

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

Clifton Newman, Circuit Court Judge

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S.C. Supreme Court

RICHARD A. GREEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002622

APPENDIX

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STATE OF SOUTH CAROLINA))
COUNTY OF SUMTER)) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

RICHARD A. GREEN,)

DEFENDANT.)

TRANSCRIPT OF RECORD
10-GS-43-1050
September 12, 2011
Sumter, South Carolina

BEFORE :

THE HONORABLE HOWARD P. KING, JUDGE;
AND JURY

APPEARANCES:

JOHN P. MEADORS, ESQ.
Assistant Solicitor

CALVIN HASTIE, ESQ.
Attorney for defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter
Typed for Margaret Sullivan

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1 THE COURT: All right, Solicitor, what's
2 the next matter?

3 MR. MEADORS: If it pleases Your Honor.

4 THE COURT: Yes, sir.

5 MR. MEADORS: At this time the State would
6 call the State of South Carolina versus Richard A.
7 Green. This is a Sumter County true bill indictment
8 2010-GS-43-1050, indictment for burglary in the
9 first degree. Mr. Green is present in the courtroom
10 with his attorney Mr. Hastie, Your Honor.

11 THE COURT: All right, ladies and
12 gentlemen of the jury, if you would give me your
13 attention. As you have heard, the State has
14 announced the -- that they have called the case
15 State versus Richard Avon Green. What I'm going to
16 tell you now is not evidence of anything. It is
17 simply the allegations of the indictment, and I tell
18 you this so you can determine if you've heard
19 anything about the case or anything will prevent you
20 from serving as a juror in this matter. But the
21 State of South Carolina accuses Mr. Green, or says
22 that Mr. Green did in Sumter County on or about May
23 4th of 2010 enter the dwelling of Rita Davis located
24 at [REDACTED] Black River Road without consent and with
25 intent to commit a crime therein and in effecting

1 entry or while in the dwelling or immediate flight
2 when this happened or occurred in the night time and
3 the charges is one of burglary in the first degree
4 for allegedly entering the dwelling of Rita Davis on
5 May 4th, 2010. The defendant Mr. Green is
6 represented by Mr. Calvin Hastie.

7 Mr. Hastie, would you stand and introduce
8 yourself to the jury and have your client turn and
9 face the jury please.

10 MR. HASTIE: Good morning. My name is
11 Calvin Hastie and this is my client Richard Green.

12 THE COURT: Thank you. You may be seated.
13 The State of South Carolina is represented by
14 Solicitor Earnest A. Chip Finney and Assistant
15 Solicitor John Meadors. These are Mr. Finney and
16 Mr. Meadors right here. Thank you, gentlemen.

17 Before we select a jury I need to ask you
18 some questions. Please give your attention to these
19 questions, and if any of them apply to you then
20 respond accordingly. Is any member of the jury
21 panel related by blood or connected by marriage to
22 the defendant Richard Avon Green, if so, please
23 stand.

24 (There was no response.)

25 THE COURT: The following individuals may

1 appear as witnesses in this case: Investigator
2 Wesley Gardner of the Sumter County Sheriff's
3 Office, Rita Davis, Deputy S. Deberry of the Sumter
4 County Sheriff's Office, Captain James Turner of the
5 Sumter County Sheriff's Office, and Tyrone Mack. Is
6 any member of the jury panel related by blood or
7 connected by marriage to any of the proposed
8 witnesses, if so, please stand.

9 (There was no response.)

10 THE COURT: Is any member of the jury
11 panel represented now or been represented in the
12 last ten years by Mr. Calvin Hastie, if so, please
13 stand.

14 (There was no response.)

15 THE COURT: Is any member of the jury
16 panel represented now or been represented in the
17 last ten years by any member of the Sumter County
18 Public Defender's Office, if so, please stand.

19 (There was no response.)

20 THE COURT: Is any member of the jury
21 panel represented now or been represented in the
22 last ten years by anyone in — by Mr. Meadors or
23 Mr. Finney or anyone in the Third Circuit
24 Solicitor's Office, if so, please stand.

25 (There was no response.)

1 THE COURT: Is any member of the jury
2 panel a close personal friend of any of the parties,
3 their lawyers or any of the witnesses whom I have
4 read off to you, if so, please stand.

5 (There was no response.)

6 THE COURT: Thank you. Does any member of
7 the jury panel know anything about the facts of this
8 case as I have briefly recited them to you, if so,
9 please stand.

10 (There was no response.)

11 THE COURT: Has any member of the jury
12 panel formed or expressed an opinion as to the guilt
13 or innocence of the defendant Richard Avon Green, if
14 so, please stand.

15 (There was no response.)

16 THE COURT: Is any member of the jury
17 panel aware of any interest, any bias, or any
18 prejudice for or against the defendant Richard Avon
19 Green, if so, please stand.

20 (There was no response.)

21 THE COURT: Thank you. Can each member of
22 the jury panel give to the State and the Defendant
23 Richard Avon Green a fair and impartial trial, if
24 not, please stand.

25 (There was no response.)

1 THE COURT: Thank you. Does any member of
2 the jury panel know of any reason whatsoever why he
3 or she should not serve as a juror in this case, if
4 so, please stand.

5 (There was no response.)

6 THE COURT: Thank you. Are there
7 additional questions on behalf of the State,
8 Mr. Meadors?

9 MR MEADORS: No, sir. Thank you, Your
10 Honor.

11 THE COURT: On behalf of Defense,
12 Mr. Hastie?

13 MR. HASTIE: No, Your Honor.

14 THE COURT: All right. Counsel, come up
15 just a moment please.

16 (WHEREUPON, counsel approached the Bench
17 for an off-the-record discussion.)

18 THE COURT: All right, Mr. Clerk, if
19 you'll give us the jury please. Ladies and
20 gentlemen, you've been through this process a little
21 bit with the previous case when Judge Cotheran was
22 in here and we drew a jury, and we're going to go
23 through that process again. The names of all the
24 qualified jurors are being put in the computer. The
25 computer will draw the names randomly and then your

1 name will be called one at a time. When your name
2 is called please come to either the swinging door to
3 my left or the double swinging doors here in front
4 up to the rail. Turn around with your back toward
5 me and face the back of courtroom. If you are
6 acceptable to the State the State will indicate by
7 saying present the juror. If you're acceptable to
8 the Defense the Defense will indicate swear the
9 juror and you will have a seat in the jury box to my
10 left. If either side excuses you then you would
11 have a seat back out with the balance of the jury
12 panel.

13 All right, Mr. Clerk, whenever your
14 computer is ready.

15 THE CLERK OF COURT: Yes, sir. If it
16 please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 THE CLERK OF COURT: Juror number 79,
19 Betty Lawhon (white female). What saith the State?

20 MR MEADORS: Please present Ms. Lawhon.

21 THE CLERK OF COURT: What say Defendant?

22 MR. HASTIE: Please excuse Ms. Lawhon.

23 THE CLERK OF COURT: Have a seat back in
24 the panel. You've been excused from this trial,
25 ma'am.

1 Juror number 70, Pat Jones (black female).

2 What saith the State?

3 MR. MEADORS: Please present the juror.

4 THE CLERK OF COURT: What saith the
5 Defendant?

6 MR. HASTIE: Please seat the juror.

7 THE CLERK OF COURT: Have a seat in the
8 jury box please, ma'am.

9 Juror number 116, Elizabeth Prescott
10 (white female). What saith the State?

11 MR MEADORS: Please present the juror.

12 THE CLERK OF COURT: What say the
13 Defendant?

14 MR. HASTIE: Please seat the juror.

15 THE CLERK OF COURT: Have a seat in the
16 jury box please, ma'am.

17 Juror number 99, Ronald Mooney (white
18 male). What saith the State?

19 MR. MEADORS: Please present the juror.

20 THE CLERK OF COURT: What saith the
21 Defendant?

22 MR. HASTIE: Please seat the juror.

23 THE CLERK OF COURT: Have a seat in the
24 jury box please, sir.

25 Juror number 39, Jessica Frotten (white

1 female). What saith the State?

2 MR. MEADORS: Please present the juror.

3 THE CLERK OF COURT: What saith the
4 Defendant?

5 MR. HASTIE: Please excuse this juror.

6 THE CLERK OF COURT: Have a seat back in
7 the panel. You've been excused from this trial
8 please, ma'am.

9 Juror number 62, Paul Holloman (white
10 male). What saith the State?

11 MR. MEADORS: Please present the juror.

12 THE CLERK OF COURT: What saith the
13 Defendant?

14 MR. HASTIE: Please seat Mr. Holloman.

15 THE CLERK OF COURT: Have a seat in the
16 jury box please, sir.

17 Juror number 125, James Rogers (white
18 male). What saith the State?

19 MR. MEADORS: Please present the juror.

20 THE CLERK OF COURT: What saith the
21 Defendant?

22 MR. HASTIE: Please seat Mr. Rogers.

23 THE CLERK OF COURT: Have a seat in the
24 jury box please, sir.

25 Juror number 149, Joseph Tobiere (black

1 male.) What saith the State?

2 MR. MEADORS: Please present Mr. Tobiere.

3 THE CLERK OF COURT: What saith the
4 Defendant?

5 MR. HASTIE: Please seat the juror.

6 THE CLERK OF COURT: Have a seat in the
7 jury box please, sir.

8 Juror number 146, Chris Tallent (white
9 male). What saith the State?

10 MR MEADORS: Please present Mr. Tallent.

11 THE CLERK OF COURT: What saith the
12 Defendant?

13 MR. HASTIE: Please excuse Mr. Tallent.

14 THE CLERK OF COURT: Have a seat with the
15 panel. You've been excused from this trial please,
16 sir.

17 Juror number 21, Keyron Choice (black
18 male). What saith the State?

19 MR. MEADORS: Please accept the juror.

20 THE CLERK OF COURT: What saith the
21 Defendant?

22 MR. HASTIE: Please seat Mr. Choice.

23 THE CLERK OF COURT: Have a seat in the
24 jury box please, sir.

25 Juror number 65, Samuel Jackson (black

1 male). What saith the State?

2 MR. MEADORS: Please accept Mr. Jackson.

3 THE CLERK OF COURT: What saith the
4 Defendant?

5 MR. HASTIE: Please seat Mr. Jackson.

6 THE CLERK OF COURT: Have a seat in the
7 jury box please, sir.

8 Juror number 158, Paul Stewart (white
9 male). What saith the State?

10 MR. MEADORS: Please present the juror.

11 THE CLERK OF COURT: What saith the
12 Defendant?

13 MR. HASTIE: Please seat Mr. Stewart.

14 THE CLERK OF COURT: Have a seat in the
15 jury box please, sir.

16 Juror number 10, Catherine Bendel (white
17 female). What saith the State?

18 MR. MEADORS: Please present the juror.

19 THE CLERK OF COURT: What saith the
20 Defendant?

21 MR. HASTIE: Please seat Ms. Bendel.

22 THE CLERK OF COURT: Have a seat in the
23 jury box please, ma'am.

24 Juror number 105, Jason Mosley (black
25 male). What saith the State?

1 MR. MEADORS: Please present the juror.

2 THE CLERK OF COURT: What saith the
3 Defendant?

4 MR. HASTIE: Please seat Mr. Mosley.

5 THE CLERK OF COURT: Have a seat in the
6 jury box please, sir.

7 Juror number 15, Rosa Brooks (black
8 female). What saith the State?

9 MR. MEADORS: Please excuse the juror.

10 THE CLERK OF COURT: Have a seat back with
11 the panel. You've been excused from this trial
12 please, ma'am.

13 Juror number 41, Opal Fulwood (black
14 female.) What saith the State?

15 MR. MEADORS: Please accept the juror.

16 THE CLERK OF COURT: What say Defendant?

17 MR. HASTIE: Please seat Ms. Fulwood.

18 THE CLERK OF COURT: Have a seat in the
19 jury box please, ma'am.

20 THE COURT: All right, counsel, one
21 alternate, one and two.

22 THE CLERK OF COURT: Alternate juror,
23 juror number 17, Henry Carter, Jr. (black male).
24 What saith the State?

25 MR. MEADORS: Please present the juror.

1 THE CLERK OF COURT: What saith the
2 Defendant?

3 MR. HASTIE: Please seat Mr. Carter.

4 THE CLERK OF COURT: Have a seat in the
5 jury box please, sir.

6 THE COURT: Anything with regard to
7 selection of the jury on behalf of the State,
8 Mr. Meadors?

9 MR. MEADORS: No, Your Honor.

10 THE COURT: On behalf of defendant?

11 MR. HASTIE: Nothing, Your Honor.

12 THE COURT: All right, counsel, come up
13 just a minute.

14 (WHEREUPON, counsel approached the Bench
15 for an off-the-record discussion.)

16 THE COURT: All right, ladies and
17 gentlemen selected in the trial of this case, I've
18 confirmed with counsel we've got some matters we
19 need to take care of before we can go forward so I
20 am going to excuse you now and allow you to go and
21 get your lunch and ask you to be back at 2:30. I'm
22 gonna ask you to go with the bailiff. He will show
23 you where your jury room is and also how to get back
24 in here. Do not come back to the courtroom, come
25 directly to your jury room at 2:30 this afternoon.

1 We will be trying the case in this courtroom and so
2 if when you come up and they're checking you in and
3 you're — they ask you which case you're on, you can
4 simply tell them that you have been selected on the
5 second case in the large courtroom and that will be
6 the Green case, and they'll know which jury room to
7 send you in.

8 Before I let you go I've got two or three
9 things I want to tell you. First of all, while
10 you're waiting at the courthouse do not discuss this
11 case with anyone. Do not let anyone discuss it with
12 you. If you see your family or your friends during
13 the lunch recess do not discuss the case with them.
14 I know you do not know anything about the case at
15 this point except what I told you the allegations of
16 indictment are, but it would be improper for you to
17 discuss the case with anyone and the reason for that
18 is pretty apparent. You've got to decide this case
19 based upon what you hear in this courtroom and not
20 on the basis of what anyone else might say. Do not
21 allow anyone to discuss it with you. If anyone
22 should approach you or try to talk with you about
23 this case over the lunch recess, get their name or
24 their description and report it to the bailiffs and
25 they will report it to me.

1 Later on in this case I will either name a
2 foreperson of this jury or will allow you to select
3 a person to serve as the foreperson. When that
4 foreperson is selected he or she should sit in this
5 front seat, the first seat on the front row here.
6 The alternate should always sit in the seat where he
7 is seated. The rest of the seats in the jury box
8 are not reserved, and it does not matter what order
9 you come and go from the courtroom. I will simply
10 ask that you go all the way down so it wouldn't be a
11 situation of falling over one another reserving the
12 first seat on the front row for the foreperson when
13 that foreperson is selected and the seat up here for
14 the alternate. Other than you can sit in of these
15 seats in the jury box.

16 Do not also — I will also tell you I do
17 not think there will be any, but there could be, do
18 not read any news stories or listen to any
19 broadcasts, media, reports about this case. Again,
20 with due respect to all of my friends in the media,
21 they — what they report is not always in completely
22 accurate as to what happens in court, and you've got
23 to decide this case based upon what you hear in this
24 courtroom and not on the basis of what the news
25 media might publish or might say. So with those

1 admonitions I am going to excuse you now, ask you to
2 go and get your lunch. Go with the bailiff, he'll
3 show you where the jury room is, show you how to get
4 back here. And please be back in your jury room at
5 2:30, and we'll be ready to go forward at that time.
6 Thank you. You may go with the bailiff.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 12:15 p.m., and the following
9 proceedings commenced in open court.)

10 THE COURT: All right, Mr. Hastie, is
11 Mr. Green incarcerated?

12 MR. HASTIE: Yes, he is.

13 THE COURT: So we don't have a question
14 about whether bond should be revoked or anything.
15 All right, that takes care of that. All right,
16 we'll be in recess on the matter of State versus
17 Richard Green until 2:30, court personnel till 2:00.
18 I've got a matter I want to take up with Mr. Britain
19 at 2:00 and we'll see everyone at that time. Is
20 there anything, Mr. Meadors, between now and then
21 that we need to take up from the Solicitor's
22 standpoint?

23 MR. MEADORS: No, sir, I do not believe
24 there is, Judge.

25 THE COURT: All right then, we'll be in

1 recess till 2:00 from court, 2:30 on this case.

2 We'll be ready to resume at that time.

3 (WHEREUPON, a lunch break was taken and
4 court proceedings resumed at 2:30 p.m.)

5 THE COURT: Mr. Green is present with his
6 counsel. The State is present and I understand all
7 the jurors are back. Anything before we bring the
8 jury in on behalf of the State, Mr. Meadors?

9 MR. MEADORS: Your Honor, we have agreed
10 on State's 1 and 2.

11 THE COURT: Without objection?

12 MR. MEADORS: Mr. Hastie has seen them and
13 he has no objection.

14 THE COURT: All right, State's 1 and 2.

15 MR. MEADORS: Pictures of the victim's —
16 two pictures of the victim's house, Your Honor.

17 THE COURT: All right. Admitted without
18 objection, Mr. Hastie?

19 MR. HASTIE: Yes, sir.

20 THE COURT: All right, it'll be marked as
21 State's one and two, admitted without objection, and
22 we can go forward without any further
23 identification.

24 (WHEREUPON, State Exhibits No. 1 and 2
25 were marked for identification and

1 received into evidence.)

2 MR. HASTIE: Your Honor, I also have for
3 identification purposes only, Defense Exhibits 1, 2,
4 and 3, and I've already shared that with him as
5 well.

6 MR. MEADORS: I mean, I really don't have
7 a problem but I don't think they're admissible just
8 as of themselves. It's a summary of the incident
9 report, a summary of the victim's statement, and
10 another officer's report but he's marking them as
11 identification.

12 MR. HASTIE: That's right.

13 THE COURT: It's for I.D. only at this
14 time.

15 MR. HASTIE: That's right.

16 THE COURT: All right, ID only, 1, 2 and
17 3.

18 (WHEREUPON, Defense Exhibits Nos. 1, 2, 3
19 were marked for identification only.)

20 THE COURT: All right, bring the jury in
21 please.

22 THE BAILIFF: Yes, sir.

23 (WHEREUPON, the jury was returned to the
24 courtroom, and the following proceedings
25 commenced in open court.)

1 THE BAILLIFF: Your Honor, we have all the
2 jurors present in the courtroom.

3 THE COURT: All right, thank you very
4 much, ladies and gentlemen, and thank you for your
5 promptness in being back here and we're now ready to
6 proceed in this matter. Mr. Bradley, you may swear
7 the jurors.

8 THE CLERK OF COURT: Yes, sir. Ladies and
9 gentlemen of the jury, please raise your right hand
10 to be sworn. Please respond saying I will.

11 (WHEREUPON, the jury was sworn.)

12 THE CLERK OF COURT: Thank you. You may
13 be seated.

14 THE COURT: All right. Thank you, ladies
15 and gentlemen, and before we begin the actual trial
16 of this case I thought it might be helpful if I
17 explain to you basically how a trial proceeds. I
18 know all of you have seen trials on television but I
19 think you're going to find that there's a great deal
20 of difference in real life. First of all, the State
21 will make an opening statement. Opening statement
22 is not evidence. It is simply an outline to help
23 you understand what the State expects the evidence
24 will show. The defendant may, if he wishes to, make
25 an opening statement but he doesn't have to for

1 reasons that I will explain later. Following the
2 opening statement you will hear the testimony and
3 evidence in this case. This consists of testimony
4 from the State's witnesses as well as any physical
5 exhibits which may be introduced into evidence, and
6 I know already that there will be some physical
7 exhibits introduced into evidence and I will tell
8 you that the lawyers may ask for permission to
9 publish those exhibits while you're sitting there in
10 the jury box. And I will likely grant them that
11 right to publish those exhibits. Publish is simply
12 a legal word meaning show the jury those exhibits,
13 and the lawyer will pass them to you while you're
14 sitting there in the jury box. Do not be concerned
15 if you do not have long to look at any exhibit while
16 you're sitting in the jury box as you might like to.
17 Anything that is introduced into evidence and
18 admitted into evidence will go with you to the jury
19 room when you retire to deliberate your verdict.

20 Following the completion of the testimony
21 the attorneys will again have an opportunity to make
22 what is called a closing statement or summation to
23 you. This is an opportunity for the attorneys to
24 summarize the case from their respective points of
25 view. Again, these arguments are not evidence.

1 Following the closing statements by the attorneys I
2 will instruct you on the law of South Carolina as it
3 pertains to the issues that have arisen in this
4 case, and when I have completed my instructions to
5 you you will be permitted to begin your
6 deliberations in order to reach a verdict.

7 Now ladies and gentlemen, you're the jury
8 in this case and I want to take just a few minutes
9 tell you something about your duties as jurors and
10 give you some preliminary instruction. At the end
11 of this case I will give you more detailed
12 instruction and those instructions will control your
13 deliberations. It will be your duty to decide from
14 the evidence what the facts are. You, and you
15 alone, are the judges of the facts. You will hear
16 the evidence, decide what the facts are, and then
17 apply those facts to the law which the Court will
18 give to you. That is how you'll reach a verdict.
19 In doing so you must follow the law whether you
20 agree with it or not. The evidence will consist of
21 testimony of witnesses, documents, and other things
22 received into evidence as exhibits, and any facts on
23 which the lawyers agree or which I instruct you to
24 accept.

25 Now you should not take anything that I

1 may say or do during this trial as indicating what I
2 think of the evidence or what your verdict should
3 be. The law does not allow me to have an opinion
4 about the facts; that is totally up to you. The
5 same law that makes you the judge of the facts makes
6 me the judge of the law. You must take the law as I
7 give it to you regardless of what you think the law
8 is or what the law ought to be. If I'm wrong on the
9 law there's another time and place for that error to
10 be corrected; but for this case, you must accept the
11 law as I charge it to you.

12 Now this is a criminal case brought by the
13 State of South Carolina. The State charges the
14 defendant Richard Avon Green with the charge or with
15 the crime of burglary in the first degree. The
16 charge against the defendant is contained in the
17 indictment which I hold in my hand. The indictment
18 is not evidence of anything. It is simply the
19 description of the charge made by the State against
20 the defendant. The defendant has pled not guilty to
21 the charge and is presumed innocent unless and until
22 proven guilty beyond a reasonable doubt. A
23 reasonable doubt is the kind of doubt that would
24 cause a reasonable person to hesitate to act. A
25 defendant has the right not to testify and never has

1 to prove innocence or present any evidence. The
2 burden of proof is always on the State of South
3 Carolina.

4 Now there are certain things that are not
5 evidence, and you must not consider them as evidence
6 in deciding the facts of this case. Statements and
7 argument of the attorneys are to the evidence.
8 Questions and objection of the attorneys are to the
9 evidence, and testimony that I instruct you to
10 disregard is not evidence. Evidence may be direct
11 or circumstantial. Direct evidence is testimony by
12 a witness about what that witness personally saw or
13 heard or did. Circumstantial evidence is indirect
14 evidence. The law permits you to give equal weight
15 to both, but it is for you to decide how much weight
16 to give to any of the evidence.

17 There are rules of evidence which control
18 what can be received into court. When a lawyer asks
19 a question or offers an exhibit into evidence and
20 the lawyer on the other side thinks that it is not
21 permitted by the rules, that lawyer may object. If
22 I overrule the objection the question may be
23 answered or the exhibit may be received. If I
24 sustain the objection the question cannot be
25 answered or the exhibit cannot be received.

1 Whenever I sustain an objection to a question or
2 deny a motion to admit an exhibit into evidence, you
3 must not guess what the answer would have been or
4 what the exhibit would have shown. Sometimes it may
5 be necessary for me to request that you leave the
6 courtroom while I discuss with the attorneys legal
7 questions that come up during the trial. If that
8 occurs, you should not speculate about our
9 discussion or reasons that you were asked to leave
10 the courtroom. This is simply a procedure that the
11 law requires when certain legal issues arise. There
12 also may be occasions when I asked the attorneys to
13 approach the Bench so that I can discuss a legal
14 issue with them in private. I will do this as often
15 as possible so that you will not be required to
16 leave the courtroom more than is absolutely
17 necessary.

18 Again, if I ask the attorneys to step up
19 to the Bench or if I ask you to leave the courtroom,
20 please don't think that anybody is trying to hide
21 anything from you or keep any evidence from you.
22 This is simply a procedure used by all lawyers and
23 by all courts to determine and decide the request.
24 Now in deciding the facts of this case you may have
25 to decide which witnesses to believe and which

1 witnesses not to believe. That is called
2 credibility. You may believe everything a witness
3 says or only part of it or none of it. In deciding
4 what to believe you may consider a number of factors
5 including the witness' ability to see or hear or
6 know the things that the witness testified to, the
7 quality of the witness's memory, the witness' manner
8 or demeanor while testifying, whether the witness
9 has an interest in the outcome of the case or any
10 motive, bias, or prejudice, and whether the witness
11 is contradicted by anything the witness said or for
12 trial or by any other evidence, and how reasonable
13 was the witness' testimony when considered in light
14 of other evidence which you do believe.

15 Now just a few words for you about your
16 conduct as jurors some of which I have already
17 mentioned, but they're important enough that they
18 bear repeating. First of all, do not talk to each
19 other about the case until the end of the case when
20 you go to your jury room to decide on your verdict.
21 So if at any time you're in the jury room prior to
22 the time I tell you to begin your deliberations you
23 should not talk about this case. You should talk
24 about anything you want to talk about, weather,
25 sports, grandchildren, anything at all, but don't

1 talk about this case. Secondly, do not talk with
2 anyone else about this case until the trial is ended
3 following your verdict and you have been discharged
4 by jurors. This means do not discuss the case with
5 members of your family or friends or with anyone
6 else. You may tell them that you are a juror, but
7 don't tell them anything about the case until you
8 have been discharged by me. Do not let anyone talk
9 to you about the case. If anyone should try to talk
10 with you, get their name or their description,
11 report it to the bailiff who will report it to me
12 and I will deal with them.

13 Do not read any news stories or articles
14 or listen to the radio or television reports about
15 this case. You're not to consider as evidence
16 anything that you may see or hear when court is not
17 in session. Do not do any research such as
18 consulting dictionaries or other reference materials
19 and do not do anything on the internet or any other
20 electronic research source. And do not make any
21 investigation into the case on your own. And
22 finally and probably most important, do not make up
23 your mind about what your verdict will be until you
24 have heard all the evidence in this case and the
25 arguments of counsel and the instructions on the law

1 of the Court. You will be instructed when to be
2 begin deliberations by either me or the bailiff.

3 Any objection to my opening remarks on
4 behalf of the State, Mr. Meadors?

5 MR. MEADORS: No, sir, Your Honor.

6 THE COURT: On behalf of the Defense,
7 Mr. Hastie?

8 MR. HASTIE: None, Your Honor.

9 THE COURT: All right. The first order of
10 business will be the matter of opening statements
11 and for that purpose the Court will recognize the
12 Assistant Solicitor Mr. Meadors.

13 MR. MEADORS: May it please the Court.

14 THE COURT: Yes, sir.

15 MR. MEADORS: That's Rick Green. That is
16 Rick Green. Those are the words Rita Davis said on
17 the early morning hours of May 4th, 2010 as she saw
18 somebody pulling up, or hear somebody pulling up her
19 garage door after the door bell had rung, after her
20 front door been shook, and after she sees the person
21 come from her garage back toward the front door.
22 Rick Green. Ladies and gentlemen, my name is John
23 Meadors. I'm an assistant solicitor here in the
24 third judicial circuit. I have the honor of working
25 for the honorable solicitor Ernest A. Finney, the

1 III, "Chip" Finney. I'm here today representing the
2 people of South Carolina, the people of Sumter
3 County against the defendant Richard A. Green.
4 Mr. Green sits here with Mr. Hastie, his attorney.
5 Sitting at counsel table is Wesley Gardner, an
6 investigator in this case, Deputy Deberry, Tom
7 Miller, an investigator with our office, and the
8 victim in this case, Mrs. Rita Davis.

9 His Honor has already instructed you, and
10 as he said, this is the opportunity for us to
11 briefly give you an outline of the case. That's
12 what I'm gonna do; I'll be very brief. First and
13 foremost I want to talk to you about the burden that
14 is on the State in this case. It's the same burden
15 that's on every case that's prosecuted around this
16 country. And I want to tell you something right off
17 the bat. This is not going to be a long case. I
18 think we'll be finished tomorrow. As a matter of
19 fact I know we will. But the length of the case
20 does not take away from the import of this case.
21 This case is important. I mean, it really is. It's
22 important of a case that will be tried in this
23 county in this state and this country this week.
24 Important to the defendant Richard A. Green,
25 important to Ms. Davis. It's important to everybody

1 in this courtroom. So don't let the shortness of
2 this case take away from the important that
3 importance case.

4 What is the defendant charged with? His
5 Honor told you, and before I forget, reasonable
6 doubt, the burden, we all heard. We must prove the
7 defendant guilty beyond a reasonable doubt. Not
8 beyond all doubt but beyond a reasonable doubt.
9 It's important. Beyond a doubt that cause
10 reasonable folks to hesitate to act. Now the
11 Defense, the defendant is cloaked with something
12 which I believe and it's a very important part of
13 our law. And the Defendant sits presumed innocent,
14 presumed innocent of these charges unless and until
15 the State proves him guilty and we must do that
16 beyond a reasonable doubt. What's he charged with?
17 Well, the Sumter County grand jury returned an
18 indictment, and this is an extensive charge the
19 grand jury returned an indictment that does say on
20 May 4th, 2010, Richard Avon Green did enter the
21 dwelling of Ms. Rita Davis at [REDACTED] Black River Road,
22 that he entered the residence without consent with
23 the intent to commit a crime.

24 And ladies and gentlemen of the jury, with
25 burglary first there's several ways one be charged

1 with burglary first. Either be armed with a weapon,
2 get weapons from you're in the house. But one way
3 also there can be a burglary first is that it
4 occurred in the nighttime. The judge will tell you
5 that later on in the trial. So the State must prove
6 the elements of this indictment, that that's Richard
7 Green, that he entered Ms. Davis' house on Black
8 Road, that it was a weapon, that he did enter
9 without consent. And I'm gonna ask him did you
10 consent. And that he did it with intent to commit a
11 burglary. Those are the elements we must prove to
12 y'all beyond a reasonable doubt for you to take away
13 that presumption of innocence and find the defendant
14 guilty.

15 His Honor told you and I will very briefly
16 here too, the types of evidence. Circumstantial
17 evidence which the law makes no, gives no greater
18 weight to one or another which prove the fact A and
19 fact B that leads to fact C. If you went to bed
20 last night and there wasn't snow on the ground and
21 you got up this morning and there was snow on the
22 ground, but you know it's snow even though you
23 didn't see it. That's an example of circumstantial
24 evidence. The other evidence — Your Honor has
25 mentioned documents and pictures and there will be

1 some of those. But the others are direct evidence.
2 It's what you do or acquire. It's evidence you
3 acquire with one of your senses. You see it, you
4 hear it, you smell it, you touch it. And you come
5 in and take the witness stand and you say, this is
6 what I heard, felt, smelled, and touched. She's
7 gonna tell you what she saw, what she heard. Listen
8 to her. What happened? It's May 4th. The trial
9 takes you back to what happened. We will take you
10 back to May 4th, 2011 [sic] to Black River Road, the
11 home of Rita Davis. She worked at the county
12 detention center, still does. She'll tell you where
13 she worked. She worked the day before. This was a
14 Tuesday. She works from six till six. She's gonna
15 tell you what she was watching, what time she went
16 to bed. I think she went to bed about 10 to 11
17 after watching the news. And about 1:30 she hears
18 the door bell ring. She goes and looks out the door
19 there. She sees a man walking away. She'll tell
20 you what she saw in the window. Her husband's truck
21 is usually there, wasn't there. He was working
22 night shift. She had one car inside and one car
23 outside. She looked, she sees the person walk away.
24 And then she'll say, we believe the evidence will
25 show, she hears her garage door going up. She goes

1 to the dining room, looks out the window and sees
2 the man she'll testify, we believe the evidence will
3 show, the same man she saw in the peep hole over at
4 the garage, come back to the garage in front of the
5 dining room window. And that's when she says,
6 that's Rick Green. And she's gonna tell you how
7 long she's known him, where she's known him from.
8 She then goes back and that's when he starts pulling
9 at the door, pulling at the front door. And listen
10 to what Rita Davis said. She went and got her gun.
11 She got her gun and aimed it at the front door.
12 This is an important case. She aimed it. And
13 listen to her. Listen to her, see how she felt,
14 whether she's scared or not, didn't know what to do,
15 whether she should shoot or not. And you know what
16 she did? The evidence will show she tried to make a
17 phone call and the phone wouldn't work. The phone
18 wouldn't work. She goes to the back. She opens the
19 back door, the back door. She fires her gun. And
20 instead of firing at this person at the door she
21 fires towards his house to scare him off. She then
22 sits there for three hours or so with a gun waiting
23 for her neighbor to wake up and drives trucks, and
24 she knows he wakes up about ten to four the evidence
25 will show. And when she hears her neighbor next

1 door she starts flicking the lights so he'll see
2 what's going on. He comes over. He says,
3 everything all right, ma'am? The evidence will show
4 she said no, this fella tried to break in my house,
5 was pulling up the garage, my phone won't work, I
6 left my cell phone out in the car, the evidence will
7 show. He goes around the front and talking waiting
8 to meet with Tyrone, meets her at her car while she
9 gets the cell phone and calls the police. Deberry
10 responds shortly after 4:00 in the morning. This is
11 in the morning, ladies and gentlemen, the evidence
12 will show. And she gives him a statement, tells him
13 happened, and tells him who did it, Rick Green.

14 Later on that day Investigator Gardner
15 comes out, gets a statement from her, and she
16 describes who it was. It was who it was. He takes
17 pictures of her house. And the evidence will show,
18 ladies and gentlemen, the reason she couldn't make a
19 phone call when he took a picture of it was the
20 phone line was cut. Intent to commit a crime?
21 Ladies and gentlemen, that's what this case is
22 about.

23 Now I want to talk to you briefly about
24 your role. His Honor has said, it ought to be
25 crystal clear, he is the law. There's no question

1 about it. This is his courtroom. He's the judge of
2 the law and decides what the law is and that's the
3 way it is and the way it should be. I have a role
4 and Mr. Hastie has our roles. With all deference to
5 His Honor, I think your role is as important,
6 perhaps more important than everyone else, because
7 you come in, everything you gather in your lifetime,
8 experiences and common sense, and you decide what
9 happens. Isn't that a beautiful system? That's our
10 system. We make sure the evidence fits in. We both
11 make sure the rules are followed. His Honor makes
12 sure the rules are followed. But once you decide
13 what the facts are using your common sense, His
14 Honor will tell you this is the law. You apply what
15 you think the facts are to the law His Honor tells
16 you, and that's when you come up with a verdict. It
17 really is good.

18 Now in deciding what the truth is, it
19 comes down in most cases is credibility,
20 believability of what comes out of the mouths of
21 folks that take this witness stand. That's what
22 y'all got to present; that's what it boils down to.
23 What's the truth, what's credible. Ladies and
24 gentlemen of the jury, I respectfully submit that
25 tomorrow when you've heard all the evidence and you

1 go back to reach your verdict, the verdict will
2 speak the truth. We respectfully submit that your
3 verdict will say, that's Rick Green, and he's guilty
4 of burglary first of Ms. Rita Davis' house. Thank
5 you.

6 THE COURT: Mr. Hastie, does Defendant
7 care to make an opening statement?

8 MR. HASTIE: Yes, Your Honor. May it
9 please the Court.

10 THE COURT: Yes, sir.

11 MR. HASTIE: Good afternoon, ladies and
12 gentlemen, my name is Calvin Hastie. I'm a public
13 defender here in Sumter. I'm from Sumter, was born
14 right here. I grew up here on the south side of
15 Sumter, still live on the south side of Sumter.
16 Went to school here in Lake High School. Most of us
17 here, y'all can remember back then (inaudible) went
18 to South Carolina State and went in the military for
19 20 years. Went for 20 years in the military all
20 over the world. And I spent all that time for
21 moments just like these so that we can protect our
22 rights so we can have certain rights that no nobody
23 can take away from us. And that's what we want to
24 talk about today. My client is Mr. Green sitting at
25 the table over there. He has waited 15 months on

1 this day. This is his day. Listen Mr. Hastie, I
2 can't wait till I get my chance in court. This is
3 his chance. If I had to choose a theme for today --
4 and I want y'all to listen very carefully. I want
5 y'all to ask yourself as this information, facts,
6 evidence is introduced, ask yourself, now where is
7 the evidence of all this, what evidence do you have
8 in this? The burden of proof in any trial is not
9 upon you and me. It's upon the State to prove to
10 you beyond a reasonable doubt that anyone may have
11 committed a certain crime beyond a reasonable doubt.
12 So I want you to listen to a theme. Where's the
13 evidence here today? Because in this country our
14 Constitution of the United States and the
15 constitution of this state says that we are all
16 presumed innocent until proven guilty, not talk
17 about him, not look like he may be guilty, you
18 happen to have a bad record. But it says only until
19 proven guilty. And that's what we're going to hang
20 out hat on here today. It's not prove anybody
21 committed a crime, especially my client here today.

22 You have already heard some things that I
23 want you to listen to. Solicitor said that, she
24 said that she saw Rick, Rick, Richard Green at her
25 door. Well, in her statement she said I saw a young

1 man. She told Detective Gardner I saw someone,
2 whether she'll have to (inaudible) him off. Then
3 she says, she said he entered her home because in
4 order to have a burglary there must be an entry.
5 There's absolutely no testimony, you will not hear
6 any testimony today that anyone -- not my client --
7 anyone entered her home. She said she peeped
8 through a peephole in her front door. Her garage is
9 to the left, and it's kind of bent a little bit so I
10 don't know what kind of peephole she got, but there
11 ain't no way in the world you can look through a
12 peephole and see somebody at your garage door on the
13 far left, and it's kind of bent. You'll see the
14 picture of her home. And she says, I saw him at the
15 garage door. Then I saw him walk back toward my
16 door. Then he hold the door bell. Why in the world
17 you gonna ring the door bell. Said I'm coming in.
18 No, he ought to know better. If she knew Rick
19 Green, if what she said is true and she knew Richard
20 Green and she saw Mr. Green, she say I know him,
21 well why didn't she say, well Rick, what in the
22 world are you doing at my door at 1:30 in the
23 morning. Why didn't you do something? And I think
24 she's a correctional officer. She knows how to use
25 a gun. She had a weapon. But she didn't say Rick,

1 if you don't get off my door I will put a bullet
2 hole in you. No, she said none of that. She runs
3 to her rear door now. She goes peeping through this
4 hole. She gets her gun. She runs to the back of
5 the house and fired four shots out the back door.
6 The first one is (inaudible). Who does that? Who
7 does that? She shot out the back door. Then I
8 don't know what kind of neighbors she got, but I
9 live on the south side. And any time I hear rounds,
10 somebody fire a shot, everybody wakes up. You look
11 out, what's going on, who's firing these shots
12 because there's something very distinct about a shot
13 fired at 1:30 in the morning. Ladies and gentlemen,
14 something very distinct. Somebody firing a shot at
15 1:30 in the morning you're gonna hear it if you're
16 the next door neighbor. Did any of the neighbors
17 come? No, nobody came. She said I get back and I
18 sat down in my living room for three hours, three
19 hours waiting on -- could have been less time but
20 let's say two hours -- waiting on my neighbor to
21 wake up. And she fired on up. She says, well, I
22 flashed my lights. Couldn't hear four gun shots but
23 where he could see flashes of lights so now he comes
24 over and he says, are you all right, and she says
25 no.

1 Where is this car she's talking about
2 where she says she left her phone? That's why she
3 fired those shots. She said, well my husband left
4 the car in the -- outside the garage. And I assume
5 then her car was inside the garage. Well then, why
6 you waiting on the neighbor to wake up so he can
7 mess with you to your car. Your car is just out in
8 the garage. Just go to your car and get your cell
9 phone. But she waited two or three hours for him to
10 wake up.

11 Ladies and gentlemen, I'm just asking you
12 today to just look at the evidence. You ask
13 yourself where is the proof of all of this. It
14 sounds pretty good. And the counsel said, oh, this
15 is a simple case, but it's not simple for Mr. Green
16 because it's his life because —

17 MR. MEADORS: Your Honor, I object to
18 that.

19 THE COURT: Yes, sir.

20 MR. HASTIE: I apologize.

21 THE COURT: I sustain it. Also, the
22 opening statements is to what the evidence will show
23 and not argument to this jury, Mr. Hastie.

24 MR. HASTIE: Yes, sir, it was some of the
25 things he brought out. I will not repeat that.

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1 And I just want you all to know justice is good
2 evidence that you're gonna hear today. And you ask
3 yourself are you convinced beyond a reasonable doubt
4 that it was Richard Green that — there was no
5 entrance so he wasn't burglarizing this young lady's
6 home. Thank you.

7 THE COURT: All right, Mr. Meadors, you
8 may call your first witness.

9 MR. MEADORS: If it please the Court.

10 THE COURT: Yes, sir.

11 MR. MEADORS: The State would call Rita
12 Davis.

13 THE COURT: Okay.

14 THE BAILIFF: Place your left hand on the
15 Bible, raise your right hand. State your name
16 please.

17 THE WITNESS: Rita Lee Davis.

18 WHEREUPON,

19 RITA LEE DAVIS,
20 having been duly sworn by the Clerk of Court,
21 testified as follows:

22 THE BAILIFF: Please state your full name,
23 Spell your last name for the record.

24 THE WITNESS: Rita Lee Davis, D-A-V-I-S.

25 **DIRECT EXAMINATION**

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1 BY MR. MEADORS:

2 Q Good afternoon, Ms. Davis.

3 A Good afternoon.

4 Q All I ask is if you could just speak in there so
5 His Honor and the jurors and the court reporter can
6 hear you please, ma'am.

7 A Okay.

8 Q Ms. Davis, I want to start off just asking you a
9 few questions about you. Where are you from?

10 A Rembert, South Carolina.

11 Q Okay. Were you born and raised there?

12 A Yes.

13 Q And where did you go to high school?

14 A Hillcrest High.

15 Q And after -- after Hillcrest High what did you
16 do?

17 A I went to work for Springs in Lancaster, South
18 Carolina.

19 Q Okay. What did you do for Springs?

20 A I was a spinner?

21 Q How long were you a spinner?

22 A About two years.

23 Q And then do you remember what two years those,
24 when that was?

25 A 1980 through 1982.

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- 1 Q And when you got through with Springs in
2 Lancaster what did you do then?
3 A I went to Hermitage Textile in Camden, South
4 Carolina.
5 Q Okay, and what did you do there?
6 A I was a spinner.
7 Q And how long did you spend at Hermitage?
8 A About eight years.
9 Q And where did you go after that?
10 A After that I —
11 Q Did you work at Thermoid?
12 A Thermoid in Elgin, South Carolina.
13 Q Okay. And what did you do for Thermoid?
14 A I was a belt inspector.
15 Q A belt inspector?
16 A Yes, sir.
17 Q How long did you do that, Ms. Davis?
18 A Nine years.
19 Q And after you got through with Thermoid — and
20 that's pretty tough working those jobs; wasn't it?
21 A Yes, it is.
22 Q Where did you go after that?
23 A I decided to go into law enforcement and I went
24 to Kershaw prison and been with that for six months.
25 Q And is that in Lancaster?

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1 A Lancaster, South Carolina.

2 Q Okay. And after that job what did you do?

3 A I went to work for Kershaw County Detention
4 Center about three years.

5 Q And roughly when was that?

6 A 2001 through 2003.

7 Q And then from 2003 you're now into law
8 enforcement. Where did you work after that?

9 A I'm working at Kershaw — at the Sumter/Lee
10 Regional Detention Center.

11 Q At the Sumter/Lee Regional Detention Center?

12 A Yes, sir.

13 Q And are you doing that through today? You're
14 working there now?

15 A Yes.

16 Q For these purposes Ms. Davis, are you married?

17 A Yes, I am.

18 Q I would ask you to look at these ladies and
19 gentlemen of the jury and to tell them — I just
20 want to ask you one question. Do you know Richard
21 Green?

22 A Yes, I do.

23 Q And what do you know him as?

24 A Rick.

25 Q Rick Green?

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- 1 A Rick Green.
- 2 Q And is that what you call him, Rick?
- 3 A Rick.
- 4 Q Can you tell the ladies and gentlemen of this
5 jury how do you know Rick Green?
- 6 A I know Rick Green from the community and in
7 school.
- 8 Q From the community and school?
- 9 A Yes, sir.
- 10 Q Did y'all grow up in the same community?
- 11 A Yes, sir.
- 12 Q Did you go to the same school?
- 13 A Yes, sir.
- 14 Q Was he older or younger than you?
- 15 A He was a little younger than I am.
- 16 Q Did you have any brothers or sisters?
- 17 A Yes, I do.
- 18 Q Was he the age of any of your brothers or
19 sisters?
- 20 A Yes, he's the age of my baby brother Thomas.
- 21 Q He's the age of your baby brother Thomas?
- 22 A Yes.
- 23 Q Is it fair to say that you've seen him for years?
- 24 A Yes.
- 25 Q And do you know him by name and sight?

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1 A Rick.

2 Q Okay. But when you see him you know him as
3 that's Rick?

4 A Yes.

5 Q You know him by name and sight?

6 A Yes. Once I see him that's Rick Green.

7 Q Where do you live?

8 A In the corner of Black (ph)River Road.

9 Q Do you know how far Rick lives from you,
10 Mr. Richard Green?

11 A He lives maybe about a minute from me.

12 Q And do you know what road he lives on, or did
13 live on?

14 A He lives on the Springhill Road.

15 Q Springhill?

16 A At — yes.

17 Q And do you know who he stayed with?

18 A His mother.

19 Q And you know his mother?

20 A I know of her.

21 Q Would you ever see him walking in the area or
22 community of where you lived?

23 A Yes, I did.

24 Q Now I want you to go back and we'll take this
25 jury back to May 4th of 2010, Ms. Davis. We've

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1 looked — you've looked at a calendar. Is that a
2 Tuesday?

3 A Yes, it is.

4 Q Now what was your work schedule? Where were you
5 working then?

6 A At the Sumter/Lee Regional Detention Center.

7 Q What was your schedule like? Did you have a
8 certain rotation?

9 A Yes. I was off that weekend, a long weekend. I
10 had to go back to work on Monday, Tuesday. I worked
11 Monday and was sleeping on Tuesday morning.

12 Q And what was your shift on Monday? What did it
13 —

14 A 6 a.m. in the morning to 6 p.m.

15 Q And that was going to be the same shift Tuesday?

16 A Yes.

17 Q 6 to 6?

18 A Yes.

19 Q So did you work Monday?

20 A Yes.

21 Q And you went to bed Monday night?

22 A Yes.

23 Q Can you tell the ladies and gentlemen of this
24 jury what was your habit, if any, and do you
25 remember what you did that night which would have

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- 1 been May 3rd night of 2010 leading up to May 4th
2 morning?
- 3 A That night I watched the 10:00 report on channel
4 57.
- 5 Q Is that your habit? Is that what you do?
- 6 A Yes. Every morning when I go to bed I watch the
7 channel 57 news. And I watch my news I go to bed.
- 8 Q Approximately what time did you go to bed?
- 9 A About quarter till 11.
- 10 Q Now I'm not prying and it's not personable, but
11 was is your husband there that night?
- 12 A No, he wasn't.
- 13 Q Where was he?
- 14 A He was at work.
- 15 Q Does your husband have a -- what car does he
16 drive?
- 17 A He has a Nissan truck.
- 18 Q And is it -- is it parked there when he's there?
- 19 A Yes.
- 20 Q Is it parked outside the garage when he's there?
- 21 A Yes.
- 22 Q If his truck is not there is he there?
- 23 A No.
- 24 Q Do you drive a truck?
- 25 A No.

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1 Q So if you were outside the residence and you
2 would be able see if his truck wasn't there?

3 A Yes.

4 Q And you've had — what other cars were there?

5 A My Honda Accord was parked on the outside in the
6 front of the garage and my SUV was in the garage.

7 Q And what car were you planning on driving to work
8 on May 4th?

9 A My Honda Accord.

10 Q About quarter till 11?

11 A Quarter till 11.

12 Q Rita Davis goes to sleep, correct?

13 A Yes.

14 Q Tell the jury what do you remember next, what
15 happened next?

16 A After I went to bed about 1:30 my door bell so
17 when I woke up I looked at my clock. And I say it's
18 1:30, who in the devil is that ringing my door bell
19 at this time in the morning. So when I got up I
20 went to my front door. I peep out my peephole. I
21 saw a man walking away from my door at that —

22 Q Walking away from your door.

23 A Walking away from my door, yes.

24 Q Did you know who that man was at that point?

25 A No, I did not.

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1 Q Okay. What happened next?

2 A After he walked away from the door he went to try
3 to get my garage door opened. He couldn't get the
4 garage door open. When he walked away from the door
5 I went into my dining room and stood at the window
6 and he was trying to get my garage door open. I
7 heard my garage door going up.

8 Q You heard your garage door going up?

9 A I heard my garage door going up.

10 Q And you heard — you know it was your garage
11 door?

12 A Yes.

13 Q Tell the jury about this garage door, is it
14 locked?

15 MR. MEADORS: Your Honor, can I approach.
16 There's some — can we approach.

17 (WHEREUPON, counsel approached the Bench
18 for an off-the-record discussion.)

19 THE WITNESS: This is serious.

20 BY MR. MEADORS:

21 Q When you go to bed at night your garage doors, do
22 you leave them open or are they shut?

23 A They are shut, garage with remote.

24 Q And do you lock them?

25 A It automatically locks.

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- 1 Q Automatic lock?
- 2 A Yes.
- 3 Q What, if anything, did you hear after you'd seen
- 4 this person going away from your door?
- 5 A After I heard him coming from my garage door
- 6 after he couldn't get it up, open, he proceed back
- 7 to my front door.
- 8 Q Okay. But prior to proceeding back to your front
- 9 door you said you heard your garage door going up?
- 10 A Yeah, it was going up.
- 11 Q Is there any doubt in your mind about that?
- 12 A No.
- 13 Q Was he able to get the door up?
- 14 A No, sir, just a little.
- 15 Q But he got it up a little?
- 16 A Just a little.
- 17 Q What were you thinking then? Were you scared?
- 18 A I was scared to death.
- 19 Q Look at me. Were you scared?
- 20 A Scared to death.
- 21 Q You see the man at the front door, you hear your
- 22 door trying to, the garage door open, correct?
- 23 A Yes, sir.
- 24 Q Where do you go next, what happens next?
- 25 A I was in my dining room window looking out the

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1 window and then he walked pass from there trying to
2 get my garage door open. I said, that's Rick Green
3 and he went to try to get my front door open.
4 That's when I went and got my gun and make a call
5 and my phone was dead.

6 Q So you tried to make a phone call?

7 A Yes, I did.

8 Q You couldn't make a phone call?

9 A No, sir.

10 Q Did you know why then?

11 A Because my phone was dead.

12 Q Okay, well, that was a terrible question. Did
13 you know why your phone was dead then?

14 A No, sir, I didn't.

15 MR. MEADORS: Your Honor, can I ask the
16 witness to step down.

17 THE COURT: Yes, you can step down.

18 BY MR. MEADORS:

19 Q Ms. Davis, if you will stand right here.

20 THE COURT: Ms. Davis, you can stand over
21 here if you'd like. Just please talk this way so
22 this young lady can take down everything you say.
23 You're going to be away from the microphone. You
24 have to speak up loud and clear so everybody can
25 hear you.

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1 MR. MEADORS: Your Honor, can we have her
2 come right here?

3 THE COURT: That will be fine.

4 BY MR. MEADORS:

5 Q Now you recognize these two, do you not?

6 A Yes.

7 MR. MEADORS: Your Honor, this is State's
8 1 and 2 without objection.

9 THE COURT: All right. These exhibits
10 have been admitted into evidence without objection.

11 BY MR. MEADORS:

12 Q Now this is State's Number 2, Ms. Davis. Will
13 you tell these ladies and gentlemen of the jury what
14 is this?

15 A That's my house.

16 Q And it's the address is what?

17 A [REDACTED] Black River Road, Rembert, South Carolina.

18 Q And that's in Sumter County?

19 A Sumter County.

20 Q Now would you show the jury, you said you heard a
21 door bell ring. Can you show the jury on here where
22 you when or your front door.

23 A My front door, this is my front door right here.
24 This is the window I was standing at in my dining
25 room looking out.

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- 1 Q But the person left your front door, correct?
- 2 A Yes.
- 3 Q You didn't know who it was at that point?
- 4 A At that time I did not.
- 5 Q The next thing you testified you hear your garage
- 6 door going up?
- 7 A Trying to go up.
- 8 Q Did it go all the way up?
- 9 A No, sir.
- 10 Q Did it sound like somebody was trying to get it
- 11 up?
- 12 A Yes.
- 13 Q Where were you then?
- 14 A Standing at this window right here.
- 15 Q Okay. What did this person do, if anything,
- 16 after he tried to get your garage door open and
- 17 couldn't?
- 18 A He walked back on to my sidewalk right here and
- 19 tried to get in my front door open right here.
- 20 Q What is this up here?
- 21 A That's my dawn to dusk light.
- 22 Q Dawn to dusk light?
- 23 A Yes, sir.
- 24 Q Was it on?
- 25 A Yes.

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1 Q Did it help you see?

2 A Yes, sir.

3 Q When this person left here, came here, tried to
4 get the garage door open and walked back, you were
5 where?

6 A Standing right here in my dining room window.

7 Q Did you look out and see the person's face at
8 that time?

9 A Yes, I did.

10 Q What did you say to yourself?

11 A That's Rick Green.

12 Q Did you immediately recognize it was Rick Green?

13 A Yes, I did.

14 Q Did he have any facial hair?

15 A Yes, he did.

16 Q What did he have?

17 A Goatee.

18 Q Did you know him to have a goatee?

19 A Yes, sir.

20 Q Was that the same fella you grew up with?

21 A Yes, sir.

22 Q Same fella your brother went to school with?

23 A Yes, sir.

24 Q Is that the same fella you walked around the
25 neighborhoods with?

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- 1 A Yes, sir.
- 2 Q Is there any doubt in your mind?
- 3 A No doubt.
- 4 Q Well, what happened next? Show the jury what
5 happened next. Where did you go — after you saw
6 Rick Green go back where did he go?
- 7 A He — he went to my front door. I was standing
8 right here. When I saw him that's when I went — I
9 said that's Rick Green and then that's when I went
10 and got my phone and my gun.
- 11 Q You tried to make a phone call?
- 12 A Yes, sir.
- 13 Q Couldn't?
- 14 A No, sir.
- 15 Q Got your — I guess your gun is the one you had
16 because of your job, correct?
- 17 A No, sir, it wasn't the gun I —
- 18 Q You went and got it?
- 19 A Yes, sir.
- 20 Q Where did you go then?
- 21 A In my den.
- 22 Q And what, if anything, did you hear from the
23 front door?
- 24 A Someone jerked on my front door trying to get it
25 open.

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- 1 Q You could hear it?
- 2 A Yes, sir.
- 3 Q Okay. Were they pulling at it?
- 4 A They was just pulling on it, pulling on it trying
- 5 to get it open.
- 6 Q Did you go open the door then?
- 7 A No, sir.
- 8 Q Have a seat, ma'am.
- 9 MR. MEADORS: That's all at this point,
- 10 Your Honor, for that.
- 11 BY MR. MEADORS:
- 12 Q Are you standing or sitting now, Rita?
- 13 A I'm standing.
- 14 Q And in what room?
- 15 A In my den.
- 16 Q And can hear somebody is trying to open your
- 17 door?
- 18 A Yes, sir.
- 19 Q Where is the gun you had? You had a gun?
- 20 A Yes, sir.
- 21 Q I mean, how were you holding it?
- 22 A Holding it like this.
- 23 Q Did you think about using it?
- 24 A I did.
- 25 Q Where were you going to use it? Where were you

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1 going to shoot it?

2 A Through my front door.

3 Q You were; weren't you?

4 A Yes, I were.

5 Q Were you that scared?

6 A Yes, I was.

7 Q But you didn't?

8 A I didn't.

9 Q You glad you didn't.

10 A (There was no response.)

11 Q But you didn't fire it?

12 A I didn't fire it. At time I didn't.

13 Q And — look at them or just tell them. I don't

14 care if you look at them or not. What was going

15 through your mind?

16 A At that time I didn't really recall — if you

17 shoot someone —

18 Q You can't quote the law, but I mean, you had

19 decided whether to shoot or not?

20 A I decided not to shoot.

21 Q What did you do next?

22 A After I decide not to shoot through my front door

23 that's when I opened my back door and fired four

24 shots.

25 Q And why did you do that?

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- 1 A It was to get him away from my house.
- 2 Q Instead of firing through and killing him you
- 3 were trying to scare him away?
- 4 A That's true.
- 5 Q What did you do after that?
- 6 A After I fired four shots and got him away from my
- 7 house I just sit in my den knowing that my neighbor
- 8 gets up at 4:00 to crank his truck. And once I hear
- 9 his truck cranked up I start doing my back porch
- 10 light once he got my attention he came and asked me
- 11 what was wrong. I said Rick Green is trying to
- 12 break in my house about 1:30, and I said let's walk
- 13 around to the front and so I can go to my car and
- 14 get my cell phone.
- 15 Q So your cell phone was not in the house?
- 16 A No, sir.
- 17 Q And you had left it in your car?
- 18 A Yes, sir.
- 19 Q And I know you fired four shots but did you know
- 20 whether Rick Green was out there?
- 21 A No, I did not.
- 22 Q And is that why you didn't go out and get your
- 23 cell phone?
- 24 A Exactly.
- 25 Q So you waited on your neighbor. And again, did

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- 1 he have a habit of getting up at a certain time or?
- 2 A Yes, sir.
- 3 Q He knew he had to —
- 4 A Yes, sir.
- 5 Q He responded, I mean, you really did flick the
- 6 lights; didn't you?
- 7 A I did.
- 8 Q And he came over there, met you at your car?
- 9 A I — yeah, he met me at my car. He walked around
- 10 to the front.
- 11 Q And why couldn't you go back around?
- 12 A Because my back is fenced in.
- 13 Q Did you go through the house and met him out
- 14 front?
- 15 A I went to my front door and met him out front.
- 16 Q And did you call the police at that point?
- 17 A Yes, I did.
- 18 Q And did you have an occasion for this young man
- 19 to show up?
- 20 A Excuse me?
- 21 Q This officer show up —
- 22 A Yes.
- 23 Q —do you remember?
- 24 A Yes.
- 25 Q And is it fair to say you told him what happened?

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1 Did you tell him what happened?

2 A Yes, I did.

3 Q Okay. I'm sorry?

4 A Yes, uh-huh.

5 Q And if you said it, I apologize, and I apologize
6 to the Court, what time did your neighbor get up?

7 A He crank his trucks up between ten to four.

8 Q To four?

9 A Ten to four. Ten minutes to four.

10 Q And that whole time you were just sitting there?

11 A Sitting in my den scared to death.

12 Q Did not move?

13 A No, I did not move.

14 MR. MEADORS: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 BY MR. MEADORS:

17 Q And in addition to that you called some family
18 members, your brother-in-law?

19 A Yes, I did.

20 Q And did your husband come home?

21 A After I called my brother-in-law because he was,
22 he could have got to me and my husband. Then I
23 called my husband.

24 Q Location wise.

25 A Location wise, yes.

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1 Q Mr. James Davis?

2 A James Davis.

3 Q Brother-in-law?

4 A Yeah.

5 Q Did you have an occasion to see Investigator

6 Wesley Gardner?

7 A Yes, I did.

8 Q And was that later on in the day?

9 A Yes.

10 Q Now you testified to the ladies and gentlemen you

11 heard the garage door, somebody trying to get in,

12 correct?

13 A Yes, sir.

14 Q At some point later that day did you look at your

15 garage?

16 A Yes, sir.

17 MR. MEADORS: And this is State's 1, Your

18 Honor.

19 BY MR. MEADORS:

20 Q And when you — was your garage door closed like

21 it had been when you get, went to bed, or was it

22 open?

23 A It was closed.

24 Q And when you came out, your husband got there

25 somebody, had it been up a little bit to where it

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- 1 was closed?
- 2 A Yes, sir.
- 3 Q So it was closed when you went to bed?
- 4 A Yes, sir.
- 5 Q And then after this incident it was up, correct?
- 6 A Just a little.
- 7 Q And was that pointed out to one of the other
- 8 officers?
- 9 A Yes, sir, to Deberry.
- 10 Q Okay. Deberry?
- 11 A Yes, sir.
- 12 Q Okay. And when you went to bed that had been
- 13 closed, correct?
- 14 A Yes, sir.
- 15 Q All the way down?
- 16 A All the way down.
- 17 Q And when you saw it the next morning it was up a
- 18 little bit?
- 19 A Yes, sir.
- 20 Q But you couldn't get it up without 'cause it was
- 21 locked, right?
- 22 A It was locked.
- 23 Q Now State's 1, you recognize this?
- 24 A Yes, sir, those are where my telephone wires are.
- 25 Q And were they in the same condition when you went

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1 to bed on May 3rd as when this picture was taken the
2 next day? Had they been cut?

3 A Yes, they had been cut the next day.

4 Q And is that why you couldn't use your phone?

5 A Exactly.

6 Q And did these officers take a picture of this?

7 A Yes, the detective did.

8 Q I guess the simple way and I apologize to
9 everybody, was your phone working before you went to
10 bed?

11 A Yes, it was 'cause I talked to my husband and my
12 sister.

13 Q And after you saw Rick Green they were cut,
14 correct?

15 A Yes, sir.

16 Q You don't know when they were cut, do you?

17 A No, sir, but they were working when I went to
18 bed.

19 Q Now Ms. Davis, that's your dwelling house, right?

20 A Yes, sir.

21 Q Black River Road?

22 A Yes, sir.

23 Q Address again is [REDACTED]-

24 A [REDACTED] Black River Road, South Carolina.

25 Q And on the early morning hours of May 4th, 2010

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1 did you give permission for Richard Avon Green who
2 you know as Rick Green, to come into your house?

3 A No, sir.

4 Q Did you give him permission to pull that garage
5 door open?

6 A No, sir.

7 Q Did you want him to come in?

8 A No, sir.

9 MR. MEADORS: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 BY MR. MEADORS:

12 Q Just one other question. The person, could you
13 tell what he was wearing?

14 A He was wearing a white T-shirt and denim jeans.

15 Q And his facial features, did he have any hair on
16 his face?

17 A Just right here.

18 Q Goatee?

19 A Yes.

20 Q And is the person that you saw from your house in
21 the early morning hours of 1:30, May 4th, 2010, who
22 came from your garage standing out in front of your
23 dining room is that person who was standing out in
24 front when you were in your dining room, that person
25 in this courtroom?

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1 A Yes, sir.

2 Q Would you please point him out to the ladies and
3 gentlemen of the jury.

4 A Sitting next to Mr. Hastie. Yes, sir.

5 MR. MEADORS: Your Honor, would the record
6 reflect she has picked out Richard Avon Green.

7 THE COURT: The record will so reflect.

8 MR. MEADORS: Thank you. That's all.

9 THE COURT: Cross-examination, Mr. Hastie.

10 MR. HASTIE: Yes, sir.

11 **CROSS - EXAMINATION**

12 BY MR. HASTIE:

13 Q Good afternoon, Ms. Davis.

14 A Good afternoon.

15 Q I just want to go directly to the night that all
16 of this happened. It was 1:30 in the morning; is
17 that correct?

18 A Yes, sir.

19 Q And you heard your door bell ring?

20 A Yes, sir.

21 Q Where is your bedroom? This is the picture of
22 your house. Would you show us where your bedroom is
23 located?

24 A That is — that's my bedroom.

25 Q So your bedroom is out on the front of the house?

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- 1 A No, sir.
- 2 Q So you were in the back of the house?
- 3 A Yes, sir.
- 4 Q And you heard the door bell?
- 5 A Yes, sir.
- 6 Q Then you got up and went to -- I'm just trying to
- 7 find -- and went to -- is this the den?
- 8 A That's right. That's my house.
- 9 Q That's your dining room. So you went to the
- 10 dining room and peeped out the window.
- 11 A No, sir, I went to my front door and came back.
- 12 Q You did look out the front door?
- 13 A Yes I did.
- 14 Q And was anyone at the front door?
- 15 A He was walking away.
- 16 Q He was walking away toward the garage.
- 17 A Right off the porch, walk back.
- 18 Q Was there a light on on your front door porch
- 19 there?
- 20 A No, I have a yard light over to the right of my
- 21 house and I have a dawn to dusk light on my garage.
- 22 Q Where is the yard light in proximity to this
- 23 picture?
- 24 A It won't be picked up but my yard light would be
- 25 over here somewhere here.

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- 1 Q Here?
- 2 A Yes.
- 3 Q And it's all the time?
- 4 A At night.
- 5 Q At night. So it was on that night?
- 6 A Yes, sir.
- 7 Q And you saw — when you peeped out your peephole
- 8 you saw someone, you saw Richard Green going towards
- 9 your garage door.
- 10 A At that moment when he walk off my porch his back
- 11 was turned. I ain't know who he was at that time.
- 12 Q So you didn't know who that person was?
- 13 A At that time.
- 14 Q At that time. Then this person went to your
- 15 garage door?
- 16 A Yes.
- 17 Q And where were you at this time?
- 18 A Standing on down the window.
- 19 Q So you moved from your front door, saw the guy
- 20 and you went to your dining room, and looked out
- 21 there?
- 22 A Yes, sir.
- 23 Q And you said you heard your garage door going up?
- 24 A Someone trying to get it up.
- 25 Q Okay, so you didn't hear it going up. You just

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1 heard someone kind of wrestling with it?

2 A Yes, sir.

3 Q Do you normally leave your garage door open or
4 locked at night?

5 A Locked.

6 Q So it was locked?

7 A Yes, sir.

8 Q Okay. So how far was this person able to get
9 your locked garage door up?

10 A I couldn't see him at the moment.

11 Q You couldn't see him at the moment?

12 A No, sir.

13 Q Okay. Did you tell the police that it was up a
14 certain height?

15 A No, did not.

16 Q Did not? So you don't know whether you just
17 heard him fumble around with the garage door?

18 A Yes, sir.

19 Q Then he came back to?

20 A The front door.

21 Q The front door?

22 A Uh-huh.

23 Q And you were still at the dining room window?

24 A Yes, sir.

25 Q Looking out the window.

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1 A When he left the garage door, after he couldn't
2 get it up.

3 Q Uh-huh.

4 A When he walked from the garage when I walked back
5 that's when I said that's Rick Green.

6 Q Okay. And you know Rick Green?

7 A Yes, I do.

8 Q He's somebody that you know. You've known Rick
9 Green, is it any reason you did, just didn't say,
10 what in the world are you doing at my house this
11 time of night?

12 A I don't talk to anyone at my house that time of
13 day.

14 Q So you went back to your door, this same guy you
15 know, now he's pulling on your door?

16 A Yes.

17 Q How long was he there at your door?

18 A Maybe about a minute.

19 Q And so for a minute?

20 A If that long.

21 Q Long time. Even a minute is a pretty good while.
22 He's yanking on your door. Where are you?

23 A When he was yanking on my door that's when I went
24 and got my phone and my gun.

25 Q The house phone?

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- 1 A Yes.
- 2 Q And you got your gun. Is he still yanking on
- 3 your door?
- 4 A Yes.
- 5 Q Now you got your gun?
- 6 A Yes.
- 7 Q And you got your house phone?
- 8 A Yes. I don't have my house phone. The phone was
- 9 not working.
- 10 Q I thought you said you went and got it.
- 11 A I did.
- 12 Q You put it right back?
- 13 A Yes, after I realized it wasn't working.
- 14 Q Now you just got your gun?
- 15 A Yes.
- 16 Q And is he still yanking on your door?
- 17 A Yes.
- 18 Q He's still pulling on your door, that's a long
- 19 minute. So he's yanking on your door. So what do
- 20 you do? You got a gun. Is the door about -- where
- 21 are you from the door? You was in -- me and the
- 22 door right here, about how far are you from that
- 23 door? Where he is with your gun in your hand?
- 24 A Maybe from that desk right there to right there.
- 25 Q You was me and that door right there?

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- 1 A Not that far.
- 2 Q I'm saying if I was you.
- 3 A Uh-huh.
- 4 Q And that's the door he's at, how far was he?
- 5 A Right there.
- 6 Q Okay.
- 7 A I have a foyer.
- 8 Q You about right here?
- 9 A I have a foyer.
- 10 Q So you in the foyer?
- 11 A Standing in the foyer, yes.
- 12 Q The door was right here?
- 13 A Yes.
- 14 Q Was there a peephole in the door?
- 15 A That's it.
- 16 Q So you can see him right there?
- 17 A Not at that moment because I wasn't looking in
- 18 the peephole.
- 19 Q Okay, but he's right there, you got a gun in your
- 20 hand?
- 21 A Yes.
- 22 Q Any reason why you didn't say, Rick, get way from
- 23 my door?
- 24 A No, sir.
- 25 Q Has Rick been to your house before?

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1 A Not my house.

2 Q Why they say he may have been with your brother
3 or somebody else at your house?

4 A No. If he been, he hung out with my husband at
5 the garage was at.

6 Q You got a gun in your hand. You're right here.
7 Rick is right here. He can hear you talking at the
8 door. Say, look, you don't get away from that door,
9 I'm gonna put a bullet in you. You did say you
10 prepared to shoot him; wasn't you?

11 A Yes, I was.

12 Q So you prepared to shoot tell right there, get
13 away from my house?

14 A I wasn't going to say anything to him at that
15 time of night.

16 MR. HASTIE: May we approach one second?

17 THE COURT: Yes, come on up.

18 (WHEREUPON, counsel approached the Bench
19 for an off-the-record discussion.)

20 BY MR. HASTIE:

21 Q You opened your front door; is that correct?

22 A I opened my back door. I started to shoot.

23 Q Did you go to your back door while he was still
24 yanking on the front door?

25 A Yes, I did.

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1 Q He was still at your front door just one minute.

2 A Yes.

3 Q So you went to your back door. How far is your
4 back door from here to from that direction where you
5 were?

6 A Where I was in my den?

7 Q Yeah, this is where you were in the den. How far
8 did you go to your back door approximately in that
9 direction? You're standing here —

10 A At that point in a desk at the back door right
11 there. That's —

12 Q About right there?

13 A Yes, sir.

14 Q So you went to your back door. Was your back
15 door locked?

16 A Yes, it was.

17 Q Your front door was locked.

18 A Yes.

19 Q You opened your back door?

20 A Yes.

21 Q It was your screen door?

22 A Yes.

23 Q A peephole?

24 A No.

25 Q No peephole in the back door? And you had your

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- 1 personal revolver?
- 2 A Yes.
- 3 Q And you fired how many rounds?
- 4 A Four.
- 5 Q Four in the air?
- 6 A Yes.
- 7 Q Is that something you all do normally out there
- 8 in your neighborhood?
- 9 A No, we don't.
- 10 Q Have you ever done that before?
- 11 A No, I didn't never.
- 12 Q You never shot your pistol in the air?
- 13 A No.
- 14 Q And why did you do that?
- 15 A To get him away from my house.
- 16 Q Did you go back to the front door and take a look
- 17 and see whether he was gone?
- 18 A Through the peephole.
- 19 Q So you went back to the peephole?
- 20 A Uh-huh.
- 21 Q And this man you were peeping through the
- 22 peephole, did you saw him leave?
- 23 A No, I did not.
- 24 Q Was he there?
- 25 A No, he wasn't.

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- 1 Q Did you see him exit at all at the time?
- 2 A I did not.
- 3 Q When he was walking from your garage door and you
- 4 got a good look at him when the light came on; did
- 5 you not?
- 6 A The light was already on.
- 7 Q Pardon me?
- 8 A The light was already on.
- 9 Q Did you get a good look at him?
- 10 A Yes, I did.
- 11 Q And you know what he was — what was he wearing
- 12 then?
- 13 A White shirt.
- 14 Q White shirt?
- 15 A Denim jeans.
- 16 Q And jeans?
- 17 A Uh-huh.
- 18 Q Did he have a wire cutter in his hand, anything
- 19 like that?
- 20 A I don't know.
- 21 Q Could you see?
- 22 A No.
- 23 Q Couldn't see?
- 24 A No.
- 25 Q But your light was on. It was pretty bright out

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1 there?

2 A Yes.

3 Q But you didn't see him with a wire cutter or
4 anything, did you?

5 A No, I didn't.

6 Q Then you decided to go in your den and wait; is
7 that, correct?

8 A (Inaudible.)

9 Q Pardon me?

10 THE COURT REPORTER: I didn't understand.

11 BY MR. HASTIE:

12 Q Say what?

13 A You said at -- go in my den and wait. I say, at
14 what moment.

15 Q After you shot out the back door --

16 A Uh-huh.

17 Q --what did you do? Tell us about that.

18 A Sitting in my den.

19 Q Okay, that's what I asked you. What were you
20 doing in your den?

21 A Sitting in my -- on my couch with my weapon.

22 Q Did you go back and look through the peephole and
23 see whether he was still there?

24 A Yes, I did.

25 Q So after you shot you didn't go in the den you

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1 went back to the peephole first?

2 A My back door is in my den.

3 Q But he was at the front door trying to come in?

4 A Yes.

5 Q Where did you go to the front door after you shot
6 the weapon and peeked to see whether he was still
7 there?

8 A After I finished shooting then I went to see if
9 he was gone.

10 Q Oh, that's what I'm asking?

11 A Yes.

12 Q So you shot four times in the air?

13 A Uh-huh.

14 Q Then you went to the front door?

15 A Yes.

16 Q And peeked?

17 A Uh-huh.

18 Q Did not see him at all?

19 A No.

20 Q Then from the front door you went to your den and
21 sat down?

22 A Yes.

23 Q And you sat back for a number of hours; didn't
24 you?

25 A Yes.

SW - R. DAVIS - CROSS

- 1 Q And you had a weapon in your hand?
- 2 A Yes.
- 3 Q How far is your neighbor's house from where you
- 4 all live here?
- 5 A It's the house on the other side of my house, and
- 6 then it's my neighbor house, the one that I got his
- 7 attention.
- 8 Q Give us a idea how far it's -- this is between
- 9 this corridor and some indication the distance
- 10 between the house is shorter than from this wall to
- 11 this wall?
- 12 A It's a little farther because it's a house
- 13 between my house before my neighbor, the other
- 14 neighbor came home.
- 15 Q Does anybody live in that house?
- 16 A Yes.
- 17 Q So somebody lives next door to you?
- 18 A Uh-huh.
- 19 Q Like right in the middle there?
- 20 A Yes.
- 21 Q And the neighbor is right over there?
- 22 A Yes.
- 23 Q And you fired four rounds out your back door?
- 24 A Yes.
- 25 Q And nobody came or looked out or checked on you?

SW - R. DAVIS - CROSS

1 A Because the house next door is a old lady.

2 Q It's a old lady?

3 A Yes.

4 Q And at any time, at any time, did whoever was at
5 your door enter your premises, enter your home, your
6 house?

7 A No.

8 Q Not through the garage?

9 A No.

10 Q Not through the front door?

11 A No.

12 Q Certainly not through the back door where you
13 were shooting?

14 A No.

15 Q Never entered your home?

16 A No, sir.

17 MR. HASTIE: Court's indulgence, Your
18 Honor.

19 THE COURT: Yes.

20 BY MR. HASTIE:

21 Q And your neighbor that lived in the second house
22 over came over and what did you tell him?

23 A Told him that Rick Green tried to break in my
24 house about 1:30.

25 Q And what did he say?

SW - R. DAVIS - CROSS

- 1 A Well, when I got his attention from flickering
2 the back porch light he walked, turn his truck
3 off — excuse me, he walked across the field and
4 asked me what was wrong. I said Rick Green tried to
5 break in my house about 1:30, will you just come
6 walk around to my car until I come to my car because
7 the back of my house is you can't see. Once he got
8 there I went to my car and got the cell phone and
9 called 9-1-1.
- 10 Q Did he come to your back door or front door?
- 11 A Side of my house.
- 12 Q There's an entrance on the side of your house?
- 13 A He came close in, to the front.
- 14 Q To the front door?
- 15 A Yes.
- 16 Q So he came to the front door?
- 17 A Uh-huh.
- 18 Q And you told him Richard Green, said will you
19 walk with me to your car. So your car was outside?
- 20 A My Honda.
- 21 Q Your Honda was outside —
- 22 A Yes.
- 23 Q —of the door. So there was a car out there in
24 the driveway. Was there evidence he entered your
25 car?

SW - R. DAVIS - CROSS

1 A No.

2 Q Thank you very much.

3 A You're welcome.

4 THE COURT: Redirect?

5 MR. MEADORS: Very brief.

6 BY MR. MEADORS:

7 Q Your front door, is, is what? Is it just a front
8 door, does it have a glass door?

9 A My front door is a storm door along with the
10 regular wood door.

11 Q And then so he was pulling on the front door?

12 A On the storm door, the front of the house.

13 Q And you could hear it?

14 A Yes.

15 Q Sound like somebody is trying to get in?

16 A Yes.

17 Q And he said -- Mr. Hastie asked you about did you
18 know how high up, he asked you about you heard the
19 garage door and somebody trying to pull it up and
20 down?

21 A Yes.

22 Q Do you remember he asked you how high it was up,
23 but didn't then because you couldn't see it then?

24 A I couldn't see it at the moment.

25 Q But the next day did you see that it was up a

SW - R. DAVIS - RECROSS

1 little bit?

2 A It was up a little bit.

3 Q I mean, tell -- was it up?

4 A Yes, it was up.

5 Q And is that the way it was when you went to bed?

6 A No, sir.

7 Q And you didn't -- you'd never shot out your door
8 before like that?

9 A No.

10 Q And I mean, you remember firing a gun; don't you?

11 A Yes, I do.

12 Q Mr. Hastie was asking a few questions earlier
13 about why didn't you open the door, why didn't you
14 open the door. Let me just ask you this way, you
15 knew Rick Green?

16 A Yes, I do.

17 Q And you decided not to open the door?

18 A Exactly.

19 Q Thank you. That's all I have.

20 THE COURT: Recross.

21 MR. HASTIE: Yes, sir.

22 **RECROSS - EXAMINATION**

23 BY MR. HASTIE:

24 Q This garage door, is it your testimony that you
25 heard him trying to pry the door open because this

SW - R. DAVIS - RECROSS

- 1 garage door is locked. So one thing you can't get
2 these garage door up, you know, you can't yank them
3 up. You got to have something to get a garage door
4 up. I think the next one you said there were up
5 about 2 feet; is that correct?
- 6 A Up about 2 feet.
- 7 Q Okay. But it was up the next morning?
- 8 A Yes.
- 9 Q About how high?
- 10 A About this much.
- 11 Q Just that much?
- 12 A Yes.
- 13 Q Okay, 2 inches?
- 14 A Yes.
- 15 Q Okay. But still 2 inches. Did you see Richie
16 with any type of tool —
- 17 A No.
- 18 Q —or anything like that?
- 19 A No.
- 20 Q No cutting tools?
- 21 A No, sir.
- 22 Q Anything like that? But you see — you did see
23 him?
- 24 A Yes, I did.
- 25 Q Clearly you didn't see no crow bar or nothing?

1 A No, I didn't.

2 Q Thank you.

3 THE COURT: All right, thank you, Ma'am.
4 You may step down.

5 All right, ladies and gentlemen, you've
6 been in the courtroom about an hour and a half,
7 hour, 20 minutes. It is appropriate that we take
8 our afternoon break at the same time. I have one
9 matter I need to tend to at the same time so I'm
10 going to ask that you go to your jury room. Please
11 do not discuss the case among yourselves. Talk
12 about anything you want to talk about and I'll send
13 for you very shortly. What I am going to ask that
14 you do while you're there in the jury room is that
15 the twelve of you will select one of the members of
16 the principle jury as the foreperson of this jury
17 and notify the bailiff when you have selected a
18 foreman and then that foreman will sit in the first
19 seat on the front door here when you return to the
20 courtroom. But I'm gonna allow you to select your
21 own foreperson and let me know who that is when you
22 come back in. Other than that, please go to your
23 jury room. Don't discuss the case among yourselves
24 and just relax for a few minutes. Thank you. You
25 may go with the bailiff.

1 (WHEREUPON, the jury was removed from the
2 courtroom and the following proceedings commenced in
3 open court.)

4 THE COURT: All right. The jury is out.
5 We'll be in recess for a few minutes and I
6 understand for this case and take a break from the
7 court just a minute.

8 (WHEREUPON, a recess was taken from the
9 proceedings.)

10 THE BAILIFF: We have all the jurors
11 present and in the courtroom.

12 THE COURT: Thank you very much. Thank
13 you for your patience, ladies and gentlemen. I had
14 to address another matter. It took me a few minutes
15 to do that but we are ready to go forward. Are you
16 Ms. Fulwood?

17 THE FOREPERSON: Yes, sir.

18 THE COURT: I believe you have been
19 selected by fellow jurors as foreman of this jury so
20 if you will always sit where you are seated and the
21 alternate will always sit where he is seated. And
22 you will serve of course throughout the trial of
23 this matter as the foreperson. Thank you very much.

24 All right, Mr. Meadors, if you are ready
25 to you may call your next witness.

SW - T. MACK - DIRECT

1 MR. MEADORS: Thank you, Your Honor. If
2 it please the Court.

3 THE COURT: Yes, sir.

4 MR. MEADORS: The State would call
5 Mr. Tyrone Mack.

6 THE BAILLIFF: Place your left hand on the
7 Bible, raise your right hand. State your name
8 please.

9 THE WITNESS: Tyrone Mack.

10 WHEREUPON,

11 TYRONE MACK,
12 having been duly sworn by the Clerk of Court,
13 testified as follows:

14 THE BAILLIFF: Have a seat. State your
15 full name and spell your last name for the record.

16 THE WITNESS: Tyrone Mack, M-A-C-K.

17 **DIRECT EXAMINATION**

18 BY MR. MEADORS:

19 Q Good afternoon, Mr. Mack.

20 A Good afternoon. How are you doing?

21 Q Good. Where are you from, sir?

22 A Rembert, South Carolina.

23 Q Born and raised?

24 A No.

25 Q Where -- how long -- how long you been here?

SW - T. MACK - DIRECT

- 1 A Maybe 20, 26 years.
- 2 Q What is your occupation, sir?
- 3 A Truck driver.
- 4 Q And how long have you been doing that?
- 5 A Over 20 years.
- 6 Q Twenty years. And do you own your own rig?
- 7 A No, sir.
- 8 Q Who do you drive for?
- 9 A Wallie Slaton (ph).
- 10 Q I'm sorry?
- 11 A Wallie Slaton.
- 12 Q Are where is your route?
- 13 A From Sumter to (inaudible).
- 14 Q And then how far is your route?
- 15 A Not quite three miles one way.
- 16 Q And you work every day?
- 17 A Yes, sir.
- 18 Q And have you already worked today?
- 19 A Yes, sir.
- 20 Q Tiring driving a truck?
- 21 A Yes.
- 22 Q And but you park the rig at your house when you
- 23 get through?
- 24 A Yes, sir.
- 25 Q Now do you work different — do you work

SW - T. MACK - DIRECT

- 1 different — not sort of like first shift, second
2 shift we do. Is there a certain time that you
3 drive? Does that change depending on situation?
4 A It's according to time I get up. If I can get up
5 early and go to Bishopville and get. I get up early
6 about 3:00, maybe 3:30, quarter to 4, something like
7 that.
8 Q Is that pretty much a regular habit of yours?
9 A Right, yes.
10 Q And taking you back in time to May 4th of 2010,
11 were you driving the same rig for the same company?
12 A Yes.
13 Q Riding the same ride?
14 A Yes.
15 Q And do you know Ms. Rita Davis in the courtroom?
16 A Yes, sir.
17 Q And how do you know her?
18 A Neighbor.
19 Q Y'all been neighbors for several years?
20 A Not — maybe just —
21 Q It doesn't matter but for a good while?
22 A Yes.
23 Q All right. Now I'd like for you if you can
24 remember, on early morning hours of May 4th, 2010,
25 did you have an occasion to see Ms. Davis?

SW - T. MACK - DIRECT

1 A Well, that morning I got up to go to work and I
2 saw the lights blinking off and on. I was wondering
3 what's going on. I went to show. I switched my
4 truck off and started to walk over there and —

5 Q And had you ever seen that light going off and on
6 before?

7 A Yes — no.

8 Q Before you went to work?

9 A No, no, sir.

10 Q So as a result of that did you go over?

11 A Yes, I did.

12 Q And what, if anything, happened there? Did you
13 happen to go and see Ms. Davis?

14 A Yes, sir, she came to the door and she told me
15 that someone tried to break, Rick Green tried to
16 break in her house.

17 Q She said Rick Green tried to break in the house?

18 A Yeah, she told me.

19 Q So she told you that as soon as you went over
20 there that morning May 4th, 2010?

21 A Right.

22 Q And tell these folks, Mr. Mack, can you describe
23 her demeanor or how was she — how did she appear to
24 you?

25 A She was pretty upset. She was scared.

SW - T. MACK - DIRECT

1 Q And what did you do next or what happened next?

2 A Well, she told me that the phone in the car.

3 She -- phone in the car and cell phone was in the
4 car so I walk her to the car and just sitting there
5 waiting and all then her brother-in-law get there.

6 Q So you went with her to her car to get her cell
7 phone?

8 A She got her cell phone.

9 Q You stayed there till her brother-in-law came?

10 A Till her brother-in-law got there.

11 Q Do you know her brother-in-law?

12 A Know something about him.

13 Q Mr. James Davis.

14 A Yeah.

15 Q Are you a pretty heavy sleeper?

16 A Depending if I'm tired or not. If I'm real
17 tired, yes, sir. I'm a pretty heavy sleeper 'cause
18 I get up early every morning so I sleep heavy.

19 Q When you -- well, describe how big land do you
20 have.

21 A I'm on an acre land.

22 Q And are you in relation to Ms. Davis' house where
23 are you?

24 A It's a house between mine and hers.

25 Q And is that an owner female or do you know?

SW - T. MACK - DIRECT

1 A Excuse me?

2 Q Do you know who lives there?

3 A Older lady, older lady live there.

4 Q So it's — beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 MR. MEADORS: Your Honor, this is State's

7 3 I believe without objection?

8 THE COURT: All right. State's 3 will be
9 entered into evidence and placed into evidence.

10 State's number three without objection.

11 (WHEREUPON, State Exhibit

12 No. 3 was received into

13 evidence.)

14 MR. MEADORS: Your Honor, if I could have
15 this and show it to the jury.

16 THE COURT: All right. That will be fine.
17 You may step down, sir. You're going to have to
18 keep your voice up because you're going to be away
19 from the microphone.

20 BY MR. MEADORS:

21 Q Do you mind coming over here, get you step here
22 so the court reporter can hear you. Do you
23 recognize this an aerial map of where you live,
24 general direction?

25 A Yes, sir.

SW - T. MACK - DIRECT

- 1 Q And it's got in the photo, this is the victim's
2 house, Ms. Davis?
3 A Right.
4 Q [REDACTED]
5 A Uh-huh.
6 Q Can you show the jury where your house is on
7 State's 3.
8 A This would be mine right, right here.
9 Q Okay. And you're 8460?
10 A Yeah.
11 Q Your house — your house, correct?
12 A Yes.
13 Q And this is — is this the elderly lady?
14 A Yeah.
15 Q And then Ms. Davis.
16 A Right.
17 Q So the morning you testified you came down — you
18 had started your truck?
19 A Yeah, getting ready to go.
20 Q But you can see some lights flashing?
21 A Yeah.
22 Q And as a result of that you went down to her
23 house?
24 A Yeah.
25 Q And that's when she said Richard Green, right,

SW - T. MACK - CROSS

1 mentioned his name?

2 A Right.

3 Q Tried to come in her house. And that's all you
4 know. That's all you know. Thank you.

5 THE COURT: All right. You can come back
6 and get on the stand please, sir. That's all you
7 have for this witness at this time? That's all you
8 have at this time?

9 MR. MEADORS: Yes, sir.

10 THE COURT: Cross-examination.

11 MR. HASTIE: Yes, sir, Your Honor.

12 **CROSS - EXAMINATION**

13 BY MR. HASTIE:

14 Q How are you doing, Mr. Mack?

15 A Fine. How are you?

16 Q Okay. The night in question you saw lights
17 flickering; is that correct?

18 A Yes, sir.

19 Q And they were flickering just on and off?

20 A On and off, yes, sir.

21 Q And by that map that that house is not very real
22 close to yours, is it?

23 A Well, I park — always park my truck in the back,
24 in the back of house.

25 Q Okay.

SW - T. MACK - CROSS

- 1 A It's not a problem seeing her house.
- 2 Q There's the pointer. Can you see from there?
- 3 A No, sir.
- 4 Q Can you come down here. Stand right there. And
- 5 is this proximate where your house is? This is your
- 6 house. And the elderly lady lives here; is that
- 7 correct?
- 8 A Yes, sir.
- 9 Q And you live here?
- 10 A Yes, sir.
- 11 Q And your house -- your car was parked in the
- 12 back?
- 13 A My truck was parked in the back, yes, sir, on the
- 14 side close to my next door neighbor lot.
- 15 Q On this side?
- 16 A Yes.
- 17 Q Is that a driveway?
- 18 A That is a driveway.
- 19 Q And that's where you were parked at right here?
- 20 A Right.
- 21 Q So you could see the lights flicker?
- 22 A Exactly.
- 23 Q Now do you know, is that a trailer right there, a
- 24 house?
- 25 A It's a trailer behind that.

SW - T. MACK - CROSS

1 Q Does anybody live in that trailer?

2 A Yes, sir.

3 Q Someone lives there?

4 A Yes, sir.

5 Q Do you know the neighbor who lives there?

6 A No, sir.

7 Q Do you know there's another elderly lady lives
8 there?

9 A I know it was, but I never did know their name.

10 Q How many people live in this trailer?

11 A I don't have a clue.

12 Q You have no idea. This is a lot closer to your
13 house and twice close as your house?

14 A Right.

15 Q Okay, all right. Thank you. You may have a
16 seat. So she went over and I notice that your
17 initial statement said her — she told you that
18 someone had broken into, attempt to break into her
19 home?

20 A No, she told me Ricky Green.

21 Q Okay, well it was Ricky Green. She told you
22 that, okay. Did you check her house out?

23 A No, sir, I didn't.

24 Q Did you see the wires that were cut?

25 A No, sir, I didn't.

SW - T. MACK - CROSS

- 1 Q You didn't see the wires. Did you see the garage
2 door that was —
- 3 A I didn't pay any attention.
- 4 Q Did you ask her where, how did that happen, what
5 happened?
- 6 A No, sir.
- 7 Q So what did she ask you? She just asked you to
8 come go with her to get her --
- 9 A Her cell phone was in her car.
- 10 Q Where was the car?
- 11 A Parked on the side.
- 12 Q It was parked?
- 13 A Yeah.
- 14 Q In the driveway?
- 15 A I can't remember exactly.
- 16 Q But she didn't discuss no details with you to
17 your knowledge?
- 18 A No, sir, not exactly as I can remember. And she
19 actually told me that she shot in the air a couple
20 of few times, three or four times, to go scare him
21 off.
- 22 Q She shot in the air. She did tell you that. You
23 ever been in the military?
- 24 A No, sir.
- 25 Q Did you hear a gunshot at any time that night?

SW - T. MACK - REDIRECT

1 A No, sir.

2 Q So you're a hard sleeper?

3 A Yes, sir.

4 Q I am too sometimes, yes, sir. Now where did you
5 live before you moved down here?

6 A Pisgah (ph) O'Neil Road, just right down the road
7 from here.

8 Q Oh really, okay.

9 MR. HASTIE: Your Honor, I have no further
10 questions for this witness.

11 THE COURT: Redirect.

12 MR. MEADORS: One followup.

13 **REDIRECT EXAMINATION**

14 BY MR. MEADORS:

15 Q Mr. Mack, Mr. Hastie asked you if she gave any
16 details. Did she give you his name as soon as she
17 saw you?

18 A She said Rick Green. She sure did.

19 Q Thank you. That's all.

20 THE COURT: Recross, Mr...

21 MR. HASTIE: None, Your Honor.

22 THE COURT: All right. Thank you, sir.

23 You may step down.

24 You may call your next witness

25 Mr. Meadors.

SW - S. DEBERRY - DIRECT

1 MR. MEADORS: Deputy Deberry.

2 THE COURT: All right, Deputy Deberry, if
3 you will come around.

4 MR. MEADORS: Your Honor, we ask the
5 witness be excused.

6 THE COURT: Any objection?

7 MR. HASTIE: Not at all.

8 THE COURT: All right, you are excused.
9 Thank you for coming.

10 THE BAILLIFF: Place your left hand on the
11 Bible, raise your right hand. State your full name
12 please.

13 THE WITNESS: Shawn Deberry.

14 WHEREUPON,

15 SHAWN LAWRENCE DEBERRY,
16 having been duly sworn by the Clerk of Court,
17 testified as follows:

18 THE BAILLIFF: Thank you. Have a seat up
19 here please. State your full name. Spell your last
20 name for the record.

21 THE WITNESS: Shawn Lawrence Deberry,
22 D-E-B-E-R-R-Y.

23 **DIRECT EXAMINATION**

24 BY MR. MEADORS:

25 Q Mr. Deberry, where are you from?

SW - S. DEBERRY - DIRECT

1 A My father was in the military so I'm ---

2 Q How long have you been here?

3 A Probably about ten years.

4 Q Ten years. And tell the ladies and gentlemen of
5 this jury a little bit about you, your background,
6 your education. How long you been in law
7 enforcement?

8 A Coming up on two years next month.

9 Q And what are the different positions you've held
10 or what's your job at the Sheriff's Department?

11 A Patrol deputy.

12 Q Are you ---

13 A Patrol.

14 Q Excuse me?

15 A I work patrol.

16 Q And does that mean you're assigned to certain
17 areas?

18 A Yes.

19 Q And is this one of the areas that you were
20 assigned to in May of 2010?

21 A Yes, sir, at that time I was working as a deputy
22 in that area.

23 Q And how many deputies in that area?

24 A In Rembert Dezel (ph)? Usually just about one.

25 Q One?

SW - S. DEBERRY - DIRECT

- 1 A Yes, sir.
- 2 Q And what was your shift, do you remember? What
- 3 shift were you on?
- 4 A What time of day?
- 5 Q Right.
- 6 A It was night shift, 6 p.m./6 a.m.
- 7 Q That was my question. 6 p.m./6 a.m. And do you
- 8 remember getting this call and responding to this
- 9 address, [REDACTED] Black River Road?
- 10 A Yes, sir.
- 11 Q I mean, you remember?
- 12 A Yes, sir.
- 13 Q Did you know Ms. Davis from the detention center
- 14 but did you know her before then.
- 15 A No, sir, I don't remember.
- 16 Q And were you the first officer on the scene?
- 17 A Yes.
- 18 Q And when you arrived back was the brother-in-law
- 19 in there or do you remember?
- 20 A There was a male gentleman I believe it was Mack
- 21 I don't recall exactly who it was.
- 22 Q But you knew a neighbor that'd been involved in
- 23 this at some point, correct?
- 24 A Yes.
- 25 Q Tell the ladies and gentlemen, describe

SW - S. DEBERRY - DIRECT

1 Ms. Davis' demeanor when you got there.

2 A When I arrived she was still visibly upset. She
3 actually seemed to be a little bit — in my presence
4 apprehensive to come out of house at that time
5 still.

6 Q Still what? I'm sorry.

7 A She was still she apprehensive wanting to come
8 outside while I was there. She was still quite
9 upset.

10 Q And did she come out and talk to you?

11 A She walked and talked to me.

12 Q At the door, okay.

13 A Yes, sir.

14 Q And was she able to tell you what happened?

15 A Yes, yes.

16 Q And as part of law enforcement, especially a
17 person who you were a first responder?

18 A Yes, sir.

19 Q Do you like to try to not only find out what
20 happened, but if you know, who the suspect might be?
21 Isn't that something you would try to find out early
22 on?

23 A Yes, of course we ask for descriptions.

24 Q Okay. That was my next question. Do you ask for
25 descriptions?

SW - S. DEBERRY - DIRECT

- 1 A Yes, sir.
- 2 Q And did she give you one?
- 3 A Yes, sir.
- 4 Q And did she describe what kind of shirt he had?
- 5 A She said he had a white shirt.
- 6 Q And did she describe what type pants he was
- 7 wearing?
- 8 A Blue jean pants.
- 9 Q And she told you that that night?
- 10 A Yes, sir.
- 11 Q What, if any, facial hair did she tell you about?
- 12 A She said he had a goatee.
- 13 Q And did she say he was a black male?
- 14 A Yes.
- 15 Q And did she provide you with his name?
- 16 A She said that she recognized him as Rick Green.
- 17 Q And did you make that a part of your report?
- 18 A Yes.
- 19 Q That early morning?
- 20 A Yes.
- 21 Q Did she tell you about firing the shots?
- 22 A Yes.
- 23 Q Did she tell you about the neighbor?
- 24 A Yes, sir.
- 25 Q Now you're a deputy. And does an investigator

SW - S. DEBERRY - DIRECT

1 usually come and involve and followup on what you
2 have found?

3 A Yes.

4 Q And was that deputy the investigator Wesley
5 Gardner?

6 A Yes, sir.

7 Q So is it fair to say you come, you get
8 information from her, and you pass it on to the
9 investigator?

10 A Yes, sir.

11 Q Had you been out in this area before?

12 A I'd been in the area. I have not been to that
13 particular house before.

14 Q And is it fair to say -- and I can't go through
15 every bit of it, but is it fair to say she told you
16 what happened and you put it in this report?

17 A Yes.

18 Q And this is Ms. Davis you talked to?

19 A Yes.

20 Q Beg the Court's indulgence.

21 THE COURT: Yes.

22 MR MEADORS: I think that's all.

23 BY MR. MEADORS:

24 Q What time of day was this when you got there?

25 A Response time is somewhere just after 4:00.

SW - S. DEBERRY - CROSS

1 Q 4:00 in the morning still dark?

2 A Yes.

3 MR. MEADORS: Thank you, Judge.

4 THE COURT: Cross-examination, Mr.
5 Hasties.

6 MR. HASTIE: Yes, sir.

7 **CROSS - EXAMINATION**

8 BY MR. HASTIE:

9 Q Good afternoon.

10 A Good afternoon, sir.

11 Q So your father was in the military?

12 A Yes.

13 Q He was in the army or air force?

14 A Air force.

15 Q Let's go back to this night over a year ago. She
16 told you that she fired her weapon how many times
17 did she say?

18 A I have two to three. I believe I remember her
19 saying somewhere a couple I believe is what she
20 said. I estimated two or three.

21 Q Now when someone doing an investigation, someone
22 tells you something you write exactly down what they
23 say?

24 A Yes.

25 Q You don't summarize it?

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1 A A general idea of what they said, but as far as
2 descriptions I put specifics.

3 Q But you think she told you two or three times,
4 couple of times. You wrote two or three, warning
5 shots, okay. And you didn't know her before even
6 though she works at the jail. You'd never seen her
7 before?

8 A I don't believe I saw her before.

9 Q Now when you got there she told you about someone
10 named Rick Green had tried to enter her home. She
11 fired a shot. Did you ask to see the weapon that
12 she fired?

13 A Not at that time.

14 Q Did you ask to see the weapon at all?

15 A No.

16 Q Did you check for casings to see whether there
17 was two or four casings on the ground?

18 A No, sir, I didn't.

19 Q She did say that — at that time did she tell you
20 about the cut wires and the phone? Did you know
21 about that?

22 A No, sir, not at the first response time.

23 Q But she did tell you by your report — you got
24 your report in your hand; don't you?

25 A Yes, sir.

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1 Q On that third line, she recognized the subject as
2 Rick Green, attempted to what her door?

3 A Pry open the door.

4 Q Pry open the door. And I guess she's talking
5 about the front door?

6 A Yes, sir.

7 Q Pry open the front door. Did she mention that he
8 had any type of device, crowbar, or anything like
9 that to pry open the door or was it with his hand?
10 Did she mention?

11 A I don't recall.

12 Q You don't recall that. That also try to lift the
13 garage door. She told you about that. He evidently
14 was trying to lift the garage door open. Now in
15 your report that last two lines, could you read that
16 last sentence there, Davis also, into the record.

17 A Davis also reported that she found —

18 MR. MEADORS: Objection. If he's offering
19 this I will object to it.

20 THE COURT: You reading without offering
21 it?

22 MR. MEADORS: Yes, sir.

23 THE COURT: Objection sustained.

24 Objection is sustained.

25 ///

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1 MR. HASTIE: Okay.

2 THE COURT: It's not in evidence. You
3 can't read from it.

4 MR. HASTIE: Yes, sir.

5 BY MR. HASTIE:

6 Q By your report, how high, by your report now, did
7 she say that garage door was open?

8 A That last line is not mine. That was added by my
9 investigator.

10 Q Oh, somebody else wrote the last sentence there?

11 A They signed their name.

12 Q All right.

13 MR. MEADORS: Objection.

14 THE COURT: Objection is sustained. The
15 jury is to disregard the question and the answer.
16 Now if you want to offer the report we go from
17 there; but otherwise, the matter cannot be testified
18 to.

19 MR. HASTIE: Yes, sir. Court's
20 indulgence, Your Honor.

21 THE COURT: All right.

22 MR. HASTIE: Your Honor, at this time I
23 would like to offer this report into evidence.

24 THE COURT: Any objection?

25 MR. MEADORS: Without objection.

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1 THE COURT: Admitted into evidence by the
2 Defense without objection. Hand it to the court
3 reporter and have it marked defense number one
4 without objection. That will be Defense Number 3 in
5 this?

6 THE COURT REPORTER: That's two.

7 THE COURT: Two without objection,
8 admitted as Defense Number 2 without objection.

9 (WHEREUPON, Defendant Exhibit No. 2 was
10 received into evidence.)

11 MR. HASTIE: Thank you, Your Honor.

12 THE COURT: All right.

13 BY MR. HASTIE:

14 Q Let's take a look at this report that's now in
15 evidence. Now that last sentence, even though you
16 said it wasn't written by you, could you read into
17 the report what it says.

18 A Davis also reported that she found the garage
19 door up approximately 2 feet and the telephone line
20 was cut. Signed, investigator — I can't read the
21 name.

22 Q Gardner I think it is. Do you know Investigator
23 Gardner?

24 A Yes, sir.

25 Q Okay. So her — she reported in this report and

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1 the two of y'all signed this report and I apologize
2 for that. Two of y'all initialed your report with
3 Gardner and some language in your report?

4 A Yeah.

5 Q And that language said that she reported that the
6 garage door was open 2 feet is what you just read,
7 right? Is that correct?

8 A Yes, sir.

9 Q Okay. Was there any damage to the garage door
10 that you could see?

11 A Not that I could see.

12 Q Was there any damage to the front door?

13 A I don't recall seeing any.

14 Q You don't recall seeing any damage to the front
15 door, but you see the report does say the front door
16 was being pried open?

17 A Yes, sir.

18 Q Did you take any pictures of the garage door?

19 A No, sir, I did not have a camera.

20 Q You didn't have a camera so someone couldn't take
21 pictures of the front door as well?

22 A No.

23 Q When do you all take fingerprints? Do you call
24 someone else to take fingerprints?

25 A Yes, investigation usually handles that.

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1 Q Investigation handles that and investigators were
2 called?

3 A I notified my superior whenever I took the
4 report.

5 Q So if any fingerprints were taken, pictures were
6 have been taken, it wouldn't be taken by you, it
7 would be taken by an investigator; is that correct?

8 A Yeah.

9 Q While you were there was it still 4:00 in the
10 morning? Did anyone of the neighbors come and say,
11 well I did hear some shots being fired.

12 A The only person I spoke to about shots being
13 fired was Ms. Davis.

14 Q Mr. Who?

15 A Ms. Davis.

16 Q Ms. Davis.

17 MR. HASTIE: Your Honor, I have no further
18 questions.

19 THE COURT: Redirect.

20 MR. MEADORS: That's fine.

21 THE COURT: All right, thank you. You may
22 step down.

23 MR. MEADORS: May we approach.

24 THE COURT: Yes, come up Mr. Hastie.

25 MR. HASTIE: Yes, sir.

1 ((WHEREUPON, counsel approached the Bench
2 for an off-the-record discussion.)

3 THE COURT: It's about ten to five and
4 I've been advised the next witness may take a little
5 time. Plus, we do have some legal matters we will
6 have to take up anyhow so I think the best time for
7 us to do those is now. And so I'm going to excuse
8 you, allow you to go to your home and families for
9 the evening and ask you to be back please in the
10 jury room tomorrow morning at 9:30 and we'll be
11 ready to go forward when you're assembled in your
12 jury room. Do not discuss the case among
13 yourselves. It's still premature for you to begin
14 any discussion in the case. Do not discuss it with
15 your family or anyone else that you might see over
16 the evening recess because you've got to decide the
17 case based on what you've heard in this courtroom
18 and all bases of that anyone else might say. And
19 also do not listen to any news stories or television
20 or radio broadcasts next matter. Simply forget
21 about this matter over the evening recess and return
22 in the morning at 9:30 and we'll be ready to begin
23 at that time. But if you would, be back in the jury
24 room tomorrow morning at 9:30 and I'll see you at
25 that time. Have a pleasant evening.

1 (WHEREUPON, the jury was removed from the
2 courtroom at 4:56 p.m., and the following
3 proceedings commenced in open court.)

4 THE COURT: All right. I realize the
5 State hadn't rested. Mr. Hastie, what I would like
6 to do at this time is to talk with Mr. Green about
7 his Fifth Amendment rights without inquiring give me
8 an answer until tomorrow.

9 So Mr. Green, I would ask that you stand
10 please. Mr. Green, you may be called as a witness
11 to testify on your own behalf. I now advise you
12 that you have the right to invoke the protections
13 given to you by the Fifth Amendment of the
14 Constitution of the United States and similar
15 counterpart provision of the constitution of the
16 State of South Carolina. The United States
17 Constitution provides in part that no person shall
18 be compelled in any criminal case to be a witness
19 against himself. This provision of constitutional
20 law means that you cannot be compelled or required
21 to testify in this case. This is a right and a
22 privilege which the law extends to you. It is a
23 personal privilege and no one can waive this right
24 except you. You have the right not to testify but
25 you also have the right to testify. The Court will

1 grant you the right to consult with your lawyer
2 before you make a decision. If you elect not to
3 testify your failure to testify cannot be used by
4 the State as an inference of guilt and your failure
5 to testify could not be considered by the jury in
6 its deliberations. If you elect to testify and
7 waive the privilege given to you by the constitution
8 I advise you that you will then assume the role of a
9 witness in this case and you will then waive or give
10 up your constitutional privilege against
11 self-incrimination. This means that if you
12 voluntarily take the witness stand and testify that
13 you will then subject yourself to the same rules
14 that govern owe witnesses, and you may be examined
15 and cross-examined on any relevant issue in this
16 case and you may be impeached to the same extent as
17 any other witness, all of which is subject to the
18 rules of law and the rules of evidence.

19 I further advise you that if you elect to
20 take the witness stand and testify that this
21 decision on your part must be made freely,
22 voluntarily, intelligently, and with knowledge of
23 protections given to you by the constitution and the
24 knowledge of the consequences of your election to
25 testify. Do you understand what I have explained to

1 you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions that
4 you wish to ask me regarding your Fifth Amendment
5 rights?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. I'm not going to
8 require to you give me an answer today, but I'm
9 going to let you have the evening recess and talk
10 with this matter, talk about your Fifth Amendment
11 right with your lawyer and be prepared to tell me
12 tomorrow morning whether you do or do not wish to
13 exercise your privilege against self-incrimination
14 or whether you wish to waive that right and testify.
15 But I will ask you that in the morning, but for now
16 I just want to make sure that you knew your rights
17 and that you understood them. All right.

18 One of the things — you may be seated.
19 One of the things, Mr. Hastie and Mr. Meadors, that
20 impacts upon a decision, a defendant's decision as
21 to whether to testify under rule 608 or 609 is his
22 criminal record. What do you consider to be matters
23 that would be impeachable offenses, Mr. Meadors?

24 MR. MEADORS: Just if I could just go down
25 I don't think it's — 2001 resisting arrest, it's...

1 THE COURT: All right.

2 MR. MEADORS: I'll have to check on the
3 date to see if that's it.

4 THE COURT: It's close. But even if it
5 was, you know, 2001, it's actually a ten years from
6 the expiration of the sentence so we have to look
7 and see what he got. I don't know what —

8 MR. MEADORS: It's very close and I'll
9 have that in the morning, Judge.

10 THE COURT: All right.

11 MR. MEADORS: Breaking into a motor
12 vehicle February of 2003, use of vehicle without
13 permission in 2003, and another breaking and
14 entering, Your Honor, in 2003. I'll have the
15 certified indictments tomorrow to clarify.

16 THE COURT: That's B&E auto?

17 MR. MEADORS: Yes, sir.

18 THE COURT: Okay.

19 MR. MEADORS: CDV first which I — 2007,
20 that will not be, I'm sorry.

21 THE COURT: All right.

22 MR. MEADORS: Failure to stop for blue
23 light in '90 with a ten year suspended five years
24 confinement, five years probation.

25 THE COURT: What year?

1 MR. MEADORS: June of '90. I don't know
2 how long his probationary — that probably is but
3 I'd like to check with the probation department.

4 THE COURT: Check on that.

5 MR. MEADORS: Possession of a weapon on
6 ABC premises. That was a year. That was in — that
7 was 1990 as well as receiving stolen goods. It was
8 in '90, but we argue with Your Honor to consider
9 since it's a larceny that we — with the exception
10 of the ten year rule. A resisting arrest, that's
11 '94, excuse me.

12 THE COURT: '94?

13 MR. MEADORS: Yes, sir. Three accessory
14 after the facts, that's also '94. Two more also in
15 '94. Your Honor, I apologize, but the failure to
16 stop he had back in '95 was revoked and he got five
17 years in '95. Again, maybe I'll sign — I'll check
18 with probation. Judge, then we got some house
19 breakings and larcenies and I just respectfully ask
20 the Court to consider the larcenies. That's back in
21 June '94 a YOA for a larceny, attempted house
22 breaking and —

23 THE COURT: When was that, the same year?

24 MR. MEADORS: Same year. Another house
25 breaking, petit larceny, another house breaking,

1 petit larceny for one disposition of a, I guess it
2 was on YOA, Judge.

3 THE COURT: That was in '84?

4 MR. MEADORS: Yes, sir. But again on
5 those, it was a petit larceny, one, two petit
6 larcenies and a — they're all, four petit
7 larcenies, Your Honor.

8 THE COURT: All in '84?

9 MR. MEADORS: Yes, sir. Failure to stop
10 for a blue light he was revoked — excuse me, that
11 was back in '84. Judge, there's another house
12 breaking, that's '84. House breaking and larceny
13 '85. House breaking and larceny four counts '85.
14 He got four years on all those, Judge. Appears to
15 be a couple of more in '85 looks like scribbled
16 together and burglary third, larceny, house
17 breaking, larceny two counts, July '85. Those are
18 all concurrent. Receiving stolen goods in '87.
19 That's it, Judge.

20 THE COURT: All right Ms. I'm not sure
21 exactly what Mr. Meadors is intending to use but it
22 looked like we can clear up some things right now
23 starting back to the 2001 resisting arrest,
24 Mr. Hastie you agree that that would be admissible
25 under rule 609?

1 MR. HASTIE: I do, Your Honor.

2 THE COURT: And 203 breaking and entering
3 auto would be to under 609, 203 use of vehicle
4 without owner's consent is also particular period
5 and you agree that that would be admissible?

6 MR. HASTIE: Yes, sir.

7 THE COURT: And then 203 another breaking
8 auto would be admissible.

9 MR. HASTIE: Yes, sir.

10 THE COURT: All right. Now the other
11 things looks like we're gonna have to look at and
12 see what the situation is. What do you contend,
13 Mr. Meadors, is admissible if it's outside ten years
14 and why is it admissible?

15 MR. MEADORS: Judge, at this point I
16 haven't — I don't have priors. Some of the —

17 THE COURT: Well, what I want you to do is
18 when we break here, go over here you and Mr. Hastie
19 go over the criminal record. You determine what you
20 are going to want to you're gonna contend is
21 admissible and if he takes the stand and then if
22 Mr. Hastie doesn't agree with that we'll take it
23 up — I'll take it up with y'all in the morning at
24 9:00 so y'all get together and decide which of the
25 ones other than those that are in the 2000 series,

1 the already might be close, the others '03
2 convictions are. But the ones that go back into the
3 '80s and '90s you need to advise Mr. Hastie of what
4 you want to use and if the defendant takes the stand
5 and if he disagrees that's admissible then I will
6 rule on that in the morning at 9:00.

7 MR. MEADORS: Your Honor, I'm not trying
8 to be -- it looks like he was revoked and did some
9 more time, and I think it's out of that ten year
10 period but I can't know that until I talk to
11 probation office.

12 THE COURT: Y'all look at that and let me
13 know in the morning at 9:00. If it's something I
14 need to rule on then I can rule on that in the
15 morning. All right. Mr. Meadors, what do you
16 anticipate, one other witness or two?

17 MR. MEADORS: The most two. Perhaps just
18 candidly one, but it might be two but I wouldn't --
19 it might just be just one.

20 THE COURT: You got two on the list.

21 MR. MEADORS: It might just be one.

22 THE COURT: Okay. All right, Counsel,
23 then we'll -- anything else that we need to cover
24 before that we can take care of today that we don't
25 need to take care of till in the morning? Anything

1 you can think of Mr. Hastie, Mr. Meadors? All
2 right, we'll be in recess then until 9:00 tomorrow
3 morning and let's take up the matters if y'all can't
4 agree on it. We'll know exactly where we stand with
5 Mr. Green and his desire to testify, and he does
6 have the right to know what he thinks are
7 impeachable offenses before he makes that decision.
8 All right, thank you. We'll be in recess till 9:00
9 in the morning.

10 (WHEREUPON, the proceedings were concluded
11 for the day to be reconvened on September
12 13, 2011.)

13 THE COURT: Mr. Mills, I'm going to ask
14 you, if you would please, sometime when this case
15 over to find out from me what the reason for that
16 problem was. My understanding is that the call in
17 to the Clerk's office about quarter to nine that
18 related to Mr. Scott, Mr. Scott related to somebody
19 about six minutes to nine and at 9:25 the juror
20 called and nobody had been there basically got to
21 the Sheriff's Office to the security for the court
22 at six minutes to nine, and it was about an hour and
23 ten minutes before the juror got here and I'd like
24 to find out the reason for it so thank you. All
25 right. Bring the jury in.

1 (WHEREUPON, the jury was returned to the
2 courtroom, and the following proceedings
3 commenced in open court.)

4 THE BAILIFF: All the jurors are present
5 and in the courtroom.

6 THE COURT: All right. Thank you very
7 much, ladies and gentlemen. I appreciated your
8 promptness in being back here. And I will tell the
9 juror, you did exactly what you were supposed to do.
10 You had a transportation problem and the problem was
11 not with you but with the our system of picking up
12 jurors. We're now ready to go forward and we will
13 go forward at this time.

14 Mr. Meadors, you may call your next
15 witness.

16 MR. MEADORS: If it please the Court, Your
17 Honor, the State would now call Investigator Wesley
18 Gardner.

19 THE COURT: Thank you, Mr. Gardner.

20 THE BAILIFF: Place your left hand on the
21 Bible, raise your right hand. State your name
22 please.

23 THE WITNESS: Wesley Gardner.

24 WHEREUPON,

25 WESLEY GARDNER,

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1 having been duly sworn by the Clerk of Court,
2 testified as follows:

3 THE BAILIFF: Have a seat up here please.
4 Please state your full name, spell your last name
5 for the record.

6 THE WITNESS: Wesley Gardner,
7 G-A-R-D-N-E-R.

8 **DIRECT EXAMINATION**

9 BY MR. MEADORS:

10 Q Good morning, Investigator Gardner.

11 A Good morning.

12 Q Investigator, will you please tell this jury
13 about you. Generally, you know, where are you from,
14 where are you born and raised, your education, your
15 background and training, and in particular your
16 training and the time you've spent in law
17 enforcement please, sir.

18 A My name is Wesley Gardner. I was born in the
19 Rembert area. I was in law enforcement now almost
20 30, 40 years. I've been with the Sumter County
21 Sheriff's Office 29 years, and I've been an
22 investigator for 23 years.

23 Q And as an investigator are you assigned to a
24 certain regions or the whole county, how does that
25 work?

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1 A Right now I'm assign to the whole county.

2 Q And back in last year, May of 2010, you were an
3 investigator?

4 A That's correct.

5 Q Any particular region then?

6 A I just all over the county.

7 Q And is it fair to say that whoever the first
8 investigator is that goes to a scene that's kind
9 their case?

10 A Mainly what we do, once we get the reports in the
11 morning the supervisor assign cases to the
12 investigators.

13 Q And the case we're discussing or presenting to
14 this jury, Investigator, were you the lead
15 investigator on this case?

16 A Yes, I was.

17 Q Now let's go back in time to May 4th of last
18 year. Do you remember what — what shift were you
19 working?

20 A We normally work day shift.

21 Q Okay. So that starts when?

22 A 8 to 5 or whenever we get off.

23 Q And did you get assigned to this case and get
24 involved on May 4th, 2010?

25 A Yes, that's correct.

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1 Q Tell the ladies and gentlemen of the jury what
2 did you do?

3 A I was the lead investigator on this case; and
4 what I did, I met with Ms. Davis that afternoon. I
5 went out to her house and I talked to her a little
6 bit about the case.

7 Q And did you know Ms. Davis?

8 A Yeah, I've known her and her family for years.

9 Q And this — when you got there were you aware of
10 what's — it's actually in evidence, Defendant's 2.
11 Can I approach, Your Honor?

12 THE COURT: Yes.

13 BY MR. MEADORS:

14 Q Were you aware that Deputy Deberry had already
15 been out there?

16 A Yes, sir.

17 Q And were you aware when you got to the residence
18 that's where you met her, at the residence, correct?

19 A Yes.

20 Q That there was already a suspect?

21 A Yes.

22 Q And then she also conveyed, said to you who the
23 person was that had —

24 A Yeah.

25 Q —been to her house?

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1 A Yes. She told me Rick Green at that time broke
2 in.

3 Q Now did you have an opportunity to look at the
4 house?

5 A Yes, I did.

6 Q And what, if any, observations did you make,
7 Investigator?

8 A I took photographs of the phone line wire that
9 was cut and also photographs of the garage door and
10 the front door to the house.

11 MR. MEADORS: Your Honor, if I may get
12 these exhibits from the court reporter.

13 BY MR. MEADORS:

14 Q Investigator, I want to show you what's marked
15 State's 1, what's in State's 1, excuse me. Did you
16 take that picture?

17 A Yes.

18 Q What's that a picture of?

19 A That's a picture of the phone line that was cut.

20 Q And through the investigation, as the chief
21 investigator did you learn she tried to make a phone
22 call and couldn't?

23 A Yes, that's correct. She said she tried to make
24 a phone call and the phone was dead.

25 Q And is that why you were — is that what led you

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1 to this or --

2 A Did he show you that, or did you find it. I want
3 they told any the phone had been cut.

4 Q Okay. Your Honor, may I publish this?

5 THE COURT: Yes, sir. You recall, ladies
6 and gentlemen, I told you anything that was admitted
7 in evidence the lawyers could ask and publish that.
8 That means show it to the jury. You can pass it
9 around while you're sitting there. Do not be
10 concerned if you do not have long to look at it as
11 you might like to. It will go with you when you
12 retire to the jury panel in deliberations for the
13 verdict.

14 BY MR. MEADORS:

15 Q Investigator, State's 2, you took this picture
16 also?

17 A Yes, that's correct.

18 Q And did you take this picture after you had
19 talked with Ms. Davis?

20 A Yes.

21 Q And as the chief investigator and investigating
22 this crime, did you learn that this door had been
23 partially opened?

24 A Yes.

25 Q All right. And who told you that?

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- 1 A Ms. Davis told me that.
- 2 Q And in fact, did you add that to what's already
- 3 in evidence as Defendant's 2?
- 4 A Yes, that's correct.
- 5 Q And I'm gonna show you what's Defendant's 2.
- 6 It's down at the very bottom. Could you read that
- 7 starting here.
- 8 A Davis also reported that she found the garage
- 9 door approximately 2 feet and the telephone lines
- 10 was cut, the line was cut.
- 11 Q So this report was produced by Deputy Deberry?
- 12 A That's correct.
- 13 Q And after you went out to investigate you added
- 14 to this report?
- 15 A Yes, that's correct.
- 16 Q And did you do that the same day?
- 17 A Yes.
- 18 Q Back in May, May 4th, 2010?
- 19 A That's correct.
- 20 Q And did you actually see the door open just a
- 21 little bit, or that's what you were told is —
- 22 A That's what I was told.
- 23 Q And you made note of that?
- 24 A Yes.
- 25 Q And then you took a picture of this garage door

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1 and obviously it's all the way open at this point,
2 correct?

3 A Yes, all the way. When I got there it's all the
4 way open.

5 THE COURT: Can I mark this as State's...
6 (WHEREUPON, State Exhibit No. 4 was marked
7 for identification only.)

8 MR. MEADORS: May I approach again please,
9 Judge.

10 THE COURT: Yes, sir.

11 BY MR. MEADORS:

12 Q Wesley, looking at State's 4 for ID, who is
13 listed down there as a witness?

14 A I am.

15 Q And did you have an occasion to take that
16 statement from Ms. Davis?

17 A Yes.

18 Q And when was this?

19 A This was the same day I went out there on
20 May 4th.

21 Q And did you take this out?

22 A Yes, and she wrote on the statement.

23 Q And then did she say in here how many times she'd
24 shot?

25 A Yes.

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1 Q And —

2 A Four times.

3 MR. MEADORS: Now Your Honor, with the
4 Court's permission could we ask Investigator Gardner
5 to come down please and speak loudly.

6 THE COURT: Sure.

7 BY MR. MEADORS:

8 Q Investigator, if you want to stand by the
9 microphone. Have you looked at State's 3?

10 A Yes.

11 Q Yesterday and today?

12 A Yes.

13 Q And it's been pointed out, but can you point out
14 Ms. Davis' house again to the ladies and gentlemen
15 of the jury?

16 A This is Ms. Davis' house right here, [REDACTED] Black
17 River Road.

18 Q And I think — I'm not sure. So that's in Sumter
19 County?

20 A That's correct.

21 Q Now did you know where or do you know where the
22 defendant was living at that time?

23 A Yes, I did. He lived at [REDACTED] Pisgah Road Lane.

24 Q And what road is Pisgah Road off of?

25 A Black River Road runs here. Pisgah runs from

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1 north south there. And this is corner, corner of
2 the store right here.

3 Q And tell me again where the defendant lives?

4 A He lives at [REDACTED]

5 Q Now you were present when Mr. Mack testified,
6 correct?

7 A Yes.

8 Q Do you know where Mr. Mack —

9 A Mr. Mack —

10 Q —lives?

11 A —lives right here.

12 Q And I think there's been testimony and I, with
13 all due respect to the lady, the elderly lady lived
14 there, correct?

15 A That's right.

16 Q Do you know who lives back here, anybody, May
17 10th. And I'm referring to the trailer behind the
18 victim's residence, Your Honor.

19 A That's an elderly lady also. I think she's 60.

20 Q Sixty at this point?

21 A Right.

22 Q That's all on this particular thing.

23 THE COURT: All right, you may come back
24 up.

25 THE WITNESS: All right.

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- 1 BY MR. MEADORS:
- 2 Q How long have you known Ms. Davis?
- 3 A Ms — I met her over 20 years. I don't — I'm
- 4 from Luminary (ph) her family is from Luminary. I
- 5 been knowing her husband for at least 20 some years.
- 6 Q And the reason I ask that is when you got there
- 7 it was 7:00 that same day?
- 8 A Right, about 7:00 p.m.
- 9 Q And but could -- was she -- can you describe her
- 10 demeanor then as she was telling you about this?
- 11 A She was still upset that Ricky Green tried to
- 12 break into her house. She was still upset, right.
- 13 Q And there wasn't any confusion when she heard the
- 14 name when she — you understood she said Ricky Green
- 15 or Rick Green.
- 16 A Yes, she said Rick Green.
- 17 Q And is that Mr. Richard Green sitting there with
- 18 Mr. Hastie who was arrested by department for
- 19 burglary first degree?
- 20 A Yeah, that's him.
- 21 Q At my request did you Google the population of
- 22 the world?
- 23 A Yes, I did.
- 24 Q And what is that?
- 25 A Approximately 6.9 billion.

SW - W. GARDNER - CROSS

1 Q 6.9 billion?

2 A Yeah.

3 MR. MEADORS: Beg the Court's indulgence,
4 Judge. I think that's all I have. Thank you.

5 THE COURT: Cross-examination, Mr. Hastie.

6 MR. HASTIE: Yes, Your Honor.

7 **CROSS - EXAMINATION**

8 BY MR. HASTIE:

9 Q Good morning, Detective.

10 A Good morning.

11 Q How are you doing?

12 A All right.

13 Q Did you prepare a written statement yourself for
14 this investigation?

15 A No — as far as the victim's statement?

16 Q Yes.

17 A No, she wrote her own statement.

18 Q Did you prepare an overall statement of —

19 A Yes, I did.

20 Q —the case file?

21 A I did a case summary.

22 Q You did a case summary. So you did do that?

23 A Yes.

24 Q At the investigators or police academy I guess, I
25 assume you are trained on how to prepare written

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1 statements; is that correct?

2 A That's correct.

3 Q And I assume that you all are taught ed to
4 prepare complete and accurate reports; is that
5 correct?

6 A Yes, best we can.

7 Q And I assume that you all are taught to include
8 everything about incident that was important to the
9 situation?

10 A Everything that we're familiar with.

11 Q That you're familiar with?

12 A Right.

13 Q And this is important because that's what the
14 prosecutor or attorney and the county use to put a
15 case together; is that correct?

16 A That's correct, like I said.

17 Q Okay. Are you taught to write down exactly what
18 you are told by the victim in your report.

19 A We try to get as accurate as we can.

20 Q As accurate as you can, okay. Now, and you were
21 just shown by Mr. Meadors Defense Exhibit Number 2 I
22 believe it was, and I think he already asked you
23 about the distance of this garage door; is that
24 correct?

25 A That's correct.

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1 Q Now you were here when she testified that the
2 garage door was open about 2 inches yesterday.

3 A That's correct.

4 Q You heard — you remember that?

5 A Right.

6 Q But in the report that you wrote down on May
7 the 4th she told you by your statement in the report
8 that it was open how far, how wide?

9 A Approximately 2 feet.

10 Q 2 feet?

11 A Right.

12 Q So there's a big difference between 2 feet and 2
13 inches?

14 A Right, right.

15 Q Did you take any pictures of the garage door?

16 A Not the door itself. I won't pick up the garage.

17 Q Okay. Any reason why because what her statement
18 she said the garage door was pried open; is that
19 correct?

20 A That's correct.

21 Q And you chose not to take a picture of any
22 damage. Was any damage to the garage door?

23 A I didn't see any damage to the garage door. In
24 fact, I think one of the wheels had came off and her
25 husband had already put the wheel back on when I got

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- 1 there.
- 2 Q Okay.
- 3 A One of the wheels where you pull it up.
- 4 Q Did you see any kind of damage that might reflect
- 5 someone tried to pry that garage door 2 feet up?
- 6 A I didn't see any kind of damage.
- 7 Q You didn't see?
- 8 A In fact, the bottom of the garage is rough so I
- 9 didn't see any damage.
- 10 Q Did you talk to the husband about putting the
- 11 wheel back on the garage door at all?
- 12 A He told me that he put it back on.
- 13 Q He told you he put it back on the door?
- 14 A Right.
- 15 Q Did you include that anywhere in your written
- 16 report?
- 17 A I don't think I did.
- 18 Q What about the phone line being cut? You took
- 19 pictures of the -- is that the phone box I assume?
- 20 A Yeah, that's the box.
- 21 Q Phone box?
- 22 A Yes.
- 23 Q Is there any way that you could tell how long the
- 24 lines were cut? Was it cut last night or was it cut
- 25 two days ago? Could you tell that by your

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1 investigation?

2 A No, I couldn't tell how long it's been cut.

3 Q There's absolutely no way you can tell when it
4 was cut.

5 A No, I couldn't tell.

6 Q No, no. Did you check with the phone company to
7 see whether those lines were cut at all that night
8 or two days before at all?

9 A Well, according to Ms. Davis, I think she
10 testified that when she -- she had talked on the
11 phone prior to, prior to going to bed, so the phone
12 had been working.

13 Q According to Ms. Davis?

14 A Yeah.

15 Q What about fingerprints? She said someone was
16 prying on the garage door. She also testified that
17 someone was pulling on her front door.

18 A Right.

19 Q Did you fingerprint her front door at all?

20 A No, I didn't. Very seldom are we going to get a
21 fingerprint off a doorknob, very seldom.

22 Q Well, she said she had a screen door. There
23 probably would have been a handle there.

24 A Well, a handle, that's even worse, you know.

25 Q And this person is pulling on this door, you

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1 heard her testimony, for over a minute. And you
2 chose to decide not to try and get any fingerprints?

3 A Well just what I said, a handle on a door it's
4 really not enough to even lift a fingerprint off of.

5 Q Oh, really.

6 A Because it's real small and it's not — most
7 handles are not smooth, and it's kind of hard to
8 lift a fingerprint off of a handle.

9 Q Do y'all ever fingerprint handles to doors in
10 your 30 years of investigation?

11 A Not. Not a handle.

12 Q Never?

13 A No, I haven't.

14 Q Okay. Was there any damage then to the front
15 door because your testimony is that this big fella
16 over here was pulling on her front door for over a
17 minute. Was there any damage that you could see to
18 her front door?

19 A No, I didn't see any damage.

20 Q You didn't see no damage?

21 A No.

22 Q Did you take any pictures in case there wasn't?

23 A I think I took overall picture of the house.

24 Q Of the front door?

25 A Not specifically of the front door I took a

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1 picture of the house.

2 Q Now the front door and garage were where this
3 burglar tried to enter her home, right?

4 A That's correct.

5 Q And you took no pictures of the garage damage.
6 Could have pulled it down -- I know you did took a
7 picture of the garage, but you didn't pull it down
8 just look at it and say, what, look like somebody
9 was here doing something?

10 A Yes, sir, they did. In fact, her husband let it
11 down a little ways, and that's where the rubber was
12 seen under the bottom of the garage door and
13 actually wasn't anything found.

14 Q Wasn't any damage?

15 A I didn't see any damage.

16 Q So you didn't see no damage at all? You don't
17 look at that there? Area product the front door,
18 this guy, somebody was pulling on this door for over
19 a minute -- you heard the testimony -- and there was
20 no damage that you could see; is that correct?

21 A That's correct.

22 Q Okay. Did she tell you anything about because
23 she said that's Rick Green, I know Rick Green, I saw
24 him walking away. Did she tell you anything that he
25 had a wire cutter?

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- 1 A No.
- 2 Q On him, person, or any in his hand?
- 3 A No.
- 4 Q What about a crowbar prying the garage door up? I
- 5 did she mention anything about those kinds of items?
- 6 A No.
- 7 Q None of them. Now you say that you know that
- 8 Mr. Green lives at [REDACTED] Pisgah?
- 9 A That's correct.
- 10 Q How do you know that?
- 11 A According to his identification.
- 12 Q According to his identification?
- 13 A Right.
- 14 Q Have you been by Pisgah Road to see if he still
- 15 lives there?
- 16 A That's his address. I think his mother lives
- 17 there, he lives there with his mother.
- 18 Q He lives with his mother there. Have you ever
- 19 been to that address?
- 20 A Several times.
- 21 Q Okay. Is it common practice to — because you
- 22 made this statement about the 2 feet on the deputy's
- 23 report; is that correct?
- 24 A Yes, that's the incident report.
- 25 Q Incident report. Is it common police practice

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1 that you write on someone else's report?

2 A That's why I initialed it. That's why I got my
3 name beside where I added something to this report.

4 Q Is that common practice?

5 A Yes. Yes, it is.

6 Q And you're sort of the head investigator?

7 A Yes.

8 Q So you read the report and saw that something
9 wasn't quite right, is that —

10 A I just added the information that Ms. Davis told
11 me when I got there that wasn't on the accident
12 report.

13 Q You saw in the incident report you just described
14 that she evidently told Deputy Deberry that by her
15 own statement or in his report that she fired two or
16 three times; is that correct?

17 A That's correct.

18 Q In that report?

19 A Right.

20 Q But in your summary you said that she fired four
21 times?

22 A That's correct.

23 Q Because that is what she told you?

24 A Right.

25 Q So obviously when she met with — you can't

SW - W. GARDNER - REDIRECT

1 testify to that. But Deberry's report is that two
2 or three times?

3 A That's correct.

4 MR. HASTIE: Court's indulgence, Your
5 Honor.

6 THE COURT: Yes.

7 MR. HASTIE: Thank you, Your Honor. I
8 have no further questions.

9 THE COURT: Redirect.

10 MR. MEADORS: Briefly please, sir. May I
11 approach please?

12 THE COURT: Yes, sir.

13 MR. MEADORS: Can we approach a second.

14 (WHEREUPON, counsel approached the Bench
15 for an off-the-record discussion.)

16 **REDIRECT EXAMINATION**

17 BY MR. MEADORS:

18 Q The subject, a Rick Green, she recognized the
19 subject Rick Green attempting to pry open the door
20 and also trying to lift the garage door, correct?

21 A That's correct.

22 Q And he asked you about the garage door. You got
23 a picture here of the garage but the door is
24 actually up inside the garage here, correct on,
25 State's 2?

SW - W. GARDNER - REDIRECT

1 A That's correct.

2 Q And you testified that out of your investigation
3 and talking with the husband and the wheel was off
4 and the husband repaired it?

5 A That's correct.

6 Q And you learned that that day?

7 A Yes.

8 Q And on State's 4 for I.D. does Ms. Davis put in
9 here about being in bed asleep and hearing the door
10 bell ringing?

11 A Yes, she did.

12 Q Seeing the man walking from the garage -- seeing
13 the man walking from my door and he tried to open
14 when he was walking from the garage door I said
15 that's Rick Green.

16 A Yes, that's in the statement.

17 Q Pull on the storm door?

18 A Yes.

19 Q And she's sitting in her den with the gun ready?

20 A Yes.

21 Q Weapon ready, I apologize. She put in here about
22 trying to make a phone call and that the line was
23 dead, trying to call 9-1-1?

24 A That's correct.

25 Q Opened back door firing four shots, is that in

SW - W. GARDNER - REDIRECT

1 here?

2 A Yes.

3 Q Waiting for a neighbor to get up around 4?

4 A Yes.

5 Q Is it in here she put flicked her lights?

6 A Yes.

7 Q Then here you came over?

8 A Yes.

9 Q Went with her to her car so she could get her
10 cell phone?

11 A That's correct?

12 Q And then she called 9-1-1?

13 A Yes.

14 Q So she put that in her statement that day?

15 A Yes.

16 Q Mr. Hastie asked you about the address of the
17 defendant. Is that information provided on his
18 arrest warrant, what was the other one, address?

19 A [REDACTED] Pisgah Road, Rembert.

20 Q That's information you got either from him or
21 about him from the time of his arrest?

22 A Yes, sir.

23 Q That's all I have.

24 THE COURT: Recross, Mr. Hastie.

25 MR. HASTIE: Yes, Your Honor.

SW - W. GARDNER - RECROSS

RECROSS - EXAMINATION

1
2 BY MR. HASTIE:

3 Q Did you get this address from Rick, Mr. Green, on
4 the day of his arrest? Did he tell you that?

5 A No, not the address that's on this particular
6 warrant.

7 Q That's right. He did not tell you that?

8 A I already had that information.

9 Q He did not tell you that?

10 A No, I already had that information.

11 Q But you were just asked did you get that from
12 Mr. Green?

13 A Oh, I didn't understand what ---

14 Q Well, I want to make sure about that. On this
15 arrest warrant you also have on here that he did
16 enter the residence by prying open the garage door.
17 Do you have proof that he entered this residence?

18 A According to Ms. Davis he was prying on the
19 garage door. Now the garage door was up, and in
20 order to get the garage door up you got to pull it
21 up to me. I mean, once you pull a garage door up
22 he's considered to be inside the residence.

23 Q Once you pull the garage up you're considered to
24 be inside the residence?

25 A Right.

SW - W. GARDNER - RECROSS

1 Q Even though you heard the testimony it only went
2 up 2 inches.

3 A Well, your fingers can get a garage door up it's
4 two inches.

5 Q Were you there? Did you see Rick Green that
6 night?

7 A I didn't.

8 Q No you did not. But she was there, right?

9 A That's correct.

10 Q She was there?

11 A Yeah.

12 Q She described her situation. That garage door
13 was only open two inches. That's her testimony; is
14 that correct?

15 A That's correct.

16 Q Okay. I have nothing else, Your Honor.

17 THE COURT: All right. Thank you, Mr.
18 Gardner. You may step down.

19 MR. MEADORS: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. MEADORS: Your Honor, the State of
22 South Carolina rests.

23 THE COURT: All right. Thank you, Mr.
24 Meadors.

25 Ladies and gentlemen of the jury, you

1 heard the State announce they have rested their
2 case. That means that you have heard all of the
3 testimony that you will hear at this time. There
4 are certain matters of law which I now need to take
5 up with the attorneys involved, and so I'm going to
6 ask you to go to your jury room while I do take care
7 of these matters. Again, do not discuss this case
8 among yourselves. It would still be premature for
9 you to give any discussion among yourselves. Let's
10 take care of these matters for you. We'll send for
11 you very shortly.

12 And Mr. Meadors, if you will get that
13 exhibit, we need it back.

14 MR. MEADORS: Yes, sir.

15 THE COURT: Thank you, ladies and
16 gentlemen, if you may go with the bailiff.

17 (WHEREUPON, the jury was removed from the
18 courtroom, and the following proceedings
19 commenced in open court.)

20 THE COURT: All right, Mr. Hastie, motions
21 on behalf of Defendant?

22 MR. HASTIE: Yes, Your Honor. Your Honor,
23 I certainly like to make a motion for a directed
24 verdict. We know that one of the four elements of
25 burglary is there must be an entry. And there's

1 been no testimony whatsoever today that Mr. Green or
2 anyone else actually entered into that house. The
3 second element is without consent. We want to talk
4 about that, Judge. I haven't heard nothing about
5 any —

6 THE COURT: Look at me. I can't
7 understand you. Go ahead.

8 MR. HASTIE: I want to talk more about
9 without consent because I've never heard nothing
10 about anyone in the house. The third element is the
11 place must be a dwelling, and that's not without
12 question. And the fourth, there must be an intent
13 to commit a crime. She testified that someone rung
14 the door bell. She looked out the window and it was
15 Rick Green. So I make a directed verdict. I think
16 it fails on the elements itself because there never
17 was an entry into Ms. Davis' home.

18 THE COURT: All right. So your matter of
19 fact they failed to prove an entry which is one of
20 the requirements of burglary?

21 MR. HASTIE: Yes, sir.

22 THE COURT: All right. Mr. Meadors.

23 MR. MEADORS: Thank you, Your Honor. May
24 it please the Court. I think the State versus
25 Chappell or Chappell addresses this issue. I think

1 that was in —

2 THE COURT: Well, it says entry however
3 slight.

4 MR. MEADORS: Right, yes, sir, and I think
5 that's what —

6 THE COURT: I'm familiar with State versus
7 Chappell, I think it is Mr. Meadors, and it says but
8 the word has broad significance in the long form of
9 the record of burglary is not confined to the
10 intrusion of the whole party but may consist of the
11 insertion of any part for the purposes of committing
12 a felony. But I think he's saying that there's no
13 evidence in the record of the insertion of any part
14 of the right.

15 MR. MEADORS: Well, I think that's where
16 we have to rely on circumstantial evidence, Judge,
17 and direct evidence by her here. She says that
18 after she sees the individual at her front door she
19 comes over, she goes to the dining room, and then
20 she hears her garage door trying to get in. She
21 hears it going up. And I think to do that there has
22 to be an intrusion, Your Honor.

23 THE COURT: How do you make that leap? I
24 mean, there could be a handle on the outside of the
25 garage door, and I'm just talking about my garage

1 door from the standpoint now. On the outside of my
2 garage door there's a handle, and you know, if he's
3 grabbing that handle and trying to pull it up,
4 that'll -- let's say, let's take a different
5 example. Let's say it's not the garage door. Let's
6 say it's a screen door, and he walks up there and
7 pulls the screen door, is that a burglary? Pulls
8 the handle of a screen door.

9 MR. MEADORS: If the door was locked and
10 there's testimony the door was locked when she went
11 to bed and then came and it's open, when she sees it
12 open I think yes, sir. In this case the garage door
13 she said is locked when she goes to bed, it's down.
14 She gets up and looks and discovers it is up which
15 circumstantially is consistent with her being pulled
16 up. There's entry there that had to go up. The
17 wheel had to be replaced we found out this morning
18 or today so obviously there was some damage to the
19 door. I respectfully ask Your Honor to consider
20 circumstantially to get that door up that was
21 locked, it clearly was up, and there was clearly
22 some making going up, however you want to do it,
23 Judge, but that was the intention to lift up. And
24 there was a passage of airway that he --

25 THE COURT: In answer to my question about

1 the screen door, if they grab the handle and pull
2 the door and it gives a little bit but never comes
3 unlocked, and it gives a little bit on the screen
4 door, by grabbing an outside handle that that's an
5 entry?

6 MR. MEADORS: I think circ— it'd have to
7 depend on their limits, Judge. I guess I don't know
8 if I can answer that hypothetical. If you had
9 somebody who said that door was locked and they
10 heard pulling and then the door was open, I think
11 circumstantially I would respectfully argue to Your
12 Honor that that was an entry. Here I think it's a
13 little bit different because they're here, direct
14 evidence here, hears it's going up and —

15 THE COURT: Two inches, by her testimony.

16 MR. MEADORS: Two or four. Yes, sir. I
17 understand. 2 or 3 feet, but I accept that. I
18 accept that.

19 THE COURT: Her testimony is 2 inches.

20 MR. MEADORS: Correct. It's enough to get
21 two fingers in.

22 THE COURT: Huh?

23 MR. MEADORS: It's enough to get two
24 fingers in. I think that's all it takes.

25 THE COURT: Well, that's what you're

1 supposing happened.

2 MR. MEADORS: Yes, sir. Well, that's what
3 I think, with her ear and her hands. Judge, also if
4 at the appropriate — depending on what Your Honor's
5 ruling is now, I was going to ask Your Honor to
6 consider the lesser included offense of attempted
7 armed robbery.

8 Well, that is my question. Is that a
9 lesser included?

10 MR. MEADORS: Well, we've been doing
11 research on that most of the night and it's an
12 interesting issue. I don't know if it's been
13 directly —

14 THE COURT: I can't find a case on it as
15 to whether it's a lesser included of attempting, and
16 I wondered if that was going to be your argument
17 that it wasn't indicted for attempted. And under
18 the statute 16-1-80 the offense of attempted is
19 punishable by the principal offense. But the
20 attempted, I guess the way this is indicted, it
21 would have to be lesser included and that may be a
22 different issue all together.

23 MR. MEADORS: And there is a case out
24 there that — and I can find it in just a moment,
25 Your Honor. That talks about it with a — I don't

1 if I have the case here, but it talks about a latest
2 attempted kidnapping. And I think as Your Honor
3 knows better than I do, there must be some same
4 element test obviously which I think is true but
5 there must be some evidence of the lesser. And I
6 guess arguing with Your Honor's hypothetical to me
7 would be the evidence of the lesser perhaps of the
8 attempted.

9 THE COURT: Well, I think the distinction
10 or the way you define what is lesser included and
11 not lesser included is are there additional elements
12 required. If there are additional elements required
13 then it is not lesser included.

14 MR. MEADORS: Correct, Judge.

15 THE COURT: But if there are less elements
16 it could be attempted and here -- not less because
17 the right word is fewer I think. If fewer elements
18 included then it would be. And the one element that
19 would not be necessary for attempted would be the
20 entry, it would be the attempted entry.

21 MR. MEADORS: Yes, sir. Yes, sir.

22 THE COURT: What say you to the attempted
23 armed robbery, I mean the attempted burglary,
24 Mr. Hastie?

25 MR. HASTIE: Your Honor, I just think that

1 the prosecutor is now scrambling trying to get
2 something on this client. I disagree with the
3 attempted burglary. I disagree with this man being
4 accused of with — the code is very clear on the
5 elements of the burglary. There was no entry and I
6 think that's clear. And I just disagree with that
7 to allow that for him to come back and say maybe
8 there was some type of attempt.

9 THE COURT: What say you as to whether
10 attempted burglary is a lesser included offense of
11 burglary?

12 MR. HASTIE: I say not.

13 THE COURT: Why?

14 MR. HASTIE: Well, I've done some
15 research. I've seen and I think and I told the
16 Court, I asked that this morning about the attempt,
17 attempted burglary should be lesser included.

18 THE COURT: I don't think I was told about
19 it but, there is a statute on attempt so any felony
20 16-1-80 offense of attempted punished as a principal
21 offense, person who commits a common law offense of
22 attempt, upon conviction must be punished for the
23 principal offense. And I guess my question is why
24 is attempted burglary not a lesser included offense
25 of burglary under the definition of what is a lesser

1 included.

2 MR. HASTIE: Your Honor, I guess when I
3 heard in this testimony this last day and this
4 morning I've seen no evidence of any type of attempt
5 at least as my client is concerned. I disagree with
6 attempted burglary and trial burglary first and I
7 just disagree with that issue at this time.

8 THE COURT: Okay, all right. Yeah, Mr.
9 Meadors.

10 MR. MEADORS: And Your Honor, in does not
11 being added on under the law if it's same element
12 test as I call it and I apologize, Your Honor, that
13 same or less.

14 THE COURT: Same fewer.

15 MR. MEADORS: Fewer same or fur
16 anticipation.

17 THE COURT: Less than means small.

18 MR. MEADORS: You're right. Or fewer.
19 And clearly I think circumstantially, is theres to
20 an entry there and if not I think it would be fewer
21 it will be proven entry still have to bring
22 everything else well consent and intent submit crime
23 which to answer that I think cutting the phones
24 using night before but something good that was going
25 to be planned. Clearly I think there was attempt to

1 be inferred from that. Judge, we respectfully ask
2 Your Honor to charge lesser included offense of
3 attempted burglary. We think it meets the defenses.

4 THE COURT: Okay. I'm going to think
5 about it. Let me go back and see if I can find
6 anything on it in a few minutes. I will be very
7 frank with you, Mr. Meadors. I tend to agree with
8 Mr. Hastie that there's not even element of an
9 entry. It's not even enough to insert a finger of
10 it as far as inserting a finger or lifting up on the
11 door or anything of that nature. You know, had they
12 taken fingerprints from under the door and found
13 fingerprints inside the door where he tried to lift
14 it up or there was some evidence he had tried to
15 insert some part of the body into the, into the
16 dwelling, then you would have the entry. But I
17 think simply trying to open a door, it could have
18 been attempt. Could have been to push it up 2
19 inches or 2 feet, whatever it was, could have been
20 done from the outside. And I can't say that I think
21 that's a quantum leap to say that there was an entry
22 based on the proof in this case. The only question
23 that I do have and have had and thought about it
24 last night and of course, I wasn't going to say
25 anything until I saw what y'all's position was,

1 whether or not it would be attempted burglary as a
2 lesser included offense and I want to think about
3 that a little bit more. All right. I'm going to do
4 that in just a minute.

5 In the meantime, let me address Mr. Green
6 in this case of is he prepared to address the issue
7 of whether or not he plans to testify in his case at
8 this point Mr. Hastie?

9 MR. HASTIE: He is, Your Honor.

10 THE COURT: Mr. Green, yesterday I went
11 over with you your right under the Fifth Amendment
12 of the constitution is your privilege against
13 self-incrimination and you indicated to me that you
14 understood what I had told you; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You — also I told you that I
17 will give you an opportunity to talk with your
18 lawyer. Have you had chance to talk with your
19 lawyer about your Fifth Amendment right?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you understood your talks
22 with him?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any questions you
25 want to ask either him or me about your Fifth

1 Amendment right?

2 THE DEFENDANT: No, sir.

3 THE COURT: And have you made a decision
4 as to whether you do or do not wish to testify in
5 the case?

6 THE DEFENDANT: No, sir.

7 THE COURT: You have made a decision and
8 that decision is not to testify?

9 THE DEFENSE: Yes, sir. Yes, sir. Yes,
10 sir.

11 THE COURT: Is that correct? That
12 decisioning on your part is freely and voluntarily
13 made?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. The defendant
16 after having been advised by court and by his
17 counsel of his Fifth Amendment protection against
18 self-incrimination. Has made a free and voluntarily
19 knowing and intelligent decision is per his Fifth
20 Amendment right to not to testify in this matter.
21 The court will recognize that decision and will
22 instruct the jury that they're not to make any
23 inferences from his election not to testify. All
24 right. Thank you. You may be seated.

25 Now counsel, assuming and I haven't made

1 this decision yet but assuming that that two go
2 forward and this matter goes to the jury, tell me
3 about your position Mr. Meadors with regard to
4 report to arguments how many arguments whether how
5 much time you need?

6 MR. MEADORS: I don't want to waive my
7 opening. I think under State versus Pittard the
8 last part.

9 THE COURT: All right. You agree
10 Mr. Hastie, he's entitled to last argument?

11 MR. HASTIE: No, sir, I do not agree.

12 THE COURT: Why is that?

13 MR. HASTIE: My client did not testify.

14 THE COURT: Didn't you admit — didn't you
15 offer evidence?

16 MR. HASTIE: Yes, sir, I did offer one
17 piece.

18 THE COURT: All right. And that's doesn't
19 that waive your right to last argument?

20 MR. HASTIE: Yes.

21 THE COURT: All right. All right. He'll
22 waive opening. That means that you would argue
23 first. Mr. Hastie, how much time would you need?

24 MR. HASTIE: I would think about 20
25 minutes, Your Honor.

1 THE COURT: Mr. Meadors?

2 MR. MEADORS: 25.

3 THE COURT: All right. Half an hour give
4 everybody plenty of time. Any special requests to
5 charge other than the principal offense and I'm
6 going look at that in just a minute, but with my
7 general charge would be the presumption of
8 innocence, burden of proof reasonable doubt, direct
9 and circumstantial evidence, the charge itself. It
10 would go with the — what the situation is and of
11 course, defendant not to testify. I don't know of
12 anything else that would be property do we have
13 anything further?

14 MR. MEADORS: No, sir. Your burglary
15 charge will go through assuming —

16 THE COURT: Assuming we go forward with it
17 it would, yeah. All right, let's take about ten
18 minutes and let me do a little bit of research.

19 (WHEREUPON, a recess was taken from the
20 proceedings.)

21 THE COURT: All right. We're back on the
22 record with regard to the matter of State v. Richard
23 Avon Green 2010-GS-43-1050. Counsel, I have done
24 some research and tried to determine what I thought
25 was appropriate and correct under the law of this

1 case. I am convinced that there is no evidence in
2 the record upon which the jury could convict the
3 defendant of burglary in the first degree because
4 the evidence is simply not there for a showing of
5 entry which is one of the elements of crime of
6 burglary in the first degree. There must be an
7 entry in order for there to be a burglary in the
8 first degree, and my task under rule 19 is to
9 determine not the weight to be given to the evidence
10 but the existence of evidence. And essentially no
11 evidence in existence of an entry into the house
12 even by circumstantial evidence I think would be
13 speculation on the part of the jury. There's just
14 not any circumstantial evidence which would show an
15 entry. That does not end the inquiry because then
16 we have to look and determine whether or not the
17 crime of attempted burglary should go to the jury as
18 a lesser included offense and I have done some
19 research on that and I can't tell you what the case
20 is right now because I can't get this computer to
21 work; but there is a South Carolina case the
22 language for which is first of all, that under the
23 elements test crime will only be considered a lesser
24 offense if the greater crime encompasses all of the
25 elements of lesser. And in this case the greater

1 crime being burglary in the first degree requiring
2 entry whereas the lesser offense does not require an
3 entry but requires all of other elements and
4 furthermore, this particular case goes on to say
5 that when an indictment for greater offense trial
6 court has the requisite jurisdiction to charge and
7 convict a defendant of any lesser included offense
8 inconclusive of instruction is required only whether
9 the evidence warrants such an instruction. To me
10 the evidence in this case is exactly that, that
11 there was — there's evidence in the record of
12 attempted burglary and attempted opening of front
13 door and attempt to open the garage door but no
14 entry if the jury believes that testimony and that
15 would be a jury determination so the long and short
16 of it is that I am going to submit the case to the
17 jury on the lesser included offense of attempted
18 burglary in the first degree and not on burglary in
19 the first degree and I will charge the elements as
20 an attempt as instead of actually requiring an
21 entry. So it will go to the jury on attempted
22 burglary rather than burglary in the first degree.
23 All right, that will be the Court's ruling.

24 MR. MEADORS: Thank you, Your Honor.

25 THE COURT: Mr. Hastie.

1 MR. HASTIE: Your Honor, I would like to
2 on the record propose —

3 THE COURT: You don't have to do; you're
4 protected. You've already — I understand your
5 position and it's not necessary under our rules to
6 take exception.

7 MR. HASTIE: Thank you, Your Honor.

8 THE COURT: All right. Bring the jury in.
9 I'm gonna call on you, Mr. Hastie, to present any
10 testimony and when you ways it I'll recognize I will
11 advise the jury that you go into argument you've
12 rested, gone into arguments at this time.

13 MR. MEADORS: Your Honor, I not to mention
14 any penalty or mention any penalty of time in his
15 closing.

16 THE COURT: I think Mr. Hastie knows that,
17 yeah.

18 MR. HASTIE: Did you Your Honor.

19 (WHEREUPON, the jury was returned to the
20 courtroom, and the following proceedings
21 commenced in open court.)

22 THE BAILLIFF: Your Honor, we have all the
23 jurors back in the courtroom.

24 THE COURT: All right, ladies and
25 gentlemen, thank you very much for your patience.

1 We are now ready to go forward. You have heard the
2 State announce that they finished and presented
3 their testimony to you, and now I will call on the
4 defendant and give them the right to present any
5 testimony, evidence that they wish to present.

6 Mr. Hastie.

7 MR. HASTIE: Thank you, Your Honor.

8 THE COURT: No, sir, just from evidentiary
9 standpoint is there any evidence that you wish to
10 present?

11 MR. HASTIE: Oh, no, Your Honor.

12 THE COURT: So the defendant rests as
13 well?

14 MR. HASTIE: Yes, sir.

15 THE COURT: All right, ladies and
16 gentlemen, what that means is that you have heard
17 all of the testimony that you'll hear actually in
18 this matter and now the only two elements or only
19 two things that remain to be done are the arguments
20 of counsel and the instructions on the law by the
21 Court. I will tell you now as I did at the first of
22 this case that the statements of attorneys or the
23 summations of attorneys are not evidence in this
24 case. They're simply the lawyer's views of what
25 they think the evidence shows. You will decide this

1 case based on evidence that you have heard from this
2 witness stand and from any exhibits that have been
3 introduced into evidence. But the lawyers do have
4 the right to, not only the right but the duty on
5 behalf of their client, to address you now and to
6 give you their views of what they think the evidence
7 is. You will hear first from Mr. Hastie on behalf
8 of defense and then you will hear from Mr. Meadors
9 on behalf of State. After you have — after they
10 have concluded their argument to you I will then
11 instruct you on the law of South Carolina as it
12 applies to the elements in this case and to the
13 facts of this case as you may find those facts to be
14 and then you will be allowed to go to your jury room
15 to deliberate your verdict.

16 Before I call on the lawyers for closing
17 arguments I want to tell you that the Court has
18 directed a verdict as far as the crime of burglary
19 is concerned because the State in my view there is
20 no evidence of all the elements of the crime of
21 burglary. However, under the theory that lesser
22 included offense is included in the greater offense
23 the matter will be for your decision as to whether
24 or not there was an attempted burglary in this case.
25 And so that is what the issue that will be before

1 you, whether there is an attempted burglary in the
2 first degree, and that is on the basis of the fact
3 that of legal principle that the lesser included
4 offense of greater offense, lesser intent offense
5 being attempted burglary as opposed to burglary so
6 that is the issue that will be before you and that
7 is what counsel will argue to you at this time.

8 All right, Mr. Hastie.

9 MR. HASTIE: Thank you, Your Honor. Good
10 morning, ladies and gentlemen. First of all, I want
11 to thank y'all for your time because this is one
12 time I noticed everybody is paying a lot of
13 attention to the evidence that was presented here
14 today. I want to go back to the beginning. And the
15 judge spoke to you all yesterday. He talked to you
16 about, he said I want you to follow the law, I want
17 you to be fair. And it is your responsibility to
18 hold the prosecution to its burden of proof, and I
19 am going to remind you that the burden of proof of
20 this offense rests with the Prosecution. He started
21 off by saying, that is Rick Green, that's Rick
22 Green. But suppose it wasn't. That's why you all
23 are here. Just suppose she's mistaken, it wasn't
24 him. I asked you yesterday to, my theme is, ask
25 yourself throughout all the testimony where is the

1 evidence? Now you've heard everything. Now where
2 is the evidence? You've seen a lot conflicts with
3 investigator. The investigator report said the door
4 was 2 feet. She got up and said 2 inches. Did we
5 see any type of entry with any type of tools or
6 anything like that? Is that in there? No. There
7 was none. You got to ask yourself where are the
8 facts? There's so many strange things about her
9 testimony here. Here's a young lady that has a
10 weapon. She says she stood when this man was
11 pulling on her door, she stood here, about here to
12 the door with a weapon in her hand. And she did not
13 yell out to him anything about, get away from my
14 door. Y'all heard she works at the correction
15 facility so she's trained how to handle a weapon and
16 how to deal with rough people. But she says, I
17 don't speak to anybody that time of night, anybody.
18 Oh, when Mr. Mack came over 4:00 in the morning she
19 spoke to him and told him about this supposedly this
20 attempt to enter into her home.

21 She -- I asked the detective about the
22 fingerprints because if he had taken fingerprints,
23 or tried to. He said, well no, no, we don't do
24 that, there are not fingerprints on your doors, we
25 don't need to do that. He's not the expert. I

1 said, let's try, because if he had attempted to take
2 the fingerprints we might have not been here today
3 because we would have found out who really was at
4 that door, but he decided not to do that. Well, did
5 you take any pictures of that door? This guy get to
6 the door, by her testimony, a whole minute. And big
7 as this guy is, the peep hole on that screen door,
8 not to worry about the screen door for a minute he
9 probably would have been in that house and he
10 probably would have been shot. You know, that
11 didn't happen. What about the garage door? Tried
12 to pry the garage door open. I don't know what she
13 saw. She said I heard him prying the garage door
14 open. I don't know how you hear somebody prying the
15 garage door but she did. She heard him. But did he
16 have a piece of wood, was there a crowbar to get up
17 to this 2 inches? No, there wasn't. But she
18 clearly told Detective Gardener the next day it was
19 a whole 2 feet now. And he put that in his report.
20 She got on that stand and said it was just 2 inches.
21 The burden, I tell you, rests with the State.

22 The judge is going to talk with you about,
23 you know, we're all presumed innocent, everybody.
24 And this innocence is like a robe of righteousness
25 that we all wear in this country, and this robe

1 can't be pulled on by the prosecutor and yanked on
2 by the prosecutor. Beyond a reasonable doubt is
3 what we're talking about here today. It must be
4 taken completely off. And I — you listened.
5 You've heard everything, and it's been a lot of I
6 think confusion. The elements of burglary, you
7 heard the judge tell you all about burglary; but
8 it's not burglary now. But the elements of burglary
9 of course is an entering. The other elements are
10 entering someone's home without consent. You heard
11 no testimony that he went into the home without
12 consent. Now the charge is attempt so it's
13 attempted burglary, not burglary second. And there
14 must be an attempt to commit a crime. You've heard
15 no testimony from anyone that Mr. Green talked to
16 anyone. No one has talked about, well, Mr. Green
17 told me that he was going to break into this home.
18 There's been absolutely no evidence to that effect.
19 But I truly think if the officer had taken some type
20 of prints on the door because if someone there been
21 trying to pry open the door, maybe they put their
22 hand on the door to get it up. You don't know; you
23 weren't there. But no fingerprints obtained.
24 What's the damage, if it just attempt to get in this
25 door, what's the damage? Did you see any prints or

1 any damage with the screen door or the garage door?
2 Not a single picture.

3 I just want you to ask yourself; let's
4 keep focused. What are the facts? What are the
5 facts? We heard testimony going through very clear
6 about what she said. That's all well and good, but
7 we've got the facts to prove what she said. She
8 said she recognized Richard Green. Well, if you
9 know Richard Green, if you knew you recognized him,
10 you point at him. Three yards away, why not say,
11 Richard, if you don't get yourself a back door.
12 This is a corrections officer. She's not some
13 housewife that may never used a gun before. She's
14 been trained to use a gun. Then said she go back,
15 she went back into her living room and sat with her
16 weapon for three hours waiting on the neighbor to
17 come out. Three hours she just sat there. Did she
18 go back and peek and see whether Richard was still
19 out there? Now what's even strange enough she goes
20 out and fired four shots out the back door. The
21 police came. None of them where I live — you fire
22 a weapon anywhere in my neighborhood, if the police
23 come they're gonna come and see your weapon, where'd
24 you shoot the rounds, where are the cartridges, what
25 are you shooting about. No questions about, asked

1 of her, about why you shooting in this neighborhood.
2 You know, it's against the law, why you shooting in
3 this neighborhood, well what weapon did you have.
4 And it was asked of her, was this a weapon issued by
5 the county? No, no, this is my private weapon and
6 the deputy didn't even ask her about this other
7 weapon. Do you have a license on it? I'm thinking
8 a lot of things, ladies and gentlemen, should have
9 been explained that were not. I go back to my theme
10 from the very, very beginning. Where is the
11 evidence in this case? We've been here a
12 day-and-a-half and here we are looking at maybe
13 attempt to burglary, not even burglary anymore,
14 maybe attempted burglary.

15 What does this all have? I truly believe
16 that the prosecution has failed just to prove this
17 case, failed miserably to prove this case. He
18 failed to, other than the statement of the victim,
19 he failed to show anybody else accusing him of being
20 there. Did he tell someone that he was there? Is
21 there any evidence anything that had been taken out
22 of the home? None, none of that. I just ask you to
23 simply to just consider the evidence. You're gonna
24 get the evidence that was produced here today back
25 in the room with you so you'll get a chance to go

1 over it carefully. Look at it carefully. Are you
2 convinced, have you been convinced to convict
3 someone? Now not burglary, but attempted burglary.
4 And I just think that we shouldn't reward the
5 Prosecution on what they failed to do. And the
6 judge talked about very plainly your job is simple;
7 your job is clear. The burden is not to decide on
8 the burden. The burden is up here; it's not down
9 here. He should have presented to you enough
10 evidence beyond a reasonable doubt that this man
11 attempted to break into that home that night. And I
12 don't see where the evidence lies. It's not your
13 job — as the judge in talking about the law he's
14 going to tell you what the law is. Even if you
15 don't like the law we got to abide by it, and the
16 law says that tells us what the elements are of
17 attempted burglary are and what your duty is as
18 jurors. I ask that you just consider putting her in
19 this incident, and you decide whether or not you've
20 seen what you need to satisfy yourselves in your own
21 mind that this incident didn't happen the way that
22 it was described by them. I ask that you make a
23 decision after you've heard all of the deliberations
24 and look at all the evidence in that room there,
25 that you let him go back to his family and his life

1 simply because that is the right thing to do. Thank
2 you very much.

3 THE COURT: Mr. Meadors.

4 MR. MEADORS: May it please the Court.

5 THE COURT: Yes, sir.

6 MR. MEADORS: Good afternoon. I too on
7 behalf of Sumter County, Sheriff's Department, and
8 Ms. Rita Davis want to thank all of you for being
9 here yesterday and today. Thank you for your
10 attention. This is nothing about rewarding the
11 Prosecution. This is a search for the truth of what
12 happened on May 4th, in the early morning hours at
13 Rita Davis' house. His Honor who is the judge of
14 the law has determined, as he has every right to do
15 and has, that there was not enough evidence to go
16 forward on a burglary. You heard the evidence that
17 went up and you found out the next morning. He has
18 determined, made that decision that this case will
19 go forward only as attempted burglary first which is
20 what the law required. Evidence presented of either
21 the offense or a lesser offense. That's the way the
22 system works. It's nothing unusual. No one more;
23 it has to be that. And so we go forward on an
24 attempted burglary.

25 An attempted burglary first is again

1 intent. It must be some specific intent the State
2 must prove. There's so much intent in this case,
3 specific intent with an overt act that goes beyond
4 mere preparation. That's really the only difference
5 now that's between the burglary first. Where we had
6 to prove an entry we now have to prove specific
7 specific intent. That's an overt act that goes
8 beyond mere preparation. That's intent. I think
9 there's no dispute about that. That it was without
10 consent; there's some dispute about. That it was in
11 the nighttime. I don't think there's any dispute
12 about that. So then now the only element we
13 respectfully submit to you is, that an attempt, had
14 the intent but it was overt act that went beyond
15 mere preparation. And we submit it comes down what
16 if she had shot him, what if she had shot the gun?
17 And why does she shoot in the air? And again,
18 Mr. Hastie during questioning and I think might have
19 some difference maybe in the incident report, two or
20 three shots. Then you'll see in her statement it
21 went over four shots. That's not the reasonable
22 doubt. I just respectfully don't want you to get
23 hung up on something like that. She shot out of her
24 window. Why did she shoot out of her window?
25 Somebody was trying to break in her house. The fact

1 that she might have said three or an officer took it
2 down three here and said four here; that's not a
3 reasonable doubt. If anything we submit to you that
4 shows credibility. Nothing ever is going to be
5 perfect, the same like you wouldn't fit it together.
6 That's when you need it to work. She's at her house
7 at 1:30. And what you judge credibility by, folks,
8 ladies and gentlemen, is watching them take the
9 stand. That's the only evidence you can consider is
10 that evidence from the stand. You watched
11 Ms. Davis; you watched her demeanor. And you know a
12 lot of folks have habits. She has a habit of going
13 to bed after she watched the news. I think WLTX;
14 I'm not sure. She went to bed around 11.00. This
15 is here second day in a two day weekend; she has a
16 long weekend. I believe it's about 11:30. She
17 hears the door bell ring. Now at first she goes,
18 did the door bell ring? Well, at 1:40 in the
19 morning or 1:50 in the morning, 1:30, whatever it
20 was the record will reflect, the door bell rings.
21 An unusual night for the door bell to ring. You
22 think, and I'm allowed to argue, someone trying to
23 see if somebody was there or not. Husband's truck
24 is gone; it's always there. If he's there, if the
25 truck is there or his car is there, he's there.

1 It's not there; he's working. Somebody is coming to
2 see if somebody is home. What does she do? She
3 gets up and looks out the window. She sees somebody
4 going — you know why credibility is so important?
5 At that point what does she say? I didn't know who
6 it was then. I thought I saw a white shirt and
7 pants. And look at this incident report here.
8 That's what she gives a description of. And what
9 does she do then? It's 1:50, somebody is ringing
10 the door bell. She goes and she goes over to the
11 den. Then she goes and hears — this is direct
12 evidence. You know, you can see it, smell it, touch
13 it. She hears somebody trying to open the garage
14 door, her garage door right beside her. And she's
15 here. She doesn't see him. And that's what Your
16 Honor says, well, there's no evidence that we can
17 prove of entry. Was he down there underneath with
18 his hands underneath that? I'll tell you that wheel
19 sure is broken that the husband fixed and this side
20 is falling off. But she hears him. But now ladies
21 and gentlemen, the attempted burglary he's either
22 pushing it up, he's not doing that, is that a step
23 that goes beyond mere preparation trying to get in?
24 An overt act? That's what that is. She hears it.
25 Can you hear the garage door trying to get it up?

1 She says it's locked when she goes to bed. She
2 wakes up the next day and it's 2 inches 2 feet it's
3 up. It was down when she went to sleep and it's up.
4 What's he trying to do? He's trying to get in her
5 house. Intent, beyond mere preparation, an overt
6 act.

7 What's that they say? They say dusk to
8 dawn light. Dusk to dawn light. It illuminates
9 when it's dark. No question about it's in the night
10 time here. As the individual after she's seeing him
11 at the front door, walking away, didn't know who it
12 is, hears him trying to get up garage door, comes
13 back. She says -- who does she say this one to
14 first? Who does she say it to first? She says it
15 to herself. That's Rick Green. That is direct
16 evidence. She sees with her eyes. She's known him
17 her whole life time. Her brother is in the same
18 grade with her. She's grown up with him, seen him
19 in the community, seen him walking the streets.
20 That is direct evidence. How many questions were
21 asked about how do you know him, when did you see
22 him, how do you know him? None, none. That's Rick
23 Green. Knows him by his nickname. You know, he
24 says, he's just a few feet away from her why don't
25 you let him in. I think she said, I know Rick

1 Green, he's not coming into my house. She almost
2 killed him. You think it's getting serious?
3 There's a door between the two of them. Why didn't
4 you open the door. Rick Green is there 1:50 in the
5 morning. She's a lady by herself in her house. She
6 has a right to be in her castle, her dwelling. He's
7 outside, ringing her door bell, pulling up her
8 garage door trying to get in. You think she's going
9 to open the door that time of night? She almost
10 pulls the trigger and candidly says, I didn't know
11 the law. You talk about credible testimony. But
12 that's how scared she was. I had the gun, yeah, I
13 was going to shoot. But she didn't. The man who is
14 trying to break into her house while she's alone;
15 and instead of firing to protect herself when she's
16 in danger, she's scared, she goes to the back
17 window, the back door, and puts off a few shots.
18 That's mercy. He could be dead. He could be dead.
19 And instead of doing that she goes to the back
20 twice, and she kind of — what, you think this
21 didn't happen? You can't make these facts up. She
22 goes and shoots off in the back to scare him off. I
23 mean, that's — isn't that what you do? I mean, if
24 somebody is there trying to break in, your house,
25 you're by yourself. What did she do? She tried to

1 get the phone. The phone wasn't working.
2 Intent, an act beyond mere preparation.
3 She used the phone the night before. That ain't
4 good. That's not a good intention. She's by
5 herself, she can't get her phone. Attempted
6 burglary. She can't get her phone. She's thinking
7 about shooting. She shoots out the back four times.
8 And then she sits there. Is she going to go
9 outside? She doesn't know where he is. She sits
10 there. She sits there. She knows her neighbor
11 Mr. Mack leaves around three, around four. She sits
12 there. She sits there. It's in the early morning
13 hours. Somebody is trying to break in her house,
14 rang the door bell, pulled at the garage door.
15 She's sitting there with a gun, and she's just
16 sitting there by herself. Is she scared? You
17 dadgum right she's scared. And what does she do?
18 When she sees her neighbor, she flicks the lights.
19 Do you think this isn't real? You think this isn't
20 credible testimony?
21 Then we get the neighbor in. He comes
22 over. I saw her flip the lights. What did he do?
23 I come over there, she said she had a fenced in back
24 yard. She said my phone is not working, will you go
25 to the front where I can get my cell phone. He says

1 he will. He goes to the front to meet her. What
2 does he say right off the bat that she says? Rick
3 Green tried to break in my house. Said it to
4 herself. Says it right off the bat to Mr. Mack who
5 ain't got a dog in this fight. Of all the
6 6.9 billion people in this world she says that's
7 Rick Green, and she tells Mr. Mack. This isn't an
8 I.D. issue. She had him I.D.'d years ago, went to
9 school together. Her brother knows him. She knows
10 him by name and sight. And you see him, that's Rick
11 Green. It's credible, believable testimony. He
12 waits till her brother-in-law comes, Mr. James Davis,
13 from Kershaw coun— in recreation over in Kershaw
14 County. Deberry comes. And you've got this report.
15 Around 1:30 she heard a shot, attempting to gain
16 entry through her door, front storm door. When she
17 looked out her front window she recognized the
18 subject as Rick Green. The officer even got it
19 checked in here, Rick Green. She knew it herself.
20 She told Mr. Mack. She immediately tells Deberry,
21 attempting to pry open the door and also trying to
22 lift the garage door. And I think inadvertently he
23 was trying to say pry open the garage door. She
24 said he was trying to open the front door, pry the
25 front door and open the garage door. Lift it like

1 this, lift it like this. We don't have to prove
2 entry. Attempt all we have to do. Attempted. 1:30
3 at night somebody is pulling up your garage door, no
4 matter how they do it. We don't have to prove it.
5 If we had proved to His Honor fingers went in,
6 that's enough burden. And that is Your Honor's
7 ruling. We respect that. We're now going forward
8 on attempted burglary. We submit there's no doubt
9 of that, much less a reasonable doubt.

10 Also trying to lift a garage door. She
11 was able to scare the subject away by firing two to
12 three warning shots with her firearm out of the back
13 door. The next day, later on that day Mr —
14 Investigator Gardener comes over. She tells him the
15 door was down when I went up, went to sleep, up when
16 got up and saw it the next morning. That's an act
17 beyond mere preparation. And he also went and took
18 the picture. Now get on with this. This isn't
19 State versus Investigator Gardner. At one point I
20 thought it was the State versus Rita Davis, putting
21 Rita Davis on trial for sleeping in her home and
22 getting upset what she does or doesn't do when
23 somebody is trying to break in her house. This
24 isn't State versus Rita Davis. She's the victim.
25 She was sleeping in her home. It's not a book on

1 what she has to do to come in here, well you didn't
2 do this, why aren't you trying to talk to a man who
3 is trying to break in your house at 1:30, Rita.
4 Thank God she fired a shot. And then he says,
5 learned that the phone wouldn't work and he goes and
6 takes a picture of this. This is not good intent.
7 Why did he cut the phone lines? Well, I don't think
8 anybody is here, don't know husband's truck isn't
9 here, just in case I'm going to cut phone lines if
10 somebody is there. Act beyond a mere preparation?
11 And Wesley Gardner — I'm just checking the time,
12 Your Honor.

13 THE COURT: It's all right.

14 MR. MEADORS: He didn't bring it up. I
15 tried to cover everything. The fact that nobody
16 else didn't hear the shots is not a reasonable
17 doubt. When — and I don't mean to this elderly
18 lady. She just tells she was there. She doesn't
19 get up on behind other lady now deceased might have
20 been up in years a little bit. Mack didn't even
21 hear it. Who is that? That didn't happen, is that
22 a reasonable doubt? No, it goes to smoke screen.
23 That has nothing to with what happened here when it
24 happened or not. Mack comes over when she flashes
25 the lights. There's no doubt about that. The fact

1 that nobody heard the gunshots is just a smoke
2 screen. Sometimes over my 25 years of doing this,
3 sometime questions are just questions. That doesn't
4 mean there's a reasonable doubt.

5 Ladies and gentlemen, I'm about through.
6 But I believe in the presumption of innocence as
7 much as anybody, and it stays with the defendant
8 unless and until you find the State has proven him
9 guilty beyond a reasonable doubt. And as you go
10 back there to start going over this evidence you'll
11 start removing that cloak. That's what you do,
12 you're removing the cloak. I want you to view it
13 decide state's proved this case beyond a reasonable
14 doubt the cloak is off. I suggest to you that it
15 started being removed which Ms. Davis was up here
16 and described her ordeal, her ordeal, held it in her
17 house that night when she'd woken up and she's
18 scared in her house alone, the door bell, the door.
19 And I'm sorry there's not more damage on there. She
20 testified he was pulling at the door; I could hear
21 it. Scared me enough I got a gun and pointed at it
22 and almost shot. The wheel on the garage door was
23 drawn, that's damage. When she says not at first
24 but when she says later, that's Rick Green; that's
25 Rick Green, Mr. Mack; that's Rick Green,

1 Mr. Deberry; that's Rick Green, Investigator
2 Gardener. We grew up in the community together. He
3 showed you where he lived. He showed you where she
4 lived. Is there any doubt? This isn't an I.D.
5 case, ladies and gentlemen. It comes down to
6 whether you believe the State has proved an attempt
7 to enter that house with an act beyond mere
8 preparation, pulling up the door, pulling up the
9 garage. We submit the State has proved it.

10 The word verdict means to speak the truth.
11 And I ask you with that cloak when you get it, come
12 back and later use it as a blanket the next time
13 she's sleeping, watching TV. Let it protect her
14 when she's sleeping in her home at night. We
15 respectfully, respectfully ask you to return a
16 verdict, a verdict that says on May 5th, 2011
17 Richard Green, also known as Rick Green, tried to
18 break into Rita Davis' house, didn't have her
19 permission to do so, her dwelling, and it was the
20 intent to commit a crime. And you can infer that
21 intent upon the cutting of the lines as opening of
22 the door of someone's dwelling. It wasn't good
23 intent. Was it to steal? Was it her? Thank God
24 we'll never know that he was intending to commit a
25 crime going into somebody else's house that wasn't

1 his. An act beyond mere preparation. Ladies and
2 gentlemen, thank you.

3 THE COURT: All right, Madam forelady and
4 ladies and gentlemen. If you would give me your
5 attention. You have followed very patiently and
6 listened attentively to the presentation of evidence
7 in this case and also to the arguments made by
8 the solicitor Mr. Meadors on behalf of the State and
9 by Mr. Hastie on behalf of defendant and I thank you
10 for that. It now becomes the duty of the trial
11 judge under the constitution of this state to charge
12 and instruct you on the law applicable to this case.
13 And it is your duty as jurors to accept and apply
14 the law as the Court will now state it to you. And
15 as jurors it is your exclusive duty to decide all of
16 the issues of fact in this case and for that purpose
17 to determine the effect, the value, and the weight
18 and the truth of the evidence. Both the State and
19 the Defendant have the right to expect that you will
20 conscientiously consider and evaluate the evidence
21 in this case and apply the law thereto to the end
22 both the State and of South Carolina and the
23 Defendant will receive and obtain a fair and
24 impartial trial.

25 Now when I use the word defendant I refer

1 of course to Richard Avon Green. The State of South
2 Carolina by the bill of indictment in this case ~~turn~~
3 charges the defendant with the crime known in the
4 law as burglary in the first degree and alleges that
5 on or about May 4th, 2010, that the defendant did
6 enter the dwelling of Rita Davis located at [REDACTED]
7 Black River Road without consent with intent to
8 commit a crime and that this was done during the
9 nighttime. The charge is one of, originally was one
10 of burglary in the first degree. To this charge and
11 to this indictment the defendant has entered a plea
12 of not guilty plea. This plea of not guilty by the
13 defendant places the burden of proof on the State to
14 prove by evidence the guilt of the defendant beyond
15 a reasonable doubt before you, the jury, can find
16 the defendant guilty. The defendant Mr. Allen [sic]
17 is presumed in the law innocent of the charge
18 contained in the indictment. It is a cardinal and
19 fundamental rule of the law of evidence that a
20 defendant irrespective of the enormity of offense
21 against him or charged against him will always be
22 presumed innocent of the crime for which he is
23 indicted unless and until the guilt of the defendant
24 has been proven by evidence which satisfies you, the
25 jury, of his guilt beyond a reasonable doubt. The

1 presumption of innocence is not a mere legal theory.
2 It is not just a legal phrase. The presumption of
3 innocence is a substantial right to which every
4 accused is entitled. Our Supreme Court has declared
5 that the presumption of innocence is like a robe of
6 righteousness placed about the shoulders of the
7 defendant, and it gives to him, remains with him
8 that presumption until that presumption of innocence
9 of innocence is stripped from his person by evidence
10 satisfying you, the jury, of the guilt of the
11 defendant beyond a reasonable doubt.

12 The presumption of innocence accompanies
13 the defendant from the time of his arraignment and
14 appearance in this courtroom and continues with him
15 after you retire to your jury room to deliberate a
16 verdict. The presumption of innocence continues in
17 existence to the benefit of the defendant till you,
18 the jury, reach the conclusion that the State has
19 proven the guilt of the defendant beyond a
20 reasonable doubt.

21 Now the State is not required to prove the
22 guilt of the defendant beyond all doubt or beyond
23 every doubt but beyond a reasonable doubt. What is
24 a reasonable doubt? It is not a imaginary, fanciful
25 doubt or a weak doubt; it is a substantial doubt.

1 It is a doubt which the words apply, a doubt for
2 which you can give or assign a reason based on the
3 testimony and evidence in the case. A reasonable
4 doubt is not any sort of a doubt. You and I know
5 from everyday life experiences that you may have a
6 sort of a doubt about any matter that arises no
7 matter how trivial it may be or how serious it may
8 be. A reasonable doubt is a doubt that makes a
9 honest and sincere conscious juror hesitate to act.
10 Proof beyond a reasonable doubt proof which leaves
11 you formally convinced of a defendant's guilt. You
12 have a reasonable doubt with which you can give or
13 assign a reason as to the guilt of defendant then he
14 is entitled to a verdict of not guilty. Reasonable
15 doubt may arise from evidence which is in the case
16 or from the lack of evidence in the case. You, the
17 jury, must make the determination of whether or not
18 reasonable doubt exists as to the guilt of the
19 defendant. The very fact, however, that the jury
20 engages in a full and free discussion of the issues
21 of guilt or nonguilt in this case with the normal
22 conversational ebb and flow does not mean that
23 reasonable doubt automatically exists in this case
24 or any other case.

25 I charge you that the defendant is entitled to

1 every reasonable doubt arising in the whole case.
2 If upon any issue of fact essential to conviction in
3 a verdict of guilty you have a reasonable doubt as
4 how that issue should be resolved it would be your
5 duty to resolve that doubt in favor of the
6 defendant. A defendant, ladies and gentlemen, is
7 not required to prove his innocence, but the State
8 is required by law to prove every essential element
9 of the offense against the defendant by evidence
10 which satisfies you, the jury, of the defendant's
11 guilt beyond a reasonable doubt for you to convict
12 him and find him guilty.

13 If the evidence on the whole case you have a
14 reasonable doubt as to the guilt of the defendant he
15 is entitled to that reasonable doubt and would be
16 entitled to an acquittal on a verdict of not guilty.
17 But on the other hand, if upon the whole case you
18 find that the State has proven by evidence which
19 satisfies you, the jury, of the guilt of the
20 defendant beyond a reasonable doubt then in such
21 circumstance it would equally be your duty to
22 convict the defendant and find him guilty. Now I
23 instruct you that the indictment in this case which
24 I went over with you is not evidence, and you cannot
25 consider the indictment as evidence in this case.

1 It is the written document by which this case is
2 brought the trial.

3 Now ladies and gentlemen, during this trial
4 each of us, you and I have certain duties to
5 perform. As trial judge it is my responsibility to
6 preside over the trial of this case and I also have
7 the duty to rule upon or pass upon the admissibility
8 of evidence offered here during the progress of the
9 trial. You are to consider only the competent
10 evidence before you and you are to disregard and
11 disabuse from your mind any testimony ordered
12 stricken from the record during the progress of this
13 trial, if there be any, and you are to consider only
14 the testimony that has been presented from the
15 witness stand together with any exhibits admitted
16 into the record of the case and any stipulations of
17 counsel made for the record there be any.

18 I have the additional duty to charge you the
19 applicable law in this case. As presiding judge I
20 am the sole judge of the law in this case. It is
21 your duty to accept and apply the law as I now state
22 it to you. If you have a preconceived idea as to
23 what the law is or what the law ought to be and it
24 does not agree with what I tell you the law is, you
25 are obligated under your oath to abandon this

1 preconception on your part because you are sworn to
2 accept the law precisely as I state it to you. In
3 every case tried in this court before a jury the
4 jury becomes the sole and exclusive judge of the
5 facts. You, the jury, are the judge of facts in
6 this case. The Court is the judge of law. The
7 constitution of this state has declared that the
8 trial judge shall not intimate, state, comment upon
9 or make any statement to a trial jury about the
10 facts in a case. Since you are the sole judge of
11 the facts you're not to infer from anything that I
12 have said in the progress of this trial in ruling
13 upon the admissibility of evidence or otherwise or
14 anything that I say to you now during the course of
15 these instructions to you that I have any opinion
16 about what the facts of this case are. I do not.
17 The law does not permit me to have an opinion about
18 the facts. This is a matter solely for you, the
19 jury, to determine. As I have stated it is your
20 duty to determine the value, the weight, and the
21 truth of the evidence presented during the course of
22 this trial.

23 Necessarily then, you must assess the
24 credibility of the witnesses who have testified in
25 this case. Credibility is simply a legalistic term

1 which means believability. It becomes your duty
2 then to analyze and evaluate the evidence and to
3 determine that evidence which convinces you of its
4 truth. I charge you that in determining the
5 question of credibility or believability you may
6 believe one witness as against several witnesses or
7 several witnesses as against one witness. You may
8 believe a part of a witness, a part of the testimony
9 of a witness and reject the remaining part of the
10 testimony of that same witness. You may believe the
11 testimony of a witness in its entirety or you may
12 reject the testimony of a witness in its entirety.
13 You may consider whether any witness has exhibited
14 any interest, any bias, or any prejudice in the
15 case. And you may consider the demeanor of a
16 witness, that is, the appearance of a witness from
17 the witness stand. And you may consider the
18 opportunity or knowledge concerning those things
19 about which a witness testified. These
20 considerations you do not exercise arbitrarily, but
21 if in your good judgment there is so, there is sound
22 reason in the record for so doing because your
23 objective, ladies and gentlemen, is to find the
24 truth whether it comes from one or more witnesses.

25 And in exercising your mental processes and in

1 determining what you consider to be true the law
2 simply requires that you exercise your good
3 judgment, your common sense, your sense of logic and
4 reason, and your experiences with life. You then
5 apply these attributes of ability to the evidence
6 and determine what you consider to be the truthful
7 evidence; and to these true state of facts as
8 determined by you, the jury, you take and apply the
9 law as I now state it to you, and thus, arrive at a
10 true verdict in this case.

11 Now as I told you the defendant in this case
12 was originally charged with the crime of burglary in
13 the first degree. I have already ruled that that
14 matter is not for your consideration and burglary in
15 the first degree, but the lesser included offense of
16 attempted burglary in the first degree will be for
17 your decision. But in order for me to separate the
18 two between burglary in the first degree and
19 attempted burglary and what a attempted burglary is
20 I need to first instruct you on what burglary in the
21 first degree is.

22 Section 16-11-311(a) of the South Carolina
23 Code of Laws provides that a person is guilty of
24 burglary in the first degree if a person enters a
25 dwelling without consent and with intent to commit a

1 crime in the dwelling and the entering or remaining
2 occurs in the nighttime. Now for burglary in the
3 first degree the State must show there was an
4 entering; that is, the defendant actually went
5 inside the dwelling or some part of it. However, it
6 is not confined to the intrusion of the whole body
7 the slightest entry is sufficient and it may consist
8 of the insertion of any part of the body by any or
9 any instrument under the defendant's control. An
10 entry may be accomplished, for example, by the
11 insertion of hand, finger, foot, implement such as a
12 hook or pole. The place entered must be a dwelling.
13 With respect to burglary Section 16-11-10 of the
14 South Carolina Code of Laws defines dwelling house
15 as any house, outhouse, apartment, building,
16 erection, shed, or box in which there sleeps a
17 proprietor, tenant, watchman, clerk, laborer, or
18 person who lodges there with a view to protection of
19 property.

20 Next, without consent. The entry must have
21 been without consent. Enters the dwelling without
22 consent means to enter without the consent of the
23 person in lawful possession, and there must have
24 been an intent to commit a crime, any crime, a
25 felony or misdemeanor whether or not that crime was

1 actually committed. Mere entry into a dwelling
2 without consent is not sufficient to constitute
3 first degree burglary. There must have been intent
4 to commit a crime once inside. Now if you find that
5 the defendant — and this is all again a part of the
6 burglary statute. If you find the defendant entered
7 the dwelling without consent with the intent to
8 commit a crime you must find the presence of at
9 least one of the aggravating circumstances, one of
10 which is that the entering or remaining occurred in
11 the nighttime.

12 Now that's burglary, and I have already
13 charged to you that not all of the elements of
14 burglary have been met and that the lesser included
15 offense of attempted burglary is the charge that you
16 will actually be considering. So what is an
17 attempt? An attempt is an act done in part,
18 execution of a design to commit a crime. It must be
19 an intent that the act shall be committed and an act
20 done not in full execution but in pursuance of the
21 intent. An attempt is distinguished from
22 preparation to commit it and also from the intent to
23 commit. The law does not punish the mere
24 entertainment of criminal intent. To bring the law
25 into action it is necessary that some act should be

1 done in pursuance of the intent immediately and
2 directly tending to the commission of the crime an
3 act which should the crime be perpetrated would
4 constitute part and parcel of the transaction which
5 does not reach to the accomplishment of the original
6 intent because it is prevented or voluntarily
7 abandoned. In order to constitute an attempt to
8 commit a crime it is essential that coupled with the
9 intent to commit the offense there be some overt act
10 beyond mere preparation in furtherance of the intent
11 and there must be an actual or present ability to
12 complete the crime.

13 Attempt crimes are generally ones of specific
14 intent such that the act constituting the attempt
15 must be done with the intent to commit the crime or
16 to commit that particular crime. In the context of
17 an attempt crime specific intent means that the
18 defendant consciously intended the completion of
19 acts comprising the offense. In other words, the
20 completion of such acts is the defendant's purpose.
21 Additionally, the State must prove the defendant's
22 specific intent was accompanied by some overt act
23 beyond mere preparation in furtherance of the
24 intent, and there must be an actual or present
25 ability to complete the crime. The preparation

1 consists in devising or arranging the means or
2 measures necessary for the commission of the crime.
3 The attempt overt act is the direct movement toward
4 the commission of the crime after the preparations
5 are made.

6 Intent is an essential element of attempt.
7 What is criminal intent in the law? Criminal intent
8 is a state of mind which operates jointly with an
9 act of omission or co-mission of a crime. Criminal
10 intent is a mental state of conscious wrongdoing.
11 Don't think.

12 Now you will take that law as I have
13 instructed it to you and apply it to the facts of
14 this case, but there are a couple of other matters
15 that I need to instruct you on. First of all, there
16 are generally two types of evidence which presented
17 in a case, direct evidence and circumstantial
18 evidence. Direct evidence is the testimony of a
19 person who asserts or claims to have actual
20 knowledge of a fact such as an eyewitness.
21 Circumstantial evidence is proof of a chain of
22 circumstances indicating the existence of a fact.
23 The law makes absolutely no distinction between the
24 weight or value to be given to either direct or
25 circumstantial evidence, nor is a greater degree of

1 certainty required of circumstantial evidence than
2 of direct evidence. You should weigh all of the
3 evidence in this case and after weighing all of the
4 evidence if you're not convicted of guilt of the
5 defendant beyond a reasonable doubt it would be your
6 duty to find the defendant not guilty.

7 Now I will also tell you, ladies and
8 gentlemen, that the defendant in this case has not
9 testified. This is his constitutional right. It is
10 not a circumstance that you can take into
11 consideration or even allow to enter into your
12 discussions in the jury room. Under the
13 constitution of the South Carolina and the United
14 States Constitution it is the defendant's
15 constitutional right not to testify. The burden of
16 proof is on the State of South Carolina to establish
17 the guilt of the defendant by competent evidence
18 beyond a reasonable doubt. The fact that the
19 defendant did not take the witness stand and testify
20 in his own behalf does not create any inference
21 against him, and the jury must not permit that fact
22 to weigh in the slightest degree against him and
23 this fact should not even enter into your
24 discussions or deliberations in the jury room.

25 Now ladies and gentlemen, I have about

1 finished my instructions to you, but I will tell you
2 that it has been often said that you do not serve
3 friend on a jury to reward your friends or punish
4 your enemies. You are not partisans or advocates of
5 the State of South Carolina or for this defendant.
6 Only such a perverted system of justice would be
7 intolerable.

8 You have been selected by both the State and
9 this Defendant as fair and impartial jurors. It is
10 your duty then by your joint deliberations to
11 determine the truth of this case giving to the
12 defendant the benefit of every reasonable doubt on
13 each and every issue. And then to the facts that
14 you determine to be true you then take and apply the
15 law which has been given to you by this Court and
16 thus arrive at a verdict which does speak the truth
17 because the word verdict, ladies and gentlemen, has
18 a Latin derivative. It comes from the Latin word
19 veredicto meaning to speak the truth. And when you
20 have accomplished these responsibilities you will
21 have satisfied your oath as jurors, and you will
22 have discharged your duty to this Court.

23 Now I want to instruct you on your forms of
24 verdict in this case. The State has proven the
25 guilt of the defendant of the crime of attempted

1 burglary on first degree beyond a reasonable doubt
2 your verdict will be two words, not guilty. If the
3 State has proven the guilt of the defendant to the
4 crime of attempted burglary — I'm sorry, let me
5 read that again. If the State has failed to prove
6 the guilt of the defendant beyond a reasonable doubt
7 to the crime of attempted burglary your verdict will
8 be two words, not guilty. If the State has proven
9 the guilt of the defendant beyond a reasonable doubt
10 again to the crime of attempted burglary your
11 verdict would be one word, guilty. Now the verdict
12 that you render in this case must be the verdict of
13 each and every juror. It must be your unanimous
14 verdict. All 12 of you must agree on the verdict
15 which you authorize your forelady to write.

16 Now Madam Forelady, I have prepared a form of
17 verdict on this verdict form that you will take with
18 you to the jury room. And I will tell you, all of
19 you, that the order which I put the possible
20 verdicts on here has absolutely no significance
21 whatsoever. And you should not infer the way I have
22 the possible verdicts on this verdict form that I
23 have any opinion as to what your verdict should be.
24 I do not. The law does not allow me to have an
25 opinion, but obviously I have to put something down

1 on the piece of paper. I had to put something
2 first, put something second.

3 Across the top up here simply we have State of
4 South Carolina, County of Sumter, court of general
5 sessions, indictment number. The name of the case
6 State of South Carolina versus Green, verdict: We,
7 the jury, by unanimous agreement find the defendant
8 Richard Avon Green on the charge of attempted
9 burglary first degree either guilty or not guilty.
10 And you would put a check or X or whatever is the
11 unanimous verdict of the jury, sign your name, date
12 it, and knock on the door and notify us and we will
13 return you to the courtroom. Now I'm going to send
14 you to your jury room. I'm going to ask you not
15 begin your deliberations just yet. The law does
16 require that I take up certain matters of law with
17 the attorneys in this case. If it is not necessary
18 for me to bring you back for additional instructions
19 I will have the bailiff bring you the exhibits in
20 this case and also the verdict form and then will
21 tell you to begin your deliberations and when you
22 reached a verdict simply knock on the door and we
23 will return you to the courtroom as quickly as
24 possible.

25 So with the exception of the bailiff, I mean,

1 with the exception of the alternate I'm going to ask
2 you to stay here. I'm going to ask the twelve of
3 you to go to your jury room. Please do not begin
4 your deliberations just yet. We've got some matters
5 to take up and we'll maybe go forward in just a few
6 minutes. Thank you. You may go with the bailiff.

7 (WHEREUPON, the jury was removed from the
8 courtroom, and the following proceedings
9 commenced in open court.)

10 THE COURT: Anything on behalf of the
11 State, Mr. Meadors?

12 MR. MEADORS: Not from the State, Your
13 Honor.

14 THE COURT: Mr. Hastie, other than the
15 fact that you disagree or take exception to the
16 charge of attempted burglary in the first degree
17 going to the jury at all which the record is noted
18 on that and your position is protected, are there
19 any additions or exceptions to the charge?

20 MR. HASTIE: No, sir, Your Honor.

21 THE COURT: All right. Check the exhibits
22 and make sure that — I think they're how many from
23 the State? Three? And maybe one for the Defense?

24 THE COURT REPORTER: Right.

25 THE COURT: Check those and here's the

1 verdict form. You can tell the jury they may begin
2 their deliberation.

3 (Alternate is returned to the courtroom.)

4 THE COURT: Mr. Alternate, the law does
5 not permit me to have twelve jurors. The purpose of
6 drawing the 13th juror is in the event that somebody
7 becomes ill and is unable to serve so that we would
8 not have a mistrial. However, everybody in this
9 case has remained healthy and so most 12 of the
10 jurors are the only ones that will be able to be the
11 ones that will make the decision. You have heard
12 all the evidence in the case but you will not
13 participate in the decision so I'm going to excuse
14 you from any further service in this case. I will
15 tell you that once you have been excused there is
16 nothing illegal about your talking with anyone about
17 your service. There's nothing illegal about anybody
18 talking to you about your service. It is a practice
19 of which I strongly disapprove and I strongly
20 discourage, but it's not illegal. You have the
21 right to talk to anyone, but you also have the right
22 not to talk to anyone. And if you don't want to
23 discuss it with anybody and they continue to harass
24 your bother you, you let me know or let the court
25 personnel know and I will deal with them. You're

1 free to go from any further responsibility on this
2 case.

3 (Alternate was excused.)

4 THE COURT: If you will tell the jury they
5 may begin their deliberations.

6 (Court was in recess and jury began their
7 deliberations at 12:23 p.m.)

8 (Court's Exhibit Number 1, note from jury,
9 was marked and made a part of the record.)

10 THE COURT: All right. We're back on the
11 record with regard to the matter of Richard Avon
12 Green in indictment number 2010-GS-43-1050.

13 Mr. Green is present with his counsel. The State is
14 present represented by Mr. Meadors. Counsel, we do
15 not have any word from the jury and we had — we
16 have reached the lunch hour. I am going to send the
17 jury to lunch and have them come back this afternoon
18 and tell them that we want to give them as much time
19 as they need to deliberate their verdict in this
20 case, and I don't want them not to have, starve them
21 into a verdict, and let them go to lunch and come
22 back. Any objection to that procedure, Mr. Meadors?

23 MR. MEADORS: No, sir.

24 THE COURT: Mr. Hastie?

25 MR. HASTIE: No, Your Honor.

1 THE COURT: All right. Bring the jury in
2 please.

3 (WHEREUPON, the jury was returned to the
4 courtroom, and the following proceedings
5 commenced in open court.)

6 THE BAILLIFF: We have all the jurors
7 present in the courtroom.

8 THE COURT: All right. Thank you very
9 much, ladies and gentlemen, and I want to tell you
10 that I do appreciate your hard work on this matter.
11 And I want to tell you that we're not trying to
12 starve you into a verdict, that I want you to feel
13 like that you have as much time as you need to
14 consider all the issues in this case. So we're now
15 going to go to lunch and allow you to go get some
16 lunch and come back and resume your deliberations.
17 And it's about five minutes, three or four minutes
18 after one. And if it suits everybody I would ask
19 you to go — to please be back in the jury room,
20 say, 2:15. That's about an hour and fifteen
21 minutes. And come back and deliberate, resume your
22 deliberations.

23 Two or three things I will tell you while
24 you're away from the courthouse. Folks, do not
25 discuss the case with anyone. Do not allow anyone

1 to discuss it with you. And when you are resuming
2 there in the jury room do not begin discussion in
3 the case among yourselves until all twelve of you
4 are back in the jury room. It would be
5 inappropriate for you to begin any discussion in
6 this case until all of you have reassembled. So
7 with those instructions I am going to release you
8 now and allow you to go get your lunch, and please
9 be back in the jury room at 2:15. I won't see you
10 at that time unless you get to see me, but please be
11 back at 2:15 but don't begin your deliberations
12 until everyone is back in the jury room. The
13 bailiffs will pick up the exhibits and the verdict
14 form. Are there any notes in the jury room that
15 have been left that nobody should have access to?
16 All right, good. In that case we will allow to go
17 and get your lunch and please be back at 2:15.
18 Thank you, see you then.

19 (WHEREUPON, the jury was removed from the
20 courtroom, and the following proceedings
21 commenced in open court.)

22 THE COURT: Any objection to that
23 procedure or instructions given to the jury, Mr.
24 Meadors?

25 MR. MEADORS: No, sir, Your Honor.

1 THE COURT: Mr. Hastie?

2 MR. HASTIE: No, sir.

3 THE COURT: We'll be in recess until 2:15.
4 All right.

5 (WHEREUPON, a lunch break was taken.)

6 THE COURT: With regard to the matter of
7 the State versus Green, the State is present and
8 represented by Mr. Meadors. The Defendant is
9 present and represented by Mr. Hastie. Counsel, we
10 have another communication from the jury which I
11 will have marked as court exhibit number two and
12 made a part of the record. Very simply, we are
13 split. By Fulwood 9/13/11. That being the case,
14 counsel, I think the appropriate thing is an Allen
15 charge. Any objection to that on behalf of the
16 State, Mr. Meadors?

17 MR. MEADORS: No, sir, Your Honor.

18 THE COURT: On behalf of Defendant?

19 MR. HASTIE: No, sir.

20 THE COURT: All right, bring the jury in
21 please.

22 (Court's Exhibit Number 2 was marked
23 and made a part of the record.)

24 (WHEREUPON, the jury was returned to the
25 courtroom at approximately 2:55 p.m., and

1 the following proceedings commenced in
2 open court.)

3 THE BAILLIFF: Your Honor, we have all the
4 jurors present in the courtroom.

5 THE COURT: All right. Thank you, ladies
6 and gentlemen. And I do have your latest
7 communication, and in that connection I'm going to
8 give you an additional charge. It has to do with
9 trying to reach a verdict because hopefully you can
10 make another effort and reach a verdict in this
11 case. And I have some very brief comments I would
12 like to make and by way of further instruction on
13 the matter of your being able to reach a verdict.
14 Before I do go into these instructions I do want to
15 say that at no time do I want to know what the
16 division is. I have the note that we are split, but
17 at no time should you communicate with the Court
18 what that division is. Just keep that within
19 yourselves.

20 But having said that, I want to go ahead
21 and give you some additional instructions. As I
22 have already told you, you are the sole judges of
23 the facts and the evidence in this case. Now as the
24 judge, as I have already told you, I'm not permitted
25 to give you a hint as to how I feel about the

1 factual matters and certainly could give you no hint
2 about what verdict you ought to bring in this case.
3 It is my duty to state the law in this case and I
4 have done so, and it is your duty to bring in a
5 verdict. Now if there is any clarification that I
6 can give you on the law when you go back to your
7 jury room please let me know, and I will try to
8 clarify any questions of law, but I certainly cannot
9 give you any hint with regard to the facts because
10 that is a matter totally up to you. But I can say
11 this, that when a matter is in dispute, is in
12 dispute, it is not always easy for even two men to
13 agree or two persons, two men, or two women and when
14 12 must agree it becomes obviously correspondingly
15 more difficult. But it is important that
16 litigation, and this is litigation, be ended if it
17 may be ended without a single one of you doing
18 violence to your conscience. No juror is expected
19 to give up an opinion based on reasoning
20 satisfactory to himself or herself merely for the
21 purpose of being in agreement and I want that to be
22 understood. You're not called upon often to try
23 cases. There are 46 circuit court judges in this
24 state who's work it is to try these cases from day
25 to day throughout the year. And it is very unusual,

1 almost unheard of, for a jury to go out and return
2 promptly with a verdict. This is what would happen
3 if a juror normally was in agreement to begin with.
4 At the same time we usually get a verdict. What
5 that means is that it is normal for a jury to
6 disagree at first but the fact that we normally get
7 a verdict also means that after reasonable persons
8 lay aside all extraneous matters and determine to
9 decide a case on the basis of the law and the
10 evidence, they do come to a common understanding and
11 write a verdict. It has never been intended that
12 the verdict of a jury should be the verdict of any
13 one person. Conversely, the verdict of jury is the
14 collective reasoning of all the persons put together
15 and that is why we have a jury so that we may have a
16 benefit of collecting thoughts, collecting reason.
17 It becomes your duty to tell each other how you feel
18 about the case and why you think as you do, and I'm
19 sure that you have been doing that. It also becomes
20 the other juror's duty to exchange views with you;
21 and you should listen to each other and give to each
22 other such, each other's thoughts such meaning as
23 you think it should have and to some degree it would
24 be said that jury service is a matter of give and
25 take.

1 Now if you do not agree on a verdict it
2 just means that at some future term of court before
3 some other judge perhaps that some other jury would
4 sit where you are, the same participants will come,
5 and the same lawyers will probably come and they
6 will ask the same questions and presumably they will
7 get pretty much the same answers. And we will go
8 through the whole process all over again. And I
9 have no reason now to think that any other twelve
10 citizens of Sumter County will be more capable of
11 solving this controversy than you, and so I'm going
12 to ask that you at this time to deliberate further
13 and see if you cannot write a verdict in this case.
14 And I want to close this part of the additional
15 charge by reminding you, again, while it is
16 important litigation be ended, it should be ended in
17 the form of a verdict by no juror doing violence to
18 his or her own conscience. No juror is expected to
19 give up an opinion based on reasoning satisfactory
20 to himself merely for the purpose of being in
21 agreement.

22 So what I'm going to do is ask you to go
23 back and deliberate further keeping in mind the
24 instructions that I just gave you and let me know in
25 a reasonable time if you're making progress. If you

1 are not making progress you let me know that too;
2 but let me know if you're making progress in a
3 reasonable time. And you can have as much time as
4 you want, but I would like to kind of where you
5 stand without knowing the exact division among the
6 jury or anything else, just whether you are or are
7 not making progress in this matter. Now with those
8 additional instructions I'm going to ask you to
9 retire and deliberate further, and after a while
10 bring me a report as to what progress you are
11 making. Thank you very much. You may go back to
12 your jury room.

13 (WHEREUPON, the jury was removed from the
14 courtroom at 3:05 p.m., and the following
15 proceedings were had.)

16 THE COURT: Any additions or exceptions,
17 Ms. Meadors?

18 MR. MEADORS: No, sir, thank you.

19 THE COURT: Mr. Hastie?

20 MR. HASTIE: No, sir.

21 THE COURT: None? All right, we'll be at
22 ease until we hear from the jury.

23 (Court was in recess while the jury continued their
24 deliberations.)

25 THE COURT: We've got a verdict, good.

1 All right, back on the record with regard to the
2 matter of State versus Richard Avon Green in case
3 number 2010-GS-43-1050. The defendant is present in
4 court represented with his counsel Mr. Hastie. The
5 State is present and represented by Mr. Meadors.
6 Counsel, I understand that the jury has reached a
7 verdict. Is there anything before we bring the jury
8 in, Mr. Meadors?

9 MR. MEADORS: No, sir, no, sir.

10 THE COURT: Mr. Hastie?

11 MR. HASTIE: Nothing, Your Honor. All
12 right, bring the jury in please.

13 THE BAILIFF: Yes, sir.

14 (WHEREUPON, the jury was returned to the
15 courtroom at approximately 4:08 p.m., and
16 the following proceedings commenced in
17 open court.)

18 THE BAILIFF: We have all jurors present
19 in court.

20 THE COURT: All right, Madam Forelady,
21 I've been advised you have reached a verdict; is
22 that correct?

23 THE FOREPERSON: Yes, sir.

24 THE COURT: Is it unanimous?

25 THE FOREPERSON: Yes, Your Honor.

1 THE COURT: If you would hand it up to the
2 bailiff please.

3 (Verdict form tendered to the Court by the bailiff.)

4 THE COURT: All right. I cannot certify
5 that the verdict form is correct. The jury added
6 something to the verdict form that the Court would
7 not be able to accept. I guess what I'm asking,
8 Madam Forelady, is the only two possibly verdicts in
9 this case are not guilty or guilty. The other thing
10 that you have on here is indicated on here is not an
11 acceptable verdict form. Is it not unanimous on one
12 of those two questions?

13 THE FORELADY: Yes, Your Honor.

14 THE COURT: It is? All right. He is now
15 either guilty or not guilty?

16 THE FORELADY: Yes, Your Honor.

17 THE COURT: But you have got something
18 added down here. Is that no longer the verdict of
19 the jury?

20 THE FORELADY: No, sir, it's not.

21 THE COURT: What I'm going to do, I'm
22 going to hand it back to the bailiff. I'm going to
23 ask you on behalf of the jury to strike that out and
24 to initial where you have stricken it out and I'll
25 ask you some questions about that.

1 (Forelady complies.)

2 THE COURT: All right. The verdict form
3 has been returned to me. And the thing that was
4 written down on the verdict to start with has been
5 stricken and X'd out by the forelady as has the
6 check mark X'd out by the forelady, and she has
7 initialed that. Was that what the situation was
8 prior earlier time, is that what it was?

9 THE FORELADY: Yes, Your Honor.

10 THE COURT: That's the reason that y'all
11 have now reached a unanimous verdict on either
12 guilty or not guilty, is that correct?

13 THE FORELADY: Yes, Your Honor.

14 THE COURT: All right, that being the case
15 then, I will allow the verdict to stand and I will
16 accept as the form that has been presented.
17 Mr. Bradley, you may publish the verdict. Mr.
18 Hastie, if you would ask your client to stand
19 please.

20 THE BAILLIFF: The State of South Carolina,
21 County of Sumter, in the court of General Sessions,
22 docket number 2010-GS-43-1050, the State of South
23 Carolina, plaintiff, versus Richard Avon Green,
24 defendant. We, the jury, by unanimous agreement
25 find the defendant Richard Avon Green on the charge

1 of attempted burglary in the first degree guilty.
2 Signed Opal Fulwood dated 13th day of
3 September 2011. Ladies and gentlemen, if this is
4 your verdict so say you all by raising your right
5 hand.

6 (All jurors complied by raising their hand.)

7 THE COURT: You may be seated.
8 Mr. Hastie, anything before the jury is excused,
9 Mr. Hastie?

10 MR. HASTIE: Yes, Your Honor, I would like
11 to poll the jury. I want to poll the jury.

12 THE COURT: All right. Mr. Bradley.

13 THE BAILLIFF: Ladies and gentlemen, when I
14 call your name please stand and answer two questions
15 for me please.

16 Ms. Pat Jones, is that your verdict, is it
17 still your verdict?

18 JUROR JONES: It is.

19 THE COURT: Thank you. You may be seated.

20 THE BAILLIFF: Elizabeth Prescott, is that
21 your verdict, is it still your verdict?

22 JUROR PRESCOTT: Yes, sir.

23 THE BAILLIFF: Thank you.

24 Ronald Mooney, is that your verdict, is it
25 still your verdict?

1 JUROR MOONEY: Yes, sir.

2 THE BAILIFF: Thank you.

3 Paul Holloman, is that your verdict and is
4 it still your verdict?

5 JUROR HOLLOMAN: Yes, sir.

6 THE BAILIFF: Thank you.

7 James Rogers, is that your verdict and is
8 it still your verdict?

9 JUROR ROGERS: Yes.

10 THE BAILIFF: Is this your verdict and is
11 it still your verdict?

12 THE POTENTIAL JUROR: Yes, it is.

13 THE COURT: Joseph Tobier, is this your
14 verdict and is it still your verdict?

15 JUROR TOBIERE: Yes, sir.

16 THE BAILIFF: Thank you.

17 Keyron Choice, is that your verdict and is
18 it still your verdict?

19 JUROR CHOICE: Yes, sir.

20 THE BAILIFF: Thank you.

21 Samuel Jackson, is that your verdict and
22 is it still your verdict?

23 JUROR JACKSON: Yes, sir.

24 THE BAILIFF: Thank you. Paul Stewart, is
25 this your verdict and is it still your verdict?

1 JUROR STEWART: Yes, sir.

2 THE BAILIFF: Thank you.

3 Catherine Bendel, is this your verdict and
4 is it still your verdict?

5 JUROR BENDEL: Yes, sir.

6 THE BAILIFF: Thank you.

7 Jason Mosley, is this your verdict and is
8 it still your verdict?

9 JASON MOSLEY: Yes.

10 THE BAILIFF: Thank you.

11 Opal Fulwood, is this your verdict and
12 still your verdict?

13 JUROR FULWOOD: Yes, sir.

14 THE BAILIFF: Thank you. Your Honor, the
15 jury has been polled and the verdict stands.

16 THE COURT: All right. Thank you, sir.

17 All right, Mr. Hastie, before the —
18 anything before the jury is excused?

19 MR. HASTIE: Yes, sir, I think my client
20 would like to publish the verdict form that came
21 out.

22 THE COURT: All right. I'm going to go
23 over that with you, but y'all come on up just a
24 minute please.

25 (WHEREUPON, counsel approached the Bench

1 for an off-the-record discussion.)

2 THE COURT: That concludes your service in
3 connection with this matter. I will excuse you from
4 any further service on this case. I will tell you
5 that once you have been excused by me as a juror
6 that nothing legal about your talking with anyone
7 about your service on this case. There's nothing
8 illegal about anybody talking to you about your
9 service. It is a practice which I strongly
10 disapprove and strongly discourage but it is not
11 illegal. You have a right to talk with anyone. You
12 also have the right not to talk with anyone. And if
13 anybody should want to talk with you and you tell
14 them you don't want to talk about it and they
15 continue to harass you, you let the court personnel
16 know and we will deal with them. As I told jurors
17 many times over the years, in my view the juror's
18 role fact finding process is so important that the
19 trial judge should not comment on the verdict of the
20 jury even after a jury has reached a verdict, and I
21 make a practice never to comment on the verdict of a
22 jury. I will tell you that there was evidence in
23 the record about by which you could have reached the
24 decision that you did. But that will complete your
25 services on this case, and I'm going to excuse you

1 from any further service.

2 (Jury was excused.)

3 THE COURT: All right, counsel, let's talk
4 about the verdict. When the form was first given to
5 me it had two possible verdicts, guilty and not
6 guilty. The guilty was checked and then under the
7 forelady had written it split and then checked that.
8 That's when I told her it didn't appear to be a
9 unanimous verdict and I could not accept it that
10 way. After inquiry of her on the record I think the
11 evidence speaks for itself. The case was that that
12 was the — what they had put on the verdict form and
13 she had checked at the time that the note came in it
14 was Court's Exhibit Number 2 that she had, we are
15 split, but that now this was a unanimous verdict.
16 And I asked her to take off that split and to check
17 mark and initial it, and she did so and I inquired
18 as to whether their verdict as shown on this sheet
19 with that change was their unanimous verdict and she
20 indicated that it was. Then I had the verdict
21 published and showing guilty and then at the request
22 of the Defense the jury was polled and indicated by
23 answering both of the questions that it was the
24 unanimous, the verdict of each and every juror as to
25 the guilty verdict. So I think that we have covered

1 or covered on the record -- the record will speak
2 for itself as to what the verdict form actually
3 said. But I'll let you put anything on the record
4 if you would like to, Mr. Hastie.

5 MR. HASTIE: Thank you, Your Honor. Your
6 Honor, I just on behalf of my client, when they came
7 out the jury box, when we got the verdict form there
8 were two items checked, guilty, then there was
9 split. And I just think that they should have been
10 given an opportunity to go back into the jury room.
11 And I know you clarified it in front of everyone.
12 The jury raised their hand. When they came out with
13 two decisions made, one was split and one was
14 guilty, that that issue should have been stopped at
15 that time and should have been asked to do it right
16 it and go back.

17 THE COURT: It should have been asked what
18 now?

19 MR. HASTIE: To go back to the jury room,
20 given another form, and do it correctly.

21 THE COURT: Okay, all right. Your
22 objection is noted, okay. Sentencing sheet.

23 MR. MEADORS: Your Honor, it's being
24 prepared now. I didn't know at the time -- did you
25 to go ahead and do this tonight with the matter

1 across the street.

2 THE COURT: Well, we'll do it in the
3 morning, okay. We will — let me hear from you with
4 regard to motions. Let's go ahead and put those on
5 the record, Mr. Hastie.

6 MR. HASTIE: First Your Honor, I want to
7 renew our motion earlier about the directed verdict
8 on the grounds that directed verdict on first degree
9 burglary. I assume you ruled that he was not guilty
10 of first degree burglary, then he was charged with
11 attempted burglary. And I don't know whether you
12 put on the record that you ruled (inaudible) first
13 degree burglary and I will renew that motion as well
14 that he —

15 THE COURT: Well, I think that's all taken
16 care of at the end of directed verdict stage. And
17 what I ruled is that there was not evidence of the
18 burglary but that attempted burglary was a lesser
19 included and it went to the jury on lesser included.
20 And the sentence — the verdict form actually says
21 on the charge of attempted burglary in the first
22 degree, and I think you've made your position clear
23 that you didn't think that it should be a lesser
24 included and it should not go to the jury on that
25 attempted burglary in the first degree. So I

1 believe that's clear and the record is clear that
2 you object to that at the end of the charge and the
3 end of the directed verdict stage. And I think that
4 what we've gotten here is a verdict that the jury
5 has confirmed as being their unanimous verdict of
6 attempted burglary in the first degree so I believe
7 that that takes cares of it. I understand, you're
8 protected. I think you're protected on the record
9 as to the form of verdict but you disagree with the
10 way I handled it and that will be up to the Court of
11 Appeals to tell me whether I'm right or wrong.

12 MR. HASTIE: And my client was indicted
13 for first degree burglary only. His warrant said
14 only first degree burglary and I certainly
15 understand your charge of lesser included.

16 THE COURT: All right. Any objection is
17 noted and is noted on the record. All right, that
18 being the case then let's sentence sheets are not
19 ready right now let's adjourn. I believe he is
20 incarcerated so it won't hurt to take this up in the
21 morning. Let's say at 9:00 and have the sentencing
22 sheets ready. Anything in mitigation I'll hear from
23 you at that time as well, Mr. Hastie, and anything
24 y'all want to put on the record with regard to
25 require railroad and all we can do all that in the

1 morning at 9:00.

2 MR. MEADORS: Your Honor, would you
3 consider 9:30?

4 THE COURT: Yep, I don't have any problem
5 with 9:30. I just didn't know what y'all were going
6 to do with the jury. 9:30? All right, 9:30 in the
7 morning. We'll be in recess till 9:30 in the
8 morning.

9 (WHEREUPON, the proceedings were concluded
10 for the day to be reconvened on September
11 14, 2011.)

12 THE COURT: The matter was concluded
13 yesterday with the jury verdict and we tended to
14 legal matters. Mr. Green is present in the
15 courtroom with his attorney Mr. Hasties. The State
16 is present and represented by Mr. Meadors. The only
17 matter that remains to be done is the sentencing.

18 Mr. Hastie, of course I'm gonna give you,
19 as far as giving you the opportunity to talk to me
20 about anything you want to in mitigation in just a
21 minute; but going back to yesterday, is there
22 anything that you want to put on record or do before
23 we enter into the sentencing phase?

24 MR. HASTIE: Your Honor, I also renew our
25 motions again and talk a little bit about the motion

1 that I made yesterday about the verdict form and the
2 verdict, the jury form.

3 THE COURT: Well, you have the right under
4 the rule to make a motion within ten days so if you
5 got — I thought I'd already ruled on all the
6 motions that you made yesterday. Is there anything
7 new that you want to — and if you want to make
8 another motion I think the rules do permit a motion
9 to be made after ten days.

10 MR. HASTIE: Well, I —

11 THE COURT: Up to ten days.

12 MR. HASTIE: I believe I talked about
13 verdict form yesterday. I think I did.

14 THE COURT: Yes, sir, you did. You did.

15 MR. HASTIE: And request the jurors, you
16 know, prior to coming in the courtroom given the
17 opportunity to —

18 THE COURT: I understand that, but I
19 think all that was cured by the polling.

20 MR. HASTIE: No other motions, Your Honor.

21 THE COURT: Okay, all right. Mr. Meadors
22 and Mr. Hastie, you and Mr. Green come around.

23 Mr. Meadors, how about give me the
24 criminal record and if you or anyone else with
25 regard as, and from the victim, before I call on

1 Mr. Hastie.

2 MR. MEADORS: Yes, sir, Your Honor, may it
3 please the Court. A 2001 resisting arrest, 2001
4 unlawful use of a vehicle without permission, 2001
5 also resisting arrest, a breaking and entering a
6 motor vehicle in February of 2003 along with a
7 receiving stolen goods charge. And I think this was
8 criminal domestic violence first in September of
9 '07. A failure to stop for a blue light in June of
10 '90, and he received ten years suspended, five years
11 confinement, and five years probation. A possession
12 of weapon on ABC premises, driving under suspension
13 more than first, and receiving stolen goods.

14 THE COURT: When was that?

15 MR. MEADORS: That was in looks start date
16 of 11/90 it says. And Judge, some of that may be as
17 a result, revoked because of the other plea, Judge.
18 That may have been what that was. Now let the
19 record reflect that for a failure to stop. Judge,
20 then in going back to '94, a resisting arrest,
21 November of '94. It looks like three counts of
22 accessory after the fact; and it may be accessory
23 after the fact of forgery there, Your Honor, it's
24 not clear. But three counts of accessory after the
25 fact of malicious injury to property and two more

1 counts of accessory after the fact.

2 THE COURT: When were those?

3 MR. MEADORS: And those were in court date
4 of October of '94.

5 THE COURT: Okay.

6 MR. MEADORS: Looks like his parole was
7 revoked in '98. Judge, a simple possession of
8 marijuana in '99. Judge, then going back to 1984,
9 house breaking and larceny, July of 1984. And it
10 looks like, Judge, there were several other
11 attempted house breaking, house breaking and petit
12 larceny, house breaking and petit larceny. Those
13 show a court date of May of '84 and the other house
14 break and larceny shows a July of '84. One
15 disposition on those would be a YOA sentence, Your
16 Honor, indeterminate. Failure to stop a blue light
17 in '84. That shows May 3rd of '84. And Judge, then
18 I show another court date of an attempted house
19 breaking. Judge, that may relate back to the other
20 two so I'll just — I'm not sure on that. It's a
21 house breaking, petit larceny two counts, and house
22 breaking '84, but it may have been wrapped in with
23 the other one, Judge. April of '85, house breaking
24 and larcenies, again a one to six, so all those may
25 have run together. Date of arrest not determined,

1 April '85 on house breaking. And again, a one to
2 six sentence. And then, Your Honor —

3 THE COURT: That must not have been in
4 South Carolina.

5 MR. MEADORS: No, sir, they were all in
6 Sumter.

7 THE COURT: They were?

8 MR. MEADORS: So I think all of them may
9 have been handled at one —

10 THE COURT: One to six, must have been the
11 youthful — must have been YOA then.

12 MR. MEADORS: Yes, sir. So I think they
13 were all handled together. There is another house
14 breaking July of '85 which he received four years.
15 And also with that was a grand larceny. And I think
16 on that one, Judge, there's a burglary third degree
17 also in July of '84 which he got four years, a
18 larceny which he got four years, house breaking and
19 larceny two counts which he got four years. It
20 appears all those were concurrent. And a receiving
21 stolen goods July of '87.

22 Judge, if now is the appropriate time I
23 think — first of all, I think three things hit me
24 last night when I was going on about this trial.
25 Number one, I think the evidence was clear to this

1 lady that Richard or Rick Green was the person who
2 was there. The other thing that kind of hit me was
3 that if he had come in that door she would have
4 killed him. And because she knew that, and if he'd
5 kept rattling that door I think he would have been
6 able to come in. Because I think she knew that she
7 would have killed him is why she went out that back
8 door to scare him away, and I think that was an act
9 of mercy on her part and I think that scared him
10 away. She didn't know it. She was still sitting
11 there for a couple of hours scared Your Honor heard.
12 But I think because of that it perhaps saved,
13 whatever was going to happen inside, but it saved
14 him too, Judge. And I don't know, it hit me on the
15 way home; I just wanted to say it. I don't know if
16 Ms. Davis wants to anything. We obviously want to
17 thank the jury for their verdict and their
18 attention. I want to thank Sumter Sheriff's
19 Department, Wesley Gardner and Deputy Deberry. And
20 I don't know if Ms. Davis wants to say anything or
21 not.

22 THE COURT: All right, Ms. Davis, let me
23 tell you, as the victim in this crime and under the
24 Victims' Rights Amendment to the constitution and
25 victims amendment legislation you have a right to be

1 present. First of all, you have the right to be
2 kept advised of everything that's going on, and I'm
3 sure the Solicitor's Office through their victims
4 advocate has kept you advised. You also have the
5 right to be present at any crucial stage of
6 proceedings, and you also have the right to address
7 the Court. Of course you were here and no, I did
8 testify, but you also have the right to address the
9 Court at this point in time so if there's anything
10 you would like to tell me I'll be glad to hear from
11 you.

12 THE VICTIM: Your Honor, the only thing I
13 want to say that I was so afraid that night and I'm
14 still — I was still shook up until he was
15 incarcerated because my husband work at nights
16 sometimes and I'm home by myself.

17 THE COURT: Thank you, ma'am.

18 MR. MEADORS: Judge, this is one of things
19 where — we couldn't bring it out obviously, but she
20 knew the defendant, knew his background, knew some
21 of the troubles he'd been in, and that's the reason
22 that she was scared. And that's all we have.

23 THE COURT: I understand. All right, Mr.
24 Hastie.

25 MR. HASTIE: Thank you, Your Honor. Your

1 Honor, there really isn't a lot to say here. My
2 client was accused of this first degree burglary.
3 He was pretty much not enough evidence to convict
4 him of that. He was convicted of this attempt and
5 he's here today for that. His position still is
6 that he no, I did not do this, and he will pursue
7 this even further. He has extensive record as we
8 all have just heard. He said, Mr. Hastie, in every
9 instance when I have done something -- and he
10 started as a youth and even as an adult. He said in
11 every instance I always admitted my guilt to the
12 Court. This is the first time there's been even a
13 need for a trial. He maintains his innocence here.
14 So I just ask the Court to at least consider some
15 leniency for this young man because of the original
16 indictment was first degree burglary, and he was
17 found guilty of a lesser offense. Thank you.

18 THE COURT: Well, you concur that attempt
19 carries the same thing as first degree burglary?

20 MR. HASTIE: I do, Your Honor.

21 MR. MEADORS: Judge, can I hand this to
22 the Court?

23 THE COURT: Yes, sir.

24 MR. MEADORS: It's a clearer -- I was just
25 handed...

1 THE COURT: What is that?

2 MR. HASTIE: It's just a clearer summary,
3 and I've shown that to —

4 THE COURT: Mr. Hastie seen that?

5 MR. MEADORS: Yes, sir, and that's a clear
6 summary of those and they were run concurrent. I
7 just want the record — in addition to the other
8 ones.

9 THE COURT: Not that it matters at this
10 stage, Mr. Meadors; but under the old law, of
11 course, it used to be called a lot of times house
12 breaking. Isn't there case law to the effect that
13 house breaking qualifies as prior burglaries?

14 MR. MEADORS: Yes, sir.

15 THE COURT: So that actually y'all could
16 have pursued burglary first on the basis of the
17 prior offenses as well as the night time.

18 MR. MEADORS: Judge, and it was indicted
19 before I got here and I — and I think that shows
20 the fairness of the State. They went forward on the
21 night time because you could have actually gone
22 forward in the indictment as element of two prior
23 house breakings without question, yes, sir.

24 THE COURT: All right. How long has he
25 been incarcerated, Mr. Hastie?

1 MR. HASTIE: Fifteen months, Your Honor.

2 THE COURT: Basically since this happened
3 in May 2010.

4 MR. HASTIE: Yes, sir.

5 THE COURT: Which he was arrested May 4th,
6 that day? That's the day this is — it's alleged to
7 have occurred that morning so I assume he was
8 arrested that same day so he's been in jail since
9 May 4th of 2010; is that correct?

10 MR. MEADORS: Yes, sir. Your Honor, I
11 think it was June.

12 MR. HASTIE: June 15th.

13 THE COURT: June 15th. I mean, he —

14 MR. HASTIE: He turned himself in.

15 THE COURT: All right, Mr. Green, I am
16 sure that your lawyer has explained to you that
17 whatever sentence I impose under the burglary
18 statute requires you to serve 85 percent of the
19 sentence before you would be eligible for any kind
20 of community supervision. I have heard the
21 testimony in this case, and so, of course I know
22 what the factual background is. I'm also concerned
23 with your criminal record, but I'm not going to give
24 you a life sentence. I could, under the law, but
25 I'm not going to do that. I'm going to give you a

1 pretty stiff sentence, but you just don't seem to
2 have much regard for other peoples' property and
3 other peoples' homes.

4 The sentence of the Court is the defendant
5 is committed to the State Department of Corrections
6 for a determinate term of twenty years. I'll be
7 giving credit for time served since June 15th of
8 2010.

9

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11 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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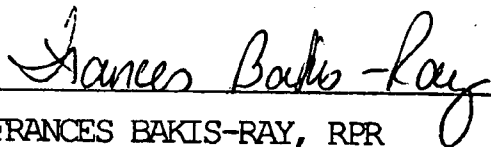
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered
Professional Reporter (RPR), court reporter for the
State of South Carolina, Twelfth Judicial Circuit,
do hereby certify that the foregoing proceeding was
transcribed using digital audio through
computer-aided transcription; that the foregoing
transcript contains a true record of the
proceedings.

I further certify that I am neither
counsel for, nor related to nor employed by any of
the parties connected to the action, nor am I
financially interested in the action.

Witness my hand at Florence, South
Carolina, this 16th day of February, 2012.



FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD AVON GREEN,

APPELLANT

Appellate Case No. 2011-199866

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in allowing the jury to consider an act that was not alleged in the one-count indictment for first degree burglary, when the trial court granted a directed verdict on the first degree burglary charge, and at the State's request, erroneously sent the common-law offense of attempted burglary to the jury as a lesser-included offense, thereby creating a structural due process defect that deprived Appellant of a fair trial?

STATEMENT OF THE CASE

On September 2, 2010, Appellant Richard Avon Green was indicted by the Sumter County Grand Jury for first degree burglary. R. 192.

On September 12, 2011, Appellant proceeded to trial before the Honorable Howard P. King and a jury. R. 1. Appellant was represented by Calvin Hastie, and the State was represented by Assistant Solicitor John P. Meadors. After the close of the State's case, defense counsel moved for a directed verdict. R. 130, l. 21 – 132, l. 17. The State then requested that the trial court also “consider the lesser included offense of attempted armed robbery.” R. 136, ll. 2-7.

In response, the trial court stated, “I am convinced that *there is no evidence* in the record upon which the jury could convict [Appellant] of burglary in the first degree because *the evidence is simply not there for a showing of entry* which is one of the elements of [the] crime of burglary in the first degree.” R. 145, ll. 1-6 (emphasis added). Yet, the trial court also ruled, “I am going to submit the case to the jury on the lesser included offense of attempted burglary in the first degree . . . and I will *charge the elements as an attempt . . . instead of actually requiring an entry.*” R. 146, ll. 16-21 (emphasis added).

On September 13, 2011, the jury found Appellant “on the charge of attempted burglary in the first degree guilty.” R. 187, l. 24 – 188, l. 1. The trial court then sentenced Appellant to twenty years imprisonment. R. 189, ll. 4-8.

STATEMENT OF FACTS

Indictment

The one-count indictment charged Appellant with first degree burglary. R. 192.

Specifically, the relevant text of the indictment alleged:

That Richard Avon Green did in Sumter County on or about May 4, 2010 *enter the dwelling* of Rita Davis located at [address] without consent and with the intent to commit a crime therein and when, *in effecting entry* or while in the dwelling or in immediate flight and *the entering* or remaining occurred in the nighttime, **in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.**

R. 193 (emphasis added). No request was made at trial to amend the indictment.

Motion for a Directed Verdict

After the close of the State's case, defense counsel moved for a directed verdict. R. 130, l. 21 – 132, l. 17. Defense counsel argued, “[O]ne of the four elements of burglary is [that] there must be an entry. And there’s been no testimony whatsoever today that [Appellant] or anyone else actually entered into that house.” R. 131, l. 24 – 132, l. 2. Defense counsel further argued, “I think [the State’s case] fails on the elements itself because there never was an entry into Ms. Davis’ home.” R. 132, ll. 15-17.

The State then requested that the trial court also “consider the lesser included offense of attempted armed robbery.” R. 136, ll. 2-7. The trial court replied, “I can’t find a case on it as to whether it’s a lesser included of attempting, and I wondered if that was going to be your argument that it wasn’t indicted for attempted.” R. 136, ll. 14-17. The trial court also noted, “[U]nder the statute 16-1-80 the offense of attempted is punishable by the principal offense. But the attempted, I guess the way this is indicted, it would have to be a lesser included and that may be a different issue all together.” R. 136, ll. 17-22.

In response, defense counsel stated:

Your Honor, I just think that the prosecutor is now scrambling trying to get something on this client. *I disagree with the attempted burglary.* I disagree with this man being accused of with - - the [South Carolina] code [of Laws] is very clear on the elements of the burglary. *There was no entry and I think that's clear.* And I just disagree with that to allow that for him to come back and say maybe there was some type of attempt.

R. 137, l. 25 – 138, l. 8 (emphasis added). The trial court then asked defense counsel, “What say you as to whether attempted burglary is a lesser included offense of burglary?” and defense counsel replied, “*I say not.*” R. 138, ll. 9-12 (emphasis added). Defense counsel further argued, “I disagree with attempted burglary and trial [for] burglary [in the] first [degree] and I just disagree with that issue at this time.” R. 139, ll. 5-7.

The trial court contemplated, “I tend to agree with [defense counsel] that there’s not even [an] element of an entry . . . But I think simply trying to open a door, it could have been attempt.” R. 140, ll. 7-18. The trial court also revealed, “The only question that I do have . . . [is] whether or not it would be attempted burglary as a lesser included offense and I want to think about that a little bit more.” R. 140, l. 22 – 141, l. 3. The trial court subsequently directed a verdict of acquittal on the first degree burglary charge:

I am convinced that *there is no evidence* in the record upon which the jury could convict [Appellant] of burglary in the first degree because *the evidence is simply not there for a showing of entry* which is one of the elements of [the] crime of burglary in the first degree. . . . *There's just not any circumstantial evidence which would show an entry.*

R. 145, ll. 1-15 (emphasis added). Yet, the trial court noted, “That does not end the inquiry because then we have to look and determine whether or not the crime of attempted burglary should go to the jury as a lesser included offense[.]” R. 145, ll. 15-18.

Although the trial court was unable to cite the case name or citation, the trial court proceeded to refer to a case regarding the applicability of lesser-included offenses. Specifically, the trial court elaborated, “[T]his particular case goes on to say that when an indictment for [a] greater offense [the] trial court has *the requisite jurisdiction to charge and convict* a defendant of any lesser included offense inconclusive of instruction is required only whether the evidence warrants such an instruction.” R. 146, ll. 4-9 (emphasis added).

The trial court ultimately found, “[T]here’s evidence in the record of attempted burglary and attempted opening of [the] front door and attempt to open the garage door but no entry if the jury believes that the testimony and that would be a jury determination.” R. 146, ll. 9-15. The trial court then ruled, “I am going to *submit the case to the jury on the lesser included offense of attempted burglary* in the first degree . . . and I will *charge the elements as an attempt . . . instead of actually requiring an entry.*” R. 146, ll. 16-21 (emphasis added). In response, defense counsel attempted to put his continued objection on the record, “Your Honor, I would like to on the record propose ---” when the trial court interjected, “You don’t have to do; you’re protected. You’ve already – I understand your position and it’s not necessary under our rules to take exception.” R. 147, ll. 1-6.

The trial court subsequently informed the jury of his decision:

Before I call on the lawyers for closing arguments I want to tell you that *the Court has directed a verdict as far as the crime of burglary* is concerned because the State in my view there is no evidence of all the elements of the crime of burglary. However, under the theory that lesser included offense is included in the greater offense the matter will be for your decision as to whether or not there was an attempted burglary in this case. And so that is what the issue that will be before you, *whether there is an attempted burglary in the first degree, and that is on the basis of the fact of legal principle that the lesser included offense of greater offense, lesser intent offense being attempted burglary as opposed to*

burglary so that is the issue that will be before you and that is what counsel will argue to you at this time.

R. 149, l. 16 – 150, l. 7 (emphasis added).

In the State's closing argument to the jury, Assistant Solicitor Meadors argued, "We [the State] *don't have to prove entry. Attempt [is] all we have to do . . . We don't have to prove it . . . We're now going forward on attempted burglary.* We submit there's no doubt of that, much less a reasonable doubt." R. 165, ll. 1-9 (emphasis added). The State further argued, "It goes down to whether you believe *the State has proved an attempt to enter that house* with an act beyond mere preparation, pulling up the door, pulling up the garage. We submit the State has proved it. The word verdict means to speak the truth." R. 168, ll. 5-10 (emphasis added).

The trial court later charged the jury on the law of first degree burglary under S.C. Code Ann. § 16-11-311(a) (2010) followed by the law of attempt crimes. R. 170, l. 11 – 174, l. 11. After the trial court finished with jury instructions, the trial court asked defense counsel, "[O]ther than the fact that you disagree or take exception to the charge of attempted burglary in the first degree going to the jury at all which the record is noted on that and your position is protected, are there any additions or exceptions to the charge?" Defense counsel replied, "No, sir, Your Honor." R. 176, ll. 14-20.

Jury Notes and *Allen* Charge

During deliberations, the jury sent out two jury notes. The first note from the jury contained two questions: (1) "Was Mrs. Davis wearing her glasses that morning?" and (2) "What type of door was her outer door? Storm?" R. 177, ll. 8-9; R. 190 (Court's Exhibit #1). The second note from the jury stated, "We are split." R. 180, ll. 6-23; R. 191 (Court's Exhibit #2). With consent from the State and defense counsel, the trial court issued an *Allen*

charge¹ to the jury. R. 181, l. 5 – 185, l. 20. The jury subsequently found Appellant “on the charge of attempted burglary in the first degree guilty.” R. 187, l. 24 – 188, l. 1. The trial court then sentenced Appellant to twenty years imprisonment. R. 189, ll. 4-8.

¹ *Allen v. United States*, 164 U.S. 492 (1896) (defining charge used to encourage a deadlocked jury to reach a verdict).

ARGUMENT

The trial court erred in allowing the jury to consider an act that was not alleged in the one-count indictment for first degree burglary, when the trial court granted a directed verdict on the first degree burglary charge, and at the State's request, erroneously sent the common-law offense of attempted burglary to the jury as a lesser-included offense, thereby creating a structural due process defect that deprived Appellant of a fair trial.

“In South Carolina, ‘[i]t is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment.’” *State v. Gunn*, 313 S.C. 124, 136, 437 S.E.2d 75, 82 (1993) (quoting *State v. Cody*, 180 S.C. 417, 423, 186 S.E. 165, 167 (1936)). “A material variance between charge and proof entitles the defendant to a directed verdict; such a variance is not material if it is not an element of the offense.” *Id.* (citation omitted); *See* 41 Am. Jur. 2d *Indictments & Informations* § 252 (2005) (stating that one of the two ways an indictment can be improperly modified is through “a variance, whereby the charging terms of the indictment are left unaltered, but the evidence offered at trial proves facts materially different from those alleged in the indictment”).

“[W]hile a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged.” *Thomason v. State*, 892 S.W.2d 8, 11 (Tex. Crim. App. 1994) (citations omitted). “A conviction under the latter circumstance violates principles of due process . . . because the State has failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged.” *Id.* (citations omitted); *see* 41 Am. Jur. 2d *Indictments & Informations* § 256 (2005) (“A material variance that violates a defendant's substantial right to be tried only on charges

presented in an indictment constitutes fatal error and warrants a reversal on an appeal of a judgment of conviction of the offense not charged in the indictment.”).

A. The trial court erred in sending the common-law offense of attempted burglary to the jury as a lesser-included offense of first degree burglary.

In this case, the one-count indictment charged Appellant with first degree burglary. R. 192; *See* S.C. Code Ann. § 16-11-311(a)(3). Specifically, the relevant text of the indictment alleged:

That Richard Avon Green did in Sumter County on or about May 4, 2010 *enter the dwelling* of Rita Davis located at [address] without consent and with the intent to commit a crime therein and when, *in effecting entry* or while in the dwelling or in immediate flight and *the entering* or remaining occurred in the nighttime, **in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.**

R. 193 (emphasis added). No request was made at trial to amend the indictment under S.C. Code Ann. § 17-19-100 (2010) (“Amendment of indictments; proceedings after amendment”).

After the close of the State’s case, defense counsel moved for a directed verdict. R. 130, l. 21 – 132, l. 17. Defense counsel argued, “[O]ne of the four elements of burglary is [that] there must be an entry. And there’s been no testimony whatsoever today that [Appellant] or anyone else actually entered into that house.” R. 131, l. 24 – 132, l. 2. Defense counsel further argued, “I think [the State’s case] fails on the elements itself because there never was an entry into Ms. Davis’ home.” R. 132, ll. 15-17.

The State then requested that the trial court also “consider the lesser included offense of attempted armed robbery.” R. 136, ll. 2-7. The trial court replied, “I can’t find a case on it as to whether it’s a lesser included of attempting, and I wondered if that was going to be

your argument that it wasn't indicted for attempted." R. 136, ll. 14-17. The trial court also noted, "[U]nder the statute 16-1-80 the offense of attempted is punishable by the principal offense. But the attempted, I guess the way this is indicted, it would have to be a lesser included and that may be a different issue all together." R. 136, ll. 17-22.

Notably, the trial court directed a verdict of acquittal on the first degree burglary charge:

I am convinced that *there is no evidence* in the record upon which the jury could convict [Appellant] of burglary in the first degree because *the evidence is simply not there for a showing of entry* which is one of the elements of [the] crime of burglary in the first degree. . . . *There's just not any circumstantial evidence which would show an entry.*

R. 145, ll. 1-15 (emphasis added); *See In re Winship*, 397 U.S. 358, 364, 90 S.Ct. 1068, 1073 (1970) (holding "the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged."); *see also State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004).

Yet, the trial court noted, "That does not end the inquiry because then we have to look and determine whether or not the crime of attempted burglary should go to the jury as a lesser included offense[.]" R. 145, ll. 15-18. The trial court ultimately found, "[T]here's evidence in the record of attempted burglary and attempted opening of [the] front door and attempt to open the garage door but no entry if the jury believes that the testimony and that would be a jury determination." R. 146, ll. 9-15. The trial court then ruled, "I am going to *submit the case to the jury on the lesser included offense of attempted burglary in the first degree . . . and I will charge the elements as an attempt . . . instead of actually requiring an entry.*" R. 146, ll. 16-21 (emphasis added).

“In a criminal case the trial court's subject matter jurisdiction is limited to those crimes charged in the indictment and all lesser included offenses.” *See State v. Watson*, 349 S.C. 372, 375, 563 S.E.2d 336, 337 (2002) (citations omitted). “The test for determining when a crime is a lesser included offense of the crime charged is whether the greater of the two offenses includes all the elements of the lesser offense. If the lesser offense includes an element not included in the greater offense, then the lesser offense is not included in the greater.” *See State v. Bland*, 318 S.C. 315, 317, 457 S.E.2d 611, 612 (1997) (citations omitted); *see also State v. Kirby*, 325 S.C. 390, 481 S.E.2d 150 (Ct. App. 1996) (noting “[a]n indictment will sustain a conviction for a lesser included offense only if the lesser offense is included within the greater charged offense.”).

Here, the one-count indictment charged Appellant with first degree burglary and contained absolutely no language regarding attempt. *See* § 16-11-311(a)(3) (replacing the prior common-law burglary statute in 1985 and dividing the offense into three degrees of burglary). The State also never moved to amend the one-count indictment. Therefore, the common-law offense of attempted first degree burglary does not constitute as a lesser-included offense of the statutory offense of first degree burglary because attempted first-degree burglary does not necessarily include all elements of first degree burglary. *See* S.C. Code Ann. § 16-1-80 (2003) (“A person who commits the common law offense of attempt, upon conviction, must be punished as for the principal offense.”); *see also State v. Reid*, 393 S.C. 325, 329-330, 713 S.E.2d 274, 276-277 (2011) (affirming “to prove attempt, the State must prove that the defendant has the *specific intent* to commit the underlying offense, along with some *overt act*, beyond mere preparation, in furtherance of the intent” (citing *State v. Nesbitt*, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001))).

Notably, the trial court would have also directed a verdict of acquittal if Appellant had been indicted without the attempt language for second or third degree burglary under S.C. Code Ann. § 16-11-312, 313 (2010) because all three degrees of burglary require the element of entry. *See State v. Mathis*, 355 S.C. 87, 584 S.E.2d 366 (2003) (noting second degree burglary is a lesser-included offense of first degree burglary), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). As persuasive authority to the instant case, in *Hope v. State*, 328 S.C. 78, 81-82, 492 S.E.2d 76, 78-79 (1997), our Supreme Court compared § 16-11-311 (Supp. 1996) (first degree burglary) to S.C. Code Ann. § 16-13-170 (1976) (entering or *attempting* to enter a house without breaking).

The *Hope* Court “defined [§ 16-11-311], in pertinent part, as entering ‘a dwelling without consent and with intent to commit a crime in the dwelling.’” *Id.* at 81, 492 S.E.2d at 78. The Court then “defined [§ 16-13-170], in pertinent part, as entering, without breaking, or *attempting to enter* any house or vessel, with intent to steal or commit any other crime.” *Id.* The Court also defined “breaking” as “any act of physical force, however slight, whereby any obstruction to entering is forcibly removed.” *Id.*, 328 S.C. at 82, n.7, 492 S.E.2d at 79, n.7 (citation omitted). The Court held that § 16-13-170 is *not* a lesser-included offense of first degree burglary “[b]ecause first degree burglary does not necessarily include all elements of ‘entering [or attempting to enter] without breaking[.]’” *See Cody*, 180 S.C. at 423, 186 S.E.2d at 167-68 (finding “[i]t is manifest that these are two separate and distinct offenses. They are not the same in law or fact, and involve different acts of wrongdoing. Proof of one does not prove the other or warrant a conviction therefor.”).

The indictment apprised Appellant that he had to defend only against the allegation that he “on or about May 4, 2010 *enter the dwelling* of Rita Davis . . . without consent and with the intent to commit a crime therein and when, *in effecting entry* or while in the dwelling or in immediate flight and *the entering* or remaining occurred in the nighttime.” R. 193 (emphasis added); *See Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) (“The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, *i.e.*, to apprise him of the elements of the offense and to **allow him to decide whether to plead guilty or stand trial**, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.”) (emphasis added). The trial court’s decision to submit the common-law offense of attempted first degree burglary constituted a material variance between the State’s evidence and the allegations in the indictment. *See Gunn*, 313 S.C. at 136, 437 S.E.2d at 82.

The trial court thus created a structural due process defect that deprived Appellant of a fair trial when the trial court granted a directed verdict on the first degree burglary charge, and at the State’s request, erroneously sent the common-law offense of attempted burglary to the jury as a lesser-included offense. Accordingly, the trial court erred in allowing the jury to convict Appellant of an act that was not alleged in the one-count indictment for first degree burglary.

- B. Even if the common-law offense of attempted first degree burglary is a lesser-included offense of first degree burglary, the trial court improperly “enlarged” the indictment by instructing the jury that it could convict Appellant of a crime not alleged in the indictment.**

In *Bailey v. State*, 392 S.C. 422, 709 S.E.2d 671 (2011), Bailey argued that the PCR judge erred in denying his PCR claim that trial counsel was ineffective in failing to object to supplemental jury instructions that allowed the jury to convict him for an act that was not

alleged in the indictment. In *Bailey*, 392 S.C. at 434-35, 709 S.E.2d at 677-78, our Supreme Court agreed with the reasoning presented in *Castillo v. State*, 7 S.W.3d 253 (Tex. Ct. App. 1999), and applied the analysis of the Texas Court of Appeals to the facts in that case. “In *Castillo*, the defendant was charged with the felony offense of intentionally and knowingly causing serious bodily injury to a child and convicted of the lesser-included offense of reckless injury to a child pursuant to section 22.04(a)(1) of the Texas Penal Code.” *Id.* at 434, 709 S.E.2d at 677.

Notably, “[i]n prefacing its analysis, the Texas Court of Appeals noted that ‘[b]y including a more specific description, the State undertook the burden of proving the specific allegations to obtain a conviction.’” *Id.* “On appeal, Castillo raised several issues, including an argument that the trial judge egregiously erred by adding, through a lesser-included offense charge, a theory of prosecution (“shaking”) that was not supported by the indictment. *Id.* at 254.” *Id.*, 392 S.C. at 435, 709 S.E.2d at 678. The *Bailey* Court agreed with the following reasoning: “The Texas Court of Appeals agreed with Castillo’s argument, finding the trial court erred in ‘enlarging’ the indictment by adding ‘shaking’ as an additional manner and means of committing the charged offense. *Id.* at 260. In so ruling, the court recognized that a defendant may only be tried and convicted of the crimes alleged in the indictment and the State is bound by the theory alleged in the indictment. *Id.* at 258-59.” *Id.*

Applying this analysis to the facts in *Bailey*, the Supreme Court held, “[T]he trial judge’s instructions improperly ‘enlarged’ the indictment by instructing the jury that it could convict Bailey of a crime not alleged in the indictment.” *Id.* The *Bailey* Court further held, “Such an instruction was in direct contravention of the specific act alleged in

the indictment and, thus, constituted a material variance or a ‘constructive amendment’ to the indictment.” *Id.* Consequently, the *Bailey* Court found “that Bailey was prejudiced by counsel’s deficient performance.” *Id.*, 392 S.C. at 437, 709 S.E.2d at 679.

In this case, the State never moved to amend the indictment to include any allegation of Appellant “attempt(ing) to enter” the dwelling. Same as in *Castillo*, “[b]y including a more specific description, the State undertook the burden of proving the specific allegations to obtain a conviction.” 7 S.W.3d at 255. Applying the analysis of *Castillo* to the facts of the instant case, even if the common-law offense of attempted first degree burglary is a lesser-included offense of first degree burglary, the trial court improperly “enlarged” the indictment by instructing the jury that it could convict Appellant of a crime not alleged in the indictment. *See Bailey*, 392 S.C. at 434-35, 709 S.E.2d at 677-78; *see also Castillo*, 7 S.W.3d 253. Thus, the jury convicted Appellant of an unindicted crime, as the jury found evidence of attempted first-degree burglary rather than the specifically alleged act of entry into the dwelling.

C. The trial court’s error is unduly prejudicial and cannot be harmless because trial court created a structural due process defect that deprived Appellant of a fair trial.

“[O]ur appellate courts have consistently held that a trial court should only be reversed when an error is prejudicial and not harmless.” *State v. White*, 371 S.C. 439, 447, 639 S.E.2d 160, 164 (Ct. App. 2006). “The determination of prejudice must be based on the entire record[,] and the result will generally turn on the facts of each case.” *State v. Sweat*, 362 S.C. 117, 128-29, 606 S.E.2d 508, 514 (Ct. App. 2004) (internal citation and quotation marks omitted). An error is harmless if it could not have reasonably affected the result of the trial. *State v. Key*, 256 S.C. 90, 93-94, 180 S.E.2d

888, 889-90 (1971).

Here, the trial court directed a verdict of acquittal on the one-count indictment for first degree burglary. R. 145, ll. 1-15. Yet, the trial court found that common-law offense of attempted burglary was lesser-included offense of first degree burglary and ruled, "I am going to submit the case to the jury on the lesser included offense of attempted burglary in the first degree . . . and I will charge the elements as an attempt . . . instead of actually requiring an entry." R. 146, ll. 16-21.

The trial court subsequently informed the jury of this decision:

Before I call on the lawyers for closing arguments I want to tell you that *the Court has directed a verdict as far as the crime of burglary* is concerned because the State in my view there is no evidence of all the elements of the crime of burglary. However, under the theory that lesser included offense is included in the greater offense the matter will be for your decision as to whether or not there was an attempted burglary in this case. And so that is what the issue that will be before you, *whether there is an attempted burglary in the first degree, and that is on the basis of the fact of legal principle that the lesser included offense of greater offense, lesser intent offense being attempted burglary as opposed to burglary* so that is the issue that will be before you and that is what counsel will argue to you at this time.

R. 149, l. 16 – 150, l. 7 (emphasis added).

Furthermore, in the State's closing argument to the jury, Assistant Solicitor Meadors argued, "We [the State] *don't have to prove entry. Attempt [is] all we have to do . . . We don't have to prove it . . . We're now going forward on attempted burglary.* We submit there's no doubt of that, much less a reasonable doubt." R. 165, ll. 1-9 (emphasis added). The State also argued, "It goes down to whether you believe *the State has proved an attempt to enter that house* with an act beyond mere preparation, pulling up the door, pulling up the garage. We submit the State has proved it. The word verdict means to speak the truth." R.

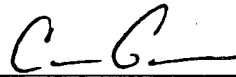
168, ll. 5-10 (emphasis added).

The trial court subsequently charged the jury on the law of first degree burglary under S.C. Code Ann. § 16-11-311(a) (2010) followed by the law of attempt crimes. R. 170, l. 11 – 174, l. 11. During deliberations, the jury sent out two jury notes. The first note from the jury contained two questions: (1) “Was Mrs. Davis wearing her glasses that morning?” and (2) “What type of door was her outer door? Storm?” R. 177, ll. 8-9; R. 190 (Court’s Exhibit #1). The second note from the jury stated, “We are split.” R. 180, ll. 6-23; R. 191 (Court’s Exhibit #2). With consent from the State and defense counsel, the trial court issued an *Allen* charge to the jury. R. 181, l. 5 – 185, l. 20. Accordingly, the trial court’s error is unduly prejudicial and cannot be harmless because trial court created a structural due process defect that deprived Appellant of a fair trial.

CONCLUSION

For the forgoing reasons, Appellant Richard Green respectfully requests that this Court reverse his conviction and sentence for the unindicted crime of attempted first degree burglary and remand this case to the Sumter County Court of General Sessions.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of May, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Sumter County
Howard P. King, Circuit Court Judge

THE STATE

Respondent

vs.

RICHARD AVON GREEN,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

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ATTORNEYS FOR RESPONDENT

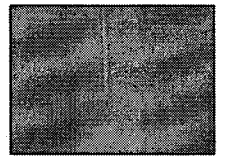
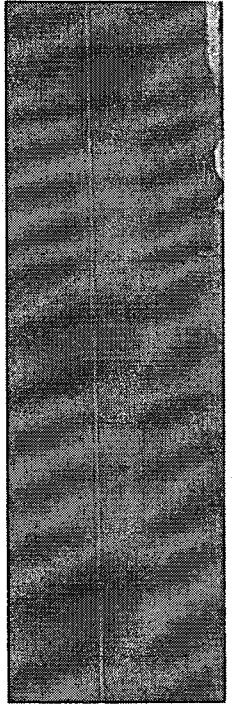


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STATEMENT OF ISSUE ON APPEAL

In South Carolina, an attempt to commit a felony is a lesser included offense of the completed felony; evidence supports the jury's verdict that Appellant is guilty of attempted burglary in the first degree; and the Court of General Sessions has subject matter jurisdiction over the offense of attempted burglary in the first degree.

STATEMENT OF THE CASE

Appellant Green was indicted for burglary in the first degree. He proceeded to jury trial before the Honorable Howard P. King. Judge King granted directed verdict on the burglary charge on the basis that there was no evidence of an entry into the dwelling, but submitted the charge of attempted burglary in the first degree to the jury. The jury convicted Green of this charge and Judge King sentenced Green to twenty years' imprisonment.

STATEMENT OF FACTS

Victim was home alone. Her husband was working and so his truck was not in the driveway. At about 1:30 a.m., someone rang the doorbell. She peered through the keyhole and saw a man walking away. She then heard the man try and open the garage door, she could hear the garage door going up on its runner. But he was unable to open it. The man walked past her window and she could see it was Green. She knew Green for a long time, she grew up with him in the community and went to the same school. Her brother and Green were the same age. She retrieved her phone and her gun. When she tried to use the phone, it was dead. She was scared. Green started pulling on the front door and she contemplated shooting through the door at him, but refrained. She fired out

of the back door four times in hopes of scaring him away. She realized she left her cell phone in the car, but did not want to go outside in case Green was still there. She waited until 4 a.m., when she knew her neighbor would be going to his truck to leave for work. She attracted the neighbor's attention by turning her porch lights on and off. He escorted her to her car so she could call law enforcement from her cell phone. ROA. pp. 29-45.

The garage door was completely closed when she went to bed, but was two inches off the ground the next morning. ROA. pp. 46-47. She testified the Green never actually entered the house. ROA. p. 64.

Tyrone Mack was the neighbor who helped Davis. He testified that she got his attention when he went out to his truck by turning the porch lights on and off. She told him Richard Green was trying to break into her house. ROA. pp. 77-78.

Deputy Shawn DeBerry responded to Victim's residence and found Victim visibly upset and apprehensive about coming out of her house. She gave a description of Green's clothes and his goatee and informed DeBerry that she recognized the man trying to break into her house and it was Green. ROA. pp. 86-89.

Investigator Gardner testified he took pictures of the severed phone line. Victim's husband advised Gardner that one of the wheels had come off the garage door, but he had fixed it. ROA. p. 110, p. 120.

ARGUMENT

In South Carolina, an attempt to commit a felony is a lesser included offense of the completed felony; evidence supports the jury's verdict that Appellant is guilty of attempted burglary in the first degree; and the Court of General Sessions has subject matter jurisdiction over the offense of attempted burglary in the first degree.

Appellant Green complains the trial court erred in charging attempted first degree burglary to the jury after the trial court directed a verdict on first degree burglary. Green argues the charge should not have gone to the jury because it amounted to a material variance from the indictment.¹ The argument is premised on the mistaken belief that an attempt is not a lesser included offense of the completed offense. Green fails to cite the case that settled this issue and controls the result in the instant case, State v. Hiott, 276 S.C. 72, 276 S.E.2d 163 (1981).

In Hiott, the trial court found insufficient proof that any goods or monies were taken in a prosecution for armed robbery. However, the trial court elected to submit the charge of attempted armed robbery to the jury. Hiott argued that attempted armed robbery was not a lesser included offense of armed robbery and that the indictment was rendered insufficient once reference to the alleged stolen item, a toothbrush, was stricken from the indictment. Our state supreme court opined as follows: "Defendants contend that an

¹ Alarminglly, Green cites case law to the effect that the language of an indictment goes to subject matter jurisdiction, citing State v. Watson, 349 S.C. 372, 375, 563 S.E.2d 336, 337 (2002). This line of cases was explicitly overruled by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (subject matter is the power of a court to hear a particular class of cases). "Circuit courts obviously have subject matter jurisdiction to try criminal matters." Gentry, 363 S.C. at 101, 610 S.E.2d at 499. General Sessions undoubtedly has jurisdiction to hear trials for an attempted burglary.

attempted offense is not lesser included in the completed offense because in-completion of the offense is, in itself, a separate and distinct element. Defendants cite no support for this position and we find no logic in it.” Id., 276 S.C. at 80, 276 S.E.2d at 166. The Court affirmed the conviction. Id.; see William Shepard McAninch, W. Gaston Fairy, and Lesley M. Coggiola, The Criminal Law of South Carolina at 45 (5th Ed. 2007) (Citing Hiott and concluding: “It would appear that the attempt to commit any felony would be a lesser included offense of that felony.”).

Attempt crimes are specific intent crimes that require the State to prove the defendant’s specific intent coupled with an overt act, beyond mere preparation and in furtherance of that intent, and the actual or present ability to complete the crime. State v. Nesbitt, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001). The overt act is sufficient if it goes “far enough toward accomplishment of the crime to amount to the commencement of its consummation.” State v. Quick, 199 S.C. 256, 259, 19 S.E.2d 101, 102 (1942); see Hiott, (“[I]t must appear that the circumstances were such that the crime would have been robbery had the attempt been successful.” 77 C.J.S. Robbery § 61.”).

Green’s quote of Thomason v. State, 892 S.W.2d 8 (Tex. Crim. App. 1994) is facially appealing in isolation, but Thomason has scant application to the instant case. In Thomason, the defendant was charged for theft of at least \$20,000, without alleging a continuous course of conduct in the indictment. The theft occurred over the course of several months and involved receipt by the defendant of ten different checks based on invoices he submitted for non-existent computer equipment. The defendant argued Texas should have been required to elect between one of the ten transactions to proceed on since the indictment did not allege an aggregated theft. The case did not involve an attempted

offense. Id.

Burglary in the first degree is committed when a “person enters the dwelling of another without consent and with intent to commit a crime in the dwelling,” and one of several enumerated aggravating circumstances exists. S.C. Code § 16-11-311. In the instant case, the aggravating circumstance was the incident occurred in the nighttime. § 16-11-311(A)(3).

In the instant case, Green was identified by Victim, who knew him all too well, she grew up with him and went to the same school. She testified he rang the doorbell, then went to the garage and pulled on the door, leaving it lifted from the ground and breaking a wheel in the process. Then he pulled on the front door and ceased attempting to break in only after she fired four shots out the other door.

When considering a motion for directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Walker, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). In reviewing the denial of a motion for a directed verdict, the reviewing court must put the evidence in the light most favorable to the State. Id. “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 that the case was properly submitted to the jury.” State v. McGowan, 347 S.C. 618, 622, 557 S.E.2d 657, 659 (2001). Evidence abundantly supports that Green was attempting to enter the dwelling, although he was unsuccessful. Green’s attempt to enter the dwelling with such abundant force at such an early hour creates a reasonable inference for the jury that Green intended to commit a crime in the dwelling. State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) (The intent of an act by the accused may be proven by the expressions or conduct of the accused

in light of the given circumstances). Accordingly, the charge was properly submitted to the jury.

CONCLUSION

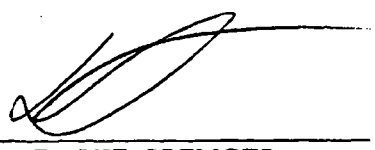
For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

June 12, 2013

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

The State, Respondent,

v.

Richard Avon Green, Appellant.

Appellate Case No. 2011-199866

Appeal From Sumter County
Howard P. King, Circuit Court Judge

Opinion No. 5187
Heard November 14, 2013 – Filed January 2, 2014

AFFIRMED

Appellate Defenders Dayne C. Phillips and Carmen
Vaughn Ganjehsani, both of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General David A. Spencer, both of
Columbia, for Respondent.

LOCKEMY, J.: Richard Avon Green appeals his conviction of the common law charge of attempted burglary. He contends that because attempted burglary is not a lesser included offense of first degree burglary, the trial court erred in submitting the claim of attempted first degree burglary to the jury after it granted a directed verdict in his favor on the charge of first degree burglary. We affirm.

FACTS

On September 2, 2010, Green was indicted on the charge of first degree burglary. His trial began on September 12, 2011. At the close of the State's case, Green moved for a directed verdict. The State requested that the trial court consider the lesser included offense of attempted burglary. Green argued that the State was "scrambling" to find a charge against him and maintained there was no evidence of an attempt of any kind.

The trial court explained it was convinced "there [was] no evidence in the record upon which the jury could convict [Green] of burglary in the first degree because the evidence [was] simply not there for a showing of entry which is one of the elements of [the] crime of burglary in the first degree." Thus, the trial court granted Green a directed verdict on the charge of first degree burglary but decided to submit the case to the jury on the "lesser included offense of attempted burglary in the first degree." The trial court concluded that in charging the elements of attempted first degree burglary, it would explain to the jury that the offense did not require an entry.

The jury returned a verdict of guilty on the charge of attempted burglary in the first degree. The trial court sentenced Green to twenty years of imprisonment.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) (citing *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001)). "This [c]ourt is bound by the trial court's factual findings unless they are clearly erroneous." *Id.* (citing *State v. Quattlebaum*, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000)).

LAW/ANALYSIS

Lesser Included Charge

Green argues that the trial court erred in finding attempted first degree burglary was a lesser included charge of first degree burglary, the charge for which Green was on trial. Because of this alleged error, Green contends the trial court further erred in instructing the jury on the charge of attempted first degree burglary. We disagree.

"A trial [court] is required to charge a jury on a lesser included offense if there is evidence from which it could be inferred that a defendant committed the lesser offense rather than the greater." *State v. Gilliland*, 402 S.C. 389, 400, 741 S.E.2d 521, 527 (Ct. App. 2012) (alterations in original) (quoting *State v. Drafts*, 288 S.C. 30, 32, 340 S.E.2d 784, 785 (1986)). "The test for determining whether one offense is a lesser included offense of another 'is whether the greater of the two offenses includes all the elements of the lesser offense. If the lesser offense includes an element not included in the greater offense, then the lesser offense is not included in the greater.'" *Id.* (quoting *Hope v. State*, 328 S.C. 78, 81, 492 S.E.2d 76, 78 (1997)); see *State v. Elliott*, 346 S.C. 603, 606, 552 S.E.2d 727, 728 (2001); *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005).

Green was indicted under section 16-11-311(A) of the South Carolina Code (2003). The pertinent portions of the indictment alleged:

That Richard Avon Green did in Sumter County on or about May 4, 2010 enter the dwelling of Rita Davis located at [address] without consent and with the intent to commit a crime therein and when, in affecting entry or while in the dwelling or in immediate flight and the entering or remaining occurred in the nighttime, in violation of section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

The State asked the trial court to charge the common law crime of attempted burglary as a lesser included charge, not the statutory crime of entering without breaking. "To prove attempt, the State must prove that the defendant committed an overt act, beyond mere preparation, in furtherance of the intent to commit the crime." *State v. Reid*, 393 S.C. 325, 329, 713 S.E.2d 274, 276 (2011) (citing *State v. Nesbitt*, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001)). "[W]here an attempt crime exists, it is properly considered a lesser included offense of the completed offense, so long as the completed offense is a felony." *State v. Elliott*, 346 S.C. 603, 616, 552 S.E.2d 727, 734 (2001) (Pleicones, J., dissenting) *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005) (citing *State v. Hiott*, 276 S.C. 72, 276 S.E.2d 163 (1981)).

Notably, in *Hiott*, our supreme court found no logic in the defendant's position that an attempted offense is not a lesser included offense in the completed offense because incompleteness of the offense is in itself a separate and distinct element. 276 S.C. at 72, 80, 276 S.E.2d at 168. We also find *State v. Murphy*, 322 S.C. 321, 471 S.E.2d 739 (Ct. App. 1996), to be instructive. In *Murphy*, this court stated that

[a]ssault is an unlawful attempt or offer to commit a violent injury upon another person, coupled with the present ability to complete the attempt or offer by a battery. Assault differs from assault and battery in that there is no touching of the victim in an assault. Accordingly, [assault of a high and aggravated nature] is a lesser included offense of [assault and battery of a high and aggravated nature], without the completed act of violence.

322 S.C. at 325, 471 S.E.2d at 741 (internal citation omitted).

We find that the trial court was correct in ruling that attempted first degree burglary is a lesser-included charge for the charge of first degree burglary. Similar to the situation in *Murphy*, here, attempted first degree burglary is a lesser included offense of first degree burglary, without the completed act of entering the premises. Thus, we affirm the trial court's decision to instruct the jury on the charge of attempted first degree burglary.

Enlarged Indictment

Green argues that even if attempted burglary is a lesser included charge of first degree burglary, the trial court improperly enlarged the indictment when he charged the jury with attempted burglary. We disagree.

Green cites *Bailey v. State*, 392 S.C. 422, 709 S.E.2d 671 (2011), to support its position.¹ We believe Green's interpretation of our supreme court's ruling in *Bailey* disregards the pertinent explanation of its decision. The court in *Bailey* explained that "[i]n South Carolina, [i]t is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the

¹ *Bailey* was a PCR appeal. Nevertheless, it involves the issue of whether the trial court improperly enlarged the indictment.

particular offense charged in the bill of indictment." *Bailey*, 392 S.C. at 433, 709 S.E.2d at 677 (quoting *State v. Gunn*, 313 S.C. 124, 136, 437 S.E.2d 75, 82 (1993) (alterations in original)). "A material variance between charge and proof entitles the defendant to a directed verdict; such a variance is not material if it is not an element of the offense." *Id.* (quoting *Gunn*, 313 S.C. at 136, 437 S.E.2d at 82).

"[W]hile a conviction may be sustained under an indictment which is defective because it omits essential elements of the offense, such is not true when the indictment facially charges a complete offense and the State presents evidence which convicts under a different theory than that alleged." *Id.* (quoting *Thomason v. State*, 892 S.W.2d 8, 11 (Tex. Crim. App. 1994)). "A conviction under the latter circumstance violates principles of due process . . . because the State has failed to prove beyond a reasonable doubt every fact necessary to constitute the crime with which a defendant was charged." *Id.* at 434, 709 S.E.2d at 677 (quoting *Thomason*, 892 S.W.2d at 11).

"Bailey's indictment only apprised him that he had to 'defend against the allegation that he inflicted the physical injuries resulting in the victim's death.'" *Id.* at 436, 709 S.E.2d at 678. "A careful review of the jury's questions and the ensuing discussion with the judge reveals that the jury focused on the terms of the indictment and recognized the alternative elements in the homicide by child abuse statute, *i.e.*, an 'act' versus an 'omission.'" *Id.* "The foreman of the jury then stated the jury found 'no evidence' that Bailey struck the [v]ictim." "Based on this statement and the reference to the last line of the indictment, it is evident the jury was inquiring as to whether a finding of 'neglect' on the part of Bailey was sufficient for a conviction under the statute." *Id.* "The judge's supplemental instructions, which were confusing and contradictory, resulted in the erroneous directive that the jury could find Bailey guilty of homicide by child abuse if it found an act of 'abuse *or* neglect.'" *Id.* "Such an instruction was in direct contravention of the specific act alleged in the indictment and, thus, constituted a material variance or a 'constructive amendment' to the indictment." *Id.*

Here, Green alleged the State should have moved to amend the indictment to include any allegation of "attempting to enter" the dwelling. Green argues because the State did not move to do so, the trial court improperly enlarged the indictment. We disagree. Green was apprised of the fact that the State was trying to prove first degree burglary by showing he entered the victim's home. Unlike in *Bailey*, where the trial court allowed for a conviction upon a theory not alleged in the indictment, here, the same theory was used by the State under the attempted burglary and first

degree burglary charge. Green was on notice of the charge and its lesser included offenses. Accordingly, we affirm the trial court.

CONCLUSION

For the foregoing reasons, the trial court is

AFFIRMED.

HUFF and GEATHERS, JJ., concur.

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FORM 5

RECORDED

Referred to: Gowley, Jm
Answered: _____

STATE OF SOUTH CAROLINA

COUNTY OF Sumter

Richard A. Green # 291708
Full name and prison number (if any) of Applicant.

2014 MAR 3 11:44:00 COURT OF COMMON PLEAS

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2014-CP-43-636

v.

State of South Carolina

APPLICATION FOR
CERTIFIED TRUE COPY
OF ORIGINAL FILE

POST-CONVICTION RELIEF
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

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

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

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 McCormick Corr. Inst
2. Name and location of Court which imposed sentence Sumter County General Sessions Court
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-43-1050
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 09-14-2011
 - (b) 20 yrs

- (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. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Heard Nov. 14, 2013 - Filed January 2, 2014
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Opinion No. 5187
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE Assistance of Counsel
 (b) Due Process Violation
 (c) Subject-matter Jurisdiction

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) "See Attachment Behind this page"
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? N/A
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 (d) any other petitions, motions or applications in this or any other Court? N/A

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. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____

1 THE COURT: All right, Solicitor, what's
2 the next matter?

3 MR. MEADORS: If it pleases Your Honor.

4 THE COURT: Yes, sir.

5 MR. MEADORS: At this time the State would
6 call the State of South Carolina versus Richard A.
7 Green. This is a Sumter County true bill indictment
8 2010-GS-43-1050, indictment for burglary in the
9 first degree. Mr. Green is present in the courtroom
10 with his attorney Mr. Hastie, Your Honor.

11 THE COURT: All right, ladies and
12 gentlemen of the jury, if you would give me your
13 attention. As you have heard, the State has
14 announced the — that they have called the case
15 State versus Richard Avon Green. What I'm going to
16 tell you now is not evidence of anything. It is
17 simply the allegations of the indictment, and I tell
18 you this so you can determine if you've heard
19 anything about the case or anything will prevent you
20 from serving as a juror in this matter. But the
21 State of South Carolina accuses Mr. Green, or says
22 that Mr. Green did in Sumter County on or about May
23 4th of 2010 enter the dwelling of Rita Davis located
24 at [REDACTED] Black River Road without consent and with
25 intent to commit a crime therein and in effecting

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR

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

At a Court of General Sessions, convened on September 2, 2010 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONEBURGLARY, 1ST DEGREE

That Richard Avon Green did in Sumter County on or about May 4, 2010 enter the dwelling of Rita Davis located at [REDACTED] Black River Rd without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight and the entering or remaining occurred in the nighttime, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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



SOLICITOR

ATTACHMENT

11.

- A. Trial counsel was ineffective for not objecting to Attempted First Degree Burglary where the Statute of Limitations has run out on informing the accused of the violation, "See Exhibit -1 and Exhibit-2," before the date of the indictment and the sworning of the Jury.
- B. Defendant is entitled to be tried only on charges set forth in indictment And appraise the defendant of what he must be prepared to meet at trial, And before the sworning of the Jury.
State vs. Beam, 336 S.C. 45, 518 S.E. 2d 297
C CT. App. 1998).
- C. Defendant in criminal case is entitled to be tried only on charges set forth in indictment, As Trial Court lacked Subject matter Jurisdiction to convict defendant for offense, when there was no indictment charging him with Attempted First Degree Burglary offense before the jury is sworning. The lesser offense includes an element that's not included in the greater offense "Overt Act" or the indictment.

MOORE

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- N/A
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) P.C.R. Court is the Jurisdiction Court
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of: yes

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

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

- (a) the name and address of each attorney who represented you:
- i. Calvin Hastle - 7 East Hampton Ave., Sumter, S.C. 29150
- ii. Calvin Hastle - 7 East Hampton Ave., Sumter, S.C. 29150
- iii. Dayne C. Phillips - Post Office Box 11589, Columbia, S.C. 29211
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Sentencing
- iii. Appeal

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

Vacate sentence and conviction, New trial

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

NO

STATE OF SOUTH CAROLINA

County of Sumter)
)
)

VERIFICATION

I, Rae, 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.

Richard H. Green

SWORN to and subscribed before me this 27
day of March, 2014.

J. Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

I, RAG 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.

Richard A. Green
Applicant

SWORN or affirmed to and subscribed before me this
27 day of March, 2014.

Franklin
Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Richard A. Green, # 291708,	)	2014-CP-43-636
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Amended Return to the application for post conviction relief (PCR) filed March 3, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the September 2010 term of the Sumter County Grand Jury for Burglary – First Degree (2010-GS-43-1050). Calvin Hastie, Esquire represented Applicant. Applicant proceeded to trial before the Honorable Howard P. King. On September 14, 2011, Applicant was found guilty of the lesser included offense of Common Law Robbery. Judge King sentenced Applicant to a twenty year term of imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf by Dayne C. Phillips, Esquire and Carmen Ganjehsani, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Richard Green, Op. No. 5187 (Ct. App. filed January 2, 2014). The Remittitur was issued on January 22, 2014.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel was ineffective for not objecting to attempted first degree burglary where the statute of limitations has run out on informing accused of violation..."
2. Due Process Violation
 - a. "Defendant is entitled to be tried only on charges set forth in indictment and appraise the defendant of what he must be prepared to meet at trial, and before the swearing of the jury."
3. Subject Matter Jurisdiction
 - a. "Defendant in criminal case is entitled to be tried only on charges set forth in indictment, as trial court lacked subject matter jurisdiction to convict defendant for offense, when there was no indictment charging him with attempted first degree burglary offense before the jury is sworn in. The lesser offense includes an element that's not included in the greater offense "overt act" or the indictment."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

August 11, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2014-CP-43-636
	)	
RICHARD A. GREEN, #291708,	)	
	)	
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:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 11th day of August, 2014.


 Caroline Kaiser, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA))
COUNTY OF SUMTER)) COURT OF COMMON PLEAS

RICHARD A. GREEN)
291708

PETITIONER,)

v.)

TRANSCRIPT OF RECORD
14-CP-43-636

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

October 2, 2014
Sumter, South Carolina

B E F O R E :

THE HONORABLE CLIFTON B. NEWMAN, JUDGE

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

LANCE S. BOOZER, ESQ.
Attorney for the Petitioner

DANIEL GOURLEY, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1
2 MR. GOURLEY: This is Richard Green versus
3 the State of South Carolina, docket number
4 2014-CP-43-636. He's presently confined in the
5 South Carolina Department of Corrections pursuant to
6 order of commitment of the Sumter County Clerk of
7 Court. He was true bill indicted at the
8 September 2010 term of Sumter County grand jury for
9 burglary first degree. Mr. Hastie represented him.
10 He proceeded to a trial before the Honorable Howard
11 P. King on September 14th, 2011. He was found
12 guilty of lesser included offense of common law --
13 no, lesser included offense of attempted burglary
14 first degree. Judge King sentenced him to 20 year
15 term of imprisonment. A timely notice of appeal was
16 filed on applicant's behalf by Dane C. Phillips and
17 Carmen Ganjehsani. South Carolina Court of Appeals
18 affirmed the applicant's conviction, and the
19 remittitur was issued on January 22nd, 2014. He
20 filed a timely application for post-conviction
21 relief on March 3rd, 2014, alleging that he was
22 being held in custody unlawfully based on
23 ineffective assistance of counsel for failing to
24 object to the attempted first degree burglary, due
25 process violation, and a subject matter jurisdiction

1 violation. The State filed its return on
2 August 11th, 2014, and he is represented in this
3 matter by Mr. Lance Boozer. I'll turn it over to
4 Mr. Boozer, Your Honor.

5 THE COURT: All right. Mr. Boozer.

6 MR. BOOZER: Thank you, Your Honor, if it
7 pleases the Court, just very briefly. My client
8 sent to me recently, as the Attorney General is
9 aware, a motion to amend his PCR application with
10 maybe five or six allegations. I've forwarded those
11 to Mr. Gourley, and it's my understanding the State
12 does not object to his amendments so we'll just put
13 them on the record through testimony from the
14 witness.

15 THE COURT: All right.

16 MR. GOURLEY: And Mr. Boozer did forward
17 us the amendments, Your Honor, so we have no
18 objection to those.

19 THE COURT: All right, it is amended then.

20 MR. GOURLEY: Thank you.

21 MR. BOOZER: Thank you, Your Honor. And
22 at this time we're prepared to call Mr. Green to the
23 stand.

24 THE CLERK: Place your left hand on the
25 Bible, raise your right hand. State your name

PW - R. GREEN - DIRECT

1 please.

2 THE PETITIONER: Richard Avon Green.

3 WHEREUPON,

4 **RICHARD A. GREEN,**

5 having been duly sworn by the Clerk of Court,

6 testified as follows:

7 THE CLERK: Thank you. Have a seat up
8 here please. Please state your name and spell your
9 last name for the record.

10 THE PETITIONER: Richard Avon Green,
11 G-R-E-E-N, Green.

12 THE COURT: Yes, sir.

13 MR. BOOZER: Thank you, Your Honor.

14 **DIRECT EXAMINATION**

15 BY MR. BOOZER:

16 Q Mr. Green, do you know why you're here today?

17 A Yes, sir.

18 Q Okay. And why is that? What are you asking the
19 Court for today?

20 A For PCR. I'm here for a PCR hearing.

21 Q And what's your understanding of a PCR hearing?

22 A That I can either get my case reversed and have a
23 new trial if it's deemed fit.

24 Q Okay. And you're -- what was your original
25 charge? What were you charged with?

PW - R. GREEN - DIRECT

1 A Burglary first degree.

2 Q Okay. And you had a trial?

3 A Yes, sir.

4 Q And what did you get convicted of at trial?

5 A I got convicted of attempted burglary first
6 degree.

7 Q Okay. Now you've obviously filed an application
8 for post-conviction relief, and I want to go through
9 your allegations, okay.

10 A Okay.

11 Q Tell me what your allegations are.

12 A That I don't think that I should, you know, had
13 gotten 20 years after the fact that I went to trial
14 and was indicted on first degree burglary and after
15 I, you know, got found not guilty that they
16 sentenced me to 20 years on attempted burglary,
17 which I was never indicted for or they never amended
18 indictment to give me a lesser included offense.

19 Q Okay. Well, let's kind of walk through these so
20 we can outline for the Court, not if I may, for a
21 little bit of leeway, Your Honor, in walking through
22 these.

23 THE COURT: Yes, sir.

24 MR. BOOZER: Thank you, Your Honor.

25

PW - R. GREEN - DIRECT

1 BY MR. BOOZER:

2 Q All right. You've alleged that trial counsel was
3 ineffective for not objecting to attempted first
4 degree burglary; is that correct?

5 A That's one of them.

6 Q Okay. Tell me about that allegation.

7 A Just like I said, I think, you know, he should
8 have had object to it, you know, because it was
9 not -- I was never indicted for that. I never had a
10 trial on that. I was never put on notice for a
11 attempted burglary.

12 Q Okay. Explain to the Court what happened at your
13 trial.

14 A Okay. After we went through, went through all
15 our proceedings, my lawyer asked for direct verdict.
16 The judge ---

17 Q On what charge?

18 A On a first degree burglary.

19 Q Okay.

20 A And the judge, he granted the direct verdict of
21 acquittal. And so after I was acquitted, he said I
22 wasn't going home, said he was going to go in his
23 chamber and look in the books, see what else he
24 could charge me with. And after he did that he went
25 in his chamber, and he came back out and said he was

PW - R. GREEN - DIRECT

1 charging me — instead of finding — instead of
2 charging me with a first degree burglary, he now
3 gonna charge me with attempted burglary. So now he
4 called the jury back out, tell the jury, okay,
5 instead of y'all deliberate on first degree
6 burglary, y'all deliberate on attempted burglary. I
7 never had no trial for attempted burglary. I never
8 had the chance to defend myself for attempted
9 burglary.

10 Q Okay. So your allegation is you were charged
11 with burglary first degree, did a motion for
12 directed verdict on burg first, and then the jury is
13 ultimately charged with attempted burglary, which is
14 what you got convicted of?

15 A Yes, sir.

16 Q And you feel like your lawyer was ineffective for
17 allowing that to go forward?

18 A Yes, sir.

19 Q Okay, all right. Let's move on. You also
20 alleged due process violation whereby you say that
21 you're entitled to be tried only on the charges set
22 forth in your indictment, which you were indicted
23 for burg first and apprized, failure to apprize you
24 of what you must be prepared to meet at trial and
25 before the swearing of the jury?

PW - R. GREEN - DIRECT

1 A Yes, sir.

2 Q What's your complaint with regard to that
3 allegation?

4 A That I never, that you know, he should have
5 objected to that, you know, whatever possibly he
6 could do because, I mean, I was never, I never -- we
7 never went to trial for attempted burglary. We
8 never, never in our trial was nothing, during the
9 time of trial was nothing mentioned about attempted
10 burglary, nothing whatsoever.

11 Q Now your third allegation that you originally
12 filed is, again, along those same lines. You've got
13 a subject matter jurisdiction violation, and in
14 that -- and I'm just paraphrasing. You tell me
15 whether this is correct or not, your allegation.
16 You're entitled to be tried only on the charges set
17 forth in the indictment, and you feel that the trial
18 court lacked subject matter jurisdiction to convict
19 you of the attempted burglary after the jury was
20 sworn?

21 A Yes, sir.

22 Q Okay. Explain your complaint with regard to that
23 allegation.

24 A Well, number one, you know, like Joseph versus
25 State it states that circuit court does not have

PW - R. GREEN - DIRECT

1 subject matter jurisdiction to convict a defendant
2 of an offense unless there's an indictment which
3 sufficiently state that offense.

4 Q Okay. Is that your main complaint and issue as
5 far as that allegation?

6 A Yeah, to due process because I was never, you
7 know, indicted for that.

8 Q Okay.

9 A I never, you know, we never went to trial for
10 that.

11 Q Okay. All right, you also filed an amended
12 application, is that right?

13 A Yes, sir.

14 Q Which you forwarded to my office?

15 A Yes, sir.

16 Q And you've alleged some issues with that as well?

17 A Yes, sir.

18 Q All right. Tell me -- you've alleged that
19 ineffective assistance of counsel for failing to
20 raise the defense of no presence at the alleged
21 location?

22 A Yes, sir.

23 Q What's your -- tell the Court your complaint with
24 that.

25 A That when I went like -- okay, when I find out

PW - R. GREEN - DIRECT

1 that there was, they was looking for me, I turn
2 myself in, you know, and I stated to the police that
3 I was never there at the crime, at the crime scene.
4 And I went to court, I mean, when I first met
5 Mr. Hastie I told Mr. Hastie that I was never
6 present at the crime scene, and that was never
7 brought up in the, at no time in the trial.

8 Q Okay. So what was your defense in this case?

9 A My defense, really, was I was never there. That
10 was number one defense.

11 Q Okay. Who testified that you weren't, you were
12 not there?

13 A Ain't nobody testified to that.

14 Q Okay. And why is that?

15 A I have no idea. You know, me myself, I didn't
16 get on the stand, you know, during the trial which I
17 couldn't, you know, thought that should have been
18 brought up.

19 Q Did you and your attorney discuss putting forth
20 the defense that you were not there at the time of
21 this incident?

22 A No. We never discussed it. Like I say, I told
23 him about it but we never discussed none of that.

24 Q All right. Had you gone to trial — had you
25 testified what would you have said?

PW - R. GREEN - DIRECT

1 A I would tell them that, you know, I was never
2 there.

3 Q Where were you?

4 A I was at home.

5 Q What were you doing?

6 A Sleeping, had to have been at 1:00 in the
7 morning.

8 Q All right. Is that all with regard to that
9 allegation?

10 A Yes, sir.

11 Q All right. Let's move on to your next amended
12 allegation, and that's counsel failed to challenge
13 the validity of your identification which you call a
14 physical characteristics at the relevant time.
15 What's your complaint with what your lawyer did
16 there?

17 A That I was never, you know, that ain't nobody
18 never put me in no lineup, never do none of that.
19 You know, she never like positive identify me in
20 lineup or nothing.

21 Q What should your lawyer have done differently
22 that he didn't do with regard to that allegation?

23 A I feel like he know he should have objected, you
24 know, object to she saying, by she saying she know
25 me. I mean, that's -- I mean, okay, so you know me,

PW - R. GREEN - DIRECT

1 so therefore, that right there is telling you that
2 you, I mean, that I have a record; because you got a
3 record, you're gonna call my name, you know. And I
4 mean, I feel like he should have objected to that.

5 Q Okay. Do you feel like he cross-examined the
6 witness with regard to your identification?

7 A No.

8 Q Is there anything else you have with regard to
9 that allegation?

10 A No, sir.

11 Q All right. Your third amended allegation is
12 counsel failed to adequately object to the trial
13 judge's instruction on submitting attempted
14 burglary. We've addressed that in your original
15 allegation. Is there anything else you want to add
16 to that allegation?

17 A No, sir.

18 Q Okay. On your fourth amended allegation you have
19 trial counsel failed to challenge the element of
20 attempt or intent in regard to your alleged conduct.
21 Tell the Court what your complaint is with regard to
22 your counsel's actions or inactions with regard to
23 that allegation.

24 A Okay. Because, I mean, the conviction of attempt
25 is grounded on mere presumptions, you know, and

PW - R. GREEN - DIRECT

1 not — I mean, they had no type of evidence
2 whatsoever and my lawyer, you know, he never object
3 to it. And I mean, it seem like, like they say you
4 presumed innocent until proven guilty. I think I
5 was presumed guilty until proven innocent in that
6 case.

7 Q Okay. What other complaints do you have with
8 regard to that allegation?

9 A No other complaint.

10 Q All right. You also have another amended
11 allegation which is along the same lines of three of
12 the ones we already outlined which is counsel failed
13 to challenge a violation of double jeopardy for
14 prosecution of the same offense, which I'm assuming
15 is the attempted burglary you're talking about?

16 A Yes, sir.

17 Q Okay. What's your complaint with regard to that,
18 if anything is different from what your prior
19 complaints have been?

20 A It's no different.

21 Q Okay, so that's the same as your other
22 complaints?

23 A Yes, sir.

24 Q All right. Now who was your lawyer in this case?

25 A Mr. Calvin Hastie.

PW - R. GREEN - DIRECT

1 Q How did you come about having Mr. Hastie
2 represent you?

3 A Well, when I was locked up in the county they --
4 you fill out application for a counsel.

5 Q So he was appointed lawyer?

6 A Yes, sir.

7 Q All right. Had you had any other lawyers prior
8 to that?

9 A No, sir.

10 Q This was your first one?

11 A Yes, sir.

12 Q Did you have a preliminary hearing?

13 A Yes, sir.

14 Q All right. Who represented you at the
15 preliminary hearing?

16 A Some guy out of their office; that's all I know.
17 I don't even know his name.

18 Q Well, what happened at the preliminary hearing?

19 A We went through the preliminary. My lawyer, he
20 never -- whoever the guy was, he never said nothing.
21 Everything they said he went along with it.

22 Q Okay. Tell me a little bit more about your
23 meetings with Mr. Hastie. How many times did y'all
24 meet?

25 A We met like, I want to say, like two or three

PW - R. GREEN - DIRECT

1 times.

2 Q Did you ever bond out on this?

3 A No, they wouldn't give me no bond.

4 Q What'd y'all talk about during your meetings?

5 A Just talk about, you know, talk about this case,
6 you know, about the burglary first degree and that,
7 you know, that he don't see where they could convict
8 me of a burglary first degree because there was
9 simply no evidence to convict me.

10 Q Okay. Was there ever a plea offer?

11 A Yeah, I think it was.

12 Q Do you recall what that was?

13 A I think it was like 10 to 15.

14 Q Why didn't you take that?

15 A Because I didn't commit a crime.

16 Q All right. So your defense all along was you
17 didn't do this?

18 A No, sir.

19 Q All right. Did he tell you the possibility that
20 you could be convicted of attempted burglary?

21 A No, sir.

22 Q Okay. What if he had told you that?

23 A Well, still the fact remain the same, I never
24 commit a crime.

25 Q Do you know what type of investigation your

PW - R. GREEN - CROSS

1 lawyer did?

2 A No, sir.

3 Q All right. Other than what we've covered in
4 your application and your amended allegations and
5 today through your testimony, is there anything else
6 that we have not covered that you wish to bring to
7 the Court's attention with regard to your
8 allegations?

9 A No, sir, I don't -- let me see. No, sir.

10 Q Okay.

11 MR. BOOZER: Your Honor, I don't have any
12 further questions at this time.

13 THE COURT: All right. I ask a question
14 for clarification, was this a guilty verdict
15 appealed?

16 MR. GOURLEY: It was, Your Honor.

17 THE COURT: And what did the Court of
18 Appeals say?

19 MR. GOURLEY: The issue on appeal was
20 whether or not trial judge erred charging attempted
21 murder -- or attempted burglary first and the Court
22 of Appeals affirmed the decision.

23 THE COURT: Okay.

24 MR. GOURLEY: Mr. Green -- may it please
25 the Court, Your Honor.

1 THE COURT: Yes, sir.

2 **CROSS-EXAMINATION**

3 BY MR. GOURLEY:

4 Q Mr. Green, you stated you met with Mr. Hastie two
5 or three times before your trial?

6 A Yes, sir.

7 Q Did y'all go over, like, the evidence and the
8 discovery material during those meetings?

9 A Yes, sir.

10 Q Okay. And did y'all talk about any defenses?

11 A Excuse me?

12 Q Any defenses, did y'all discuss any kind of way
13 to defend this charge?

14 A I imagine so, yeah.

15 Q You recall what they were?

16 A No, sir.

17 Q Okay. But you you're claiming you weren't there?

18 A No, sir, I wasn't there.

19 Q Okay. And you were just at home asleep?

20 A Yes, sir.

21 Q Was anybody else there?

22 A No, I stay my myself.

23 Q Okay. Did you give him leads or witnesses to
24 look into on your behalf?

25 A No, sir.

PW - R. GREEN - CROSS

1 Q Okay. Now you recall the court reading you your
2 fifth amendment rights, your right to testify, so on
3 and so forth, at your trial?

4 A Yes, sir.

5 Q And you chose not to testify?

6 A Yes, sir.

7 Q Okay. And the victim positively I.D.'d you as
8 the alleged person trying to break in her house,
9 right?

10 A Yes, sir.

11 Q And then she I.D.'d you in the courtroom as well,
12 right?

13 A Yes, sir.

14 Q And then in regards to the intent element, the
15 State alleged that you had cut the phone lines and
16 that you had tried to break in her garage door, so
17 on and so forth, right?

18 A Yes, sir.

19 Q Okay.

20 MR. GOURLEY: Your Honor, that's all I
21 have.

22 Thank you, Mr. Green.

23 THE COURT: All right. Any redirect?

24 MR. BOOZER: No redirect, Your Honor.

25 THE COURT: Thank you, sir.

RW - C. HASTIE - DIRECT

1 Your next witness, Mr. Boozer.

2 MR. BOOZER: No further witnesses on
3 behalf of the State — or behalf of Applicant, Your
4 Honor.

5 THE COURT: All right, yes, sir.

6 MR. GOURLEY: Yes, Your Honor, we call
7 Mr. Hastie to the stand please.

8 THE COURT: Mr. Hastie.

9 THE CLERK: Place your left hand on the
10 Bible, raise your right hand. State your name
11 please.

12 THE WITNESS: Calvin Hastie.

13 THE CLERK: Thank you. Have a seat.

14 WHEREUPON,

15 **CALVIN HASTIE,**

16 having been duly sworn by the Clerk, testified as
17 follows:

18 THE CLERK: State your full name, spell
19 your last name for the record.

20 THE WITNESS: Calvin Kenneth Hastie, Sr.,
21 H-A-S-T-I-E.

22 MR. GOURLEY: May it please the Court,
23 Your Honor.

24 THE COURT: Yes, sir.

25 **DIRECT EXAMINATION**

RW - C. HASTIE - DIRECT

1 BY MR. GOURLEY:

2 Q Mr. Hastie, how long have you been practicing
3 law?

4 A About 15 years.

5 Q Okay. And do you recall approximately when you
6 were appointed?

7 A March, approximately March of 2012.

8 Q Okay. And how many times did you meet with the
9 applicant prior to this trial?

10 A I would say four or five times.

11 Q And was he cooperative during your course of
12 representation?

13 A Yes, he was.

14 Q Did you file Rule 5 and Brady motions?

15 A Yes, I did.

16 Q Were you able to review that material with Mr.
17 Green?

18 A Yes, I did.

19 Q And prior to his trial did y'all discuss the
20 elements and the State's burden?

21 A We certainly did.

22 Q And do you recall his version of the facts?

23 A Just as he said, he just said he wasn't there,
24 they must have the wrong person.

25 Q Okay. Did he ever give you any leads of

RW - C. HASTIE - DIRECT

1 witnesses to look into on his behalf?

2 A No, he did not.

3 Q What were the possible defenses that y'all
4 discussed to these charges?

5 A Well my -- the biggest defense at that time for
6 the first burglary was that there was not an
7 entering and they could not and did not prove an
8 entering. That's why we wanted a direct verdict.

9 Q And you actually made a directed verdict motion
10 during the trial?

11 A Yes, I did.

12 Q And the judge granted your directed verdict on
13 the burg first because of that argument?

14 A Yes, he did.

15 Q Okay. And then the judge charged or allowed the
16 jury to consider attempted burglary first degree?

17 A Yes, he did.

18 Q And did you object to that?

19 A Certainly did.

20 Q And are you familiar with the Court of Appeals
21 decision on that objection?

22 A Yes, I am.

23 Q And they affirmed that decision by Judge King,
24 correct?

25 A That's right.

RW - C. HASTIE - DIRECT

1 Q Okay. And can you briefly describe the State's
2 evidence against Mr. Green.

3 A Really, it was the lady, the witness, the home
4 that he was accused of breaking in, this was a,
5 someone that knew him very well so. And she
6 described him that he would, attempted to break into
7 her home. She saw him from the window she said.
8 She saw him from the peep hole in the door. So she
9 was able to describe him. That was her story on the
10 stand.

11 Q And she actually I.D.'d him in the courtroom as
12 well?

13 A Yes, she did.

14 Q Do you recall your investigation in this case?

15 A Yes, but without any witnesses we only had the
16 investigative report and things like that to review,
17 but yes.

18 Q You feel you were prepared for trial?

19 A Oh, yes.

20 Q Beg the Court's indulgence, Your Honor.

21 Mr. Hastie, do you know of anything of a defense of
22 no presence? Are you familiar with that?

23 A Yes, yes.

24 Q Did you feel that that was applicable to this
25 factual circumstance?

RW - C. HASTIE - DIRECT

1 A May have been, but we've got a witness saying
2 that she was, you know, he was — she was a hundred
3 percent he was there.

4 Q Okay. Did y'all discuss Mr. Green taking the
5 stand during trial?

6 A Yes, we did.

7 Q Okay. And what was that discussion?

8 A I always tell my clients the final decision is
9 theirs and we talked about it. Of course, Mr. Green
10 as you know, has extensive record, many charges
11 related to similar charges; and at the end of the
12 day it was decided by him that he not take the
13 stand.

14 Q Okay. Did you feel that you had a basis to
15 challenge the witness' identification of Mr. Green?

16 A Yes, and it was challenged by me during the
17 process. Because as he said, it was at night.

18 Q That would have been through cross-examination of
19 the witnesses?

20 A Yes, right.

21 Q Did you challenge the intent element of this
22 crime?

23 A Yes.

24 Q Okay. Did you feel there was any basis to raise
25 a double jeopardy claim?

RW - C. HASTIE - CROSS

1 A I did not.

2 Q Okay. Thank you, Mr. Hastie.

3 MR. GOURLEY: Your Honor, that's all the
4 questions I have.

5 THE COURT: All right.

6 **CROSS-EXAMINATION**

7 BY MR. BOOZER:

8 Q How are you doing, Mr. Hastie?

9 A Just fine, how are you?

10 Q I'm doing fine, thank you. What was Mr. Green's
11 position in this case throughout the whole time you
12 represented him?

13 A The whole time was that, Mr. Hastie, they got the
14 wrong guy. I really felt sorry for him. I thought
15 we had a strong case, and evidently we did on the
16 first degree burglary which is the only offense he
17 was indicted with and we won that, so he said he
18 wasn't there, they had the wrong guy.

19 Q Did he ever tell you who the other guy may have
20 been?

21 A Not to my recollection.

22 Q Okay. Did he tell you where he was, or did y'all
23 get into that?

24 A Yes. Of course he said he was home asleep, but
25 there were no witnesses that he could produce.

RW - C. HASTIE - CROSS

1 Q Let me ask you this, you've heard Mr. Green's
2 testimony. Was there an offer that had been made?

3 A Yes, there was an offer.

4 Q And do you recall what that offer was?

5 A It was around ten years offer.

6 Q Okay. What was, obviously we know what his
7 response was 'cause he went to trial; but on your
8 recollection, how did that conversation go and what
9 was his response?

10 A Well, of course he did not want to consider an
11 offer because he was completely innocent. That has
12 been his position all the time. He was never there,
13 and he wasn't -- didn't want to consider that offer.
14 He didn't want to plead guilty to something he did
15 not do, was his position.

16 Q Let me ask you this, and the Attorney General may
17 have already asked, what was y'all's trial strategy
18 going into this case?

19 A Well, our strategy was with the -- of all the
20 evidence that I saw in the record, they never could
21 prove that there was a entering into this house that
22 the young lady claimed he was trying to break into.
23 So we -- that was our main strategy there. And at
24 the end of the day they never could prove, and Judge
25 King said, you all never proved that Mr., that he,

RW - C. HASTIE - CROSS

1 Green, entered that premises.

2 Q How about his -- and again, you heard his
3 testimony today. How about his position that, you
4 know, not only did he not enter the house but he
5 wasn't even there, how did -- how were you able to
6 put forth that defense?

7 A Well, you know, our position was he wasn't there.
8 They couldn't prove that he wasn't there. She
9 thought he was there. There was a fellow like him,
10 someone dressed like him, she described him to a
11 tee. Well, there are many folks that were dressed
12 like him at that particular time. There were no
13 fingerprints. They said he pulled up on the garage
14 door. They had no fingerprint record of that or
15 anything like that so we just kind of stuck with
16 that.

17 Q Did y'all put up any witnesses on the defense's
18 behalf that you recall?

19 A I don't think so.

20 Q Okay. Who would have been able to testify that
21 he wasn't there?

22 A Well, again, he's home asleep by himself so
23 that's the problem. He couldn't produce anyone that
24 could say I -- he had family members but none of
25 them wanted to get involved in the trial or anything

1 like that.

2 Q Do you recall making the argument in closing that
3 not only did he not enter, but he wasn't there?

4 A Well, yea, that was our whole premise from the
5 very beginning, that he wasn't there, you all got
6 the wrong guy, he definitely was not there.

7 Q Going back to how the court came to the -- you
8 made a motion for directed verdict on the burg
9 first?

10 A Yes, sir.

11 Q And you were successful in that?

12 A Yes.

13 Q Did you explain to him -- kind of tell us 'cause
14 we can't really see, we go back in time and see what
15 happened, but what was going on at that time, were
16 you explaining to Mr. Green what was happening and
17 why the court was doing what it was doing?

18 A On the directed verdict or on further --

19 Q On the directed verdict, then seg-waying into the
20 jury being charged with attempted burg?

21 A Because there was no talk of going any further
22 until the directed verdict was won. Then the motion
23 was made by the attorney -- I don't recall his name.
24 Then that's when objected to it, opposed. He was
25 only charged with first degree burglary. We had

RW - C. HASTIE - CROSS

1 sidebars and things like that because, and you'll
2 see in the transcript where Judge King said, I was
3 preserve my right to, on my objection of going
4 forward in this matter. And the judge say he wasn't
5 sure whether they could or not so he left the bench
6 and did some research and then came back and said
7 that he could, and that's what he charged the jury
8 with.

9 Q Did you explain to Mr. Green prior to, I mean,
10 was this something unexpected that came up or did
11 you think going in that you could get a DV on the
12 burg first and that would either be it; or did you
13 think you could get DV on burg first, then the jury
14 would be charged with the attempt?

15 A I didn't think there would be a charge with
16 attempt. That was our discussion. We -- he was not
17 indicted on the attempt. I talked with the
18 Solicitor and there was no discussion from the
19 Solicitor's Office about charging him with the
20 attempt so when they came with that, it was kind of
21 a surprise to us.

22 Q Okay. So did you discuss that possibility with
23 Mr. Green prior to the trial that he could ---

24 A No.

25 Q ---the jury could be charged on attempt?

RW - C. HASTIE - CROSS

1 A No, Mr. Green is right, we did not talk about
2 that. We're preparing for the fight. The fight was
3 first degree burglary. In our view we won the
4 fight.

5 Q You had indicated on questioning by the State
6 that you attempted to change the element of intent
7 or attempt which you've heard is one of Mr. Green's
8 allegations here.

9 A Yes.

10 Q How did you attempt to challenge the attempt
11 element?

12 A Oh, well, you'll see in the transcript, I think
13 it's on page 200, where I opposed it; and Judge King
14 said, you are protected. Let me see can I find his
15 exact words. He got a little tired of me making
16 that point.

17 THE COURT: Judge King got tired of you?

18 THE WITNESS: Yes, sir, he was quite clear
19 about it. But anyway, I thought I had it marked.

20 On page 203 Judge King said, Mr. Hastie, other than
21 the fact that you disagree and take exception to the
22 charge of attempted burglary in the first degree
23 going to the jury at all, which the record is noted
24 on that, and your position is protected and are
25 there any other additions or exceptions so.

RW - C. HASTIE - CROSS

1 BY MR. BOOZER:

2 Q All right. Let's jump back in time a little bit
3 further. Do you recall -- did you represent him at
4 his preliminary hearing?

5 A No, I did not.

6 Q Do you know who did or why you didn't?

7 A No, I'm not -- no, I don't know who did.

8 Q Okay. Do you know why it wouldn't have been you?

9 A Sometimes there may be some type of conflict.
10 Sometime the preliminaries come up so fast before
11 they assign an attorney, and the Public Defender's
12 Office -- if you notice how even the Solicitor's
13 Office operate right now, one solicitor goes to the
14 preliminary hearings and represent all the cases.
15 And the public defender was doing something very
16 similar. Then when someone gets assigned, then
17 that's your case.

18 Q Looking at even though you didn't argue
19 preliminary hearing and looking at all the evidence
20 that you've seen and going through the trial, do you
21 think this was a case that had it been argued at the
22 preliminary hearing would have been one that could
23 have been successful?

24 A Preliminary hearing?

25 Q Yes, sir.

1 A No, I seriously doubt that, not at the
2 preliminary hearing.

3 MR. BOOZER: Court's indulgence Your
4 Honor.

5 THE COURT: All right.

6 MR. BOOZER: Your Honor, that's all the
7 questions I have for Mr. Hastie. Thank you, sir.

8 MR. GOURLEY: I just have one question.

9 **REDIRECT EXAMINATION**

10 BY MR. GOURLEY:

11 Q Mr. Hastie, would your defense strategy changed
12 had you known that Mr. Green was gonna be facing
13 attempted burglary first degree charge?

14 A Probably not because I felt that there was
15 absolutely no evidence that he was there, that they
16 could prove that and that they did prove that. So
17 we probably — the strategy would not have changed.

18 Q And that was Mr. Green's story, that he was not
19 there?

20 A He just was not there and I believe in what he
21 was saying.

22 Q Thank you, Mr. Hastie.

23 MR. GOURLEY: No further questions, Your
24 Honor.

25 THE COURT: All right. You may step down.

1 MR. GOURLEY: Your Honor, that's the
2 State's case.

3 THE COURT: All right. Any argument?

4 MR. BOOZER: None from the applicant, Your
5 Honor.

6 THE COURT: All right.

7 MR. GOURLEY: I don't have any, Your
8 Honor.

9 THE COURT: It's an interesting issue.
10 It's clear from the transcript that Mr. Hastie did
11 everything he could do to try to win this case for
12 Mr. Green. It's really not a PCR issue; it's an
13 appellate issue. Mr. Hastie raised all the issues,
14 objected to everything. Everything that Mr. Green
15 now is saying here that Mr. Hastie should have done,
16 he did. Mr. Green is not complaining about
17 Mr. Hastie; he's complaining about the judge. And
18 that's what the appeal is all about, if the judge
19 made an error of law. And in fact, in the
20 transcript the judge said, well, if I'm wrong the
21 Court of Appeals will tell me that I'm wrong. And
22 it went to the Court of Appeals and the Court of
23 Appeals agrees that the judge ruled properly. I had
24 this similar issue in a trial where a guy was, he
25 was caught under a house and he was charged with

1 burglary and he was caught under the house and so
2 the State charged him with burglary, and at the
3 close of the evidence I had that same issue. Well,
4 can I, should I direct a verdict or what. And of
5 course, he didn't enter the house, he was under the
6 house, so in that instance I directed a verdict.
7 Now the solicitor objected saying, well judge, it
8 should be attempted burglary or attempt to get in a
9 house I guess, and but I directed a verdict and they
10 were upset about it. So this case, and just looking
11 at the appeal and what the court is reviewing here,
12 this whole issue all over again as to, well, if he,
13 if the facts clearly indicated that he did not enter
14 then why did the State allege in the indictment that
15 he entered. And after the State couldn't prove that
16 he entered, then should the State been allowed to
17 have a jury consider the lesser included of
18 attempting to enter, or even if attempt is a lesser
19 does it really materially change the charge. And
20 I'm just looking through this opinion where the,
21 they are -- Mr. Hastie said that the State was just
22 trying to -- what were the words you used? -- they
23 were just trying to piece something together or they
24 lost so they were just trying to create something to
25 save the case. And, you know, the judge listened to

1 the whole thing. And I guess that here Green
2 alleges they should have moved to amend the
3 indictment to include attempting to enter the
4 dwelling because they didn't attempt to amend the
5 indictment, then the judge improperly allowed them
6 to enlarge the indictment; and the Court of Appeals
7 and my good friend Judge Lockemy says, we disagree,
8 wrote the opinion. And they brought up cases from
9 all over the country including Texas and other South
10 Carolina cases, and they ultimately concluded that
11 Green was on notice for the charge and its lesser
12 included offenses. And this is a relatively recent
13 opinion here by the Court of Appeals. It just came
14 out in January 2014. I'm sure it's probably some
15 request for the Supreme Court to review it. They
16 may or may not -- I don't know if there is or there
17 isn't, but typically in many of these instances some
18 of them will request the Supreme Court to review the
19 opinion of the Court of Appeals and it might stand
20 or it may not, who knows, but ---

21 MR. GOURLEY: Your Honor, I believe cert
22 has already been denied by Supreme Court.

23 THE COURT: Oh, cert denied. It'd been a
24 good case for cert to have been granted because it
25 does present an interesting issue. But the statute

1 that says a person attempts to commit a certain
2 offense then is punishable as if they committed the
3 offense, or they completed the attempted act. Now
4 of course on the stand here Green says he's guil--
5 he was home asleep, but the lady says I know him.
6 Known him a long time, no doubt about it, he was the
7 one, and he's in effect, he's lucky he didn't get in
8 my house 'cause had he gotten in, he would have been
9 blown away, he wouldn't have had a trial, he'd have
10 on boot hill. So the jury was satisfied from her
11 description that he wasn't home asleep; he was there
12 trying to break in her house. So it's a question of
13 law, not a question whether the lawyer could have
14 done anything.

15 Mr. Hastie could not make the judge do
16 anything. He argued until he made the judge mad.
17 Any reason -- another good issue is when the jury
18 came back with the way the verdict form was
19 configured, the jury had certain boxes crossed out
20 and put in a box saying that we're split on
21 something and the judge spoke with the forelady and
22 had her to correct it, correct the verdict form to
23 clearly indicate what the decision was. And during
24 the process of receiving the verdict and polling the
25 jury, they concluded that the verdict form was

1 proper. Mr. Hastie objected to that saying that it
2 seemed as if the judge was a little too involved in
3 the completion of the verdict form, that he should
4 have sent the jury back and given them a clean form,
5 let them clearly indicate what they decided when
6 crossing anything out. So Mr. Hastie once again got
7 on the judge's nerve by arguing that issue after the
8 polling of the jury. So it's nothing the lawyer did
9 wrong; he did a great job. He did all he could do.
10 In fact, he just lost the case. And whether or not
11 the law should be as it is, the Court of Appeals
12 affirmed the judge. The Supreme Court decided not
13 to consider it anymore and the Court of Appeals the
14 cites some other supreme court cases where they
15 contend clearly that it shows that the manner which
16 the judge addressed it was proper. You know, I
17 would have the same concern the defense had as I did
18 in the case that I referred to where the guy was
19 under the house, you know, I directed a verdict
20 because if he didn't -- he was under the house
21 cutting wires. He didn't try to come in the house.
22 I guess he -- I don't know why he was under the
23 house; but you know, that was not, it wasn't
24 burglary to me because he didn't attempt to enter.
25 In this case it's a little -- well, this is, this is

1 a different case in that Green attempted to enter
2 the house; he just wasn't under the house. So of
3 course, the fellow I directed a verdict for, he's
4 since committed another burglary and he's got his
5 just due. But there is no basis for a PCR in this
6 case. I can understand, and if Green was a lawyer
7 he'd be there arguing it perhaps instead of
8 Mr. Hastie, and claiming that because he didn't get
9 in, can't be guilty of attempted burglary; but
10 that's what he's guilty of, attempted burglary
11 'cause he attempted to get in. The question was
12 whether or not the charge should have been different
13 in the manner in which the jury had to consider the
14 charge. Of course it didn't happen like Mr. Green
15 said about the judge going back in chambers and
16 figuring out a new charge and all that. Everything
17 was clearly on the record. This is a — it's an
18 interesting transcript and interesting issue, and it
19 is what it is so I deny this PCR. If you will draw
20 an order for me, Mr. Attorney General.

21

22 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

23

24

25

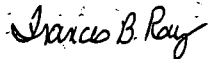
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 19th day of February, 2015.



FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Richard A. Green, #291708,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED
) IN THE COURT OF COMMON PLEAS
2014 NOV 20 PM 4:08 FOR THE THIRD JUDICIAL CIRCUIT

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2014-CP-43-636

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hester
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 3, 2014. Respondent made its return on August 11, 2014. An evidentiary hearing in to the matter was convened on October 2, 2014, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the September 2010 term of the Sumter County Grand Jury for Burglary – First Degree (2010-GS-43-1050). Calvin Hastie, Esquire represented Applicant. Applicant proceeded to trial before the Honorable Howard P. King. On September 14, 2011, Applicant was found guilty of the lesser included offense of Attempted Burglary—First Degree. Judge King sentenced Applicant to a twenty year term of imprisonment.

A timely Notice of Appeal was filed on Applicant's behalf by Dayne C. Phillips, Esquire and Carmen Ganjehsani, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Richard Green, Op. No. 5187 (Ct. App. filed January 2, 2014). The Remittitur was issued on January 22, 2014.

ALLEGATIONS

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Trial Counsel was ineffective for not objecting to attempted first degree burglary where the statute of limitations has run out on informing accused of violation..."
2. Due Process Violation
 - a. "Defendant is entitled to be tried only on charges set forth in indictment and appraise the defendant of what he must be prepared to meet at trial, and before the swearing of the jury."
3. Subject Matter Jurisdiction
 - a. "Defendant in criminal case is entitled to be tried only on charges set forth in indictment, as trial court lacked subject matter jurisdiction to convict defendant for offense, when there was no indictment charging him with attempted first degree burglary offense before the jury is sworn in. The lesser offense includes an element that's not included in the greater offense "overt act" or the indictment."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from Calvin Hastie. (hereinafter "Trial Counsel"). This Court also had before it a copy of the trial transcript, the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant testified that he met with Trial Counsel approximately two to three times prior to his trial. Applicant recalled reviewing all discovery material with Trial Counsel prior to trial. Applicant recalled discussing the possibility of arguing to

the jury that he was not present at the crime scene. Applicant stated that he did not give Trial Counsel any leads or witnesses to investigate on his behalf. Applicant stated Trial Counsel explained that he did not feel the State could meet their burden of proof for a charge of burglary—first degree.

Applicant stated Trial Counsel should have objected when the trial judge allowed the case to proceed on the lesser included offense of attempted burglary—first degree. Applicant explained that he was indicted for burglary—first degree and he was never put on notice for attempted burglary—first degree. Applicant stated he should not have received a twenty year sentence for attempted burglary—first degree because he was never indicted for attempted burglary—first degree. Applicant stated that his due process rights were violated because he was not indicted for attempted burglary—first degree. Applicant further stated the court did not have subject matter jurisdiction because he was not indicted on attempted burglary—first degree.

Applicant stated he received ineffective assistance of counsel due to Trial Counsel's failure to fully argue the defense of "no presence." Applicant explained that he was never at the crime scene. Applicant stated he turned himself into the police and explained to them that he was never present at the crime scene. Applicant stated that he was at home sleeping when the crime occurred.

Applicant further stated Trial Counsel was ineffective for failing to challenge the victim's identification. Applicant stated the police failed to show victim a photo lineup. Applicant stated there was never a positive identification as a result of a photo lineup. Applicant stated Trial Counsel should have cross-examined the victim on her identification of him.

Following Applicant's testimony, Trial Counsel was called to testify by the State. Trial Counsel stated he has been practicing law for approximately fifteen years. Trial Counsel stated he was appointed to represent Applicant in March 2010. Trial Counsel stated he met with Applicant

approximately four to five times prior to trial. Trial Counsel stated he filed for and reviewed with Applicant all Rule 5 and Brady material. Trial Counsel stated he and Applicant discussed the various elements of burglary—first degree.

Trial Counsel stated that the State offered a ten year plea deal. Trial Counsel stated Applicant rejected the plea offer and claimed his innocence. Trial Counsel stated Applicant did not want to plead to a crime that he did not commit. Trial Counsel stated that his trial strategy was to argue that the State could not prove that Applicant was the person who committed this crime. Additionally, Trial Counsel stated he also argued that the State could not prove that the perpetrator entered the dwelling. Trial Counsel stated there was no physical evidence linking Applicant. Specifically, Trial Counsel stated there was no finger print evidence or DNA evidence. However, Trial Counsel stated there were no witnesses to call on Applicant's behalf because Applicant claimed he was at home sleeping when the crime occurred. Trial Counsel stated he called Applicant's various family members, but they all refused to get involved.

Trial Counsel stated he discussed Applicant version of the facts. Specifically, Applicant claimed he was innocent and was never present at the crime scene. Trial Counsel stated he and Applicant discussed various defenses, but ultimately it was Trial Counsel's opinion that the State would not be able to prove that Applicant actually entered the dwelling. Trial Counsel stated his opinion was correct as the trial judge granted Trial Counsel's directed verdict motion. However, the trial court allowed the case to proceed on the lesser included offense of attempted burglary—first degree. Trial Counsel stated he was surprised by the trial judge's ruling and did not expect that Applicant was going to be facing an attempted burglary—first degree charge. As a result, Trial Counsel stated he strenuously objected to the case proceeding on a charge of attempted burglary—first degree. Trial Counsel stated even though the case proceeded on an attempted burglary—first

degree charge it would not have changed his defense because Applicant continually asserted that he was not present. Trial Counsel stated that the issue was preserved and reviewed by the South Carolina Court of Appeals. Trial Counsel stated the South Carolina Court of Appeals affirmed Applicant's conviction and sentence for attempted burglary—first degree.

Trial Counsel stated the victim positively identified Applicant as the person attempting to break into her home. Trial Counsel stated the victim knew Applicant very well and she was able to identify him through her peep hole on the door. Trial Counsel stated victim positively identified Applicant in the court room. Trial Counsel stated there were no additional witnesses. Trial Counsel explained that Applicant claimed he was at home asleep, yet no one could verify that he was at home. Trial Counsel stated he attempted to argue that Applicant was not present and did not commit the crime due to the lack of physical evidence. However, Trial Counsel stated the victim was positive Applicant was the person who attempted to break into her home. Trial Counsel stated he did not want Applicant to take the stand because of his extensive criminal record.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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.

*Ineffective Assistance of Trial Counsel for failing to object to the Trial Court submitting the claim of attempted first degree burglary to the jury after it granted a directed verdict in his favor on the charge of first degree burglary.*¹

This Court finds Applicant's allegation that Trial Counsel was ineffective for failing to object to the Trial Court submitting the claim of attempted first degree burglary to the jury after it granted a directed verdict in his favor on the charge of first degree burglary to be without merit.

¹ This Court address Applicant's allegations of Subject Matter Jurisdiction and Due Process violation as one allegation that Trial Counsel was ineffective for failing to object to the Trial Court submitting the claim of attempted first degree burglary to the jury after it granted a directed verdict in his favor on the charge of first degree burglary.

This Court notes that this exact issue was objected to by Trial Counsel and properly preserved for appellate review. This issue was briefed and argued by Appellate Defense and the Court of Appeals affirmed Applicant's conviction and sentence. Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Additionally, this Court finds Counsel's actions were reasonable in the circumstances, and did not fall below professional norms of reasonableness. Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Based off of the foregoing, this Court finds this allegation should be denied and dismissed with prejudice.

Additionally, this Court finds Applicant can show no prejudice as there was clear overwhelming evidence of guilt. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial). Applicant was positively identified by victim as the person who attempted to break into her house. (Tr. p. 52 line 24—p.53 line 5; p. 57 lines 4-10). Victim further positively identified Applicant in the courtroom during trial. (Tr. p. 66 line 20—p. 67 line 4). Accordingly, this Court finds that Applicant has failed to meet his burden of proof and thus, this allegation is denied and dismissed with prejudice.

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 testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

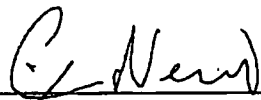
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that ^{and} ~~that~~ Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12th day of November, 2014.


 CLIFTON NEWMAN
 Presiding Judge
 Third Judicial Circuit

Coleman, South Carolina

WITNESSES

W: Gardner Sheriff Sumter County

DOCKET NO. 2010-GS-43-1050

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2010

THE STATE

vs.

RICHARD AVON GREEN

ARREST WARRANT NUMBER

M441204

ACTION OF GRAND JURY

True Bill

Forfeiture of Grand Jury
Date: 5-2-10

VERDICT

Indictment for

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

C. KELLY JACKSON, SOLICITOR

Forfeiture of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

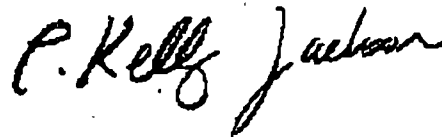
Burglary / Burglary (After June 20, 1985) - First degree

At a Court of General Sessions, convened on September 2, 2010 the Grand Jurors of
 SUMTER County present upon their oath:

COUNT ONEBURGLARY, 1ST DEGREE

That Richard Avon Green did in Sumter County on or about May 4, 2010 enter the dwelling of Rita Davis located at [REDACTED] Black River Rd without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight and the entering or remaining occurred in the nighttime, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Sumter

VS.

Richard Avon Green

AKA:

Race: 2

Sex: M

Age: 46

DOB: [REDACTED]

SS#: [REDACTED]

Address:

City, State, Zip: Rembert, SC 29128

DL#:

SID#:

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

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

☒ CONVICTED OF or ☐ PLEADS

TO: Attempt / Attempt, Common Law, Punish as to principal offense (violent if violent offense)

in violation of § 16-1-80

of the S.C. Code of Laws, bearing CDR Code # 1151

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

John P. Meadows 10479

Manning, Glenn B

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

20

days/months/years or

☐ under the Youthful Offender Act not to exceed

and/or to pay a fine of \$

-

; provided that upon the service of

-

days/months/years and/or payment

of \$

-

; plus costs and assessments as applicable*: the balance is suspended with probation for

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. *Since 9am 15, 2010*☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ DeL. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 137.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ca

\$

Proviso 90.5 (SCCA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

TOTAL

\$

133.90

Clerk of Court/ Deputy Clerk

James C. Campbell

Court Reporter:

Margaret Sullivan

SCCA217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-43-1050

A/W#: M441204

Date of Offense: 5/4/2010

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

Presiding Judge

Judge Code:

Sentence Date:

Howard P. King
2107
9-14-11☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.