

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

\_\_\_\_\_  
Appeal from Lancaster County

DeAndrea G. Benjamin, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**

AUG 12 2016

**SC SUPREME COURT**

CHARLES HENRY DAVIS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000049

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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STATE OF SOUTH CAROLINA  
COURT OF GENERAL SESSIONS  
COUNTY OF LANCASTER  
2007-GS-29-00866 and 00867

State of South Carolina  
vs.  
Charles Davis

Lancaster, South Carolina  
February 13, 2013  
Before the Honorable Brooks P. Goldsmith

APPEARANCES

For the State: Randy Newman  
For the Defendant: Mark Grier  
  
Reported by: Michael C. Watkins  
Official Court Reporter

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## PRETRIAL MOTIONS

1 THE COURT: Have you heard from your client?

2 MR. GRIER: No, I haven't.

3 THE COURT: Do you want a continuance? Are you ready  
4 to go?

5 MR. GRIER: For the record, I do. Judge, I would make  
6 a motion for a continuance. We have made efforts to contact  
7 him, I have called the numbers that the solicitor has  
8 provided me for contacts that are supposed to be used to be  
9 able to contact him, we have exhausted all means. I have  
10 written him and asked him to contact me since the last  
11 trial, or the last one that didn't end up being a trial and  
12 have lost contact with him. A bench warrant has been issued  
13 and his bonds lady is looking for him and I think the -- we  
14 would just ask for a continuance in this case so that I  
15 could have my client present. I think it's prejudicial when  
16 he's not and it causes difficulties in defending him and he  
17 is not able to participate in the defense of his case.

18 THE COURT: Solicitor?

19 MR. NEWMAN: Your Honor, he was noticed about this case  
20 last term, he was here, we told him we were going forward,  
21 he was very aware of it. We are prepared to go forward  
22 today and we are opposed to a continuance.

23 THE COURT: Refresh my memory, the last term of court,  
24 or the last term I was here was last month?

25 MR. NEWMAN: Last month.

## PRETRIAL MOTIONS

1 THE COURT: This case was called for trial; is that  
2 right?

3 MR. NEWMAN: Correct. He was here the day before the  
4 case was called if I recall.

5 MR. GRIER: Can I correct? This case actually was not  
6 called for trial technically just so the record is clear.

7 MR. NEWMAN: He was here the day before the jury came  
8 in and he was informed the case was going to be called,  
9 however due to some indictment issues this case was not  
10 called but another case of his was called, he didn't show up  
11 for that either.

12 THE COURT: All right. What makes you think that he  
13 knows that if he doesn't show up for trial this week that he  
14 might be tried in his absence?

15 MR. NEWMAN: He signed the bond papers which state "it  
16 has been explained to me that if I fail to appear before the  
17 court as required a warrant will be (blank) for my arrest.  
18 I have a right and obligation to be present at trial and  
19 should I fail to attend the court the trial will proceed in  
20 my absence, signed Charles Davis, May 26, 2007."

21 THE COURT: During the last term of court when he was  
22 here, was he advised -- wasn't he advised then? That's what  
23 I'm a little fuzzy on, was he advised when he was here that  
24 he had to be here for his trial and if he wasn't here that  
25 he would be tried in his absence?

## PRETRIAL MOTIONS

1 MR. NEWMAN: I believe he was, Your Honor. In fact I  
2 remember myself and Mr. Grier had a conversation about it  
3 and I offered to put something on the record and Mr. Grier  
4 said, "No, I understand, if he's not here we're going  
5 forward."

6 MR. GRIER: I can't specifically remember that but that  
7 is not unlikely.

8 THE COURT: I find that the defendant knew or should  
9 have known that he had to be here this week for trial, that  
10 he has failed to appear and therefore he has waived his  
11 right to be present at his trial.

12 (Start of Voir Dire.)

13 THE COURT: And solicitor, do we have a case ready for  
14 trial.

15 MR. NEWMAN: Yes, sir, Your Honor. State calls the  
16 case of State versus Charles Davis, indictment number  
17 2007-GS-29-0886, he is charged with burglary in the first  
18 degree. Also State versus Charles Davis, indictment number  
19 2007-GS-29-0867, assault and battery of a high and  
20 aggravated nature.

21 THE COURT: Ladies and gentlemen, you've heard just a  
22 moments ago we are about to begin the case of the State of  
23 South Carolina versus Charles Henry Davis charged with two  
24 offenses, both occurring on the same dates in Lancaster  
25 County. The burglary first degree apparently involves the

## VOIR DIRE

1 entering -- unlawful entering of the dwelling of Sharita  
2 Colbert, on February 11th of 2007. The other assault and  
3 battery of a high and aggravated nature once again on the  
4 same date involved one Leon Caskey, Sr. that involved the  
5 striking of Leon Caskey, Sr. with a pistol. Once again --  
6 I'm sorry, I didn't say once again, these are the  
7 allegations that are contained in the indictments and that  
8 will be explained to you later. The reason I tell you that  
9 is I'm going to ask you a few questions in a moment, I want  
10 to make sure that nobody is related to anybody or anybody  
11 that has been involved in this case. Before I begin asking  
12 you the questions I'm going to ask you, the attorneys that  
13 are going to be involved in the case are going to stand and  
14 identify themselves to you and identify to you the names of  
15 any witnesses who may be called in the case, after that I'm  
16 going to ask you about your relationship, if any, with the  
17 attorneys, with the witnesses, with the defendant himself.  
18 We will begin with the State. Solicitor?

19 MR. NEWMAN: My name is Randy Newman, assistant  
20 solicitor. Assistant Solicitor Andy Cook may be in and out  
21 of the courtroom with me. As far as witnesses we have from  
22 the Lancaster Police Department Phillip Hall. Lancaster  
23 Police Department Brian Small. Lancaster County Sheriff's  
24 Office Charles Campbell. Chester County EMS Rickey Bell who  
25 has not made it in yet. Ms. Sharita Colbert in the back of

VOIR DIRE

1 the room. And Mr. Leon Caskey who is also in the back of  
2 the room.

3 THE COURT: Thank you, Mr. Newman. Mr. Grier?

4 MR. GRIER: I'm Mark Grier, I've been practicing law in  
5 this area since 1990, I represent Charles Davis in this  
6 case.

7 THE COURT: Thank you, sir. Now, ladies and gentlemen,  
8 the first question I have is this: Has any member of the  
9 jury panel ever been related by blood or related by marriage  
10 to any of the attorneys who are involved in this case or to  
11 any of the witnesses that have been identified to you or to  
12 the defendant himself? If you've ever been related by blood  
13 or marriage to any of the those defendants if you will  
14 please stand and give us your juror number and then tell me  
15 why you stood. And I'm going to let the lady who stood in  
16 the front row answer first. Yes, ma'am, your name and  
17 number?

18 THE JUROR: My name is Catherine Reeves.

19 THE CLERK: Number 110.

20 THE JUROR: And Randy Newman is my nephew.

21 THE COURT: She's telling the truth? I take it then  
22 that you -- not only is he your nephew but that you have  
23 occasion to see him on a regular basis?

24 THE JUROR: Not regularly, no, sir.

25 THE COURT: Not enough or too much?

VOIR DIRE

1 THE JUROR: Mostly on the Internet.

2 THE COURT: All right. Thank you, ma'am. Yes, sir,  
3 your name?

4 THE JUROR: I'm Jeff Faulkenberry, juror number 44.  
5 I'm related To Phillip Hall.

6 THE COURT: How is that?

7 THE JUROR: Cousins.

8 THE COURT: First, second or --

9 THE JUROR: His mother and my father are brother and  
10 sister.

11 THE COURT: Let me ask you a similar question, do you  
12 ever see your cousin?

13 THE JUROR: Oh yeah.

14 THE COURT: I really do seriously have several cousins  
15 that I haven't seen in several years.

16 THE JUROR: Not every week, but yeah, regular.

17 THE COURT: But on a regular basis? You think that  
18 might interfere with your ability to sit as a fair and  
19 impartial juror in this case?

20 THE JUROR: It might, I don't know. I can try it, it  
21 don't matter. I'm just related to him.

22 THE COURT: All right. In other words you think you  
23 might be -- nevertheless be able to sit and be a fair and  
24 impartial juror in this case despite the fact that he was  
25 related to you?

## VOIR DIRE

1 THE JUROR: No, probably not.

2 THE COURT: I'm sorry?

3 THE JUROR: No, probably not.

4 THE COURT: Do you think it might interfere with your  
5 ability to be fair?

6 THE JUROR: Might.

7 THE COURT: Has any member of the jury panel ever had a  
8 close personal or social relationship with any of the  
9 attorneys involved in the case, any of the witnesses that  
10 have been identified to you or with the defendant himself?  
11 Have you ever had a close personal or social relationship  
12 with any of those individuals? If so, please stand. We  
13 need to get your name, please.

14 THE JUROR: Helen McDowell, number three. Mark Grier  
15 and I were neighbors for years and years.

16 MR. GRIER: And she still likes me.

17 THE COURT: How long ago did that cease being the  
18 situation?

19 THE JUROR: We have been moved about 12 years.

20 THE COURT: Twelve years ago?

21 THE JUROR: Still, you know, contact.

22 THE COURT: Still have communication with him and see  
23 him?

24 THE JUROR: Uh-huh.

25 THE COURT: When you were his neighbor were you a

VOIR DIRE

1 neighbor that lived across the pasture 10 miles away or  
2 50 yards from him?

3 THE JUROR: We use the same driveway right beside.

4 THE COURT: That kind of neighborhood. Well, do you  
5 think that relationship, Ms. McDowell, might interfere with  
6 your ability to sit on this jury and be a fair and impartial  
7 juror?

8 THE JUROR: I would think not.

9 THE COURT: You would think not? Well, I need to ask  
10 you about it really. Do you think that you would be able to  
11 listen to the evidence and be fair to both the State and to  
12 the defense?

13 THE JUROR: Yes, sir, I think I could.

14 THE COURT: Has anyone ever been represented by any of  
15 the attorneys involved in this case? If so, please stand.  
16 Has any member of the jury panel formed or expressed an  
17 opinion about any issue or any matter involved in this case?  
18 If so, please stand. Is any member of the jury panel or  
19 member of your immediate family related by blood or marriage  
20 to any member of law enforcement? Are you or any member of  
21 your immediate family related by blood or marriage to any  
22 member of law enforcement? If so, please stand. Let me ask  
23 the lady who is closest to me on the left, stand, give me  
24 your name, number and tell me why.

25 THE JUROR: Cheryl Poliquin, juror 107. My son is a

VOIR DIRE

1 border patrol agent.

2 THE COURT: I take it that is not in Lancaster County.

3 THE JUROR: He lives in Arizona.

4 THE COURT: Okay. Thank you, ma'am.

5 MR. GRIER: We couldn't understand her.

6 THE JUROR: My son is a border patrol agent.

7 THE COURT: Son was a border patrol agent. Yes, ma'am,  
8 your name and number?

9 THE JUROR: Laura Boone, and I don't remember my  
10 number.

11 THE CLERK: Thirteen.

12 THE JUROR: Barry Faile, the Lancaster County Sheriff  
13 is my brother-in-law, he's married to my sister.

14 THE COURT: That is probably a little bit too close a  
15 relationship for to you sit on this jury.

16 THE JUROR: Jeff Faulkenberry, 44.

17 THE COURT: Yes, sir?

18 THE JUROR: Again, Phillip Hall.

19 THE COURT: Same relationship?

20 THE JUROR: Yes, sir.

21 THE COURT: Yes, ma'am?

22 THE JUROR: Alice Pierce, 106. My brother-in-law is a  
23 homicide detective and my sister-in-law is a FBI agent.

24 THE COURT: Now, which locals are they in?

25 THE JUROR: In Arizona and New York.

## VOIR DIRE

1 THE COURT: The lady closest to me.

2 THE JUROR: My husband is a retired senior agent for.

3 THE COURT: Got to get your name and number first.

4 THE JUROR: Barbara Sherburne, 117.

5 THE COURT: Yes, ma'am?

6 THE JUROR: My husband is a retired senior agent with

7 the US Customs Service and currently does background

8 investigations for the government.

9 THE COURT: Is he retired?

10 THE JUROR: Well, technically they never retire. He

11 thinks no, I say yes.

12 THE COURT: Let me ask you this, did he have a badge or

13 anything or --

14 THE JUROR: Yes, sir, and he carries a gun.

15 THE COURT: And he carries a weapon?

16 THE JUROR: Yes, sir.

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

18 THE JUROR: You are welcome.

19 THE COURT: Yes, ma'am, your name and number?

20 THE JUROR: Denise Jordan, Gloria Jordan. My cousin,

21 Mike Oliver, is the captain of the highway patrol in South

22 Carolina.

23 THE COURT: I'm going to ask you a similar question to

24 the one I asked earlier, first cousin, third cousin?

25 THE JUROR: First cousins.

## VOIR DIRE

1 THE COURT: Do you ever see him?

2 THE JUROR: I have not seen him in ages.

3 THE COURT: Anyone else? Has any member of the jury

4 panel or member of your immediate family ever been the

5 victim of a violent crime or house breaking or burglary?

6 Ever been the victim of a violent crime or house breaking or

7 burglary? If so, please stand. Give me your name and

8 number, please, ma'am.

9 THE JUROR: House breaking -- what did you say?

10 THE COURT: A burglary or house breaking, kind of the

11 same thing. Does that apply to you? Your name and number

12 again? Yes, ma'am.

13 THE JUROR: 117, Barbara Sherburne.

14 THE COURT: Yes, ma'am?

15 THE JUROR: I had my home broken into when I lived in

16 Florida.

17 THE COURT: How long ago was that?

18 THE JUROR: Thirty years.

19 THE COURT: Home was broken into.

20 THE JUROR: Items were stolen.

21 THE COURT: And what was stolen?

22 THE JUROR: Items were stolen.

23 THE COURT: Were you or any family member at home when

24 this occurred?

25 THE JUROR: No, sir.

## VOIR DIRE

1 THE COURT: Nighttime, daytime or do you know?

2 THE JUROR: Daytime while I was at work.

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

4 THE JUROR: 143, Lula Williams. Our home was broken  
5 into about ten years ago, I wasn't at home so I don't know  
6 the time it was broke in or anything.

7 THE COURT: Ten years ago your home was broken into.  
8 Were any items taken?

9 THE JUROR: Yes.

10 THE COURT: Were they recovered?

11 THE JUROR: Yes, but we didn't get them back.

12 THE COURT: Okay. And I've forgotten your name and  
13 number.

14 THE JUROR: Alice Pierce, 106. This would involve my  
15 sister, does that apply?

16 THE COURT: Say it one more time.

17 THE JUROR: It involves my sister, would that apply?

18 THE COURT: Yes.

19 THE JUROR: Her apartment was broken into and she was  
20 there and there was an attempted rape.

21 THE COURT: And how long ago?

22 THE JUROR: Twenty years ago.

23 THE COURT: Apprehension of the suspect?

24 THE JUROR: No.

25 THE COURT: All right. Thank you. Is any member of

VOIR DIRE

1 the jury panel aware of any bias or any prejudice that they  
2 may have towards either the State or -- the State or the  
3 defendant in this case? If so, please stand. Is there any  
4 member of the jury panel who is a member of or contributor  
5 to any group which has as its primary concern the promotion  
6 or law enforcement or victims rights, such groups would  
7 include but not be limited to MADD, SADD, CAVE, such groups  
8 similar to that? If so, please stand. Does any member of  
9 the jury panel know of any reason whatsoever why he or she  
10 should not serve as a juror in this case with particular  
11 emphasis on your ability to being fair and impartial to both  
12 the State and to the defendant? If so, please stand.

13 Additional questions from the State?

14 MR. NEWMAN: None from the State.

15 THE COURT: Any additional not already requested from  
16 the defense?

17 MR. GRIER: No, Your Honor.

18 THE COURT: All right. The clerk will call your name,  
19 when he does, please stand. Mr. Clerk?

20 THE CLERK: Juror 113, Raila Roinsalo. What say the  
21 State?

22 MR. NEWMAN: Please present the juror.

23 THE CLERK: Defendant?

24 MR. GRIER: Please swear the juror.

25 THE CLERK: Juror 128, Tina Stuber. What say the

## VOIR DIRE

1 State?

2 MR. NEWMAN: Please present the juror.

3 THE CLERK: Defendant?

4 MR. GRIER: Please excuse the juror.

5 THE CLERK: Juror 84, Angela McFadden. What say the  
6 State?

7 MR. NEWMAN: Please excuse the juror.

8 THE CLERK: Juror 67, Unshenekia Jones. What say the  
9 State?

10 MR. NEWMAN: Please present the juror.

11 THE CLERK: Defendant?

12 MR. GRIER: Please swear the juror.

13 THE CLERK: Juror 104, Sandra Perry. What say the  
14 State?

15 MR. NEWMAN: Please present the juror.

16 THE CLERK: Defendant?

17 MR. GRIER: Please swear the juror.

18 THE CLERK: Juror 95, Joe Mungo. What say the State?

19 MR. NEWMAN: Please present the juror.

20 THE CLERK: Defendant?

21 MR. GRIER: Please excuse the juror.

22 THE CLERK: Juror 68, Gloria Jordan. What say the  
23 State?

24 MR. NEWMAN: Please present the juror.

25 THE CLERK: Defendant?

## VOIR DIRE

1 MR. GRIER: Please swear the juror.

2 THE CLERK: Juror 147, Jennifer Wright. What say the  
3 State?

4 MR. NEWMAN: Please present the juror.

5 THE CLERK: Defendant?

6 MR. GRIER: Please swear the juror.

7 THE CLERK: Juror 139, Rachel Wallace. What say the  
8 State?

9 MR. NEWMAN: Please present the juror.

10 THE CLERK: Defendant.

11 MR. NEWMAN: Please excuse the juror.

12 THE CLERK: Juror 26, Paul Craig. What say the State?

13 MR. NEWMAN: Please present the juror.

14 THE CLERK: Defendant?

15 MR. GRIER: Please swear the juror.

16 THE CLERK: Juror 106, Alice Pierce. What say the  
17 State?

18 MR. NEWMAN: Please present the juror.

19 THE CLERK: Defendant?

20 MR. GRIER: Please excuse the juror.

21 THE CLERK: Juror seven, Michael Barrett. What say the  
22 State?

23 MR. NEWMAN: Please present the juror.

24 THE CLERK: Defendant?

25 MR. GRIER: Please excuse Mr. Barrett.

## VOIR DIRE

1 THE CLERK: Juror 96, Cynthia Noyes. What say the  
2 State?

3 MR. NEWMAN: Please present the juror.

4 THE CLERK: Defendant?

5 MR. GRIER: Please swear the juror.

6 THE CLERK: Juror 108, Mary Price. What say the State?

7 MR. NEWMAN: Please present the juror.

8 THE CLERK: Defendant?

9 MR. GRIER: Please swear the juror.

10 THE CLERK: Juror 78, Tianac Massey. What say the  
11 State?

12 MR. NEWMAN: Please present the juror.

13 THE CLERK: Defendant?

14 MR. GRIER: Please swear the juror.

15 THE CLERK: Juror eight, Gary Belcher. What say the  
16 State?

17 MR. NEWMAN: Please present the juror.

18 THE CLERK: Defendant?

19 MR. GRIER: Please excuse the juror.

20 THE CLERK: Juror 149, Daniel Ziegler. What say the  
21 State?

22 MR. NEWMAN: Please present the juror.

23 THE CLERK: Defendant?

24 MR. GRIER: Please swear the juror.

25 THE CLERK: Juror 42, Penny Eubanks. What say the

## VOIR DIRE

1 State?

2 MR. NEWMAN: Please present the juror.

3 THE CLERK: Defendant?

4 MR. GRIER: Please excuse the juror.

5 THE CLERK: Juror 144, Riketa Williams. What say the

6 State?

7 MR. NEWMAN: Please present the juror.

8 THE CLERK: Defendant?

9 MR. GRIER: Please swear the juror.

10 THE CLERK: Juror 19, Deborah Chambers. What say the

11 State?

12 MR. NEWMAN: Please excuse the juror.

13 THE CLERK: Juror 110, Catherine Reeves. What say the

14 State?

15 MR. GRIER: Judge, may we approach?

16 (Bench conference was held.)

17 THE COURT: I'm granting the motion, disqualify her for  
18 cause.

19 THE CLERK: Juror number 122, Mary Smith. What say the

20 State?

21 MR. NEWMAN: Please present the juror.

22 THE CLERK: Defendant?

23 MR. GRIER: Please present the juror.

24 THE COURT: One alternate.

25 THE CLERK: Juror 101, William Peacock. What say the

## VOIR DIRE

1 State?

2 MR. NEWMAN: Please excuse the juror.

3 THE CLERK: Juror five, Janice Ayres. Any challenge  
4 for cause?

5 MR. NEWMAN: No challenge for cause.

6 THE CLERK: Defendant?

7 MR. GRIER: Please excuse the juror.

8 THE CLERK: Juror ten, Nina Blackmon. Any challenge  
9 for cause by the State?

10 MR. NEWMAN: No challenge.

11 THE CLERK: Defendant?

12 MR. GRIER: Please swear the juror.

13 THE COURT: Any matters of law or challenge to the  
14 selection of the jury from the State?

15 MR. NEWMAN: None, Your Honor.

16 THE COURT: From the defendant?

17 MR. GRIER: None from defense.

18 (The remaining panel was excused.)

19 (Back in the courtroom.)

20 THE COURT: And Mr. Grier?

21 MR. GRIER: Judge I would ask you to quash the  
22 indictment on the assault and battery of a high and  
23 aggravated nature. I was astounded to learn when you were  
24 reading the indictment that the allegations are that my  
25 client used a gun and that's part of the aggravating

## MOTIONS

1 circumstances constituting aggravated assault, because  
2 there's nothing in the police report about a gun being used.  
3 I have been told -- I have not been told by the solicitor  
4 that a gun was being used, I don't know what was presented  
5 to the grand jury to obtain an indictment, I don't know how  
6 that -- of course I'm not privy to how that's obtained. But  
7 if there was information about a gun and that was presented  
8 to the grand jury I think I'm entitled to at least as much  
9 as the grand jury of an aggravating circumstance which will  
10 have a substantial impact on the defense of this case which  
11 I have not had a chance to talk to my client about or to a  
12 any other witnesses about. It's prejudicial, extremely  
13 prejudicial to the defense to be surprised. It's a failure  
14 on the part of the State to disclose material information  
15 that the defense is entitled to, and I strongly object to  
16 proceeding on that indictment because I think it's  
17 prejudicial and that it is just outright wrong, it is a  
18 failure and the proper sanction is to quash that indictment  
19 for failure to disclose information that I am entitled to to  
20 prepare my case.

21 THE COURT: Okay. Solicitor?

22 MR. NEWMAN: Your Honor, first of all I apologize to  
23 Mr. Grier, this is not something that was done purposefully.  
24 As you know, this is a 2007 case, I don't know who started  
25 this case, I just know I ended up with it and the first time

## MOTIONS

1 I spoke with the victim he told me he got hit with a gun.  
2 Of course we didn't have the original indictment, I had to  
3 make those and he was reindicted this past term. I think  
4 we've got ABHAN even without the gun based on the extent of  
5 the injury, that kind of -- you know, I don't see the  
6 difference -- if Mr. Caskey gets up on the stand and says,  
7 "Well, he hit me with a gun." He is there, he can cross  
8 examine him, I don't see the difference as being surprised  
9 with that or being surprised with the indictment, the  
10 indictment is not evidence. That's all I have got.

11 MR. GRIER: Well, Judge, I think, it's, you know, that  
12 some inquiry as to how this was presented to the grand jury  
13 is in order, I don't know even know how that works. Does  
14 the solicitor go in and testify to the grand jury that the  
15 man had a gun? How did they create an indictment that says  
16 a gun is an aggravating circumstance? Did the solicitor  
17 tell them that? There's nothing in the police reports, you  
18 know. Does the solicitor testify to the grand jury? I  
19 don't think so. And so it's improper -- whatever got  
20 presented to the grand jury got improperly presented to the  
21 grand jury and an indictment that says a gun was used and  
22 presented to the grand jury, it just should not have been an  
23 indictment that says that a gun is the aggravating  
24 circumstance, I can't see how that could have or should have  
25 been presented to the grand jury and that indictment coming

## MOTIONS

1 out of it. And I'm not accusing Mr. Newman of intentionally  
2 doing anything of hiding the ball from me, but I think he  
3 has the duty to inform me of newly discovered evidence. The  
4 fact that this case is six years old it ain't my fault, it  
5 ain't my client's fault, and that other solicitors have  
6 handled it, it ain't my fault, it ain't an excuse. I'm  
7 renewing -- certainly I've got that motion, I am renewing my  
8 motion for -- if you deny it I need to make other motions  
9 relevant to it.

10 THE COURT: I'm going to deny it. What's the other  
11 motion?

12 MR. GRIER: I need a recess to investigate the evidence  
13 of these new allegations that I have just learned of and I  
14 need some time to investigate it. There is a difference  
15 between being surprised by a witness on the stand and the  
16 solicitor having knowledge about a case that he doesn't  
17 disclose to you, there is a huge difference between those  
18 two things. I can be surprised by anything that a witness  
19 might say.

20 THE COURT: Solicitor?

21 MR. BARFIELD: Give Mr. Newman and me just a second.

22 THE COURT: All right.

23 (Break in proceedings.)

24 MR. GRIER: Judge, if I may ask you to consider another  
25 thing in my prior motion that you have already denied as

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1 something that I should have put on the record, I mentioned  
2 it earlier when we had our conversation at the bar. I guess  
3 we'll wait and see what they do.

4 MR. NEWMAN: Your Honor, I believe a proper remedy  
5 would be to amend the indictment and take out the three  
6 words with a pistol, then it would just state hitting the  
7 victim causing serious bodily injury, and I can instruct the  
8 victim, Mr. Caskey to not mention pistol on the stand.

9 THE COURT: Mr. Grier?

10 MR. GRIER: Well, you know, Judge, you know, that  
11 undercuts the argument I might have except for the standing  
12 issue of not being told about something I should have had  
13 the opportunity to investigate, but I can't argue that  
14 there's prejudice if the State is willing to do that.

15 THE COURT: All right. I will grant that motion then,  
16 solicitor, under those terms and conditions and order the  
17 witness not to refer to a gun, pistol or similar object.

18 MR. BARFIELD: And before the jury comes in here and  
19 actually start stuff I am sure Mr. Newman is going to need  
20 to talk to the witness, it might be he can do it right now  
21 but at some point before he gets on the stand they need to  
22 have a conversation.

23 MR. GRIER: But Judge, one other issue is this jury has  
24 been told that he has been charged with a gun and that's the  
25 first time I heard it as well. But I'm asking the Court, I

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1 assume you're going to have to make some kind of statement  
2 to the jury about that it was -- you were improperly told  
3 there was a gun.

4 THE COURT: I don't think so. What if the witness in a  
5 regular case -- suppose it had not been -- this issue had  
6 not come up, the original indictment had always said pistol  
7 and the witness did not testify about a pistol, isn't that  
8 where we are? Aren't you at the same place? Because we  
9 tell the jury that the indictment is not evidence.

10 MR. GRIER: Well, I understand that, but --

11 THE COURT: Well, let's suppose the solicitor argued to  
12 the jury in another hypothetical case, "We'll prove to you  
13 the following, bla, bla, bla," and you don't prove it.  
14 Isn't that what you always tell the jury?

15 MR. GRIER: But they have been told that the State is  
16 going to present evidence that this is an aggravated -- that  
17 there was a gun used in an assault, they've been told that  
18 and so --

19 THE COURT: It was an allegation in an indictment.

20 MR. GRIER: I don't know that they are, you know -- I  
21 don't know that it's fair to say that that's comprehended at  
22 the time that you're told -- they were not actually told  
23 that it was an allegation.

24 THE COURT: Yes, they were, I told them.

25 MR. GRIER: They were told after the fact that you made

## MOTIONS

1 the statement that this is an allegation.

2 THE COURT: Yes.

3 MR. GRIER: But not at the time that you made the  
4 statement.

5 THE COURT: But immediately following the statement I  
6 told them it was an allegation contained in the statement.

7 MR. GRIER: And my issue is that at the time they were  
8 told there was a gun they weren't told it was an allegation,  
9 it was a statement as though it were fact.

10 THE COURT: I understand and I'm going to deny your  
11 motion. All right. My plan would be then bring in the  
12 jury, swear them, give them a preliminary charge, make  
13 opening statements and go to lunch, that will give  
14 Mr. Newman time to talk to his witness.

15 (The jury returned to the courtroom.)

16 THE COURT: Ladies and gentlemen, I know you just sat  
17 down but I'm going to ask you to stand back up while the  
18 clerk administers to you an oath.

19 (At this time the jury was sworn.)

20 THE COURT: In just a few minutes, ladies and  
21 gentlemen, we actually are going to begin the trial of this  
22 case, before we do that I want to tell you a few things. As  
23 you recall the defendant in this case is charged by way of  
24 an indictment with assault and battery of a high and  
25 aggravated nature and with burglary in the first degree. I

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1 tell you that these documents do not constitute evidence and  
2 should not be considered by you as evidence in this case,  
3 this is merely the vehicles that bring the case into court.  
4 The defendant has pled not guilty to these indictments and  
5 that puts the burden upon the State to prove to you to your  
6 satisfaction each and every element of the indictment beyond  
7 a reasonable doubt. It would be your duty, ladies and  
8 gentlemen, to decide whether at the end of the day the State  
9 meets its burden of proof. Your purpose as jurors is to  
10 determine the facts of the case. You are the sole judges of  
11 the facts of the case, I am the judge of the law. I tell  
12 you what the law is, I rule about admissibility of evidence  
13 and so on, but you decide what the facts are, and if at any  
14 time I ever do anything to cause you to believe I have an  
15 opinion about the facts of the case, you may disregard that.  
16 I'm not permitted to discuss the facts of the case in your  
17 presence. You decide this case based solely on first of all  
18 what happens in the courtroom, and secondly the sworn  
19 testimony from the witness stand and any documents that  
20 might be properly introduced into evidence. The attorneys  
21 will make comments to you and statements to, you opening and  
22 closing statements, but their comments to you is not  
23 evidence, it's just merely what the attorneys are saying  
24 they think and what they believe. In the opening statement,  
25 which will happen in just a moment, the attorneys will

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1 typically tell you what they think the evidence will prove  
2 or will not prove and then we'll begin taking testimony. At  
3 the conclusion of all of the testimony then the attorneys  
4 will make their closing arguments to you where they try to  
5 convince you to see the case the way they see it, then I  
6 will tell you about the law that applies in the case. Until  
7 the case is completely over, though, you are not permitted  
8 to discuss the case with anybody or let anybody discuss the  
9 case with you. The only people that can discuss the case  
10 with you until the case is over with are we here in the  
11 courtroom, but believe it or not even in the jury room even  
12 among yourselves until the case is over you can't discuss  
13 the case. You can discuss the weather, what you are doing  
14 in your family life, discuss anything you want to, politics,  
15 probably not a good idea but you can, but just not the facts  
16 of this case. From time to time, ladies and gentlemen, you  
17 may ask (sic) as you have already seen the attorneys ask if  
18 they can approach me and talk privately to me, I may call  
19 them over to a side bar, and the reason we do that is not  
20 necessarily to keep secrets from you but it's most likely  
21 because I need to discuss with the attorneys a matter of law  
22 and discussing it may require me to discuss the facts of the  
23 case. And so when we do that when we whisper or we say  
24 things we think you can't hear, it's really not to try to  
25 keep secrets from you, once again it's because it's likely I

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1 am required to discuss a matter with them outside of your  
2 presence. Ladies and gentlemen, we will now have opening  
3 arguments beginning with the State. Solicitor?

4 MR. GRIER: Your Honor, can we approach for a second?

5 THE COURT: Yeah. I told you it was going to happen,  
6 didn't I?

7 (Bench conference was held.)

8 THE COURT: Before the attorneys begin, ladies and  
9 gentlemen, I do want to tell you one other thing. You may  
10 notice the defense counsel at the table and the defendant is  
11 not present. I need to tell you, though, that the defendant  
12 is not required to be present, he may be present but a  
13 defendant in a criminal trial is not required to be present  
14 at the trial. Mr. Newman.

15 MR. NEWMAN: Thank you, Your Honor. May it please the  
16 Court? Ladies and gentlemen, I'm Assistant Solicitor Randy  
17 Newman, I work here for the Honorable Doug Barfield in the  
18 6th Circuit. I want to thank y'all for your service today.  
19 I realize even though I'm here doing what I love to do I  
20 know there's a million other places that y'all would rather  
21 be, but it's very important that y'all are here today. It's  
22 up to y'all to make sure that Mr. Davis gets a fair trial  
23 and this case is up to y'all to decide. You will hear some  
24 testimony and you'll see some evidence. After you see and  
25 hear what you're going to see and hear you're going to know

## OPENING STATEMENTS

1 that beyond a reasonable doubt that Mr. Davis is guilty of  
2 burglary first and assault and battery of a high and  
3 aggravated nature. Burglary first is, definition by the  
4 State, entering a dwelling without consent with the intent  
5 to commit a crime once you get in, and it has to be in our  
6 case in the nighttime. Assault and battery of a high and  
7 aggravated nature is an unlawful act of violent injury to  
8 another accompanied by an aggravating circumstance, and  
9 we'll go through that. I know a lot of that is legal mumbo  
10 jumbo and you might not know what it means but you will know  
11 what it means by the time we're done. I'm going to ask you  
12 to be patient with us. I know a lot of this is not like you  
13 see on TV, we're not going to wrap everything up in a one  
14 hour slot. And like I said, you're going to hear some  
15 testimony and see some evidence and when I'm finished today  
16 you're going to know beyond a reasonable doubt that  
17 Mr. Davis is guilty of burglary first and assault and  
18 battery of high and aggravated nature.

19 THE COURT: Thank you, Mr. Newman. Mr. Grier?

20 MR. GRIER: May it please the Court? Mr. Newman?  
21 Ladies and gentlemen, thank you for your participation as a  
22 citizen of Lancaster County. And I must make a confession  
23 to you, while Mr. Newman might prefer to be here today I  
24 probably would prefer to be somewhere else myself quite  
25 frankly just like y'all probably would be, I have been doing

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1 it a lot longer than Mr. Newman. But I do like what I do  
2 and I enjoy trying cases and criminal defense, because my  
3 job is to really represent the constitutional privileges of  
4 citizens just like everybody sitting here today. And you  
5 know one of your privileges is you're entitled to a trial by  
6 a jury of your peers and that's where you fit in. Everybody  
7 that's sitting in this courtroom in an official capacity  
8 today is the judge, the clerk, the reporter, the solicitors  
9 and the defense people, we are all ordained as officers of  
10 the courts and that's what we do for a living, and y'all are  
11 temporarily officers of court because you are jurors and you  
12 are necessary to make the jury system work. And it's really  
13 one of the few things that we are called on to do as  
14 citizens, we sacrifice our men and woman in uniform and a  
15 lot of sacrifices that a lot of people make for your  
16 country, this is not quite as burdensome as are the other  
17 sacrifices that a lot of other people make. But I represent  
18 Charles Davis. And when people say that Charles Davis is on  
19 trial there's really two ways to look at it, and certainly  
20 not many people get to sit on the perspective of the  
21 defense, but what you're really on -- the burden of proof is  
22 on the State of South Carolina to prove that Mr. Davis is  
23 guilty of these allegations and their burden is to prove it  
24 beyond a reasonable doubt. Arrests are made just based on a  
25 suspicion so when an officer -- people are astounded that

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1 they can be arrested because somebody said something. But  
2 that is the reality is is that if an officer is told  
3 something that constitutes a crime and they believe it or  
4 have no reason not to believe it they have a right to lock  
5 someone up and that's called reasonable suspicion and that's  
6 a very low bar. So people get locked up on a very low test  
7 and it is the only way that the system will work. You've  
8 got to -- when there's an alleged crime you have got to have  
9 action and law enforcement has to have authority to act, but  
10 they act on a low bar of a suspicion, and that's not a --  
11 what jurors are charged with doing. Jurors are charged with  
12 determining whether someone committed a crime based on the  
13 burden of proof on the State beyond a reasonable doubt. The  
14 Judge is going to give you instructions, I'm going to talk  
15 to you about that a little bit more in a minute. So when  
16 somebody says that the defendant is on trial, I kind of take  
17 issue with that. I think it's just as appropriate to say  
18 that the State is on trial because they're the ones that  
19 have to prove -- they have the burden of proof, the defense  
20 has to prove nothing. I could sit at that desk throughout  
21 this whole trial and not say anything as a lawyer, the  
22 defendant doesn't have to say anything, everything that has  
23 to be done in this courtroom in this trial is done by the  
24 State. I can choose to do things. I am choosing to argue  
25 and you probably wish I wouldn't, but I'm choosing to argue

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1 and I would like to share a few things that I'm asking you  
2 to consider strongly from the defense perspective. Again, I  
3 told you in -- you know that the State has the burden of  
4 proof and they've got to prove the guilt of Charles Davis  
5 beyond a reasonable doubt. The Judge is going to tell you,  
6 or give you the law, he's going to say -- he's going to tell  
7 you that and he's going to explain the burden of proof in  
8 all of that, but what he is going to tell is you that at the  
9 conclusion of all of the evidence is if you are firmly  
10 convinced of the guilt of Charles Davis then you must  
11 convict. However, if you find the real possibility, the  
12 real possibility that the defendant may not be guilty then  
13 you must acquit. And so the test for whether the State has  
14 met their burden of proof is really not you believe the  
15 defendant might be guilty because if so then you're going to  
16 hear people saying stuff today, you're going to see some  
17 pictures of some injuries, but mainly what you're going to  
18 have to depend on today is the testimony and what people  
19 say. Now, if you come to the conclusion that Mr. Davis  
20 might be guilty, well, that's not enough evidence to convict  
21 someone of a criminal offense. Okay? Okay? You hear the  
22 evidence and you say, "You know what, he's probably guilty."  
23 That's not enough evidence to convict somebody of a criminal  
24 offense. If the State was suing my client for money, that  
25 would be the test for a criminal (sic) trial, he probably

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1 did it, he did it more likely than not. This is not a trial  
2 about money, this is a trial about somebody's freedom. When  
3 you try somebody, you know, to -- when you threaten to take  
4 away somebody's freedom it's a higher bar and it should be.  
5 Because if you take away my money in theory I can make some  
6 more money, but if you take away my liberty I can't do  
7 nothing, I can't make more money. I don't have anything if  
8 I don't have my freedoms and for that reason the State is  
9 required to prove the evidence beyond a reasonable doubt.  
10 And so it's not whether Charles Davis might be guilty, it's  
11 not whether he is probably guilty, the real test is is there  
12 the real possibility that he might be innocent. And when  
13 you consider the evidence today I believe you will find that  
14 Charles Davis not just might be innocent but he is innocent,  
15 not probably is innocent, I think you will find both of  
16 those things that he might be, he probably is, but what you  
17 will find I believe most certain is that there is the real  
18 possibility that he might be innocent. Thank you for your  
19 participation. This is not going to be a long trial, we  
20 look forward to trying the case. Thank you.

21 THE COURT: And having heard all of that, ladies and  
22 gentlemen, we're now going to take a lunch break. The first  
23 witness we're afraid may take awhile so rather than run over  
24 and run into the lunch hour we will go ahead and take a  
25 lunch break. What I would like for you to do some time

## OPENING STATEMENTS

1 today after you get to know each other is select a  
2 foreperson which can be either 12 of you but not the  
3 alternate juror. If y'all have any problems electing a  
4 foreperson just let me know and I can do it. So ladies and  
5 gentlemen, I remind you during the lunch break though don't  
6 let anybody talk to you about the case, you don't talk to  
7 anybody about the case. See you back at 1:30.

8 (The jury left the courtroom.)

9 THE COURT: Anything else before we go to lunch?

10 MR. NEWMAN: No, Your Honor.

11 MR. GRIER: Nothing.

12 (A lunch recess was taken.)

13 THE COURT: Bring in the jury.

14 (The jury returned to the courtroom.)

15 THE COURT: Welcome back, ladies and gentlemen. The  
16 bailiff handed me a note I believe indicating juror number  
17 96, Cynthia Noyes has been selected, is that you? A wise  
18 decision your fellow jurors made. Before we begin one thing  
19 I did want to say to our alternate juror, pay close  
20 attention, you still may have to sit on this jury and make a  
21 decision because somebody may not be here if this case keeps  
22 carrying over until tomorrow. Solicitor, you may call your  
23 next witness.

24 MR. NEWMAN: Thank you, Your Honor. May it please the  
25 court? State calls Sharita Colbert.

## TESTIMONY OF SHARITA COLBERT

1           The witness, SHARITA COLBERT, was first duly  
2           sworn and testified as follows, on:

3                                 DIRECT EXAMINATION

4 BY MR. NEWMAN:

5 Q.    Please state your name for the record.

6 A.    Sharita Colbert.

7 Q.    What do you do for a living, Ms. Colbert?

8 A.    A home mom.

9 Q.    How many kids do you have?

10 A.   Three.

11 Q.   Do you remember the events that occurred on February 11  
12 of 2012 -- 2007?

13 A.   Some of it.

14 Q.   Were you at home that night?

15 A.   Uh-huh.

16 Q.   At your home?

17 A.   Yes, sir.

18 Q.   Anybody with you?

19 A.   My mama and my kids.

20 Q.   Anybody else?

21 A.   And Leon.

22 Q.   Leon Caskey?

23 A.   Uh-huh.

24 Q.   What is the relationship with you and Mr. Caskey, or  
25 what was the relationship?

## TESTIMONY OF SHARITA COLBERT

- 1 A. He was my friend at the time.
- 2 Q. Okay. Was he spending the night?
- 3 A. Yes, sir.
- 4 Q. Would he sleep over?
- 5 A. Uh-huh.
- 6 Q. What time did y'all go to sleep?
- 7 A. I have no idea.
- 8 Q. Anything significant happen after y'all went to sleep?
- 9 How did you get woken up?
- 10 A. By Charles Davis.
- 11 Q. And do you have a relationship with Charles Davis?
- 12 A. He's my babies' daddy.
- 13 Q. Now how old are your children?
- 14 A. Five.
- 15 Q. You've got three children?
- 16 A. Just two by Charles, I've got twins by Charles.
- 17 Q. The twins are five years old?
- 18 A. Uh-huh.
- 19 Q. So, were they born on --
- 20 A. Nuh-uh.
- 21 Q. They weren't around?
- 22 A. My oldest was, she's eight.
- 23 Q. That's not Charles Davis'?
- 24 A. Nuh-uh.
- 25 Q. How did you know Charles Davis at that time?

## TESTIMONY OF SHARITA COLBERT

- 1 A. I was pregnant with his kids.
- 2 Q. You were pregnant at the time?
- 3 A. Uh-huh.
- 4 Q. Did y'all live together?
- 5 A. No, sir.
- 6 Q. He had a key to your apartment?
- 7 A. Yes, sir, to the back door.
- 8 Q. Do you remember when you spoke to law enforcement that
- 9 night, the night that this happened, do you remember talking
- 10 to law enforcement?
- 11 A. Uh-huh.
- 12 Q. Do you remember telling them that he did not have a
- 13 key?
- 14 A. No, sir.
- 15 Q. Did you take any steps to secure that back door?
- 16 A. No. Because when we woke up Charles was in the door,
- 17 he was in.
- 18 Q. I mean before you went to sleep did you do anything to
- 19 secure --
- 20 A. I put a stove to the back door.
- 21 Q. Did you lock the door?
- 22 A. Yes, sir.
- 23 Q. And you put a stove against it?
- 24 A. Uh-huh.
- 25 Q. When you woke up did you hear any banging on the door

## TESTIMONY OF SHARITA COLBERT

1 or anything or you just woke up and he was just in the  
2 house?

3 A. I heard something and he was in and I jumped up, I woke  
4 up Leon and I ran upstairs.

5 Q. Did you see any fight?

6 A. When I came down the stairs Leon was laying on the --  
7 he was on the couch and he was like bloody all over because  
8 I was pregnant at the time and I was scared.

9 Q. I understand. Let me show you some photographs that's  
10 been marked for ID.

11 A. Uh-huh.

12 Q. What has been marked for ID purposes as State's Number  
13 1. Do you recognize that person? Who is that person?

14 A. Charles Davis.

15 Q. This is State's 4. Do you recognize what's in that  
16 photo? Is that a mattress on the floor at your apartment?

17 A. Uh-huh.

18 Q. Was there blood on there?

19 A. Uh-huh.

20 Q. Were you bleeding that night?

21 A. No, nuh-uh.

22 THE COURT: Ms. Colbert, I need you to respond to the  
23 questions with a yes or no.

24 A. No, I wasn't bleeding that night.

25 Q. Was Leon Caskey bleeding that night?

## TESTIMONY OF SHARITA COLBERT

1 A. Yes, sir.

2 Q. Do you recognize that photo?

3 A. Uh-huh.

4 Q. Is that the back door of your apartment?

5 A. Yes, sir.

6 Q. Is that your stove?

7 MR. GRIER: Your Honor, I would like for him to not ask  
8 her leading questions. He can ask her to identify what it  
9 is but he can't ask her if that's the back door to her  
10 apartment, it's leading.

11 THE COURT: Leading question. Sustained.

12 Q. Do you know what that is?

13 A. My door to my apartment.

14 Q. What is this?

15 A. A stove.

16 Q. Earlier you said you pushed the stove against the door.

17 A. It was just -- the stove was like this. Do you see  
18 where the lock at? You've got to turn the lock to go this  
19 way so I got the stove over to hold the door.

20 Q. So you had it over just a little ways?

21 A. Yes. It was pushed to the back door.

22 Q. I show you State's 5, that's basically the same picture  
23 just closer up. Is that -- what does that show?

24 A. It show the door has -- he had to do that to get the  
25 stove off the door.

## TESTIMONY OF SHARITA COLBERT

1 Q. Is that any type of damage?

2 A. Uh-huh.

3 Q. Okay.

4 THE COURT: Ms. Colbert, you need to answer yes or no.

5 A. Yes. I'm sorry.

6 Q. Did you call the police that night?

7 A. Leon did.

8 Q. Do you have a phone in your apartment or did he call  
9 from his cellphone or --

10 A. He called from a cellphone.

11 Q. His cellphone?

12 A. His cellphone.

13 MR. NEWMAN: Beg the Court's indulgence.

14 THE COURT: All right.

15 (Break in proceedings.)

16 Q. Ms. Colbert, why did you take so many steps to secure  
17 your apartment?

18 A. What you mean?

19 Q. Were you afraid of Mr. Davis?

20 A. I was but not no more.

21 Q. But you didn't want him in your apartment that night.

22 A. No, sir.

23 Q. What was the address of your home at that time? You've  
24 moved since then; is that right?

25 A. .

## TESTIMONY OF SHARITA COLBERT

1 Q. Is that on \_\_\_\_\_ :?

2 A. Yes, sir.

3 MR. NEWMAN: That's all of the questions I have, please  
4 answer anything Mr. Grier has.

5 THE COURT: Cross examination, Mr. Grier?

6 MR. GRIER: Thank you.

7 CROSS EXAMINATION

8 BY MR. GRIER:

9 Q. Ms. Colbert, I believe you just testified that  
10 Mr. Davis had a key to your apartment, y'all had a -- how  
11 long had y'all been seeing each other? How long had your  
12 relationship been going on prior to this?

13 A. There was no relationship, it was --

14 Q. Well, okay. You saw him on a regular basis?

15 A. Yes, sir.

16 Q. You gave him a key to your apartment?

17 A. Yes, sir.

18 Q. So he had, you know, a right to use that key, I assume,  
19 when you gave him a key to the apartment. You assumed he  
20 was going to be using it, correct?

21 A. Anytime Charles Davis comes to my house he is to call  
22 my phone and tell me he was coming, he didn't just come  
23 unspeaked.

24 Q. Well, he had a key, right?

25 A. Right.

## TESTIMONY OF SHARITA COLBERT

1 Q. So if you gave me a key to your apartment would you  
2 assume I might use it to come in unannounced?

3 A. Yes, sir.

4 Q. I'm a little bit confused. Now, you didn't -- you have  
5 an eight year old that is not Charles' child. So at the  
6 time of this incident you had not given birth to any  
7 children by Charles Davis.

8 A. No, sir.

9 Q. Did you know these were twins already at this time?

10 A. Uh-huh.

11 Q. How far along were you pregnant?

12 A. About eight months.

13 Q. All right. Well, was your relationship with Leon  
14 Caskey romantic at the time? Were y'all seeing each other  
15 romantically?

16 A. Uh-huh.

17 Q. Were you still seeing Mr. Davis romantically at that  
18 time?

19 A. No, sir.

20 Q. Okay. Well, when this happened I imagine you were mad,  
21 weren't you?

22 A. Yes, sir.

23 Q. So when the police came in do you recall, you know,  
24 your conversation with the police?

25 A. No, I don't. But I do remember one police being there,

## TESTIMONY OF SHARITA COLBERT

1 only one.

2 Q. There was only policeman that came?

3 A. It was about two or three but only one made the -- it  
4 was him, I remember him.

5 Q. Okay. Well, so when you woke up Mr. Davis was already  
6 in the apartment or the noise of him coming in --

7 A. Yes, sir.

8 Q. I'm sorry. The noise of him coming in woke you up or  
9 he was already there?

10 A. The noise of him. When I got up he was already in.

11 Q. Okay. Well, had there been any bad blood between Mr.  
12 Caskey and Mr. Davis prior to this that you know of?

13 A. Ever been who?

14 Q. Any bad blood, any fuss between Mr. Caskey and  
15 Mr. Davis prior to this date?

16 A. Not that I know of.

17 Q. All right. So is Mr. Davis mad because you were with  
18 Mr. Caskey and he came in and you were with Mr. Caskey?

19 A. That's what it was.

20 Q. Did you see any of the -- of whatever the fight that  
21 happened or was alleged to have happened, or did you see  
22 anything? Did you just run upstairs without seeing  
23 anything?

24 A. When Charles came in I woke up Leon, I don't know if  
25 Leon got up or not because I ran upstairs, woke up my mom,

## TESTIMONY OF SHARITA COLBERT

1 when I came back downstairs Leon was laying on the couch and  
2 then I helped him up. When Charles had left, when Charles  
3 left I came back downstairs, I helped Leon upstairs, I wiped  
4 the blood and stuff from his face and his mouth in the  
5 bathroom.

6 Q. Okay. Well, you know, did Mr. Caskey suffer any  
7 injuries that crippled him in any way after that?

8 A. I don't know of being crippled but I know Charles  
9 knocked his teeth out and face -- a lot of swelling in his  
10 face, yes, sir.

11 Q. Well, do you know anything about whether there was --  
12 both people -- was it just a one way fight, was it a two way  
13 fight or --

14 A. If he fought -- no, I didn't.

15 Q. Okay. So you really didn't see anything about the  
16 fight? Okay.

17 MR. GRIER: Thank you, Ms. Colbert.

18 THE COURT: Any questions, Solicitor?

19 MR. NEWMAN: Briefly Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. NEWMAN:

22 Q. Ms. Colbert, you said when you saw Mr. Davis you ran  
23 upstairs. So you didn't see any of the fight; is that  
24 correct?

25 A. Yes, I did say that.

## TESTIMONY OF CHARLES GLENN CAMPBELL

1 Q. Did you hear it?

2 A. Yeah, I heard it, I heard a lot of noise.

3 Q. A lot of noise?

4 A. A lot of noise.

5 Q. Like fists?

6 A. Fists.

7 MR. NEWMAN: That's all I have.

8 THE COURT: Thank you, ma'am, you may step down.

9 Solicitor, you may call your next witness.

10 The witness, CHARLES GLENN CAMPBELL, was first  
11 duly sworn and testified as follows, on:

12 DIRECT EXAMINATION

13 BY MR. NEWMAN:

14 Q. Please state your name for the record.

15 A. Charles Glenn Campbell.

16 Q. Officer Campbell, where are you employed?

17 A. Right now I work for the Lancaster County Sheriff's  
18 Office.

19 Q. How long have you been there?

20 A. Six months.

21 Q. Where were you employed before that?

22 A. I was employed with the Lancaster Police Department  
23 from October of 2005 until September of 2012.

24 Q. Were you working on the night of February 11, 2007?

25 A. Yes, sir, I was.

## TESTIMONY OF CHARLES GLENN CAMPBELL

1 Q. Did you get called out to [redacted]?

2 A. Yes, sir, I did at approximately 5:15 in the morning.

3 Q. What was the call for?

4 A. According to my report we responded to [redacted]  
5 [redacted] in reference to an assault that had already occurred.

6 While we were in route we were also advised that EMS was on  
7 the way and we needed to let paramedics know that the scene  
8 was secured, that was basically what we were told as we were  
9 in route to [redacted].

10 Q. Were you the first officer on the scene?

11 A. Yes, sir, I was.

12 Q. Whose apartment was that?

13 A. Ms. Ryan Colbert, I can give you the full name here.  
14 Sharita Ryan Colbert was her name.

15 Q. Was that Ms. Colbert that was up here?

16 A. Yes, sir.

17 Q. Did you see her that night?

18 A. I did.

19 Q. Did you talk to her that night?

20 A. Yes, sir, I did.

21 Q. Did she tell you that Mr. Davis does not have a key?

22 MR. GRIER: Your Honor, we've got leading, the  
23 solicitor can't testify.

24 THE COURT: I sustain the objection.

25 MR. GRIER: I would ask him to rephrase it and strike

## TESTIMONY OF CHARLES GLENN CAMPBELL

1 that.

2 THE COURT: Solicitor?

3 Q. Ms. Colbert was up here earlier and she testified that  
4 Mr. Davis had a key, did she tell you anything different  
5 that night?

6 A. Let me check my report, I'm not sure. I can tell you  
7 what she did say.

8 Q. It's on the second page, second full paragraph.

9 A. Okay. Right here it says, "The victim's left eye also  
10 appeared to be severely swollen under and victim also had a  
11 swollen area over his left eye. Colbert told officer she  
12 was sure Davis made entry through the back door but was  
13 unsure how he got in."

14 MR. GRIER: Your Honor, that's not responsive and I ask  
15 that it be struck.

16 Q. I think you've got a different sheet than I have.

17 THE COURT: I grant the motion. Please strike the last  
18 statement of the witness.

19 A. Are you talking about right here?

20 Q. The paragraph starts with, "after further  
21 investigation."

22 A. Okay. "After further investigation it was discovered  
23 that Colbert placed the oven against the back door before  
24 they went to sleep. Officers checked the back door and  
25 found a shoe print on the back door where Davis kicked in

## TESTIMONY OF CHARLES GLENN CAMPBELL

1 the back door to get entry into the residence. Colbert told  
2 officers --"

3 MR. GRIER: Your Honor, this whole litany is not  
4 responsive to the question.

5 THE COURT: I sustain the objection.

6 MR. NEWMAN: I believe he's getting there, I think it's  
7 the next sentence.

8 A. Yes, sir. "Colbert told officers that Davis does not  
9 live at the residence and does not have a key."

10 MR. GRIER: Your Honor, he's continuing to -- he calls  
11 them out as they --

12 THE COURT: I sustained the objection.

13 MR. NEWMAN: That was the question.

14 THE COURT: I sustained the objection.

15 Q. Okay. Ms. Colbert was up here earlier, she said  
16 Mr. Davis had a key, did she tell you anything different  
17 that night?

18 A. According to my report Ms. Colbert told the officer  
19 that Davis does not live at the residence and does not have  
20 a key.

21 Q. You stated there was some marks on the back door, a  
22 footprint?

23 A. Yes, sir.

24 Q. Was it a fresh footprint?

25 A. I will have to look at the picture because I believed

## TESTIMONY OF CHARLES GLENN CAMPBELL

1 it to be a fresh footprint and that's why we took pictures  
2 of it.

3 Q. Let me show you State's 6 marked for identification.

4 What does that show?

5 A. It shows what appears to be a footprint on the lower  
6 portion of the back door.

7 Q. Did you believe the door to be kicked in?

8 A. Other than the footprint I believe there was other  
9 pictures that was took of a door frame, it did appear that  
10 it was kicked in.

11 MR. NEWMAN: Beg the Court's indulgence.

12 (Break in proceedings.)

13 Q. Through your investigation that night did you receive  
14 the name of who might have did this?

15 A. I will have to read from my report. This is a little  
16 over six years old, I will have to read from my report.

17 Q. Take your time, refresh your memory.

18 A. When we asked Ms. Colbert who the suspect was she  
19 stated, "I know who it was but I" --

20 MR. GRIER: Your Honor, I --

21 THE COURT: I sustain the objection.

22 Q. You can't say what she said, but did you just receive a  
23 name?

24 A. We did.

25 Q. What was the name?

## TESTIMONY OF CHARLES GLENN CAMPBELL

1 A. Charles Davis.

2 Q. Do you know Charles Davis?

3 A. I do.

4 Q. Let me show you State's 1. Do you recognize that  
5 photo?

6 A. That is Charles Davis.

7 MR. NEWMAN: That's all of the questions I have, please  
8 answer anything Mr. Grier has.

9 CROSS EXAMINATION

10 BY MR. GRIER:

11 Q. You don't know how Mr. Davis gained entry into the  
12 apartment.

13 A. Through our investigation it appeared that Mr. Davis  
14 did kick in the back door and gained entry.

15 Q. That's not my question. Do you know how he got access  
16 to the apartment?

17 A. Through our investigation it was through the back door  
18 and it appeared to be forced entry.

19 Q. There was the appearance that there had been forced  
20 entry into that apartment at some point.

21 A. Yes.

22 Q. What evidence is there that it happened that night?

23 A. The shoe print, the partial shoe print on the back door  
24 appeared to be dirt still freshly on the door, and the wood  
25 from the door frame that was broken, it appeared to be

## TESTIMONY OF CHARLES GLENN CAMPBELL

1 fresh. I cannot say if it happened right then or a few  
2 hours before but it did appear to be recent damage.

3 Q. Do you have any special training in determining  
4 forensically the age of a footprint or --

5 A. Forensically, no.

6 Q. That's just your gut feeling based on what you saw  
7 there?

8 A. Based on what we were told and the information we  
9 gathered.

10 Q. Okay. Well, and I assume -- is this what you saw that  
11 night?

12 A. Yes, sir.

13 Q. Is that what you saw that night too?

14 A. Yes, sir.

15 Q. Okay. All right.

16 MR. GRIER: Thank you.

17 THE COURT: Anything else, Solicitor?

18 MR. NEWMAN: Nothing further from the State.

19 THE COURT: Thank you, you may step down. You may call  
20 your next witness.

21 MR. NEWMAN: Judge, may Officer Campbell be released?

22 MR. GRIER: I have no objection.

23 THE COURT: Yes, sir. Officer Campbell, you are  
24 released from your subpoena.

25 MR. NEWMAN: I also request that Ms. Colbert be

## TESTIMONY OF PHILLIP HALL

1 released.

2 THE COURT: Mr. Grier, any objection?

3 MR. GRIER: No objection.

4 THE COURT: Ms. Colbert, you are released from your  
5 subpoena, you may stay or go as you choose. You may call  
6 your next witness.

7 MR. NEWMAN: State calls Lieutenant Phillip Hall.

8 The witness, PHILLIP HALL, was first duly sworn  
9 and testified as follows, on:

10 DIRECT EXAMINATION

11 BY MR. NEWMAN:

12 Q. State your name for the record.

13 A. Lieutenant Phillip Hall.

14 Q. Lieutenant Hall, where are you employed?

15 A. By the City of Lancaster Police Department.

16 Q. What do you do?

17 A. Currently now I'm the supervisor over the Lancaster  
18 Police Department Special Operation Division.

19 Q. In 2000 -- February 11th of 2007 were you employed by  
20 the Lancaster City Police Department?

21 A. I was.

22 Q. What were your duties at that time?

23 A. I believe at that time I was a shift supervisor.

24 Q. Did you get called out to \_\_\_\_\_ that night?

25 A. Yes, sir.

## TESTIMONY OF PHILLIP HALL

1 Q. When you arrived on scene who was there?

2 A. Officer Campbell arrived on scene prior to my arrival,  
3 I was a few seconds behind him.

4 Q. Now, , is that in the City of  
5 Lancaster?

6 A. It is.

7 Q. Did you speak with the victim on the scene?

8 A. I did.

9 Q. Did he give you a name of someone who attacked him?

10 A. I did.

11 Q. What was his name?

12 A. He told me Charles Davis assaulted him.

13 Q. This is marked as State's Exhibit 1 for identification  
14 purposes. Can you identify that person?

15 A. That is Charles Davis.

16 MR. NEWMAN: Your Honor, I would like to move to  
17 introduce State's 1 into evidence.

18 MR. GRIER: No objection.

19 THE COURT: Admitted without objection.

20 (The photo was received as State's 1.)

21 Q. Did you take photos at the scene?

22 A. I did.

23 Q. Did you take photos of the victim?

24 A. I did.

25 Q. I show you State's 2 through 6. Do you recognize those

## TESTIMONY OF PHILLIP HALL

1 photos?

2 A. Yes, sir, I do.

3 Q. Is that a clear representation of photos that you took  
4 that night?

5 A. Yes, sir.

6 Q. Has it changed in any way?

7 A. It has not.

8 MR. NEWMAN: Your Honor, at this time I would move to  
9 enter them into evidence.

10 MR. GRIER: Can we have a side bar?

11 (A bench conference was held.)

12 THE COURT: Any other objection to the photos?

13 MR. GRIER: No, Just that one photo.

14 THE COURT: The Court admits them?

15 (The photos were received as State's 2-6.)

16 MR. NEWMAN: Permission to publish, Your Honor?

17 THE COURT: Yes, sir.

18 Q. Is that on your screen, Officer Hall?

19 A. No, sir.

20 Q. Just touch the screen as you come up. Who is in this  
21 picture?

22 A. This here is Leon Caskey.

23 Q. Was he conscious?

24 A. Mr. Caskey was in and out of consciousness, I do  
25 remember that.

## TESTIMONY OF PHILLIP HALL

1 Q. Did you speak with him on the scene or --

2 A. We got him actually loaded up into the ambulance, we  
3 did have to bring him down from upstairs, I assisted EMS  
4 with doing that. Because if you're not familiar with  
5 Apartments the stairs are pretty steep and it's a  
6 small hallway and we had to help him downstairs because he  
7 was in the bathroom upstairs when we got there. But this  
8 picture was taken in the ambulance, I believe it was, I  
9 can't see the whole picture.

10 Q. He had to be taken to the hospital?

11 A. Yes, sir.

12 Q. Was he complaining of anything significant?

13 MR. GRIER: Your Honor, Mr. Caskey has not testified,  
14 he is asking for hearsay from Mr. Caskey about his  
15 complaints at the time.

16 THE COURT: All right. Sustained.

17 MR. GRIER: Certainly he can impeach him or --

18 THE COURT: I sustain the objection.

19 Q. This is State's 3. What does this picture show?

20 A. This is Mr. Caskey coming out of the apartment on the  
21 stretcher with EMS.

22 Q. EMS carrying him out of the apartment?

23 A. Yes, sir.

24 Q. This is State's 4. What does that picture show?

25 A. That is the mattress where the assault took place, or

## TESTIMONY OF PHILLIP HALL

1 where they said the assault took place. There was fresh  
2 blood on the comforter right there.

3 Q. Now, is this the kitchen area?

4 A. This is.

5 Q. Is this the door where entry was made?

6 A. It was.

7 Q. Can you show me what led you to believe there was  
8 forced entry?

9 A. Well, according to what Ms. Colbert stated, she said  
10 that she did have the oven partially blocking the doorway  
11 and we did see that it was moved, we had to move it so we  
12 could open the door the rest of the way to take a picture of  
13 the outside of the door. So we did arrange -- we did have  
14 to move the oven prior to exiting the house or the  
15 apartment. But when we first got back there the door was  
16 opened -- the oven was offset, it wasn't flat against the  
17 wall like that was and we done that in the process of  
18 clearing the house.

19 Q. This is a close-up picture, pretty much the same  
20 picture just a little closer, what does that show?

21 A. That shows the frame of the door. And you can see the  
22 splintering where force was used to open that door, that was  
23 fresh, it still had splintering coming off the door frame  
24 itself.

25 Q. This is State's 6. What does this picture show?

## TESTIMONY OF PHILLIP HALL

1 A. That's a picture of the back door. We noticed a fresh  
2 -- or I noticed fresh footprints on the door. Like I said,  
3 back side of the 600 block is like -- and it goes between  
4 the 600 and 700 block where all the rain washes out and all  
5 of the area back in there stays pretty much nasty, not  
6 completely saturated where mud is going up to your ankles  
7 but it's nasty. And we noticed that that there was all  
8 fresh so I tried to take it with our camera.

9 Q. Now, you stated you know Mr. Davis?

10 A. Yes, sir.

11 Q. What's his stature? Is he a big fellow?

12 A. Charles Davis -- I am 6 foot 3, back in those days I  
13 was about 285 pounds, me and Charles were pretty much toe to  
14 toe. He was actually a little bit bigger than I was,  
15 broader in the shoulders.

16 MR. NEWMAN: Beg the Court's indulgence.

17 THE COURT: All right, sir.

18 (Break in proceedings.)

19 MR. NEWMAN: No further questions, please answer  
20 anything Mr. Grier has.

21 THE COURT: Mr. Grier?

22 MR. GRIER: I don't have any questions.

23 THE COURT: All right, you can step down. You may call  
24 your next witness.

25 MR. NEWMAN: State calls Sergeant Brian Small.

## TESTIMONY OF BRIAN SMALL

1 The witness, BRIAN SMALL, was first duly sworn  
2 and testified as follows, on:

3 DIRECT EXAMINATION

4 BY MR. NEWMAN:

5 Q. State your name for the record.

6 A. Sergeant Brian Small.

7 Q. Officer Small, where are you employed?

8 A. Lancaster Police Department.

9 Q. How long have you been there?

10 A. Since May 17th of 2005.

11 Q. Do you know Charles Davis?

12 A. I do, yes, sir.

13 Q. I'll show you State's 1. Do you recognize that?

14 A. Yes, sir, that's Charles Davis.

15 Q. Did you arrest Charles Davis?

16 A. Yes, sir.

17 Q. You served warrants for him in this case?

18 A. Yes, sir.

19 Q. And you took him to jail.

20 A. Yes, sir.

21 MR. NEWMAN: No further questions.

22 MR. GRIER: No questions.

23 THE COURT: Thank you, you may step down. Call your  
24 next witness.

25 MR. NEWMAN: Ask that Officer Small be released.

## TESTIMONY OF WILLIAM RICHARD BELL

1 MR. GRIER: No objection.

2 THE COURT: Without objection, yes, sir.

3 MR. NEWMAN: State calls Rickey Bell.

4 The witness, WILLIAM RICHARD BELL, was first  
5 duly sworn and testified as follows, on:

6 DIRECT EXAMINATION

7 BY MR. NEWMAN:

8 Q. Please state your name for the record.

9 A. My name is William Richard Bell.

10 Q. Where are you employed?

11 A. I'm currently the operation manager at Chester County  
12 EMS.

13 Q. Back on February 11th of 2007 where were you employed?

14 A. I was a paramedic for Lancaster County EMS.

15 Q. Okay. Did you get called out to [redacted] on  
16 that night?

17 A. I did.

18 Q. Did you deal with the victim, Mr. Caskey?

19 A. I did.

20 Q. Was he conscious when you arrived?

21 A. He was conscious, yes, sir.

22 Q. I show you State's 3. Is that you in the picture?

23 A. Yes, sir. I'm the balled headed one on the left.

24 Q. And were you carrying him out to go to the hospital?

25 A. We were.

## TESTIMONY OF WILLIAM RICHARD BELL

1 Q. To an ambulance?

2 A. Yes, sir.

3 Q. Did you take him to Lancaster?

4 A. Yes, sir.

5 Q. Did he ask to be taken to the hospital?

6 A. I do not recall.

7 Q. Let me show you what has been marked as State's 2. Do  
8 you recognize that photo?

9 A. Yes, sir.

10 Q. Can you explain the extent of injuries that you found?

11 A. Yes, sir. We found a hematoma about three  
12 centimeters --

13 Q. Wait. What is a hematoma?

14 A. It's swelling under the skin, a knot, a goose egg  
15 roughly three centimeters above the left eye, kind of hard  
16 to see in that picture.

17 Q. If I blow it up can you touch your screen and circle  
18 what we're talking about?

19 A. Well, just looking from here I can see the swelling in  
20 this area, but if I remember correctly there was swelling up  
21 in here also.

22 Q. I'm going to change the color of that because I can't  
23 see that red very well. Let's try green, try that. Okay.  
24 So is that you said two knots basically?

25 A. Well, he had swelling from the eye but the knot that I

## TESTIMONY OF WILLIAM RICHARD BELL

1 was referring to was up in the hair line.

2 Q. Okay. What else?

3 A. He also complained of teeth missing, blood in the mouth  
4 and the surrounding areas and extreme pain to his back.

5 Q. Is that blood on his nose?

6 A. Appears to be.

7 Q. Blood on his mouth?

8 A. Yes, sir.

9 Q. Did you consider this to be a serious injury?

10 A. Yes, sir.

11 Q. Do you know how many teeth were missing?

12 A. I do not remember, no, sir.

13 Q. I'm sorry, I know you answered this, but did you say he  
14 was conscious when you arrived?

15 A. He was alert to person, place and time which is what we  
16 consider conscious, it's not a true grade of his mental  
17 status.

18 Q. Did he ever lose conscience?

19 A. I do not recall.

20 Q. Now, during the transport were you driving?

21 A. No, sir, I was in the back with him.

22 MR. NEWMAN: Please answer anything Mr. Grier has.

23 THE COURT: Cross examination, Mr. Grier?

24 CROSS EXAMINATION

25 BY MR. GRIER:

## TESTIMONY OF WILLIAM RICHARD BELL

1 Q. Mr. Bell, you don't know the outcome of his visit to  
2 the hospital.

3 A. No, sir.

4 Q. You are not a medical doctor.

5 A. No, sir.

6 Q. Did you just do some -- I know you did this, but you  
7 did first aide with what you saw on the scene?

8 A. Yes, sir.

9 Q. To assist him did you do anything to -- can y'all do  
10 anything for comfort or pain to assist somebody?

11 A. We can. In his case we did not administer any type of  
12 morphine for the pain.

13 Q. But you are licensed and authorized to administer  
14 morphine if necessary?

15 A. Yes, sir.

16 Q. Okay. What is the protocol for taking somebody to the  
17 hospital for EMS? When do you determine they go to the  
18 hospital, they don't go to the hospital, how do you make  
19 that decision?

20 A. If they have their mental faculties we leave it up to  
21 them, they are in charge of their person at that point,  
22 however if they are altered in any way in making a decision  
23 that a normal person would decide we would take them.

24 Q. Now, in this case he didn't decide or he did decide?

25 A. It is not documented either way.

## TESTIMONY OF WILLIAM RICHARD BELL

1 Q. Okay. So he was oriented towards time, place and what?

2 A. Yes, sir, person. Person, place and time.

3 Q. Meaning they can identify themselves?

4 A. Correct.

5 Q. I have trouble with that myself sometimes. So based on

6 that it would suggest that he has asked to be taken to the

7 hospital since y'all were able to find him to be oriented,

8 correct?

9 A. Yes, sir.

10 MR. GRIER: Thank you.

11 THE COURT: Anything else, Solicitor?

12 MR. NEWMAN: Nothing further, Your Honor.

13 THE COURT: Thank you, you may step down.

14 MR. NEWMAN: Ask that Mr. Bell be released from his

15 subpoena.

16 MR. GRIER: No objection.

17 THE COURT: You may be released from your subpoena,

18 thank you for coming. You may call your next witness.

19 MR. NEWMAN: State calls Mr. Leon Caskey.

20 The witness, LEON CASKEY, was first duly sworn

21 and testified as follows on:

22 DIRECT EXAMINATION

23 BY MR. NEWMAN:

24 Q. Please state your name for the record.

25 A. Leon Caskey, Sr.

## TESTIMONY OF LEON CASKEY

1 Q. How old are you, Mr. Caskey?

2 A. Forty-five.

3 Q. Do you remember what was going on on February 11th of  
4 2007?

5 A. Yeah, bits and pieces.

6 Q. Who were you with?

7 A. Sharita Colbert.

8 Q. Is that your girlfriend?

9 A. Somewhat it was, it was somewhat, yes, good friends or  
10 whatever.

11 Q. Prior to this event did you know Mr. Davis?

12 A. Yes, I know him.

13 Q. Have you ever had any problems with him?

14 A. Had no altercation with him at all, none.

15 Q. How tall are you, Mr. Caskey?

16 A. 5-11.

17 Q. How much do you weigh?

18 A. About 150.

19 Q. On February 11, 2007, you said you were at the home of  
20 Sharita Colbert. Do you remember what time y'all went to  
21 sleep?

22 A. To be exact I couldn't tell you, probably around 1:00,  
23 2:00 in the morning, something like that.

24 Q. How did you get woken up?

25 A. Actually I thought I heard something like a boom, bam

## TESTIMONY OF LEON CASKEY

1 and I kind of tilted a little bit and I heard her running  
2 up -- she said something before she ran up the stairs and  
3 before the I could turn around Mr. Davis was -- somebody was  
4 on my back, I didn't know who this was at first but I had an  
5 idea. I couldn't move because he was on my back and I just  
6 had a back surgery prior to that two weeks before,  
7 January the 12th or 15th, somewhere around there.

8 Q. Were you getting around pretty good?

9 A. Yeah. I'm getting around all right.

10 Q. I mean then.

11 A. Then no, because I was still sore then.

12 Q. When was your surgery?

13 A. Around January 12th or 15th, somewhere around in there.

14 Q. So about a month?

15 A. Yeah.

16 Q. How many times did he hit you?

17 A. Man, I couldn't even tell you.

18 Q. Five times, ten times, more?

19 A. Probably more, eight or nine, somewhere around in  
20 there. It was a lot of times, I know that.

21 Q. Did you ask to go to the hospital that night?

22 A. I don't know, I can't recall. To be honest with you I  
23 can't recall, I probably did, probably didn't, I don't know.  
24 But I really needed to go, though.

25 Q. Did you lose consciousness that you know of?

## TESTIMONY OF LEON CASKEY

1 A. I think I did, I think I did. I don't know when but I  
2 think I did because some stuff I can't remember.

3 Q. What happened as a result of your injuries?

4 A. Rephrase it. What you say now?

5 Q. What injury did you sustain?

6 A. My eye was blood shot red and closed --

7 MR. GRIER: I'm having trouble hearing, can we check up  
8 -- there you go.

9 THE COURT: Try to speak up. There you go.

10 A. My eye was blood shot red and closed and my jaw was  
11 swollen and my nose was swollen and my jaw and my lip.

12 Q. Was your nose bleeding?

13 A. Yeah.

14 Q. Mouth bleeding?

15 A. Yeah.

16 Q. Did you lose any teeth?

17 A. Yeah.

18 Q. How many?

19 A. Four.

20 Q. Mr. Caskey, I'm not trying to embarrass you, do you  
21 mind smiling at the jury?

22 A. (Witness complies.)

23 Q. Teeth still missing?

24 A. Yeah.

25 Q. And you had your teeth before you got knocked out?

## TESTIMONY OF LEON CASKEY

- 1 A. Yeah.
- 2 Q. How long did you stay in the hospital?
- 3 A. Maybe a few hours, just about four or five hours or
- 4 something like that.
- 5 Q. I show you State's 4. Do you recognize that?
- 6 A. Yes, I do.
- 7 Q. What is that?
- 8 A. That's my blood on the quilt.
- 9 Q. Is that where you were sleeping that night?
- 10 A. Yes.
- 11 Q. When you woke up you said he was on top of you?
- 12 A. Uh-huh.
- 13 Q. About how long?
- 14 A. It seemed like forever because I couldn't get up.
- 15 Q. He's a lot bigger than you.
- 16 A. Yeah.
- 17 Q. Where was Ms. Colbert during this?
- 18 A. I couldn't tell you because I was face down, I couldn't
- 19 tell you.
- 20 Q. Is that the first time you spent the night with her?
- 21 A. No.
- 22 Q. There were other times?
- 23 A. Yeah, probably about four or five times after that.
- 24 Q. No problems?
- 25 A. No problems.

## TESTIMONY OF LEON CASKEY

1 Q. Did you know she was pregnant?

2 A. Yeah.

3 MR. NEWMAN: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 (Break in proceedings.)

6 Q. I show you State's 1. Do you recognize that person?

7 A. Yes, I do.

8 Q. Who is that?

9 A. Charles Davis.

10 Q. Is that the man that assaulted you?

11 A. That's correct.

12 MR. NEWMAN: I've got no other questions, please answer  
13 anything Mr. Grier has.

14 THE COURT: Mr. Grier?

15 CROSS EXAMINATION

16 BY MR. GRIER:

17 Q. Mr. Caskey, are you married?

18 A. Yes, sir.

19 Q. Were you married at the time this happened?

20 A. No, sir.

21 Q. So you've gotten married since?

22 A. Yes, sir.

23 Q. Congratulations. What kind of work do you do?

24 A. Disabled.

25 Q. You draw disability?

## TESTIMONY OF LEON CASKEY

1 A. Yes.

2 Q. Were you disabled at the time this happened?

3 A. Well, at that time I had had my surgery but I wasn't  
4 receiving disability benefits yet. But I was -- I  
5 considered myself disabled because I've had three or four  
6 surgeries -- well, two before then.

7 Q. So you had two prior surgeries prior to the surgery  
8 before this?

9 A. Yes.

10 Q. So you have been dealing with it ten or 12 --

11 A. Since December of 2006.

12 Q. Okay. All right. Well, Mr. Caskey, you were out of  
13 the hospital within a few hours.

14 A. Uh-huh.

15 Q. Correct?

16 A. Yes, sir.

17 Q. So this was -- whatever it was it wasn't something that  
18 changed your life.

19 A. No, sir.

20 Q. You know, you lost a couple of teeth.

21 A. Yes, sir.

22 Q. You know, have you been in fights before?

23 A. Been in plenty of fights before, never lost a tooth.

24 Q. Okay. As you were describing the situation -- and

25 forgive me if I missed it, I'm not just trying to drag you

## TESTIMONY OF LEON CASKEY

1 through but I do need to understand clearly what happened.

2 Okay. My understanding was Mr. Davis -- did you stand up  
3 when you -- was that the first thing you did? You were on  
4 the ground when he was on your back.

5 A. I didn't have a chance to get up.

6 Q. So you were on the blanket.

7 A. Yes, sir.

8 Q. I mean, was your head in the middle of the blanket?

9 A. Yes, sir.

10 Q. How did that happen? Why wasn't it in the middle of  
11 the blanket?

12 A. I guess --

13 Q. Why wouldn't your head be at one end of the blanket?

14 A. I guess when he hit me I was kind of scooting back I  
15 guess because it was on the floor.

16 Q. Okay. All right. The first thing you remember from  
17 what I understand your testimony to be is Ms. Colbert -- do  
18 you call her Sharita or is she Ryan?

19 A. Ryan, I call her Ryan.

20 Q. Was her getting you up or her running up the stairs or  
21 something?

22 A. No. I just heard her running up -- I kind of heard her  
23 running up the stairs and saying something, she was  
24 hollering and screaming or something while he was still  
25 beating me. So I actually didn't see her run up the stairs

## TESTIMONY OF LEON CASKEY

1 but I heard her screaming at the same time.

2 Q. Okay. Other than -- okay. The first time you had any  
3 contact with law enforcement, EMS or anybody you were up in  
4 the upstairs in the bathroom?

5 A. Yeah. I can't tell you how I got there.

6 Q. Did Ms. Colbert tell you how you got there?

7 A. She didn't tell me.

8 Q. Well, then I'm not asking you to say what she said.

9 A. Well, this is my first time hearing it today so I don't  
10 know how I got there. She said she took me.

11 Q. Okay. Now, so you went to the hospital, you were there  
12 for three hours. You weren't being treated the whole time,  
13 you probably waited awhile, didn't you?

14 A. Yes, I probably waited awhile. I'm just guessing, I  
15 don't know, I'm just guessing. It could have been longer.

16 Q. Was the majority of the time spent waiting for  
17 treatment?

18 A. No. Well, I don't know.

19 Q. You don't recall?

20 A. I really couldn't tell you or anything.

21 Q. Once you left that hospital did you have any additional  
22 treatment after that for anything that happened here?

23 A. Well, I had to follow-up with the doctor.

24 Q. For your back surgery?

25 A. Well, I had another surgery coming up anyway so after

## TESTIMONY OF LEON CASKEY

1 that happened that caused me to go earlier because they  
2 wanted to check it out since I had gotten beaten up or  
3 whatever so they wanted to go ahead and do it early, so then  
4 I went to a dentist and he checked my jaw and everything.  
5 And the eye socket and everything, it was bruised but I  
6 still had to take medication for that for awhile. And he  
7 had -- one of the teeth he hit was broken off in there so  
8 they had to pull that one out. One of them was broken off,  
9 they had to pull that one out.

10 MR. GRIER: All right. Well, thank you, Mr. Caskey.

11 THE COURT: Thank you, Mr. Grier.

12 REDIRECT EXAMINATION

13 BY MR. NEWMAN:

14 Q. Just to clarify a few things. You told Mr. Grier that  
15 you were face down on the mattress and squirming as you were  
16 being hit. Do you know for a fact it was Charles Davis that  
17 was hitting you?

18 A. Yes, sir, I do.

19 Q. And I apologize, it was kind of hard to hear over here,  
20 did you say that you did not remember going upstairs?

21 A. I really don't to be honest with you.

22 Q. Do you remember coming down stairs?

23 A. In and out. I think I -- the last thing I remember was  
24 getting in the ambulance, that was about all I remember,  
25 getting in an ambulance, that's about all I remember because

## TESTIMONY OF LEON CASKEY

1 I think I was in and out.

2 MR. NEWMAN: That's all of the questions I have.

3 MR. GRIER: Nothing.

4 THE COURT: Thank you, you may step down. You may call  
5 your next witness, Solicitor.

6 MR. NEWMAN: The State rests, Your Honor.

7 THE COURT: The State rests. Mr. Grier?

8 MR. GRIER: Defense is not going to be presenting any  
9 evidence today, Your Honor.

10 THE COURT: Do you have any motions?

11 MR. GRIER: Certainly we will be making our motions but  
12 we don't have any evidence to present.

13 THE COURT: Ladies and gentlemen, I'm going to need to  
14 ask you to step into the jury room, hopefully this won't  
15 take very long while I discuss a few matters with the  
16 attorneys outside of your presence. And I remind you do not  
17 begin discussing the case.

18 (The jury left the courtroom.)

19 THE COURT: Mr. Grier?

20 MR. GRIER: Your Honor, I would move for a directed  
21 verdict on all of the evidence, or on both of the charges  
22 number one. And certainly the -- Ms. Colbert testified that  
23 Mr. Davis had a key to the apartment and it was reasonable  
24 to expect him to assume that he could enter without any  
25 specific consent on that occasion. I think for a burglary

## TESTIMONY OF LEON CASKEY

1 the State would have to have -- convince a jury that he  
2 entered without consent. I understand that she was  
3 impeached on that and I know you're going to rule against me  
4 based on that, but Your Honor, nonetheless I am making that  
5 motion for the record that I think the evidence that was in  
6 this courtroom today that as the 13 juror that you have the  
7 power to direct a verdict on the burglary. Certainly if he  
8 entered with consent -- or with consent there would be no  
9 burglary notwithstanding that some alleged crime happened  
10 after the fact. Secondly, Your Honor, in good faith I  
11 cannot argue with a straight face that there's no evidence  
12 sufficient to support an assault, I would submit to you that  
13 there's insufficient evidence to establish a serious bodily  
14 injury. We don't have expert testimony to that to establish  
15 a serious bodily injury, and I understand that the jury  
16 will -- that it's likely that you are going to believe  
17 that's going to be something that the jury is going to have  
18 to decide whether it's serious or not. Certainly Mr. Caskey  
19 said there was no --

20 THE COURT: Let me interrupt you a minute and take this  
21 opportunity to ask y'all this, which statute?

22 MR. NEWMAN: It's the old ABHAN.

23 MR. GRIER: It's the old ABHAN which has a list of  
24 aggravating circumstances.

25 THE COURT: Which doesn't actually deal with serious

## TESTIMONY OF LEON CASKEY

1 bodily injury, does it?

2 MR. NEWMAN: It is one of eight aggravating  
3 circumstances.

4 MR. GRIER: Right, you are right. Well, there is use  
5 of a deadly weapon, which there's no evidence of, commission  
6 of a serious bodily injury actually. So it does have a  
7 serious bodily injury actually.

8 MR. NEWMAN: It's one of eight.

9 MR. GRIER: It continues to be in there, it's just that  
10 it's one of the eight just as Mr. Newman says.

11 MR. NEWMAN: Your Honor, I have a copy printed out, I  
12 can pass it up if you don't have it.

13 THE COURT: No, I've got it. You're right, it does,  
14 I'm sorry. But one of the differences is the disparity  
15 between the ages and physical conditions of the parties.

16 MR. NEWMAN: Correct, Your Honor.

17 THE COURT: Hadn't there been some testimony on that?

18 MR. GRIER: I don't know about the ages.

19 THE COURT: No, you're right.

20 MR. NEWMAN: It says ages and physical condition.  
21 There was plenty of testimony about the physical condition  
22 and the fact that one was so much bigger than the other and  
23 one already had a hurt back.

24 MR. GRIER: 6-3 versus 5-11, Your Honor, and I guess  
25 that's something that the jury is going to have to decide

## TESTIMONY OF LEON CASKEY

1 because -- I understand, I'm making a motion so that's my  
2 duty to convince you of that and I'm conceding that, I am  
3 not going to get there with that.

4 MR. NEWMAN: And Your Honor, I'm not conceding anything  
5 on the serious bodily injury, I believe there was testimony  
6 given the man still don't have any teeth permanently.

7 THE COURT: One of his teeth was broken off according  
8 to his testimony presumably to his jaw. Mr. Grier, I  
9 understand your motions, I think there is sufficient  
10 evidence for each of these matters to be submitted to the  
11 jury. So you're going to rest. Do y'all want to take five  
12 before we do closing?

13 MR. NEWMAN: Five will be great, Your Honor, ten would  
14 be better.

15 MR. GRIER: Well, realistically ten.

16 THE COURT: All right. We will be in recess for ten  
17 minutes.

18 (A break was taken.)

19 THE COURT: Any special charges?

20 MR. GRIER: Something relating to the defendant not  
21 being required to be present cannot be discussed in their  
22 deliberations. And Judge, I believe the evidence would  
23 support the charge of -- I think we have already crossed the  
24 bridge in my directed verdict motion as far as whether you  
25 are going to charge ABHAN but I think it would also support

## TESTIMONY OF LEON CASKEY

1 a charge of a simple assault as well. If the jury finds  
2 that these circumstances are not aggravating then certainly  
3 a charge of simple assault would be some option that I think  
4 the jury would be entitled to be defined as well, so I'm  
5 asking for that charge.

6 THE COURT: Solicitor?

7 MR. NEWMAN: Your Honor, I've got no problem with the  
8 charge and I'm familiar with your charge book.

9 THE COURT: Wait a minute, are you saying you agree to  
10 a simple assault charge?

11 MR. NEWMAN: Yes, sir.

12 THE COURT: All right.

13 MR. NEWMAN: But we're still going to charge ABHAN  
14 first.

15 THE COURT: All right.

16 MR. GRIER: I'm not as familiar with your charge book  
17 as Mr. Newman since I didn't have the luxury of serving as  
18 your clerk, Your Honor.

19 THE COURT: Well, he wrote most of it.

20 MR. GRIER: Well, I didn't have the luxury of writing  
21 it, but at any rate -- but Judge, I am familiar from having  
22 tried a number of cases in front of you and I think your  
23 standard charges are appropriate under the circumstances.

24 THE COURT: All right. Well, are y'all ready?

25 MR. GRIER: Ready, Your Honor.

## CLOSING ARGUMENTS

1 MR. NEWMAN: State is ready.

2 THE COURT: Bring in the jury.

3 (The jury returned to the courtroom.)

4 THE COURT: I can't remember whether you heard this or  
5 not but the defendant in the case has also rested meaning  
6 that the defendant has elected not to present or offer any  
7 evidence.

8 MR. GRIER: This is true, Your Honor.

9 THE COURT: Which means that you have heard all of the  
10 evidence and received all of the evidence which you're going  
11 to receive, there's not going to be any additional testimony  
12 or documents, you've heard it all. The thing that remains  
13 to be done, the attorneys will make their closing arguments  
14 to you, I will then tell you about the law, you'll retire to  
15 the jury room and begin your deliberations. Solicitor?

16 MR. NEWMAN: Thank you, Your Honor, Mr. Grier. May it  
17 please the Court? Ladies and gentlemen, as the Judge told  
18 you this was probably a good week to serve and it looks like  
19 he was right, that was a pretty fast trial. We weren't  
20 trying to be fast, it just happened like that. I know you  
21 are probably tired and ready to go home and we're getting  
22 close so I promise I'll be brief. You've heard from a  
23 number of witnesses up there but I don't think any one  
24 witness gave you a full story. You have a piece from one  
25 and a piece from another and you have to piece that together

## CLOSING ARGUMENTS

1 like a puzzle to make a complete story. I'm going to walk  
2 you back through it. The defendant broke into Ms.  
3 Colbert's home, kicked the door in, went in and assaulted  
4 Mr. Caskey, knocked him out, knocked his teeth out of his  
5 head, and then didn't just knock his teeth out, he broke  
6 them off. Ms. Colbert told officers that night, no, he  
7 don't live here, he had no business here, he didn't have a  
8 key. She told you on the stand that he had a key. She has  
9 got children with the defendant and you have to ask yourself  
10 who you want to believe, law enforcement or Ms. Colbert.  
11 One thing she did say was, "Yeah, I was scared of him. I  
12 locked the door, put the stove in front of the door because  
13 I didn't want him over there." And if you believe he had a  
14 key she also told you that, "Well, he just couldn't come and  
15 go as he pleased, he had to call me and I had to allow him  
16 to come." So, I'm telling you even if you believe he had a  
17 key he had no business over there, she told you that. We  
18 showed you evidence that the door was kicked which leads me  
19 to believe he didn't have a key. And you'll see these  
20 pictures, you'll get to take them back with you. You heard  
21 from EMS, he told you that the injuries were pretty serious  
22 and I know they're not life threatening, but as an adult if  
23 you lose a tooth that's pretty permanent. He didn't lose  
24 just one tooth he lost I think he said three or four. So  
25 that's pretty much the complete story. You've got a

## CLOSING ARGUMENTS

1 burglary, a breaking in and an assault and a pretty violent  
2 injury. I want to talk to you a little bit about the law.  
3 I told you earlier assault and battery of a high and  
4 aggravated nature is defined by the State as an unlawful act  
5 of violent injury to another accompanied by aggravating  
6 circumstances. The unlawful act, that's pretty simple, he  
7 assaulted him. Aggravating circumstances, there's a list of  
8 eight and the Judge will tell you all eight, I'm not going  
9 to tell you all eight, I will tell you two of them that I'm  
10 concerned with, I have only got to prove one, one of them is  
11 inflicting serious bodily injury and I believe we have that.  
12 This man lost four of his teeth, you saw the picture, I  
13 won't keep it up because I know it's kind of gruesome.  
14 There's blood all over, he lost four of his teeth, and then  
15 he is carried out on a gurney and taken to the hospital.  
16 Another aggravating circumstance could be great disparity in  
17 physical condition of the parties, and although I have only  
18 got to prove one of these I think we've got both of them  
19 proved. Mr. Hall testified he is 6-foot 3, 285 pounds and  
20 he said the defendant is bigger than him, and you saw the  
21 size of Mr. Caskey, I think he said he was about 150 pounds.  
22 Now on the burglary first. Burglary in the first degree is  
23 entering a dwelling, and a dwelling is a home where you  
24 sleep, without consent with the intent to commit a crime  
25 once you're inside, and while entering or leaving as you

## CLOSING ARGUMENTS

1 have to do. Once again, a list of things, I'm only  
2 concerned with two, he has to either cause physical injury  
3 to a non-participant which we have, Mr. Caskey was injured,  
4 or it has to occur during the nighttime. Ladies and  
5 gentlemen, we have both of them. They told you that when  
6 the police arrived it was around five in the morning. I  
7 guess this is one of those cases where there's not a lot of  
8 CSI evidence like you see on TV, no DNA, no forensics,  
9 you've got basically he said, she said, and you've got some  
10 photos. It's up to you to decide, you decide the facts.  
11 The Judge is going to tell you the law, you've got to decide  
12 the facts, you've got to decide what you believe. The  
13 defense is going to get up here when I sit down and he's  
14 going to pick apart everything I just told you and he's  
15 going to try to -- he's going to probably talk a long time  
16 on reasonable doubt. Ladies and gentlemen, I just want to  
17 tell you, every defense attorney makes a big deal about  
18 reasonable doubt, you don't have to look for reasonable  
19 doubt. If reasonable doubt is there you will see it, it's  
20 like a flashing sign, it's says, "Look at me." It is a hole  
21 in the case and I don't believe you have got reasonable  
22 doubt. You've got a man who broke into a house, violently  
23 assaulted a man and then left, so I ask that when you go  
24 back in that room you talk about it and you come out with a  
25 guilty verdict for both charges. Thank you.

## CLOSING ARGUMENTS

1 THE COURT: Thank you, Mr. Newman. Mr. Grier?

2 MR. GRIER: May it please the Court? Mr. Newman?

3 Solicitor is right about one thing, I'm going to talk about  
4 reasonable doubt because reasonable doubt ain't got nothing  
5 to do with a flashing sign. I mean, a reasonable doubt --  
6 the Judge is going to tell you what a reasonable doubt is,  
7 but reasonable doubt is defined in South Carolina the Judge  
8 is going to tell you as the kind of doubt that would cause a  
9 reasonable person to hesitate, that's what reasonable doubt  
10 is. And I don't know the analogy of that being -- and I  
11 appreciate Mr. Newman's analogy but I don't see it as a  
12 flashing sign that it just jumps out at you, that's why we  
13 deliberate. If it jumped out at you there there wouldn't be  
14 much deliberating. But certainly I'm going to talk some  
15 more about that but I had to take the opportunity to mention  
16 that yes, I'm going to talk about reasonable doubt because  
17 when I talk about reasonable doubt it's like I told you, my  
18 job as an officer of the court and as an advocate for  
19 Charles Davis is to protect the Constitution. I am the wall  
20 between the State and the individual who makes sure that the  
21 State follows the rules and that they prove their case  
22 beyond a reasonable doubt as our Constitution requires. You  
23 know, traditionally, you know, our Constitution was kind of  
24 novel when it came about. Traditionally folks didn't have  
25 the Constitutional rights that we enjoy in our country now

## JURY CHARGE

1 so it's how I wake up in the morning and get myself excited  
2 about doing my job, and this is the most important thing in  
3 the world to me because without it you have summary  
4 judgment, you have the King deciding who is going to jail  
5 and who doesn't, that's why it is real serious business, it  
6 is not something that is just necessarily intuitive. And  
7 certainly my job is to make sure that I do everything I can  
8 to call attention to what I believe the responsibilities of  
9 a juror to be when they're weighing the guilt or innocence  
10 of my client. A couple of things I would also like to go  
11 ahead and address and take issue with that the solicitor  
12 said, I didn't -- I don't believe the evidence -- that  
13 Ms. Colbert said she had to allow him to come. She said  
14 she -- just going back to this issue on the burglary, did he  
15 come with consent or not? She didn't say she had to allow  
16 him to, she said he would usually call before he came over  
17 and that she gave him a key. And she said in her testimony  
18 that if I give somebody a key I'm going to assume that they  
19 can walk in, I'm giving them consent to come in by virtue of  
20 giving them a key. Of course, the State says well, that's  
21 not what she told someone that night. You heard her, she  
22 was mad that night and that's -- I kind of feel sorry for  
23 the puzzles that the police have to put together because  
24 when they get on the scene and there's only one person only  
25 one story gets told and people are mad and they say

## JURY CHARGE

1 everything to make themselves look good and the person they  
2 are grieved with look bad, and, you know, that's something  
3 that has to be sorted out in jury trials. And so I don't  
4 think there was anything in her testimony that would suggest  
5 to you that she's making that up. He had a key and when  
6 he's got a key you've got consent and if you've got consent  
7 to come in you don't have a burglary. It's real surprising  
8 to people to find out -- I mean, we heard several folks and  
9 maybe some of you that -- I don't believe it was anybody  
10 that's on this jury -- to say that they had been victims of  
11 a burglary or somebody in their family had. But generally  
12 those are home invasions for property, I think it is common  
13 knowledge, and when you tell somebody that's a burglary that  
14 if I go into somebody's dwelling with the intent to commit a  
15 crime that is a burglary, that's generally a surprise to  
16 people I find. Certainly the people that were there that  
17 night when whatever happened happened didn't say anything  
18 about -- or I didn't hear it and I don't think they said  
19 anything about Mr. Davis kicking the door in, and that's  
20 merely speculation on the part of law enforcement that the  
21 door was kicked in. It's going to make some noise when you  
22 come into a house and you push a washing machine or a stove,  
23 whatever that is and that's going to make some noise. But,  
24 you know, I think that you've got -- that the best evidence  
25 most certainly -- the State has to prove the case beyond a

## JURY CHARGE

1 reasonable doubt, and if you've got to flip a coin to decide  
2 what you're going to believe then you certainly have a  
3 reasonable doubt. But, you know, sworn testimony on that  
4 Bible today Ms. Colbert said that Mr. Davis had a key. Now,  
5 of course when law enforcement takes statements and right  
6 after people fall out and have fights and accuse each other  
7 of stuff that is not sworn testimony, that is not sworn  
8 testimony like you hear in the courtroom. And there's a  
9 difference between those things when you sit in that box,  
10 and I don't know if any of you have ever done it, but you  
11 know, that's sworn testimony and it's subject to perjury if  
12 you lie and there are rules about lying in the courtroom.  
13 So I think you have every reason to believe that Mr. Davis  
14 had a key. For heaven sakes, this woman is eight months  
15 pregnant with his baby. I mean, is it unreasonable that a  
16 person that's going to kind of stay in touch with the person  
17 who was carrying their baby? I don't know if they knew it  
18 at the time, they turned out to be twins and that she would  
19 give the father of this child a key to her house when she's  
20 carrying his baby that close to delivery? Certainly that's  
21 going to be a critical issue and y'all are going to have to  
22 wrestle with that, or you might not have to wrestle with it,  
23 you might have already actually -- I hope you haven't  
24 already made a decision because you're not supposed to be  
25 deliberating, you haven't deliberated or made up any

## JURY CHARGE

1 decisions until you're sent into the courtroom (sic). But  
2 at any rate that's the issue with the burglary whether he  
3 had a key or not and whether the State has proved beyond a  
4 reasonable doubt when you consider whether he had a key or  
5 not do you hesitate to say he didn't have a key? If you  
6 hesitate to say, well -- if you're feeling about the  
7 evidence causes you to hesitate then you've got a reasonable  
8 doubt because that's what a reasonable doubt is, the Judge  
9 is going to tell you that. And I think it's reasonable that  
10 you would hesitate based on the evidence that you've seen in  
11 here because I think he had a key. As to the assault and  
12 battery of a high and aggravated nature, the Judge is going  
13 to give you -- actually the law has changed, this case is  
14 six years old for heaven sakes and the law has changed but  
15 you -- this case is being tried under the law as it was in  
16 2007 when this happened and the Judge is going to give you a  
17 jury charge and the solicitor correctly stated a couple of  
18 things, whether the assault was aggravated or not is going  
19 to be a determination of whether or not you consider this to  
20 be a serious crime. When you get in a fight you're going to  
21 get contusions or hematomas and you're subject to getting a  
22 tooth knocked out, or teeth knocked out. And certainly  
23 Mr. Caskey himself told you he's in the hospital for about  
24 three hours he believes and that there were no lingering  
25 results of whatever happened that night. And I think for

## JURY CHARGE

1 something to -- you're going to have to decide what's  
2 serious, okay, and you know, that's going to be a debate  
3 that is going to have to happen in your deliberations.  
4 Personally I think something serious is something that  
5 interferes with your life. He said that that -- Mr. Caskey  
6 said this did not interfere with his life after that night.  
7 He had to go get a checkup, he had a broken off tooth or  
8 something and most certainly those -- every injury that he  
9 described is something that could happen in a simple assault  
10 and you're going to have to consider based on what some of  
11 our conversations outside of your presence you're going to  
12 be charged, and you are going to have to decide whether  
13 Davis committed a burglary, you're going to have to decide  
14 whether he committed an assault and battery of a high and  
15 aggravated nature or whether he committed assault -- a  
16 simple assault, which is an assault that doesn't have those  
17 factors that could have the potential for making it  
18 aggravated, or aggravated assault. Certainly an assault  
19 happened, we don't -- nobody was there, but Mr. Caskey and  
20 even Ms. Colbert apparently didn't see any assault. So  
21 you're getting -- you've got to take what Mr. Caskey has to  
22 say with a bit of scrutiny as well because you're getting  
23 one man telling a story in the light most favorable to  
24 himself to help his case and so you've got to take that into  
25 consideration when you deliberate. Again I mentioned in my

## JURY CHARGE

1 opening that we -- that the burden of proof is on the State  
2 and I think the State is on trial as well as the defendant,  
3 and, you know, the State gets some certain advantages.  
4 Actually if I would have presented any evidence today, which  
5 we chose not to present, the State would have been able to  
6 make what's called the final closing argument. I'm getting  
7 to make the final closing argument for what it's worth, I  
8 don't know that it's worth anything, but when -- the State  
9 gets the first few shots at the defendant in terms of the  
10 defendant is arrested, he is drug into court, accusations  
11 are made, the jury hears all of these horrible things about  
12 him because the State gets to go first. And that's one of  
13 the reasons that our constitutional people that devised our  
14 constitution say, hey, the State has got all of these tools,  
15 they get -- they get all of these advantages in the trial so  
16 the burden of proof needs to be beyond a reasonable doubt to  
17 make sure that the people that are not guilty of the crimes  
18 that the State accuses them of don't go to jail. It's not a  
19 get out of jail card, it's a protection from people from  
20 being wrongly convicted. Again, the Judge is going to  
21 charge you reasonable doubt is the kind of doubt that would  
22 cause a reasonable person to hesitate to act, in this case  
23 to hesitate to convict based on whether or not you believe  
24 the State is going to prove their case beyond a reasonable  
25 doubt. He is going to tell you if you are firmly convinced

## JURY CHARGE

1 of the guilt of the defendant then you must convict.  
2 However if you find the real possibility that he may not be  
3 guilty, the real possibility he may not be guilty then you  
4 must acquit. Ladies and gentlemen of the jury, we  
5 appreciate your service. This is the shortest trial I have  
6 ever tried in 22 years of trying cases so I hope that was  
7 merciful to you in your experience today and I guess you are  
8 going to tour the courthouse when this is all over and find  
9 out what the clerk has got up his sleeve if you want one.  
10 But first of all you've got to exercise your duty as a  
11 citizen to give the State a fair shake, to give Mr. Davis a  
12 fair shake when you deliberate and each of you really must  
13 come to your own conclusions. You know, it's getting on  
14 over there in the afternoon, it's still pretty early and  
15 you're thinking about tonight, want to get out of here and I  
16 understand that, I'm the same way but I'm asking you to come  
17 to your own conclusion. Do not just blanketedly adopt the  
18 conclusions of another person, if you're doing that you're  
19 not deliberating. You should consider what your fellow  
20 jurors have reasonable to contribute to the deliberations  
21 but if you say, "I'm going with that simply because I just  
22 give up," well, then you have kind of abrogated what you are  
23 really supposed to be doing because you have got to come to  
24 your own conclusion in this case and that's what the jury  
25 process is about as well. I appreciate your attention. I

## JURY CHARGE

1 believe that after you've considered all of the evidence you  
2 will find that the defendant is not guilty. Thank you.

3 THE COURT: Thank you, Mr. Grier. Ladies and  
4 gentlemen, I remind you that the fact that the defendant was  
5 arrested, charged and indicted in this case is not evidence  
6 and cannot be considered by you as evidence, nor does it  
7 create any presumption or any inference of guilt, this is  
8 simply the documents bringing the case into the court. As I  
9 told you earlier the defendant has pled not guilty to these  
10 indictments and this plea puts the burden upon the State to  
11 prove the defendant guilty. I tell you that a person  
12 charged with committing a criminal offense in South Carolina  
13 is never required to prove himself innocent. It is an  
14 important rule of law that the defendant in any criminal  
15 trial no matter what the seriousness of the charge may be  
16 and will always be presumed to be innocent of the crime for  
17 which the indictment was issued unless guilt has been proven  
18 by evidence that satisfies you of that guilt beyond a  
19 reasonable doubt. This presumption of innocence does not  
20 end when you begin your deliberations but it accompanies the  
21 defendant throughout the trial until you reach a verdict of  
22 guilt based on evidence that satisfies you of that guilt  
23 beyond a reasonable doubt. The presumption of innocence is  
24 like a robe of righteousness placed about the shoulders of  
25 the defendant which remains with the defendant until it has

## JURY CHARGE

1 been stripped from the defendant by evidence that satisfies  
2 you of that guilt beyond a reasonable doubt. The  
3 presumption of innocence is not a mere legal theory, it is  
4 not just a legal phrase, it is a substantial right to which  
5 every defendant is entitled unless you, the jury, are  
6 satisfied from the evidence of the defendant's guilt beyond  
7 a reasonable doubt. A reasonable doubt is the kind of doubt  
8 that would cause a reasonable person to hesitate to act.  
9 Some of you may have served on juries in civil cases and you  
10 were told that it was only necessary to prove a fact was  
11 more likely true or not such as by the greater weight and  
12 the preponderance of the evidence. But in criminal cases  
13 the State's proof must be more powerful than that, it must  
14 be beyond a reasonable doubt. Proof beyond a reasonable  
15 doubt is proof that leaves you firmly convinced of the  
16 defendant's guilt. Of course there are very few things in  
17 this world that we know of with absolute certainty, and in  
18 criminal cases the law does not require proof that overcomes  
19 every possible doubt. If based on your consideration of the  
20 evidence you are firmly convinced that the defendant is  
21 guilty of the crime charged you must find the defendant  
22 guilty. If on the other hand you think there is a real  
23 possibility that the defendant is not guilty you must give  
24 the defendant the benefit of the doubt and find the  
25 defendant not guilty. During this trial you and I have had

## JURY CHARGE

1 different obligations and responsibilities. It has been my  
2 responsibility to preside over the trial, to rule on the  
3 admissibility of the evidence and now it is my duty to  
4 charge you or tell you about the law that applies in this  
5 case. As the presiding judge I am the sole judge of the law  
6 of this case and it is your duty as jurors, ladies and  
7 gentlemen, to accept the law and apply the law as I now  
8 state it to you. If you already have any idea of what the  
9 law is or what the law should be and it does not agree with  
10 what I tell you, you must abandon that idea because you're  
11 sworn to accept the law and apply the law exactly as I state  
12 it to you. In every case tried before a jury the jury  
13 becomes the sole and exclusive judge of the facts of the  
14 case. A trial judge such as myself cannot intimate, state,  
15 comment on or make any statement to a trial jury about the  
16 facts of the case. You are not to infer from anything I've  
17 done or said that I have an opinion about the facts of the  
18 case, that is a matter solely for you to determine. It is  
19 your duty, ladies and gentlemen, to determine the effect,  
20 the value, the weight and the truth of the evidence  
21 presented during this trial. Generally speaking there are  
22 two types of evidence presented during a trial, direct  
23 evidence and circumstantial evidence. Direct evidence, of  
24 course, is the testimony of a person who claims to have  
25 actual knowledge of a fact such as an eye witness, it is

## JURY CHARGE

1 evidence which immediately establishes the main fact to be  
2 proved. Circumstantial evidence is proof of a chain of  
3 facts and circumstances indicating the existence of a fact.  
4 It is evidence which immediately establishes collateral  
5 facts in which a main fact may be inferred. Circumstantial  
6 evidence is based on inference and not on personal knowledge  
7 or observations. The law makes no distinction between the  
8 weight or the value to be given to direct or circumstantial  
9 evidence, nor is a greater degree of certainty required of  
10 circumstantial evidence than of direct evidence. You should  
11 weigh all of the evidence. After weighing all of the  
12 evidence if you are not convinced of the guilt of the  
13 defendant beyond a reasonable doubt you must find the  
14 defendant not guilty. You must determine the credibility of  
15 the witnesses who testified in this case, ladies and  
16 gentlemen, this simply means the believability of the  
17 witnesses. It becomes your duty as jurors to analyze and to  
18 evaluate the evidence and determine which evidence convinces  
19 you of its truth. In determining the believability of  
20 witnesses you may believe one witness over several or  
21 several witnesses over one. You may believe everything that  
22 a witness says or you may believe nothing that a witness  
23 says. You may believe part of what a witness says and  
24 reject the remaining testimony of the very same witness.  
25 And, of course, you may decide -- you may consider whether

## JURY CHARGE

1 the witness has shown any bias or any prejudice in the case.  
2 I instruct you and emphasize to you that the fact that the  
3 defendant did not appear and did not testify in this case is  
4 not a factor to be considered by you for your deliberation  
5 and your consideration in questioning the guilt or innocence  
6 of the defendant. It must not be considered by you  
7 whatsoever. I repeat, under your oath you are to draw no  
8 conclusions whatsoever from the fact that the defendant did  
9 not appear and testify. This should not even be discussed  
10 in the jury room. The burden of proof as I have stated to  
11 you is on the State, the defendant is not required to prove  
12 his or her innocence. The burden remains upon the State to  
13 prove guilt beyond a reasonable doubt. As you've heard the  
14 defendant has been charged with first degree burglary. The  
15 State must first prove beyond a reasonable doubt that the  
16 defendant entered the dwelling without consent, and of  
17 course a dwelling is any building or portion of a building  
18 in which a person ordinarily sleeps. Next the State must  
19 prove beyond a reasonable doubt that the defendant intended  
20 to commit a crime, either a felony or a misdemeanor at the  
21 time of the entry. The mere entering into a dwelling  
22 without consent is not burglary, if the intent to commit a  
23 crime is formed after entry it is not burglary. On the  
24 other hand if the defendant intended to commit a crime at  
25 the time of the entry it is a burglary even if the intent

## JURY CHARGE

1 was abandoned after the entry. Intent may be shown by acts  
2 and conduct of the defendant or the circumstances which you  
3 may naturally and reasonably infer intent. Finally the  
4 State must prove beyond a reasonable doubt either one or  
5 more of the following circumstances: That when entering or  
6 while in the dwelling or when fleeing the defendant caused  
7 physical injury to someone who was not participating in the  
8 crime, or while entering the dwelling or fleeing the  
9 defendant used or threatened to use a dangerous object, or  
10 the defendant entered or remained in the dwelling in the  
11 nighttime, and I tell you nighttime is the period between  
12 sunset and sunrise. The defendant is also charged with  
13 assault and battery of a high and aggravated nature. I tell  
14 you that that is an unlawful act of violent injury to the  
15 person of another accompanied by circumstances of  
16 aggravation. I'll explain the assault and battery to you  
17 just for a second. The assault occurs when a person  
18 unlawfully attempts or offers to commit a violent injury  
19 upon another person having the present ability to complete  
20 the injury. It is the intentional creation of a reasonable  
21 fear of immediate bodily harm. For an assault to occur it's  
22 not necessary that the attempted injury or harm actually  
23 take place. For example if I were to walk up to one of you  
24 and we were within arms reach and I draw back to strike you,  
25 that actually constitutes an assault. The battery though is

## JURY CHARGE

1 the unlawful touching of another person by a person who is  
2 committing the assault and this can be caused by any object  
3 or any part of another's body. The battery is the  
4 completion of the assault. And the other example I gave  
5 you, if I followed through and struck you that would  
6 constitute a battery, thus assault and battery. The State  
7 must also prove, though, a circumstance of aggravation.  
8 Circumstances of aggravation include using a deadly weapon,  
9 the intent to commit a felony and infliction of serious  
10 bodily injury, or a great disparity between the ages or  
11 physical conditions of the parties. If you find that the  
12 State has failed to prove that the defendant is guilty of  
13 assault and battery of a high and aggravated nature you may  
14 then consider whether the State has proved the defendant was  
15 guilty of simple assault and battery. Simple assault and  
16 battery contains all of the elements of assault and battery  
17 of a high and aggravated nature except those -- none of  
18 those circumstances of aggravation that I mentioned to you  
19 earlier. Ladies and gentlemen, in just a few moments I am  
20 going to ask you to retire to the jury room but I ask you  
21 not to begin your deliberations until I send to the jury  
22 room the exhibits that have been introduced and this verdict  
23 form, when these are sent to the jury room that would be the  
24 cue for the alternate juror to step back into the jury room  
25 and for you to begin your deliberations. I would ask the

## JURY CHARGE

1 foreperson if she would on behalf of the jury to complete  
2 the verdict form. For there to be any verdict the verdict  
3 must be unanimous meaning all 12 of you must agree before  
4 there can be any kind of verdict. As to each of these  
5 charges the verdict of guilty or not guilty, on the charge  
6 of burglary in the first degree you have no other choices  
7 except guilty or not guilty. On the other charge, though,  
8 on assault and battery of a high and aggravated nature you  
9 will again have that same choice of guilty or not guilty.  
10 As I instructed you a moment ago if you decide that the  
11 defendant -- the State has failed to prove beyond a  
12 reasonable doubt that the defendant is guilty of assault and  
13 battery of a high and aggravated nature, you then consider  
14 whether the State has proved the lesser included charge of  
15 simple assault and battery. The defendant cannot be guilty  
16 of both assault and battery of a high and aggravated nature  
17 and simple assault and battery, he may be guilty or not  
18 guilty of either but he cannot be guilty of both. When the  
19 jury reaches a unanimous verdict, Ms. Noyes, would you  
20 please circle whether the verdict was guilty or not guilty  
21 in the appropriate place, sign the verdict form, knock on  
22 the door and let the bailiff know that you are ready and we  
23 will then receive you back into the courtroom. So ladies  
24 and gentlemen, if you would now please step in the jury  
25 room, don't yet begin deliberations, I will send word when

## JURY CHARGE

1 it's time to begin deliberations.

2 (The jury left the courtroom.)

3 THE COURT: Exceptions?

4 MR. GRIER: None from the defendant.

5 MR. NEWMAN: No, sir.

6 THE COURT: Exhibits?

7 MR. NEWMAN: We need to be sure we strike the words on  
8 the indictment if it is going back.

9 THE COURT: It's not going back.

10 (The jury began deliberations.)

11 THE COURT: I have a note from the jury, "We would like  
12 to know the difference between assault and battery of a high  
13 and aggravated nature and assault and battery?" Any  
14 thoughts besides bring them back in and recharge them?

15 MR. GRIER: I don't see anything else that can be done.

16 MR. NEWMAN: I'm fine with recharging.

17 (The jury returned to the courtroom.)

18 THE COURT: Welcome back, ladies and gentlemen. I have  
19 a note from the jury. As I understand it the jury seeks a  
20 clearer definition between assault and battery of a high and  
21 aggravated nature and simple assault and battery. As I told  
22 you earlier assault and battery of a high and aggravated  
23 nature is an unlawful act of violent injury to the person of  
24 another accompanied by circumstances of aggravation. I'm  
25 assuming y'all understand what constitutes assault and

## JURY CHARGE

1 battery. The difference between assault and battery of a  
2 high and aggravated nature and simple assault and battery is  
3 that in simple assault and battery there are no aggravating  
4 circumstances. The aggravating circumstances that the State  
5 must prove to prove assault and battery of a high and  
6 aggravated nature constitute use of a deadly weapon, the  
7 intent to commit a felony or the infliction of serious  
8 bodily injury, or there was a great disparity between the  
9 ages or physical conditions of the parties. I hope that  
10 does it, if it doesn't send me another note. Retire to the  
11 jury room and resume your deliberations, ladies and  
12 gentlemen.

13 (The jury left the courtroom and resumed  
14 deliberations and returned with a verdict.)

15 THE COURT: I'm informed the jury has reached a  
16 verdict. Is the State ready?

17 MR. NEWMAN: State is ready.

18 THE COURT: Defense?

19 MR. GRIER: Yes, sir.

20 (The jury returned to the courtroom.)

21 THE COURT: Madam Forelady, I understand the jury has  
22 reached a verdict?

23 THE JUROR: Yes, sir.

24 THE COURT: Couple of questions. Was it a unanimous  
25 verdict?

## JURY VERDICT

1 THE JUROR: Yes, sir.

2 THE COURT: And did you circle the appropriate verdicts  
3 on the verdict form?

4 THE JUROR: Yes, sir.

5 THE COURT: If you would, hand it up to the clerk. Mr.  
6 Clerk, if you would publish the verdict.

7 THE CLERK: Case of State vs. Charles Davis. We the  
8 jury as to indictment number 2007-GS-29-0866, burglary first  
9 degree, unanimously find the defendant, Charles Henry Davis,  
10 guilty. We, the jury, as to indictment number  
11 2007-GS-29-0867, assault and battery of a high and  
12 aggravated nature unanimously find the defendant, Charles  
13 Henry Davis, guilty. Signed by the foreperson, Cynthia  
14 Noyes with today's date. Ladies and gentlemen, if this be  
15 your verdict so say you all by the raising of your right  
16 hands. Let the record reflect all jurors raised their  
17 hands.

18 THE COURT: Thank you. Anything from the State?

19 MR. NEWMAN: No, Your Honor.

20 MR. GRIER: Polling the jury.

21 THE COURT: All right, Mr. Clerk?

22 THE CLERK: Raila Roinsalo, was this your verdict and  
23 is this still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Unshenekia Jones, was this your verdict and

## JURY VERDICT

1 is this still your verdict?

2 THE JUROR: Yes, sir.

3 THE CLERK: Sandra Perry, was this your verdict and is  
4 this still your verdict?

5 THE JUROR: Yes, sir.

6 THE CLERK: Gloria Jordan, was this your verdict and is  
7 this still your verdict?

8 THE JUROR: Yes, sir.

9 THE CLERK: Jennifer Wright, was this your verdict and  
10 is this still your verdict?

11 THE JUROR: Yes, sir.

12 THE CLERK: Paul Craig, was this your verdict and is  
13 this still your verdict?

14 THE JUROR: Yes, sir.

15 THE CLERK: Foreperson, Cynthia Noyes, was this your  
16 verdict and is this still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Mary Price, was this your verdict and is  
19 this still your verdict?

20 THE JUROR: Yes, sir.

21 THE CLERK: Tianac Massey, was this your verdict and is  
22 this still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Daniel Ziegler, was this your verdict and  
25 is this still your verdict?

## SENTENCING HEARING

1 THE JUROR: Yes, sir.

2 THE CLERK: Riketa Williams, was this your verdict and  
3 is this still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Mary Smith, was this your verdict and is  
6 this still your verdict?

7 THE JUROR: Yes.

8 THE COURT: Anything else before the jury is released,  
9 Mr. Grier?

10 MR. GRIER: No, sir.

11 (The jury was released.)

12 THE COURT: Motions?

13 MR. GRIER: Just renew my motions that were made on the  
14 directed verdict, I would ask that the judge consider them  
15 as the 13 juror and grant a new trial. Those would be my  
16 motions.

17 THE COURT: And I understand the motions and I  
18 understand the reasons for the motions but I believe the  
19 decision of the jury was in its province and I will deny the  
20 motion. And I suppose that the solicitor is preparing  
21 sentence sheets?

22 MR. NEWMAN: I am, Your Honor.

23 MR. GRIER: Are we going to do any presentation prior  
24 to sentencing?

25 THE COURT: I'm sorry?

## SENTENCING HEARING

1 MR. GRIER: Do we argue?

2 THE COURT: Would you like to?

3 MR. GRIER: Well, are you going to sentence him without  
4 knowing anything about his history or --

5 THE COURT: Solicitor, do you want to present something  
6 on sentencing?

7 MR. NEWMAN: Your Honor, the victim is here and I think  
8 he would probably like to speak.

9 THE COURT: Okay.

10 MR. NEWMAN: And he also has some medical bills that  
11 could be an issue for restitution.

12 THE COURT: Okay.

13 MR. NEWMAN: I understand it's a prison sentence,  
14 but --

15 THE COURT: All right. Are you prepared to go forward?

16 MR. NEWMAN: Give me just a moment.

17 (Break in proceedings.)

18 THE COURT: Solicitor?

19 MR. NEWMAN: Your Honor, I was looking for an updated  
20 rap sheet, of course this is from 2007 in this case file. I  
21 have texted Mr. Nowiki because he had a newer case on him.  
22 He does have some stuff pending with our office, Mr. Nowiki  
23 is in the process of looking for. I will give you what I  
24 have got. Again, Mr. Grier and I discussed, I think the  
25 only new thing is that he failed to stop for a blue light

## SENTENCING HEARING

1 just a few months ago, he was sentenced to eight and a half  
2 months and he pled guilty to that. His record goes back.

3 THE COURT: He's not on --

4 MR. GRIER: No, he has been back out, it was  
5 approximately September, you know..

6 THE COURT: Judge Burch?

7 MR. GRIER: Close enough, he has been out for several  
8 months at least.

9 MR. NEWMAN: His record, Your Honor, goes back to 1986,  
10 malicious injury to personal property, 1988 assault and  
11 battery, 1991 simple possession of cocaine, 1992 criminal  
12 domestic violence, 1992 driving under suspension, 1994  
13 simple possession of marijuana, 1996 driving under  
14 suspension, 1998 resisting arrest and simple assault and  
15 battery. 2000 unlawful use of credit cards, 2001 unlawful  
16 carrying of a weapon, possession of cocaine second offense.  
17 2001 attempted armed robbery, 2003 possession of cocaine  
18 second, 2003 -- I'm sorry, 2004 possession of cocaine second  
19 two counts, pointing and presenting a firearm and unlawful  
20 carrying. 2005 trespassing and entering premises after  
21 warning. And as we said the failure to stop for a blue  
22 light is the most recent. Your Honor, I hate that Mr. Hall  
23 left before we did this, law enforcement is the reason that  
24 we pushed this case. We had a case last term with him and  
25 this term, he has just been a thorn in the side of law

## SENTENCING HEARING

1 enforcement, every time they see him he runs from them.  
2 Check this newer record. 2006 entering premises without  
3 warning and a 2007 entering another's land after notice,  
4 2009 entering premises after warning and then 2011 failure  
5 to stop for a blue light. Your Honor, I don't think I have  
6 to say a whole lot, a minimum of 15 years. I'm certain this  
7 doesn't warrant any life sentence so but I would ask you to  
8 hear from the victim.

9 THE COURT: I will be glad to. Yes, sir, Mr. Caskey?

10 THE WITNESS: Yes, sir. You know, I'm just glad this  
11 thing is over with, Your Honor, and I can put it behind me.  
12 Only thing I really want is to get this behind me and  
13 this -- it shouldn't have happened and it's bad enough when  
14 you are jumping on a man but when a man is asleep that's  
15 just cowardly, you get what you deserve from that and I am  
16 glad this is over.

17 THE COURT: Thank you, sir.

18 MR. NEWMAN: Your Honor, he doesn't have the bills with  
19 him but he says the hospital bill was a little over \$3,000,  
20 ambulance bill was 1,000. I will send up a restitution  
21 order and let you decide the amount.

22 THE COURT: I take it Mr. Davis is currently 44, the  
23 sentence sheet says 44.

24 MR. NEWMAN: That is printed off our system.

25 MR. GRIER: He was 38 six years ago so that would be

## SENTENCING HEARING

1 consistent with the police report.

2 THE COURT: All right. And Mr. Grier?

3 MR. GRIER: He would have turned 39 in 2007, so he will  
4 be 45 at the end of this month. Judge, I understand law  
5 enforcement is aggravated with him because he runs and  
6 running is not one of the worst crimes with all of these  
7 murders and serious cases that we've got in this town. The  
8 running aspect of this being the reason he is a thorn in  
9 their side is not the biggest thing, it's annoying but it --  
10 as far as a threat to the community it's not really that big  
11 of a deal. But Judge, you heard his record. Certainly he  
12 was on a major tear as a younger man, after 2004 the only  
13 general sessions crime that he has been convicted of is the  
14 failure to stop for a blue light. This happened in 2007, so  
15 it's a six year old case and, you know, while any crime is  
16 one crime too many his -- the frequency and his contact with  
17 law enforcement and his criminal behavior has substantially  
18 subsided which we think was evidenced by the criminal record  
19 is the only reason I thought it was important for you. And  
20 I understand what the minimum sentence is, I don't think  
21 there's any prohibition against being able to suspend part  
22 of that and I'm certainly asking you to suspend all of it  
23 which I know you're not going to do. But Your Honor, we had  
24 negotiations that were quite frankly in retrospect for Mr.  
25 Davis when we should have been able to resolve this case and

## SENTENCING HEARING

1 I think had he appeared we would have been able to resolve  
2 it through a plea. But my last note on a negotiation is  
3 that seven years suspended -- but they were moving this  
4 downward and getting this out of the burglary and those were  
5 the offers that were on the table for to get him, in fact,  
6 out of 85 percent time. But the offer was seven suspended  
7 to four was the last offer that I received and that would  
8 have involved restitution for Mr. Caskey as well. I'm  
9 asking you not to trial tax him too much over what the  
10 solicitor saw was an appropriate resolution and actually  
11 that was an offer when he had a pending --

12 MR. NEWMAN: Your Honor, I will say that was the offer,  
13 however we never got any indication he was willing to plead  
14 on any of his charges and he didn't. He pled straight up to  
15 his failure to stop for a blue light on the day that we were  
16 going to pick a jury.

17 MR. GRIER: Not withstanding I think it's my duty to  
18 point out at some point that the solicitor thought that was  
19 a resolution of the case for a possession with intent to  
20 distribute these -- all of these charges and so now we are  
21 faced with sentencing on these charges alone. Your Honor,  
22 you heard, he's got at least twins, I don't have any other  
23 indication that he has got any other children, that  
24 apparently there's a relationship with Ms. Colbert. While I  
25 don't think they're together, you know, it's apparently

## SENTENCING HEARING

1 amicable at the time this happened. While I'm not  
2 justifying an attack on Mr. Caskey, he seems like a nice man  
3 and I hate that for him to suffer at all, certainly, you  
4 know, I don't know what the jury based their aggravated  
5 assault verdict on but, you know, if it was serious bodily  
6 injury, if Mr. Davis had intended to very seriously  
7 injure -- if they did -- well, if that was considered  
8 serious, knocking teeth out -- the only thing I think if the  
9 jury decided was a serious bodily injury was knocking the  
10 teeth out, I'm not trying to justify it but certainly  
11 Mr. Davis was capable of harming Mr. Caskey much more than  
12 happened in this case when he apparently came in while  
13 another man is with the woman carrying his babies, eight  
14 months pregnant. So that's, you know, the -- what would go  
15 through a man's mind under those circumstances I think has  
16 some mitigation value in this case and might cause him to  
17 suspend the judgment of just walking away and saying that's  
18 fine. But at any rate, Judge, Mr. Davis is -- when I talked  
19 to him, you have seen me in front of this Court with many  
20 clients who you could probably recognize we were in  
21 difficult relationships with, it was never that way with me  
22 and Mr. Davis. He was always reasonable to talk to, and as  
23 Mr. Caskey said they never had any problems. This was a one  
24 time deal, a burglary that, you know, is quite frankly, you  
25 know, very surprised that the State won it, but I commend it

## SENTENCING HEARING

1 for their victory not withstanding that and they should be  
2 proud of that. But at any rate, Your Honor, it was one  
3 event, technically a burglary but nobody was stealing,  
4 somebody was just mad, probably an assault just got out of  
5 hand. I'm asking you to suspend a substantial part of that  
6 15 years, the message is going to be out there for him, it's  
7 six years old, Your Honor, and really no substantial -- a  
8 failure to stop for a blue light is the only general  
9 sessions charge since 2004, almost ten years.

10 THE COURT: All right. Thank you, Mr. Grier. Anything  
11 else, Solicitor?

12 MR. NEWMAN: No, Your Honor.

13 THE COURT: All right. I completed the sentence sheets  
14 and put them in a sealed envelope provided by the clerk of  
15 court.

16 (End of trial proceedings.)

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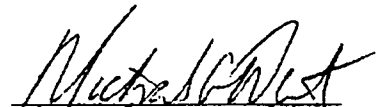
25

1 I, the undersigned, Michael C. Watkins, Official Court  
2 Reporter for the Sixth Judicial Circuit of the State of South  
3 Carolina, do hereby certify that the foregoing is a true,  
4 accurate and complete transcript of the proceedings had and  
5 evidence introduced in the trial of the captioned case,  
6 relative to appeal, in the Court of General Sessions for  
7 Lancaster County, South Carolina, on the 13th day of  
8 February, 2013.

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

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September 17, 2013

  
Michael C. Watkins  
Court Reporter

SATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	SIXTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	CASE NO.: 2007-GS-29-00866
	)	-00867
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
CHARLES DAVIS	)	

BEFORE THE HONORABLE J. ERNEST KINDARD, JR.

APPEARANCES:

RANDY NEWMAN, ASSISTANT SOLICITOR  
LANCASTER, SOUTH CAROLINA

ATTORNEY FOR THE STATE

MARK GRIER, ASSISTANT PUBLIC DEFENDER  
LANCASTER, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM  
16<sup>TH</sup> Circuit Court Reporter

I-N-D-E-X

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

NO EXHIBITS

1 THE COURT - Okay, we've got Charles Davis out  
2 here. What's he been up to?

3 MR. NEWMAN - Your Honor, this is a sealed  
4 sentence. Mr. Davis was tried February 13<sup>th</sup>, 2013, tried  
5 for assault and battery of a high and aggravated nature and  
6 burglary first, was found guilty. Mr. Davis did not show  
7 up for trial. Judge Goldsmith sentenced him and sealed the  
8 sentence, and we request that you open the sentence at this  
9 time.

10 THE COURT - All right. Okay. It looks like  
11 Judge Goldsmith sentenced him to 20 years and 10 years;  
12 they were concurrent and ordered him to pay \$4,000 dollars  
13 restitution. So what about it, Mr. Grier?

14 MR. GRIER - Judge, I -- you know, I'd like to  
15 make motions; I'd like for you to -- but I assume I'd have  
16 to make those in front of Judge Goldsmith. Would you --  
17 Judge, I'd ask that you reconsider, that you -- I mean it's  
18 a -- he got a 20 year sentence on the burglary and a 10  
19 year on the assault and battery with a -- of a high and  
20 aggravated nature?

21 THE COURT - Yes.

22 MR. GRIER - Your Honor, I think that that's  
23 excessive in light of, you know, what -- you know, was  
24 presented to the Court. He had a offer of a cap of five  
25 years on it. It was a -- he was obviously tried in his

1 absence, Your Honor, and we just were not able to get Mr.  
2 Davis into the courtroom and the sentencing is grossly  
3 excessive for, you know, what's alleged, that he -- I will  
4 tell you that in the trial the -- the owner of the home was  
5 the mother of his baby. She was pregnant with his child at  
6 the time and he was -- she was having a -- had a man in  
7 there and, you know, Mr. Davis entered the home; she  
8 testified he had a key to the home, and notwithstanding  
9 that, the jury found him guilty on the burglary first which  
10 I believe is unconstitutional. I mean I don't believe  
11 burglary first applies under the circumstance. I know  
12 we've got some law on it in South Carolina, would love to  
13 see it challenged on the federal level, you know, but,  
14 Judge, it's -- you know, certainly I could understand a  
15 charge of assault and battery of a high and aggravated  
16 nature under the circumstances and hearing the testimony of  
17 the victim in that case, but this was a entry into a home  
18 where the owner the owner of that home said that he had a  
19 right to be there and access to it during the trial, and  
20 I'd ask that you vacate the sentence and -- or in the  
21 absence and re-sentence him to something, you know, where -  
22 - he certainly wants to return home to his family, and that  
23 would be our objective today, but I think it's grossly  
24 disproportionate to the facts of the case.

1 THE COURT - Well, here's how these things  
2 operate. He should've taken the deal which he didn't take.  
3 I think burglary first because the jury could've found him  
4 guilty of burglary second, so burglary first is 15 to life.  
5 I think that's what it is, so all I could cut it to would  
6 be 15. I'm not retrying it. I'm just -- could re-  
7 sentence.

8 MR. GRIER - Well, Judge I'd ask you to do -  
9 certainly, I'd ask that you reduce it the 15 if that's all  
10 the Court feels like it can do. Of course, you know, I  
11 think that'd be an appropriate ---

12 THE COURT - Well, burglary first I believe is 15  
13 to life, and I don't think I can play with it.

14 MR. GRIER - Well, I -- regrettably I think that's  
15 what our Supreme Court said. I think, you know, if it's  
16 going to be challenged, that have to go to -- to -- you  
17 know, be reviewed on a constitutional basis, and I don't  
18 know if there's anything there or not, but probably  
19 somebody needs to challenge it.

20 THE COURT - Well, anyway, that's ---

21 MR. GRIER - And we can't do that here, and I  
22 understand that, Your Honor. I think Mr. Davis would like  
23 to address you.

24 THE COURT - I'm listening.

1 MR. DAVIS - How you doing, sir? I just want to  
2 say, I didn't not come to Court intentionally. I had came  
3 when he told me to come. I came up here the day before and  
4 he said uh -- he told me to come back the next day to pick  
5 a jury and which me and fiancé and my daughter, we came and  
6 he told us to go upstairs and I waited, but I just want to  
7 say this, I'm not a burglar and that assault and battery,  
8 it was just a -- it was just a fight, you know, and, sir, -  
9 - and I wasn't trying to hide because I just ---

10 THE COURT - Here's the problem. I was not the  
11 Trial Judge of that Court.

12 MR. DAVIS - Yes, sir, I know.

13 THE COURT - I didn't hear it. I'll do this for  
14 you, the best I can do, since Judge Goldsmith is here and  
15 since this is his first opportunity, maybe he can  
16 reconsider, but he would be locked in the same thing  
17 though. The jury found him guilty of burglary first. I  
18 don't think I can help you. I -- I'll reduce it to 15  
19 years, which is the minimal I can do as I understand the  
20 law.

21 MR. DAVIS - Yes, sir, but -- sir, I was just  
22 saying I wasn't hiding. I -- I ---

23 THE COURT - I understand, but that's not --  
24 that's not something I can deal with. The jury's already  
25 found you guilty. They've found you weren't there and so

1 forth. You may have other recourse on that but nothing I  
2 can do for you.

3 MR. DAVIS - Yes. I just -- I mean I wasn't ---

4 MR. GRIER - I told him he needs to file his PCR.

5 THE COURT - Yes.

6 MR. GRIER - And that's the best he can do. Go  
7 ahead and file your PCR. We'll file motions in front of  
8 Judge Goldsmith as well, Your Honor. I think we can still  
9 probably do that.

10 THE COURT - I'm going to write off on this one  
11 sealed sentence opened ---

12 MR. GRIER - Well, while, Your Honor, I don't --  
13 you know, I agree with your analysis of our predicament, I  
14 think in an abundance of caution I probably need to go  
15 ahead and file some Motion to Reconsider on his behalf and  
16 would be appropriate thing to do notwithstanding the  
17 potential futility of it.

18 THE COURT - I said sealed sentence opened 6-18-  
19 13, reduced to 15 year sentence.

20 (END OF TRANSCRIPT)

21

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STATE OF SOUTH CAROLINA        )  
  )  
  )        C-E-R-T-I-F-I-C-A-T-E  
  )  
COUNTY OF YORK                    )

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the State of South Carolina v. Charles Davis, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 20th day of September, 2013.

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



Shirley Broom, CVR-M  
Official Court Reporter  
SIXTEENTH JUDICIAL CIRCUIT

WITNESSES

Campbell - LPD #07:022223

*Attorney at Law*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ARREST WARRANT NUMBER/DOA

K055265 (DOA 5-25-2007)

\_\_\_\_\_

ACTION OF GRAND JURY

\_\_\_\_\_

*Foreperson of Grand Jury*

Date: FEB 07 2013

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-SS-23-0867

The State of South Carolina

County of Lancaster

FILED  
OFFICE OF CLERK  
OF COURT  
2013 FEB -7 PM 12:32  
CLERK OF COURT  
LANCASTER, SC

COURT OF GENERAL SESSIONS

February TERM 2013

\_\_\_\_\_

THE STATE

vs.

Charles Henry Davis *2007-807*



\_\_\_\_\_

Indictment for

Assault and Battery of a High and Aggravated Nature

SC Code: §17-25-0030  
CDR Code: 0013  
Class: Misdemeanor, UNC

\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LANCASTER )

INDICTMENT

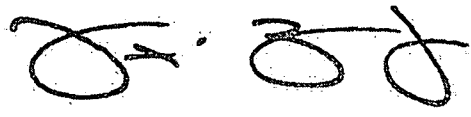
FILED  
FEB 11 2013  
CLERK OF COURT  
LANCASTER COUNTY  
SOUTH CAROLINA

At a Court of General Sessions, convened on February 7, 2013, the Grand Jurors of Lancaster County present upon their oath:

**ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE**

That Charles Henry Davis did in Lancaster County on or about February 11, 2007, commit an assault and battery upon the victim, Leon Caskey, Sr., constituting an unlawful act of violent injury to the person of the victim accompanied by circumstances of aggravation, to wit: Hitting victim [REDACTED], causing serious bodily injury, in violation of the common law of the State of South Carolina.

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



\_\_\_\_\_  
Douglas A. Barfield, Jr., SOLICITOR

STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lancaster )

STATE VS. )

Charles H Davis )

AKA: )

Race: BLACK Sex: M Age: )

DOB: SS#: )

Address: )

City, State, Zip: )

DL#: SID#: )

\*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: Assault / Assault and battery of a high and aggravated nature (ABHAN)

INDICTMENT/CASE#: 2007-GS-29-867

A/W#: K055265

Date of Offense: 5/25/2007

S.C. Code § : 17-25-0030

CDR Code #: 0013

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 17-25-0030 of the S.C. Code of Laws, bearing CDR Code # 0013

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.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Newman, Randy Eugene

SC Bar# 28667

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 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment of \$ ; plus costs and assessments as applicable\*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Rows include various assessment and surcharge items like § 14-1-206, § 14-1-211(A)(1), etc.

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

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

Clerk of Court/ Deputy Clerk

Court Reporter: Mild Weather

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2139

Sentence Date: February 13, 2013

WITNESSES

Campbell - LPD #07-02223

FILED

FILED  
OFFICE OF CLERK  
OF COURT

2013 FEB -7 PM 12:31

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

ARREST WARRANT NUMBER/DOA

K055264 (DOA 5-25-2007)

ACTION OF GRAND JURY

THE STATE

VS.

Charles Henry Davis

*See Ben*

Foreperson of Grand Jury

Date: FEB 07 2013

VERDICT

**TRIFEBRII**

Foreperson of Petit Jury

Date:

Indictment for  
Burglary, First Degree

SC Code: §16-11-311(A)(3)  
CDR Code: 0079  
Class: Felony, EXM

STATE OF SOUTH CAROLINA    )  
  )  
COUNTY OF LANCASTER        )

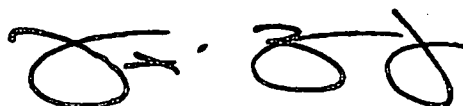
INDICTMENT

At a Court of General Sessions, convened on February 7, 2013, the Grand Jurors of Lancaster County present upon their oath:

**BURGLARY, FIRST DEGREE**

That Charles Henry Davis did in Lancaster County on or about February 11, 2007, enter the dwelling of Sharita Ryan Colbert without consent and with intent to commit a crime in the dwelling and the entering or remaining occurred in the nighttime in violation of §16-11-311(A)(3), *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.

  
\_\_\_\_\_  
Douglas A. Barfield, Jr., SOLICITOR

COUNTY OF Lancaster  
STATE VS.  
Charles H Davis

INDICTMENT/CASE#: 2007-GS-29-866  
A/W#: K055264  
Date of Offense: 5/25/2007  
S.C. Code §: 16-11-0311  
CDR Code #: 0079

AKA:  
Race: BLACK Sex: M Age: 44  
DOB: [REDACTED] SS#: [REDACTED]  
Address:  
City, State, Zip:  
DL#:                      SID#:                     

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Burglary / Burglary (After June 20, 1985) - First degree

CONVICTED OF or  PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §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:  
[Signature] 78667  
Newman, Randy Eugene 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            years  
and/or to pay a fine of \$                     ; provided that upon the service of                      days/months/years and/or payment  
of \$                     ; plus costs and assessments as applicable\* the balance is suspended with probation for                     

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

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
by the State Department of Corrections.  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP  
Total: \$                      plus 20% fee: \$                                           days/hours Public Service Employment  
Payment Terms:                      Obtain GED   
 Set by SCDPPPS                      Attend Voc. Rehab. or Job Corp.                     

Recipient:                      May serve W/E beginning                       
                     Substance Abuse Counseling   
                     Random Drug/Alcohol testing

\*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 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/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Fine may be pd. in equal, consecutive weekly/monthly  
pmts of \$                      beginning                       
                     paid to Public Defender Fund  
Other:                     

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

Clerk of Court/ Deputy Clerk [Signature]  
Court Reporter: M. T. Watkins  
SCCA/217 (03/2011)

Presiding Judge 2139  
Judge Code: [Signature]  
Sentence Date: February 13, 2013

STATE OF SOUTH CAROLINA )  
County of Lancaster )

IN THE COURT OF COMMON PLEAS

Charles H. Davis...299511 )  
Full name and prison number (if any) of Applicant )

2014 CP 29 01049

v. )

APPLICATION FOR

State of South Carolina )

POST-CONVICTION RELIEF

FILED  
OFFICE OF CLERK  
OF COURT  
2014 AUG -5 AM 9:41  
CLERK OF COURT  
LANCASTER, SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institution
2. Name and location of Court which imposed sentence Lancaster County Court of General Session
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:  
(a) 2007-65-29-867... 65-29-866

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- 5. The date upon which sentence was imposed and the terms of the sentence:
  - (a) February 13, 2013
  - (b) 30 Years
  - (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 General Session
    - ii. Court Of Appeal
    - iii. \_\_\_\_\_
  - (b) the result in each such Court to which you appealed:
    - i. Court Of General Session / Guilty Verdict
    - ii. Court Of Appeal Dismissal
    - iii. \_\_\_\_\_
  - (c) the date of each such result:
    - i. February 13, 2013 General Court
    - ii. July 16, 2014, Direct Appeal Dismissed
    - iii. \_\_\_\_\_
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. No Precedential Value
    - ii. \_\_\_\_\_
    - iii. \_\_\_\_\_
- 9. If you answered "no" to (7), state your reasons for not so appealing:
  - (a) N/A

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Impeachment evidence/NO Warrants/NO Commitment
- (b) Fraud upon the Court/No transmittal order
- (c) NO Jurisdiction by Valid Indictment

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) The Conviction and Sentence, and Sentences is in Violation
- (b) of the United State on the Constitution of laws of this
- (c) State/NO AFFIDAVITS/After discovery evidence.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - 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. \_\_\_\_\_

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?

NO

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

(a) which grounds have been presented:

i. Motion to Quash Indictment

ii. Motion For A Continuance

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) N/A
- (b) N/A
- (c) N/A

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

- (a) your arraignment and plea? NO
- (b) your trial, if any? Yes
- (c) your sentencing? NO
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

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. Mr. Grier Public Defender 104 N. Main Street  
Laconaster S.C. 29721
  - ii. \_\_\_\_\_  
Lara M. Caudy Appellate Defender
  - iii. P.O. Box 11589 Columbia S.C. 29211
- (b) the proceedings at which each such attorney represented you:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

To have my conviction and sentence vacated  
with instruction from the Judge

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA )

VERIFICATION

County of Lancaster )

I, Charles Henry Davis, 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.

Charles H Davis

SWORN to and subscribed before me this 28<sup>th</sup>  
day of July, 2014.

Lucyanna Bryant (L.S.)  
Notary Public

My Commission Expires: May 26, 2020

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

I, Charles Henry Davis, 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.

Charles H. Davis  
*Applicant*

SWORN or affirmed to and subscribed before me this  
28<sup>th</sup> day of July, 2014.

Ludrean Bryant  
*Notary Public*

My Commission Expires: May 26, 2020

Charles H. Davis #299511CA19  
 Lieber Correctional Inst  
 P.O. Box 205  
 Ridgeway S.C. 29477

The Applicant through his undersigned Counsel wishes to Amend his PCR Application on the following grounds.

1. Applicant is being held false imprisonment by these elements Abuse of Process, malicious Prosecution, unlawful restraint, deprivation of Society, no Probable Cause, Pain and suffering, NO legal authority.
  2. The state has fail to Prove unlawfully entry, in burglary case
  3. Applicant was Not Place on the jury trial court docket
  4. Public index has indicate that there is no valid arrest warrants issued, or logged in at the Police department or listed on the NCIC.
  5. Applicant request that Presiding judge over his Post Conviction relief enter his docket number in the data base to Prove that his PCR case hearing is invalid... Case No#
- b. The Applicant filed his PCR Application solely on the rule of 71.1(e) the Preponderance of evidence which is invalid arrest warrants.

FILED  
 OFFICE OF CLERK  
 OF COURT  
 2014 AUG 15 PM 3:27  
 CLERK OF COURT  
 LANCASTER, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	SIXTH JUDICIAL CIRCUIT
	)	
	)	
Charles H. Davis, #299511,	)	2014-CP-29-1049
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed on August 5, 2014, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. Applicant was indicted at the February 2013 term of the Lancaster County Grand Jury for assault and battery of a high and aggravated nature (ABHAN) (2007-GS-29-0867) and burglary, first degree (2007-GS-29-0866). Applicant was represented by Mark Grier, Esquire.

On February 13, 2013, Applicant pled guilty as indicted. The Honorable Brooks P. Goldsmith sentenced Applicant to concurrent terms of ten (10) years imprisonment for ABHAN and 20 years imprisonment for burglary. Applicant filed a timely notice of appeal. Applicant was represented on appeal by Lara M. Caudy of the South Carolina Office of Appellate Defense, who filed an Anders brief on his behalf. The appeal was denied and dismissed. The Remittitur was sent on August 4, 2014.

## II.

In his application for post conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Impeachment evidence/ No warrants/ No commitment.
2. Fraud upon the Court.
3. No transmittal order.
4. Invalid indictment.

Attached herewith and incorporated herein by reference are the records of the Lancaster County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, the transcript, and the appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## III.

For purposes of this Return, Respondent interprets Applicant's allegations as claims of ineffective assistance of counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used 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 v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The

Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that 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. As such, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Each and every allegation contained within the application not hereinbefore, either expressly admitted, qualified or explained is hereby denied.

[Signature on following page]

V.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

J. CROOM HUNTER  
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737


December 31<sup>st</sup>, 2014

STATE OF SOUTH CAROLINA,	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
	)	
	)	2014-CP-29-1049
CHARLES H. DAVIS, #299511	)	
	)	
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** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Mr. William Michael Hemlepp Jr., Esquire**  
**W. Michael Hemlepp, Jr., Attorney at Law**  
**3027 S. Paraham Road**  
**York, SC 29745**

DATED this 31<sup>ST</sup> day of December, 2014.

  
 Ashley Haworth, Legal Assistant  
 For Respondent



I-N-D-E-X

WITNESSES:	Direct	Cross	Re-Direct	Re-Cross
Charles Davis				
By Mr. Hemlepp	7			
By Mr. Hunter		18		
Mark Grier				
By Mr. Hunter	27			
By Mr. Hemlepp		37		
By Mr. Hunter			44	

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(NO EXHIBITS)

1 THE COURT - All right.

2 MR. HUNTER - May it please the Court. This is  
3 Charles Davis versus the State of South Carolina, 2014-CP-  
4 29-1049. Mr. Davis is incarcerated with SCDC pursuant to  
5 the Lancaster County Clerk of Court Orders. He was  
6 indicted in the February 2013 term for the Lancaster County  
7 Grand Jury for assault and battery of a high and aggravated  
8 nature, 2007-GS-29-0867, as well as burglary first degree,  
9 2007-GS-29-0866. He was represented by Mark Grier. Mr.  
10 Davis -- I apologize. My Return is incorrect. Mr. Davis  
11 was tried in absentia, and he was apprehended a short while  
12 later. He was found guilty of the burglary and the  
13 assault. On February 13<sup>th</sup>, 2013 was the date of the trial  
14 in absentia, and then he was brought to Court on -- I  
15 apologize, Your Honor. He was brought to Court; sentence  
16 was unsealed. Judge Kinard read the sentence. Judge  
17 Goldsmith sentenced the applicant to 20 years imprisonment  
18 for burglary and 10 years imprisonment for the ABHAN.  
19 Judge Kinard reduced the sentence to 15 years imprisonment  
20 on the burglary. At this time the State would request a  
21 continuance until tomorrow. Mr. Grier is the State's  
22 witness in this case and as -- is conducting a jury trial  
23 at this time. We hope he will be finished with it by  
24 tomorrow afternoon.

1 THE COURT - Any ---

2 MR. HEMLEPP - No, objection, Your Honor.

3 THE COURT - All right, it'll be continued until  
4 tomorrow, so he just needs to -- I guess they need to keep  
5 him -- they're going to keep him at the county detention  
6 center.

7 MR. HEMLEPP - They will, Your Honor.

8 MR. HUNTER - Yes, sir. And just for the record,  
9 Your Honor, I did contact SCDC as well at the jail and  
10 asked for Mr. Davis to be held over night at the detention  
11 center.

12 THE COURT - All right.

13 MR. HEMLEPP - Thank you, Your Honor.

14 THE COURT - All right, thank you.

15 (WHEREUPON, COURT IN RECESS IN THIS MATTER FOR  
16 THE DAY)

17 \* \* \* \* \*

18 (WHEREUPON, HEARING COMMENCES 2/3/2015)

19 THE COURT - Yes, sir.

20 MR. HUNTER - May it please the Court. This is  
21 Charles Davis versus the State of South Carolina, 2014-CP-  
22 29-1049. Mr. Davis is incarcerated with SCDC pursuant to  
23 the Lancaster County Clerk of Court's Order. He was  
24 indicted in the February 2013 term of the Lancaster County  
25 Grand Jury for assault and battery of a high and aggravated

1 nature. That Indictment Number is 2007-GS-29-867, as well  
2 as for burglary first degree. That Indictment Number is  
3 2007-GS-29-0866. He was represented by Mark Grier. Mr.  
4 Davis was tried in his absence, and after he was found  
5 guilty by a jury, he was apprehended, and on February 13,  
6 2013, he was sentenced -- or his sentences were unsealed.  
7 He was sentenced to 20 years for burglary first degree and  
8 10 years for ADHAN. Judge Kinard lowered the burglary  
9 first degree from 20 years to 10 years, no 15 years, excuse  
10 me. He filed an appeal through the South Carolina Office  
11 of Appellate Defense which filed an Anders Brief. It was  
12 denied and dismissed. The Remittitur was returned on  
13 August 4<sup>th</sup>, 2014. He filed this application on August 5<sup>th</sup>,  
14 2014, and he's represented here today by Mr. Hemlepp.

15 THE COURT - All right.

16 MR. HEMLEPP - Thank you, Your Honor. May it  
17 please the Court.

18 THE COURT - Yes, sir. Yes, sir.

19 MR. HEMPLEPP - I would call the applicant to the  
20 stand, Mr. Charles Davis.

21 CHARLES DAVIS, AFTER BEING FIRST DULY SWORN,  
22 TESTIFIES AS FOLLOWS -

23 MR. HEMLEPP - May it please the Court.

24 THE COURT - Yes, sir.

25 MR. HEMLEPP - Thank you.

1 DIRECT EXAMINATION

2 BY MR. HEMLEPP -

3 Q Mr. Davis, would you please give us your full name,  
4 and would you spell your last name so that the court  
5 reporter can put it in the record.

6 A Charles H. Davis, C-h-a-r-l-e-s D-a-v-i-s.

7 Q Okay. Mr. Davis, have you ever testified in a  
8 courtroom before?

9 A No, sir.

10 Q This is a very big room, and the Attorney General  
11 needs to be able to hear what you say, and the Judge needs  
12 to be able to hear what you say, so I'm going to ask if you  
13 can speak out about as loudly as I'm speaking right now.  
14 Can you do that for me?

15 A Yes, sir.

16 Q Okay. Are you nervous today?

17 A Yes, sir.

18 Q You're, in fact, very nervous.

19 A Yes, sir, this is my life.

20 Q Yes. Mr. Davis, you are currently in the department  
21 of corrections, are you not?

22 A Yes, sir.

23 Q And you're serving a sentence.

24 A Yes, sir.

CHARLES DAVIS - DIRECT BY MR. HEMLEPP

8

1 Q Where did that sentence come from? How did you come  
2 to be in the department of corrections?

3 A From being tried in general sessions. They tried in  
4 my absence for burglary and assault and battery high and  
5 aggravated nature.

6 Q Okay. And when was that?

7 A I think it was -- I think they tried me in my absence  
8 like February the 11<sup>th</sup>, I think, something like that.

9 Q Okay. And when did you discover that you had been  
10 tried in your absence?

11 A I was at -- I was managing a detail shop on Lynwood  
12 (phonetic) Drive and I was at the shop and my fiancé came  
13 in the shop, and she was like, there's some cops was  
14 outside and they was asking for me. And I thought maybe  
15 they wanted something done to their car or something. And  
16 she was like, no, they say they got a warrant for you. And  
17 I said, ain't no way. And uh, so I go outside and I talk  
18 to the officers, you know. He was like they had a warrant  
19 for me, and I was like, for what, because they didn't have  
20 -- they didn't have no warrant papers or nothing, and I was  
21 like, for what, and they was like uh, they told me for  
22 simple resisting and I -- only reason I went with them --  
23 they -- they didn't have no warrants, but I went with him,  
24 because, you know, it was kind of like making the place  
25 look bad, the cops was there and there's a daycare right

1 here on this side and hair salon, so I went with them and  
2 got out to the county and they was asking me who I was and,  
3 you know what I'm saying, I was like, y'all said y'all had  
4 a warrant for me, and they was like, well, if you don't  
5 give us any information, you won't be able to see the Judge  
6 and get out today. It was on a Thursday, if I'm not  
7 mistaken. It was June the 13<sup>th</sup>. And uh, so I gave them the  
8 information and they put me in a cell and I was asking when  
9 I get to see the Judge, and they told me -- I think it was  
10 like a Saturday or maybe Sunday that I had to go to Court.  
11 And I was like, uh, go to Court, you know and they was  
12 like, yeah, and so that's when I found out I had a  
13 concealed (sic) sentence. And I was like -- well, actually  
14 I didn't find out right then. I didn't find out til I  
15 asked Mr. Grier up here at the courthouse and I talked to  
16 him in the little booth, and he was like, well, you know,  
17 they tried you in your absence, and they gave you a  
18 concealed (sic) sentence. And I didn't know what to say.  
19 I mean I was kind of like, you know, lost. So after then  
20 we uh -- we proceeded and went forward and came in the  
21 courtroom and they sentenced me for burglary and assault  
22 and battery for a high and aggravated nature.

23 Q How long had you been working at the detail shop?

24 A Like right after I got out of prison. I got out of  
25 prison December the 28<sup>th</sup> of 2012.

CHARLES DAVIS - DIRECT BY MR. HEMLEPP

10

1 Q Okay. And we're going to get back to that. You said  
2 that you -- you discovered what was going on when Mr. Grier  
3 who was your lawyer came and told you that there was a  
4 concealed (sic) -- a sealed sentence rather, and how long  
5 had Mr. Grier been your lawyer?

6 A He was appointed to me from 2007 I think, I guess, you  
7 know what I'm saying, from the time of the incident.

8 Q On this charge, the burglary second -- I mean the  
9 burglary first and the assault and battery, you were  
10 charged in 2007?

11 A Yes, sir.

12 Q How much time did you spend in jail ---

13 A Uh ---

14 Q --- on that charge?

15 A If I'm not mistaken I think it was maybe like a month  
16 or something like that.

17 Q And then you bonded out?

18 A Yes, sir.

19 Q And were you appointed to -- was a public defender  
20 appointed to you?

21 A Yes, sir.

22 Q How many times did you talk about this case over the  
23 course of -- from 2007 to 2013? Did you get a chance to  
24 talk to Mr. Grier?

25 A Maybe once or twice.

1 Q Okay. Did you tell him about the charge and any  
2 defenses you might have?

3 A I can't really remember, but I know I talked to him  
4 once and I telling him that I had a key. I said -- I said  
5 they charging me with burglary. I said I had a key. I  
6 always had a key to her apartment, you know what I mean.  
7 And uh, he was like, well, you know, we going to work on  
8 that ---

9 Q Why was that significant?

10 A Sir?

11 Q Why was that significant? You were accused of going  
12 to a home and committing an assault and battery. Why was  
13 it significant you told your lawyer that you had a key?

14 A Cause uh they was charging me with burglary and I know  
15 I didn't -- I know I didn't break in the house, you know  
16 what I mean. I didn't -- I know I didn't break in -- I --  
17 I didn't have to, and why would I? I mean ---

18 Q So would you have pled not guilty to the burglary?

19 A Yes, sir, because I didn't do the -- I didn't do the  
20 burglary. I was guilty -- I was guilty of the assault and  
21 battery. That was because she was -- the girl, Ryan  
22 (phonetic) Colbert, she was pregnant with twins at the time  
23 and, you know, -- and -- we wasn't on bad terms or nothing.  
24 I didn't know she had -- I ---

25 Q Well, let me interrupt you.

1 A Okay.

2 Q Did you tell your lawyer that you were willing to  
3 plead to the assault and battery -- the assault and battery  
4 against Mr. Caskey?

5 A I -- I really don't remember. It's been so long, I --  
6 I really don't remember, but I know I -- I know I was  
7 guilty of that. You know what I mean? I know I was guilty  
8 of assault and battery, because, you know, we fought. We  
9 had a fight. It wasn't just like I just -- we fought. We  
10 was two grown men and we fought. I mean -- but I was  
11 guilty of that, you know, the assault and battery.

12 Q And you still contend that you're guilty of that.

13 A Yes, sir. I have no problem with that.

14 Q Okay. The -- you made a comment about being in the  
15 department of corrections and that you had gotten out --  
16 you had testified a moment ago -- December 28<sup>th</sup> of 2012.

17 A Yes, sir.

18 Q Why were you in the department of corrections?

19 A For failure to stop for a blue-light.

20 Q Okay. When were you arrested on that charge?

21 A Um, I -- I can't remember.

22 Q Do you remember when you -- did you go to trial? Did  
23 you plead guilty?

24 A I pled guilty.

25 Q You pled guilty?

1 A Yes, sir.

2 Q Okay. And do you remember when?

3 A I think it was like September the -- I think it was  
4 September the 16<sup>th</sup>, something like that.

5 Q Did you have a lawyer with you?

6 A Yes, sir.

7 Q Who was that?

8 A If I'm not mistaken I think it was -- it's been so  
9 long, but if I'm not mistaken, I think it was Mr. Grier.

10 Q Okay. Mr. Grier represented you on that charge?

11 A Yes, sir.

12 Q And what was your sentence on that charge?

13 A Eight and a half months.

14 Q Okay. At the time that you pled guilty to the failure  
15 to stop for blue-light, this other -- these other charges  
16 were pending with the Court. Did you and Mr. Grier discuss  
17 taking care of everything all at one time?

18 A No, sir.

19 Q Okay. Did he discuss that with you?

20 A No, sir. I -- it was because -- and I always thought  
21 the burglary and all that was thrown out because I -- like  
22 right after it happened I went to Court for like a year and  
23 a half and they called my name a few times in Court, and  
24 then after then they just stopped calling my name, so it --  
25 they was like, the people names that they didn't call raise

CHARLES DAVIS - DIRECT BY MR. HEMLEPP

14

1 your hand and -- because I was pleading not guilty, so it  
2 was like they just stopped calling my name, and uh, so  
3 after then, you know what I mean, I talked to Ms. Colbert  
4 and I asked her and she was like, they threw it out, and I  
5 was like, you sure ---

6 Q Who is Ms. Coleman?

7 A Ms. Colbert.

8 Q Colbert. Who is that?

9 A That's the -- my baby mama.

10 Q Is that the victim of the burglary?

11 A Yes, yes, sir.

12 Q And she told you that it had been thrown out?

13 A Yes, sir, so and they -- and I came to court a little  
14 bit more after then and they never did call my name no more  
15 and next I heard of it was when I came back for -- I got  
16 out of prison 2012, December 28<sup>th</sup>, and uh -- when all this -  
17 - this went about. That's when I heard about, you know,  
18 the case coming up and Mr. Grier had told me to go up to  
19 his office one day. We went up there and we waited; he  
20 never did come up there, so the next day he tell me he  
21 brought a paper to me and showed me, he said I think they  
22 going to bring these charges back in front of you. If I'm  
23 not mistaken, the courthouse or something got burned up or  
24 something, you know what I mean, and I don't know if stuff  
25 got missing or -- or files got lost. I don't know what

1 happened, but when he brought the paper to me and I was  
2 like, man, they ain't no way, I thought the case was thrown  
3 out, you know, and -- because it -- you know, it had been  
4 so long too and, you know what I mean -- and I -- and I  
5 ain't been running from nobody. I wasn't hiding or  
6 nothing. I was -- you know what I'm saying? I was at my  
7 shop, you know what I'm saying, and stuff like that right  
8 there, well, my cousin's shop, but -- it wasn't like I was  
9 running the charge or nothing like that right there. It  
10 was just that they wasn't calling my name and by be kept  
11 coming up to court, I was like couldn't work and stuff like  
12 that there and time (sic) so I -- you know what I'm saying  
13 -- and they wouldn't call my name, so I was thinking it was  
14 thrown.

15 Q After you got out of the department of corrections,  
16 did you talk to Mr. Grier or make -- did you tell Mr. Grier  
17 or his office how to get in touch with you?

18 A Yes, sir.

19 Q How did you do that?

20 A He had asked me -- well, they -- well, actually they  
21 had a -- they had a address from my previous address, but I  
22 moved since then though and I had moved to Santa Barbara  
23 Drive and uh then I moved with my sister in Clendover  
24 (phonetic) -- in Clendover Lane. He had the address to  
25 there. And when I talked to him again he said he had uh --

1 he said he had wrote my sister -- wrote a letter to that  
2 address, so he was trying to get in contact with me through  
3 that -- through that address, but I was staying on Santa  
4 Barbara Drive then at the time when he was saying he was  
5 writing -- sending letters to my sister's house.

6 Q Okay. And had you told the public defender's office  
7 where you were living every time you moved?

8 A Well, the last time -- I did -- I don't think I told  
9 them that I moved to Santa Barbara Drive, because I was  
10 staying with my -- when I got -- when I got out the last  
11 time, I moved to Santa Barbara Drive from Clendover.

12 Q And what was that -- what was that first address?  
13 Santa Barbara Drive and what's the other address?

14 A Clendover.

15 Q Clendover.

16 A Yes, sir.

17 Q Had -- if Mr. Grier had been -- had gotten in touch  
18 with you, would you have come to Court?

19 A Yes, sir.

20 Q And had there been -- how would you have pled to the  
21 crime of assault and battery of a high and aggravated  
22 nature?

23 A I would've pled guilty to that, because I was guilty  
24 of it, sir.

25 Q And how would you have pled to the burglary?

1 A I would've pled not guilty.

2 Q Did you -- when you were released from the jail on  
3 these charges, did you have a bond?

4 A Yes, sir.

5 Q And did a bondsman post the bond for you?

6 A Yes, sir.

7 Q Do you remember who your bondsman was?

8 A Mace Green.

9 Q Say that again?

10 A Mace Green.

11 Q Mace Green.

12 A Yes, sir.

13 Q Did you keep in touch with your bondsman?

14 A Yes, sir. Wait a minute. Which charge -- which  
15 charge you talking about? When I got out December the 28<sup>th</sup>?

16 Q These charges.

17 A I don't -- I don't think messed with my bondsman on  
18 that -- I can't remember -- used to cover bond, but it was  
19 either Journey (sic) or Mace ---

20 Q But you did have a bondsman?

21 A Yes, sir.

22 MR. HEMLEPP - Your Honor, I have no further  
23 questions at this time. Mr. Davis, answer any questions  
24 that the Attorney General may have or that the Court has.

25 MR. DAVIS - Yes, sir.

CHARLES DAVIS - CROSS BY MR. HUNTER

18

1 MR. HEMLEPP - Thank you, Your Honor.

2 THE COURT - Yes, sir.

3 CROSS EXAMINATION

4 BY MR. HUNTER -

5 Q Mr. Davis, how many -- how long were you in jail for  
6 the failure to stop charge?

7 A The Judge sentenced me to eight and a half months, so  
8 I think I did like four and a half.

9 Q And what year was that?

10 A 2012.

11 Q 2012?

12 A Yes, sir.

13 Q So between 2007 and 2012 you were out of prison.

14 Right?

15 A Yes, sir.

16 Q Okay. Did you ever come up to the courthouse to Mr.  
17 Grier's office and try and meet with him?

18 A I came -- I came numerous of times -- I mean -- well,  
19 the Court for roll call, you know and stuff like that right  
20 there, and uh I talked to him I think maybe one or -- once  
21 or twice in between there and we talked about um -- and I --  
22 - matter of fact my main thing was I kept telling him that  
23 I had key, and he was like, well, we going to work on that,  
24 you know, and he asked me would Ms. Colbert come and

1 testify to that and I said yeah, she -- because she said  
2 she would, you know.

3 Q Okay. Well, are you aware that she testified that you  
4 had a key, but you were supposed to ask her permission  
5 before you could use it?

6 A I mean I just seen that in the transcript, but no,  
7 sir, we had -- we was -- we was on good terms. We didn't  
8 never -- matter of fact the night before when this  
9 happened, I had went over there and -- she was pregnant --  
10 like I say, she was seven months pregnant and they didn't  
11 have a air-condition upstairs. I the one -- I the one at  
12 about 2:00 o'clock in the morning I went over there and  
13 took the mattress from upstairs off her bed and brought it  
14 downstairs and put it in the floor ---

15 Q Okay.

16 A --- for her in front of her air conditioning.

17 Q So, all right, can you explain why she would testify  
18 that her door was locked and she had put a stove in front  
19 of her door so nobody could get in?

20 A Sir, that has -- I have no idea, you know what I mean.  
21 I guess if -- she -- she had a guy over there, so I guess  
22 she, you know what I'm saying.

23 Q Okay. So she might've been worried that, you know,  
24 you might've had some beef with the guy she was with.

1 A I can't really answer that, because I didn't -- I  
2 didn't even know he was there, you know what I mean, so I  
3 wouldn't have ---

4 Q But -- but you do admit that you attacked him when you  
5 went in the house?

6 A We fought. I didn't just attack him like that. I was  
7 mad. That was my baby mama. She was seven months pregnant  
8 with my kids.

9 Q So he didn't attack you, did he?

10 A We fought. You know what I mean? I mean we -- we  
11 both ---

12 Q He wasn't asleep on the couch when you got in the  
13 house and you started beating on him?

14 A No. They wasn't neither one of them asleep. She ran  
15 -- when I went in the house, she ran upstairs and he was  
16 standing there naked, you know what I mean, and I was like,  
17 you know, what's going ---

18 Q That just made you mad?

19 A And I was like, what's going on, you know what I mean?  
20 Yeah, I -- yeah I was mad. You know, that's my baby mama;  
21 she was seven months pregnant with me kids, you know.

22 Q So she hadn't invited you to be over there that night.

23 A Sir?

24 Q She hadn't invited you to come over to the house that  
25 night.

1 A No, I had a key. I mean I always ---

2 Q But she didn't know that you were coming over.

3 A No, I always go over there. I mean it wasn't no -- I  
4 didn't -- I seen in the transcript where she said I was  
5 supposed to call her. I ain't never -- she didn't never  
6 tell me to call or -- before I come over like -- that's  
7 what -- that was the purpose of her giving me a key. She  
8 was ---

9 Q Okay, but that house wasn't in your name. Correct?  
10 That's in her name.

11 A Yes, sir.

12 Q Okay. Let's -- let's move on. So you say you met  
13 with Mr. Grier maybe two times?

14 A Yes, sir.

15 Q Between 2007 and 2013?

16 A Yes, sir.

17 Q Okay. But up until you allege that she told you the  
18 charges were dropped, you -- and that was pretty close to  
19 the time of your trial -- when did she tell you that the  
20 charges were dropped?

21 A This was like -- after it happened in 2007, it was  
22 like maybe -- like a -- almost a year or two after, you  
23 know what I mean?

24 Q Okay. So you thought from say 2008, 2009 all the way  
25 up to 2013 you didn't think you had these charges anymore?

1 A No. I mean they -- they never -- they stopped calling  
2 my name in Court. I done had went to the -- I went to the  
3 county. I been to the county before then, they always -- I  
4 know I didn't have no bench warrants, because every time I  
5 got out they ran a NCI check and uh, like I said, I didn't  
6 never -- that long I would assume that I would've had a  
7 bench warrant, you know what I mean, but it never -- bench  
8 warrant never came up, and like I said ---

9 Q So you initially bonded out on these charges. Correct?

10 A Yes, sir.

11 Q Okay. Did you ever get that bond money back?

12 A No, sir.

13 Q Okay. Would -- would you not have tried to get that  
14 bond money back if you thought the charges were gone?

15 A I mean I don't really -- I don't really know -- to  
16 tell the truth, I didn't ever -- I didn't know that you  
17 could get bond money back like that right there. I just  
18 thought once you, you know what I mean -- I didn't know if  
19 charge has been dropped you can get bond money back. I  
20 didn't know that.

21 Q Okay, well, let's move on. Did you ever -- did Mr.  
22 Grier ever go over your discovery with you?

23 A Right.

24 Q The evidence against you?

1 A Yes, yes, uh -- yes, sir, he went over some stuff with  
2 me. That was like uh -- when I came back from prison, he -  
3 --

4 Q Okay.

5 A --- told me they was going to bring a old case up and  
6 stuff like that right there, and he went over with me. He  
7 was like uh ---

8 Q When you came back from prison for the failure to  
9 stop?

10 A Yes, sir, and he was like, they -- they bringing this  
11 case ---

12 Q Okay, and that would've been in 2012. Correct?

13 A Sir?

14 Q That would've been in 2012 when you came back to (sic)  
15 prison.

16 A Yeah, but they was actually -- I came back 2012, but  
17 it was '13 when I came there.

18 Q And so you did -- you were aware that you still had  
19 these charges then.

20 A When he told me it was '13. That's when he told me.  
21 It was '13 when I came to Court here.

22 Q Okay, but you just testified that in 2008 or 2009 you  
23 thought the charges were gone.

24 A Yeah, yes, sir, I did, and when I got out of prison,  
25 which was 2012, December the 28<sup>th</sup>, I was scheduled to come

1 for Court for another charge that I had pending. When I  
2 got out in 2012, I had to go back to the county and get  
3 bond out on a charge, ---

4 Q Okay.

5 A --- and when I came -- I came up here for that charge,  
6 and uh, which got disposed of and he told me to meet him up  
7 to office, so I -- we went up there, me and my fiancé went  
8 up there and waited that day, and, you know, he was kind of  
9 busy, you know, he was ---

10 Q Okay, well, let's move on. So how many times total do  
11 you think you spoke with Mr. Grier about these charges from  
12 2007 to 2013?

13 A Maybe three, maybe four in all.

14 Q And you went over with Mr. Grier that you had a key  
15 and so you were guilty of the assault but not guilty of the  
16 burglary. Correct?

17 A Yes, sir.

18 Q Now, the State offered you a plea deal in this case,  
19 didn't they?

20 A He came -- the day that he tell me to meet him up to  
21 his office, and he tell me that day, he was like uh, well,  
22 they offering you -- he said they were going to offer you  
23 five years, and I said -- and I asked him, I said for what,  
24 is it for the assault and battery or the burglary -- I mean  
25 altogether or was it for the assault and battery, I said,

CHARLES DAVIS - CROSS BY MR. HUNTER

1 man, because I didn't do this burglary, man, I said I had a  
2 key, I said I -- and I ---

3 Q Okay, so you turned down the plea deal.

4 A I was asking him -- I was trying to find out what was  
5 it -- the plea deal for. I was trying to find out was it  
6 for both of them together or just for the assault and  
7 battery high and aggravated nature, because I -- like I  
8 said, I was guilty of the assault and battery.

9 Q So basically you said you wanted to take your chance  
10 at trial on the burglary, because you said you weren't  
11 guilty. Right?

12 A Yes, sir.

13 Q So you knew at some point you had to go to trial if  
14 you turned down a plea deal.

15 A Listen, that was -- that was 2013, yeah, and he tell  
16 me to meet him up at his office that day and he didn't come  
17 up there, so the next day I come up here anyway and he -- I  
18 finally get to talk to him that next day, and ---

19 Q Okay.

20 A --- he -- he presented a paper from (sic) that look  
21 like it was -- you can tell it been run off because it was  
22 -- I guess it was from the courthouse being burnt, but any  
23 way he was telling me that might bring this back up, this,  
24 that and the other, and he was like he was going to get  
25 back with me, so I thought, you know, I'm waiting.

CHARLES DAVIS - CROSS BY MR. HUNTER

26

1 Q Okay. All right. So you thought he was going to get  
2 back with you, but you testified that you did not give him  
3 your address at Santa Barbara Drive. Is that correct?

4 A Yeah, he still had the -- well, no at the time I think  
5 I -- I might -- I'm not sure, because it's been a little  
6 minute, I'm not sure, but I might've gave him the -- at --  
7 when I came here 2013 I might've gave him the address at  
8 the Santa Barbara, but if I didn't -- I mean I might've  
9 didn't, you know what I mean, but he had the address at  
10 Clendover, I know that though.

11 Q Okay. Let's move on. We don't need to keep you up  
12 there all day. Mr. Grier was successful in getting your  
13 sentence reduced, wasn't he at the -- when the sentence was  
14 unsealed?

15 A Well, sir -- tell me again.

16 Q You were originally sentenced to 20 years on the  
17 burglary. Right?

18 A Yes, sir.

19 Q Okay, and then Mr. Grier got that knocked down to 15,  
20 ---

21 A Yes, sir.

22 Q --- which is the minimum.

23 A Yes, sir.

24 Q Okay.

1           Mr. HUNTER - Beg the Court's indulgence. Okay,  
2 Your Honor, I don't have any further questions. Thank you,  
3 Mr. Davis.

4           THE COURT - All right, anything else from you,  
5 Mr. Hemlepp?

6           MR. HEMLEPP - Not at this time, no. Thank you,  
7 Your Honor.

8           THE COURT - All right, sir, you can step down.  
9 Call your next witness.

10          MR. HEMLEPP - Your Honor, we have no further  
11 witnesses to bring.

12          THE COURT - All right, thank you. Yes, sir.

13          MR. HUNTER - Your Honor, the State would call  
14 Mark Grier.

15                 MARK GRIER, AFTER BEING FIRST DULY SWORN,  
16 TESTIFIES AS FOLLOWS -

17                 THE COURT - Yes, sir.

18                 DIRECT EXAMINATION

19                 BY MR. HUNTER -

20 Q         Mr. Grier, how long have you been practicing law?

21 A         Since 1990.

22 Q         Okay.

23 A         I won't say how long that is, but I think it's 24, 25  
24 years.

25 Q         How -- were you appointed or retained on this case?

1 A I was appointed.

2 Q Okay. Were you with the public defender's office?

3 A Yeah, I was. At the time I was appointed I had the  
4 contract for the county before the statewide system was  
5 created, and I had the contract, and so the case was  
6 assigned to me as the contract attorney for the county.

7 Q Okay. And have you had a chance to review your file?

8 A I have, yes.

9 Q Do you recall approximately how many times you met  
10 with Mr. Davis prior to this trial?

11 A I think he's fairly accurate. I think initially we  
12 met and determined that he did not want to plead guilty,  
13 because I think they were offering him like ten years  
14 active time initially on those charges, and quite frankly,  
15 I thought the -- I believe we have even spoken with Ms.  
16 Colbert, and uh -- at any rate, my notes reflect that she  
17 would testify that he did have consent to be in the home,  
18 and while, you know, the risk of going to trial on a  
19 burglary first is something that I think may cause some  
20 people to plead to charges they may not be guilty of when  
21 they get lesser charges from my experience, public  
22 defender, and they don't have a real problem with that, but  
23 um in Mr. Davis' case I thought we had pretty credible  
24 evidence that we had a witness that would give us a way to  
25 beat that charge and I had made those representations to

1 Mr. Davis after our initial -- the first time that I knew  
2 that Ms. Colbert I thought was a witness who was not going  
3 to be hostile to us, we had that conversation that, you  
4 know, we felt like we had a good defense, but it would take  
5 a lot of -- it would be very -- you know, you can have a  
6 great defense and lose at trial if a jury doesn't agree  
7 with you.

8 Q So did you -- you didn't tell Mr. Davis that he could  
9 definitely win?

10 A No. No, I told him he would have to -- I probably  
11 used a term to describe the male anatomy about if he went  
12 to trial on a burglary first when he had -- if we could get  
13 -- you know a significantly lower sentence negotiated was  
14 my recollection of what we discussed initially, but I don't  
15 think we met for probably several years, because in the  
16 inter -- I mean, of course, this case at the time it was  
17 called for trial was six years old, and I -- you know,  
18 there was no -- we weren't put on the trial list; I wasn't  
19 going to ask to have contact with Mr. Davis, that was --  
20 you know, I had notes and, you know, had a good idea of  
21 what the case was. I don't know if we met one or two  
22 times, you know, initially probably a couple of times, but  
23 it was kind of like one of those, you know, wait and see,  
24 you know, if it goes away, because it looks like it's a,  
25 you know, crummy burglary case, you know, from the initial

1 -- rather than plead and go to prison for something,  
2 although, you know, of course, the risk on the ABHAN was I  
3 felt greater initially by looking it up and looking at some  
4 pictures of the severity of the injuries to the -- to the  
5 guy.

6 Q Now, when -- when did the State -- did the State  
7 extend any other plea offers than the ten year?

8 A Might can refresh my recollection. Actually, I'm  
9 mistaken about that. I believe the initial offer -- and  
10 this document was pulled out of things that were burned up.  
11 A little bit hard to read, but it looks like it's from 2008  
12 when maybe the first offer was made and it was -- it was a  
13 cap of five.

14 Q Okay, and did you -- did you tell Mr. Davis about that  
15 offer?

16 A I can't say with certainty, but, you know, I don't --  
17 I would assume that we discussed it. I don't -- you know,  
18 can't say I recall that. Too far back and I don't have  
19 notes that reflect that we had a conversation about that  
20 offer.

21 Q Do you typically discuss plea offers with your  
22 clients?

23 A If I have one, you know, absent, you know, forgetting  
24 or it not coming up or there being more pressing matters,

1 I'm certainly -- I feel that I've got an obligation, I  
2 think an ethical obligation to do that.

3 Q Okay, let's step back just a second ---

4 A But as far as answering your question, the last offer  
5 we got was ten suspended to four, ---

6 Q Okay.

7 A --- and that was in October of 2012.

8 Q Okay.

9 A And I do recall discussing that. I think he said  
10 five, because the active time they wanted, but I think -- I  
11 think what I told him, it was four, I -- I think I would've  
12 told him what was on that -- on that offer that's  
13 reflected.

14 Q Okay. Did you file all the appropriate Brady and Rule  
15 5 motions in this case?

16 A I did.

17 Q Okay, and did you have any trouble getting discovery?

18 A None that I can recall. I -- I think ---

19 Q Did you go over the discovery with Mr. Davis?

20 A I think that I went over it with him. My notes  
21 reflect that I actually sent discovery to him in -- I mean  
22 I've got a letter that says I'm sending discovery to him at  
23 -- I have Wendover. I don't know if the address -- you  
24 know, apparently ---

25 Q So you don't have a Santa Barbara address.

1 A I don't see where I ever was aware of a Santa Barbara  
2 address.

3 Q Okay. And did -- when it was apparent that Mr. Davis'  
4 case was going to be called for trial, did you attempt to  
5 notify him?

6 A I did. I -- you know, well, our office is --  
7 typically does the calls and sends letters out. So what my  
8 notes reflect about -- about attempts to contact him were  
9 that we sent a letter -- or what I have as far as letters I  
10 have in the file are that we sent a letter in December -- I  
11 can give you the date -- December 17<sup>th</sup> that he was on the  
12 trial list. Apparently -- I don't know why, but then I  
13 sent another letter telling him to call the office, maybe  
14 didn't get a response, because the first letter would've  
15 said make an appointment.

16 Q What was the date of that letter?

17 A That date -- the second letter?

18 Q (No response)

19 A The first letter was 12/17; second letter would've  
20 been January -- was January the 4<sup>th</sup> of 2013.

21 Q Okay.

22 A And there -- and other letters were sent. That was  
23 prior -- actually there were, you know, two trials, and I  
24 don't -- for this to make sense I think I need to tell you,  
25 they called a trial involving a drug case against Mr.

1 Davis. We actually had sent, you know, letters to him, but  
2 anyhow my last contact with him was prior to the first  
3 trial where I was able to get those charges thrown out  
4 after we picked a jury on the drugs charges.

5 Q So you were representing him on other charges as well.

6 A Yeah, he had -- I did represent him. He mentioned the  
7 failure to stop for a blue-light, and he uh -- he pled  
8 guilty to that and got a eight and a half month sentence.  
9 That was in September -- that was September the 10<sup>th</sup> of  
10 2012.

11 Q Okay. Did you represent him on anything else?

12 A Yeah, I -- I mean I still had the other burglary  
13 charge and the ABHAN charge pending and also they uh -- I  
14 guess that was ---

15 Q Do you have any reason to believe that Mr. Davis would  
16 think he didn't have any more pending charges after his  
17 failure to stop?

18 A He did tell me that he was under the impression that  
19 they were not pending or that they had been disposed of,  
20 and I do recall him asserting that, and -- you know, and --  
21 he -- you know, I said that I sent letters to him to call  
22 the office and he did show up -- well, excuse me, he didn't  
23 show up for roll call on January the 11<sup>th</sup> of 2013, but he --  
24 but then he contacted our office and he showed up -- or Ms.  
25 Bailey (phonetic) called to see if he needed to be in Court

1 on January the 14<sup>th</sup> and apparently, you know, I don't know  
2 if I took that call or my office did, but he -- he was told  
3 to come in and he did that day.

4 Q So he did come in; so you did have communication with  
5 him.

6 A We met, according to my notes, on January the 14<sup>th</sup> of  
7 2013. We met and we were -- that was the day before the  
8 drug trial started, and I told him at that time the trial's  
9 starting tomorrow, and he picked up discovery, according to  
10 my notes. I either sent him to the office and asked him to  
11 get that -- I -- well, Court was going on and so I did send  
12 him up to the office. I told him that we had a trial  
13 starting the next day.

14 Q Okay.

15 A That was not for this burglary charge, though. That  
16 was for this drug charge.

17 Q Okay, did he show up for that?

18 A He did not show up the next day.

19 Q So he was tried in his absence on that case, as well.

20 A We picked a jury. I had a good defense to the stop,  
21 and because of the information, the nature of the  
22 informant, and Judge Goldsmith dismissed that case or  
23 suppressed the evidence, excuse me, and they didn't have a  
24 case.

1 Q Okay. Now, leading up to his trial in absentia for  
2 these charges, did you have ample time to prepare for this  
3 case?

4 A For the burglary case?

5 Q Yes.

6 A Yes.

7 Q Okay. So and you did -- did you move for a  
8 continuance?

9 A I did.

10 Q Okay.

11 A Yeah, I did. I was alarmed that I couldn't get a hold  
12 of him; he had shown up prior to the other trial, and we  
13 had discussed actually that I thought we had a good chance  
14 of getting that case dismissed, the drug case.

15 Q So he knew that -- well ---

16 A And I apologize, I'm mixing them together, but in --  
17 to establish the continuity of events, I think it all kind  
18 of runs together.

19 Q Okay, and if you -- my last question. If you would  
20 just briefly kind of describe your strategy when you tried  
21 this burglary case?

22 A Well, Ms. Colbert was the key witness as far as the  
23 burglary went, and you know, she testified I thought in a -  
24 - as we were told that she would and that he did have a key  
25 to the home and that he was allowed there. My

MARK GRIER - DIRECT BY MR. HUNTER

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1 recollection, she uh -- but I mean I think she testified  
2 that he would, you know, tell her he was coming or  
3 something. I -- I haven't reviewed the transcript. I --  
4 you know; of course, I guess you have and I haven't look at  
5 that, but my recollection is is that she -- I mean she  
6 testified that he had a key and ---

7 Q So you felt comfortable trying the case ---

8 A Well, I mean I didn't; I had no choice. I didn't want  
9 to try the case. He had been offered, you know, ten  
10 suspended to four; he didn't want to do that. At -- to --  
11 you know, prior to the first trial -- uh, he hadn't been  
12 out long; I think he had a fiancé, and I -- we didn't -- I  
13 mean that was the whole -- you know, that was a package  
14 deal, was the ten suspended to four for, you know, all, you  
15 know, I mean -- that would've -- and that would've -- the  
16 offer was ten suspended to four, the burglary would've been  
17 reduced to a burglary second is what they wanted, and I --  
18 you know, whatever -- they had other -- possession of  
19 marijuana charges that they were going to let him plead to,  
20 a distribution of crack that they were going to let him  
21 plead to as part of all that. We had -- there were other  
22 charges, and, you know ---

23 Q Okay.

24 A --- it was a deal of ten suspended to four, which, you  
25 know, I felt, you know, that he should take, but he didn't

1 -- he wasn't -- he had just gotten out and was engaged and  
2 -- you know, did not -- you know, he understood his  
3 exposure on -- was very significant on the ABHAN; we  
4 discussed that and felt like we had a pretty good defense  
5 on the burglary first, but the -- the number, if you lose  
6 on that was -- is always scary for any defense attorney, I  
7 mean more-so for the client but even for the lawyer of a  
8 mandatory minimum.

9 MR. HUNTER - Okay. That's all the questions I  
10 have.

11 MR. GRIER - Thank you.

12 THE COURT - All right, yes, sir.

13 MR. HEMLEPP - May it please the Court.

14 CROSS EXAMINATION

15 BY MR. HEMLEPP -

16 Q Mr. Grier, how long have you been representing  
17 criminal defendants in Lancaster County who are determined  
18 to be indigent?

19 A Well, I -- you know, before I had the contract I would  
20 still get appointed. Back then, you know, conflicts went  
21 to the private bar and I -- before 2006 when I got the  
22 contract -- I -- you know, when we practiced law -- we had  
23 an office up here when I worked for George Speedy, so  
24 basically since around 1990.

25 Q About 25 years.

- 1 A Yes, (indicating yes) Right.
- 2 Q The case at bar was a 2007 arrest ---
- 3 A That's right.
- 4 Q --- with a 2013 trial.
- 5 A That's right.
- 6 Q About six years.
- 7 A That's right.
- 8 Q Is that typical in Lancaster County?
- 9 A It's not at all unusual.
- 10 Q Lancaster, in fact, has a fairly old docket.
- 11 A Absolute.
- 12 Q Okay. Is that difficult for you in representing
- 13 people in Lancaster County?
- 14 A Frankly it is, because our clientele has -- is often
- 15 transient.
- 16 Q Transient, they move a lot.
- 17 A They have -- you know, often their phone numbers
- 18 change a lot, and it creates a lot of difficulties, yes.
- 19 Q What kind of -- what was your case load like in 2007?
- 20 A As far as a number of cases that I had?
- 21 Q And I'm not going to hold you to it -- a sense of it.
- 22 A You know, -- well, let's put it this way, it's
- 23 probably about what it is right now, and right now I have
- 24 eight hundred and -- I had -- last time I checked I had
- 25 eight hundred and thirty-five cases assigned to me. I

1 know, sir, -- a bunch of them are ten, eleven -- I say a  
2 bunch -- those are cases that are ten years old, eleven  
3 years old sometimes, maybe even older, yeah. That's some  
4 of them.

5 Q When this case was tried in February of 2013, did the  
6 solicitor's office publish a trial roster?

7 A Yeah, I mean ---

8 Q How did you know that they were going to call this  
9 case?

10 A Sherri Pollard (phonetic) is our office clerk, and, of  
11 course, the -- typically we would get a list right the day  
12 before the window, the ten-day notice would come.  
13 Typically we'd get a -- our office would get notice and our  
14 -- that day, typically, or the next day, our office staff  
15 would send letters to the client, say, hey, you're on the  
16 trial list, and you know, get in touch with the office.  
17 Yeah.

18 Q Do you know how you got notice in this case? And I do  
19 appreciate you testifying how it typically works. Does  
20 your file reflect how it worked in this case?

21 A Well, I, you know -- as far as the -- all I can tell  
22 you is a letter went out on January the 25<sup>th</sup>, 2013 addressed  
23 to Charles Davis at 1831 Wendover Lane, which I would  
24 assume would've been the address that, you know, was  
25 reflected in the file, just advising that he'd been placed

1 on the general sessions jury trial docket for February the  
2 11<sup>th</sup> and that was after the -- he'd already been placed on  
3 the trial list for the previous term where the case had  
4 been dismissed on the drug case.

5 Q Did you -- you testified a little while ago that you  
6 had sent him a letter saying that -- telling him that the  
7 drug case had been dismissed.

8 A That the what?

9 Q That the drug case had been dismissed.

10 A Yes, I did.

11 Q When was that letter sent?

12 A It was sent on the 28<sup>th</sup>, because I had -- according to  
13 my notes I had -- (pause) -- I thought -- whatever -- my  
14 train of thought about that isn't right -- but um -- I  
15 don't know -- on January the 28<sup>th</sup> I sent him a letter  
16 saying, Charles, your drug and gun charges were dismissed  
17 by Judge Goldsmith, after jury was selected for your last -  
18 - for your trial last court term, please get in touch with  
19 my office immediately. Now, that's three days after the  
20 letter that he had been placed on the trial list for the  
21 next term for these burglary charges had gone out from the  
22 office.

23 Q Okay, so your office sent a letter to your client  
24 saying you're on the roster, ---

25 A (Indicating yes)

1 Q --- and then days later sent a letter to the client  
2 saying your charges have been dismissed.

3 A Office sent one as a routine matter, then a couple of  
4 days later I sent him a letter that I drafted myself, um,  
5 yeah, telling him the status of his last case and that he  
6 needed to get in touch with me immediately.

7 Q Okay. Given the number of cases that are pending in  
8 Lancaster County -- well, actually, let me -- I withdraw  
9 that. When was the arrest on the drug case? How old a  
10 case was that?

11 A It'll take me a minute to figure that out.

12 Q Absolutely, absolutely.

13 A I thought I had notes in here for the dates of all the  
14 -- okay, he had a -- at the time -- okay -- at the time  
15 that -- I made notes on the offer sheet; I don't know when  
16 I made them, but the offer sheet was dated October the 15<sup>th</sup>  
17 of 2012. I went through and I made notes on what was on  
18 that offer sheet, and there was a distribution of crack  
19 that was from 2006, along with a possession of marijuana  
20 from 2006; there was a burglary first -- which the subject  
21 of this PCR -- was a 2007 case actually, then there was a  
22 possession of a firearm case from 2008. There was a CDV  
23 second from 2009, and then there was a -- then there were,  
24 you know, four charges, possession of a firearm, unlawful

1 carrying of a pistol, possession of marijuana and a  
2 possession of cocaine, all charges from 2012.

3 Q Okay. That ---

4 A That doesn't even have the failure to stop for a blue-  
5 light. I -- you know, I think that one came ---

6 Q According to ---

7 A --- up after October of 2012. I'm sorry.

8 Q According to Mr. Davis' testimony, in October of 2012  
9 he was in prison on the failure to stop for a blue-light.

10 A That doesn't keep them from making an offer. Yeah,  
11 right.

12 Q Right, right, but we do agree -- are you disagreeing  
13 with that?

14 A Uh, I don't know. I mean October -- yeah, October of  
15 2012 he would've been in prison, because he got eight and a  
16 half months and that was -- yeah, he would've been in  
17 prison.

18 Q Okay. Do your notes reflect you trying to convey this  
19 offer to him in prison or by writing or ---

20 A I don't -- I don't have any, you know, documentation  
21 that I conveyed that to him while he was in prison. He  
22 would've been -- I don't know that I actually went through  
23 the exercise of figuring that he would be out soon, but,  
24 you know, yeah, he was -- he's going to do, you know, four  
25 -- he's going to do five months and be out, so -- I mean he

1 went in -- yeah, I didn't -- I don't see where I did. I do  
2 recall the conversation specifically, because, yeah, I --  
3 Mr. Davis, I liked him, you know. You know, a likeable  
4 guy. He treated me with respect. I don't get that  
5 sometimes. I get it more than you might think, but ---

6 Q Was he a cooperative client?

7 A He was, and he -- he'd shown -- I hadn't had any  
8 difficulties with him. He had shown up and been compliant  
9 until we got to the -- this last, you know, issue, yeah.

10 Q Did you have a copy of his bond on the present case in  
11 your file?

12 A I don't think so. I don't recall seeing that.

13 Q Does your office collect information about bondsmen?

14 A We don't -- we don't ordinarily get that. We do  
15 typically -- our -- the office contacts the bondsman when  
16 we can't find someone.

17 Q Was that done in this case?

18 A It was done back in June by Sherri in our office. I  
19 didn't and typically I wouldn't except -- in extraordinary  
20 circumstances, you know, I do, you know, but typically our  
21 office does, yeah. But I didn't -- I've only done it a  
22 couple of times in my career.

23 MR. HEMLEPP - Thank you, Mr. Grier. Thank you,  
24 Your Honor.

25 THE COURT - Thank you. Anything else?

MARK GRIER - RE-DIRECT BY MR. HUNTER

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1 MR. HUNTER - Very briefly, Your Honor?

2 THE COURT - Yes, sir.

3 RE-DIRECT EXAMINATION

4 BY MR. HUNTER -

5 Q Mr. Grier, is it your practice to always take notes  
6 whenever you convey plea offers to your clients?

7 A If possible, but understand the dynamics of a public  
8 defender. You know, often times I have, you know, six or  
9 seven people that are called to Court; we're told by the  
10 solicitor that our offer has changed on the spur of the  
11 moment, and, you know, when the negotiating is, you know,  
12 kind of chaotic and that's being done while -- between  
13 pleas and for clients that you don't even have files in the  
14 courtroom on often, and, you know, I make every attempt to  
15 do that, but I -- you know, to say that I always do it or  
16 it's my practice, when I can, I do, yeah.

17 Q Okay. And just to make this clear. Mr. Davis was  
18 tried in his absence twice on two different sets of  
19 charges. Correct?

20 A Juries were picked, yeah. One was dismissed before  
21 the jury actually got it, so no trial happened on the drug  
22 charge, yeah.

23 MR. HUNTER - No further questions.

24 THE COURT - All right. Sir, you may step down.

25 MR. HUNTER - The State would rest.

1 THE COURT - All right. Yes, sir, I'll be glad to  
2 hear from you.

3 MR. HEMLEPP - I'm sorry?

4 THE COURT - I'll be glad to hear from either one  
5 of you after you all have -- anything in closing.

6 MR. HEMLEPP - Your Honor, simply the Court has  
7 that there are many rights that attach to a criminal  
8 defendant in a trial, the right to challenge the witnesses,  
9 the right to make the State prove beyond a reasonable  
10 doubt, the right to testify, I had a key and I had the  
11 right to be there. There's no greater way to -- for the  
12 State to go around those rights, except for a trial in  
13 absence. I know the law allows a trial in absence, but  
14 it's kind of an atomic option for the State. It's -- it's  
15 a big deal to try somebody in absence, and I understand the  
16 difficulty of trying to get in touch with somebody and  
17 trying to make them come to Court, but we have a good  
18 sheriff's department in Lancaster County. A bench warrant  
19 could've been issued. We know the bench warrant -- that he  
20 was easy to find, because when they got the bench warrant  
21 for the sealed sentence, they drove to his office and got  
22 him and held him until they came to do sentencing. They  
23 could've found him. The problem here, Your Honor, is the  
24 length of time between the arrest and the trial. When  
25 somebody has a charge that's six years old, six years old,

1 comes to Court, has a lawyer, eventually it drops off  
2 everybody's radar -- it drops off everybody's radar even  
3 despite the fact that he was arrested on other charges and  
4 those were disposed of, arrested and went to -- pled guilty  
5 on a charge, went to the department of corrections, came  
6 out of the department of corrections, there -- there -- I  
7 know that Mr. Grier is a diligent lawyer. I know that he's  
8 a caring lawyer. But even in his testimony he sent the  
9 letter telling his client to be ready for trial and then  
10 five days later sent a letter that said charges were  
11 dismissed. A reasonable person who did not believe these  
12 charges were still pending -- because the victim said they  
13 weren't -- they weren't pending anymore, he believed they  
14 weren't pending anymore, he told his lawyer he believed  
15 that they weren't pending anymore -- could reasonably  
16 believe those charges weren't here. He discovered them  
17 after he had been tried in his absence. Had the bondsman  
18 been called and he could've been present. We know from the  
19 testimony of the applicant that he would've pled guilty to  
20 the ABHAN. He would've pled not guilty to burglary. That  
21 would've been a different result here.

22 I would ask the Court to consider all of these  
23 things in issuing its ruling. In addition, I would ask the  
24 Court to carefully read the transcript, especially with  
25 regards to the trial in absence.

1 THE COURT - All right, I'm listening.

2 MR. HUNTER - Judge, just very briefly. I think  
3 there's been ample testimony that Mr. Grier attempted to  
4 notify Mr. Davis for this trial, or his trials. The  
5 evidence clearly shows that Mr. Davis skipped out on, not  
6 one but two trials on two different sets of charges. I  
7 think the idea that he just didn't know anything was going  
8 on, that he didn't have all these charges pending is -- is  
9 just frankly not believable. You don't get arrested for  
10 all these serious crimes and just have charges disappear  
11 for no reason. I think that's -- can speak to the length  
12 of time between the arrest and the trial. Charges don't  
13 just go away. And I think Mr. Grier testified that he told  
14 Mr. Davis the charges were still pending. So the State's  
15 position is that this PCR application should be denied. I  
16 don't think he's met either prong of Strickland. I don't  
17 think he's shown any ineffectiveness on the part of Mr.  
18 Grier. That's all I have.

19 MR. HEMLEPP - Your Honor, briefly?

20 THE COURT - Yes, sir.

21 MR. HEMLEPP - I've worked in Lancaster County for  
22 20 years now. It is -- charges go away; charges go away.  
23 Old charges get dismissed, and defendants aren't always  
24 notified. Defense attorneys are not always notified.

1 Justice delayed is justice denied. In this case, justice  
2 for everybody was delayed a long, long time. Thank you.

3 THE COURT - All right, thank you. All right,  
4 I'll take this under advisement.

5 MR. HEMLEPP - Thank you, Your Honor.

6 (END OF TRANSCRIPT)

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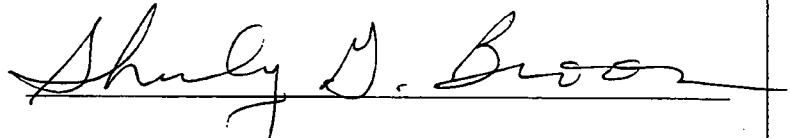
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## C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 49 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of Charles H. Davis vs. State of South Carolina, as taken by me in the Court of Common Pleas for the Sixth Judicial Circuit on February 2 and 3<sup>rd</sup>, 2016 and provided by me this the 10<sup>th</sup> day of March, 2016.

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



Shirley Broom, CVR-M  
Official Court Reporter,  
Certified Verbatim Reporter, In and  
for the State of South Carolina

STATE OF SOUTH CAROLINA )  
 COUNTY OF LANCASTER )  
 Charles H. Davis, #299511, )  
 Applicant, )  
 v. )  
 State of South Carolina, )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE SIXTH JUDICIAL CIRCUIT

Case No. 2014-CP-29-1049

**ORDER OF DISMISSAL**

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 LANCASTER, SC  
 OFFICE OF CLERK  
 OF COURT

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 5, 2014. Respondent made its return on December 31, 2014. An evidentiary hearing into the matter was convened on February 3, 2015, at the Lancaster County Courthouse. Applicant was present at the hearing and was represented by W. Michael Hemlepp, Jr., Esquire. Respondent was represented by Assistant Attorney General J. Croom Hunter of the South Carolina Attorney General's Office.

**PROCEDURAL HISTORY**

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Lancaster County Clerk of Court's orders of commitment. Applicant was indicted at the February 2013 term of the Lancaster County Grand Jury for assault and battery of a high and aggravated nature (ABHAN) (2007-GS-29-0867) and burglary, first degree (2007-GS-29-0866). Applicant was represented by Mark Grier, Esquire.

On February 13, 2013, Applicant was tried and convicted in absentia. The Honorable Brooks P. Goldsmith sealed the sentencing sheets after sentencing Applicant to concurrent terms of ten (10) years imprisonment for ABHAN and twenty (20) years imprisonment for burglary.

Applicant was eventually apprehended, and the sentences were unsealed by the Honorable J. Ernest Kinard, Jr., on June 18, 2013. Judge Kinard reduced Applicant's sentence from twenty (20) years to fifteen (15) years imprisonment on the burglary charge.

Applicant filed a timely notice of appeal. Applicant was represented on appeal by Lara M. Caudy of the South Carolina Office of Appellate Defense, who filed an Anders brief on his behalf. The appeal was denied and dismissed. The Remittitur was sent on August 4, 2014.

### ALLEGATIONS

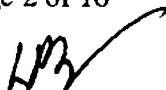
At the post-conviction relief hearing, Applicant proceeded to argue his confinement is unlawful based upon the following grounds:

1. Ineffective assistance of counsel.
  - a. Counsel was ineffective for failing to inform Applicant of the date of his trial.

### SUMMARY OF TESTIMONY PRESENTED

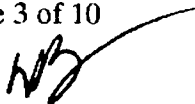
At the evidentiary hearing, Applicant testified on his own behalf. Respondent also presented testimony from trial counsel, Mark Grier, Esquire. This Court also had before it a copy of the trial transcript, the Lancaster County Clerk of Court's records, the Applicant's South Carolina Department of Corrections records, the PCR application, the appellate records, and the return.

During the evidentiary hearing, Applicant testified that he was represented at trial by Mark Grier (Counsel). Applicant testified Counsel represented him on these charges since 2007. Applicant testified he was unaware his case had been called for trial and did not become aware until the police arrested him at his job, after he had already been convicted in his absence. Applicant testified he had been working at a detail shop since his previous release from prison. Applicant testified after he was initially arrested on the current charges, it took him about a



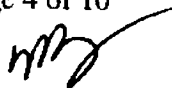
month to bond out. He testified he spoke with Counsel once or twice. Applicant testified he could not recall whether he and Counsel discussed any potential defenses, although he testified he did tell Counsel he was given a key to the residence by the victim. Applicant testified he is guilty of the ABHAN but not the burglary. Applicant testified Counsel also represented him on a failure to stop charge, to which he pled guilty and received eight and a half months in prison. Applicant testified that after he was sentenced on the failure to stop charge, the victim of the burglary, who was the mother of his child, told him the burglary and ABHAN charges had been dropped. Applicant testified he was not on the run when he was tried in absentia, but he thought the charges against him were no longer pending. Applicant testified he told Counsel how to get in touch with him after he was released from prison after serving time on his drug charges. Applicant testified Counsel sent letters to Applicant's sister's house, but he testified he did not notify Counsel when he moved to a different address on . Finally, Applicant testified he would have come to court and pled guilty to ABHAN but not burglary.

On cross-examination, Applicant testified Victim gave him a key to her home, and he had permission to be there. Applicant testified he did not know why Victim moved a stove against her door, blocking entry, but he had permission to enter the home. Applicant disputed testimony put forth at trial that he was supposed to call before coming over. Applicant testified he did not force the door open and disputed trial testimony that the door appeared to have been kicked in. Applicant testified he entered the home without any intention of harming the second victim who was laying on the couch, but "they fought." Upon further questioning, Applicant would not specify whether he attacked second victim, only saying "they fought." Applicant testified he only spoke with Counsel once or twice at roll call, and three or four other times. Applicant testified he did not speak with Counsel after 2007 because he thought the charges he is challenging in this



Application were disposed of as part of the disposition of his earlier charges. However, upon further questioning, Applicant admitted he did speak with Counsel after he was released from prison in 2012 regarding these charges that he was still facing. Applicant testified he only attempted to see Counsel one time after he was released from prison in 2012. Applicant testified he did not update his mailing address with Counsel when he moved to [REDACTED]. Applicant once again testified he believed his charges were no longer pending; however, when questioned whether he attempted to recover his bond money, Applicant testified he did not know he could get that money back. Applicant further testified that he turned down a four (4) year plea offer, yet he still believed the State had dropped the charges against him. Applicant testified he thought the charges just went away. Applicant did acknowledge that Counsel was successful in having Applicant's sentence reduced from twenty (20) years to fifteen (15) years when Applicant was apprehended and the sentences were unsealed.

Following Applicant's testimony, Counsel testified. Counsel testified he has been practicing law since 1990. Counsel testified he was appointed to Applicant's case in 2007 because he had a contract with the Public Defender's Office. Counsel testified that although Applicant was arrested in 2007, and he was not tried until 2013, such a delay is not uncommon. Counsel testified Lancaster has an old docket. Counsel testified it is not uncommon for his clients to be transient or for their contact information to change. Counsel testified that as a public defender, he currently has 835 cases assigned, and some of those cases are ten or eleven years old. Counsel testified he represented Applicant for a number of years on these charges, along with other charges Applicant had pending. Counsel testified that in the time period from 2007, when Applicant was initially arrested on the instant charges, through 2013, when he was convicted in his absence, Counsel also represented Applicant on charges for distribution of crack



cocaine, criminal domestic violence, firearm and cocaine charges, and a failure to stop. Counsel testified he could not definitively recall how many times he met with Applicant to discuss the instant charges, but he did not dispute Applicant's claim that it was only a handful of times. Counsel testified he filed the proper Brady and Rule 5 motions and had no trouble obtaining discovery. Counsel further testified he went over discovery with Applicant and discussed Applicant's potential defenses. Counsel testified Applicant was adamant he was innocent of the burglary because he had a key to the home however, Counsel testified Applicant admitted to him he was guilty of the ABHAN. Counsel testified he took a "wait and see" approach with Applicant's case. Counsel testified the State initially extended a plea offer of a cap of five (5) years in 2008. Counsel testified the State offered a second deal in 2012 of ten (10) years suspended upon the service of four (4) years in prison. Counsel testified he was certain he discussed the second offer with Applicant, but his notes did not reflect whether he discussed the first offer with Applicant. However, Counsel did testify it is his standard practice to convey all plea offers, and he had no reason to believe he did not convey the first offer to Applicant. Counsel testified he extended the offer of ten (10) years suspended to four (4) years in prison in October of 2012, when Applicant was in prison for failure to stop, to which he pled guilty. Counsel testified he had no documentation to prove the offer was conveyed, but he recalled the conversation because Applicant was a cooperative client, and he liked him. Counsel testified it is not always possible to make notes every time a plea offer is conveyed. Counsel testified Applicant understood he was facing significant prison time, but he did not want to plead guilty. Counsel testified he also represented Applicant on some unrelated drug charges, and Applicant was tried in his absence on those charges as well. Counsel testified he succeeded in having those charges dismissed on a directed verdict motion, even though Applicant failed to appear. Counsel

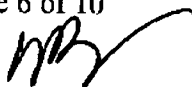


testified he is generally alerted by an assistant in his office that a case is being called, and he usually gets the trial list one (1) day before the ten (10) day notice period begins. Counsel testified his office sends out letters to affected clients once the office receives the trial list. Counsel testified that when the charges Applicant is currently challenging came up for trial, he sent letters to the address Applicant gave him, notifying him that his case was set for trial. Counsel testified he sent Applicant a letter on December 17, 2012, notifying him his drug case was on the trial list, and he sent Applicant another letter on January 4, 2013 requesting that he contact Counsel's office. Counsel testified he sent letters to Applicant on January 25, 2013 and February 11, 2013, stating this case was coming up for trial. Counsel testified he sent a separate letter on January 28, 2013, notifying Applicant his drug charges had been dismissed in his absence, but he still needed to contact Counsel regarding the instant charges. Counsel testified he moved for a continuance when Applicant did not appear on the date of his trial. Counsel testified he had ample time to prepare for trial and was ready to go forward and try Applicant's case, even though Applicant failed to appear. Finally, Counsel reiterated that he represented Applicant on two separate sets of charges where Applicant failed to appear for trial.

#### **INEFFECTIVE ASSISTANCE OF COUNSEL**

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

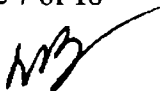
The proper measure of performance is whether the attorney provided representation



within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Applicant failed to demonstrate that Counsel's performance was deficient in any way. This Court further finds that Applicant presented no evidence to show any prejudice resulting from Counsel's representation. Additionally, this Court finds Counsel's testimony credible and Applicant's testimony not credible.

This Court finds Counsel met with Applicant an adequate number of times prior to trial. This Court further finds Counsel obtained discovery from the solicitor and went over it with Applicant. This Court further finds that Counsel thoroughly investigated and prepared Applicant's case. This Court finds Counsel conveyed the State's plea offers to Applicant, but Applicant elected not to take the deals. The evidence before this Court clearly indicates



Applicant was intimately familiar with the criminal justice system, and for reasons known only to Applicant, he decided not to appear for trial, not once, but on two (2) separate occasions. This Court finds Counsel made multiple attempts to notify Applicant his case was set for trial. This Court notes it was not incumbent on Counsel to keep up with his client's whereabouts; rather, it was incumbent on Applicant to keep Counsel informed and apprised of up to date contact information. Applicant was not incarcerated in the months leading up to his trial, and all evidence indicates Applicant was living and working in Lancaster. Accordingly, this Court finds Applicant had ample opportunity to maintain communication with Counsel and stay apprised of his situation. This Court rejects Applicant's assertion that he believed the charges, to which he had rejected a plea offer of four (4) years in prison, had simply been dropped and finds such testimony to be not credible. Evidence before this Court indicates Applicant had no reasonable reason to believe his charges were no longer pending, and there is no evidence Counsel made any such representations. Additionally, this Court finds Applicant's conflicting testimony regarding the dates he spoke with Counsel about these charges further weakens Applicant's credibility. Applicant initially testified he had not spoken with Counsel since 2007; however, upon questioning by the State, Applicant indicated he was in contact with Counsel through 2012. As such, Applicant's argument that he was unaware of the pendency of the charges is further weakened. Furthermore, the fact that Applicant elected not to appear for two (2) separate trials further highlights Applicant's apparent indifference and failure to take the charges against him seriously. Accordingly, this Court finds Counsel took all reasonable steps to ensure Applicant was notified of his trial date, and any prejudice that resulted from Applicant's failure to appear for trial is the consequence of Applicant's behavior, not any alleged deficiency on the part of Counsel. Finally, this Court finds Counsel's representation of Applicant and handling of this case



were well within the standards required for effective representation.

Accordingly, this Court finds Applicant did not demonstrate any deficiencies in Counsel's representation. This Court finds that because Counsel's representation was well within the range of competence required in criminal cases, Applicant has further failed to make any showing that but for Counsel's alleged deficiencies, the result of Applicant's case would have been any different.

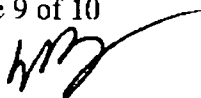
### ALL OTHER ALLEGATIONS

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, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

### CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Trial counsel rendered effective assistance in regard to the claims raised by Applicant. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf.




Applicant is directed to 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 23 day of Nov, 2015.

  
\_\_\_\_\_  
THE HONORABLE DEANDREA G. BENJAMIN  
Presiding Judge  
Sixth Judicial Circuit

Columbia, South Carolina