

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Certiorari to Georgetown County

Honorable Benjamin H. Culbertson, Circuit Court Judge

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JAMES ARTHUR BRYANT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002451

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APPENDIX

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LARA M. CAUDY  
Appellate Defender

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON  
Attorney General

VALERIE GIOVANOLI  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA ) COURT OF GENERAL SESSIONS  
INDICTMENT NO.: 06-GS-22-276  
COUNTY OF GEORGETOWN ) 06-GS-22-277  
06-GS-22-278  
06-GS-22-279  
06-GS-22-303

THE STATE OF SOUTH CAROLINA, )  
 )  
 ) PLAINTIFF, )  
 )  
 ) -VS- )  
 )  
 ) JAMES A. BRYANT, )  
 )  
 ) DEFENDANT. )

TRANSCRIPT OF RECORD  
PAGES 1 - 200

May 30 - June 1, 2006  
Georgetown, S. C.

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, JUDGE and a jury.

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

MATTHEW J. MODICA, ESQUIRE  
And  
DORIE BIAGIANTI, ESQUIRE  
Assistant Solicitors, Fifteenth Judicial Circuit  
Attorney for the State

STUART MARK AXELROD, ESQUIRE  
Assistant Public Defender for Georgetown County  
Attorney for the Defendant

LINDA W. MCCALL  
OFFICIAL REPORTER

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MAY 30, 2006

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VOIR DIRE

1

TUESDAY

MAY 30, 2006

TRIAL

1 THE COURT: Alright. Call your case.

2 MR. MODICA: May we have one moment, Your Honor?

3 THE COURT: Have the defendant brought around, please.

4 (Defendant takes seat at defense table with defense counsel.)

5 THE COURT: Alright, sir. Solicitor, call your case.

6 MR. MODICA: May I approach, Your Honor?

7 THE COURT: Yes, sir.

8 (Bench conference off record but in the presence of the jury  
9 panel.)

10 MR. MODICA: Thank you, Your Honor.

11 At this time the State would call The State of South Carolina  
12 v. James Arthur Bryant, under the following indictments for the  
13 following charges:

14 Burglary in the first degree under indictment 06-GS-22-277;

15 Kidnapping under 06-GS-22-278;

16 Assault and battery with the intent to kill under 06-GS-22-  
17 276;

18 Assault and battery with the intent to kill under 06-GS-22-  
19 279; and

20 Assault and battery with the intent to kill under 06-GS-22-  
21 303.

22 THE COURT: Alright, sir.

VOIR DIRE

2

1 Mr. Fox, are you ready for trial in your representation of  
2 this defendant?

3 MR. FOX: Yes, Your Honor.

4 THE COURT: Ladies and gentlemen of the jury panel, we in  
5 just a moment will begin the process of selecting the jury for the  
6 trial of these cases. The jury, of course, will be the finders of  
7 the facts. I'll keep you fully advised of your duties thereabout.

8 This defendant and any defendant comes into court under what  
9 we call an indictment that I hold in my hand. This indictment - -  
10 these indictments are merely the charges meaning the allegations,  
11 allegations only. These indictments are in no way evidence.  
12 Evidence comes from this jury stand under oath.

13 I, specifically, tell you, now, that to these indictments this  
14 defendant has pled not guilty which places the burden of proof upon  
15 the State of South Carolina of proving him guilty if they can to  
16 your satisfaction beyond a reasonable doubt.

17 This defendant and all defendants in South Carolina come into  
18 this courtroom under a presumption of innocence, absolute  
19 presumption of innocence. They don't have to prove a thing. This  
20 presumption remains with this defendant and all defendants from the  
21 time of his arraignment throughout the trial and until you, the  
22 jury, have unanimously found him guilty if you do by evidence  
23 beyond a reasonable doubt.

VOIR DIRE

24  
25 Now, ladies and gentlemen of the jury panel, we are about to

VOIR DIRE

3

1 ask of you certain questions concerning these various cases. I'm  
2 going to charge - - read to you the various allegations of these  
3 indictments such that you can respond to the following inquiries  
4 advising you that these are allegations and allegations only.

5 The first indictment is referenced with burglary first degree.  
6 That James Arthur Bryant did in Georgetown County on February 11,  
7 2006, without consent and with intent to commit a crime therein  
8 enter the dwelling of Lasha E. Bryant located at 12 Avant Court,  
9 Georgetown, causing bodily harm to the said Lasha Bryant and/or  
10 Nelson Edwards and/or Tamar Bryant in violation of the appropriate  
11 section of law.

12 The other indictment is assault and battery with the intent to  
13 kill in that that same defendant did on that same date feloniously  
14 and with malice aforethought commit an assault and battery upon the  
15 body of Lasha Brown with intent to kill.

16 The next indictment alleges assault and battery with the  
17 intent to kill upon the body of Nelson Hayward, III.

18 The next indictment reads assault and battery with the intent  
19 to kill upon the minor victim, Tamar Bryant.

20 And the last indictment alleges that that same defendant did  
21 on that date, February 11, 2006, kidnap one Lasha F. Bryant,  
22 calling to your attention that to these indictments this defendant  
23 has pled not guilty.

24 I'm going to ask of you certain questions to make sure that we  
25 get a jury with no friends to reward, no enemies to punish, a jury

VOIR DIRE

4

1 who says, "I know nothing about the case or even if I did, I can  
2 dismiss it and base my verdict on the law and the evidence heard in  
3 this courtroom."

4 We need to know has anybody discussed the case with anybody.  
5 Had anybody discusse it with them? We need to know if anybody  
6 made a foregoing conclusion as to the guilt or innocence of any  
7 party. We need to know if any potential jurors have any specific  
8 relationship with any of the parties involved.

9 Again, this is to insure from the perspective of the State and  
10 the defendant that we get twelve folks here who say, "Judge, I know  
11 nothing about the case or if I did, I can set it aside."

12 A juror who can say, "Judge, if I am one of the twelve jurors,  
13 I will base my verdict on the law and the evidence heard in this  
14 courtroom and from no other place."

15 Now, my first inquiry is are any of you related by blood or  
16 connected by marriage to the defendant James Arthur Bryant.

17 Mr. Bryant, please stand and face the jury for me.

18 (Defendant stands and faces jury panel.)

19 THE COURT: Any of you related by blood or connected by  
20 marriage with this defendant?

21 Do any of you have any close personal relationship with Mr.  
22 Bryant such as neighbor, co-worker, church?

23 Any of you know any members of his family?

24 How many of this jury panel know this defendant in any  
25 capacity whatsoever, please stand?

VOIR DIRE

5

1 Mr. Bryant, you may be seated.

2 (Defendant resumes his seat at defense table.)

3 THE COURT: The alleged victims in this case are Lasha E.  
4 Bryant. Any of you have any close connections with Ms. Bryant,  
5 related in any way? How many of you know Lasha E. Bryant in any  
6 capacity whatsoever?

7 Same question with an alleged victim, Nelson Hayward, III or  
8 Tamar Bryant? Any of you even know Nelson Hayward or Tamar  
9 Bryant?

10 Any of you know their immediately family? Anybody have any  
11 close connection with them in any capacity whatsoever?

12 These incidences are alleged to have occurred here in  
13 Georgetown County on February 11<sup>th</sup> of this year.. Said to have  
14 occurred at that time and place that I've previously mentioned.

15 Would any of you have heard anything about this case? If so,  
16 please stand.

17 Anybody discussed any part of these issues in your presence?

18 Would you have read anything in the newspaper or heard  
19 anything on the tv?

20 Ladies and gentlemen, sometimes based on our experiences in  
21 life, we develop certain biases or prejudices whether we want to or  
22 not, and I always give an example in a matter that occurred with me  
23 some years ago in another county. I was getting ready to try a  
24 young man for felony DUI. It has nothing to do with this case, it  
25 being alleged that while drunk driving he killed a young girl. I

VOIR DIRE

6

1 asked the jury panel as I propose to ask you. Anybody have any  
2 reason that they can't be fair and just to the State and to the  
3 defendant?

4 A lady got up and said, "Judge, I can't be fair to this  
5 defendant. My daughter was killed by a drunk driver, and  
6 regardless of the evidence, I can't be fair to him."

7 Obviously, I excused her and thanked her for that.

8 On that same panel, a gentleman got up and said, "Judge, I  
9 can't be fair to the Solicitor in the case. They tried my son  
10 three separate times for the same thing until he was found not  
11 guilty. They harassed him."

12 That was his position.

13 "I can't be fair to the State and the Prosecution in a case  
14 like this."

15 These are examples. Now, sometimes, in our experiences we or  
16 members of our immediately family have been victims of violent  
17 crime, and it's for that reason that sometimes folks say, "I can't  
18 be fair. I'm a victim, and I still got it in my mind, and anybody  
19 who is accused of it, I think they guilty."

20 Based on your prior experiences in life knowing of the serious  
21 charges to which he pleads not guilty, do any of you have any  
22 reason to believe that you could not be a fair and impartial jury  
23 if selected as one of the twelve? Please stand and tell me that,  
24 and I'll excuse you.

25 The State of South Carolina is represented by the Solicitor's

VOIR DIRE

7

1 Office. Mr. Hembree is Solicitor of this circuit. Are any of you  
2 employed in any capacity by the Fifteenth Circuit Solicitor's  
3 Office or have you been clients of theirs such as a witness or  
4 victim in the last year or so? Please stand.

5 Anybody have any connection with the Solicitor's Office, any  
6 close relatives employed by the Solicitor's Office?

7 Mr. Fox represents - - excuse me, I'm sorry. Ma'am, your  
8 name?

9 MS. BELLAMY: Yes, Sandie Bellamy.

10 THE COURT: And what is your response?

11 MS. BELLAMY: My son was Assistant Solicitor for several  
12 years - - was Assistant Solicitor for several years. It's been  
13 longer than that but he use to be - - worked several years.

14 THE COURT: But he's not now employed?

15 MS. BELLAMY: No, he's not there, Your Honor.

16 THE COURT: Would the fact that your son worked several  
17 years ago? Would that give you any difficulty in being a fair  
18 juror for both sides?

19 MS. BELLAMY: It wouldn't.

20 THE COURT: I think not.

21 You are saying that he does not work there now?

22 MS. BELLAMY: No, sir, he doesn't.

23 THE COURT: And you have no special allegiance to the  
24 Solicitor's Office? You will base your verdict on the law and the  
25 evidence heard in this courtroom.

VOIR DIRE

8

1 MS. BELLAMY: Yes, sir.

2 THE COURT: If selected, we'll be delighted to have you.

3 Alright. The defendant is represented by - -

4 May I have your jury number, please?

5 MS. BELLAMY: 92.

6 THE COURT: Your name, too? Ma'am?

7 MS. BELLAMY: My name is Sandra Bellamy.

8 THE COURT: Okay.

9 The defendant is represented by Mr. Fox of the Public  
10 Defender's Office who is also in the private practice of law. Any  
11 of you clients of Mr. Fox or have you been in the immediately past?  
12 If so, please stand.

13 Alright, Solicitor, any other inquiry?

14 MR. MODICA: Your Honor, may I read out the witness list,  
15 please.

16 THE COURT: Give me your witness. Mr. Fox, give me your  
17 witness list, please.

18 MR. MODICA: I gave you mine, Your Honor.

19 THE COURT: Mr. Modica, other than the witness list, is  
20 there any other inquiry that you propose?

21 MR. MODICA: Yes, Your Honor. Ah - - -

22 THE COURT: Give me your - - I see. This is just handed to  
23 me.

24 What number that you have some question about on your - -

25 MR. MODICA: Section 6.

VOIR DIRE

9

1 THE COURT: 6?

2 MR. MODICA: And #8.

3 THE COURT: No, I have generally complied with that --  
4 based on prior experiences. I'm satisfied with what I've done.  
5 Anything else?

6 MR. MODICA: Other than the witnesses, Your Honor, no, Your  
7 Honor.

8 THE COURT: Alright, sir.

9 MR. MODICA: Would you like me to read that, Your Honor?

10 THE COURT: In just a moment.

11 Mr. Fox, you got any other additional inquiry rather than the  
12 witness list?

13 MR. FOX: No, Your Honor.

14 THE COURT: Alright.

15 Now, gentlemen and ladies, the Solicitor -- counsel is going  
16 to give you certain names that may be witnesses. My inquiry is are  
17 any of you related by blood or connected by marriage or have any  
18 special relationship with any of these witnesses. As he calls  
19 their names, please stand, and I'll make further inquiry.

20 You may proceed, Solicitor.

21 MR. MODICA: Your Honor, may I approach for a moment?

22 THE COURT: Yes, sir.

23 (Bench conference off record but in the presence of the jury  
24 panel.)

25 THE COURT: Mr. Fox, I'm going over these witness lists in

VOIR DIRE

10

1 a moment. In addition to that, do you have any further inquiry you  
2 would have me make?

3 MR. FOX: No, Your Honor.

4 THE COURT: Alright, sir.

5 Have you provided your witness list?

6 MR. FOX: Yes, sir.

7 THE COURT: Where are - - right here?

8 MR. FOX: On that sheet of paper, Your Honor, right  
9 there.

10 THE COURT: Alright, sir.

11 Ladies and gentlemen, I'm going to call these names, now. If  
12 you are related or have any close personal relationship with any of  
13 these folks, please stand.

14 Investigator Johnell Sparkman of the Georgetown Police  
15 Department; Sgt. Robert Small of Georgetown Police Department;  
16 Officer Timothy Burroughs of Georgetown Police Department; Officer  
17 Janna Grubb of Georgetown Police Department.

18 You've already responded to Lasha Bryant, Tamar Bryant, Nelson  
19 Hayward, III.

20 Paulette Smith, Elaine Johnson, Georgetown County  
21 Communications; Lorie Pruitt, Georgetown County Communications;  
22 Octavia Taylor.

23 Is that all?

24 Yes, ma'am? Your name, please?

25 MS. SAMSON: Terra Samson, Jury #138.

VOIR DIRE

11

- 1 THE COURT: And what is your response?
- 2 MS. SAMSON: I work with Lorie Pruitt.
- 3 THE COURT: I work with Lorie Pruitt.
- 4 MS. SAMSON: No. I work with her. She works with me at  
5 times.
- 6 THE COURT: Where do y'all work?
- 7 MS. SAMSON: In Andrews.
- 8 THE COURT: You just know him?
- 9 MS. SAMSON: And work with her.
- 10 THE COURT: And work with him.
- 11 You are qualified if selected. That's fine.
- 12 MS. SAMSON: Okay.
- 13 THE COURT: Alright. Let's follow this again.
- 14 James Bryant, Agnes Bryant, Brian Gilliard, Christine Woodruff  
15 of the Georgetown Housing Authority, Detective - - what is that?
- 16 MR. FOX: Wineglass, Your Honor.
- 17 THE COURT: Georgetown Sheriff's Department.
- 18 Records Custodian of the City of Georgetown, Darryl Hassell,  
19 Al Bright. What is that? William what?
- 20 MR. FOX: Grimes.
- 21 THE COURT: William Grimes and Sandra Gilliard.
- 22 Anybody have any close relationship with those folks?
- 23 Alright, sir.
- 24 Any other inquiry, Solicitor?
- 25 MR. MODICA: No, sir. Thank you.

## JURY SELECTION

12

1 THE COURT: How about it, Mr. Fox?

2 MR. FOX: None, Your Honor.

3 THE COURT: Give us a jury, please.

4 Ms. White.

## 5 JURY SELECTION

6 CLERK OF COURT: When your names are called, please bring  
7 all your belongings with you in case you got to sit in the jury  
8 box.

9 #7, Ronald Brown.

10 What says the State?

11 MR. MODICA: Please present Mr. Brown.

12 CLERK OF COURT: What says the defendant?

13 MR. FOX: Please seat Mr. Brown.

14 CLERK OF COURT: Okay. Now you can come.

15 Take a seat in the jury box.

16 #10, John Cherry.

17 What says the State?

18 THE COURT: What number, please?

19 CLERK OF COURT: #10.

20 THE COURT: What was the name?

21 CLERK OF COURT: John Cherry.

22 THE COURT: Cherry?

23 CLERK OF COURT: Yes, sir.

24 What says the State?

25 MR. MODICA: Please present Mr. Cherry.

## JURY SELECTION

13

1 CLERK OF COURT: What says the defendant?  
2 MR. FOX: Please seat the jury.  
3 CLERK OF COURT: Okay.  
4 Juror #137, Robert Row.  
5 What says the State?  
6 MR. MODICA: Please excuse Mr. Row.  
7 CLERK OF COURT: You may return to your seat.  
8 #92, Sandra Bellamy.  
9 What says the State?  
10 MR. MODICA: Please seat Ms. Bellamy.  
11 CLERK OF COURT: What says the defendant?  
12 MR. FOX: Please excuse this juror.  
13 CLERK OF COURT: You may return to your seat.  
14 Juror #113, Peter Groot.  
15 THE COURT: What number?  
16 CLERK OF COURT: #113.  
17 What says the State?  
18 MR. MODICA: Please present Mr. Groot.  
19 CLERK OF COURT: What says the defendant?  
20 MR. FOX: Please excuse this juror.  
21 CLERK OF COURT: You may return to your seat.  
22 #112, Henry Green.  
23 THE COURT: Five and ten.  
24 Five and ten, burglary.  
25 CLERK OF COURT: Okay.

## JURY SELECTION

14

1 What says the State?

2 MR. MODICA: Please present Mr. Green.

3 CLERK OF COURT: What says the defendant?

4 MR. FOX: Please seat this juror.

5 (Juror frowns noticeably and there is laughter in courtroom.)

6 THE COURT: Mr. Green, we glad to have you.

7 (There is more laughter from jury panel.)

8 CLERK OF COURT: Juror #57, Jimmy Miller.

9 THE COURT: #57?

10 CLERK OF COURT: Yes, Your Honor.

11 What says the State?

12 MR. MODICA: Please present Mr. Miller.

13 CLERK OF COURT: What says the defendant?

14 MR. FOX: Please excuse this juror.

15 CLERK OF COURT: You may return to your seat.

16 #142, Vicky Stickell.

17 What says the State?

18 MR. MODICA: Please present Ms. Stickell.

19 CLERK OF COURT: What says the defendant?

20 MR. FOX: Please excuse this juror.

21 CLERK OF COURT: You may return to your seat.

22 Juror #138, Terra Samson.

23 What says the State?

24 MR. MODICA: Please present Ms. Samson.

25 CLERK OF COURT: What says the defendant?

## JURY SELECTION

15

1 MR. FOX: Please excuse this juror.

2 CLERK OF COURT: You may return.

3 Juror #60, James Moody.

4 THE COURT: That's #60, Ms. White?

5 CLERK OF COURT: Yes, Your Honor.

6 What says the State?

7 MR. MODICA: Please present Mr. Moody.

8 CLERK OF COURT: What says the defendant?

9 MR. FOX: Please seat the juror.

10 CLERK OF COURT: Juror #69, Homer Reed.

11 What says the State?

12 MR. MODICA: One moment, please.

13 Please present Mr. Reed.

14 CLERK OF COURT: What says the defendant?

15 MR. FOX: Please seat this juror.

16 CLERK OF COURT: Juror #117, Melanie Hipkins.

17 What says the State?

18 MR. MODICA: Please present Ms. Hipkins.

19 CLERK OF COURT: What says the defendant?

20 MR. FOX: May I have that juror number again, please,  
21 Madame Clerk?

22 CLERK OF COURT: #117.

23 MR. FOX: Please excuse this juror.

24 CLERK OF COURT: You may return to your seat.

25 THE COURT: Is that juror excused by the defense?

## JURY SELECTION

16

1 CLERK OF COURT: Yes, Your Honor.

2 THE COURT: Alright. That's number six.

3 CLERK OF COURT: Juror #94, Henry Byrd.

4 What says the State?

5 MR. MODICA: Please excuse Mr. Byrd.

6 CLERK OF COURT: You may return to your seat.

7 Juror #64, Scott Peka.

8 What says the State?

9 MR. MODICA: May I have a moment, please?

10 Please excuse Mr. Peka.

11 CLERK OF COURT: You may return to your seat.

12 Juror #49, James Lambert.

13 What says the State?

14 MR. MODICA: One moment, please.

15 Please present Mr. Lambert.

16 CLERK OF COURT: What says the defendant?

17 MR. FOX: Please seat this juror.

18 CLERK OF COURT: Sit in the jury box.

19 Juror #87, Edna Yarborough.

20 What says the State?

21 MR. MODICA: Please present Mr. Yarborough.

22 CLERK OF COURT: What says the defendant?

23 MR. FOX: Please seat this juror.

24 CLERK OF COURT: Juror #42, Daisy Johnson.

25 What says the State?

## JURY SELECTION

17

1 MR. MODICA: One moment, please?  
2 Please present Ms. Johnson.  
3 CLERK OF COURT: What says the defendant?  
4 MR. FOX: Please seat Ms. Johnson.  
5 CLERK OF COURT: Take a seat in the jury box.  
6 Juror #90, Clarence Barrimore.  
7 What says the State?  
8 MR. MODICA: Please present Mr. Barrimore.  
9 CLERK OF COURT: What says the defendant?  
10 MR. FOX: Please excuse this juror.  
11 CLERK OF COURT: You may return to your seat.  
12 Juror #116, Jimmy Hicks.  
13 What says the State?  
14 MR. MODICA: Please excuse Mr. Hicks.  
15 CLERK OF COURT: You may return to your seat.  
16 Juror #98, Cicely Crawford.  
17 What says the State?  
18 MR. MODICA: Please present Ms. Crawford.  
19 CLERK OF COURT: What says the defendant?  
20 MR. FOX: Please excuse this juror.  
21 CLERK OF COURT: Juror #51, Kathy Mantgault.  
22 THE COURT: What number was that, please?  
23 CLERK OF COURT: #51, Your Honor.  
24 THE COURT: #51. Thank you, Ms. White.  
25 CLERK OF COURT: What says the State?

## JURY SELECTION

18

1 MR. MODICA: Please present Ms. Mantgault.

2 CLERK OF COURT: What says the defendant?

3 MR. FOX: Please seat this juror.

4 CLERK OF COURT: Juror #32, Patrick Duggan.

5 MR. MODICA: May I have that number, please?

6 CLERK OF COURT: #22.

7 THE COURT: Juror #32.

8 CLERK OF COURT: #22, Your Honor.

9 What says the State?

10 MR. MODICA: Please present Mr. Duggan.

11 CLERK OF COURT: What says the defendant?

12 MR. FOX: Please excuse Mr. Duggan.

13 THE COURT: You may return to your seat.

14 Juror #140, Michael Smith.

15 MR. MODICA: What number was that again?

16 CLERK OF COURT: #140.

17 MR. MODICA: Thank you.

18 CLERK OF COURT: What says the State?

19 MR. MODICA: Please present Mr. Smith.

20 CLERK OF COURT: What says the defendant?

21 MR. FOX: Please excuse this juror.

22 CLERK OF COURT: You may return to your seat.

23 Juror #146, Delores Watkins Pittman. Is that right?

24 What says the State?

25 MR. MODICA: Please present Ms. Watkins.

## JURY SELECTION

19

1 CLERK OF COURT: What says the defendant?

2 MR. FOX: Please seat this juror.

3 CLERK OF COURT: Have a seat in the jury box.

4 Juror #89, Kathryn Bancroft.

5 What says the State?

6 MR. MODICA: Please present Ms. Bancroft.

7 CLERK OF COURT: What says the defendant?

8 MR. FOX: Please swear the juror.

9 CLERK OF COURT: Have a seat in the jury box.

10 Juror #53, Eric Massengill.

11 What says the State?

12 MR. MODICA: Please present Mr. Massengill.

13 CLERK OF COURT: What says the defendant?

14 MR. FOX: Please swear the juror.

15 THE COURT: Alright. That will constitute the jury. We

16 will select two alternates. The strikes will be one and two

17 separately as to each alternate.

18 Ms. White, please proceed, two alternates.

19 CLERK OF COURT: Juror #4, Michael Benton.

20 MR. MODICA: #4?

21 CLERK OF COURT: Yes.

22 What says the State?

23 MR. MODICA: Please present Mr. Benton.

24 CLERK OF COURT: What says the defendant?

25 MR. FOX: Please excuse this juror.

## JURY SELECTION

20

1 CLERK OF COURT: Juror #110, Shannon Grayson.

2 What says the State?

3 MR. MODICA: Please excuse Ms. Grayson.

4 CLERK OF COURT: Juror #32, Carlene Gauler.

5 What says the State?

6 MR. MODICA: Please present Ms. Gauler.

7 CLERK OF COURT: What says the defendant?

8 MR. FOX: Please seat the juror.

9 CLERK OF COURT: Juror #62, Susie Poston.

10 What says the State?

11 MR. MODICA: Please present Ms. Poston.

12 CLERK OF COURT: What says the defendant?

13 MR. FOX: Please seat this juror.

14 CLERK OF COURT: Have a seat in the jury box.

15 THE COURT: Ms. Knox, take this jury to the jury room.

16 I'll be calling you back out in just a moment. Ms. Knox, please,  
17 take them to the jury room, please.

18 (The jury retires to the jury room.)

19 THE COURT: Alright. What say the State? Are there any  
20 motions of any kind prior to discharging the rest of the panel?

21 What say you, Mr. Modica?

22 MR. MODICA: I have no objections.

23 MR. FOX: None from the State, Your Honor.

24 THE COURT: Alright, sir.

25 The record will reflect, then, outside the presence of the

## JURY SELECTION

21

1 jury, there are no Batson issues.

2       - Alright. Ladies and gentlemen, we have now secured the jury  
3 in the first case to be tried. Sometimes during the trial of the  
4 case cases break down. Witnesses become unavailable. Sometimes  
5 they get sick. Jurors have to be excused. Lawyers can't - -  
6 there's a number or reasons. It's not likely to happen but under  
7 Murphy's Law, if it can it will.

8       So, I'm going to excuse all of you for the rest of the day and  
9 ask, respectfully, that you call in tomorrow night after 6:00 for  
10 further instructions. I would anticipate that this case will still  
11 be in trial in which event I'll tell you to call in the following  
12 day. However, if something happens that we have to stop the trial  
13 - - I don't anticipate it but it happens - - I'll tell you to come  
14 in the following day.

15       Now, before you leave does everybody - - is there anybody who  
16 does not understand the call-in procedure? That's extremely  
17 important.

18       Alright.

19       With that understanding, I am going to excuse all of you for  
20 the day and tomorrow to call in after 6:00 tomorrow for further  
21 instructions.

22       Ms. White, at that time sometime tomorrow afternoon I'll tell  
23 you what the instructions are.

24       CLERK OF COURT:       Yes, Your Honor.

25       THE COURT:       You are now excused to call in after 6:00.

## REMARKS OF THE COURT

22

1           Everybody else remain seated, now. Nobody else leave except  
2 the jury.

3           Bring in the panel. Bring the jury back, Ms. Knox, please.

4           (Remaining jury panel departs the courtroom after being  
5 released to call back after 6:00 p.m. on Wednesday.)

6           THE COURT:       Ms. Knox - - -

7           Bring in the jury panel for me, please.

8           (The jury returns to the courtroom.)

9           THE COURT:       Alright.

10          Have Mr. Moody take the Foreman's chair, please.

11          Which one is Mr. Moody?

12          DEPUTY CLERK OF COURT:   In the red shirt, Your Honor.

13          REMARKS OF THE COURT

14          THE COURT:       Mr. Moody, I'm going to designate you as the  
15 Foreman, please.

16          Have him seat - - take the Foreman's chair after the jury is  
17 seated.

18          Mr. Moody, I have designated you, sir, as the Foreman of this  
19 jury. Your job will be to preside in the jury room and to be the  
20 jury spokesman in the courtroom. I, of course, will keep you fully  
21 advised of your duties as Foreman and during your deliberations  
22 there will be an appropriate verdict form for your jury to  
23 consider, and I'll keep you fully advised at all times.

24          During the trial of this case you would sit at this same spot  
25 at all times. The alternates would always take the back two

## REMARKS OF THE COURT :

23

1 chairs, and the rest of you may sit as you choose. You may be  
2 seated.

3 Now, ladies and gentlemen, we are going to start the trial of  
4 this case promptly at 9:30 in the morning; and I ask, please, that  
5 you be in the jury room ready to go at that time.

6 Ms. White as your Clerk of Court does something that we do in  
7 Marlboro County, and jurors like it, and I like it. She'll have  
8 either provided for you some ham or hot sausage biscuits or some  
9 doughnuts and some coffee. So if you'll get here a few minutes  
10 early, Ms. White will be glad to have those provisions for you.

11 Now, during the trial of this case, you will be the sole and  
12 only finders of the facts in this case. I'm the instructor in the  
13 law but I'll tell you what the law is with regards to every issue  
14 but you and you alone will tell us what the facts are and apply the  
15 facts as you find them to be to the law in this case and,  
16 thereafter, reach a verdict. Verdict comes from the Latin word  
17 "verdicto" meaning to speak the truth.

18 You may well say as jurors, "Well, how are we to determine the  
19 facts in this case?"

20 Well, during the trial various witnesses will testify for one  
21 side or the other. In addition to that, there may be documents,  
22 photographs, statements, whatever introduced. You will consider  
23 all of these things in determining where the truth lies with  
24 regards to the issues in the case.

25 When a witness testifies you are the sole and only judge of

## REMARKS OF THE COURT

24

1 that witness' credibility meaning believability. You may believe  
2 all of what a witness says or none. You may believe a small  
3 portion of what a witness says and disregard the larger or the  
4 other way around.

5 In your discretion if you conclude it appropriate, you may  
6 believe one witness against that of many.

7 You and you alone are the sole judges of the credibility and  
8 believability.

9 Mr. Foreman, and ladies and gentlemen, in judging credibility  
10 you have but one single objective, and that is to seek the truth.

11 Now, you folks didn't leave your common sense on the streets  
12 of Georgetown, South Carolina when you come into this courtroom,  
13 and we know in everyday life be it at our work or play or raising  
14 our families when folks tell us things we use certain tools to  
15 decide whether we want to believe some of it or all of it or none  
16 of it.

17 As an example, we always ask ourselves, "How did this person  
18 come to know about the facts that he or she is telling me? Is this  
19 witness' testimony consistent or inconsistent with other that?"

20 You would always ask yourselves, "Hey, does this witness have  
21 some cause or reason to want me to believe one thing or another?"

22 In other words, "Is this witness biased or prejudiced? Is  
23 this witness telling me the truth? If this witness is lying, why?"

24 You bring your common sense to bear here in sizing up the  
25 testimony of every witness who testifies, and, thus, by that

## REMARKS OF THE COURT

25

1 procedure and taking into consideration any matters that may be  
2 introduced such as statements, photographs or whatever in arriving  
3 at the truth of the matter.

4 Now, you must not discuss this case with anyone. Let no one  
5 discuss it with you. You must not even discuss it among  
6 yourselves, Mr. Foreman, until I have given you the case for your  
7 deliberations.

8 Sometimes during the trial of the case when we break for lunch  
9 or in the afternoon, two or three jurors in the parking lot  
10 sometimes want to talk about some issue in the case, and that's  
11 understandable but it's not - - it's prohibited for this reason.  
12 Whatever your final decision is it must be the ultimate decision of  
13 all twelve of you unanimously, and if three or four of you are  
14 discussing something outside the presence of the other, you are  
15 depriving your fellow jurors of your thought process, and they're  
16 entitled to that.

17 So, remember. Don't discuss the case at anytime even in the  
18 jury room or outside until I have said to you, "Mr. Foreman, ladies  
19 and gentlemen, you may now begin your deliberations."

20 I would ask now that you leave and return not to the courtroom  
21 but to your jury room promptly at 9:30. Be here a few minutes  
22 early. Ms. White will have some sort of refreshments waiting.

23 Have a good day, and I'll see you in the morning at 9:30.

24 (Jury departs courtroom for the day to return at 9:30 a.m. on  
25 Wednesday.)

## MOTIONS AND RULING OF THE COURT

26

1 THE COURT: Ms. White, what are these? I think these are  
2 ones that I've already done. You can take these back.

3 Alright, sir. Are the folks here in that hearing that I  
4 wanted to have. I wanted to take care of the lawyer first.

5 MOTION AND RULING OF THE COURT.

6 MR. MODICA: Your Honor, prior to that we had approached,  
7 and I had requested the ability to move to amend Indictment 06-GS-  
8 22-277 to correct a section. It says, "312". It should said  
9 "311". It does say, "burglary, first". On the back of it it has  
10 311. It does say, "burglary, first", on the back.

11 THE COURT: My understanding, Mr. Fox, you don't object to  
12 that, it being merely a scrivener's error, he being charged on the  
13 face of the indictment and other language with burglary, first  
14 degree?

15 MR. FOX: That is correct, Your Honor.

16 THE COURT: No objection from the defendant?

17 MR. FOX: None, Your Honor.

18 THE COURT: The amendment is so authorized.

19 Alright. How about your other plea that you had?

20 MR. MODICA: Your Honor, I'm ready on that.

21 THE COURT: Sir?

22 MR. MODICA: I'm ready on that.

23 (The Court adjourns the trial of this until 9:30 a.m. on  
24 Wednesday.)



## JURY SWORN/REMARKS OF THE COURT

28

1 verdict that does equal justice to this defendant.

2 Swear the witness - - swear the jury.

3 JURY SWORN

4 (Deputy Clerk of Court swears the jury.)

5 REMARKS OF THE COURT

6 THE COURT: Those jurors who desire to take notes may do so  
7 if you care to.

8 Now, Mr. Foreman, and ladies and gentlemen, recognizing that  
9 for many of you this is the first time, perhaps, that you've sat in  
10 a jury and, surely, one of the first times you may have sat on a  
11 criminal case, let me tell you how we proceed.

12 As I've indicated to you, this case comes before us on an  
13 indictment where he is charged - - the defendant is charged with -  
14 - with several offenses to which offenses he specifically pleads  
15 not guilty.

16 I told you earlier and emphasize to you that he doesn't have  
17 to prove a thing. The State of South Carolina has the burden of  
18 proving him guilty of all or some of these offenses if they can to  
19 your satisfaction beyond a reasonable doubt.

20 Now, in our process the Solicitor will make an opening  
21 statement to you as a guideline, as a roadmap as to what he says he  
22 can prove. Now, what he says is not evidence. Evidence comes  
23 from this witness stand but he'll give you an overview of what he  
24 says his case is about so that you can follow the various witnesses  
25 better.

OPENING STATEMENT BY MR. MODICA

29

1           Following his opening statement Mr. Fox who represents the  
2 defendant will make a statement to you with regards to his  
3 position, and, thus, it is the issues are joined.

4           After that, there will be witnesses called for your  
5 consideration. As I indicated yesterday, you are the sole and only  
6 judges of the credibility, believability. There will be  
7 witnesses' testimony. In addition to that, there may be other  
8 things introduced into evidence. In that regard anything that I  
9 introduce into evidence such as statement or photograph will be  
10 with you in the jury room during your deliberations. They may or  
11 may not pass it around during the trial but anything admitted into  
12 evidence will be with you during your deliberations.

13           Now, at the conclusion of all the testimony we will have final  
14 summation of both counsel where they again make an open - - a  
15 statement to you as to what they say the evidence suggests, and, of  
16 course, that is for you to determine as finders of the facts.

17           It is at that time that I will tell you what the law is and  
18 what the State must prove beyond a reasonable doubt. You take  
19 that law and then take the facts as you find them to be. Apply  
20 those facts to the case, and reach that verdict, "verdicto" meaning  
21 to speak the truth.

22           Opening statements.

23           OPENING STATEMENT BY MR. MODICA

24           MR. MODICA: Good morning.

25           "Till death do us part."

OPENING STATEMENT BY MR. MODICA

30

1           Every one of us have heard that phrase. You all know that it  
2           is connected to the marriage vows, and I imagine that with each and  
3           every one of us that took that vow, we mean to keep it but  
4           sometimes in life things happen among relationships. There's all  
5           different scenarios where people are apart. They don't love each  
6           other anymore. They have other interests. They don't get along.  
7           There may be - - there may be a whole slew of reasons why even  
8           though we say in vows, "Till death do us part," that we hope it  
9           doesn't mean our death.

10           But in this case this man here, the defendant took it to the  
11           extreme. He kicked it up way high.

12           You're going to find out that on February 11<sup>th</sup> this incident  
13           occurred but on February 10<sup>th</sup> his estranged wife, Lasha Bryant, was  
14           outside a barber shop, and when the defendant wanted to speak with  
15           her - - -

16           MR. FOX: Your Honor, may we approach?

17           THE COURT: Yes, sir.

18           (Bench conference off record but in the presence of the jury.)

19           MR. MODICA: As I was saying, on October 10<sup>th</sup>, the night  
20           before, she was in a vehicle outside a barber shop, and the  
21           defendant wanted to talk to her, and she didn't want to talk to  
22           him. She's trying to go beyond their relationship. It's not  
23           working out - - one of those relationships that don't work.

24           But he gets in the car, and he says words to the effect that,  
25           "I met a man at a club that - - and he told me how I can get to see

OPENING STATEMENT BY MR. MODICA

31

1 my kids all the time."

2 He didn't say, you know, "I know how to get rid of you."

3 But it - - he also puts his arm around her, and he says, "I  
4 take my vows seriously - - till death do us part."

5 And he meant every word of that because under the cover of  
6 darkness at 6:00 a.m. on February 11<sup>th</sup> of 2006, the defendant came  
7 to the place where she was living away from him which he didn't  
8 have a key where she resided with her twelve year old son and eight  
9 year old daughter, a key to that door.

10 She had moved on from the relationship. They hadn't been  
11 together, really, in about a year - - a year and a couple of  
12 months. She had met somebody else. His name was Nelson Hayward.  
13 He goes by Trey, and they were in bed together.

14 And he came flying into that room, and he took a weapon, a  
15 stick and began to whomp them while they slept across their heads,  
16 across their faces, breaking bones in their faces, and as you can  
17 imagine, they screamed out. And who came to his momma's aid but  
18 young Tamar, the defendant's son. Twelve years old, trying to  
19 protect his mother he puts up his hand. The defendant is so  
20 enraged he continues to swing hitting his son causing an injury to  
21 his hand that the doctor will tell you is a broken hand.

22 Takes Lasha by the back of her hair, drags her outside  
23 demanding that she get her pocketbook and keys. Drags her to the  
24 car. She can't find the keys. He gets angry and drags her back  
25 along the side of the building. Punches her and knocks her to the

## OPENING STATEMENT BY MR. MODICA

32

1 ground. Gets on top of her and she will describe it as choking her  
2 out, that she felt as though she had lost consciousness even if it  
3 was momentarily.

4 The defendant flees. She comes to herself. She runs back  
5 inside. She calls the police. That in a nutshell is what this  
6 case is about.

7 Now, the defense, I don't know. They may claim certain  
8 things. They may suggest certain things to you. Maybe they will  
9 suggest to you that you should in this circumstance believe till  
10 death do us part and that because she had moved on and was with  
11 somebody else that she deserved this.

12 I submit to you that that would be outrageous especially when  
13 you see the nature of the injuries, the blood throughout the house,  
14 the trauma that it must have caused these two children, eight and  
15 twelve years old.

16 Now, you know that one of the charges is assault and battery  
17 with the intent to kill, and it's obvious no one died. I think  
18 that you will agree after the doctor testifies that the injuries  
19 were serious injuries, not life threatening, thank God, but the  
20 potential surely existed, and the Judge is going to tell you about  
21 the intent involved and it has to do with malice, malice  
22 aforethought that this assault occurred, and, certainly, he had the  
23 time and energy to get the weapon. He had the time and energy to  
24 kick in the door, and he had the time and energy to whomp them, and  
25 he wasn't going to let his twelve year old son get in the way, and

OPENING STATEMENT BY MR. MODICA

33

1 he used a weapon that will be introduced into evidence. When you  
2 factor all those things in together, that in spite of the fact  
3 that, thank God, these injuries weren't life threatening and they  
4 didn't die, the defendant is responsible for assault and battery  
5 with the intent to kill.

6 Now, kidnapping, we most often think of kidnapping, um, as a  
7 thing that, you know, tie them in the back. Tie them up. Throw  
8 them in the trunk of the car is the classic kidnapping but here in  
9 South Carolina the Judge will instruct you. Kidnapping is  
10 depriving a person of the ability to move restricting your freedom  
11 from movement, that is sufficient for kidnapping. It doesn't have  
12 to be for any particular length of time.

13 So, the kidnapping starts when he drags her down the stairs.  
14 It continues when he drags her around looking for the pocketbook  
15 and keys. It continues when he drags her outside. That is  
16 sufficient for kidnapping.

17 Pay attention to that. You'll hear the Judge's instructions.  
18 You'll know that that, in fact, is kidnapping.

19 Now, I've told you these things but, obviously, what I've said  
20 and the Judge told you is not evidence. What I told you here now  
21 this morning will be filled in by the witnesses that come and  
22 testify and by the evidence being introduced into this trial.

23 At the conclusion of that I will come to you, and I will ask  
24 you to find the defendant guilty of all the charges beyond a  
25 reasonable doubt.

OPENING STATEMENT BY MR. FOX

34

1 Thank you.

2 THE COURT: Thank you.

3 Mr. Fox.

4 MR. FOX: If it please the Court.

5 Thank you, Your Honor.

6 OPENING STATEMENT BY MR. FOX

7 MR. FOX: Good morning, ladies and gentlemen.

8 My name is Eric Fox, and I am the attorney for Mr. James  
9 Bryant who is seated at the table with me, and he has on a white  
10 shirt and tie.

11 Obviously, I take a different view of some of the evidence.  
12 I'm not going to try the case now. You'll hear the testimony and  
13 have the evidence presented to you.

14 I would ask you at the outset as you listen to the testimony  
15 and as you consider the evidence that, number one, you not prejudge  
16 anything one way or the other, that you wait until you've heard all  
17 of the evidence and that you have heard the Judge's instructions  
18 which we call the jury charge on the law at the end of the case.

19 Mr. Bryant under our system sits before you today, comes  
20 before you a man presumed to be innocent, and he remains innocent  
21 until such time if it happens that the State can convince you  
22 beyond a reasonable doubt.

23 The Judge will define what that means. It's pretty much like  
24 you would expect, beyond a reasonable doubt that he is guilty of  
25 these charges, and you are to make that determination as to whether

OPENING STATEMENT BY MR. FOX

35

1 the State has met its burden of proof as to each separate charge.

2 You may well find that he is not guilty, and that is what I'm  
3 going to ask you to find on every charge. You may find that he is  
4 guilty of every charge or guilty of some and not guilty of others.

5 There are disagreements about - - not what happened. There  
6 isn't any question that there was an assault on the evening or the  
7 morning of February 11<sup>th</sup>. The question is who committed this  
8 assault. We come to you, the defense; Mr. Bryan, with no burden  
9 of proof. We don't have to prove or establish a thing. The burden  
10 is completely on the State but you'll hear testimony from witnesses  
11 that Mr. Bryant was, in fact, at home at the time that this assault  
12 was beginning and that his boss picked him up for work as he did  
13 every morning at a time that although we agree was after the  
14 assault was too close in time for him to have made it all the way  
15 from Avant Court in Georgetown out to his mother's home on High  
16 Market Street out on the Andrews Highway, and there was no way he  
17 could have finished this assault and gotten back in time to be  
18 picked up by his boss.

19 I have no idea who committed this assault but why - - but we  
20 don't have to prove that or establish that for you.

21 The Solicitor brought it up. I'll comment on one thing that  
22 he - - that he brought up in his opening argument about the  
23 incident at the barber shop the prior evening around 8:00.

24 Apparently, the testimony will be from Ms. Bryant that her  
25 husband told her, "I know how I can get my kids a hundred percent

OPENING STATEMENT BY MR. FOX

36

1 of the time," the implication, I guess, being that I will kill you  
2 and take you out of the picture for good, and then I will have my  
3 kids.

4 Well, maybe another interpretation is, "I know that you're  
5 shacking up with another man and committing adultery which would be  
6 grounds for me to get custody of my kids."

7 "I take my vows seriously."

8 I guess you could interpret that to mean, "I'm going to take  
9 you out, till death do us part."

10 Or it simply could mean, "I take my vows seriously. I'm  
11 living up to my vows. You need to do the same."

12 Don't necessarily assume or take the worse inference from  
13 these statements. I know the State would like you to do that but  
14 I urge you to look at the whole picture and hold the State to their  
15 burden of proof.

16 The Judge will define exactly what that is for you at the end  
17 of the case. It is the highest burden that we carry under our law,  
18 and civil courts if we were here probably about a contract or an  
19 automobile wreck or something like that, the burden of proof is a  
20 preponderance of the evidence which is simply you tilt the scales  
21 in your favor. If you have the scales of justice if one side can  
22 tilt those scales ever so slightly in their favor, then they've  
23 prevailed. That is not the standard in general sessions. In  
24 criminal court it is beyond a reasonable doubt.

25 Now, do you have to tilt them this much or this much? I don't

## MOTION AND RULING OF THE COURT

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1 know exactly but it's a substantial amount. It is not, perhaps,  
2 beyond all doubt. You can have a doubt about whether the earth is  
3 round. You can have a doubt about whether the sun will come up  
4 tomorrow but those would not be reasonable doubts. A reasonable  
5 doubt in this context would be a doubt that you can assign a  
6 reason, and the reason that you would have doubt would come from  
7 evidence and testimony or lack of evidence and testimony that you  
8 will hear in the courtroom this week.

9 So, I simply ask you to take your oath very seriously, and I  
10 know you do. Pay very careful attention. Do not prejudge anything  
11 until you've heard all of the witnesses and heard the Judge's  
12 charge on the law, and at the conclusion of the case I'll ask to  
13 return a verdict of not guilty.

14 THE COURT: Please call your first witness.

15 MR. MODICA: The State would call Tamar Bryant.

16 (The witness takes the witness stand.)

17 THE COURT: The witnesses may remain in the court. There's  
18 been no order of sequestration, counsel.

19 Mr. Modica, I said the witnesses may remain in the courtroom.  
20 There's been no order of sequestration.

21 MR. MODICA: Yes, sir.

## MOTION AND RULING OF THE COURT

22  
23 MR. FOX: Your Honor, it is correct that I've not  
24 requested that but I would at this time out of caution. This is a  
25 that this is a case about what eye-witnesses were able to perceive.

MASTER BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 THE COURT: Alright. If you make that request, I'll grant  
2 it.

3 MR. FOX: I do make that request, Your Honor.

4 THE COURT: Obviously, I leave these investigating officers  
5 here.

6 MR. FOX: Yes, sir.

7 THE COURT: And I'm going to leave the alleged victims  
8 here.

9 MR. FOX: Yes, sir.

10 THE COURT: Alright. Go ahead.

11 TAMAR BRYANT, being duly sworn, testifies  
12 as follows:

13 DEPUTY CLERK OF COURT: State your name for the record.

14 MR. BRYANT: Tamar Bryant.

15 DIRECT EXAMINATION BY MR. MODICA:

16 Q. Good morning, Tamar.

17 A. Good morning.

18 Q. You got to speak up nice and loud. Can you do that for me?

19 A. Yes, sir.

20 Q. Let me hear you.

21 A. Yes, sir.

22 Q. Okay. Very good.

23 Tamar, how old are you?

24 A. Thirteen.

25 Q. And, um, are you going to school?

1 A. yes, sir.

2 Q. About to get out?

3 A. Yes, sir.

4 Q. Looking forward to the summer?

5 A. Yes, sir.

6 Q. What school do you go to?

7 A. Howard.

8 Q. And what grade are you in?

9 A. Sixth.

10 Q. Now, tell me about your family. Who is in your family?

11 A. My momma, my dad, my sister, me, my brother.

12 Q. How old is your sister?

13 A. Eight.

14 Q. And what's her name?

15 A. Latesha.

16 Q. And how about your brother? How old is he?

17 A. Um - - -

18 Q. Does he live with you?

19 A. No.

20 Q. Okay.

21 And, um, do you see your daddy here in the courtroom today?

22 A. Yes.

23 Q. Can you point him out to our jury, please?

24 A. Alright.

25 Q. Could you describe something that he's wearing?

MASTER BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 A. A white shirt.

2 MR. MODICA: Your Honor, if the record will reflect that the  
3 witness has identified the defendant.

4 Q: Now, ah, without telling us specifically, has your mom and dad  
5 had problems in their relationship?

6 A. Yes, sir.

7 Q. And back when this incident happened, were your parents living  
8 together?

9 A. No, sir.

10 Q. Had your dad been living with you for a good long while prior  
11 to that?

12 A. No, sir.

13 Q. Do you know exactly how long that's been.

14 MR. MODICA: I'm sorry. The Judge is talking to you.

15 THE COURT: Talk a little louder, please. Make sure that  
16 everybody can hear you now. Talk a little louder for me, please.

17 Thank you.

18 Go ahead.

19 Q. Can you say exactly how long it has been that your dad was  
20 living there? If you don't know, you can't.

21 A. I don't know.

22 Q. Alright. Okay.

23 Ah, now, do you know the last time that you saw dad back in  
24 February of this year, 2006?

25 A. Yes, sir.

1 Q. I'm going to ask you about that. Okay?

2 A. Yes, sir.

3 Q. Alright.

4 Now, um, when this - - when this thing happened, were you  
5 asleep in bed?

6 A. Half awake, like.

7 Q. Half awake and half asleep?

8 A. Yes, sir.

9 Q. Alright.

10 And what do you remember hearing?

11 A. A crash.

12 Q. And then what did you hear. What?

13 A. I got up and I saw my dad hitting my momma with a stick.

14 Q. And where did you see that happen?

15 A. In my momma's room.

16 Q. And, um, can you tell us whether or not the light was on in  
17 the room?

18 A. It was on. The light was on.

19 Q. And who else was in your momma's room?

20 A. Trey. Trey.

21 Q. And that's your mother's friend?

22 A. Yes, ma'am. Yes, sir.

23 Q. And where they, your momma and Trey?

24 A. In the bed.

25 Q. In your momma's bed?

MASTER BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 A. Yes, sir.

2 Q. And where was your dad hitting your mom with the stick?

3 A. Like up in the face part.

4 Q. And what, if anything, did your dad do to Trey?

5 A. Hit him in the face.

6 Q. What was happening, ah, when your dad was hitting him in the  
7 face?

8 A. Um, he was just hitting and hitting. He wasn't doing nothing.

9 Q. Could he get up?

10 A. Like - - -

11 Q. Just answer yes or no.

12 A. No, sir.

13 Q. Okay.

14 And how about your mommy. What was she saying or doing?

15 A. "No, James, you don't do this."

16 Q. Okay.

17 And did - - what about you? What were you doing?

18 A. Telling him, "Don't hit her."

19 Q. Did you do anything?

20 A. Yes, sir.

21 Q. What did you do?

22 A. Tried to reach for the stick.

23 Q. And what happened when you reached for the stick?

24 A. He caught my right hand.

25 Q. I'm sorry?

1 A. He hit my right hand.

2 Q. And, um, as a result of that, did your hand get hurt?

3 A. Yes, sir.

4 Q. Later on did it hurt bad?

5 A. Yes, sir.

6 Q. Was your momma bleeding?

7 A. Yes, sir.

8 Q. And how about Trey?

9 A. Yes, sir.

10 Q. Um, were they bleeding bad?

11 A. Yes, sir.

12 Q. What happened after your daddy hit you in the face?

13 A. Hit me? I backed away, and that was it. He just keep  
14 swinging.

15 Q. At who?

16 A. My momma.

17 Q. And then what happened?

18 A. He had, like, grabbed her by her hair.

19 Q. Grabbed who by her hair?

20 A. Grabbed my momma by her hair.

21 Q. Okay.

22 A. And took her down - - took my momma downstairs.

23 Q. Did you hear him saying something to her?

24 A. "Get your pocketbook."

25 Q. Did you - - at that point in time, did you go downstairs?

MASTER BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 A. Not right then.

2 Q. Um, but you could hear your dad saying that?

3 A. Yes, sir.

4 Q. Ah, then what did you hear him say?

5 A. I could hear my sister yelling.

6 Q. Okay.

7 And that's your eight year old sister?

8 A. Yes, sir.

9 Q. Did you hear your momma and dad go outside?

10 A. I heard the door open and close.

11 Q. But did you see them?

12 A. No, sir.

13 Q. And, ah, when your sister started crying, what did you do?

14 A. Stay upstairs with her.

15 Q. You were trying to help her?

16 A. Yes, sir.

17 Q. Ah, then what happened?

18 A. Then we went downstairs. Well, my sister stayed up there, and  
19 I went downstairs, and I asked where was my momma, and I look  
20 outside, and I saw her coming towards the door.

21 Q. Prior to seeing her coming to the door, did you see her  
22 anywhere else?

23 A. Yeah. She was on the ground.

24 Q. Okay.

25 As you looked out which direction was your momma?

1 A. On the right side.

2 Q. And, um, you saw your mother get up off the ground? .

3 A. Yes, sir.

4 Q. And what did she do when she got up off the ground?

5 A. She came - - she came towards the door, and then she jumped  
6 back because she thought I was him.

7 Q. Okay. Then what happened?

8 A. Then she came and called 911.

9 Q. Um, sometime after the police came did they, um, among other  
10 things take a photograph of you?

11 A. Yes, sir. Yes, sir.

12 Q. I'm showing you two photographs, number 3. Can you remember  
13 that?

14 A. Yes, sir.

15 Q. Number 3 and #4. See that number there, too?

16 A. Yes, sir.

17 THE COURT: Can I see those pictures, please?

18 (Solicitor passes photographs to the Court.)

19 MR. MODICA: Also, if I may try to continue, I'll show them  
20 to counsel.

21 (Solicitor shows photographs to defense counsel.)

22 Q. I know this sounds like a stupid question but who - - who - -  
23 who is in that photographs #3 and #4?

24 A. Me.

25 Q. And, um, is that the photographs that were taken when this

MASTER BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 .happened?

2 A. Yes, sir.

3 Q. And, um, it shows the injury to your hand?

4 A. Yes, sir.

5 MR. MODICA: Your Honor, at this time I would move #3 and #4  
6 into evidence.

7 MR. FOX: Without objection.

8 THE COURT: Alright, sir.

9 MR. MODICA: And ask that they be published?

10 THE COURT: Yes, sir, and they will be with you, Mr.  
11 Foreman, during the jury room in deliberations.

12 (Court Reporter accepts State's Exhibits #3 and #4 into  
13 evidence.)

14 Q. I'm just going to show you one more photograph. Okay? I'm  
15 showing you State's Exhibit #5. You see #5 there?

16 A. Yes, sir.

17 Q. Okay. Is that the apartment where you lived back in February  
18 when this happened?

19 A. Yes, sir.

20 Q. And is the photograph showing going down the stairs towards  
21 the door?

22 A. Yes, sir.

23 Q. Alright.

24 Now, is there something at the bottom of the stairs there?

25 A. Yeah, yes, sir.

MASTER BRYANT - CROSS EXAMINATION BY MR. FOX

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1 Q. Okay, and what is that?

2 A. A stick.

3 Q. Okay. What stick?

4 A. A wooden - - -

5 Q. Well, I mean, is this the stick that was used?

6 A. Yes, sir.

7 Q. Okay.

8 That's the stick that your daddy used to hit, um, Trey and  
9 your mom?

10 A. Yes, sir.

11 MR. MODICA: Showing State's Exhibit #5 to counsel.

12 Your Honor, at this time we'd move State's Exhibit #5 into  
13 evidence.

14 MR. FOX: No objection.

15 THE COURT: Alright, and you may publish if you care to.

16 (Court Reporter accepts State's Exhibit #5 into evidence.)

17 Q. Tamar?

18 A. Sir?

19 Q. Thank you very much for talking with me today. The  
20 defendant's attorney, Mr. Fox, will have some questions for you.

21 CROSS EXAMINATION BY MR. FOX:

22 Q. What time did you wake up when all this started?

23 A. After I heard the crash.

24 Q. Do you remember - - do you know what time it was?

25 A. No.

MASTER BRYANT - CROSS EXAMINATION BY MR. FOX

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1 Q. Where were you sleeping?

2 A. In my room.

3 Q. Is that the first door or the second door?

4 A. The second.

5 Q. Okay, and your momma's bedroom is where?

6 A. Down the hall.

7 Q. You told the - - did you talk to the police after this  
8 happened?

9 A. Yes, sir.

10 Q. Yes. Okay.

11 And, in fact, you told them didn't you that when you got hit -  
12 - when your hand got hit, you felt that was accidental?

13 A. Yes, sir.

14 Q. Okay.

15 But you didn't feel like you were hit on purpose?

16 A. No, sir.

17 Q. Okay.

18 Now, your mother and father, I understand, have not been  
19 staying together all the time - - for some time before this  
20 happened. Is that correct?

21 A. Yes, sir.

22 Q. Okay, but isn't it true - - -

23 MR. MODICA: Would you keep your voice up, Tamar, please?

24 Q. Isn't it true your father would come and spend the night  
25 sometimes?

1 A. Yes, sir.

2 Q. Okay. There at Avant Court?

3 A. Yes, sir.

4 Q. Okay.

5 Do you remember how often that would happen? Could you  
6 estimate it?

7 A. No.

8 Q. Okay. Well, if you don't recall that's fine but was it as  
9 often as once a week that he might stay the night?

10 A. I don't know.

11 Q. Don't - - okay.

12 Ah, how long had you lived at Avant Court before this  
13 happened?

14 A. I don't know.

15 Q. But your father - - as I understood it, your father - - during  
16 the time that you lived at Avant Court with your mom, your father  
17 did come and spend the night sometimes.

18 A. Yes, sir.

19 Q. He would stay in the bedroom with your mother. Is that  
20 correct?

21 A. No, sir.

22 Q. No but he would stay in the house, the apartment?

23 A. Yes, sir.

24 Q. What about Mr. Hayward? Is that Trey Nelson Hayward?

25 A. Yes, sir.

MASTER BRYANT - CROSS EXAMINATION BY MR. FOX

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1 Q. Okay. You called him Trey?

2 A. Yes, sir.

3 Q. I'm not - - -

4 A. Yes, sir.

5 Q. Okay. How long had your mother been seeing Trey?

6 A. I don't know.

7 Q. You don't know.

8 Did he stay here before this night? Had he stayed overnight  
9 before this?

10 A. I don't know.

11 Q. Okay.

12 Where was - - when your father was not staying there at Avant  
13 Court, do you know where he lived?

14 A. Yes, sir.

15 Q. Where is that?

16 A. High Market Street.

17 Q. High Market Street?

18 A. Yes, sir.

19 Q. Okay.

20 Now, High Market Street runs here in town. Did he live  
21 downtown in Georgetown?

22 A. Un-huh. Gray Station.

23 Q. Graves Station? Graves Station?

24 A. Yes, sir.

25 Q. With a "v"?

1 A. I don't know.

2 Q. Gray, G-r-a-y, like the color gray?

3 Is that yes?

4 A. Yes, sir.

5 Q. You got to talk loud for the Court.

6 A. Yes, sir.

7 Q. Okay.

8 The Court Reporter can't hear a nod.

9 Okay.

10 That's out on what we call Andrews Highway. Is that correct?

11 A. Yes, sir.

12 Q. Okay.

13 And - - and that's with - - your grandmother's house. Right?

14 A. Yes, sir.

15 Q. Agnes Bryant?

16 A. Yes, sir.

17 Q. Okay.

18 And that - - house is past the railroad track as you head out  
19 of town?

20 A. Yes, sir.

21 Q. Okay.

22 Do you know how far it is out there from Avant Court?

23 A. No, sir.

24 Q. When you went downstairs when your momma was outside, what  
25 kind of car does your momma have?

MASTER BRYANT. - CROSS EXAMINATION BY MR. FOX

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1 A. A Grand Am.

2 Q. A Grand Am Pontiac?

3 A. Yes, sir.

4 Q. Did you see that car still there when you came downstairs?

5 A. Yes, sir.

6 Q. Okay.

7 Did you see anybody leave or was your momma alone by the time  
8 you got downstairs?

9 A. Can you say that again?

10 Q. When you got downstairs, you say your mom, you saw her outside  
11 through the door. Is that right?

12 A. Yes, sir.

13 Q. Okay: Was she alone at that point?

14 A. Yes, sir.

15 Q. Okay.

16 Who is or do you know a man by the name of Mike Wright? You  
17 ever heard that name?

18 A. No, sir.

19 Q. Okay.

20 You know what the Georgetown Marine Institute is?

21 A. Oh, yes, sir.

22 Q. Yeah. Does your momma ever take you down there for a day - -

23 -

24 MR. MODICA: Objection, Your Honor.

25 Can we approach?

MASTER BRYANT - CROSS EXAMINATION BY MR. FOX

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1 (Bench conference off record but in the presence of the jury.)

2 MR. FOX: Thank you, Your Honor.

3 Q. Let me ask you again. I think I remember.

4 You say you didn't know Mike Wright. That means you're not  
5 familiar with his name?

6 A. No. I know him. I know him.

7 Q. Okay. Who is that?

8 A. Marine Institute man.

9 Q. Okay, and how was it you came to know Mr. Wright?

10 A. Cause I got in trouble.

11 Q. Okay.

12 Now, did you have to go down to the Marine Institute?

13 A. For a day.

14 Q. Okay.

15 How - - whose decision was it to take you down there?

16 A. My mom.

17 Q. Okay. What did you think of that place?

18 A. I don't like that place.

19 Q. You didn't like that place.

20 What did he have you do during that day?

21 A. Took buckets of water back and forth.

22 Q. Yeah. Anything else?

23 A. No, sir.

24 Q. Okay. All day long you were toting buckets of water?

MASTER BRYANT - CROSS EXAMINATION BY MR. FOX

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1 A. Not like - - in there when I first get like - - yes, sir.

2 Q. Okay.

3 How big a bucket like a pail kind of like this big? About a  
4 foot, that big?

5 A. Like a bucket bucket.

6 Q. Bucket?

7 A. Yes, sir.

8 Q. Was it full of water?

9 A. Yeah.

10 Q. One at a time, two at a time?

11 A. One at a time.

12 Q. How far did you carry that bucket?

13 A. To the ditch.

14 Q. From where? How far did he tell you to take it?

15 A. From the, ah, I don't know.

16 Q. Do you think it was as long as this courtroom?

17 MR. MODICA: Objection, Your Honor.

18 THE COURT: No, sir. Let him. This is cross examination.

19 Let's move on on that.

20 MR. FOX: I'll move on.

21 THE COURT: Okay.

22 Q. When you had to carry buckets of water, did Mr. Wright talk to  
23 you about the Marine Institute?

24 A. Mr. Wright?

25 Q. Yes. The fellow at the Marine Institute?

1 A. Yes, sir.

2 Q. Okay.

3 Did he tell you what it would be like if you had to go there  
4 more than a day?

5 A. Yes, sir.

6 Q. But you got to go home that day. Right?

7 A. Yes, sir.

8 Q. Okay.

9 The Court - - a judge didn't make you go to the Marine  
10 Institute. Right?

11 A. No, sir.

12 Q. Okay.

13 Did Mr. Wright or your momma or anybody tell you how the other  
14 kids had got to the Marine Institute?

15 A. Yes.

16 Q. Some of the kids?

17 A. Yeah.

18 Q. Okay.

19 And you didn't like that place, did you?

20 A. No.

21 Q. Okay.

22 Do you ever want to go back there?

23 A. No, sir.

24 Q. Okay.

25 Now, when was that that you went down there? Do you remember?

MASTER BRYANT - CROSS EXAMINATION BY MR. FOX

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1 A. No, sir.

2 Q. Was it before this thing happened in February?

3 A. Yes, sir.

4 Q. Okay.

5 Now since then that's one way your momma keeps you in line,  
6 isn't it. She says, "You better behave or you're going back to the  
7 Marine Institute."

8 Did she ever do that?

9 A. Yes, sir.

10 Q. Okay.

11 And you don't want to go back there?

12 A. No, sir.

13 Q. Okay.

14 And you'd like to stay living with your mom. Correct?

15 A. Yes, sir.

16 Q. You haven't had any desire to go live with your dad, do you?

17 A. Sometimes.

18 Q. Okay.

19 And he's not around much, is he?

20 A. No, sir.

21 Q. Okay.

22 Your mother ever you or you ever worry that you might have to  
23 -- you still live at Avant Court?

24 A. No, sir.

25 Q. Okay. Where do you live now?

MASTER BRYANT - CROSS EXAMINATION BY MR. FOX

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1 A. Delta - - -

2 Q. I'm sorry. Would you repeat that?

3 A. Delta Drive.

4 Q. Delta Drive. Okay. Is that a house or an apartment?

5 A. Yes. It's an apartment.

6 Q. Okay. It's public housing like Avant Court?

7 A. Uh-huh

8 Q. Okay.

9 A. Yes, sir.

10 Q. Okay.

11 Your mother ever - - skip that.

12 MR. FOX: Court's indulgence.

13 Thank you. No further questions, Your Honor.

14 THE COURT: Alright, sir.

15 Was there any further direct?

16 MR. MODICA: No, sir, Your Honor.

17 THE COURT: You may come down. Thank you.

18 Call your next witness.

19 (The witness leaves the witness stand.)

20 MR. MODICA: Thank you, Your Honor.

21 The State would call John Manning.

22 (The witness takes the witness stand.)

23 JOHN MANNING, being duly sworn, testifies

24 as follows:

25 DEPUTY CLERK OF COURT: Please be seated and state your name

DR. MANNING - DIRECT EXAMINATION BY MR. MODICA

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1 for the Prosecutor.

2 MR. MANNING: I'm John Manning.

3 MR. MODICA: One moment, please.

4 DIRECT EXAMINATION BY MR. MODICA:

5 Q. Good morning.

6 A. Good morning.

7 Q. Please tell us where you're employed and in what capacity and  
8 how long.

9 A. Ah, I'm an ER Physician at Georgetown Hospital. I've been  
10 there for fifteen or sixteen years.

11 Q. You also work at Waccamaw?

12 A. Yes, I do.

13 Q. Because they're connected?

14 A. Right.

15 Q. I want you to tell our jury a little bit about your  
16 background, experience and education that led you to come to the  
17 ER.

18 A. Okay.

19 My professional training is from LSU down in New Orleans at  
20 Charity Hospital. It's where my - - I did my training. It's a  
21 four year residency program, and then I was a Director of ER in  
22 Louisiana for a year, then moved here in 1991 and have been  
23 associated with the Georgetown System since that time.

24 Q. Could you tell us where you went to medical school?

25 A. I went to St. George's University and then to LSU for post-

DR. MANNING - DIRECT EXAMINATION BY MR. MODICA

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1 graduate training. Um, I'm Board Certified in Emergency Medicine  
2 and have been for about twelve years.

3 Q. And you're certified in this state as well as Louisiana?

4 A. Yes. I'm licensed in Louisiana and South Carolina.

5 MR. MODICA: Your Honor, at this time I would ask that the  
6 doctor be qualified as an expert in emergency medicine.

7 MR. FOX: Without objection.

8 THE COURT: Without objection.

9 He is so qualified to render an expert and as a treating  
10 physician.

11 Q. Now, I'm going to direct you to the early morning hours of  
12 February 11<sup>th</sup> of 2006, and I trust you had a very busy morning.

13 A. Yes. It was an unusually busy morning in the hospital.

14 Q. And among the people the people you saw was Lasha Bryant,  
15 Tamar Bryant and Nelson Hayward, III. Is that correct?

16 A. Right.

17 Q. Let's start if we might with Nelson Hayward. I'm going to  
18 show you a few photographs.

19 MR. MODICA: I'm first showing these to counsel, there being  
20 one, two, twenty-three, twenty-four, twenty-two, twenty-one, twenty  
21 as well as three and four.

22 (Solicitor shows photographs to defense counsel.)

23 Q. I'm showing you one, two - - -

24 THE COURT: I'd like to see - - - I'd like to see these  
25 first, the pictures.

DR. MANNING - DIRECT EXAMINATION BY MR. MODICA

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1 (Solicitor shows photographs to the Court.)

2 THE COURT: Mr. Fox, have you seen these pictures

3 MR. FOX: Yes, Your Honor.

4 THE COURT: Alright, sir.

5 Alright, Solicitor.

6 Q. I'm showing you twenty, I'm sorry, one and two, twenty,  
7 twenty-one and twenty-two.

8 Do you recognize the person who is shown in that photograph?

9 A. Yes, I do.

10 Q. And that is who?

11 A. I believe it was Mr. - - is it Nelson Hayward? Is that what  
12 you said his name? Yeah. I took care of him on the early morning  
13 hours right at around 7:00.

14 Q. Now, tell our jury the significant findings you made during  
15 the course of your treatment of Hayward Nelson on February 11<sup>th</sup> of  
16 2006.

17 A. The main thing I remember about him is he was beaten about the  
18 head and face, ah, with a blunt object. he wasn't really sure what  
19 it was - - some piece of wood, and I was concerned about an injury  
20 to the bones around his right eye because he couldn't open that  
21 eye, and he was significantly disfigured there, and he also had  
22 been beaten over the top of the head as well, ah, that morning.

23 Q. Doctor, regarding his right eye, were you able to open his  
24 right eye?

25 A. No. I was not able to see his right eye.

1 Q. Because it was swollen that shut?

2 A. It was swollen, swollen shut.

3 In my evaluation I evaluated him for facial fractures, and he  
4 had broken several bones around that eye which caused it to swell  
5 to the point he couldn't open it.

6 Q. Doctor, what bones were broken around his right eye?

7 A. It was the orbital floor which holds the eyeball up and then  
8 the medial wall of the orbit as well. These are thin bones, ah,  
9 and they were cracked but the good news was the eyeball was intact,  
10 and I could see that on CAT-SCAN and it wasn't caught up in any of  
11 the fracture.

12 Q. Did he have any other fractures?

13 A. He had a nasal - - his nose was broken as well.

14 Q. Show us where that was.

15 A. It was right here.

16 Q. In the bridge of the nose?

17 A. Yeah, a little higher up about the middle third.

18 Q. Now, did he need surgical intervention for those bones?

19 A. Fortunately, he did not. Ah, the only time you would do  
20 something like that is if the eye was caught up in the fractures or  
21 if in the end if he was badly disfigured, he may want to change  
22 that but he'd have to wait at least a month for all the swelling to  
23 come down to see what his face looked like.

24 Q. Tell us where the other injuries were?

25 A. Well, he had lacerations over the corners of both eyes and one

DR. MANNING - DIRECT EXAMINATION BY MR. MODICA

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1 on the top of his head but the whole - - his whole face was badly  
2 swollen.

3 Q. How severe a beating was that?

4 A. It was very severe. Ah, he was in the Emergency Room for  
5 hours for a number of reasons but we wanted to observe after we  
6 CAT-SCANNED his head and his face to make sure he had no structural  
7 injury to his brain and then just to make sure he was going to be  
8 okay.

9 Q. Now, you indicated that you have had training in New Orleans?

10 A. Yes, I had trained in Charity Hospital in New Orleans.

11 Q. And is that hospital associated with trauma?

12 A. Ah, it's a Trauma Center for the City of New Orleans, and when  
13 I was there, New Orleans had the highest per capita murder rate in  
14 the United States. So, it's very, very busy hospital. It's a  
15 great place to train for trauma.

16 Q. How did the injuries to Hayward compare the traumas that you  
17 had seen in New Orleans?

18 A. It was very, very similar. He was lucky not to be hurt much  
19 worse than he was.

20 Q. Why is that?

21 A. These blows are very, very significant. Ah, you know, placed  
22 and he could have been killed by these - - this type of trauma.

23 Q. Did he say whether he was awake when he received these blows?

24 A. If I remember correct, he was asleep because he didn't see the  
25 first blow. He didn't get a good look at what it was he was being

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1 hit with.

2 Q. Did you have to suture any of his wounds?

3 A. I had to suture three of them, both eyes and the top of his  
4 head.

5 Q. Now, let's, if we might, move on to Lasha Bryant. In that  
6 regard, let me show you State's Exhibits #23 and #24.

7 Do you recognize the person depicted in those photographs?

8 A. This is the young woman that was beat up that morning as well.

9 Q. Okay. Tell us, Doctor, in regard to her what she indicated  
10 to you by way of what had occurred to her. What did you observe  
11 about her and how did you treat her?

12 A. Um, if I remember correctly, when she - - she was beaten about  
13 the face as well and was dragged, I believe, at some point, and  
14 there was a question of whether or not she had been choked into  
15 unconsciousness. I think I spent a fair amount of my time talking  
16 to her about whether or not she was choked into unconsciousness or  
17 she just sort of gave up and went limp, and at the end of the day  
18 I think we in evaluating her for that, she was choked but I don't  
19 think she was choked unconscious, that she just - - her reaction to  
20 the stress was to sort of release herself and go limp.

21 But I evaluated her for a strangulation injury as - - just in  
22 case. She had had some injury to her neck and about her face.  
23 So I actually CAT-SCANNED her larynx.

24 When you choke a person you can damage their larynx and  
25 although they can be alert and talking to you an hour or two later,

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1 if they damaged it it can swell up and cut off their breathing. So  
2 I scanned through there, and she had no damage. So she was able to  
3 go home.

4 Q. Did she tell you how the trauma had occurred?

5 A. To her neck?

6 Q. Yeah, to her.

7 A. Just that she was also beaten with an object about the head,  
8 ah, while she was at home.

9 Q. And, ah, Doctor, given what you saw of her and given her  
10 description of the trauma that she had received, the events as they  
11 occurred, could a person due to the trauma of what was happening,  
12 the injuries that a person had already sustained, could you pass  
13 out from that - - lose the sense of reality?

14 A. Yes.

15 Q. Okay, and that could be attributed to her indicating that she  
16 passed out when she was being choked?

17 A. Yes.

18 Q. Ah, tell us where her injuries were, Doctor, please and what  
19 she complained of.

20 A. She had a lot of complaints. A lot of her bones hurt from the  
21 altercation but she had a broken nose with a cut area, and then she  
22 had a small, hard to describe, the thing on the top of her head but  
23 it wasn't a laceration. It was just from being struck with a flat  
24 object on the top of her head. So, it - - the skin was - - I don't  
25 know how to describe it.

1 Q. Split open?

2 A. It was split open but didn't require suturing. It was just  
3 smashed. I don't know how else to say it.

4 Q. Um, did you have a problem assessing that part of her  
5 injuries.

6 A. Yes. If I remember correctly, she had - - she was wearing  
7 some kind of, sort of a hair piece that was woven into her head,  
8 and there was a lot of blood everywhere. We had to take this - -  
9 the nurse had to take this piece off her head to get a good look at  
10 this.

11 There was a lot more blood. We were expecting a giant gash  
12 but at the end the skin was just crushed, I guess, between the wood  
13 and her skull. So it was just like hamburger.

14 Q. I neglected to ask but did she have a lot of bleeding?

15 A. She was. She looked - - there was blood all over her when we  
16 saw her.

17 Q. And, ah, going back to Mr Hayward for a second, did he have  
18 blood on him as well?

19 A. Not as much blood on him as her. We expected her lacerations  
20 to be more. The think that impressed me about him was the facial  
21 swelling. He was badly disfigured. I'm sure he doesn't look  
22 anything like these photographs.

23 Q. Um, did she require any sutures or stitches?

24 A. I don't believe she did. I think she had a nasal fracture  
25 with an abrasion and then the cut on the top of her head, although

DR. MANNING - DIRECT EXAMINATION BY MR. MODICA

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1 .it was large, it was not - - didn't require suturing.

2 Q. Now, ah, did she complain of pain generally all over her body?

3 A. She, I think, one whole side of her body was hurting, and I  
4 think we x-rayed her entire arm and one of her entire legs. I  
5 didn't think there was anything broken but she was, obviously, ah,  
6 in despair and wanted to be reassured that she hadn't broken  
7 anything.

8 Q. And, um, and what you saw and what she told you, was it  
9 consistent with her being beaten with a blunt object consistent  
10 with a piece of wood?

11 A. Yes.

12 Q. Same with Mr. Hayward?

13 A. Yes.

14 Q. I'm now showing you, I think it's #4 and #5 - - #3 and #4, I'm  
15 sorry, two photographs. Do you recognize the shot in this  
16 photographs?

17 A. Yes. This is the young man, the woman's son.

18 Q. Tamar?

19 A. Yes.

20 Q. Did you treat him as well?

21 A. I did. I saw him that morning as well.

22 He had complained of some hand pain and by the time we got to  
23 see him, it was a very busy morning, ah, and he was very much out  
24 of sorts and had a difficult time telling me what happened but with

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1 the discussion, it appears as though the blunt object during the  
2 fight he had been struck across the knuckles with it, and it had  
3 taken the flesh off of one of his knuckles and had broken his hand.

4 Q. Were you - - were did - - what do you in the medical field  
5 call that kind of break?

6 A. It's called a boxer's fracture.

7 Q. Why?

8 A. Because it happens to boxers all the time when they punch each  
9 other. Just - - it's the little knuckle, it pushes it down. When  
10 you look at him, you can make the diagnosis by just looking at the  
11 person.

12 Q. You don't have to be a boxer or be in boxing fight to get that  
13 injury?

14 A. No. I've probably seen a couple hundred of these, and none  
15 of them were from boxing.

16 Q. Um, how did you treat him?

17 A. Ah, he was put in a splint and referred to an orthopedist. He  
18 should need - - it needed to be casted when the swelling went down.

19 Q. Why didn't you cast it then?

20 A. Ah, you try not to cast acute injuries because of the, ah, if  
21 you put the cast on immediately the hand is going to continue to  
22 swell for usually about twenty-four to forty-eight hours, and the  
23 cast will cut off the circulation.

24 Q. The abrasion that you noticed on his hand, was it a fresh?

25 A. Yes.

DR. MANNING - CROSS EXAMINATION BY MR. FOX

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1 Q. Um, what was his demeanor?

2 A. He was a very upset young man. He was tearful, and he was in  
3 a bad situation, obviously.

4 Q. Thank you very much, Doctor.

5 Please answer any questions counsel might have for you.

6 CROSS EXAMINATION BY MR. FOX:

7 Q. Dr. Manning, to start with the young boy, Tamar's injured  
8 hand. That wasn't a life-threatening injury, was it?

9 A. No, it was not.

10 Q. Okay.

11 Full expectations that he would recover normally from that  
12 with proper treatment?

13 A. Yes

14 Q. And you say Ms. Bryant, Lasha Bryant, the female, there was a  
15 lot of blood on her - - on her clothing. Is that right?

16 A. Yes.

17 Q. Okay.

18 Ah, do you normally get more bleeding from injuries to the  
19 head area because of the number of blood vessels compared to other  
20 parts of the body?

21 A. Ah, the face and hands have a lot more circulation. So any  
22 cut there, you should see a lot of bleeding

23 Q. Okay, and isn't that also true in regard to the adult male,  
24 Mr. Hayward, with the swelling? One reason you get a lot of  
25 swelling around the eyes because there's such a blood flow there.

DR. MANNING - CROSS EXAMINATION BY MR. FOX

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1 Is that not correct?

2 A. That's true.

3 Q. Okay.

4 Now, and I apologize for jumping back and forth between the  
5 different patients. I'll try to stick with one or the other in  
6 just a moment.

7 With Ms. Bryant, the female, you say she had been beaten about  
8 the head and choked. Correct?

9 A. Yes.

10 Q. But you determined from the history you obtained that she did  
11 not lose consciousness as a result of choking. Is that correct?

12 A. She didn't have - - she wasn't asphyxiate. When a person is  
13 choked and as asphyxiate, it's - - it's a - - it's a true  
14 emergency, and that was probably the most important thing I needed  
15 to know from her.

16 Q. Okay.

17 And would you have reviewed before she left, ah, would it be  
18 normal for her to be given instructions about her - - any patient  
19 to be given instructions about their injuries, treatment, follow-  
20 up, that sort of thing?

21 A. Yes.

22 Q. Would you have reviewed those with her or prior to them being  
23 given to her?

24 A. Ah, it's sort of an on-going discuss with the patient as you  
25 evaluate and let them know what the plan would be but the discharge

DR. MANNING - CROSS EXAMINATION BY MR. FOX

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1 instructions are gone over with the nurse goes over them,  
2 basically, line for line to make sure they know where they - - what  
3 is to be expected.

4 Q. But those instructions would be issued in part from - - with  
5 your diagnosis?

6 A. Right. They're specific to the diagnosis.

7 Q. Okay.

8 A. They're actually computer generated.

9 MR. FOX: May I approach the witness, Your Honor? May I  
10 approach the witness?

11 THE COURT: Certainly.

12 Q. Doctor, I had you what's been marked Defendant's Exhibit for  
13 identification purposes #1. Can you tell me - - tell me if you  
14 recognize what that is?

15 A. Yes. These are the computerized discharge instructions.

16 Q. Okay. For who?

17 A. For Ms. Bryant.

18 Q. And if you can tell me - - and it describes the different  
19 injuries. Correct?

20 A. Yes.

21 Q. Okay.

22 Um, now does it not say under head injuries that she suffered  
23 "a minor head injury"?

24 A. Yes, it does.

25 Q. Okay. Thank you.

DR. MANNING - CROSS EXAMINATION BY MR. FOX

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1 And it gives instructions on what she should do to follow up?

2 A. Yes.

3 Q. And care to take?

4 Okay. Thank you.

5 Q. With - - I know you just, um, with regard to Hayward, Mr.  
6 Hayward, there was no need for surgery in regard to his nose. Is  
7 that true, also, with regard to Ms. Bryant? Did she not also have  
8 a fracture the nose?

9 A. Right. Nasal fractures are not acutely treated. You allow  
10 them to heal to see, um, they found if you manipulate a nasal  
11 fracture acutely, you may make it worse rather than better. So the  
12 standard is to wait about two weeks, let the swelling go down and  
13 see if there is difficulty breathing or a cosmetic defeat, and then  
14 it is addressed at that point. If they do it while the swelling is  
15 up, then you don't really know if you're straightening it or making  
16 it more crooked.

17 Q. Okay.

18 As far as you know, was there anything further required on  
19 that injury for Ms. Bryant for her treatment?

20 A. Whether or not she needed to have her nose manipulated I don't  
21 know.

22 Q. You did not do anything further?

23 A. No, I did not. There was no indication for that.

24 Q. Thank you.

25 MR. FOX: I have no further questions.

DR. MANNING - REDIRECT EXAMINATION BY MR. MODICA

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1 REDIRECT EXAMINATION BY MR. MODICA:

2 Q. I may have been referring to Mr. Hayward backwards. If I did,  
3 I apologize. It's Nelson Hayward that you were treating. Right?

4 Correct? Correct?

5 If you need to look at your record, do so.

6 A. That's who it is.

7 Q. Okay. I apologize.

8 Now, we're not going to go over the questions again.

9 Remember me talking about that you could pass out. Correct?

10 A. Yes.

11 Q. From the trauma?

12 A. Uh-huh.

13 Q. Okay.

14 You're not telling our jury that the victim, Ms. Lasha Bryant,  
15 wasn't choked?

16 A. No. She was - - she was definitely choked.

17 Q. Okay.

18 But you didn't find independent that - - like hemorrhaging in  
19 the eye and things of that - - marks on the neck, those kind of  
20 things?

21 A. Right.

22 The important thing for me as a physician in evaluating her  
23 was to determine the degree of choking, not whether or not it  
24 happened but how much damage could have been done because it's not  
25 uncommon for a person to be choked, and sometimes they don't even

DR. MANNING - REDIRECT EXAMINATION BY MR. MODICA

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1 remember. You know, she was hit about the head. All these  
2 things happened quickly but if her larynx was crushed, she could  
3 actually recover from that and breathe for a couple of hours and  
4 then slowly the swelling would cut off her airway. So that was my  
5 main focus on her, and her and I had a very long discussion in  
6 private in quiet just to try to go through that morning but she was  
7 choked. That was not question. The question was how severely was  
8 she choked.

9 Q. Thank you very much.

10 MR. MODICA: No further questions.

11 THE COURT: Alright, sir. You may come down.

12 MR. MODICA: Your Honor, may the witness be excused from his  
13 subpoena?

14 THE COURT: Yes, sir. I will excuse him.

15 Thank you so much, Doctor.

16 (The witness leaves the witness stand.)

17 MR. MODICA: May I approach for a moment, Your Honor.

18 Thank you, Doctor.

19 (Bench conference off record but in the presence of the jury.)

20 THE COURT: It's 11:00. We're going to take the morning  
21 break at this time. We'll be back at 11:15. So I'll be calling  
22 you back in fifteen minutes.

23 Alright. Thank you.

24 (The jury retires to the jury room.)

25 (The Court recesses this case for a short break and then

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 reconvenes the trial of this case.)

2 THE COURT: Thank you. Be seated.

3 Alright, Mr. Fox, you ready?

4 MR. FOX: Can we approach, Your Honor?

5 THE COURT: Yes, sir.

6 (Bench conference off the record and outside the presence of  
7 the jury.)

8 THE COURT: Bring the jury in, please.

9 (The jury returns to the courtroom.)

10 THE COURT: Alright. Have your witness come around, ah,  
11 Solicitor.

12 MR. MODICA: Your Honor, at this time the State calls Lasha  
13 Bryant.

14 THE COURT: Okay.

15 (The witness takes the witness stand.)

16 LASHA BRYANT, being duly sworn, testifies  
17 as follows:

18 DEPUTY CLERK OF COURT: Please be seated and state your name  
19 for the record.

20 MS. BRYANT: Lasha Bryant.

21 DIRECT EXAMINATION BY MR. MODICA:

22 Q: Good morning.

23 A: Good morning.

24 Q: Please tell us how old you are.

25 A: Twenty-eight.

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 Q. And, ah, do you have any children?

2 A. Yes, two.

3 Q. And their names and ages?

4 A. Tamar, thirteen, and Latisha is eight.

5 Q. And, um, do you know the defendant here on trial?

6 A. Yes.

7 Q. How do you know him?

8 A. My husband.

9 Q. When did you first meet the defendant?

10 A. Um, a long time ago. It's been years. When I was about  
11 sixteen years old?

12 Q. And how old was he?

13 A. Twenty-seven.

14 Q. So he's a bit older than you?

15 A. Yes.

16 Q. And, ah, when did you - - and is - - is Tamar your son and his  
17 son?

18 A. Yes.

19 Q. Okay.

20 Did you have him before y'all got married?

21 A. Yes.

22 Q. How old were you when you had him?

23 A. I had him at fifteen, fifteen years old.

24 Q. So, you met the defendant when you were fifteen?

25 A. Well - - well, I met him way before - - a little bit before

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 then but then when I got pregnant within that same time.

2 Q. You got pregnant by him when you were fifteen?

3 A. Yes, and had Tamar at sixteen.

4 Q. And, um, when did y'all get married?

5 A. We got married December 14<sup>th</sup>. I can't remember the exact year  
6 to be honest. I don't know if it was '01 or 2000.

7 Q. Okay.

8 A. I can't remember.

9 Q. It's just slipped your mind right now?

10 A. Yes.

11 Q. Okay.

12 When - - but y'all had been together since you had Tamar?

13 A. Yes.

14 Q. Regardless of whether you'd been married?

15 A. Right.

16 Q. Now, um, did there come a time in 2004 that you kind of  
17 separated from him?

18 A. Yes.

19 Q. And when was that in 2004?

20 A. It was November, 2004.

21 Q. And, um, at some point in time did you get an Order of  
22 Protection?

23 A. Yes, I did.

24 Q. Okay.

25 Now, in the time between November, 2004, and when this

1 incident happened February 10<sup>th</sup> and February 11<sup>th</sup> of 2006, did you  
2 try and make your marriage work?

3 A. Yes, I did.

4 Q. And how did you do that?

5 A. By still having involvement with my husband, talking to him  
6 over the phone. Even though there was an Order of Protection I  
7 still wanted to try to make our marriage work. I didn't want a  
8 divorce, and I tried to see the good side in him.

9 Q. Did that include sexual relations?

10 A. Yes.

11 Q. And, um, did some of that sexual relations take place at 12  
12 Avant Court where you were living at the time of this incident that  
13 we're on trial for today?

14 A. Yes.

15 Q. About, if you know, how many times did you, um, have sexual  
16 relations at 12 Avant Court?

17 A. I can't count. I don't know.

18 Q. Why did you want to make the marriage work?

19 A. Because I came from a broken home, and my mom and my dad got  
20 a divorce, and I didn't want my kids to have to go through that  
21 because I know how the way it feels, you know, to come from a  
22 broken home, and I didn't want them to go through that.

23 Q. Despite that fact, um, y'all couldn't make it work?

24 A. Right?

25 Q. Did there come a time when you decided to move on from the

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 defendant and start dating?

2 A. Yes.

3 Q. And when was that?

4 A. That was around January.

5 Q. In what year?

6 A. '06.

7 Q. This year?

8 A. Yes.

9 Q. And did you, in fact, start dating somebody?

10 A. Yes.

11 Q. And who was that?

12 A. Nelson Hayward.

13 Q. And did he go by a nickname?

14 A. Trey.

15 Q. Did you dating him including having a sexual relationship?

16 A. Yes.

17 Q. Did the defendant have a key to Avant Court?

18 A. No, he didn't.

19 Q. Was he allowed to come there whenever he chose to?

20 A. No.

21 Q. Did you also see the defendant - - by the way, I guess for the  
22 record, can you identify your husband, James Bryant, for the jury?

23 A. Yes. He's right there in the white shirt.

24 Q. Now, does the defendant go by another name other than James?

25 A. Jamie. Jamie.

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 Q. From time to time, did you meet up with the defendant outside  
2 of your home, Avant Court?"

3 A. Yes.

4 Q. And did that include his mother's residence?

5 A. Yes.

6 Q. And I believe the address was High Market?

7 A. , oh, High Market Street.

8 Q. Okay. ?

9 A. Uh-huh. Yeah.

10 Q. Now, what I want to do is I want to direct your attention to  
11 February 10<sup>th</sup> of 2006, at about just after 8:00 on that evening.

12 MR. FOX: Your Honor, just for the record I just want to  
13 object to this testimony about the events of February 10<sup>th</sup>. We  
14 discussed at a conference before, this prior - - -

15 THE COURT: The day before?

16 MR. MODICA: Yes, hours.

17 THE COURT: I will permit it.

18 MR. FOX: Thank you, Your Honor.

19 Q. Now, directing your attention around and shortly after 8:00,  
20 um, February 10<sup>th</sup>, 2006, did you have an occasion to be in a vehicle  
21 close - - parked in front of a barber shop?

22 A. Yes.

23 Q. What barber shop was that?

24 A. I can't remember the name of the barber shop.

25 Q. Do you remember the street?

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 A. No.

2 Q. Okay.

3 A. I can't remember the street.

4 Q. Ah, what were you doing at that barber shop?

5 A. I was waiting on my friend to come out of the barber shop.

6 Q. Who?

7 A. Trey.

8 Q. And what vehicle were you in?

9 A. My own vehicle that I drive now.

10 Q. Is that a Grand Am?

11 A. A Grand Am, yeah. Uh-huh.

12 Q. And, ah, when you were sitting in the vehicle did there come  
13 a time when the defendant came up?

14 A. Yes, he did.

15 Q. Would you tell our jury about that?

16 A. I was sitting in the car waiting on Trey to come out, um, and  
17 all of a sudden, I saw him coming toward my car, and after that he  
18 was say, "I want to talk to you. I want to talk to you for a  
19 moment."

20 I said, "No, I don't want to talk to you."

21 And so he came around to the passenger side to try to get in  
22 the door but then the door was locked. So he came around the  
23 driver's side where I was sitting at, and I - - I don't even  
24 remember locking the door or whatever but he opened the door. - - -

25 Q. Did you think the door was locked?

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 A. I thought the door was locked but, then, he opened the door,  
2 and, of course, I was scared like crazy, and he got in - - inside  
3 the car, basically, scoot over - - scoot me over, really. Had me  
4 to go over and he sit beside me in the same driver's seat, and he  
5 was saying, "What are you doing out here?"

6 And he said, "I know you are waiting to see a man."

7 And I said, "No, I'm not."

8 Q. So, you lied.

9 A. I lied.

10 Q. Okay.

11 A. Because I was scared because I didn't know what he would do.

12 Q. Alright.

13 What happened next?

14 A. And then he put his around me.

15 Q. Well, then, prior to putting his arm around you, did he tell  
16 you about having been out somewhere - - -

17 MR. FOX: Objection, leading.

18 THE COURT: Yes, sir. I sustain that. Just ask her what  
19 occurred.

20 MR. MODICA: Okay.

21 Q. What happened?

22 A. Um, he then started telling me that he did meet up with a man  
23 in a club that told him that he could help him get his kids one  
24 hundred percent of the time, and, basically, well, just get rid of  
25 me, and, um, then he put his arm around me and said, "I take - - I

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 take my vows very seriously until death do us part."

2 And as he was putting his arm around me, I don't mean as in  
3 hugging me. I'm talking around my neck as in trying to, I don't  
4 know. It was tight grip around my neck, and I was trying to get  
5 away, and, um, I was shaking, and he said, "Why are you shaking?"

6 And I said, "Well, I'm just scared."

7 And, um, then he said what he said, and then he left.

8 Q. Um, did you report that to the police?

9 A. Yes.

10 Q. Okay. Does that include - - does that - - did you report it  
11 to Police Officer Burroughs?

12 A. Yes, I did.

13 Q. That night?

14 A. Yes.

15 Q. Alright.

16 Now, ah, that night, February 10<sup>th</sup> and February 11<sup>th</sup>, did you  
17 have Trey stay at your house and in your bed?

18 A. Yes.

19 Q. And, um, around six in the morning did something happen?

20 A. Yes.

21 Q. Tell us about that.

22 A. On that night, I heard a crash, a loud crash. I thought it  
23 was dishes falling or something but I was in my bedroom upstairs on  
24 the second floor in my bed, and, ah, with my door cracked so I  
25 could be able to hear my kids, you know. I always leave my door

1 cracked.

2 But, anyway, I heard the crash, and I sat up immediately in my  
3 bed to listen to see what it was, and before I knew it, he came up  
4 the steps so quickly, and he cut on the light, and he just - - he  
5 had a stick in his hand. He started swigging the stick at me first  
6 while I was still in the bed.

7 Q. Where - - where was he swinging it?

8 A. He was swinging it toward my face, and I blocked my - - I put  
9 my hand up to block the hits, and that's why my arms were so  
10 hurting. They was hurting me so bad afterwards.

11 And, um, he was trying to hit me in the face but not only was  
12 he trying to hit me - - well, he - - was he hitting me. He was  
13 hitting Trey, too.

14 Q. Okay.

15 I know that you know when you say who he is but who are you  
16 referring to?

17 A. James Bryant.

18 Q. And what did he do to Trey?

19 A. James Bryant, well, he was - - James Bryant was hitting Trey,  
20 too, with the stick in his face and in his head, basically, going  
21 back and forth, him, me, him me, with the stick, Trey, me.

22 Q. And then what happened?

23 A. And then he grabbed me by my hair and was pulling me out my  
24 bedroom door toward the steps to go downstairs, and we finally got  
25 downstairs, and I said, "Jamie, don't - - what - - don't do this."

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1           And I was saying this even upstairs, "Don't do this. Don't do  
2 this."

3           Because I know I saw the kids up to my bedroom.

4           Q.   What happened when you saw your kids come up?

5           A.   And they was just - - really, my son was in the way a little  
6 bit.

7           Q.   What happened?

8           A.   But then my daughter was in the background.

9           Q.   Okay.

10          What happened to your son, Tamar?

11          A.   I don't know exactly when he got hurt, you know, in the whole  
12 thing but I know I saw him in the room.

13          Q.   What room?

14          A.   My room, the bedroom that I was in.

15          Q.   Okay.

16          And, um, what - - what was he saying when he grabbed you by  
17 the hair and taking you downstairs?

18          A.   Throughout the whole thing upstairs he wasn't saying anything  
19 at all. He was just swinging.

20          Q.   Right.

21          A.   And, um, after we got downstairs, um, he had me by my hair  
22 dragging me down the steps, and, of course, I had on my tee-shirt  
23 and my panties.

24          So, he dragged me downstairs and, um, had me to go get my  
25 pocketbook because he said, "Get your key."

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 Q. Okay. What I'm interested in is - - tell us because we  
2 weren't there. Tell us what he said and what he was doing.

3 A. Okay.

4 He told me, "Get your keys."

5 And I said, "I don't know where my keys at."

6 Then he said, "Get your pocketbook."

7 And I found the pocketbook. So - - -

8 Q. While you were getting your pocketbook, what was he doing  
9 then?.

10 A. He still had me. He still had me by the hair.

11 Q. Alright.

12 A. I couldn't get away from him. He still had me by the hair the  
13 whole time.

14 Q. Alright.

15 Did you find your pocketbook?

16 A. And I did get my pocketbook.

17 Q. Then what happened?

18 A. We went outside. Still he had me by the hair. He,  
19 basically, had me by my hair taking me to my car, and on the  
20 driver's side we were standing there, and he was saying, "Get your  
21 keys out your purse."

22 And I was searching in my purse looking for my key, and I  
23 couldn't find them. So I would tell him, "Well, Jamie, I can't  
24 find the key."

25 So, then, he would say, "Okay, well, I'm going to kill you

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 right now."

2 So, he just took me by my hair, still had me by my hair, and  
3 he took me to the side of the building, and he hit me. He boxed me  
4 in my face.

5 (Witness begins to cry quietly.)

6 THE COURT: Ms. Knox, get her a glass of water, please.

7 A. He boxed me in my face. I hit the ground and then got on top  
8 of me.

9 THE COURT: Ma'am, you take your time, now. We  
10 understand. When you feel like you can go on, we'll do that at  
11 that time. Okay? Don't you worry about a thing.

12 If you need to take a break and come down, we'll do that, too.

13 A. He boxed me, and I hit the ground, and then he got on top of  
14 me straddled. Basically, he hold me down both of my arms, and he  
15 proceeded to choke me, and, ah, I do remember him saying, "Die,  
16 bitch, die."

17 And after that I don't remember nothing else until a few  
18 minutes I heard my son saying, "Where is Momma?"

19 Asking him, Trey, "Daddy, where is Momma?"

20 And he was saying, "Outside on the ground."

21 And that's when I got up, and I run in the house and proceeded  
22 to call 911.

23 Q. When you were able to get up and collect yourself and get in  
24 the house, did you see the defendant again?

25 A. No.

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 Q. The last time you saw him was when he was on top of you  
2 strangling you?

3 A. Yes.

4 Q. Saying, "Die, bitch, die."

5 A. Yes.

6 Q. Um - - -

7 Showing you State's Exhibit #38, a CD that the record should  
8 reflect I'm pulling out. Do you recognize this CD?

9 A. Yes.

10 Q. Have you heard what's on it?

11 A. Yes.

12 Q. And you recognize what's on there?

13 A. Yes, I do.

14 Q. And what is this?

15 A. That's myself calling 911.

16 MR. MODICA: Your Honor, at this time, I would move State's  
17 Exhibit #38 into evidence.

18 THE COURT: You see this, Mr. Fox.

19 MR. FOX: I have. I'm not sure this is the right witness  
20 to authenticate it but I have heard the call.

21 THE COURT: What's your position? He wants to put it in  
22 evidence.

23 MR. FOX: No, I believe the 911 operator is the proper  
24 person to - - -

25 THE COURT: Sir?

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 MR. FOX: I believe the operator would be the proper  
2 person to authenticate it.

3 MR. MODICA: Your Honor, she can authenticate it on her  
4 voice.

5 THE COURT: I'm going to - - is the operator going to be  
6 called, too?

7 MR. MODICA: No, Your Honor. No.

8 THE COURT: I will let the jury determine whether or not  
9 that's her voice.

10 You want to play it at this time?

11 MR. MODICA: Yes, sir.

12 THE COURT: Yes, sir. I'm going to do it.

13 (Court Reporter accepts State's Exhibit #38 into evidence and  
14 returns it to the State for publishing to the jury.

15 911 call played for the jury. Tape #2, Count 4945 to 4995.)

16 Q. Is that the call that you made to 911?

17 A. Yes.

18 Q. Let me show you a whole bunch of photographs. So bear with  
19 me.

20 Let's start with State's Exhibit #1: Do you recognize who is  
21 shown in that photograph?

22 A. Yes.

23 Q. And who is that?

24 A. Nelson, Trey.

25 Q. And, um, do the injuries that's shown in that photograph, do

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 they fairly show that as exited after this happened, after what  
2 your husband did on February 11<sup>th</sup> of 2006?

3 A. Yes.

4 THE COURT: Mr. Fox, you've seen these photographs?

5 MR. FOX: I have, Your Honor.

6 Q. Number 2?

7 A. That's Trey.

8 Q. Same question. It shows the extent of his injuries?

9 A. Yes.

10 Q. State's Exhibit #20?

11 A. Yes. Trey.

12 Q. Does that fairly show the injuries?

13 A. Yes.

14 Q. Twenty-one?

15 A. Yes. That's Trey and it does show the damage that he did.

16 Q. Twenty-two.

17 A. That's Trey again. Yes, it does show the evidence of the  
18 damage that he did.

19 Q. He being who?

20 A. My husband done to Trey.

21 Q. Number #23?

22 A. Yes. That's me.

23 Q. Does it show what he did to you?

24 A. Yes.

25 Q. Twenty-four?

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

90

1 A. Yes. That's me again, and it does show what he done to me, my  
2 husband.

3 Q. Now, ah, what type of hair is that that you had on.

4 A. That was a sewing, a hair extension.

5 Q. Commonly referred to as a weave?

6 A. Yes.

7 Q. And that's what he grabbed you by?

8 A. Yes.

9 Q. State's Exhibit #3?

10 A. Yes, that's Tamar, my son.

11 Q. And #4?

12 A. Tamar's hand.

13 Q. I'm going to show a series of photographs: 5, 6, 7, 8, 9, 10,  
14 11, 12, 13, 14, 15, 16, 17, 18, 19, 25, 26, 27, 28, 29, 30, 31, 33,  
15 33, 34, 35, 36 and 37. What I want you to do is take a look at  
16 these photographs. Take your time, and when you're done looking at  
17 all of them, let me know.

18 A. Okay.

19 (Witness reviews photographs.)

20 MR. MODICA: Your Honor, may I approach with counsel?

21 THE COURT: Yes.

22 (Bench conference off record but in the presence of the jury.)

23 THE COURT: You need to cut the lights?

24 MR. MODICA: In a moment, Your Honor.

25 (Counsel for the State with assistance begins to set up a

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 projection screen for the purpose of publishing the photographs to  
2 the jury.)

3 THE COURT: Go ahead and proceed.

4 You can identify it by number, and ask her to refer to that  
5 particular number.

6 MR. MODICA: Yes, sir.

7 (Screen falls and Solicitor attempts to put it up again with  
8 some difficulty.)

9 THE COURT: Solicitor, you can go through them one by one  
10 and pass them to the jury instead of using that and save some time  
11 here.

12 MR. MODICA: I believe it would actually be better to do  
13 this, Your Honor.

14 THE COURT: Alright. If you know how to work it.

15 MR. MODICA: As you know, we used it the last time.

16 THE COURT: Looks like they building a whole courtroom.  
17 Let's get on. Let's get on. I'm not going to waste any more time  
18 here. Let's just do it one by one.

19 Q. These photographs that I just showed you, do they fairly and  
20 accurately depict a portion of your house when this incident  
21 occurred?

22 A. Yes.

23 Q. Now, in regard to State's Exhibit #18, what is that a picture  
24 of?

25 A. This is a picture of my car and my purse lying on the ground.

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

92

1 Q. And this is where the defendant took you outside by your hair.

2 A. Yes.

3 Q. And #29?

4 A. A picture of Trey.

5 Q. Oh, Your Honor, at this time, we would move each and everyone  
6 of these exhibits into evidence, Your Honor.

7 THE COURT: You've had an opportunity to see these  
8 photographs?

9 MR. FOX: I have. Just very quickly, I don't think  
10 there's any objection, Your Honor.

11 THE COURT: Alright.

12 I introduce them into evidence.

13 MR. FOX: Let me make sure there is none.

14 THE COURT: Solicitor, you may publish them at this time,  
15 and, obviously, they will be with the Foreman in his - - in their  
16 deliberations.

17 MR. FOX: Without objection, Your Honor.

18 THE COURT: Alright, sir. Without objection. They are  
19 made a part of the record.

20 (Court Reporter accepts State's Exhibits #1, #2, #6, #7, #8,  
21 #9, #10, #11, #12, #13, #14, #15, #16, #17, #18 #19, #20, 21, #22,  
22 #23, #24, #25, #26, #27, #28, #29, #30, #31, #32, #33, #34, #35,  
23 #36 and #37 into evidence, State's Exhibit #3, #4 and #5 already  
24 having previously been entered into evidence.

25 Q. Alright.

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

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1 I'm going to ask you to step down, now, and the fact that  
2 you're stepping down away from the, ah, the microphone, you still  
3 need to keep your voice up. Alright?

4 A. Okay.

5 (Witness stands before jury box to describe photographs.)

6 Q. I'm showing you State's Exhibit #1.

7 A. Yes.

8 Q. Can you tell the jury what that shows in that photograph?

9 A. A picture of Trey?

10 Q. As a result of what happened?

11 A. Yes, sir.

12 Q. #2?

13 A. A picture of Trey as a result of what happened.

14 Q. #3?

15 A. A picture of my son's hand and what happened.

16 THE COURT: Talk a little louder for me.

17 A. A picture of my son's hand and what happened.

18 Q. Okay. #4?

19 A. Another picture of my son's hand after what happened.

20 Q. This is the injury here?

21 A. Yes.

22 Q. #5?

23 A. That's a picture going down the steps of the apartment of the  
24 same incident and the stick that was used.

25 Q. For what?

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

94

1 A. To hit me and Trey.

2 Q. Where I'm pointing to in this photograph, where does that go  
3 to?

4 A. To the front door.

5 Q. Out?

6 A. Yes.

7 Q. What is this?

8 A. That's the front door.

9 Q. #6? What is this?

10 A. This is a picture downstairs.

11 Q. What's in the photograph?

12 A. Blood.

13 Q. Whose blood?

14 A. Trey's blood, my blood.

15 Q. #7? What's this?

16 A. This is a picture, blood, again, in our apartment.

17 Q. Whose blood?

18 A. Me and Trey's blood.

19 Q. #8?

20 A. This is a picture of my bedroom with blood on the sheets and  
21 floor. Blood of Trey's head, me.

22 Q. Okay.

23 What's up on top of the photograph?

24 A. Curtains.

25 Q. In relation to this photograph what portion of the bed were

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

95

1 you in?

2 A. I was at the, um, foot of the bed.

3 Q. Okay. Were you closer to the curtains or closer to the door?

4 A. To the door.

5 Q. Okay. What about Trey?

6 A. He was closer to the window.

7 Q. #9?

8 A. This is a picture in my bedroom.

9 Q. With the blood on the door?

10 A. With the blood on the door, yeah.

11 Q. You can see the bed?

12 A. Yes.

13 Q. #10?

14 A. This is a picture of my room. There's a mirror in my room,  
15 and blood was also on the mirror and on the wall.

16 Q. #11?

17 A. This is a picture going down the steps in our apartment of  
18 blood on the wall.

19 Q. What's this?

20 A. More blood.

21 Q. What's this.

22 A. More blood going down the other side of the wall.

23 Q. #13?

24 A. This is another picture of blood on the wall.

25 Q. Is this going downstairs?

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

96

1 A. Yes. That's going down the steps.

2 Q. What I'm pointing to is going down the steps?

3 A. Yes.

4 Q. Now, what's here?

5 A. That's the blood on the floor.

6 Q. Here?

7 A. That's blood.

8 Q. On the floor?

9 A. Yeah, on the floor.

10 Q. As you look - - as you go this way, where were you headed to?

11 A. Headed downstairs.

12 Q. No, this way?

13 A. Towards my room.

14 Q. Okay.

15 Whose bedroom is that?

16 A. That's my son's bedroom, Tamar.

17 Q. Who's bedroom is that?

18 A. Latisha's bedroom.

19 Q. And there?

20 A. My room.

21 Q. Photograph #14?

22 A. This is a picture of the restroom downstairs with more blood  
23 on the floor.

24 Q. This area there?

25 A. Yes.

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

97

1 Q. #15?

2 A. This is another picture of the bathroom, the restroom  
3 downstairs with more blood on the wall, the sink.

4 Q. #16?

5 A. This is a picture downstairs of the stick that was used to hit  
6 me - - to hit me and Trey.

7 Q. What's going this way?

8 A. The steps to go upstairs to the rooms.

9 Q. And what's this way here?

10 A. That's the back door.

11 Q. And what's going out this way?

12 A. The head - - to go out - - the front door, the entrance.

13 Q. And by the way, at the time this happened, was it dark?

14 A. Yes, it was.

15 Q. #17?

16 A. That's the outside looking in from the front door of our  
17 apartment.

18 Q. #18?

19 A. That's a picture of my blue Grand Am with the purse.

20 Q. What's this here?

21 A. My purse is on the ground. It was money of mine that was on  
22 the ground.

23 Q. #19?

24 A. This is a picture of our apartment downstairs with blood on  
25 the - - on the floor.

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

98

1 Q. What's here?

2 A. And that's the stick that was used to hit me and Trey. That's  
3 the front door entrance and a piece of - - I don't know what it is.  
4 It came off the front door.

5 Q. Is that molding?

6 A. Yeah, from the side.

7 Q. What goes this way?

8 A. That's the restroom.

9 Q. #20?

10 A. This is a picture of Trey.

11 Q. Is this taken at your house where the incident occurred?

12 A. Yes.

13 Q. #21?

14 A. Another picture of Trey.

15 Q. #22?

16 A. Another picture of Trey.

17 Q. #23?

18 A. This is a picture of me.

19 Q. Where was it taken at?

20 A. In the front room.

21 Q. Of your house?

22 A. Yes.

23 Q. #24?

24 A. This is another picture of me in the front room.

25 Q. Is this the weave you were talking about?

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

99

1 A. Yes.

2 Q. Blood was coming from the ear as well?

3 A. Uh-huh, yes.

4 Q. #25?

5 A. This is a picture of downstairs, like, going into the front  
6 room, and there is the kitchen also to the top, like, going in the  
7 kitchen.

8 Q. Are these two things, pieces of the door?

9 A. Yes.

10 Q. #27, ah, #26?

11 A. This is a picture downstairs again, and that's the stick that  
12 was used.

13 Q. #27?

14 A. This is a picture of the front door where the molding came  
15 off.

16 Q. #28?

17 A. This is a picture of the weapon that was used to hit me and  
18 Trey.

19 Q. #29?

20 A. This is a picture of Trey afterwards, after my husband hit  
21 him.

22 Q. #30?

23 A. This is the top of the step where a piece of the stick came  
24 off.

25 Q. Is that what you were referring to?

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

100

1 A. Yes.

2 Q. When you come up the steps, you go the left to go upstairs?

3 A. Yes.

4 Q. #31?

5 A. This is a picture going to - - going down to my bedroom.

6 Q. Whose bedroom was here?

7 A. That's Tamar bedroom and Latisha bedroom, my bedroom.

8 Q. And this is the area where you were sleeping closest to the  
9 door?

10 A. Yes.

11 Q. #32?

12 A. This is a picture of my bedroom.

13 Q. What's that there?

14 A. Blood on the sheets, blood on the floor.

15 Q. #33?

16 A. This is a picture of my bedroom again with blood on the floor.

17 Q. #34?

18 A. This is a another picture of, like, going down the steps with  
19 blood on the - - - .

20 Q. Blood on the steps?

21 A. Yes, and blood is on the walls.

22 Q. #35?

23 A. This is a picture of my mirror that was in my bedroom with  
24 blood on the wall right on the mirror.

25 Q. #36?

MS. BRYANT - DIRECT EXAMINATION BY MR. MODICA

101

1 A. This is another picture of the wall with blood on it.

2 Q. #37?

3 A. And this is another picture with blood on the wall.

4 Q. What's that?

5 A. That's the light switch that goes downstairs.

6 Q. Thank you. You can have a seat.

7 (Witness resumes seat on witness stand.)

8 Q. I'm showing you State's Exhibit #39, a paper back with plastic  
9 over the top of it. I'd like the record to reflect that I'm  
10 removing the plastic from the top and that I'm removing a - - an  
11 item - - wooden item and ask you to take a look at that and  
12 indicate to the jury whether or not you recognize that?

13 A. Yes, I do.

14 Q. What do you recognize it as being?

15 A. The object that was used to hit me and Trey with.

16 MR. MODICA: Your Honor, at this time I would move this  
17 portion of State's Exhibit #39 into evidence.

18 THE COURT: You may do so.

19 MR. FOX: I'm sorry, Your Honor. It's alright with the  
20 defendant but if I could just see what's being introduced.

21 (Defense counsel views exhibit.)

22 MR. FOX: Without objection.

23 MR. MODICA: May I publish, Your Honor?

24 THE COURT: Yes, sir.

25 (Court Reporter accepts State's Exhibit #39, Part 1, into

1 evidence and returns it to the Solicitor for publication to the  
2 jury.)

3 THE COURT: Mr. Foreman, I tell you. These items will be  
4 with you in the jury room during your deliberations.

5 MR. MODICA: Your Honor, may the record further reflect that  
6 I am removing another item, a smaller piece.

7 Q. And I ask if you recognize this.

8 A. Yes, and that's a piece of the object that came off.

9 Q. And that was shown in the photograph?

10 A. Yes, it was. Like, going toward up the steps.

11 MR. MODICA: Your Honor, at this time I would move this  
12 portion of #39 into evidence.

13 THE COURT: Admitted.

14 MR. FOX: Without objection, Your Honor.

15 MR. MODICA: Publishing to the jury.

16 (Court Reporter accepts Part 2 of Court's Exhibit #39 into  
17 evidence.)

18 MR. MODICA: Let the record reflect I am returning both  
19 portions of State's Exhibit #39 into the bag.

20 Q. Thank you. Answer any questions counsel may have.

21 MR. FOX: May we approach, Your Honor?

22 THE COURT: Yes, sir.

23 (Bench conference off the record but in the presence of the  
24 jury.)

25 MR. FOX: Thank you, Your Honor.

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

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1 CROSS EXAMINATION BY MR. FOX:

2 Q. Ms. Lasha, you and your husband were separated because of  
3 trouble in your marriage. Correct?

4 A. Correct.

5 Q. You testified, however, that despite that that it was your  
6 desire to work things out. He would still spend the night with you  
7 more times than you can remember.

8 A. Right.

9 Q. Okay.

10 Now, and you had been having a relationship for Mr. Hayward  
11 for how long?

12 A. Not even two months.

13 Q. And that relationship had been sexual?

14 A. Yes.

15 Q. Okay.

16 Ah, how (unintelligible) - - -

17 A. Say that again.

18 Q. How did you - - let me rephrase that.

19 How long had you been living in that house?

20 A. I had moved to housing I would say December, '04.

21 Q. Okay.

22 A. Yeah.

23 Q. And you were familiar with the rules and regulations governing  
24 the Housing Authority?

25 A. Yes.

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

104

1 Q. Okay. They have any rules regarding visitors and guests  
2 there?

3 A. Yes, they do have rules.

4 Q. What are some of those rules?

5 A. Some of those rules say - - state that you can have somebody  
6 come and spend the night with you for up to two weeks, stay with  
7 you for up to two weeks.

8 Q. Okay.

9 A. And if there is someone that you want to add on to your lease,  
10 then you would have to notify them and let them know.

11 Q. You didn't ever add Hayward to the lease, did you?

12 A. No.

13 Q. Any other rules regarding visitors, their character, anything  
14 like that that you're aware of?

15 A. No.

16 Q. Anything about knowingly associating - - -

17 MR. MODICA: Objection, Your Honor. May we approach?

18 THE COURT: Alright, sir.

19 (Bench conference off record but in the presence of the jury.)

20 Q. Ms. Bryant, are you aware of any rules Housing Authority has,  
21 regulations or whatever you want to call it regarding visitors or  
22 people living there have criminal records?

23 A. Am I aware of them?

24 Q. Right?

25 A. Yes, I am.

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

105

1 Q. And what are they?

2 A. Basically, someone who have a record, they don't even there -  
3 - don't even live in there.

4 Q. Right. Now, how many times would you say Mr. Hayward was a  
5 guest at 12 Avant Court?

6 A. Um, I would say three or four times.

7 Q. Would you aware - - personally aware that Mr. Hayward had a  
8 criminal record?

9 A. Well, he did tell me that he did have to go to court or  
10 something but I wasn't aware of him having - - -

11 Q. Did he tell you whether or not he had ever been convicted?

12 MR. MODICA: Objection. Asked and answered and hearsay.

13 THE COURT: No, sir. I'm going to let him.

14 Go ahead.

15 MR. MODICA: He's calling for hearsay, Your Honor.

16 THE COURT: Go ahead.

17 Q. Were you aware whether Mr. Hayward, ah, had ever been  
18 convicted of a crime?

19 A. No.

20 Q. Okay.

21 Do you know where Mr. Hayward is today?

22 MR. MODICA: Objection.

23 THE COURT: She said - - that's enough on that issue, now.

24 She said she didn't know.

25 MR. FOX: Your Honor, with all respect, that's a separate

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

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1 question.

2 THE COURT: What's your next question?

3 MR. MODICA: Your Honor, may we approach?

4 (Bench conference off record but in the presence of the jury.)

5 THE COURT: That question as objected is sustained.

6 MR. FOX: Thank you, Your Honor.

7 THE COURT: Where he is or is not has no relevancy to any  
8 issue in this case where that particular witness may be today.

9 Q. Alright.

10 You said there is no rule or regulation or what have you of  
11 the Housing Authority that anyone with any kind of record not be  
12 around. Correct?

13 A. They can't stay there, live there...

14 Q. Alright.

15 And what happens if the Housing Authority finds out that  
16 someone with a record is staying there?

17 A. Then, that person that has the residence there would get  
18 evicted.

19 Q. Okay.

20 Did you know Mr. Hayward before you started dating him?

21 A. No.

22 Q. Okay.

23 Now, you were upstairs in your bedroom. Correct?

24 A. Yes.

25 Q. At this point when it was broken in and Mr. Hayward was in the

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

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1 bedroom with you?

2 A. Yes.

3 Q. Is there any furniture besides the bed in that room?

4 A. Say that again.

5 Q. Any furniture besides the bed in that room?

6 A. Yes.

7 Q. Alright. What else?

8 A. There's a chest-of-drawer. There is my tv in there, and  
9 that's it.

10 Q. Is there a chair in there?

11 A. No.

12 Q. Okay.

13 And where was Mr. Hayward?

14 A. He was in my bed.

15 Q. Now, if I understood when this attack occurred, this was  
16 upstairs in your bedroom. Correct?

17 A. Yes.

18 Q. Now, at some point then you were brought downstairs. Was Mr.  
19 Hayward - - do you know of Mr. Hayward ever came downstairs - - or  
20 did he stay upstairs?

21 A. He did come downstairs.

22 Q. During this attack or afterwards?

23 A. Afterwards.

24 Q. Alright.

25 With regard to your son, Tamar, did he have any follow-up

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

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1 treatment for his hand?

2 A. Yes.

3 Q. When he broke - - I'm sorry, I didn't mean to cut you off.

4 He went to the Emergency Room, and they treated him. Did he  
5 have to do anything further?

6 A. No. He didn't have to do anything else.

7 Q. Okay.

8 He testified this morning about his little visit to the Marine  
9 Institute. Do you recall that?

10 A. Yes.

11 Q. Okay.

12 How did he end up at the Marine Institute?

13 A. I took him there.

14 Q. Okay, and why was that?

15 A. Because he was misbehaving giving me a lot of problems in  
16 school. So that was a wake-up call for him.

17 Q. A wake-up call. Okay.

18 Punishment?

19 A. I wouldn't say punishment.

20 Q. Okay.

21 A. Eye opener.

22 Q. Eye opener. Okay.

23 Did you afterward - - and when was that compared to this time  
24 in February, this break-in.

25 A. I can't recall exactly when, but it was - - it was - - I can't

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

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1 recall when it was.

2 Q. Okay.

3 It was prior to this - - the event we're talking about today  
4 in February. Is that right? It was before?

5 A. Yeah.

6 Q. Okay.

7 And, in fact, since February or since you took him to the  
8 Marine Institute, his trip down there and the way you keep him in  
9 line is to remind him of that trip. Is that a way to help keep him  
10 in line to this day?

11 A. Yes.

12 Q. Okay.

13 Because he didn't like it down there, did he?

14 A. He didn't like it.

15 Q. Toting water all day.

16 Where does - - when he's not staying with you more times than  
17 you can remember, where does Mr. Bryant stay at? Do you know?

18 A. He stays with his momma, High Market Street.

19 Q. Okay, and where is that exactly?

20 A. That's Graves Station area.

21 Q. Okay.

22 A. Um, like going toward Andrews.

23 Q. Could you be, ah, going towards Andrews. Okay.

24 As you head out of town you come to some railroad tracks,  
25 don't you, out that way?

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

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1 A. Yes..

2 Q. Okay. Is it past those tracks?

3 A. Yes.

4 Q. Okay.

5 Do you know how far that is?..

6 A. No.

7 Q. Okay:

8 Usually walk over there or drive when you go over there?

9 A. Come - - say that again.

10 Q. Do you ever go to that house?

11 A. Yes.

12 Q. Okay.

13 When you go, how do you get there?

14 A. I drive:

15 Q. Okay.

16 Would it be a place that you would care to walk to if you  
17 didn't have to?

18 MR. MODICA: Objection.

19 THE COURT: Proceed.

20 Q. Now, the incident the night before when you say - - on the  
21 10<sup>th</sup> of February when you say Mr. Bryant came to your car while you  
22 were waiting outside the barber shop?

23 A. Yes..

24 Q. Okay.

25 Now, you don't know what he meant by, "I can get my kid."?

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

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1 He referred to some fellow at a club. Is that right?

2 A. Yes.

3 Q. Okay.

4 And this fellow supposedly gave him advice on how he could get  
5 his kids in any custody fight. Is that - - do I have that right?

6 A. No.

7 Q. He said he'd get the kids a hundred percent of the time?

8 A. He had a way for him to be able to get his kids a hundred  
9 percent of the time.

10 Q. Okay.

11 And that's what he said. That was it.

12 A. Yes.

13 Q. Okay.

14 So you don't know what that means, do you?

15 You're guessing?

16 A. No, I don't know exactly what that means.

17 Q. Okay.

18 And for all you know, that refers to your adulterous behavior  
19 with Mr. Hayward?

20 A. I wouldn't think so.

21 Q. You wouldn't think so.

22 A. No.

23 Q. You don't know?

24 Is this your - - this is your first marriage. Is that  
25 correct?

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

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1. A. Yes.

2. Q. So you haven't been divorced. You haven't been in a custody  
3. fight or a divorce proceeding before?

4. A. No.

5. Q. Okay.

6. And you said today that when Mr. Hayward, I'm sorry, Mr.  
7. Bryant got in the car with you, he made these comments, and at some  
8. point he put his arm around your neck real tight?

9. A. Yes.

10. Q. But you didn't tell the police that when you talked to them  
11. that night, did you?

12. A. Did I not tell them that?

13. Q. No.

14. A. I don't remember whether I told them that or not.

15. Q. Okay.

16. And you listened to that 911 call that you made this morning  
17. and did you hear at the beginning? It was like an automated voice  
18. or a computer voice at the very beginning of that. Do you recall  
19. that - - from that tape we played this morning?

20. A. Yes.

21. Q. Okay, and it gave a time. It said you called at such and such  
22. a time. Correct?

23. A. Yes.

24. Q. And what time was that?

25. A. 6:15.

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

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1 Q. Okay.

2 So that would be when you made the call. Right?

3 A. Yes.

4 Q. Okay.

5 Did you make the call - - did you wait to call after this had  
6 all happened?

7 A. No. I wouldn't say I waited to call but I was looking for my  
8 phone to make the call.

9 Q. Did it take you any time to find it?

10 A. Because I couldn't get a dial tone on my - - my cordless home  
11 phone, I had to locate my cell - - cellular phone to make the call.

12 Q. Well, once you were attacked, thought, you pretty much  
13 immediately began looking for your phone. Correct?

14 A. Yes.

15 Q. Okay.

16 MR. FOX: Court's indulgence.

17 Q. Where was your pocketbook that you were looking for?

18 A. When I was still in the apartment?

19 Q. Yes.

20 A. It was somewhere in the front room. I - - I can't remember  
21 where it was position at.

22 Q. Is that downstairs or upstairs?

23 A. Downstairs.

24 Q. You never could find your keys. Correct?

25 A. Correct.

MS. BRYANT - CROSS EXAMINATION BY MR. FOX .

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1 Q. Okay.

2 Did this fellow - - did he ever say why he wanted the keys?

3 A. Did he ever - - say that again.

4 Q. Did he ever actually say why he wanted the keys?

5 A. No.

6 Q. Okay.

7 Ah, and you drive a Pontiac Grand Am?

8 A. Yes.

9 Q. Alright.

10 When you got, ah, got off the ground - - you were taken  
11 outside, and when you got back up, was your car still there?

12 A. Yes.

13 Q. Okay.

14 When you went outside and you were drug outside, do you  
15 remember seeing your car out there?

16 A. Yes.

17 Q. Did you see any other cars?

18 A. I don't remember seeing no other cars.

19 Q. Okay.

20 Were the lights on - - you heard a crash - - but you were  
21 upstairs. So you didn't see the person actually come in. You  
22 heard a crash. Right?

23 A. Right.

24 Q. Okay.

25 Were the lights on downstairs when you went to bed?

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

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1 A. Were they on?

2 Q. Yes.

3 A. There was a light that was on in my kitchen.

4 Q. Okay.

5 What about in that - - is there a light switch in that front  
6 hallway right by the door?

7 A. Yeah.

8 Q. Okay.

9 Was that light on?

10 A. No.

11 Q. Okay.

12 Was it on when you came back downstairs?

13 A. Not that I can remember.

14 Q. Okay.

15 And you stated the person came in your bedroom and flipped on  
16 - where is the light switch in your bedroom? If I'm standing in  
17 the doorway and you're, roughly, where the bed - - you're looking  
18 towards the bed, where would that light switch be?

19 A. It would be on the right-hand side.

20 Q. As you look into the room?

21 A. Yes.

22 Q. Okay.

23 It's right on the side of the wall next to the door?

24 A. Yes, it is.

25 Q. And you say a person came in and turned that switch on.

MS. BRYANT - CROSS EXAMINATION BY MR. FOX

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1 Correct? Flipped on the switch?

2 A. No. I said my husband came in and turned on - - -

3 Q. Turned on the light?

4 A. Yes.

5 Q. Okay.

6 Did he use his hands to turn on the light switch?

7 A. I don't - - I can't remember.

8 Q. And - - and you were pretty well - - we've seen the pictures.

9 You had a good bit of blood on your clothing and in the apartment.

10 Correct?

11 A. Yes.

12 Q. Alright.

13 And what about - - and Mr. Hayward did also. You could see  
14 him?

15 A. Yes.

16 Q. Okay.

17 What about your son? Did he get hit - - he had the bloody  
18 knuckles from his injury. Did he have any blood on him on his  
19 clothing that you remember?

20 A. I'm not sure because I - - I'm not sure about it.

21 Q. What about your husband?

22 A. What about my husband?

23 Q. Yes.

24 A. I don't know.

25 Q. Okay.

MS. BRYANT - REDIRECT EXAMINATION BY MR. MODICA

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1 But there was a good deal of blood around, wasn't there?

2 A. Yes.

3 MR. FOX: Court's indulgence.

4 That would be all at this time subject to our conference a few  
5 moments ago.

6 THE COURT: Alright.

7 The record will reflect that by agreement with the Solicitor  
8 and defense counsel and in the interest of time, this witness may  
9 be recalled for further examination.

10 You agree with that, Solicitor.

11 MR. MODICA: Yes, sir.

12 THE COURT: Alright, sir.

13 You may come down subject to be - - being recalled - - -

14 MR. MODICA: Your Honor, can I have redirect at this time?

15 THE COURT: I understand.

16 You may - -

17 MR. MODICA: Thank you, Your Honor.

18 THE COURT: - - you may proceed with your redirect at this  
19 time, and, of course, if she's recalled again, he'll have the right  
20 to cross examine her and you'll have a redirect at that time.

21 MR. MODICA: Thank you, Your Honor.

22 REDIRECT EXAMINATION BY MR. MODICA:

23 Q. Now, from November of 2004 until you broke up with the  
24 defendant until February 10<sup>th</sup> of 2006, how many times if you recall  
25 - - how many times do you recall having sexual relations with the

MS. BRYANT - REDIRECT EXAMINATION BY MR. MODICA

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1 defendant?

2 A. I don't - - I'm not sure.

3 Q. Okay. Is it a hundred, two hundred?

4 A. No. Nowhere close to that.

5 Q. Okay.

6 Well, what is it close to?

7 A. Um - - -

8 Q. Defendant's attorney has asked you too many times to remember,  
9 and I don't want the jury to get the impression it was a lot. You  
10 don't know how much it was.

11 A. At least ten times, fifteen times.

12 Q. Okay.

13 How many times if you know, and if you don't, just let us know.

14 How many times at Avant Court?

15 A. Ah, about five or six times.

16 Q. Okay. The other times at his mom's or other places?

17 A. No.

18 Q. Okay.

19 You here my question?

20 A. Say that again.

21 Q. I said the other times not at Avant Court, where would that  
22 take place, at his mother's or elsewhere?

23 A. Elsewhere.

24 Q. Okay.

25 Now - - now, I asked you about what happened in the car in

MS. BRYANT - REDIRECT EXAMINATION BY MR. MODICA

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1 front the barber shop. Defendant's attorney had asked you what  
2 happened in the car outside the barber shop. We weren't there.

3 You tell our jury based upon what the defendant said, did you  
4 feel threatened?

5 A. Yes. I was scared. I was shaking. I was definitely shaken  
6 up as soon as he said that, I was like - - -

7 Q. What did you think he meant about having children a hundred  
8 percent of the time?

9 A. That he was going to have someone kill me.

10 Q. What did you think he meant by taking his marriage vows  
11 seriously until death do us part?

12 A. That he was going - - that he was going to kill me.

13 MR. MODICA: Nothing further.

14 MR. FOX: Nothing further at this time.

15 THE COURT: Alright, sir.

16 You may come down subject to possibly being recalled at a  
17 later time, and I thank you.

18 (The witness leaves the witness stand.)

19 THE COURT: Alright. Did you want to take that particular  
20 witness out of order.

21 MR. FOX: I do, Your Honor, and it's been about an hour  
22 and a half. If we could take a very short restroom break, I can  
23 check. I can check and see if my other witness is here, and I  
24 would love to do that.

25 THE COURT: Okay. We'll take a very short break and then

MS. BRYANT - REDIRECT EXAMINATION BY MR. MODICA

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1 we'll call you back. We're going to break for lunch around 1:00.

2 You may go to the jury room just a moment if you care to.

3 Relax just a second.

4 (The jury retires to the jury room.)

5 (The Court recesses this case for a short break and then  
6 reconvenes the trial of this case.)

7 THE COURT: You may be seated.

8 Bring the jury in.

9 Is this the witness we're taking out of order, Mr. Fox?

10 MR. FOX: Yes, Your Honor.

11 THE COURT: Alright. I want to explain to the jury.

12 (The jury returns to the courtroom.)

13 THE COURT: Mr. Foreman, ladies and gentlemen, in the  
14 regular order of trial all of the State's witnesses are first  
15 presented, and then the defendant if he chooses to may call his  
16 witnesses.

17 The defendant has a witness who needs to be somewhere else  
18 this afternoon and tomorrow, and the State has agreed to take the  
19 defendant's witness out of order and let him testify at this time  
20 so that he may be released from his subpoena.

21 Now, the next witness will be for the defense and would have  
22 been at the end of the State's case but to accommodate this  
23 witness, the State has agreed that we would take him out of order  
24 at this time rather than after the State has presented all of its  
25 witnesses.

MR. GRIMES - DIRECT EXAMINATION BY MR. FOX

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1 As soon as this defense witness testifies, we'll go back to  
2 the regular order of concluding the witnesses for the State.

3 You may call him, Mr. Fox.

4 MR. FOX: Thank you, Your Honor.

5 William Grimes.

6 (The witness takes the witness stand.)

7 WILLIAM LEE GRIMES, being duly sworn,  
8 testifies as follows:

9 DEPUTY CLERK OF COURT: Please be seated and state your name  
10 for the record.

11 MR. GRIMES: William Lee Grimes.

12 DIRECT EXAMINATION BY MR. FOX:

13 Q. Mr. Grimes, do you know James Bryant?

14 A. Yes.

15 Q. And is he in the courtroom today?

16 A. Yes.

17 Q. Where is he?

18 A. Sitting over there.

19 Q. Can you describe for the record what he is wearing?

20 A. A white shirt and a tie.

21 Q. Okay.

22 How long have you known Mr. Grimes?

23 A. Two years.

24 Q. And in what capacity have you known him?

25 A. Work.

MR. GRIMES - DIRECT EXAMINATION BY MR. FOX :

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1 Q. Okay.

2 You work for him?

3 A. No. He worked for me.

4 Q. What kind of business is that?

5 A. Construction.

6 Q. Okay.

7 What kind of work did he do for you?

8 A. Ah, basically, framing, remodeling and so forth.

9 Q. Okay.

10 And has he worked for you those two years?

11 A. On and off, yes.

12 Q. Okay.

13 And where do you work?

14 A. At the present time I work for Riptide Builders?

15 Q. Where were you working in February of this year?

16 A. Riptide Builders as well.

17 Q. And where is that?

18 A. They are located out of Murrells Inlet.

19 Q. Okay.

20 Do they have jobs at the one location or various locations?

21 A. Various up and down the beach.

22 Q. Okay, and did Mr. Bryant work with you up and down the beach?

23 A. Yes.

24 Q. Okay.

25 So, he was part of your regular crew. Is that correct?

MR. GRIMES - DIRECT EXAMINATION BY MR. FOX

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1 A. Right.

2 Q. Okay.

3 Now, how often? Was that a daily job?

4 A. Yes, sir.

5 Q. Okay.

6 Five days a week or six days a week?

7 A. Sometimes seven.

8 Q. Okay.

9 Do you know how Mr. Bryant would get back and forth to the job  
10 sight?

11 A. He rode with me.

12 Q. Is that every day?

13 A. Every day.

14 Q. Okay.

15 Um, did you meet him somewhere or pick him up somewhere?

16 A. I always picked him up at his mother's house and dropped him  
17 off there.

18 Q. Okay, and where is his mother's house?

19 A. I don't know the name of the road out through there. It's,  
20 um, going out of town going towards Andrews.

21 Q. Okay.

22 On Andrews Highway?

23 A. Yeah.

24 Q. Okay.

25 Ah, do you pass over any railroad tracks going out there?

MR. GRIMES - DIRECT EXAMINATION BY MR. FOX

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1 A. Yes. One set.

2 Q. Okay.

3 Is it right here in town?

4 A. It's out - - right outside the city limits.

5 Q. Do you have an idea how far it is?

6 A. A mile outside the city limits.

7 Q. Okay.

8 Have you measured it to be sure?

9 A. No, I've never measured it. Just guessing.

10 Q. Okay.

11 And, ah, did you have a regular time you would pick up Mr.  
12 Bryant?

13 A. Yes. 6:30, 6:40, in that time period.

14 Q. Okay, and how did you arrive at that?

15 A. Because we had to make it all the way north and be at work by  
16 7:30.

17 Q. And you were the foreman or in charge of the work site?

18 A. Right.

19 Q. Okay.

20 So you had an incentive to be there on time?

21 A. Yes.

22 Q. Okay.

23 Now, do you recall the morning of February 11<sup>th</sup> of this year  
24 picking up Mr. Bryant at his mom's house?

25 A. Yes.

MR. GRIMES - DIRECT EXAMINATION BY MR. FOX

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1 Q. So - - I'm sorry, yes?

2 A. Yes.

3 Q. Okay.

4 And why would you remember that morning as opposed to any  
5 other?

6 A. I - - it's same as every morning.

7 Q. Okay.

8 Was there anything different about Mr. Bryant that morning if  
9 you recall?

10 A. No.

11 Q. Okay.

12 What was his condition? Do you recall?

13 A. Intoxicated.

14 Q. Okay.

15 Ah, was he intoxicated every morning?

16 A. No.

17 Q. Okay.

18 Was he a little intoxicated that morning?

19 A. He - - he was to the point where he could sober up and work  
20 with some coffee and something to eat.

21 Q. Did he work that morning?

22 A. No.

23 Q. Okay.

24 Did you have a chance - - when you would pick him up, did you  
25 go inside to get him, ring the bell or wait in the car?

MR. GRIMES - DIRECT EXAMINATION BY MR. FOX

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1 A. I'd just wait in the vehicle.

2 Q. Okay.

3 Blow the horn or what?

4 A. Blow the horn, and he'd come right out.

5 Q. Okay.

6 Did you have a chance to observe him walking from the door  
7 into your - -

8 A. To my vehicle.

9 Q. - - your truck.

10 A. Yes.

11 Q. Okay.

12 Did he sit up front with you?

13 A. Yes.

14 Q. Okay.

15 Just the two of you?

16 A. Yes.

17 Q. Okay.

18 So, ah, the time you picked him up, was it daylight?

19 A. Ah, I don't remember.

20 Q. Okay.

21 But you could see him clearly?

22 A. Yes.

23 Q. Okay.

24 Did you see, ah, how - - -

25 MR. MODICA: Your Honor, objection to leading.

MR. GRIMES - DIRECT EXAMINATION BY MR. FOX

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1 THE COURT: He is your witness, now.

2 MR. FOX: I will be careful, Your Honor.

3 Q. Ah, could you see, ah, how he was dressed?

4 A. Regular work clothes.

5 Q. Okay.

6 Anything that caught your attention about his work clothes  
7 that morning?

8 A. No.

9 Q. Okay.

10 Nothing - - was there anything out of the ordinary?

11 A. No.

12 Q. Okay.

13 Specifically, did you see any blood anywhere on Mr. Bryant?

14 A. No.

15 Q. As a person who works on a construction site and observes  
16 people who work on construction sites, have you seen people injure  
17 themselves on the job?

18 A. Yes, many times.

19 Q. Okay.

20 And during those times, have you ever seen people bleed?

21 A. Yes.

22 Q. Ah, any of those times, did you see people get blood on their  
23 clothes?

24 A. Yes.

25 Q. Okay.

MR. GRIMES - CROSS EXAMINATION BY MR. MODICA

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1           So, you're familiar with how blood would appear on a person's  
2 clothing?

3           A.    Yes, sir.

4           Q.    Okay.

5           And you did not see - - did you see anything like that on Mr.  
6 Bryant?

7           A.    No.

8           Q.    Okay.

9           Excuse me.

10          Did you see Mr. Bryant the day before?

11          A.    Yes.

12          Q.    Okay.

13          Do you know whether he had the same clothes or different  
14 clothes?

15          A.    It appeared to be the same clothes from where he'd been out  
16 all night.

17          Q.    Thank you. Please answer any questions the State would have.

18          CROSS EXAMINATION BY MR. MODICA:

19          Q.    Where did you see him out the night before?

20          A.    I took him home.

21          Q.    You're not telling us that - - the kind of clothes he was  
22 wearing was work clothes?

23          A.    Right.

24          Q.    So people work in their clothes. They change their work  
25 clothes. You do that, don't you?

MR. GRIMES - CROSS EXAMINATION BY MR. MODICA

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1 A. Right.

2 Q. And then you put on the same work clothes, sometimes the same  
3 work clothes the following day which may be just the same dirty  
4 clothes?

5 A. No.

6 Q. Laborers are more likely to do that though because they - -  
7 you're the foreperson and they are the laborer. They were the same  
8 overalls, the same jeans and tee-shirt.

9 A. Yeah, some of the guys have.

10 Q. And that would be true of the defendant as well?

11 A. I guess.

12 Q. So, he might have been wearing the same work clothes again.  
13 You can't say for certain it was the same exact same clothes, can  
14 you?

15 A. No, not a hundred percent.

16 Q. Okay.

17 And by the way, I take it that y'all to some degree - - I know  
18 that you're his boss but to some degree you became his friend,  
19 became friendly with him?

20 A. Right.

21 Q. Okay.

22 And since you still feel that way today - -

23 A. Right.

24 Q. - - I know y'all talked before the jury came. Right?

25 A. I guess.

MR. GRIMES - CROSS EXAMINATION BY MR. MODICA

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1 Q. By the way, on this date the defendant didn't work?

2 A. No.

3 Q. Slept in the truck.

4 A. Yes.

5 Q. And, ah, didn't move around - - around a heck of a lot, did  
6 he?

7 A. No. He just slept in the truck.

8 Q. And, on that particular day you weren't looking for blood on  
9 the defendant, were you?

10 A. No.

11 Q. You had no reason to suspect that he might have blood on him?

12 A. No.

13 Q. And, um, certainly, ah, there have been times when you did  
14 toot on the horn that he hasn't - - he made you wait a little  
15 while?

16 A. A minute maybe.

17 Q. Okay.

18 And, um, you can't tell the jury whether you got there at  
19 6:40, beeped on your horn and had to wait about a minute making it  
20 6:41, potentially.

21 A. Right.

22 Q. Okay.

23 Now, traffic at the beach is different Monday through Friday  
24 versus Saturday, isn't it?

25 A. Correct. Yes.

MR. GRIMES - CROSS EXAMINATION BY MR. MODICA

131

1 Q. So, you - - you, actually - - and this was a Saturday?

2 A. Yes.

3 Q. So, actually, you could get to his house a little bit later on  
4 Saturday and have no problem making your job site by 7:30.

5 A. No.

6 Q. No, you couldn't?

7 A. No.

8 Q. Can you just agree with our jury that it's less traffic on  
9 Monday through Friday than it is on Saturday?

10 A. Yes, I do.

11 Q. Okay.

12 Then, the truth of the matter is by driving up there, you can  
13 get there quicker on Saturday than you can Monday through Friday.  
14 Wouldn't that be true?

15 A. Not necessarily.

16 Q. Okay.

17 But the potential exists because there is less traffic. Isn't  
18 that true?

19 A. Yes.

20 Q. Okay.

21 Now, it's possible given that it was Saturday that you got  
22 there even later potentially than 6:40 because the traffic is  
23 lighter going up to the beach. Isn't that possible?

24 A. No.

25 Q. Okay.

MR. GRIMES - CROSS EXAMINATION BY MR. MODICA

132

1     . . . . You never run late or you never - - that never happens?

2     A.    I'm never - - I'm never late.  I'm the boss.  I can't be.

3     Q.    Okay.

4     . . . . But, again, you agree with me that you could leave later on  
5     Saturday and make it up where the property was versus Monday  
6     through Friday?

7     A.    No.  You can't leave later to make it there.

8     Q.    Okay.

9     . . . . Would it take you less time to get up - - I'm not sure if you  
10    understand me.  On Saturday if it's lighter traffic on Saturday as  
11    compared to Monday through Friday, you would agree with me that the  
12    traffic is lighter?

13    A.    The traffic is lighter.

14    Q.    So with the traffic being lighter, isn't it possible to make  
15    better time from the defendant's mother's house up to the job site?

16    . . . . Is it true that that's possible?

17    A.    That's possible.

18    Q.    Now, picking up the defendant is out of your way to your  
19    house, is it not?

20    A.    Yes.

21    Q.    And he was the only worker that you picked up - -

22    A.    Right.

23    Q.    - - on a regular basis?

24    A.    Right.

25    Q.    And that would go probably in part that he was a decent worker

MR. GRIMES - CROSS EXAMINATION BY MR. MODICA

133

1 and probably in part because you had developed a friendship with  
2 him?

3 A. Right.

4 Q. Your cell phone now and then was area code ?

5 A. Yes.

6 Q. When you went to the defendant's house, you know that his mom  
7 lived there. Correct?

8 A. Right.

9 Q. And they both - - both of them own vehicles?

10 A. Right.

11 Q. And, ah, could you - - as best you know, the defendant doesn't  
12 have any physical limitations on driving a motor vehicle?

13 A. No.

14 Q. And probably from time he has to move a vehicle on a job site?

15 A. No.

16 Q. Never has.

17 Did he ever move any vehicle on a job site?

18 A. Not to my knowledge.

19 Q. But as far as you know, he's got no problem with being able to  
20 drive?

21 A. Correct.

22 Q. By the way, you go by Bill?

23 A. Yes.

24 Q. Your real name is William but you go by Bill or Billy?

25 A. Yes.

MR. GRIMES - CROSS EXAMINATION BY MR. MODICA

134

1 Q. And when you would drive him home, you would go out of your  
2 way?

3 A. Yes.

4 Q. For the same reason?

5 A. Right. He would give me gas money.

6 Q. Okay.

7 But you didn't do that for any of your other workers?

8 A. No.

9 Q. Now, did you remember on this Saturday getting a call from a  
10 member of some police agency regarding the whereabouts of the  
11 defendant?

12 A. No, I do not.

13 Q. You don't remember receiving - - did you ever receive a call  
14 from law enforcement asking you - - inquiring of you as to where  
15 the defendant might be?

16 A. Yes.

17 Q. And what day might that be?

18 A. It was after that weekend. I know that.

19 Q. Okay.

20 A. Because I had several officers calling me wanting to know  
21 where he was.

22 Q. Alright.

23 Now, I want you to be sure about this.

24 A. Okay.

25 Q. Are you absolutely positive that you spoke to no law

MR. GRIMES - CROSS EXAMINATION BY MR. MODICA

135

1 enforcement officer on your cell phone, on Saturday,  
2 February 11, 2006, inquiring as to where he might be?

3 A. To the best of my knowledge. I do not remember speaking with  
4 anyone.

5 Q. It's possible that you did on that day?

6 A. It very well could have been.

7 Q. Alright.

8 You knew on that Saturday, February 11<sup>th</sup> of 2006, something had  
9 come up with the defendant. You were made aware of that?

10 A. On which date?

11 Q. On Saturday.

12 A. No, I did not know - - I knew afterwards.

13 Q. So, did his mom or his sister nor the police gave you any  
14 indication that there was a problem?

15 A. No.

16 Q. By the way, how did his momma or his sister contact you if  
17 there was an emergency? Wouldn't they use your cell phone?

18 A. Yes.

19 Q. Okay.

20 But you didn't get any calls?

21 A. None. They've never called me.

22 Q. Okay.

23 I'm saying Saturday, February 11, 2006, did you get a phone  
24 call from the police or his sister, Sandra, or his momma, Agnes, on  
25 that day concerning - - calling your cell phone asking where he was

MR. GRIMES - REDIRECT EXAMINATION BY MR. FOX

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1 or asking to speak to him?

2 A. No, not to my knowledge.

3 MR. MODICA: One moment..

4 Q. Now, did you ever receive a telephone call from law  
5 enforcement sometime after February 11, 2006, in which they had  
6 asked you if you had seen the defendant on February, 2006, I'm  
7 sorry, February 11, 2006, and forward -- on going by the time that  
8 you got that telephone call, and you told them, "No, I haven't seen  
9 him."?

10 A. After that date, James no longer worked for me. So I didn't  
11 see him.

12 Q. Okay.

13 Did they not inquire in that conversation with you as to  
14 whether you saw him February 11<sup>th</sup> or beyond?

15 A. Not to my knowledge. I'm not sure.

16 Q. Thank you.

17 MR. MODICA: Nothing further.

18 THE COURT: Alright, sir.

19 MR. FOX: Just briefly, Your Honor.

20 THE COURT: Okay.

21 REDIRECT EXAMINATION BY MR. FOX:

22 Q. Mr. Grimes, with regards to your driving habits getting to  
23 work, the Solicitor has asked you about there's less traffic to the  
24 beach on the weekend.

25 Regardless of whether it does actually take less time on the

MR. GRIMES - REDIRECT EXAMINATION BY MR. FOX

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1 weekend to get up to Surfside, did that affect when you would leave  
2 to pick up James?

3 A. I always left the same time.

4 Q. Okay.

5 Now, with regard to this call from the police sometime after  
6 February 11<sup>th</sup>, do you recall getting a call from them?

7 A. Yes.

8 Q. Were you truthful with the police?

9 A. Yes.

10 Q. Did you answer all their questions?

11 A. Yes.

12 Q. Okay.

13 Mr. Bryant was a friend of yours or he was anyway. Correct?

14 A. Yes.

15 Q. Would you lie for him?

16 A. I have no reason to.

17 Q. Thank you, sir.

18 MR. FOX: Your Honor, we'd ask if the Solicitor has no  
19 questions Mr. Grimes be excused?

20 THE COURT: Yes.

21 You may come down and are excused.

22 MR. GRIMES: Thank you.

23 (The witness leaves the witness stand.)

24 THE COURT: Alright, gentlemen and - - it's 1:00, time to  
25 break for lunch.

MR. GRIMES - REDIRECT EXAMINATION BY MR. FOX

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1       Mr. Foreman, ladies and gentlemen, I want you back in the jury  
2 room at 2:30. That will give you sufficient time to have lunch,  
3 and we'll start back right at 2:30.

4       Please do not discuss the case with anyone. Let no one  
5 discuss it with you. Do not under any circumstances even discuss  
6 it among yourselves. For the reason is before you start your  
7 deliberative process, you are entitled to hear all of the  
8 testimony.

9       Alright. You may leave.

10       (The jury is released for lunch and departs the courtroom to  
11 return at 2:30 p.m.)

12       THE COURT:       Alright.

13       We are in recess until 2:30.

14       (The Court recesses this case for lunch and reconvenes this  
15 trial at 2:32 p.m.)

16       THE COURT:       Please be seated.

17       Alright, Mr. Fox, you want to put the alleged victim back on  
18 the stand for further cross examination?

19       Only as to that issue, now.

20       MR. FOX:       Right.

21       Um, now you've raised another issue, Judge.

22       THE COURT:       Sir?

23       MR. FOX:       I can't at this time. Now, I've got one more  
24 court I need to check. Apparently, now I need to check the city.

25       THE COURT:       Okay. Well, that's fine.

MR. GRIMES - REDIRECT EXAMINATION BY MR. FOX

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1 MR. FOX: With regards to a restraining order, and I can  
2 do that.

3 THE COURT: Sir?

4 MR. FOX: Regards to a mutual restraining order that was  
5 supposedly in effect at the city level. I checked the Family Court  
6 and satisfied there's nothing in the Family Court but this also  
7 being - - -

8 THE COURT: Well, if there's any - - I'd like to at least  
9 finish the testimony this afternoon if at all possible.

10 MR. FOX: Maybe.

11 THE COURT: Well, let's move along and do that so we can  
12 argue and charge in the morning.

13 Alright, sir.

14 Solicitor, you ready to go?

15 MR. MODICA: Ah, just one moment.

16 THE COURT: You trying to find whether or not there was a  
17 restraining order?

18 MR. MODICA: At the city, Your Honor. I verified - - a  
19 mutual one. There was one in the Family Court but that went one  
20 way. The defendant was restrained. I just saw that.

21 Um, but there is - - he says there is one from Judge O'Donald,  
22 the City of Georgetown, a mutual restraining order.

23 THE COURT: Okay. I got you but you found one where the  
24 defendant himself was restrained?

25 MR. FOX: Right.

MS. SMITH - DIRECT EXAMINATION BY MR. MODICA

140

1 THE COURT: Alright.

2 MR. FOX: He has clarified that. I think it was my  
3 misunderstanding. He has clarified it. No, it was at the city  
4 level.

5 THE COURT: Alright. Let's go.  
6 Modica, you ready?

7 MR. MODICA: Yes.

8 THE COURT: Bring the jury in, please.

9 Let's move on and try and finish this testimony this  
10 afternoon.

11 (The jury returns to the courtroom.)

12 THE COURT: Good afternoon, Mr. Foreman, ladies and  
13 gentlemen.

14 Alright, Solicitor, call your next witness, please.

15 MR. MODICA: The State calls Paulette Smith.

16 (The witness takes the witness stand.)

17 PAULETTE SMITH, being duly sworn,  
18 testifies as follows:

19 DEPUTY CLERK OF COURT: Please be seated and state your name  
20 for the record.

21 MS. SMITH: My name is Paulette Smith.

22 Paulette Smith.

23 DIRECT EXAMINATION BY MR. MODICA:

24 Q. Good afternoon.

25 A. Good afternoon.

MS. SMITH - DIRECT EXAMINATION BY MR. MODICA

141

- 1 Q. How old are you?
- 2 A. Twenty-eight.
- 3 Q. Do you have any children?
- 4 A. Two.
- 5 Q. And how old?
- 6 A. Eight and five.
- 7 Q. Are you working now?
- 8 A. Yes.
- 9 Q. That sounds horrible.
- 10 Where do you work?
- 11 A. I work at Subway.
- 12 Q. Now, do you know Lasha Bryant and Jamie Bryant?
- 13 A. Yes.
- 14 Q. How do you know them?
- 15 A. Through her sister. Me and her sister are best friends.
- 16 Q. And her sister being who?
- 17 A. Alisha Doiley.
- 18 Q. Alisha being Lasha's sister?
- 19 A. Yes.
- 20 Q. And, um, just so our jury knows for certain that we're talking
- 21 about the same person, do you see Jamie Bryant here in the
- 22 courtroom?
- 23 A. Yes. Over there.
- 24 Q. Could you point him?
- 25 A. With a white shirt.

MS. SMITH - DIRECT EXAMINATION BY MR. MODICA

142

1 Q. Alright. Thank you very much.

2 Now, back in February of 2006, where were you living?

3 A. Avant Court.

4 Q. And did you know who lived at ?

5 A. Yes.

6 Q. And was that Lasha Bryant with her two children?

7 A. Yes.

8 Q. Alright.

9 Now, directing your attention to sometime between 6:00 a.m.  
10 and 6:15 a.m. on February 11<sup>th</sup> of 2006, did you happen to be inside  
11 11 Avant Court?

12 A. Yes.

13 Q. What were you doing?

14 A. I was asleep.

15 Q. Did something wake you up?

16 A. Yes.

17 Q. What woke you up?

18 A. I heard real loud noises and it sounded like thumping on my  
19 wall.

20 Q. Do you know where your wall is in relation to Lasha's bedroom  
21 wall?

22 A. Yes.

23 Q. Where?

24 A. There's just a wall separating the apartment.

25 Q. Okay.

MS. SMITH - DIRECT EXAMINATION BY MR. MODICA

143

1 So they were, like, next to each other?

2 A. Right next to each other, yes.

3 Q. Alright.

4 And what else did you hear?

5 A. I heard noises. I heard voices.

6 Q. Whose voices did you hear and what were they saying?

7 A. Um, I heard Jamie's voice. I actually say what I heard but I  
8 heard his voice.

9 Q. You recognize his voice?

10 A. Yes.

11 Q. Oh, okay.

12 Who else?

13 A. I heard Lasha and, also, I heard her daughter, Latisha.

14 Q. Okay. What do you remember Lasha saying?

15 A. I just remember her screaming and saying, "Help! Help me!"  
16 And her daughter was also screaming, "Stop, Daddy, stop!"

17 Q. Okay.

18 And what other noises did you hear while you were upstairs in  
19 the bedroom?

20 A. Um, it sound like - - like I heard a real loud object hitting  
21 against something.

22 Q. Okay.

23 A hitting noise?

24 A. Yes.

25 Q. Okay.

MS. SMITH - DIRECT EXAMINATION BY MR. MODICA

144

1 And, um, when you heard these noises, what did you do?

2 A. Um, called 911.

3 Q. Where did you go to get your phone?

4 A. I went downstairs.

5 Q. And when - - when you went downstairs, did you still hear what  
6 was going on?

7 A. Yes.

8 Q. What could you hear when you were downstairs making the call?

9 A. Actually, downstairs was like where - - the - - you could  
10 still hear noises in there, like, near the back of my door which  
11 where I heard her son.

12 Q. What did you hear her - - you talking about Lasha's son?

13 A. Yes.

14 Q. What did you hear?

15 A. I hear him saying, "Daddy, please stop. Daddy, please stop."

16 Q. Ah, did you call 911?

17 A. Yes.

18 Q. Where did you call from?

19 A. I called from my house.

20 Q. Where were you in your house?

21 A. Yeah. Upstairs in my house.

22 Q. Now, um, did there come a time that while you were calling or  
23 before you called 911 that while you were upstairs you looked out  
24 your window?

25 A. Yes.

MS. SMITH - DIRECT EXAMINATION BY MR. MODICA

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1 Q. . Alright.

2 Yes, you did look out your window?

3 A. Yes.

4 Q. Alright.

5 What did you see when you looked out your window?

6 A. When I looked out my window, I looked at the side, and I could  
7 see him pulling her hair which she had braids in her hair.

8 Q. Alright.

9 We need to know for sure when you say, "him", who are you  
10 referring to?

11 A. Jamie.

12 Q. The person you previously - - -

13 A. Yes.

14 Q. Okay.

15 What was he doing with her hair?

16 A. He was dragging her by her hair.

17 Q. Okay.

18 And where did he pull her towards?

19 A. Beside of the building.

20 MR. FOX: I've got to - - Your Honor, I object to the  
21 leading. I've been letting it go but I'd ask the Solicitor not to  
22 lead the witness.

23 THE COURT: Well, that last question doesn't suggest the  
24 answer. Where? You know.

25 Go ahead. Follow the rules.

MS. SMITH - DIRECT EXAMINATION BY MR. MODICA

146

1 Q. Where did you see the defendant pull Lasha towards?

2 A. To the side of the building.

3 Q. Ah, in relation to that, about what point in time did you call  
4 911?

5 A. I called right after that.

6 Q. Alright.

7 Now, the 911 call, did you tell the 911 operator who the call  
8 involved?

9 A. No.

10 Q. Why?

11 A. Because I didn't want get involved.

12 Q. Why is that?

13 A. Because if I started - - if I went outside to help, he might  
14 have done something to me. So, I thought the best thing to do was  
15 call 911.

16 Q. And tell them what was going on?

17 A. Right.

18 Q. Okay.

19 Um, did you tell - - did you at least give part of your  
20 information?

21 A. Excuse me?

22 Q. Did you tell them who you were?

23 A. Yes.

24 Q. What did you tell them?

25 A. My name was Paulette, and I lived at Avant Court.

MS. SMITH - DIRECT EXAMINATION BY MR. MODICA

147

1 Q. When this was happening, was it still nighttime?

2 A. Yes.

3 Q. When you saw the defendant pulling Lasha over to the side of  
4 the building, did you see either the defendant or Lasha come back  
5 to the house?

6 A. No.

7 Q. You stopped looking at that point?

8 A. Yes.

9 Q. I'm showing you State's Exhibit #40, a CD that I'm removing  
10 from its case, and I ask you if you recognize it and heard its  
11 content?

12 A. Yes.

13 Q. Okay.

14 Right here.

15 Do you recognize this?

16 A. Yes.

17 Q. Okay.

18 Um, and, ah, is the 911 call that you made?

19 A. Yes.

20 Q. Does it contain the whole 911 call?

21 A. Yes.

22 MR. MODICA: Your Honor, at this time I would move State's  
23 Exhibit #40 into evidence and ask that it be published.

24 THE COURT: You may do so. It is in evidence.

25 (Court Reporter accepts State's Exhibit #40 into evidence and

MS. SMITH - CROSS EXAMINATION BY MR. FOX

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1 returns it to the Solicitor for publication to the jury.

2 CD is played for the jury. Tape #3, County 990 to 1015.)

3 THE COURT: Mr. Foreman, these, ah, videos here or audios  
4 are in the record now. If you in your deliberations you want them,  
5 they will be available to you. Just let us know.

6 Alright. Proceed.

7 Q. Is that the 911 call that you made?

8 A. Yes.

9 Q. Thank you.

10 Answer any questions counsel may have for you.

11 CROSS EXAMINATION BY MR. FOX:

12 Q. Ms. Smith, I want to make sure I've got my directions to  
13 things correct.

14 You live or as of February, Avant Court. Correct?

15 A. Correct.

16 Q. And next door was the ?

17 A. Correct.

18 Q. Now, pretend you're standing on your front steps looking out.  
19 So your apartment is behind you.

20 A. Correct.

21 Q. Which direction is # ?

22 A. To the left.

23 Q. Are you at the end of that building?

24 A. No. I'm at the front of the building.

25 Q. No, but I mean lengthwise is # the last one?

MS. SMITH - CROSS EXAMINATION BY MR. FOX

149

1 A. Yeah.

2 Q. Okay.

3 Now, how many windows of your apartment look out the front?

4 A. One.

5 Q. That's -- that's one at the top?

6 A. Yes.

7 Q. And testimony is when you looked out at some point you could  
8 see Ms. Bryant going around the left side?

9 A. Yes.

10 Q. Now, no question in your mind you could hear Mr. Bryant's  
11 voice through this shared wall upstairs. Correct?

12 A. Correct.

13 Q. And the voice is coming from upstairs next door. Right?

14 A. Correct.

15 Q. Now, you say your best is Ms. Bryant's sister. Are you close  
16 to Ms. Bryant also?

17 A. No.

18 Q. No.

19 But she is sister of your best friend?

20 A. Yes.

21 Q. Have you talked with Ms. Bryant's sister about this incident  
22 since February?

23 A. No.

24 Q. Not one time?

25 A. No.

MS. SMITH - CROSS EXAMINATION BY MR. FOX

150

1 Q. This horrible thing happened to her sister and you never spoke  
2 to her about it?

3 A. No.

4 Q. You never spoke to Ms. Bryant about it?

5 A. No.

6 Q. Okay.

7 And when you called 911 when you heard this ruckus next door,  
8 did you pound on the wall or yell or anything or say, "Get out of  
9 here," or anything like that?

10 A. No.

11 Q. Okay.

12 You were quiet?

13 A. Yes.

14 Q. And you called 911?

15 A. Yes.

16 Q. The people involved are outside, Ms. Bryant and this fellow  
17 was outside. Right?

18 A. Correct.

19 Q. You're upstairs inside?

20 A. Right.

21 Q. Okay.

22 Any reason that this person turned around and looked up and  
23 see you?

24 A. No.

25 Q. Okay.

MS. SMITH - CROSS EXAMINATION BY MR. FOX

151

1           When you called 911 - - you ever had to call 911 before?

2           A.    Yes.

3           Q.    Okay.

4           Now, they don't ask your name.  You don't have to give your  
5           name.  You could call anonymously, couldn't you?

6           A.    Yes.

7           Q.    Okay.

8           In fact, you gave just your first name this time.  Correct?

9           A.    Correct.

10          Q.    Okay.

11          So, why not give the name of this attacker who is doing this  
12          horrible thing?

13          A.    Because at that point in time I just called 911 so that a  
14          officer can come out and check what's going on in the apartment.

15          Q.    Wouldn't it be important to know who they were looking for?

16          A.    Yes, it would have.

17          Q.    Okay.

18          That may have helped the police in finding the attacker?

19          A.    Yes.

20          Q.    You did not see the person leave.  Correct?

21          A.    Correct.

22          Q.    When you looked out the time you looked out, do you know what  
23          Ms. Bryant's car looked like?

24          A.    Yes.

25          Q.    Okay.

MS. SMITH - REDIRECT BY MR. MODICA

152

1 Did you see her car there?

2 A. Yes.

3 Q. Did you see any other cars that you didn't recognize?

4 A. No.

5 Q. Did you hear any cars driving away?

6 A. No.

7 Q. Thank you.

8 MR. FOX: No further questions.

9 THE COURT: Alright.

10 You may come down.

11 MR. FOX: One more, Your Honor, if I may.

12 THE COURT: Sir?

13 MR. FOX: Mr. Bryant wants me to ask one more.

14 THE COURT: Alright, sir.

15 MR. FOX: That's fine, Your Honor. Thank you.

16 THE COURT: Alright, sir.

17 MR. MODICA: I just have a few more questions.

18 REDIRECT EXAMINATION BY MR. MODICA:

19 Q. Whose older male voice did you hear next door?

20 A. Jamie.

21 Q. Any question about it? Do you have a question about in your  
22 mind about that?

23 A. No.

24 Q. Okay.

25 Who did you see outside dragging around Lasha?

MS. SMITH - REDIRECT BY MR. MODICA

153

1 A. Jamie.

2 Q. Any question about that?

3 A. No.

4 Q. Now, in terms of counsel asking about identity, obviously,  
5 Lasha knew her husband was?

6 A. Correct.

7 MR. FOX: Objection. That calls - - he doesn't know what  
8 Lasha knew.

9 THE COURT: Sir?

10 MR. FOX: This witness doesn't know what Lasha Bryant  
11 knew or didn't know.

12 He asked her what Lasha knew.

13 Q. You - - you're aware that they were married?

14 A. Correct.

15 Q. Okay.

16 You are aware who the two children's father was. Correct?

17 A. Correct.

18 Q. Thank you.

19 MR. MODICA: Nothing further.

20 THE COURT: Alright, sir.

21 You may come down.

22 (The witness leaves the witness stand.)

23 MR. MODICA: Your Honor, may I approach with counsel for a  
24 moment?

25 THE COURT: Yes, sir.

MS. TAYLOR - DIRECT EXAMINATION BY MR. MODICA

154

1 (Bench conference off record but in the presence of the jury.)

2 MR. MODICA: Your Honor, at this time the State would call  
3 Octavia Taylor.

4 (The witness takes the witness stand.)

5 OCTAVIA TAYLOR, being duly sworn,  
6 testifies as follows:

7 DEPUTY CLERK OF COURT: Please be seated and state your name  
8 for the record.

9 MS. TAYLOR: Octavia Taylor.

10 DIRECT EXAMINATION BY MR. MODICA:

11 Q. Could you please tell us how old you are?

12 A. Twenty-four.

13 Q. How old are you?

14 A. Twenty-four.

15 Q. And are you working?

16 A. Yes.

17 Q. Where do you work?

18 A. Coral Beach.

19 Q. What do you do there?

20 A. Housekeeper.

21 Q. Now, do you know the defendant on trial?

22 A. Yeah, a little bit.

23 Q. And how do you know him? What name do you know him by?

24 A. Jamie.

25 Q. How do you know him?

MS. TAYLOR - DIRECT EXAMINATION BY MR. MODICA

155

1 A. By my - - through my sister fiancé. That's his uncle.

2 Q. Okay. Let's slow down.

3 His sister's name is what?

4 A. Kelly.

5 Q. And Kelly's fiancé - - fiance's name is what?

6 A. Brian Gilliard.

7 Q. And how is Brian Gilliard related to the defendant, Jamie?

8 A. That's, um, his nephew. Well, he is the nephew of Jamie.

9 Q. Okay. So Jamie is the uncle?

10 A. Yeah, he's the uncle.

11 Q. Okay.

12 Now, I want to direct your attention to around midnight going  
13 from February 10<sup>th</sup> of 2006, into February 11, 2006, you know, the  
14 night going from one day to the next?

15 A. Uh-huh.

16 Q. Did you receive a phone call?

17 A. Yes.

18 Q. On your cell phone?

19 A. Yes.

20 Q. Okay.

21 Tell us about that phone call.

22 A. It was Jamie calling my phone. He thought - - he was calling  
23 for somebody. He thought he had the wrong number. Well, he was  
24 speaking but I told him that he had the wrong number.

25 Q. He - - who did he ask for?

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1 A. I can't remember who is the guy name. I don't - - I can't  
2 remember the name but it was a guy name that he asked to speak to,  
3 and I said that you got the wrong number.

4 Q. Okay.

5 And, um, at that point did you recognize Jamie's voice?

6 A. Un-huh. I didn't pay it no attention.

7 Q. Okay.

8 Did you get another phone call?

9 A. Yeah.

10 Q. How soon after that first phone call?

11 A. It was probably like two or three minutes after that.

12 Q. Okay.

13 Now, with - - referring to that phone call, what happened  
14 then?

15 A. That was him again, and he was, like, "Can I speak to such and  
16 such?"

17 And I was, like, um, I was, like, "No, you got the wrong  
18 number."

19 I said, "This Jamie?"

20 And he was, like, "Yeah."

21 And I was, like, "You know this is Octavia phone that you keep  
22 calling."

23 And he was, like, "Oh, oh. I thought this was such and such  
24 phone number that I was calling."

25 And he was, like, "Okay."

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1 I was, like, "No."

2 I say, "Okay, then."

3 And that's when he said, "Hey, what's Lasha number?"

4 And I was, like, "I'm not going to give you their cell  
5 number."

6 Because, you know, I know they was broke up or whatever. I  
7 was, like, "I'm not going to give out her number like that."

8 Q. You're a speed talker. I can tell. I can tell a mile away.  
9 Everything you have to say is important.

10 A. Okay.

11 Q. So, I want you to turn it down a notch.

12 A. Okay.

13 Q. And talk a little bit slower.

14 Okay.

15 Let's just interrupt you for a second and, um, ask you. Did  
16 you also know Lasha?

17 A. Uh-huh.

18 Q. Okay.

19 Yes or no?

20 A. Yes.

21 Q. How did you know Lasha?

22 A. She's a friend of my sister.

23 Q. Okay, and when Jamie called that second time and he - - and  
24 you told him that you were Octavia, you recognized his voice?

25 A. Yes.

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1 Q. Alright.

2 And he asked for Lasha's number, what happened then? Go ahead  
3 with that except go slower.

4 A. Okay.

5 I told him, um, that I'm not going to give him her number,  
6 and, that, you know, because I didn't want to get involved with  
7 that. So, I'm saying I'm not going to give him her number, and  
8 that's when he was, like, - - am I still talking fast?

9 Q. You're still talking fast. You're a fast talker.

10 That's okay. Just try to concentrate and talk slower because  
11 I can tell that they're having trouble hearing.

12 A. Okay.

13 Q. So, in that second conversation, he was trying to get the  
14 number. Keep going - - slower.

15 A. Okay.

16 And I told him, "No."

17 And he was, like, "Well, could you call her for me, and I will  
18 - - and get - - see if I could talk to her. She'll call me or I  
19 can get the number, you know, or whatever."

20 And I told, "Yeah, I would do that."

21 Q. So you called Lasha?

22 A. Yes.

23 Q. Okay.

24 Now, without telling us the contents of your conversation  
25 after speaking to Lasha did you agree to give Jamie Lasha's

MS. TAYLOR - DIRECT EXAMINATION BY MR. MODICA

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1 telephone number?

2 A. Un-huh.

3 Q. You have to say yes or no.

4 A. Um, no.

5 Q. Okay.

6 After you got over talking to Lasha, what happened then?

7 A. That's when he called me back?

8 Q. Who called you back?

9 A. Jamie did.

10 Q. Okay.

11 What happened when he called you back?

12 A. He asked me did I speak to her, and I told him, um, "Yeah, I  
13 spoke to Lasha."

14 Q. And?

15 A. And, um, I told him that she said no, for me not to give him  
16 the number and that she didn't want to speak to him.

17 Q. Okay.

18 And what did the defendant say?

19 A. And then that's when he was, like, "Oh, okay, then."

20 And then that's when he was, like, before he had hung up, he  
21 was, like, "Well, tell Lasha that her - - ", I can say it?

22 Q. Yes.

23 A. "- - her ass is grass."

24 Q. Okay.

25 Now, at some point in time when the defendant was calling you

MS. TAYLOR - DIRECT EXAMINATION BY MR. MODICA

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1 on the phone, did you have some way of identifying that number?

2 A. Uh-huh. My cell - - yeah, on my cell phone, the number comes  
3 up there.

4 Q. Okay.

5 And did you recognize that number? After the first call, did  
6 you recognize that number?

7 A. Uh-huh.

8 Q. What number did you recognize it as?

9 A. The first couple of numbers was

10 Q. Okay.

11 A. And then - - -

12 Q. And that phone number is whose? Who did you recognize that as  
13 being?

14 A. His grandmother - - his mother's number.

15 Q. Miss Agnes?

16 A. Uh-huh.

17 Q. Is that a yes or no?

18 A. Yes.

19 Q. Okay.

20 And did you recognize it because of your relationship with  
21 this - - your sister with Mr. Gilliard with the defendant?

22 A. Yes.

23 Q. Okay. Alright.

24 Was that the last call you got from the defendant at that time  
25 of the night?

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1 A. Yeah. That - - that was the last call.

2 Q. Okay.

3 Now, I want to direct you to the morning of the same day but  
4 the early morning time. Did you get a call - - phone call from  
5 the defendant again?

6 A. Yes.

7 Q. Okay.

8 Tell our jury about that, please.

9 A. He - - he had called me saying, "Did you heard about what  
10 happened?"

11 I said, "What is you talking about?"

12 And he said that, um, your home girl, Lasha, is probably in -  
13 - in the house dead.

14 And - - and I was, like, "What you talking about, Jamie?"

15 And that was when he was, like, I was, like, "What you did,"  
16 and stuff.

17 Then he hung up the phone on me.

18 And so I had went and, um, woke my sister up and told her what  
19 he had said. So we called - - both called, you know, her cell  
20 phone to see if everything was alright, and when we called the cell  
21 phone, that's when the detective answered the phone and told us  
22 that he had came and then - - -

23 Q. Now, don't you say what he said but he told you about what  
24 happened?

25 A. Yeah.

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1 Q. Okay.

2 A. Oh, okay.

3 Q. That's fine.

4 Ah, did he - - did the defendant call you again?

5 A. Yes.

6 Q. When was that?

7 A. He had called me again probably about a hour after that, and  
8 I was already at work then, and he told me did I speak to Lasha  
9 yet, and I told, "No."

10 Because I said I was calling the hospital to try to find out  
11 if she was doing alright, and I asked him why he did that, and he  
12 was, like, 'cause she deserved and she hurt him and blah, blah,  
13 that, and that was when he was, like, well, he hung up the phone,  
14 and it was, like, the end.

15 I told him I would talk to him. I was at work, and I told him  
16 I have to talk to him another time and that I was at work.

17 Q. Okay.

18 Did you talk to him later when you got off work that same day?

19 A. Yes.

20 Q. About what time was that?

21 A. That was probably about 4:00.

22 Q. Okay.

23 And did he call you?

24 A. Yes, he had called me.

25 Q. Okay.

1           And what happened when he called?

2           A.    He asked - - he wanted to know if I had spoke to Lasha again  
3           and, um, yet, and I told him, yeah, I did had talked to them  
4           because I had talked to Lasha probably about a hour before I had  
5           speak to him at about 4:00.

6           And I told him, "Yeah, I had spoke with her and that she was  
7           out the hospital or whatever."

8           And then I had asked him where he was at, and he told me - - -

9           Q.    Why did you ask him where he was at?

10          A.    Because he needed to be in jail.

11          Q.    Did you try and figure out where he was?

12          A.    Uh-huh, yes.

13          Q.    You have to answer yes or no.

14          A.    Yes.

15          Q.    Um, did you speak to him after that - - on the phone?

16          A.    No, not on the phone.

17          Q.    Okay.

18          Did you see him the same day later?

19          A.    Yes.

20          Q.    Okay.

21          Where did you see him at about later?

22          A.    I seen him, um, it was probably about 9 - - 9:00. I'm not  
23          sure, though, because it was - - I know it was dark and kind of a  
24          little bit late, and, um, I was coming from my friend, Rhonda,  
25          house that stayed right across the street from my sister, Kelly,

MS. TAYLOR - DIRECT EXAMINATION BY MR. MODICA

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1 and he came walking up out the - - -

2 Q. Who is "he"?

3 A. I meant - - I'm sorry. Jamie did. He came up out the dark,  
4 and he was, like, "What are you trying to do? You trying to get me  
5 locked up?"

6 And I was, like, "What you talking about?"

7 And he said that he saw the detective leaving from my sister  
8 house, and he told me what time they was there, and when they left.  
9 He said he - - he was watching the house. He was, like, don't  
10 think that he ain't going to find anything out.

11 And then that's when I told him: I say, "I didn't tell," I  
12 say, "I didn't tell the people nothing."

13 And he was, like, "Well - - -"

14 Q. You referring to the police?

15 A. Yeah.

16 I was, like, "I didn't tell them nothing."

17 And that's when he was, like, well, he said he should have  
18 killed Lasha, and she would be dead by the morning - - by that  
19 morning.

20 Q. Now, when he confronted you about the police being at your  
21 sister's house, is that the time that the police were at the house?

22 A. Yes. That was the right time. He did see them.

23 Q. The defendant did know when they were there?

24 A. Yes.

25 Q. And you were there when the police came?

MS. TAYLOR - CROSS EXAMINATION BY MR. FOX

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1 A. Yes, I was there.

2 Q. So, you yourself know in terms of the time frame that he was  
3 right on the money?

4 A. Uh-huh. He was right on the money.

5 Q. Is that a yes?

6 A. Yes, that's a yes.

7 Q. Thank you.

8 Answer any questions counsel - - ma'am, he might have some  
9 questions.

10 A. Oh, okay.

11 CROSS EXAMINATION BY MR.. FOX:

12 Q. Now, Ms. Taylor, you say that when you talking about the  
13 police being at somebody's house, that was at Ms. Kelly's house?

14 A. Yes.

15 Q. Okay.

16 And that's Brian Gilliard's fiancé?

17 A. Yes.

18 Q. And Brian Gilliard was Mr. Bryant's nephew?

19 A. Yes.

20 Q. And, in fact, Kelly and Brian Gilliard stay together. Right?

21 A. Yes.

22 Q. Okay.

23 And was Mr. Gilliard there when the police were there?

24 A. Yes, he was.

25 Q. Did he make any phone calls while you were there that you saw?

MS. TAYLOR - CROSS EXAMINATION BY MR. FOX

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1 A. I didn't see any phone calls.

2 Q. Okay.

3 Now, Mr. Bryant made all these phone calls to you, and your  
4 testimony is he, basically, was looking for his wife, looking for  
5 her phone number and then called you afterward to tell you what he  
6 had done. Correct? The next morning he supposedly called you  
7 afterwards and said, "This is what I've done to Lasha."?

8 A. Who you -- Brian?

9 Q. Right. Jamie?

10 A. Oh, you said Jamie. Or it was Brian.

11 Um, no.

12 You said he did what now?

13 Q. He called you the night before Lasha Bryant was attacked.

14 Right?

15 A. Attacked, yes.

16 Q. Correct?

17 A. Uh-huh.

18 Q. And you said he called you several times the next day.

19 Correct?

20 A. Uh-huh.

21 Q. And when did you call the police?

22 A. I didn't call the police.

23 Q. Okay.

24 And when did you tell them all these phone calls came from Mr.  
25 Bryant?

MS. TAYLOR - CROSS EXAMINATION BY MR. FOX

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1 A. I told Lasha what happened, and Lasha had told the detective.

2 Q. And were you there with Lasha? You don't know? Were you  
3 present when Lasha spoke to the detective?

4 A. No, I wasn't.

5 Q. So you don't know what she told him?

6 A. No, I don't know because the detective called me.

7 Q. Right.

8 And did anyone ever come out and speak to you after that?

9 A. Yes.

10 Q. Who was that?

11 A. That was the office - - um, the detective. I can't remember  
12 his name.

13 Q. Is he here in court today?

14 A. I think it's that guy right there.

15 Q. Wearing a suit?

16 A. Yeah. I think so.

17 I know he was a big - - that's him.

18 Q. Officer Sparkman - - with the white shirt and tie?

19 A. Yes.

20 Q. Okay.

21 And a bald head.

22 A. Yes.

23 Q. And he spoke to you about these phone calls?

24 A. Yes, I and I told - - yeah.

25 Q. Okay.

MS. TAYLOR - CROSS EXAMINATION BY MR. FOX

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1 Did he write anything down? Was he taking notes or write a  
2 statement?

3 A. He just - - the only thing he put down was that because I told  
4 him I didn't want to get involved with it or whatever, and, you  
5 know, because I told Lasha that before, and she even told the  
6 detective that I didn't want to get into it - - involved with, you  
7 know, anything.

8 I say, "I can try to see if he can get locked up,"

9 And she was real scared but I didn't want to get involved.

10 Q. So you talked to Lasha about it?

11 A. Yeah, and she told - - I was telling her everything that he  
12 was telling me.

13 Q. And so, again, my specific question was when you talked to  
14 Officer Sparkman here was he taking notes? . . .

15 A. I think he took some - - I don't know if he took anything down  
16 because something happened, and he, you know, he left and had to  
17 come back.

18 Q. Okay.

19 Did he take any notes that time?

20 A. I don't think so.

21 Q. Okay.

22 Did he have a tape recorder with him?

23 A. No. I don't think so.

24 Q. Did he ever ask you to sign a statement about what had  
25 happened?

MS. TAYLOR - CROSS EXAMINATION BY MR. FOX

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1 A. No.

2 Q. Okay.

3 MR. FOX: One moment, Your Honor.

4 Q. Did, um, Officer Sparkman or anybody else ever come back and  
5 ask you who your cell phone company was or ask for your cell phone?

6 A. No.

7 Q. Okay.

8 They never asked you to provide any records or anything?

9 A. No.

10 Q. Cell phone records?

11 A. No.

12 Q. Okay. Alright.

13 And the first call you got you are sure was midnight on  
14 February 10th-11th?

15 A. Yes, I think that was it.

16 Q. And that was - - from the phone number?

17 A. Yes.

18 Q. No question in your mind about that?

19 A. Huh?

20 Q. No question in your mind about that?

21 A. No, there's no question. I know that's the number that was  
22 called on my phone. The first two or three numbers, yes.

23 Q. Where - - and where were you when you got these calls?

24 A. I was, um, home sleeping.

25 Q. In your house?

MS. TAYLOR - CROSS EXAMINATION BY MR. FOX

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1 A. In my sister house.

2 Q. Was that at Kelly's house?

3 A. Yes.

4 Q. Okay.

5 Ah, do you know what time you went to sleep?

6 A. I just had laid down. It was probably about 11:00 when I  
7 went.

8 Q. Okay.

9 Who was there when you laid down?

10 A. Me and my sister.

11 Q. Brian Gilliard wasn't there at that time?

12 A. No, he wasn't.

13 Q. Do you know where he was at that time?

14 A. No.

15 Q. Okay. Thank you. I have no further questions.

16 MR. MODICA: I have nothing further.

17 THE COURT: You may come down. Thank you.

18 MR. MODICA: May this witness be - - -

19 MS. TAYLOR: Thank you.

20 MR. MODICA: May she be excused, Your Honor?

21 THE COURT: Yes.

22 You are now excused but you may remain if you care to. Okay?

23 You may remain in the courtroom if you care to.

24 (The witness leaves the witness stand.)

25 THE COURT: Alright. Call your next witness.

THE STATE RESTS/CHARGE-COURT TO DEF-RIGHT TO TESTIFY OR NOT 171

1 MR. MODICA: Thank you very much, Your Honor.

2 THE STATE RESTS

3 MR. MODICA: The State rests.

4 THE COURT: Sir?

5 MR. MODICA: The State rests.

6 THE COURT: Alright.

7 I'll let you go to your jury room for just a moment, and I'll  
8 be calling you right back out.

9 Thank you.

10 (The jury retires to the jury room.)

11 THE COURT: Alright.

12 Mr. Fox, the jury is outside the presence of the court. I  
13 want to make the appropriate inquiry of the defendant. Have him  
14 stand, please.

15 (Defendant stands before the Court.)

16 CHARGE OF THE COURT TO DEFENDANT - RIGHT TO TESTIFY OR NOT

17 THE COURT: Mr. Defendant, the time has now come for you  
18 and your lawyer to present such defense as you think appropriate.  
19 Of course, we have taken one of your witnesses out of order  
20 already, and you, of course, have the opportunity to call any other  
21 witnesses you want.

22 You understand that?

23 MR. BRYANT: Yes, sir.

24 THE COURT: Now, in addition to that, you have the absolute  
25 right to take this stand and to testify and then, thereafter, to be

CHARGE-COURT TO DEF-RIGHT TO TESTIFY OR NOT

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1 cross examined by the State's attorney.

2 You understand that?

3 MR. BRYANT: Yes, sir.

4 THE COURT: As I have told the jury on two occasions, you  
5 are presumed innocent, and you don't have to prove a thing. Having  
6 said that, I tell you that it is your absolute constitutional right  
7 not to testify if you care to.

8 In the event, and I say that - - in the event it is your  
9 decision that you do not testify, I would specifically charge the  
10 jury that the fact that you did not testify can not be held against  
11 you in any way. That fact, ah, raises no adverse inferences to  
12 you, and the fact that you did not testify must not even be in  
13 their deliberations in the jury room because that's your absolute  
14 constitutional right.

15 You understand that?

16 MR. BRYANT: Yes, sir.

17 THE COURT: Now, with regard to the question of your  
18 testifying or not testifying, obviously, you would discuss this  
19 with your attorney but the final decision on that issue rests  
20 solely with you.

21 Do you understand that?

22 MR. BRYANT: Yes, sir.

23 THE COURT: Do you have any questions about what I've said  
24 to you?

25 MR. BRYANT: No, sir.

CHARGE-COURT TO DEF-RIGHT TO TESTIFY OR NOT

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- 1 THE COURT: Is it your desire to testify or not testify?
- 2 MR. BRYANT: I think I need to testify..
- 3 THE COURT: Sir?
- 4 MR. BRYANT: Yes, sir.
- 5 THE COURT: You - - you desire to testify?
- 6 MR. BRYANT: Yes, sir.
- 7 THE COURT: That is certainly your right, and I will honor
- 8 that.
- 9 Alright, Mr. Fox, are you ready to go?
- 10 MR. FOX: Your Honor, based on the last witness I'd like
- 11 just moment to call a witness that's on my list that I had not
- 12 anticipated calling. I'd like to call Mr. Brian Gilliard to see if
- 13 I can reach him to come down here. He can either answer or not
- 14 but I'd prefer to get him before Mr. Bryant. I can go make that
- 15 call right now or I can wait.
- 16 THE COURT: Go make the call and let's see.
- 17 I want to conclude the testimony this afternoon.
- 18 MR. FOX: Yes, sir.
- 19 THE COURT: If at all possible.
- 20 MR. FOX: Otherwise, I can speak with Mr. Bryant.
- 21 MR. MODICA: Your Honor, I don't know if counsel has any
- 22 motions.
- 23 THE COURT: Sir.
- 24 MR. MODICA: I don't know if he has any motions at the
- 25 conclusion of the State's case.

## MOTIONS AND RULING OF THE COURT

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1 THE COURT: I'll deal with that. I pretty well know the  
2 rules.

3 MR. MODICA: Thank you.

4 THE COURT: Alright.

5 Okay.

6 Any motions at this time?

## MOTIONS AND RULING OF THE COURT

7 MR. FOX: Yes, Your Honor.

8 At the conclusion of the State's case, we'd have a motion for  
9 a directed verdict as to all charges, all five indictments.  
10 Specifically, the State has not carried its burden of proof as to  
11 each and every element, ah, that there has not been shown - - -  
12

13 THE COURT: Well, let's talk about the elements. Tell me  
14 what element they haven't proved if believed by the jury first as  
15 to burglary?

16 MR. FOX: As to burglary?

17 THE COURT: Yes, sir, first degree.

18 MR. FOX: Judge, I'm not - - I'm not - - I believe they  
19 have not proved them beyond a reasonable doubt, and that would be  
20 my position. The Court can - - -

21 THE COURT: Well, there's overwhelming evidence here, one,  
22 that the door was knocked in; two, that he didn't have permission  
23 to do it. There is sufficient evidence, if believed, that he went  
24 in to attack that woman.

25 The burglary is the entering of the property of another

## MOTIONS AND RULING OF THE COURT

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1 without consent - -

2 MR. FOX: Yes, sir.

3 THE COURT: - - with intent to commit a crime therein.

4 MR. FOX: Yes, sir.

5 THE COURT: There's testimony on all those issues.

6 So, as to burglary, it's respectfully denied.

7 With regards to kidnapping, her testimony, if believed, her  
8 being the victim standing alone clearly meets the element of  
9 kidnapping in that she was against her will hauled downstairs,  
10 restrained and then choked.

11 If believed, and that's for the jury to determine.

12 With regard to assault and battery with the intent to kill or  
13 the lesser included ABHAN, obviously, there's testimony as to both  
14 of the victims that he beat them with a stick which can be  
15 constructed as a deadly weapon or dangerous instrumentality.

16 And with regards to burglary, it's clear that the entry  
17 occurred in the nighttime.

18 So, as to all of these charges it's a question for the jury,  
19 and if the evidence that is there is believed, it is sufficient to  
20 find beyond a reasonable doubt that he's guilty of all of them.

21 Of course, they may determine something different.

22 MR. FOX: Yes, Your Honor. I - - -

23 THE COURT: So you are - - you're protected for the record  
24 but as to each of these charges, they will go forward, and your  
25 motion for a directed verdict on the insufficiency of evidence is

## MOTIONS AND RULING OF THE COURT

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1 specifically and respectfully denied.

2 MR. FOX: And, additionally, Your Honor, briefly, I'd  
3 renew the objection we had made to testimony regarding the incident  
4 on February 10<sup>th</sup> which is the evening prior to the attack we're at  
5 trial for today. Specifically, my objection would be that that is  
6 evidence of a prior bad act that the State offered, and there was  
7 no, ah, justification given as to what exception that that would  
8 fall under.

9 THE COURT: It was, in my view, so close to this date - -  
10 it occurred on February 10<sup>th</sup>. My view is that it was so close as  
11 to what occurred here on February 11<sup>th</sup>, one, that it was a  
12 continuing event, and, secondly, if believed, he, of course, was in  
13 violation of a restraining order if, in fact, there was a  
14 restraining order.

15 So, I conclude it was so near in fact and dealt with the same  
16 type of testimony we are concerned here with today that it was  
17 appropriate that the jury had the benefit of that for their  
18 consideration.

19 MR. FOX: Yes, Your Honor.

20 I understand that ruling. I just for the record, again, renew  
21 the objection. The request I would have and, additionally, I  
22 would say that the prejudicial value of such testimony outweighed  
23 it's probative value and, therefore, should have been admissible  
24 and we would request a new trial.

25 THE COURT: I would conclude that the jury was entitled to

## MOTIONS AND RULING OF THE COURT

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1 know if they believed it that on the night before that he  
2 threatened the victim and that in - - in the following day if  
3 believed that he carried out his threat.

4 I think it's one continuing action, and I think it's  
5 appropriate for the jury's consideration but you are protected for  
6 the record.

7 MR. FOX: Thank you, Your Honor, and I'll go make that  
8 phone call now.

9 THE COURT: Alright, sir. Let's do that.

10 I assume, Solicitor, that you don't have any motions of any  
11 kind?

12 MR. MODICA: No, Your Honor.

13 (The Court recesses this case for a brief break and then  
14 reconvenes this case.)

15 THE COURT: You may be seated.

16 MR. FOX: I am, Your Honor, going to make sure Mr. Bryant  
17 wishes to testify, and I'm satisfied with my report. I'm finished  
18 with that.

19 THE COURT: It's his - - it his - - of course, that's his  
20 decision.

21 MR. FOX: Yes, sir.

22 THE COURT: Of course, he's entitled to discuss it with  
23 you, certainly.

24 Alright. Find the Solicitor and tell him let's go.

25 MS. BIAGIANTI: Okay.

## MOTIONS AND RULING OF THE COURT

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1 THE COURT: Where is he?

2 MS. BIAGIANTI: In here, Judge.

3 THE COURT: Okay.

4 Well, tell him to quit hiding and come on back.

5 Sir?

6 MR. FOX: He told me one other person I need to call.

7 It's his mother and I know her number to come down here.

8 We can go ahead with Mr. Bryant if he wishes to testify. His

9 mother is close by and I can get her down here.

10 THE COURT: Alright.

11 Bring the jury in.

12 MR. FOX: So, I'll probably have a chance to call her

13 while they come in and tell her to come down here.

14 THE COURT: Can't you get somebody to call for you?

15 MR. FOX: Sure.

16 THE COURT: Ask one of them.

17 I don't want to - - -

18 MR. FOX: I mean, she's under subpoena. I've got her

19 cell phone, and I just spoke to his sister.

20 THE COURT: Ask one of these gentlemen to call for you.

21 (The jury returns to the courtroom.)

22 THE COURT: Alright, sir.

23 Mr. Fox, call your witness.

24 MR. FOX: Johnell Sparkman, Your Honor.

25 (The witness takes the witness stand.)

INVESTIGATOR SPARKMAN - DIRECTION EXAMINATION BY MR. FOX 179

1 INVESTIGATOR JOHNELL SPARKMAN, being duly  
2 sworn, testifies as follows:

3 DEPUTY CLERK OF COURT: Please state your name for the Court.

4 INVESTIGATOR SPARKMAN: Johnell Sparkman.

5 DIRECT EXAMINATION BY MR. FOX:

6 Q. Officer, what's your title with the Sheriff's Department?

7 A. Criminal Investigator.

8 Q. Criminal Investigator. Okay. Criminal Investigations.

9 Ah, how long have you been an investigator for the Sheriff's  
10 Department?

11 A. Georgetown Police Department. Approximately a year.

12 Q. I apologize. Police Department.

13 And how long in law enforcement?

14 A. Approximately seven years.

15 Q. And you were the investigation officer on this incident with  
16 Ms. Lasha Bryant's residence?

17 A. Yes. I was on-call on that date.

18 Q. Okay.

19 And - - one minute while I look through all my notes.

20 Did you go out to the residence at Avant Court that  
21 morning, February 11<sup>th</sup>?

22 A. Yes.

23 Q. Okay.

24 And what time do you recall that you arrived there?

25 A. Approximately 6:30.

INVESTIGATOR SPARKMAN - DIRECTION EXAMINATION BY MR. FOX. 180

1 Q. And that would be in the morning?

2 A. Yes.

3 Q. And do you know what - - what was the 911 call?

4 Approximately 6:15?

5 A. Correct.

6 Q. And you were there by 6:30?

7 A. Between 6:15 and 6:30.

8 Q. Okay.

9 At the time you arrived who was present in the apartment?

10 A. Sgt. Keith Smalls and Corporal Tim Burroughs.

11 Q. Okay.

12 How about any of the residents or Ms. Bryant, children or  
13 anybody? Were they still there?

14 A. Her - - her daughter and son.

15 Q. Okay.

16 Ms. Bryant was not?

17 A. No.

18 Q. Okay.

19 Um, did you go to the hospital to interview Ms. Bryant and Mr.  
20 Hayward?

21 A. No. I took photos of Mr. Hayward at the ER.

22 Q. At the ER?

23 A. Yes.

24 Q. Okay.

25 Were you the one that took the photographs at the residence,

1 the apartment?

2 A. Yes.

3 Q. Okay.

4 So you went upstairs and downstairs at the apartment?

5 A. Yes.

6 Q. And this would have been just moments after the attack took  
7 place?

8 A. Correct.

9 Q. The place hadn't been cleaned up yet. Correct?

10 A. No.

11 Q. Okay.

12 Ah, and there was fair to describe a good bit of blood around?

13 A. Yes.

14 Q. Okay.

15 Where? Where do you remember there being blood?

16 A. Upstairs, in the bedroom, on the bed, on the walls, upstairs  
17 going down the steps downstairs and in the downstairs restroom.

18 Q. And you saw Mr. Hayward himself there at the scene or was that  
19 at the ER? I'm sorry.

20 A. At the ER.

21 Q. He was still in the same clothes he was wearing that morning?

22 A. As far as I know.

23 Q. Okay. Then what condition was his clothes in?

24 A. Bloody.

25 Q. Bloody?

INVESTIGATOR SPARKMAN - DIRECTION EXAMINATION BY MR. FOX

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1 A. Yes.

2 Q. And did you see Ms. Bryant?

3 A. No. She was, ah, I believe she was taking some x-rays or  
4 something.

5 Q. Okay.

6 Now, I've already forgotten.

7 Did you yourself take pictures of the apartment?

8 A. Yes.

9 Q. Okay.

10 What other duties did you have while at the apartment in terms  
11 of the crime scene?

12 A. Collected evidence.

13 Q. What type of evidence?

14 A. Collected a wooden piece - - a handle, a wooden handle, um,  
15 took pictures.

16 Q. Okay.

17 Collect anything besides the handle?

18 A. No.

19 Q. Okay.

20 Did you have any responsibility for further investigation, um,  
21 of this case beyond that morning when you first arrived?

22 A. Yes. I was assigned the case.

23 Q. Okay.

24 So it would have been your duty to interview any witnesses  
25 related to the case?

INVESTIGATOR SPARKMAN - DIRECTION EXAMINATION BY MR. FOX 183

1 A. Yes.

2 Q. Okay.

3 Did you collect at the scene there at the apartment or attempt  
4 to take any latent impressions, any fingerprint impressions.

5 A. No.

6 Q. Do you know if any of the other officers did?

7 A. No, not to my knowledge.

8 Q. Okay.

9 Did you yourself ever speak to Ms. Bryant regarding this - -  
10 Latasha Bryant regarding this attack?

11 A. No.

12 Q. Did you review any statement that she gave to any other  
13 officers?

14 A. She gave to the Victim's Advocate.

15 Q. Okay.

16 So are you familiar with her description? You were in the  
17 courtroom when she testified today, were you not?

18 A. Yes, sir.

19 Q. Okay.

20 Um, did you ever yourself take any fingerprint impressions  
21 from the bedroom, from the light switch in the bedroom?

22 A. No.

23 Q. Did you direct any other officer to do so?

24 A. No.

25 Q. Are you aware of any fingerprints that were obtained from

INVESTIGATOR SPARKMAN - DIRECTION EXAMINATION BY MR. FOX

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1 anywhere in the apartment?

2 A. No.

3 Q. What about samples of blood?

4 A. From the weapon that was used.

5 Q. What exactly?

6 A. Blood.

7 Q. Okay.

8 Did you collect that?

9 A. Yes.

10 Q. Okay.

11 And how did you do that?

12 A. Ah, used a swab with solution to remove it from the, ah,  
13 object, the stick.

14 Q. And what -- were you finished? I'm sorry. I didn't mean to  
15 cut you off.

16 A. Yes, I'm finished.

17 Q. Okay.

18 And what happened with the sample?

19 A. It was placed into evidence.

20 Q. And then what?

21 A. We didn't request to send it to -- to submit it to SLED being  
22 that we know it was the victim's blood. It was the weapon that was  
23 used to assault the victim.

24 Q. Um, did at some point, obviously, Ms. Bryant had named -- and  
25 her son had named James Bryant as the attacker. Correct?

INVESTIGATOR SPARKMAN - DIRECTION EXAMINATION BY MR. FOX . 185

1 A. Correct.

2 Q. Now, did you ever yourself, did you ever go out to Mr.  
3 Bryant's residence?

4 A. Yes.

5 Q. Okay.

6 Did you search that residence?

7 A. No.

8 Q. Mr. - - was Mr. Bryant there when you went to the residence?

9 A. Not that I know of.

10 Q. When was it you went out there?

11 A. We were out there on the morning of the incident and one time  
12 after.

13 Q. Can you recall the time of the morning that day? Before  
14 noon?

15 A. Yes, before noon.

16 Q. So within a few hours of the attack?

17 A. Yes.

18 Q. Okay.

19 And this was his mother's residence on High Market Street?

20 A. Yes.

21 Q. At the address we heard about?

22 A. Yes..

23 Q. Okay.

24 Did you have a search warrant?

25 A. No..

INVESTIGATOR SPARKMAN - DIRECTION EXAMINATION BY MR. FOX

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1 Q. Did you ask for a search warrant?

2 A. No.

3 Q. Could you have gotten one based on the evidence you had at  
4 that point?

5 A. Yes.

6 Q. Okay.

7 Were you not interested in possibly finding some of the  
8 defendant's clothes, Mr. Bryant's clothes?

9 A. Yes.

10 Q. Did you have reason to suspect that perhaps in such a brutal  
11 attack, the attacker might have some of the victim's blood - - -

12 MR. MODICA: Your Honor - - I'm sorry. I thought he called  
13 this person as his witness.

14 THE COURT: Sir?

15 MR. MODICA: This appears to be cross examination of this  
16 witness.

17 THE COURT: Follow the rule, now.

18 MR. FOX: I will, Your Honor.

19 THE COURT: He understands the rules.

20 MR. FOX: Yes, Your Honor. I'll be more careful.

21 Q. The answer is you did not have a search warrant. Is that  
22 correct?

23 A. Correct.

24 Q. Okay.

25 Did you ever find at his residence or anywhere else any

INVESTIGATOR SPARKMAN - DIRECTION EXAMINATION BY MR. FOX 187

1 clothes belonging to Mr. Bryant or ever take into evidence  
2 belonging to Mr. Bryant?

3 A. No.

4 Q. Did you ever at his residence or anywhere else find a piece of  
5 a handle similar to the one you found in the apartment?

6 A. No.

7 Q. Did you find - - did you find - - you ever speak with Octavia  
8 Taylor?

9 A. Yes.

10 Q. Okay.

11 When was that?

12 A. I don't recall exactly.

13 Q. How did her name come to your attention?

14 A. The Victim's Advocate.

15 Q. How long after - - I'm sorry. You answered you were not sure  
16 when that was?

17 A. Yes.

18 Q. Okay.

19 So Ms. Taylor did not call you?

20 A. No.

21 Q. Did you interview her yourself?

22 A. Yes.

23 Q. Anybody else present when you interviewed her?

24 A. Her sister and a male subject, Mr. Bryant's nephew.

25 Q. Would that be Brian Gilliard?

INVESTIGATOR SPARKMAN - DIRECTION EXAMINATION BY MR. FOX 188

1 A. Yes.

2 Q. Did you take a statement, now, I use the word statement. Did  
3 you take a statement from Ms. Taylor? ...

4 A. She didn't disclose anything. So I didn't take anything.

5 Q. Do you recall what she told you?

6 A. She didn't want to get involved.

7 Q. So she - - your testimony is she did not disclose anything?

8 A. Correct.

9 Q. Okay.

10 So was there any reason in your mind to write a report or - -  
11 then there was no statement to write for her, was there?

12 A. No.

13 Q. Did you have a recording device with you?

14 A. No.

15 Q. Did you - - we've heard testimony about various phone calls  
16 from different locations. Did you ever see her phone records?

17 A. No.

18 Q. From any cell phone or residence?

19 A. No.

20 Q. Did you speak to, ah, Mr. Bill Grimes?

21 A. Yes. It was later on during the investigation.

22 Q. Ah, did you make any either written record or recording of  
23 that, ah, conversation with Mr. Grimes?

24 A. No.

25 MR. FOX: Court's indulgence just a moment, Your Honor.

INVESTIGATOR SPARKMAN - DIRECTION EXAMINATION BY MR. FOX 189

1 Q. Um - - -

2 MR. MODICA: Your Honor, may we approach?

3 (Bench conference off record but in the presence of the jury.)

4 Q. In addition to Mr. Grimes, did you speak to any other  
5 witnesses regarding Mr. Bryant's whereabouts that morning or  
6 evening?

7 A. Throughout the investigation I spoke to several people who he  
8 is associated with - -

9 Q. Do you recall - - -

10 A. - - to find out his whereabouts.

11 Q. Do you recall who you spoke to?

12 A. Ah, I know him as C. C. but I believe his real name is Clifton  
13 Ford.

14 Q. Anybody else?

15 A. Um - - no one else I can recall. No other name I can recall  
16 right now.

17 Q. Did you take a statement from Clifton Ford?

18 A. No.

19 Q. Did you have any indication from anyone else about - - I think  
20 I've - - your testimony is Clifton Ford is the only person you  
21 spoke with regarding Mr. Bryant's whereabouts the evening of the  
22 10<sup>th</sup> and 11<sup>th</sup>?

23 A. Well, on the second visit at his mother's house, we spoke to  
24 his brother.

25 Q. And that was whose brother?

INVESTIGATOR SPARKMAN - CROSS EXAMINATION BY MR. MODICA

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1 A. Mr. Bryant's brother.

2 Q. What's his name?

3 A. Ricky Gilliard. I don't know if whether it was his brother.  
4 It's a family member.

5 Q. I understand.

6 Thank you. No further questions.

7 CROSS EXAMINATION BY MR. MODICA:

8 Q. Y'all busy down at the police department?

9 A. Quite busy.

10 Q. Got more crime than you can handle, in fact?

11 A. Pretty much.

12 Q. Now, you correct me if I'm wrong. The reason why you take  
13 photo, ah, the reason why you take fingerprints or try to develop  
14 fingerprints and the reason why you take blood swabs is when you  
15 don't know the identity of the parties?

16 A. Correct.

17 Q. If you - - if you do know the identity and you do all that  
18 work, that's just a plain old waste of time. Isn't it?

19 A. Correct.

20 Q. Time is precious in your department?

21 A. Yes, it is.

22 Q. Now, taking or attempting to develop latent fingerprints is a  
23 dirty, messy process, isn't it?

24 A. Yes.

25 Q. And it somewhat trashes the place that you do that?

1 A. Yes.

2 Q. It makes it filthy, dirty?

3 A. Yes.

4 Q. Okay.

5 And, ah, we know now in this case that even though he didn't  
6 live there, he had been there on occasions. So finding his prints  
7 there wouldn't make any difference now, would it, sir?

8 A. Correct.

9 Q. And I bet you could have spent days collecting blood samples  
10 from all that blood all over the place, couldn't you?

11 A. Correct.

12 Q. Didn't make sense to collect it under these circumstances?

13 A. No, it didn't.

14 Q. Given the eye-witness testimony from his own child?

15 A. Yes.

16 Q. His wife?

17 A. Yes.

18 Q. And his wife's then boyfriend?

19 A. Yes.

20 Q. It made no sense to do all that, did it?

21 A. No.

22 Q. Now, in regard to the, um, items used to commit this assault,  
23 you said you collected a wooden handle. It was actually two  
24 pieces, what I took out and showed to the jury today?

25 A. Yes.

INVESTIGATOR SPARKMAN - CROSS EXAMINATION BY MR. MODICA

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1 Q. That's what you collected?

2 A. Yes.

3 Q. And, ah, you are aware from your investigation that shortly  
4 after this incident when y'all arrived, y'all called upon the  
5 Sheriff's Department's to send somebody over to the defendant's  
6 residence at his mother's house. Correct?

7 A. Yes.

8 Q. And that had negative results?

9 A. Yes.

10 Q. And by the way, that's outside your jurisdiction where he  
11 lives. Correct?

12 A. Yes.

13 Q. So, you -- to some degree you have to rely on the good graces  
14 and kindness of the Sheriff's Department to help you out?

15 A. Yes.

16 Q. And at least to some degree, they did in this case?

17 A. Yes.

18 Q. Your search warrants have no jurisdiction in the county. Is  
19 that correct?

20 A. No.

21 Q. You'd have to get them countersigned?

22 A. Yes..

23 Q. And, um, you didn't do that and maybe in hindsight you could  
24 have done that?

25 A. Yes.

1 Q. But it doesn't mean that you would have found any blood on the  
2 clothing?

3 A. Correct.

4 Q. It doesn't mean you would have the clothing whatsoever, would  
5 you?

6 A. Correct.

7 Q. It doesn't mean you might have found the other pieces to the  
8 wooden handle?

9 A. Correct.

10 Q. During a search warrant - - by the way, you've been to the  
11 Bryant home. Correct? His mom's home.

12 A. Yes.

13 Q. That - - and correct me if I'm wrong. That's a pretty big  
14 house?

15 A. Yes.

16 Q. When you do a search warrant, you have to look in every nook  
17 and cranny?

18 A. Yes.

19 Q. To some degree you have to tear apart the person's house?

20 A. Correct.

21 Q. And you made an intelligent decision not to and tear up his  
22 house - - his momma's house?

23 A. Correct.

24 Q. By the way, they live on a great big piece of property as  
25 well. Right?

INVESTIGATOR SPARKMAN - CROSS EXAMINATION BY MR. MODICA

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1 A. Yes.

2 Q. There's tons of places that pieces of shovel - - the rest of  
3 the shovel and bloody clothes could have been hid?

4 A. Yes.

5 Q. But all of that would have been important if you didn't know  
6 the identify of the person who did this horrible thing?

7 A. Absolutely.

8 Q. But you did. You knew?

9 A. Yes.

10 Q. And there was no question in your mind?

11 A. No.

12 Q. Oh, by the way, would it be fair to say that the defendant was  
13 trying to hide himself from y'all from being arrested?

14 A. Yes.

15 MR. FOX: Objection. Calls for speculation.

16 Q. Well, did you - - -

17 THE COURT: I sustain that objection.

18 Q. - - did you yourself arrest him?

19 A. Yes.

20 THE COURT: You can ask him what questions about what  
21 occurred and let the jury make such determines as you've tried to  
22 elicit. That's for the jury to determine.

23 MR. MODICA: Yes, sir.

24 THE COURT: Go ahead.

25 Q. Well, did he call you on a number of occasions and tell you he

1 was coming in?

2 A. I called him.

3 Q. He said he was coming in?

4 A. Yes.

5 Q. Did he come in?

6 A. No.

7 Q. Um, were you involved in his arrest?

8 A. Yes.

9 Q. And where was that?

10 A. 2100 block of Duke Street within the city limit of Georgetown.

11 Q. And who was with you at the time that you tried to arrest him?

12 A. My supervisor, Sgt. Jimmy Burk.

13 Q. What, if anything, did the defendant do when he saw y'all?

14 A. He attempted to walk away. We told him to stop, and he  
15 complied.

16 Q. You got the jump on him?

17 A. Yes.

18 Q. It looked like he was going to bolt?

19 A. At first he did, and when he saw - - recognized me, he  
20 stopped.

21 Q. Okay.

22 Because you essentially had a jump on him?

23 A. Pretty much. We had another unit waiting in the 2100 block  
24 of Church Street which is adjacent to Duke Street.

25 Q. Thank you.

INVESTIGATOR SPARKMAN - REDIRECT EXAMINATION BY MR. FOX

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1 MR. FOX: Briefly, Your Honor.

2 REDIRECT EXAMINATION BY MR. FOX:

3 Q. And that arrest was here in the city limits?

4 A. Yes.

5 Q. During the daytime?

6 A. Yes.

7 Q. And he was just walking down the street?

8 A. We got a call. I got a call. . . I got an anonymous tip.

9 Q. But, I mean, he was there just walking down the street when  
10 you got to Duke Street?

11 A. He was walking through a path between Duke and Church Street.

12 Q. Okay.

13 And it was your testimony that it was only the goodness of  
14 your heart the reason you didn't search Ms. Bryant's home?

15 A. Yes.

16 Q. Have you ever executed a search warrant before?

17 A. Yes.

18 Q. Alright.

19 Are you as careful as you can possibly be when you do that?

20 A. Yes.

21 Q. You don't unnecessarily disrupt and tear things up?

22 A. If you call it that?

23 Q. I say you don't do that. Right?

24 A. Sometimes we are required to do that.

25 Q. Right. Sometimes you are required to do that.

1           Um, now, the fact that a search may be difficult that there's  
2 a big house, is that any reason not to search?

3           A. I had no reason to do so.

4           Q. Would the Sheriff had executed a warrant if you had gotten  
5 one? Would the Sheriff's Office have given you any trouble about  
6 executing that?

7           A. It depends on their manpower.

8           Q. How long did this investigation last?

9           A. Several weeks, a couple of weeks.

10          Q. If you had gotten a warrant the day after this happened, do  
11 you have any reason to think that the Sheriff couldn't have  
12 conducted a search at that residence within several weeks?

13          A. If they had the availability, yes, they could have.

14          Q. Can you offer me one example of a time when they have taken  
15 several weeks to conduct a warrant search?

16          A. No.

17          Q. Thank you. No further questions.

18          THE COURT:        Alright, sir. You may come down. Thank you.

19                (The witness leaves the witness stand.)

20          THE COURT:        Next witness.

21          MR. FOX:           May we approach, Your Honor?

22          THE COURT:        Alright, sir.

23                (Bench conference off the record but in the presence of the  
24 jury.)

25          MR. FOX:        The defense rests, Your Honor.

THE DEFENDANT RESTS/CHARGE OF THE COURT

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1 THE DEFENDANT RESTS

2 THE COURT: Alright, sir.

3 Anything in reply?

4 MR. MODICA: No, sir.

5 THE COURT: Alright, sir.

6 Mr. Foreman, ladies and gentlemen, that will conclude the  
7 taking of the testimony and we will - - we're going to adjourn for  
8 this evening. If we kept on going, it's a little after four now,  
9 we would have final summation of counsel and instructions in the  
10 law, all of which would take you to about 5:30, and I don't want  
11 you deliberating tonight.

12 So what we'll do, we'll start back at 9:30 in the morning and  
13 we will have final summation and instructions in the law, and  
14 you'll be getting this case for your deliberation sometime around  
15 11:00 tomorrow.

16 And, ah, this will be the only case this week requiring the  
17 services of the jury.

18 CHARGE OF THE COURT

19 THE COURT: Now, you will understand that just a  
20 moment ago that the defendant rested. The defendant did not  
21 testify. Now, I charge you as strongly as I can that that a  
22 defendant and this defendant did not testify does not raise  
23 absolutely any adverse inferences against him.

24 A defendant and this defendant is presumed innocent. He  
25 doesn't have to prove a thing. The State of South Carolina has to

THE DEFENDANT RESTS/CHARGE OF THE COURT

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1 prove him guilty beyond a reasonable doubt.

2 Now, the fact that this defendant did not testify must not  
3 even enter into your deliberations in the jury room. It is his  
4 constitutional right not to testify as it is mine and as it is  
5 yours. So do not raise any adverse inferences.

6 "Well," you say, "well, he didn't testify."

7 It is his absolute right not to testify.

8 So, Mr. Foreman, I direct you not to let any conversation come  
9 into your deliberations about the fact that he didn't testify  
10 because he doesn't have to, and I say that just as strongly and  
11 emphatically as I know how.

12 Alright.

13 Is there anything else required - - any further instructions  
14 other than to say tonight, now, ah, make no independent inquiry. Do  
15 not discuss this case with anyone. Let no one discuss it with you.

16 It's not likely but if anybody tries to discuss it any issue  
17 in this case with any of you, you take their names and report that  
18 back to me.

19 Do not even discuss it among yourselves until I have given you  
20 the case for your deliberation, and we'll be doing that around  
21 11:00 in the morning.

22 You've been very patient all day. You've all of y'all  
23 listened very attentively, and that's just a sign of a good jury  
24 intent on performing their duties under their oath, and as  
25 presiding judge I deeply appreciate that.

## MOTIONS AND RULING OF THE COURT

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1 So, you are excused to be in the jury room at 9:30.

2 And, Ms. Knox, you have some doughnuts or something for this  
3 fine group of folks.

4 Good evening. Have a good evening.

5 (The jury released for the day and departs the courtroom to  
6 return at 9:30 on Thursday morning.)

7 THE COURT: Good evening.

8 Be seated.

9 The jury has withdrawn from the courtroom. Are there any  
10 motions for the defense at this time?

## MOTIONS AND RULING OF THE COURT

11  
12 MR. FOX: Your Honor, we would just at the conclusion of  
13 the defendant's case renew our motion for a directed verdict or in  
14 the alternative for a new trial based on the Court's finding of the  
15 testimony regarding the February 10<sup>th</sup> incident. We would renew  
16 those motions at this time, Your Honor.

17 THE COURT: You have previously and properly so addressed  
18 these various issues, and I have ruled accordingly, and the ruling  
19 still stands for the reason given at the conclusion of the State's  
20 case.

21 It is obvious that there is specific testimony if believed by  
22 the jury to convict this defendant beyond a reasonable doubt. The  
23 question is for the jury as you well know. I make no statement one  
24 way or the other. I'm just saying to you that it's obvious - -  
25 plenty of testimony there if believed to convict him, and I

## MOTIONS AND RULING OF THE COURT

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1 conclude that your motions are and should be disallowed.

2 MR. FOX: Thank you, Your Honor.

3 THE COURT: But I thank you.

4 . Alright. Now, gentlemen, is there - - let 's talk about your  
5 requests to charge.

6 Obviously, I'm going to charge the general rules of  
7 presumption of innocence, credibility of witnesses and that sort of  
8 thing. In addition to that, I will be charging burglary, first  
9 degree. I'll be charging assault and battery with the intent to  
10 kill and the lesser included assault and battery of a high and  
11 aggravated nature. I will also be charging kidnapping. I will  
12 charge circumstantial evidence. I will again charge failure to  
13 testify though I've done it already.

14 Anybody got any other thoughts that you would desire me to  
15 consider?

16 How about it? What say the State?

17 MR. MODICA: Ah, intoxication of the defendant.

18 THE COURT: Sir?

19 MR. MODICA: Intoxication of the defendant.

20 I don't see that as an issue in this case.

21 MR. FOX: I don't believe we've raised that as an issue,  
22 Your Honor.

23 THE COURT: Nobody has raised any intoxication.

24 MR. FOX: He, ah, Mr. Grimes - - -

25 THE COURT: He says he wasn't there.

## MOTIONS AND RULING OF THE COURT

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1 MR. MODICA: Correct but he says that he picked him up and  
2 he was - - -

3 THE COURT: I'm not going to charge intoxication. That's  
4 not an issue. It would just confuse the jury.

5 MR. MODICA: Your Honor, Mr. Grimes - - -

6 THE COURT: Where is the intoxication issue?

7 MR. MODICA: Mr. Grimes said he was drunk. He was so drunk  
8 he couldn't work. He slept in the car.

9 THE COURT: That - - -

10 MR. FOX: He says he wasn't there. His defense is alibi.

11 THE COURT: Sir?

12 MR. FOX: His defense is alibi.

13 THE COURT: No, sir. I'm not going to charge that.

14 MR. MODICA: Your Honor, if the - - if the Court's asking -

15 - - -  
16 THE COURT: What part of no do you don't understand? I'm  
17 not going to do it.

18 MR. MODICA: Your Honor, the State would also ask that in  
19 regards to burglary, first, that each and every element of  
20 burglary, first, all the elements of burglary, first - - -

21 THE COURT: Don't you think I know what the elements of  
22 burglary, first degree, are?

23 MR. MODICA: What I'm saying is up to and including in the  
24 nighttime, a dwelling, ah, injuring another party, all those  
25 elements.

## MOTIONS AND RULING OF THE COURT

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1 THE COURT: Yes, sir. I think I'm familiar with all of  
2 that but thank you.

3 MR. MODICA: I'm saying you're going to charge them all?

4 THE COURT: The elements of burglary, first degree, will be  
5 charged, and the jury will be informed that they must prove each  
6 and every element of burglary beyond a reasonable doubt.

7 MR. MODICA: Thank you.

8 THE COURT: The elements of burglary, first degree, here is  
9 primarily the nighttime and with intent to commit a felony therein.  
10 It will be a deadly weapon. I'm not sure about that but there's  
11 enough here, the nighttime standing alone that it's sufficient to  
12 make it burglary in the first degree.

13 MR. FOX: Your Honor, the indictment shows -- of course,  
14 its many different ways you can have a first degree burglary. The  
15 indictment says, of course, the elements are without permission and  
16 caused bodily injury but they didn't allege nighttime. I know  
17 there's testimony about that but the indictment doesn't allege that  
18 as --

19 THE COURT: Well, I don't think the indictment has to  
20 allege that.

21 MR. FOX: -- as an element.

22 THE COURT: The indictment alleged burglary in the first  
23 degree, and the jury is entitled to know the elements of it but  
24 I'll charge what's appropriate.

25 But, ah, clearly, the indictment puts you and the defendant on

## MOTIONS AND RULING OF THE COURT

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1 notice that he's charged with burglary in the first degree, and  
2 being the competent attorney that you are, you know what elements  
3 must be proven to make it burglary in the first degree.

4 MR. FOX: Yes, sir.

5 MR. MODICA: Your Honor, we'd also indicate that the - - -

6 THE COURT: Please stand in addressing the Bench.

7 MR. MODICA: The warrants indicate nighttime, and the police  
8 report indicated nighttime.

9 THE COURT: I thought I just said that. Thank you.

10 MR. MODICA: I was just putting that in the record.

11 Thank you.

12 THE COURT: Anything else?

13 MR. MODICA: No, sir.

14 THE COURT: How about it, Mr. Fox?

15 MR. FOX: No, Your Honor.

16 THE COURT: Alright, sir.

17 Thank you.

18 See you in the morning at 9:30.

19 The defendant, now, of course, is in the custody - - remains  
20 in custody.

21 MR. FOX: I'm sorry.

22 THE COURT: The defendant remains in custody.

23 (The Court adjourns this case to address other matters before  
24 the Court before adjourning for the day.)

COURT ADDRESSES DEFENDANT ABOUT POSSIBLE GUILTY PLEA 205

THURSDAY

JUNE 1, 2006

(The Court convenes the trial of this case with all parties present in the courtroom.)

COURT ADDRESSES DEFENDANT REGARDING POSSIBLE GUILTY PLEA

THE COURT: Be seated.

Alright, sir.

Ready to proceed, Mr. Fox?

MR. FOX: Yes, Your Honor.

Mr. Bryant informed me this morning that he at this point wished to enter guilty pleas on all charges.

THE COURT: Alright, sir. Have him come around.

(Defendant stands before the Court.)

THE COURT: Good morning.

MR. BRYANT: Good morning.

THE COURT: Mr. Bryant, of course, since last Monday when we - - -

MR. MODICA: Tuesday, Your Honor. Tuesday.

THE COURT: Pardon me?

MR. MODICA: Tuesday.

THE COURT: When we picked the jury for the trial of your case and all day yesterday and then today, we've been involved in the trial of your case.

As you are well aware, a defendant has a absolute right to put his case before a jury because you as all defendants are presumed

## COURT ADDRESSES DEFENDANT ABOUT POSSIBLE GUILTY PLEA

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1 innocent. You don't have to prove a thing. You understand that?

2 MR. BRYANT: Yeah, uh-huh.

3 THE COURT: Now, you also have that equal right to withdraw  
4 your plea of not guilty and enter a plea of guilty if that be your  
5 free and voluntary decision. Nobody's forced you to do it.  
6 Nobody's coerced you. You understand these things?

7 MR. BRYANT: Yes, sir.

8 THE COURT: Now, we've had a trial all day yesterday. Your  
9 lawyer under the facts has given you excellent representation  
10 though the facts are pretty strong but that's for the jury to  
11 decide.

12 In the trial yesterday it was obvious that all three victims  
13 said that they can identify you. The jury well may believe that.  
14 They're entitled not to believe it but they well may believe it,  
15 particularly your son.

16 In addition to that, there was one other person who identified  
17 you. So, there are four folks who identified you. You understand  
18 that?

19 MR. BRYANT: Yeah.

20 THE COURT: Now, I tell you that the jury is there. All  
21 the testimony is in. I'm getting ready to charge the jury, and  
22 they'll have - - they'll have for them by a verdict within the next  
23 two or three hours. You understand that?

24 Sir?

25 MR. BRYANT: Yeah. Yes, sir.

1 THE COURT: Ah, swear this witness for me, please.

2 (Deputy Clerk of Court swears the defendant.)

3 THE COURT: Alright, sir.

4 Now, I want to be clear that you are under oath and as I  
5 discuss these issues with you if you have any questions about what  
6 I say to you do not hesitate to ask. You would not offend me in  
7 any way. If you don't understand, you say, "Judge, I need to ask  
8 you a question."

9 I'm here to answer any appropriate questions. Do you  
10 understand that?

11 MR. BRYANT: Yes, I do.

12 THE COURT: Now, as a first order of business do you  
13 understand that you are absolutely entitled to go forward with this  
14 trial. The jury is waiting for final instructions at this minute.  
15 Is that right?

16 MR. BRYANT: Yeah. Yes, sir.

17 THE COURT: Okay.

18 Are you saying to me it is now your decision and yours alone  
19 to withdraw your plea of not guilty and enter a plea of guilty?

20 MR. BRYANT: Yes, sir.

21 THE COURT: Are you saying that this is your decision  
22 freely and voluntarily made?

23 MR. BRYANT: Yeah, uh-huh.

24 THE COURT: Nobody has promised you anything?

25 MR. BRYANT: No. It's what they didn't tell me that making

## COURT ADDRESSES DEFENDANT ABOUT POSSIBLE GUILTY PLEA .

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1 me do this.

2 THE COURT: Well, we'll talk about that in just a minute.

3 What is it that somebody failed to tell you? I can tell you  
4 this.

5 MR. BRYANT: My attorney never informed me that there was a  
6 offer of plea for fifteen years. He only told me that yesterday,  
7 and I had asked him that late yesterday afternoon.

8 THE COURT: Well, Mr. Fox is a distinguished attorney with  
9 a wonderful reputation. I've been very much impressed with him,  
10 not only this week but in the various weeks that I have been here,  
11 and it's appropriate that he respond to that.

12 Mr. Fox.

13 MR. FOX: Your Honor, my notes reflect, excuse me, that  
14 I met with Mr. Bryant on May 19<sup>th</sup> at the Detention Center in  
15 Georgetown. At that time I had all of the discovery and met with  
16 Mr. Bryant to review that with him and informed him he was on the  
17 trial roster for this week and that there was an offer from the  
18 Solicitor's Office of fifteen years to cover all charges.

19 Now, there was some discussion of whether it might be reduced  
20 but there was going to be a fifteen year sentence that would  
21 involve a serious, no parole or a most serious, no parole type  
22 offense, probably the kidnapping or burglary, first, but there was  
23 going to be a fifteen year offer.

24 I repeated that to Mr. Bryant Tuesday of this week as we  
25 prepared for trial after discussions with Your Honor and Mr.

1 Modica, um, when the Court indicated that you would still be  
2 willing if he were to plead before trial to sentence him to fifteen  
3 years.

4 THE COURT: To consider it.

5 MR. FOX: And we had that conversation in chambers, and  
6 there's no question in my mind that that was relayed to Mr. Bryant  
7 again on Tuesday.

8 THE COURT: No question that you told him that the  
9 Solicitor had proffered an agreement to offer to the trial judge  
10 fifteen years?

11 MR. FOX: Yes, Your Honor.

12 THE COURT: Alright.

13 Now, let me say that in connection with that. When a offer  
14 was made, that doesn't mean that I've got to accept it.

15 MR. BRYANT: I know.

16 THE COURT: And if I can't accept it, I stand the defendant  
17 aside at no prejudice to him to trial.

18 Quite often, I accept negotiated pleas. Quite often, I refuse  
19 to accept them after I have looked at the facts or heard the facts  
20 in trial or in plea.

21 So, even though they offer that to you, that doesn't mean that  
22 the trial judge would accept it.

23 MR. BRYANT: Yeah, I know that.

24 THE COURT: And I certainly would not accept after having  
25 all the testimony in the trial of this case. I would not have

COURT ADDRESSES DEFENDANT ABOUT POSSIBLE GUILTY PLEA

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1 . accepted it at the time had it been offered, and I tell you that.

2       Would never chill a man's right to trial by jury but I - - I  
3 reserve unto myself the ultimate decision as to whether to accept  
4 or reject an offer based on the facts that I later learn either at  
5 a plea or trial.

6       And, of course, I've been here, and I've heard all the facts  
7 in this case.

8       I would conclude, Mr. Bryant, that this distinguished attorney  
9 relayed to you the fact that there had been an offer but I tell you  
10 that even though the Solicitor and him had an offer, that doesn't  
11 mean that I would have accepted, and I won't - - I'm not going to  
12 accept it in this plea. I tell you that up front.

13       MR. BRYANT:    Yeah, but he ain't never tell me. I had to ask  
14 him yesterday was there an offer.

15       THE COURT:     Well, I - - I would think that he has, and he's  
16 stated to me.

17       Now, having said that, let me say this to you.

18       First, you are charged with burglary which carries an absolute  
19 minimum of fifteen years and a maximum up to thirty:

20       MR. BRYANT:     See, he ain't never even tell me that.

21       THE COURT:     Well.

22       MR. BRYANT:     He ain't never even tell me that.

23       THE COURT:     Well, I'm telling you now.

24       MR. BRYANT:     He told me the burglary carried thirty to life.

25       MR. MODICA:     It doesn't carry life, Your Honor.

## COURT ADDRESSES DEFENDANT ABOUT POSSIBLE GUILTY PLEA

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1 THE COURT: I know.

2 MR. BRYANT: Well, he said thirty. He ain't never tell me  
3 nothing.

4 THE COURT: Thirty years up to life.  
5 What did he tell you - - what did he tell you that charge?

6 MR. BRYANT: Twenty years is all.

7 THE COURT: Twenty-five.

8 Assault and battery with the intent to kill carries twenty.

9 MR. BRYANT: He says it would have carried ten.

10 THE COURT: No, it carries twenty.

11 Well, anyway, under the three charges that you are being  
12 charged with, if convicted you could get life for burglary, first.  
13 Under kidnapping you could get an additional twenty-five years.  
14 As to each assault and battery with the intent to kill you could  
15 get twenty, twenty and twenty.

16 Let's figure it up. Let's say I gave him thirty for burglary  
17 and twenty, twenty, twenty. That would be sixty, ninety and  
18 twenty-five for kidnapping. That's a hundred and fifteen years.  
19 You understand that?

20 MR. BRYANT: Yeah. I understand that.

21 THE COURT: I tell you these things to let you know how - -  
22 and, of course, if the jury finds you not guilty we walk out the  
23 door.

24 Now, if you decide to plead guilty, I tell you that that's  
25 your decision. It's got to be freely and voluntarily made. You

## COURT ADDRESSES DEFENDANT ABOUT POSSIBLE GUILTY PLEA

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1 understand that?

2 MR. BRYANT: Yeah, I understand that.

3 THE COURT: Okay.

4 I would not want you to plead guilty before me today thinking  
5 that I'm going to give you fifteen years. I've heard the facts in  
6 the case, and it's for the jury to decide but if they find you  
7 guilty, I would not consider the minimum given the enormity of the  
8 facts in this case.

9 You understand that?

10 MR. BRYANT: Yeah.

11 THE COURT: Sir?

12 MR. BRYANT: Yes, sir.

13 THE COURT: Alright.

14 Now, knowing that I'm not going to give you any minimum  
15 sentence based on the facts that I've heard, is it still your  
16 intention and desire to plead guilty?

17 MR. BRYANT: Nah. I'm going to take the jury.

18 THE COURT: Okay. That's fine.

19 MR. FOX: Your Honor, very briefly, to finish this record  
20 for the future with regard to what I informed Mr. Bryant of as to  
21 the charges and the possible penalties. I wrote down on that same  
22 meeting at the jail I wrote down his charges, indictment numbers  
23 and I wrote down three counts of assault and battery with intent to  
24 kill, zero to twenty years, being violent, most serious, no parole;  
25 burglary in the first degree, fifteen years to life, violent, most

1 serious, no parole; kidnapping, I did put thirty on kidnapping  
2 instead of twenty-five, and assault and battery with intent - -  
3 okay. I already covered that.

4 THE COURT: This is your note where you told him of this.

5 MR. FOX: This is my notes.

6 THE COURT: I'm convinced that you did. He knows.

7 MR. MODICA: Your Honor, also, I put on the record that I  
8 spoke - - -

9 THE COURT: Sir?

10 MR. MODICA: I'd also spoken to Mr. Fox and talked with him.

11 THE COURT: You've done what now?

12 MR. MODICA: I spoke to Mr. Fox and talked about the plea  
13 and talked about it.

14 THE COURT: You talked to who?

15 MR. MODICA: Mr. Fox.

16 THE COURT: Okay.

17 MR. MODICA: I'm reiterating the fact that Mr. Fox and I  
18 spoke about the plea offer, and he indicated that he did meet with  
19 the defendant in jail, and he did not wish to plea.

20 THE COURT: I understand that.

21 MR. MODICA: Your Honor, I understand the defendant wants to  
22 plead now - - -

23 THE COURT: I tell you what you do. You let me and Mr. Fox  
24 handle this. Okay?

25 MR. MODICA: May we approach, Your Honor?

## COURT ADDRESSES DEFENDANT ABOUT POSSIBLE GUILTY PLEA

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1 THE COURT: No, sir. I don't need you in this case.

2 Any particular reason you need to approach the Bench?

3 MR. MODICA: Yes, sir.

4 THE COURT: Come around.

5 (Bench conference off the record and outside the presence of  
6 th jury.)

7 THE COURT: Alright. Mr. Bryant, I note that you are back  
8 before me. What is it?

9 MR. BRYANT: I'm going to go ahead and take the plea, Judge.

10 THE COURT: Sir?

11 MR. BRYANT: I'm going to go ahead and take the plea and  
12 just be down with you.

13 THE COURT: Well, I want - - this lady is taking down in  
14 fairness to you, now, Mr. Bryant, in fairness to you. I want to  
15 make sure. You know that there is an absolute minimum of fifteen  
16 years. Do you not? You know that, don't you?

17 MR. BRYANT: Yeah, now I know that.

18 THE COURT: Well, and you now I've already told you that  
19 having heard the facts in this case that I'm not going to give you  
20 any minimum of fifteen years. Now, I've got - - I want that clear  
21 on the record.

22 MR. BRYANT: Clear on the record.

23 THE COURT: Alright.

24 Now, during the course of this trial, your lawyer has had an  
25 exemplary trial for you based on the facts, and the facts against

COURT ADDRESSES DEFENDANT ABOUT POSSIBLE GUILTY PLEA

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1 you were tough. You had four eye-witnesses against you plus a  
2 threat of the night before if believed, and that was for the jury  
3 to determine.

4 During the trial of this case, I'm going to let Mr. Fox  
5 elaborate on it. We stopped the case during many times to permit  
6 him to call any witness and he had summoned such witnesses. They  
7 weren't here. We let him go get them. Gave him every opportunity  
8 to give you a full defense, and in my view, he did.

9 Now, I don't know what the jury would do with it. It's their  
10 decision. They're out there waiting, and if you say, "Judge, I  
11 really want a jury to decide this," I'd be delighted to do this.

12 Now, do you understand?

13 You got to tell me you understand it or - - Mr. - - I'm not  
14 going to take this plea. Now, I'm telling you.

15 What is it you don't understand about what I said?

16 MR. BRYANT: Just go ahead. I'm going to take the - -

17 THE COURT: Sir?

18 MR. BRYANT: - - I'm going to take the plea. Go ahead.

19 THE COURT: No, sir. No, sir. I'm not comfortable with  
20 that.

21 Have a seat. I'm going to let a jury go with you. I'm just  
22 not going to do that.

23 Mr. Bryant, I want to tell you one more time, now. You are  
24 entitled to plead guilty if you want to and if you are guilty and  
25 if the plea is freely and voluntarily made. I'm not denying you

## COURT ADDRESSES DEFENDANT ABOUT POSSIBLE GUILTY PLEA

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1 that right but you equivocate with me. I'm not going to permit  
2 that.

3 You are clearly entitled to have this jury determine your  
4 right. You are presumed innocent.

5 Now, if you wish to plead guilty, you can do that but you  
6 can't stand here mumbling with me. "Well, I'm going to go ahead  
7 and take the plea."

8 You're not going to do that.

9 If I take the plea, you're going to tell me you're guilty and  
10 there's not going to be any questions about it, and I'm not going  
11 to give you fifteen years.

12 MR. BRYANT: I understand that but if - - -

13 THE COURT: Now, what else is it you don't understand?

14 MR. BRYANT: Well, what I don't understand - - -

15 THE COURT: Well, you come forward. I want to be fair with  
16 you but I'm not going to put up with you.

17 (Defendant comes before the Court.)

18 THE COURT: Now, what is it you don't understand?

19 MR. BRYANT: This - - this part I don't understand.

20 You say if I take the plea, I got to tell you I'm guilty, I  
21 did it.

22 THE COURT: Yes, sir.

23 MR. BRYANT: Well, see. That's the part. I was so drunk  
24 up, I don't know if I did it or not.

25 THE COURT: Have a seat over there. I'm not going to do

## CHARGE OF THE COURT

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1 that.

2 MR. BRYANT: You see. I don't know.

3 THE COURT: Alright. Bring the jury in.

4 Gentlemen, come around at the Bench, please. Come around.

5 Mr. Fox.

6 (The jury returns to the courtroom.)

7 (Bench conference off the record but in the presence of the  
8 jury.)

9 THE COURT: Good morning, Mr. Foreman, and ladies and  
10 gentlemen.

11 I asked that you be back promptly at 9:30, and you were, and,  
12 of course, as you know, I was here also at 9:00.

13 We had been involved in other matters not involving this case  
14 for the last half hour, matters that we needed to get rid of,  
15 involvements in other cases, and that's why I detained you back  
16 there for the last thirty minutes.

17 I continue to tell all of you that this Court, this county,  
18 this state appreciates your willingness to come in here giving up  
19 your everyday duties to serve as jurors and as finders in the facts  
20 in the various cases that are tried before you, and I personally  
21 appreciate your services.

22 CHARGE OF THE COURT

23 THE COURT: Ordinarily in the trial of this kind after  
24 testimony we have summation by counsel, and then I charge you the  
25 law.

## CHARGE OF THE COURT

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1 Jurors have told me in the past few years, "Judge, I wish you  
2 would have told us what the law was with regard to these issues.  
3 I believe I could follow their positions better."

4 And that makes sense to me. So, in accordance with that  
5 theory, I'm going ahead and give you the charge now even before  
6 summation by and with consent of counsel for the State and the  
7 defense, and even after summation, I'll be back with you with some  
8 concluding instructions, and we'll discuss the verdict forms for  
9 you.

10 Now, Mr. Foreman, and members of this jury, as you are well  
11 aware, the State of South Carolina charges this defendant with  
12 various offenses.

13 One is kidnapping. Another is burglary in the first degree  
14 and the third is assault and battery with the intent to kill  
15 against three separate victims.

16 Now, to these charges this defendant specifically pleads not  
17 guilty. He, therefore, asks that the jury determine the facts in  
18 the case to which he is absolutely entitled.

19 He is presumed innocent. He doesn't have to prove a thing.  
20 The State's got to prove him guilty if they can beyond a reasonable  
21 doubt.

22 Now, as I have indicated to you, there are six separate  
23 indictments here. Your verdict - - you consider the facts as to  
24 each indictment separately as to each alleged victim separately and  
25 write your verdict accordingly.

## CHARGE OF THE COURT

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1           As an example, in consideration of the charges in the  
2 indictments you may find him not guilty of all charges. Equally,  
3 you may find him guilty of all charges, and you may find him not  
4 guilty of some and guilty of the other. I just emphasize to you  
5 that you consider the facts as to each separate indictment and  
6 thereafter write your verdict accordingly.

7           Now, I tell you that during your deliberations if any  
8 questions of law come up there will be pencil and paper provided.  
9 You write that question down and let me know.

10           Now, having said that, I tell you and I'm emphasizing again  
11 and will continue to do so that you twelve are the sole and only  
12 finders of the facts in this case.

13           In that regard, I am not entitled to a factual opinion and I  
14 absolutely have none, absolutely have none. If during the trial  
15 of this case any word, ruling or mannerism of mine might tend to  
16 indicate to any of you folks how I feel about any factual situation  
17 between these litigants, please disregard it. I am not entitled to  
18 a factual opinion, and I have none. You twelve are my judges of  
19 the facts in this case.

20           Now, to this indictment this defendant has pled not guilty  
21 which places upon the State the burden of proving the defendant  
22 guilty if they can. A person charged with committing a criminal  
23 offense in South Carolina is never, ever required to prove himself  
24 innocent.

25           I charge you that it is a vital important rule of law of

## CHARGE OF THE COURT

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1 evidence that a defendant in a criminal case or a criminal trial no  
2 matter how serious or great may be the offense with which he is  
3 charged must always be presumed innocent until his guilt has been  
4 established beyond a reasonable doubt.

5 This presumption of innocence remains with the defendant at  
6 all times from the moment of his arraignment throughout the trial  
7 until the jury has upon the testimony and evidence presented  
8 reached a verdict of guilty beyond a reasonable doubt for it is the  
9 solemn duty of the jury if not clearly convinced of his guilt  
10 beyond every reasonable doubt to the contrary to acquit the  
11 defendant.

12 And so it is the burden of proof is upon the State of South  
13 Carolina to establish by evidence to your satisfaction the guilt  
14 beyond a reasonable doubt of this defendant here on trial for  
15 burglary, first degree, for kidnapping and for three separate  
16 counts of assault and battery with the intent to kill.

17 Now, the State has the burden of proving the defendant guilty  
18 beyond a reasonable doubt as I've indicated. Some of you may have  
19 served on civil juries where you were told that it is only  
20 necessary to prove that a fact is more likely true than not.

21 In criminal cases the State's proof must be more powerful than  
22 that. It must be beyond a reasonable doubt.

23 Ladies and gentlemen, proof beyond a reasonable doubt is proof  
24 that leaves you firmly convinced of the defendant's guilt. There  
25 are very few things in this world that we know with absolute

## CHARGE OF THE COURT

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1 certainty, and in criminal cases the law does not require proof  
2 that overcomes every possible doubt.

3 Based on your consideration of the evidence if you are firmly  
4 convinced that the defendant is guilty of the crime charged, you  
5 must find him guilty.

6 If on the other hand you think there is a real possibility  
7 that he is not guilty, you must give him the benefit of that doubt  
8 and find him not guilty.

9 Now, ladies and gentlemen, I continue to emphasize to you that  
10 you are the sole and only finders of the facts in this case. As  
11 I've said to you, I do not have the right to pass upon any question  
12 of facts or to express any opinions about that, and I have none. I  
13 do not intimate in anyway what I think about what the guilt or  
14 innocence of this defendant.

15 As I indicated earlier and I tell you again in charging that  
16 you are also the judges, the sole judges of the believability, the  
17 credibility of every witness who has testified in the trial of this  
18 case.

19 In considering and examining their credibility, of course, you  
20 are entitled to take in many things. You may, in your experiences,  
21 take in other things to - - to reach the decision as to  
22 credibility.

23 Some of the things that we consider in everyday life  
24 concerning credibility and you are entitled to do that with regards  
25 to the witnesses here is the appearance and manner of a particular

## CHARGE OF THE COURT

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1 witness sometimes referred to as the demeanor. You may consider.  
2 Was a witness forthright or hesitant? Was a witness' testimony  
3 consistent or did it contain discrepancies? What was the ability  
4 of the particular witness to know about the facts which he or she  
5 may have testified to?

6 Obviously, you would consider whether or not a witness had a  
7 cause or reason to be biased or prejudiced in favor of the  
8 testimony that he or she gave.

9 You would consider if you choose was the testimony of a  
10 witness corroborated or made stronger by other testimony and  
11 evidence or was it made weaker or impeached by such other testimony  
12 and evidence.

13 Ladies and gentlemen, as jurors you have a right to believe a  
14 small portion of a witness' testimony and disregard the larger or  
15 the other way around. You may believe all of a witness' testimony  
16 that or none. You may, if you choose, believe the testimony of one  
17 witness against that of many or the other way around.

18 Most certainly, you do not determine the truth or falsity of  
19 a matter by counting up the number of witnesses who may have  
20 testified on one side or the other.

21 Ladies and gentlemen, throughout this entire process you have  
22 but one single objective in considering credibility and  
23 believability, one. Seek the truth. Seek the truth.

24 All of these things you will consider bearing in mind that you  
25 must give the defendant the benefit of every reasonable doubt.

## CHARGE OF THE COURT

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1           Now, ladies and gentlemen, I by the Constitution of this  
2 magnificent state makes unto me the sole and only instructor in the  
3 law, and under your oath as jurors, now, I tell you that you are  
4 required to accept the law as I charge it to you. Even though you  
5 or I for that matter might disagree with what the law ought to be  
6 for purposes of this trial, please accept the law as I give it to  
7 you remembering that you take the facts as you find them to be  
8 applying those facts to the law of this case.

9           Now, ladies and gentlemen, there are two types of evidence  
10 which are generally permitted during a trial, direct evidence and  
11 circumstantial evidence.

12           Direct evidence is the testimony of a person who asserts or  
13 claims to have actual knowledge of a fact such as an eye-witness.

14           Circumstantial evidence is proof of a chain of facts and  
15 circumstances indicating the existence of a fact. The law makes  
16 absolutely no distinction between the weight to be given to either  
17 direct or circumstantial evidence nor a greater degree of certainty  
18 required of circumstantial evidence than of direct evidence.

19           You should weigh all of the evidence in the case and after  
20 weighing all of the evidence if you are not convinced of the guilt  
21 of the defendant beyond a reasonable doubt, you must find him not  
22 guilty.

23           The defendant has filed in this case what we call a plea of  
24 alibi. This means that he was not at the scene of the crime at  
25 the time it was committed but that he was elsewhere and had nothing

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1 to do with it.

2 There is no burden upon this defendant to prove his alibi.  
3 The burden is upon the State of South Carolina to prove that he was  
4 actually present at the scene of the crime and that he actually  
5 participated in it and that he was not elsewhere, and the State  
6 must prove these allegations as all other allegations are required  
7 to be proven by evidence beyond a reasonable doubt.

8 The defendant in this case has not testified. This is his  
9 absolute constitutional right, and it is not a circumstance that  
10 you can take into consideration or even allow in your discussion in  
11 the jury room.

12 Under the Constitution of the South Carolina and of the United  
13 States, it is his constitutional right not to testify. The burden  
14 of proof is upon the State of South Carolina to establish his guilt  
15 by competent testimony beyond a reasonable doubt.

16 The fact that this defendant did not take the witness stand  
17 and testify in his own behalf does not create any inferences  
18 against him. The jury must not permit that fact to weigh in the  
19 slightest degree against this defendant nor, Mr. Foreman, would you  
20 allow any - - any discussion about that to even enter into your  
21 deliberations.

22 It is not an issue for your consideration. It is his absolute  
23 constitutional right.

24 Now, let's talk about burglary in the first degree. The  
25 defendant is charged with that to which he has pled not guilty.

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1           Burglary in the first degree is entering a dwelling without  
2 permission and with intent to commit a crime therein and that that  
3 entry contained one - - at least one of the six factors.

4           Either he was armed with a deadly weapon or caused physical  
5 injury to nonparticipants or he threatened the use of a deadly  
6 instrument or displays what appears to be a knife or other firearms  
7 or the entry occurs in the nighttime.

8           The State doesn't have to prove them all but the entry of a  
9 dwelling without consent and with intent to commit a crime therein  
10 accompanied by any one of these factors constitutes burglary in the  
11 first degree if proven beyond a reasonable doubt.

12           I go over the factors with you again which makes it - - takes  
13 it from second to first degree.

14           One, if it occurred at night.

15           Another circumstance depending upon the proof, armed with a  
16 deadly weapon or caused physical injury to a nonparticipant or  
17 threatened the use of a deadly, and I've said or if it occurs in  
18 the night.

19           Now, the State must prove as all other things one of these  
20 circumstances. Doesn't have to prove them all.

21           They must prove that there was an entry without consent with  
22 the intent to commit a crime therein and one of these instances  
23 also occurred in that situation.

24           If the State has proven all of this, it must prove it beyond  
25 a reasonable doubt.

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1 Another charge is kidnapping. Kidnapping is the intentional  
2 taking of a person and compelling him or her to be detained against  
3 her will. It is the willful and unlawful seizing of a person  
4 against his or her will with an intent to cause him or her to be  
5 confined, imprisoned or detained.

6 The essence of the offense of kidnapping is the unlawful,  
7 secret holding or imprisonment of a person.

8 Kidnapping means the carrying away of a person by unlawful  
9 force against his or her will.

10 Elements of kidnapping are as follows and the State's got to  
11 prove them beyond a reasonable doubt.

12 That there was an unlawful seizure, confinement, inveigle,  
13 abduction or carrying away of another person by any means  
14 whatsoever without authority of law.

15 Ladies and gentlemen, the gist of the offense of kidnapping is  
16 some form of compulsion but the law says that the requisite force  
17 or compulsion need not consist of the use of actual physical  
18 expense.

19 The offense of kidnapping commences when one is wrongfully and  
20 unlawfully deprived of his or her freedom and continues until that  
21 freedom is restored.

22 Now, ladies and gentlemen, the defendant is charged with the  
23 offense of assault and battery against three separate individuals.  
24 The defendant as I've indicated has been charged with the offense  
25 of assault and battery with the intent to kill. In order to prove -

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1 - and to prove assault and battery with the intent to kill, the  
2 State must prove beyond a reasonable doubt that the defendant - -  
3 this defendant committed an unlawful act of a violent nature to the  
4 person of another with malice aforethought.

5 An assault occurs when a person unlawfully attempts to commit  
6 a violent injury upon another person and has the present ability to  
7 complete the attempted injury.

8 An assault is the intentional creation of a reasonable fear of  
9 immediate bodily harm.

10 As an example, if I point a pistol at you with a bullet,  
11 that's an assault. If in an angry, I bow a fist at you, that's an  
12 assault.

13 The battery is where the bullet strikes or the instrument hits  
14 or the fist hits. Battery is the actual physical contact with the  
15 person that the defendant would desire to be struck.

16 As I've indicated, now, a battery is an unlawful touching of  
17 another person by a person who has committed the assault. An  
18 unlawful touching can be caused by a part of the person's body or  
19 by any object that the accused has put in motion.

20 A battery, as I've indicated, is the completion of the assault  
21 by using or applying force to another person however slightly in a  
22 rude, angry or resentful manner without legal justification for  
23 doing so.

24 Using my earlier example, if I carry through the assault by  
25 hitting you, then that constitutes the battery.

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1 Malice, I've indicated, is hatred, ill will or hostility  
2 towards another person. It is the intentional doing of a wrongful  
3 act without just or excuse with an intent to inflict an injury or  
4 under circumstances that the law will refer - - and infer an  
5 intent.

6 Malice aforethought does not require any particular time  
7 before the act is committed but malice must exist in the mind of  
8 the defendant just before and at the time the act was committed.  
9 Therefore, malice must be a combination of the previous intent of  
10 the act.

11 Malice aforethought may be expressed or implied. The terms  
12 expressed referred to do not mean different kinds of malice but  
13 merely the manner in which malice may be shown to exist.

14 There is - - that is either by direct evidence or by inference  
15 from the facts and circumstances which are proved.

16 Expressed malice is shown when a person speaks words which  
17 express hatred or ill will for another or when the person prepares  
18 beforehand to do the act which was later accomplished.

19 For example, lying in wait for a person or any other act of  
20 preparation going to show that the deed was in the defendant's mind  
21 would be expressed malice.

22 Malice may be inferred from conduct showing a total disregard  
23 for human life. Inferred malice may also arise when the deed is  
24 done with a deadly weapon.

25 A deadly weapon is any article, instrument or substance which

1 is likely to cause death or create deadly bodily harm.

2 Whether an instrument has been used as a deadly weapon depends  
3 on the facts and circumstances of the case.

4 As an example and an example only, our Supreme Court has held  
5 in certain circumstances a fist may be a deadly weapon. It would  
6 depend on the facts and the size of the person using the fist and  
7 the size and the person and the gender, perhaps, of the individual  
8 who was struck.

9 Ordinary objects may become deadly when the facts show that  
10 they may have been used to inflict serious bodily injury or death.

11 If facts are proved beyond a reasonable doubt sufficient to  
12 raise an inference of malice to your satisfaction, this inference  
13 would be simply an evidentiary fact to be considered by you along  
14 with the other evidence in the case, and you may give it such  
15 weight that you decide it should receive.

16 A specific intent to kill is not an element of assault and  
17 battery with intent to kill but there must be a general intent to  
18 commit serious bodily injury.

19 Injury - - intent means intending the result which actually  
20 occurred not accidentally or involuntarily. Intent may be shown  
21 by acts of conduct of the defendant's and others.

22 Circumstances for which you may naturally and reasonably infer  
23 intent: Evidence of the character of the assault; the character of  
24 the instrument used; the manner in which it was used; the purpose  
25 to accomplish and the resulting wounds or injuries may be

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1 considered if you choose to.

2 Determining the injury with which the results were committed,  
3 intent may be inferred when it would demonstrated that the  
4 defendant voluntarily and willfully commits an act, the natural  
5 tendency of which is to destroy another's life.

6 If the defendant with malice aforethought attempts to kill  
7 another but by mistake injures or kills a different person, the  
8 defendant still has the intent to commit. The intent to kill is  
9 merely transferred from the original person the defendant attempted  
10 to kill to the actual person killed or injured.

11 The defendant would be guilty of assault and battery with the  
12 intent to kill just as the attempt had resulted in the death or  
13 injury of the person he attempted to kill.

14 Ladies and gentlemen, the charge and the act of assault with  
15 intent to kill is quite often compared to the act of murder. The  
16 only difference in the act of murder and the act of intent to kill  
17 is that the victim did not die.

18 Murder is a felonious killing of another human being with  
19 malice. Assault and battery with the intent to kill contains  
20 every same element of murder except that the victim did not die.

21 In order to convict any defendant and this defendant the State  
22 must prove the assault was committed. It must prove it was with  
23 the intent to kill, and it must prove that that assault was  
24 accompanied with malice aforethought either expressed or implied,  
25 and I have given you the definition for malice.

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1 Malice must be present and must be proven beyond a reasonable  
2 doubt in assault and battery with the intent to kill as it must be  
3 proved in murder.

4 Now, under the theory that the lesser is included in the  
5 greater, there is a lesser charge depending on your view of assault  
6 and battery of a high and aggravated nature rather than assault and  
7 battery with the intent to kill, and depending on your view the  
8 verdict form that I prepared for you will express that, and we'll  
9 go over that in just a minute.

10 If you find that the State has not proven that the defendant  
11 is guilty of assault and battery with the intent to kill as to any  
12 or all of these alleged victims, you know -- recognizing that  
13 there are three separate assault and batteries, you must then find  
14 whether the State has proven that the defendant is guilty of  
15 assault and battery of a high and aggravated nature which is a  
16 lesser charge of intent to kill.

17 Assault and battery of a high and aggravated nature includes  
18 all of the elements of assault and battery with the intent to kill  
19 except malice aforethought.

20 In addition -- in addition, the State must prove beyond a  
21 reasonable doubt an aggravating circumstance. Included within the  
22 offense of aggravated -- of assault and battery with the intent to  
23 kill, as I've told you, is the lesser offense of assault and  
24 battery of a high and aggravated nature.

25 As I indicate again, aggravated assault includes all of the

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1 elements of assault with intent to kill except malice aforethought.

2 In addition, the State must prove beyond a reasonable doubt an  
3 aggravated circumstance in the alleged assault and battery.

4 Circumstances of aggravation which would make assault and  
5 battery of a high and aggravated nature include the use of a deadly  
6 weapon or dangerous instrumentality, the attempt to commit a  
7 felony, the infliction of serious bodily injury, a great disparity  
8 between the ages or physical conditions of the parties, a  
9 difference in the gender of the parties, the taking of indecent  
10 liberties or familiarities with a female through the use of force,  
11 the purposeful infliction of shame and disgrace. These are  
12 examples of aggravation.

13 Now, the State must prove beyond a reasonable doubt that an  
14 assault occurred, that a battery occurred and must prove there was  
15 at least one element of aggravation in order for him to be  
16 convicted of the lesser charge of assault and battery of a high and  
17 aggravated nature.

18 Now, I have previously charged to you the law with regards to  
19 burglary in the first degree. I have previously charged to you  
20 alibi. I have given you the elements the State must prove as to  
21 kidnapping beyond a reasonable doubt.

22 Now, Mr. Foreman, and ladies and gentlemen, the rules of  
23 evidence do not permit witnesses to testify to opinions or  
24 conclusions generally. An exception to this rule exists for  
25 witnesses we call expert witnesses.

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1           A witness who by education and experience has become expert in  
2 some art, science, profession or medical calling may state an  
3 opinion to relevant and material matter in which the witness claims  
4 to be an expert and may also state the reasons for his opinion.

5           You should consider an expert opinion received in evidence in  
6 this case like any other evidence and give it such weight you think  
7 it should receive.

8           If you decide that the opinion of an expert witness is not  
9 based upon sufficient education or experience or if you conclude  
10 that the reasons given in support of the opinion are not sound or  
11 that the opinion is outweighed by other evidence, you may disregard  
12 that opinion entirely.

13           An expert witness' testimony is to be given no greater weight  
14 than that of other witnesses simply because the witness is an  
15 expert. Further, you are not required to accept an expert's  
16 opinion though it is not contradicted.

17           Now, ladies and gentlemen, when voluntary intoxication has not  
18 produced permanent insanity, it is not a defense to a crime. A  
19 person who voluntarily becomes intoxicated is just as responsible  
20 for the acts committed while intoxicated as when the person is not  
21 intoxicated.

22           Now, ladies and gentlemen, you have been elected as jurors  
23 sworn to impartially try and determine the facts in this case. You  
24 must not be influenced, if any, by any opinions or suggestions that  
25 you may have heard on the outside but this case is to be decided by

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1 evidence produced in this courtroom in this trial and from no other  
2 purpose.

3 Now, I will be presenting to you various verdict forms which  
4 counsel for the State and the defendant have seen.

5 Did you have those - - did you hand them - - hand them to me.

6 Dora, where are those verdict forms?

7 MS. BIAGIANTI: I believe they're on the corner of your  
8 desk.

9 THE COURT: Which corner?

10 MS. BIAGIANTI: The left.

11 THE COURT: I don't see them.

12 (Counsel comes forward and hands the Court verdict forms.)

13 THE COURT: Alright.

14 Now, ladies and gentlemen, as you know, there are various  
15 indictments here. Let's talk about the - - the indictment for  
16 kidnapping. There's a verdict form here for that.

17 Your verdict will either be not guilty or guilty and you would  
18 thereafter sign your name, Mr. Foreman.

19 The verdict with regards to burglary in the first degree is  
20 either not guilty or guilty, and you would sign your name as to  
21 that.

22 Now, the verdict regarding assault and battery with the intent  
23 to kill as to each of the separate alleged victims, there is a  
24 form. You would consider assault and battery with the intent to  
25 kill first. If your verdict is guilty, you stop there. If as to

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1 intent to kill, your verdict is not guilty, you would then consider  
2 assault and battery of a high and aggravated nature. Is your  
3 verdict is guilty, say so. If it is not guilty, say that and sign  
4 your name.

5 The verdict forms are pretty clear.

6 Now, there is, of course, one form as to burglary first; one  
7 verdict form as to kidnapping; there are three separate verdict  
8 forms as to assault and battery with the intent to kill simply  
9 because there are three separate indictments involving three  
10 separate alleged victims.

11 Once you have reached your verdict, you would sign your name  
12 to them, Mr. Foreman, and knock on the door and come out with them.

13 Now, I'll be back with you with some concluding remarks after  
14 final summation.

15 Is opening statement waived by the State, Mr. Fox?

16 MR. FOX: Yes, sir.

17 THE COURT: Alright, sir.

18 Then, under the rules, you will have the first argument, and  
19 distinguished counsel for the State the second.

20 You may proceed.

21 MR. FOX: Thank you, Your Honor.

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23 MR. FOX: Good morning, ladies and gentlemen.

24 I want to first thank you quickly for your service this week,  
25 for your attention. It's been said there is no other duty or at

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1 least jury service is one of the three great duties that we have in  
2 this country along with military service and voting, and I  
3 absolutely believe that our system cannot and does not work without  
4 citizens that serve on juries as inconvenient as that may be - -  
5 inconvenience to your daily lives. So I thank you for that.

6 The Judge has charged you on the law, and that's the law that  
7 you should apply and will apply to the facts in this case.

8 I want to be very clear from the beginning that what I'm  
9 asking you to do when you go back and deliberate is return not  
10 guilty verdicts on each count.

11 I'm not even going to address the lesser included charges of  
12 assault and battery with the intent to kill because Mr. Bryant has  
13 alleged and has proven to you the alibi defense, an alibi defense  
14 that he was not there, could have not been there and gotten back to  
15 his home out on the Andrews Highway in time for his boss, Mr.  
16 Grimes, to pick him up.

17 The defense, Mr. Bryant and myself, we have - - there's no  
18 burden of proving this case. We do not have to establish, as the  
19 Judge told you, alibi. We do not have to explain or prove why  
20 these witnesses may have said what they did. I have no idea and  
21 we have no burden in that regard, and I'm not even going to attempt  
22 to guess.

23 I'm certainly going to point out some things I hope you will  
24 consider regarding the testimony you heard and the various eye-  
25 witness accounts but I believe when you compare them and combine

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1 them with Mr. Grimes' testimony, you will absolutely have a doubt  
2 and a reasonable doubt about the guilt of Mr. Bryant.

3 And if you have a reasonable doubt and it can be, again, the  
4 Judge has defined it for you, any reasonable doubt, you don't have  
5 to - - they do not have to convince you beyond all reasonable  
6 doubt, you would have a reasonable doubt and that would be a doubt  
7 based on the testimony and evidence you heard in this courtroom  
8 this week, then you must return by your oath under the Constitution  
9 of the State of South Carolina and the United States a verdict of  
10 not guilty.

11 The reasonable doubt in this case is the alibi, obviously.  
12 Mr. Grimes who was here yesterday afternoon I guess in the morning.  
13 We took him out of order. He is Mr. Bryant's boss, and he told you  
14 that Mr. Bryant had worked for him for a number, ah, I'm not sure  
15 it was years but for a good period of time, and every morning five  
16 days a week, sometimes seven days a week, Mr. Grimes would drive  
17 out to Andrews Highway out to High Market by Graves Station  
18 out past the first set of railroad tracks out there and pick up Mr.  
19 Bryant at the same time every morning, 6:30 and no later than 6:40  
20 at the very latest because at this time they work up on the beach  
21 at this particular point in time in February they were working up  
22 in Surfside Beach, and he said, "Look, I'm the Foreman for my crew.  
23 I'm the boss. I have got to be there. I take it seriously. I  
24 make sure I'm at work on time."

25 And it doesn't matter if it was on Saturday. The Solicitor

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1     tried very hard to get Mr. Grimes to say that maybe on Saturday on  
2     the weekend when the traffic is not as heavy that maybe he would  
3     leave a little bit later because it wouldn't take as long, and Mr.  
4     Grimes said repeatedly. He had several chances to back away from  
5     that, and he never did. He said over and over again, "No, I  
6     always leave because I want to make sure I'm there on time, and  
7     it's always 6:30; 6:40."

8             He could not tell you exactly on this particular day. The  
9     Judge has told you you should resolve doubts on - - on - - as to  
10    the ultimate question of innocence or guilt just as to the elements  
11    of each crime also, if you have doubts on a particular point, you  
12    need to resolve them in favor of the defendant.

13            There's no reason to think. You heard no testimony to think  
14    it was 6:40 instead of 6:30. There is a question, admittedly,  
15    about that but I would submit to you you should resolve that doubt  
16    in favor of Mr. Bryant and for purposes of your findings find and  
17    determine that Mr. Grimes was at James Bryant's mother's house  
18    where he lived out on the Andrews Highway at 6:30 that Saturday  
19    morning.

20            Now, that's important because, one thing, there is absolutely  
21    zero doubt about in this case is the time of this assault. You  
22    heard the two phone calls from 911. At the beginning there's an  
23    automated voice or computer generated thing that records the time  
24    the call comes in, and that was 6:15, and one was from the neighbor  
25    who by her testimony called or at least picked up the phone, ah,

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1        apparently while the attacker was still there because she said, "I  
2        could see or hear them outside, and I'm dialing 911."

3                So that was at 6:15, and then Ms. Bryant testified that pretty  
4        much immediately after, ah, it was all over she went inside and  
5        called. Her call also came in at 6:15, obviously, not the exact  
6        same time but both of those calls were timed at 6:15. So we know  
7        whoever did this is at Avant Court at 6:15.

8                Well, by 6:30, Mr. Bryant, no question, is at High  
9        Market, a couple of miles a way out on the Andrews Highway.

10                Now, no matter what the issue is you're thinking about in this  
11        case and considering, one thing you can't do is guess, conjecture,  
12        speculate. You are to take the testimony and evidence that you  
13        heard and been presented in this courtroom.

14                So maybe it happened this way. It could have done this.  
15        Might be like that. No. Your oath is to apply the evidence and  
16        the testimony you have in this case, and you have received not one  
17        shred of evidence, not one photograph, word from the witness stand,  
18        tape recording, anything that indicates that the person who  
19        committed this attack left by car or any other motorized conveyance  
20        or bike or anything else.

21                Ms. Bryant says this person kept asking for her keys but they  
22        couldn't find her keys, and no question that her car was still  
23        there when this was all over. I asked several witnesses that  
24        question. I asked Ms. Bryant. I asked her son, Tamar, and I asked  
25        Ms. Smith. They all knew her car, and they all testified her car

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1 was still there when it was all over.

2 And I asked each of those witnesses, "Were there any other  
3 cars you didn't recognize, any cars that shouldn't have been there  
4 or were unfamiliar to you?"

5 "No."

6 No testimony about hearing a car peel away or drive away,  
7 nothing. You can't guess.

8 So what he might have done, what this person may have done,  
9 could have done is not for you to consider because you have no  
10 evidence that this person drove away and, therefore, could cover  
11 the distance from Avant Court here in downtown Georgetown out the  
12 Andrews Highway in fifteen minutes, and you can't do it on foot.

13 And in addition, if it's fifteen minutes, he not only - - this  
14 person not only has to get - - they claim Mr. Bryant - - has to get  
15 from Avant Court all the way home in fifteen minutes but he's got  
16 to change clothes.

17 You saw the amount of blood. It seems inconceivable that  
18 whoever committed this attack didn't have at least some blood on  
19 his person.

20 You saw the - - you've seen the pictures. You've seen the  
21 condition of the apartment. You've seen what the victims looked  
22 like.

23 The police thought that that wasn't necessary. They had eye-  
24 witnesses, certainly strong evidence from their point of view, but  
25 they had eye-witnesses. They don't need anything else. They don't

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1 need to search Mr. Bryant's house for clothes. It seems, though,  
2 that would cut off any alibi he might assert if you can find - -  
3 maybe they wouldn't find. Maybe he had time to hide them in the  
4 woods or in his house.

5 I don't buy for a second that the reason they didn't try - -  
6 I don't know why they didn't get a search warrant but they can also  
7 ask for consent from the owner, from Ms. Bryant. They didn't do  
8 that. I don't buy for the second that the reason was that they  
9 didn't want to inconvenience the woman or the Sheriff's Department  
10 was not going to be cooperative or didn't have any manpower to - -  
11 to do this search warrant for them. I don't buy that for one  
12 second. It's not there. Didn't do that.

13 Never made any attempt, there's testimony that they had Bill  
14 Grimes', the boss' phone number, tried to contact him but no  
15 evidence that they ever went out and say, "Hey, I'm on the job  
16 site."

17 "Where are you working?"

18 And go out and look, ah, for Mr. Bryant there to speak with  
19 him.

20 The Judge has told you in considering the testimony that you  
21 heard that you may consider or you may accept everything a witness  
22 tells you or you may reject it all or you may accept some. You can  
23 reject other parts. I think there's very good reason when you  
24 carefully compare and combine some of the testimony to reject  
25 outright Octavia Taylor's testimony. Octavia Taylor who couldn't

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1 be inconvenienced to contact the police because she didn't want to  
2 get involved even though the person who was the victim in this  
3 case, ah, is a friend or somehow - - I honestly lost track of how  
4 all these people are connected but with Ms. Smith, the neighbor,  
5 and Ms. Taylor. I mean, they were all my sisters and her best  
6 friend and all that. They know everybody involved.

7 But despite that she can't be bothered, and she got all these  
8 phone calls that Mr. Bryant supposedly made to her looking for his  
9 wife, and you know that call at midnight. Right? The night  
10 before it happened that if you combine and I'll talk a little bit  
11 more about the incident at the barber shop.

12 Remember. Ms. Bryant said, "Look, earlier in the evening my  
13 husband came up, and he made these threats to me, and it was bad  
14 enough I called the police. I was scared."

15 And Ms. Taylor comes in and says, "At midnight that same night  
16 Mr. Bryant is calling me asking me for his wife's cell phone  
17 number, and so I called her and she said, 'No, no. Don't give him  
18 that number'."

19 Now you would think that would be a mighty important - -  
20 certainly if presented, it would be a mighty important or serious  
21 phone call. Yet, Ms. Bryant didn't say anything to you about that  
22 phone call that night. That would have been a few hours of the  
23 supposed threat she'd get by her husband that she took to be life-  
24 threatening and, yet, you would think a few hours later when your  
25 husband is now looking for her and trying to get other people to

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1 provide information about her whereabouts that that would be  
2 significant to her because, "Look. It's evidence that he's really  
3 trying to get me."

4 But she didn't say anything to the police about that, and she  
5 didn't testify to you about that.

6 Makes you wonder whether that phone call ever took place.  
7 Are there phone records to support that phone call? Not that you  
8 got.

9 And then all these phone calls and comments that supposedly  
10 Mr. Bryant made afterward to Ms. Taylor where he, basically,  
11 confessed and said, "I should have finished her off."

12 I don't even remember all that.

13 That's not important to go tell the police but now you've been  
14 wondering three or four months later.

15 What did Investigator Sparkman tell you about Octavia Taylor?  
16 I asked him, "You go speak to her? Did you talk to her? Did you  
17 get a statement, take any notes, record anything?"

18 "No. She didn't tell me nothing. She didn't want to be  
19 involved."

20 I think that tells you everything you need to know. The  
21 police don't believe Octavia Taylor.

22 Paulette Smith, the neighbor, yesterday she knows Mr. Bryant  
23 by name but when it's going on and her sister's best friend and her  
24 next door neighbor is being beaten, she doesn't want anybody to  
25 know who she is even though she is inside the apartment and no one

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1 can see her. She's safe. She don't want to give her name or  
2 identify the person she claims to know.

3 But several months later when she knows the details from her  
4 sister's best friend, now she knows who it is she saw.

5 I don't pretend to know what Ms. Bryant or her son testified  
6 the way they did. Clearly, the relationship between Mr. Bryant  
7 and his wife was a volatile one. They're separated. They're back  
8 together more times than she can remember. She appears to grant  
9 and deny access to her apartment and her bedroom to Mr. Bryant at  
10 her whim and when it's convenient.

11 They're not the only couple in Georgetown County or in the  
12 state that have those kind of relationships or problems. I don't  
13 pretend to understand or try to explain them.

14 Clearly, the son wants to please the momma. He told about  
15 being sent to the Marine Institute which is kind of like a boot  
16 camp for any of you who are not familiar with it, kind of a wake-up  
17 call but he didn't like that. That was hard work and it sounded  
18 like it was hard work, and he sure didn't want to go back, and  
19 that, yes, Momma would sometimes say, "You better watch it or  
20 you'll go back."

21 Another little thing of inconsistency you can thing about in  
22 this testimony, Lasha Bryant says, "I'm in my bed. The door  
23 downstairs is kicked open. The next thing I know the light's own  
24 and my husband is in my room swinging a stick at us."

25 The Solicitor said, "Did he say anything?"

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1 "No, he didn't say anything. He's just swinging away."

2 Paulette Smith said something different. She said, "I'm next  
3 door. We share a wall, and I could hear Jamie Bryant's voice  
4 upstairs next door."

5 Well, how can she hear next door what Ms. Bryant didn't hear  
6 right there in her own room?

7 Forgive me for jumping around because I remember things as I  
8 looked back at my notes.

9 Remember, also, Mr. Grimes, the boss, who says that he was  
10 there at 6:30 at Mr. Bryant's house to pick him up. Also, he had  
11 the opportunity to see him, to look at him, to observe him.  
12 Appeared to have on the same clothes, maybe, because he wore them.  
13 Doesn't know whether he might have worn them the same day before  
14 but he appeared to have the same clothes he had on the day before.

15 "Hadn't changed, and I've seen - - you know, I know worked  
16 around construction sites a long, long time, and I've certainly  
17 seen plenty of injuries that people had blood on their clothes and  
18 I know what that would look like, you know, how it may dry and  
19 stain and so forth, and Mr. Bryant didn't have any of that stuff on  
20 him."

21 Maybe each of these things by themselves aren't enough to give  
22 you reasonable doubt. I think Mr. Grimes' time in his testimony is  
23 enough all by itself to cause doubt. It is certainly powerful  
24 testimony from the witnesses in that apartment but I think maybe  
25 you can track it and compare with the time and what we know is the

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1 time when this happened with Mr. Grimes' testimony. That that by  
2 itself is absolutely reasonable doubt, and reasonable doubt equals  
3 not guilty.

4 But then when you factor in some of these inconsistencies and  
5 the failures of witnesses like Ms. Taylor and Ms. Smith to  
6 volunteer to tell who they are and what they saw and when it  
7 happened instead of comparing notes with people after the fact and  
8 then coming forward and when you realize that Police Officer  
9 Sparkman didn't believe at least to the point where he didn't  
10 bother even to write any notes down or take any statement from Ms.  
11 Taylor about all of these supposed phone calls and threats and  
12 admissions that Mr. Bryant supposedly made to her. When you  
13 realize Ms. Smith said something very different about what she  
14 heard and what - - what the voices she could hear compared to Ms.  
15 Bryant and when you start to add these inconsistencies of these  
16 things up, I think that just creates even more reasonable doubt.

17 So, I would urge you.

18 One last thing I want to talk about is the incident the night  
19 before at the barber shop. Mrs. Bryant said, "I'm there waiting  
20 for my lover, Mr. Hayward, and, um, my husband comes up. He gets  
21 in the car and he wants to know if I'm waiting for anybody, and so  
22 I say no. I didn't want him to know that I'm waiting for my lover.  
23 So I lied about that."

24 And that's maybe understandable but, ah, he starts talking  
25 about some unknown person supposedly he's met that says he knows

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1 how he can get his access to his kids a hundred percent of the  
2 time, and she takes that as a threat that he's going to kill her.

3 Well, I think in light of her relationship and their back and  
4 forth relationship, I don't know if they've started any divorce  
5 proceedings, and they don't appear to be in a custody fight.  
6 Obviously, it's something they've talked about or it's in their  
7 minds. Isn't it just as likely that he's saying, "Look. I know  
8 you're here waiting for a dude. I know what's going on, and it's  
9 your adulterous behavior that's going to get me my kids if we go to  
10 court, and I take my vows seriously till death do us part."?

11 Well, I guess if you emphasize the death, I don't know that  
12 that was emphasized. He said that word according to Ms. Bryant.  
13 He said until death do us part but it is just as likely that he is  
14 saying, "I take my vows seriously. I'm not going to cheat on you.  
15 Why are you cheating on me? I want to make this work."

16 I think you have to stretch to make this a threat. It is only  
17 my opinion but I believe this is why we had all this testimony  
18 about from Ms. Taylor to try to put in context about the nature of  
19 that incident earlier in the evening.

20 She said, "Oh, yeah. Look. He was looking for her later, and  
21 he said I should have got her," and all this stuff even though it  
22 was completely unbelievable.

23 So, I think, if you set aside emotions and you consider all  
24 these things and you think about the witnesses and you think about  
25 Mr. Grimes and his demeanor and the way he testified and what he

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1 said, then there is no question that Mr. Bryant was not there at  
2 6:15 because he could not get to where we know he was at 6:30.

3 And there is absolutely reasonable doubt, and I would ask you  
4 to return verdicts of not guilty on each indictment.

5 THE COURT: Counsel for the State.

6 MR. MODICA: Thank you, Your Honor.

7 SUMMATION BY MR. MODICA

8 MR. MODICA: Rather than try to talk and spend a great deal  
9 of time talking about what Mr. Fox said to you, what I'm going to  
10 try to do is incorporate what he said into my summation but, um,  
11 I'd like to point out a couple of things at first.

12 It's interesting is now, well, if it's an alibi, it's an  
13 alibi, and if it's an alibi that you don't have to explain away  
14 other things, and I think that's what the defense did.

15 I have an alibi but just in case you don't believe it's an  
16 alibi, you can't believe these other people.

17 Well, what difference does it make whether or not you believe  
18 the other people? If it's a solid alibi, you don't have to worry  
19 about that.

20 Now, talking about his alibi, it would seem as if it's like a  
21 super defense. Right? Kind of the way the Judge explained it to  
22 you.

23 Well, if I prove to you beyond a reasonable doubt that the  
24 defendant committed the crime, right, and you believe that and  
25 you're firmly convinced of that, then I don't have to worry about

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1 the alibi because if you believe he was there, then you don't  
2 believe the alibi. So it's not this super thing that's out there.

3 Obviously, during the course of my case I need to prove that  
4 he was at the scene of the crime. If you believe the testimony  
5 that he was at the scene of the crime, that's it. Game, set and  
6 match. The alibi is out. Okay?

7 So, obviously, you know, when the Judge gave you the sentence  
8 beyond a reasonable doubt, I was like, if, you know, there was not  
9 an alibi. Well, if I prove it, then, there's no alibi, clearly.

10 Now, let me talk about the alibi for a moment, and let me  
11 suggest to you why the alibi doesn't work.

12 First of all, there is the distance. Ah, there isn't one of  
13 you who knows the distance. In a sense, you know, it's funny. The  
14 defendant's attorney went on and on about guessing and speculation  
15 but Sgt. Sparkman was up there. Mr. Grimes was up there. At any  
16 point they could have asked, the defense could have asked him - -  
17 remember, of course, they don't need to put on a defense. They are  
18 not - - I'm not suggesting that they need to or have to but they  
19 chose to and when you choose to, you live by the same rules as the  
20 prosecutor when you got to present your case the best you can.

21 Well, Mr. Grimes is up there. He called the Detective  
22 Sparkman up there and easily could have asked either one of them  
23 how far is it from 12 Avant Court out to where his momma lives.  
24 Well, now you're going to have to kind of - - it's like  
25 speculating, you know, that somewhere out beyond the city limits

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1 because that's what Mr. Grimes said. Over the railroad tracks and  
2 some address which you really don't know how far.

3 Some of you are from this community and you know it's only a  
4 couple of miles. So, to suggest, you know, for the defense to make  
5 that suggestion it's all the way out there in Graves Station, you  
6 know, another planet known as Graves Station isn't really fair  
7 because you who live in this community know that it's only a couple  
8 of miles.

9 Time frame. I don't know. I must have missed it.

10 Mr. Fox says the testimony from Mr. Grimes says that it was  
11 6:30. I never heard that and neither did you because he didn't say  
12 it was 6:30. He didn't say it was 6:31. He didn't say it was  
13 6:32. He didn't know. He said, "As a matter of routine I get  
14 there between 6:30 and 6:40."

15 Well, you know, as a matter of routine I get to work at 8:30  
16 everyday but guess what? I'm human. As a matter of routine I get  
17 there at 8:30 every morning but I don't. I'm late.

18 Sometimes I got to deal with my family or my dog or my other  
19 errands. Sometimes a school bus gets in my way.

20 Let's talk a little bit about the time frame. We know that  
21 the 911 calls came in at 6:15. That's because it is computer  
22 generated. It said, "6:15".

23 And you conceptually 911 works, those calls could have come in  
24 at the same time to two different operators or they could have come  
25 at two different times. Obviously, if you listen to the operator,

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1 their voices are different.

2 But, anyway, there is probably at least as it relates to Lasha  
3 there is a probably a few minutes between the time the defendant  
4 choked her out and she passed out and the time that she got into  
5 the house. It makes common sense.

6 No question the doctor has corroborated that she passed out,  
7 that she was choked, that she could have been passed out from being  
8 choked, that she could have been passed out from the trouble of the  
9 whole event. And to some degree it was corroborated by Tamar who  
10 saw his mom on the ground without the defendant being there.

11 So the defendant thinking that he did the deed, choked her  
12 out, takes off. She's got - - she hears coming out of the fog, she  
13 hears Tamar - - Tamar crying, you know, "Momma, Momma, where's  
14 Momma?"

15 She manages to get the cobwebs out of her head. She gets up  
16 and walks to the house.

17 Well, when she gets to the house, she looks for her home  
18 phone. She gets the home phone and what does she try to do? She  
19 tries to call. She testified that she couldn't get a dial tone.  
20 So, now, she's got to go find her cell phone and call 911.

21 Now, I don't know how long that takes. It could have taken  
22 ten minutes. It could have taken five minutes. It could have  
23 taken four minutes, but I think it would be reasonably said  
24 understanding that it was probably in the neighborhood of five  
25 minutes.

SUMMATION BY MR. MODICA

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1           So the fact of the matter is it the crime could have been  
2 completed at approximately 6:10. Okay?

3           And, by the way, even if it were 6:15, it would still work but  
4 the time is that the call was made but for the sake of argument it  
5 could be as long as 6:10.

6           Now, while he is certain, he boxed himself in and he said he  
7 was certain he got there between 6:30 and 6:40, and we all know how  
8 that works. Use your common sense. Everyone of us know that try  
9 as we might to get to places on time, we always run late.

10          I use that example routinely. I get to work at 8:30 but I  
11 don't. I'm late. Sometimes I'm there. Sometimes I'm late.

12          Even the important things that we try and get to, like, work  
13 or even more important things like weddings and funerals, we try to  
14 get there sometimes and sometimes we're late, and that happens.

15          That happens for a number of reasons. We can't find the right  
16 clothes. We can't find the right shoes, traffic. There's a whole  
17 different reasons why we might be late but he wanted to box himself  
18 in to 6:30, 6:40, and the truth of the matter is he doesn't know.  
19 He doesn't know the exact time, and I think it's a stretch to  
20 believe it couldn't be after 6:40. But for the sake of argument,  
21 I'll give him the 6:40.

22          But when you listen to Mr. Grimes think about what he said.  
23 Now, Mr. Fox characterized try as Mr. Modica might cross examining  
24 him on the Saturday thing. Well, you know, the Judge asked you to  
25 listen to credibility. I don't doubt Mr. Grimes picked him up

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1 that day. I don't doubt he did. I know that he - - that there  
2 was an implication that he didn't tell the police that when they  
3 called him, that he told them. He said at some point, if I'm not  
4 mistaken, at some point in time he told the police he hadn't seen  
5 him, and it makes every bit of sense. We'll get back to that. It  
6 makes every bit of sense that the police called that day.

7 But, anyway, so he - - he's certain about what time it is, and  
8 he's also certain that on Monday through Friday it takes the same  
9 amount of time traffic-wise as Saturday.

10 Use your common sense again. You all know living in the  
11 beach area that the traffic on Monday through Friday when people go  
12 to work generally 9 to 5, 8:30 to 4:30, it's different than on  
13 Saturday, and you can make better time.

14 And guess what? What else is nice about Saturday? The  
15 lights change. They're more in our favor. They're driver  
16 friendly. They're not that way on Monday through Friday. We all  
17 know that. You know driving around, ahh, you know. Stopped by  
18 that light again, you know. All this time but on the weekend  
19 timing is different. You all know that. Especially on 17.

20 But he insisted. He insisted that it takes the same amount of  
21 time, and he insisted he is never late. Well, that - - I don't  
22 know. I don't know a person in the world who is not late. Don't  
23 know any except Mr. Grimes that I just met during the course of  
24 this trial.

25 But, anyway, when you think about when he was testifying about

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1 that and traffic, did his demeanor seem like he was being honest  
2 and forthright when he related to the phone calls about the police?  
3 Let's think about this for a second.

4 The defendant had worked for Mr. Grimes for two years. That  
5 was his testimony. I recall that. You can check it. It's two  
6 years because I wrote it down. They were - - Lasha and the  
7 defendant were still together in that two years. Do you think for  
8 a moment that Lasha didn't know the cell phone number of the  
9 defendant's boss? Course she did. Did you not think for a moment,  
10 use your common sense, that she would have given that information  
11 to the police?

12 MR. FOX: Objection, Your Honor. He's arguing things  
13 that have not been testified to. He's bringing in information that  
14 was not testified to.

15 THE COURT: The jury understands the testimony in the case,  
16 and they will make a determination as to what was not said. They  
17 are the finders of the facts.

18 Confine yourself - - confine yourself to the testimony.

19 MR. MODICA: We know although Mr. Grimes wouldn't admit that  
20 that call came on Saturday, we know that he at least admitted  
21 reluctantly admitted that the police had called, and I think he  
22 although he didn't want to admit it kind of said, "Yeah, I did tell  
23 the police I hadn't seen him."

24 He told the police he hadn't seen on Saturday when they went  
25 to call. Use your common sense.

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1 In any event getting back to the time frame, we can go from  
2 potentially - - by the way, he also said that when got there that  
3 sometimes he would have to wait up to a minute, up to a minute for  
4 the defendant to come out.

5 I would love to have friends and co-workers that would be out  
6 within a minute and I would never have to wait more than a minute  
7 but he's lucky enough to have one of those workers in the  
8 defendant.

9 So, at the very best, we have 6:10 to 6:41 which is thirty-one  
10 minutes, and at the worst we have 6:14 to 6:41 which is twenty-  
11 seven minutes. Plenty of time even if you're walking, plenty of  
12 time to get back.

13 Now, this guy, Mr. Macho over here is jacked up after beating  
14 a child, a defenseless woman and a sleeping man. He was jacked.  
15 You think even walking it took him twenty-seven minutes when he was  
16 fleeing the scene thinking as he called to tell Octavia Taylor that  
17 he killed somebody?

18 The mere fact that a person didn't hear a car drive away, does  
19 that mean he didn't have it parked around the block? We know that  
20 Mr. Grimes said he had access to not one but two vehicles.

21 I don't know how he got. I don't really know if he went back  
22 there but I know and you know that there was plenty of time for him  
23 to get back there, plenty.

24 What if he had a bicycle around the back of the building? You  
25 don't think he could have biked back there in time? He could have

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1 walked - - walked back, and you know it was at night. He could  
2 have walked. He could have driven or he could have rode a bike  
3 back in time easily.

4 If you got any concerns about the alibi, I think that when you  
5 consider the nature of this crime, your mind will be set at ease,  
6 and this is why. Clearly, the defense agrees that this happened,  
7 and there's no way to get around the photos and the crime scene.  
8 There's no way of getting around that. So something horrific  
9 happened that night.

10 Now, here is the critical aspect. If Paulette Smith is  
11 calling either during and right after the event and that's at 6:15,  
12 that means within that same minute of time Lasha Bryant is calling.  
13 Now, listen. That means that after getting beat this badly, after  
14 getting - - being beaten this badly within that minute of time she  
15 thought enough that, "Hey, now is my chance to get at the  
16 defendant."

17 So, what does she have to do? She's got to decide to do that.  
18 She's got to get her son on board with this ridiculous that instead  
19 of trying to scare him straight and get her kid right that this  
20 whole thing about the Maritime thing is a way of keeping him in  
21 line to get him to lie on his dad. Tell me that's not a joke. Use  
22 your common sense.

23 You got to get him on board, and guess what? You got to get  
24 Paulette. You got to get her on board all within that period of  
25 time. Does that sound like - - like it could happen?

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1           You heard that 911 tape. You heard the tone in her voice.  
2           You heard her upset. You heard her call her husband's name.

3           Does that sound and does this look like a person who within  
4           that minute of time decided instead of holding the person  
5           responsible who did these horrific things to her, her boyfriend and  
6           her son, she is going to call that person's name?

7           Don't hold the person responsible but hold that person  
8           responsible. Does that make any sense in this time frame?  
9           Absolutely and positively and undeniably not.

10          Then you look at the nature of the crime itself. How was  
11          this committed? There is a break-in by a person who is already  
12          armed with a weapon. That weapon wasn't from the house. It was  
13          brought inside the house.

14          The person breaks in. They know exactly where to go. They  
15          pass not one but two bedrooms going directly into a door that's  
16          partially closed. You can't see in and know that she's in there.  
17          Partially closed and go in. Know where the light switch is and  
18          beat you know what out of both of them.

19          Look at the anger and rage that is inflicted on these people.  
20          Who would do this? This is a crime in part on passion. Strangers  
21          don't do this. People who commit burglaries on strangers' house -  
22          - houses go in to commit larceny and rape, not to do this kind of  
23          harm to individuals.

24          The photographs, photographs speak a thousand words just as  
25          pictures - - paintings do, those photographs. Here is a picture of

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1 the car with the pocketbook and money. If a stranger committed  
2 this crime and forced her to carry out her pocketbook, why didn't  
3 he take the pocketbook and why didn't he take the money?

4 It just doesn't make any sense other than it's got to be a  
5 person who is so ingrained, so volatile, so pent up, that man, to  
6 do the horrible things that he did and to his boy, his little  
7 twelve year old boy who stands outside his home after having seen  
8 his mother beaten with tears in his eyes and a broken hand trying  
9 to protect his mom.

10 And they want to suggest to you that this little boy, Tamar,  
11 would come before you and take an oath and tell you that his daddy  
12 that he loves and that he wants to stay with is the person  
13 responsible for doing these horrific things, terrible, horrible  
14 things.

15 Did you see that on the witness stand? Did you see that boy  
16 lying?

17 Apparently, you also got to - - by the way, you line up these  
18 people. You line up Octavia Taylor and you line up Paulette Smith.  
19 You line them up to lie for you and then you tell them not to  
20 cooperate with the police, not to be honest and forthright. Does  
21 that make any sense to you?

22 If you're planning this whole conspiracy against this guy,  
23 wouldn't you have Paulette and wouldn't you have Octavia Taylor  
24 give that - - give those statements.

25 You know, a subpoena is a powerful thing. She can go tell

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1 tell Sparkman to go bounce off. "I ain't saying a word. I'm not  
2 getting involved."

3 But when you get subpoenaed, you got to come to court. You  
4 got to get on the witness stand, and, hopefully, you tell the  
5 truth. You're suppose to anyway.

6 And you know what about Octavia that makes her credible? She  
7 says when she had gotten that phone call, what were the words?

8 I think it was, "You better go check on your home girl," I  
9 think she said or, "Your girl - - your home girl is dead."

10 The defendant calling her.

11 You know what makes her credible? And she couldn't have known  
12 this. She, you know, really. I don't mean to - - she's not smart  
13 enough to think about this.

14 She's says that when she got that phone call from the  
15 defendant, she calls out of concern to see how Lasha is doing and  
16 who does she get on the phone? She doesn't get Lasha. She gets  
17 the police which makes perfect sense. Her phone rings, they're  
18 going to pick it up. They're going to find out who is calling.  
19 They're going to find out if the guy who did this, the defendant is  
20 calling. Of course, you would do that.

21 And I don't know. "Ma'am, Detective So and So or Police  
22 Officer So and So."

23 That in and of itself if you had any problem with her, that's  
24 like independent corroboration because she - - she couldn't think  
25 to make that up.

## SUMMATION BY MR. MODICA

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1           And somehow the defense wants to suggest that this whole thing  
2 that happened the night before is just a figment of her  
3 imagination, that she had it all wrong, that he's really a loving  
4 guy that wants to come to, you know, a nice resolution of their  
5 family issues.

6           Well, Lasha Bryant was a child when she met the defendant.  
7 She was fifteen years old when he impregnated her. He was  
8 considerably older than her, and he had her under his thumb for  
9 years and years.

10          When she finally probably got the guts enough to separate from  
11 him, she felt guilty about it having come from a broken home, and  
12 what did she do? She tried to make things right, and part of that  
13 was sleeping with the defendant from time to time, and so at some  
14 point in time in January of 2006, she decides for herself.

15          How dare she! How dare she decide for herself that somehow  
16 she wants to go on with her life, and she starts dating. Oh, my  
17 gosh! While she's still married. Oh, my! Somehow implying that  
18 she's a horrible person.

19          What did he say the night before? "You waiting on a man? I  
20 know a guy who told me how I can get my children a hundred percent  
21 of the time."

22          How else would you take that than a threat?

23          And when that doesn't work squeeze around the neck. "I take  
24 my marriage vows seriously till death do us part."

25          What other interpretation you give to that other than a

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1 threat?

2 And they want to imply that it's something else. That's  
3 ludicrous.

4 Now - - now there's the testimony about from the doctor, and  
5 there's assault and battery with the intent to kill, and there's  
6 all this phraseology that can confuse the best of us. I've been a  
7 prosecutor for a long time, and to this day I still have problems  
8 understanding or explaining what malice aforethought means.

9 But, basically, what it means is that you have ill will, that  
10 you have evil intent. What is more evil than breaking in under the  
11 cover of night while people are sleeping and inflicting these kind  
12 of injuries? What could be more evil than that?

13 Well, what - - shooting them would have been better. It would  
14 have been less painful than the constant taking that stick and  
15 (Solicitor beats stick on table top repeatedly while talking) while  
16 they're sleeping. What is more evil than that? Nothing, and  
17 that's what he did.

18 They didn't die, thank God, but you heard what the doctor said  
19 in regard to - I always want to call him Hayward Nelson because I  
20 know somebody Hayward Nelson but Nelson Hayward - - he testified  
21 that he couldn't get even get his eye open to look to make sure his  
22 eye was okay. They had to rely on, I believe it was a CAT-SCAN to  
23 check that.

24 He said, I believe, it was the number one trauma center in the  
25 country in New Orleans, and he said that this beating was as bad as

## FINAL CHARGE OF THE COURT

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1. he'd ever seen there. He said that he was lucky that he didn't die  
2. from these type of injuries.

3. So for the grace of God, he ain't here for murder.

4. THE COURT: Your time is expiring, Solicitor.

5. MR. MODICA: Thank you, Your Honor.

6. Very quickly about Tamar, clearly Tamar was hit when he went  
7. to protect his mother. You heard about transferred intent. If you  
8. intend to inflict that kind of injury on another person and it goes  
9. to a third person, you are just as guilty.

10. There are two things I want to say in closing. Don't  
11. compromise on your verdict. If the defendant didn't do it, he  
12. doesn't need you to compromise, and if he did the horrible,  
13. horrific things, he certain doesn't deserve it. When he said till  
14. death do us part, you now know in your hearts that he meant every  
15. single word.

16. THE COURT: Thank you, Solicitor, and thank you, Mr. Fox.

## FINAL CHARGE OF THE COURT

17. THE COURT: Ladies and gentlemen, I have now instructed you  
18. on various elements of the law. I ask that you remember these  
19. legal concepts during your deliberation with the understanding that  
20. you take the facts as you find them to be applying those facts to  
21. the law of the case.  
22.

23. Among other things I have discussed with you presumption of  
24. innocence that remains with this defendant throughout the trial  
25. until you, the jury, have found him guilty as to these charges

## FINAL CHARGE OF THE COURT

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1 beyond a reasonable doubt. I have defined that concept to you.

2 I have clearly said to you that the fact that he did not  
3 testify must not be used against him in any way whatsoever.

4 You would understand that you are the judges, the sole judges  
5 of the credibility of each of the witnesses who testified.

6 You and you alone are the sole and only finders of the facts.

7 You are fully aware that this defendant is charged with the  
8 offense of kidnapping, with the offense of burglary in the first  
9 degree and with the offenses of assault and battery with the intent  
10 to kill against three separate alleged victims. Included in the  
11 intent to kill depending on your view of the facts may be a lesser  
12 included assault and battery of a high and aggravated nature.

13 As to each element of each offense, the State must prove them  
14 as all other issues beyond a reasonable doubt.

15 Now, your verdict, be it not guilty or guilty as to each of  
16 these charges must be the unanimous verdict of twelve. It cannot  
17 be a verdict of the majority. Obviously, it would not be one of  
18 the minority.

19 I'm going to ask that you go to your jury room at this time.  
20 Do not begin your deliberations until I have sent the evidence in  
21 to you along with the verdict forms.

22 In the evidence was alleged transcriptions of certain 911  
23 calls. If you desire to hear that, we'll bring you back out and  
24 play that for you. You may or may not wish to hear that but it's -  
25 - any objection to bringing the jury back out if they desire to

## FINAL CHARGE OF THE COURT

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1 hear those transcription.

2 MR. FOX: No, Your Honor.

3 THE COURT: Alright, sir.

4 MR. MODICA: No, Your Honor.

5 THE COURT: Alright, sir.

6 Now, ladies and gentlemen, you will have with you the verdict  
7 forms, and I think they are reasonably self-explanatory.

8 The first form that you will be dealing with is with - - is to  
9 the alleged victim, Lasha Bryant, and you will consider the charges  
10 with regards to that alleged victim, and then you will next  
11 consider the charges with regards to the alleged victim, Nelson  
12 Hayward, III, and then you will consider the charges with reference  
13 to Tamar Bryant.

14 I told you at the outset and I indicate again to you. Your  
15 verdict of not guilty or guilty may be the same as to each alleged  
16 victim. Depending on your view of the facts, it may be not guilty  
17 as to some and guilty as to the other. That's for you to decide.

18 With reference to the three charges with Lasha Bryant, again  
19 as to the three charges, it may be not guilty as to all of them as  
20 to that alleged victim, guilty as to all of them, not guilty to  
21 some and guilty to the other.

22 You take, Mr. Foreman, the evidence as to each charge and  
23 thereafter consider your verdict which must be unanimous.

24 You may now retire to your jury room.

25 As soon as the indictments come in along with these verdict

EXHIBITS AGREED UPON BY BOTH COUNSEL

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1 forms, you may begin your deliberations.

2 (The jury retires to the jury room.)

3 THE COURT: Alright, sir.

4 Solicitor, as to the charge, are there any exceptions or  
5 additions requested by the State?

6 MR. MODICA: No, sir.

7 THE COURT: As to the defendant, any exceptions or  
8 additions requested by the defendant?

9 MR. FOX: No, Your Honor.

10 THE COURT: Then the charge will stand as given.

11 Alright.

12 The record is going to reflect now that each of you has looked  
13 at these verdict forms, find them okay.

14 Get with Mrs. McCall here and let's agree with what goes into  
15 the jury room, and, Mrs. McCall, give them that.

16 (Counsel for the State and for the defendant confer with the  
17 Court Reporter and agree as to all exhibits to go into the jury  
18 room.

19 EXHIBITS AGREED UPON BY BOTH COUNSEL

20 By consent of both counsel, it is agreed that all exhibits for  
21 the State, State's Exhibits #1 through #40 are in evidence, and  
22 Defendant's Exhibit #1 is for I.D. only)

23 THE COURT: Yes, ma'am.

24 COURT REPORTER: The attorneys have agreed on the  
25 exhibits. The verdicts are with the exhibits to go back.

## ALTERNATES REMOVED FROM THE JURY

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1           And did you mean for the indictments to go back at this time  
2 or wait - - -

3           THE COURT:       Yes. Send the indictments back, too.

4           COURT REPORTERS:   Then the indictments will go back as well.  
5           We'll need five indictments.

6           And the alternates, did you want to bring them out prior to  
7 the jury beginning its deliberations?

8           THE COURT:       Bring the alternates back out. Let the record  
9 reflect that deliberations have not begun as yet.

10          Bring the alternate back out, please, two of them.

## ALTERNATES REMOVED FROM THE JURY

11          (Alternates come back into courtroom and stand before the  
12 Court.)

13          THE COURT:       You were selected as alternates, and nobody got  
14 sick as of yet, and so we won't need your services hopefully.

15          I wish our rules permitted alternates to go back in the jury  
16 room but they just simply do not.

17          Now, I'm going to permit you to leave with this understanding.  
18 You will not discuss this case with anyone. Permit no one to  
19 discuss it with you until a verdict is rendered. You understand?

20          I say that for this reason. One time in Charleston I let the  
21 alternate go, and thirty minutes later one of the twelve had an  
22 epileptic attack, and I had to run back and get him.

23          On another occasion in Darlington we were deliberating at  
24 12:00 at night and one of the jurors got the word that her mother  
25

JURY BEGINS DELIBERATIONS AT 11:49 A.M.

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1 was critically ill having been in an accident and wanted to leave.

2 Fortunately, that alternate was so interested, he stayed in  
3 the courtroom.

4 So, I don't mind letting you go and go back to your normal  
5 duties with the understanding - - something could happen and I'd  
6 have to call one of you. You understand?

7 Well, having said all of these things, I'm going to excuse you  
8 with my appreciation to both of you for your participation this  
9 week.

10 You may leave.

11 Now, I can tell you. When you walk out that door, some of  
12 these persons are going to say, "Well, what would have been your  
13 verdict?"

14 Don't answer that because I may have to call you. Okay?

15 (Alternates released from this case.)

16 THE COURT: Alright. We are in recess for a few moments.

17 JURY BEGINS DELIBERATIONS AT 11:49 A.M.

18 (The Court recesses the trial of this case awaiting the call  
19 of the jury and thereafter reconvenes in response to a jury  
20 question.)

21 JURY QUESTION AND RESPONSE OF THE COURT

22 THE COURT: Alright. Be seated.

23 Alright. Where are the counsel?

24 Bring the defendant in and Mr. Fox in.

25 (All parties are present in the courtroom.)

JURY BEGINS DELIBERATIONS AT 11:49 A.M.

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1 THE COURT: I have received the following communication  
2 which is made a part of the record.

3 (Court Reporter accepts Jury Question #1 as Court's Exhibit  
4 #1.)

5 THE COURT: "Please let us have both CD's again and please  
6 review the law of intent to kill."

7 I assume by review they mean charge which I will do.

8 Now, with regards to the CD's, are they easy to operate or is  
9 it best to bring them - - come out here with them?

10 MR. FOX: I think they'd be easy to operate. I don't  
11 know if we have anything to play it on.

12 THE COURT: What you want to do? You agree to bring out  
13 and play them out here?

14 MR. FOX: If you've got to charge, you might as well.  
15 They're brief and if you've got to recharge.

16 THE COURT: Security, take these folks and bring them over  
17 there in the back of the courtroom or where ever you want to have  
18 them.

19 (Jail defendants waiting in jury box are removed to another  
20 area of the courtroom.)

21 THE COURT: Wait a minute, now. I've got another note.

22 Let's see. Wait a minute. I've got now, gentlemen.

23 "Please provide means for us to listen to the CD's in the jury  
24 room."

25 How can that be accomplished?

## JURY QUESTIONS AND RESPONSE OF THE COURT

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1           Would y'all agree to permit the Clerk of Court to go in there  
2 and turn the machine on and off for them?

3           MR. MODICA:     Yes, sir.

4           MR. FOX:         Yes, sir, Your Honor.

5           THE COURT:     Can you do that for us?

6           DEPUTY CLERK OF COURT:   Yes, sir.

7           THE COURT:     Alright.    Show him how to work it, and I'll  
8 send him in.

9           Where are the CD's?

10          MR. MODICA:     With the exhibits in the jury room.

11          THE COURT:     Pardon me?

12          MR. MODICA:     The jury has the exhibits.

13          THE COURT:     Alright.    Where is the machine, though?

14          MR. MODICA:     Right here, Your Honor.

15          THE COURT:     I tell you what.

16          After - - Mr. Clerk, Mr. Clerk.

17          DEPUTY CLERK OF COURT:   Yes, sir.

18          THE COURT:     After - - make no comment to them.   Permit no  
19 one to make any comment to you, now.

20          DEPUTY CLERK OF COURT:   Yes, sir.

21          THE COURT:     I'm sending you back there by and with the  
22 consent of the State and the defendant.

23          MR. MODICA:     Yes, sir.

24          MR. FOX:         Once you have played for them the CD's, bring  
25 them out so that I can recharge them on assault with intent to

## JURY QUESTIONS AND RESPONSE OF THE COURT

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1 kill.

2 DEPUTY CLERK OF COURT: Yes, sir.

3 THE COURT: And you understand, you are not authorized to  
4 say anything or nothing.

5 DEPUTY CLERK OF COURT: Yes, sir.

6 THE COURT: Just push a button.

7 DEPUTY CLERK OF COURT: Yes, sir.

8 THE COURT: Alright. Thank you.

9 Let that be on the record.

10 (Court in recess awaiting jury listening to CD's and then  
11 reconvenes for further charge by the Court.)

12 THE COURT: Bring them out.

13 Alright, gentlemen, I'm told that the jury is ready to come  
14 out.

15 (The jury returns to the courtroom.)

16 THE COURT: Mr. Foeman, you had said you wanted to hear the  
17 CD's. Did you have an opportunity to do that?

18 MR. FOREMAN: Yes, Your Honor. We did.

19 THE COURT: Alright, sir.

20 And now you have requested the charge - - again to be charged  
21 with the law of assault and battery with the intent to kill.

22 MR. FOREMAN: Yes, sir.

23 THE COURT: And that's fine, and as I've indicated to you  
24 as to questions of law that I'm glad to answer for you, and if you  
25 have any other recharges on any issue that you need, all you got to

## ADDITIONAL CHARGE OF THE COURT

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1 do let us know, and all of us appreciate the fact that you are  
2 making this further inquiry.

## ADDITIONAL CHARGE OF THE COURT

4 THE COURT: Now, as you understand, the defendant in this  
5 indictment is charged with assault and battery with the intent to  
6 kill against three separate individuals, and I shall now define the  
7 elements of this offense again for you at your request.

8 As I said earlier, upon a principal of law that any primary or  
9 greater offense automatically includes and embraces any lesser  
10 offense, there is included within the charge of assault and battery  
11 with the intent to kill the lesser charge of assault and battery of  
12 a high and aggravated nature.

13 I'm going to define for you again the word "assault" and the  
14 word "battery" and then the words "assault and battery of a high  
15 and aggravated nature", and, finally, I'm going to define for you  
16 "assault and battery with the intent to kill".

17 What is an assault? An assault is the unlawful attempt to  
18 offer with force or violence to do corporal hurt or injury to the  
19 person of another where there is the present ability to complete  
20 the attempt by battery.

21 What is a battery? A battery is the unlawful touching of the  
22 person of another by the party committing the assault himself or by  
23 any object put in motion by the party committing the assault.

24 A battery may be further defined as to the carrying into  
25 effect an assault by using or applying force to the person of

## ADDITIONAL CHARGE OF THE COURT

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1 another however slight in a rude, angry or resentful manner without  
2 legal justification.

3 As an example and an example only, if I pick up this object  
4 and threaten you in a forceful manner, that is an assault. If I  
5 take this object and hit you with it, then it becomes a battery.

6 As an example and an example only, if I point a pistol at you  
7 in a threatening manner, that is an assault. If I shoot it and hit  
8 you, then that is the battery.

9 Now, you are concerned here in these proceedings with two  
10 degrees of assault and battery: Assault and battery with the  
11 intent to kill or in your judgment assault and battery of a high  
12 and aggravated nature or nothing. That is for you to decide.

13 Obviously, the most serious offense of assault and battery is  
14 assault and battery with intent to kill. Assault and battery with  
15 the intent to kill is defined as the unlawful act of a violent  
16 injury to a person accompanied with malice aforethought, malice  
17 aforethought.

18 Now, I'm going to further define for you these various  
19 offenses.

20 I've stated to you that the assault and battery with the  
21 intent to kill is defined as an unlawful act of violence to the  
22 person of another with malice aforethought. Assault and battery  
23 with the intent to kill contains all of the elements of murder  
24 except the actual death of the person assaulted.

25 So before the defendant can be convicted of assault and

## ADDITIONAL CHARGE OF THE COURT

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1 battery with the intent to kill, you, the jury, must be satisfied  
2 beyond a reasonable doubt that if that victim or the person  
3 assaulted had died as a result of the injuries, the defendant would  
4 have been guilty of murder.

5 In order for you to more fully understand assault and battery  
6 with the intent to kill, it is, therefore, necessary that I charge  
7 you to a limited extent upon the charge of the law of murder, and  
8 I will parallel these two offenses for you, murder on the one hand  
9 and assault and battery with the intent to kill on the other.

10 Murder, Mr. Foreman, ladies and gentlemen, is the killing of  
11 a human being with malice aforethought or expressed or inferred.

12 Malice is an essential ingredient of murder, does not  
13 necessarily import ill will toward the individual injured but  
14 signifies, rather, a general malignant and reckless disregard of  
15 the life and safety of others or a condition of the mind which  
16 shows a heart regardless of social duty, a heart fatally bent on  
17 mischief.

18 Malice is an essential element of the crime of murder, and  
19 malice is an essential element of the crime of assault and battery  
20 with the intent to kill. As I stated, malice is a term of art, a  
21 technical term imposing wickedness and excluding just cause or  
22 legal excuse.

23 Ladies and gentlemen, malice in any form designed for doing  
24 mischief whether it arise from hatred, ill will or otherwise is  
25 still malice. Malice, ladies and gentlemen, springs from

## ADDITIONAL CHARGE OF THE COURT

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1 depravity, from a heart devoid of social duty, a heart fatally bent  
2 on mischief.

3 Malice must be aforethought. The law does not require that  
4 malice should exist for any particular time before the commission  
5 of the act but malice must exist aforethought; that is, malice must  
6 exist in the mind of the accused just before and at the time of the  
7 commission of the act. There must be a combination of previous  
8 evil intent and the act producing a fatal result.

9 Malice aforethought may be expressed or inferred. These words  
10 "malice aforethought", "expressed or inferred" do not mean  
11 different kinds of malice but merely the manner in which the only  
12 kind of malice known as the law -- known to law may be shown to  
13 exist. That is either by direct evidence or by necessary inference  
14 from the facts and circumstances which are proved.

15 Express malice is shown when one by word or mouth expresses  
16 his hatred or ill will for another or where it is shown -- it is  
17 shown that the defendant has made preparations beforehand to do the  
18 deed which was later accomplished. Lying in wait is an example and  
19 any act of preparation going to show that the deed was in his mind  
20 prior to the accomplishment of that deed would be expressed malice.

21 What is inferred malice? The implications of malice may arise  
22 when the deed is done with a deadly weapon or a dangerous  
23 instrumentality such as a knife, pistol or dagger or some other  
24 weapon of that nature which when used with the intent to injure  
25 another is calculated to produce either death or serious bodily

## ADDITIONAL CHARGE OF THE COURT

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1     harm.

2             If facts are proven beyond a reasonable doubt sufficient to  
3     raise an inference of malice to your satisfaction, this inference  
4     would simply be an evidentiary fact to be taken into consideration  
5     by you, the jury, along with the other evidence in the case, and  
6     you may give it such weight as you determine it should receive.

7             Now, ladies and gentlemen of the jury, before the defendant  
8     can be convicted with assault and battery with the intent to kill  
9     at all, you, the jury, must be satisfied beyond a reasonable doubt  
10    that if the party assaulted had died as a result of the injuries  
11    inflicted upon her, the defendant would have been guilty of murder.  
12    Therefore, ask yourself this question. If the person assaulted had  
13    died as a result of the injuries, would this defendant have been  
14    guilty of murder? If your answer is yes, the defendant is guilty  
15    of assault and battery with the intent to kill.

16            If you should conclude that the State has failed to satisfy  
17    the jury beyond a reasonable doubt that the defendant would have  
18    been guilty of murder had the person assaulted died as a result of  
19    that injury, the defendant - - the defendant would not be guilty of  
20    assault and battery with the intent to kill, and you would then  
21    consider the lesser included.

22            If you conclude the person would not have died, then he cannot  
23    be convicted of assault and battery with the intent to kill but you  
24    then go to assault and battery of a high and aggravated nature..

25            I'm now going to define for you the law applicable to the

## ADDITIONAL CHARGE OF THE COURT

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1 lesser included offense of assault and battery of a high and  
2 aggravated nature.

3 I have previously stated to you that the offense of assault  
4 and battery of a high and aggravated nature is defined as the  
5 unlawful act of violent injury to the person of another accompanied  
6 by circumstances of aggravation.

7 Examples and examples only include the use of a deadly weapon  
8 or a dangerous instrumentality, the infliction of serious bodily  
9 injury, the intent to commit a felony. Another example of  
10 aggravation is a great disparity between the age or the physical  
11 condition of the parties, a difference in the sexes, indecent  
12 liberties or familiarities with a female accompanied by force or  
13 the purposeful infliction of shame and disgrace. This is an  
14 assault accompanied by circumstances of aggravation.

15 As an example, an assault committed with a deadly weapon or a  
16 dangerous instrumentality in a spirit of wantonness and with  
17 reckless disregard for the safety of others would be assault and  
18 battery of a high and aggravated nature.

19 Neither serious bodily harm nor the use of a deadly weapon is  
20 an essential element of assault and battery of a high and  
21 aggravated nature but they are circumstances of aggravation.

22 Now, as to assault and battery of a high and aggravated  
23 nature, malice is not a required element of assault and battery of  
24 a high and aggravated nature. However, the presence of malice  
25 does not prevent an assault and battery from being classified as

## JURY QUESTION AND RESPONSE OF THE COURT

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1 aggravated because the circumstances that make an assault and  
2 battery aggravated can also rise to the inference of malice.

3 In other words, the presence or absence of malice alone will  
4 not determine whether the defendant is guilty of assault and  
5 battery of a high and aggravated nature.

6 Now, I have defined for you the various elements that the  
7 State must prove to your satisfaction beyond a reasonable doubt.

8 If you need a further definition of assault and battery of a  
9 high and aggravated nature or assault and battery with the intent  
10 to kill, I'll be glad to do that for you.

11 Now, does that comport with your request, Mr. Foreman?

12 MR. FOREMAN: Yes, sir.

13 THE COURT: Alright. You may resume your deliberations.

14 Thank you.

15 (Jury retires to the jury room to continue deliberating.)

16 THE COURT: For the State, any exceptions or additions to  
17 that charge?

18 MR. MODICA: No, sir.

19 THE COURT: For the defense?

20 MR. FOX: No, Your Honor.

21 THE COURT: Alright, sir.

22 (The Court recesses this case to await further advice from the  
23 jury and to address other matters before the Court.)

## JURY QUESTION AND RESPONSE OF THE COURT

24 (The Court reconvenes this case to address Jury Question #2  
25

JURY REACHES VERDICT AT 3:40 P.M.

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1 from the jury.)

2 THE COURT: Ladies and gentlemen for the State and Mr. Fox  
3 for the defendant, I've received the following statement.

4 "The indictment form has a place for me to sign and indicate  
5 our verdict. Should I complete this section of the form as well  
6 complete the verdict form?"

7 I think the verdict form is sufficient. Do you agree with  
8 that?

9 MR. FOX: I'm fine with that, Your Honor.

10 THE COURT: I have no idea what the verdict is but that's  
11 what we'll do.

12 Tell him, please, this is made a part of the record. Just  
13 complete the verdict forms, not the indictments.

14 Mrs. McCall, put this on the record.

15 (Court Reporter accepts Jury Question #2 as Court's Exhibit  
16 #2.)

17 THE COURT: Alright. What's next?

18 (The Court recesses this case awaiting further advice from the  
19 jury.)

20 JURY ADVISES VERDICT REACHED AT 3:40 P.M.

21 (The Court reconvenes the trial of this case with all parties  
22 present.)

23 THE COURT: Alright.

24 Mr. Fox, bring the defendant in.

25 Alright. Let's have some order.

VERDICT

279

1 The jury's got a verdict.

2 (The jury returns to the courtroom.)

3 THE COURT: Mr. Foreman, has the jury reached a unanimous  
4 verdict upon all indictments?

5 MR. FOREMAN: Yes, Your Honor, we have.

6 THE COURT: If this be the unanimous verdict of all twelve,  
7 please signify by raising your right hand.

8 (All members of the jury raise their right hands.)

9 THE COURT: The jury has signified by the raising of their  
10 right hand that the verdict as to all five indictments is  
11 unanimous.

12 Mr. Clerk, accept the verdict forms and hand them to me,  
13 please, or Madame Clerk.

14 Thank you.

15 Alright. Please publish the verdicts.

16 VERDICT

17 DEPUTY CLERK OF COURT: State of South Carolina, County of  
18 Georgetown, State of South Carolina v. James Arthur Bryant, GS - -  
19 06-GS-22-276, we, the jury, by unanimous consent find that the  
20 defendant James Arthur Bryant as to assault and battery with the  
21 intent to kill is guilty.

22 06-GS-22-277, we, the jury, by unanimous consent find the  
23 defendant James Arthur Bryant as to burglary in the first degree is  
24 guilty.

25 06-GS-278, we, the jury, by unanimous consent find that the

VERDICT

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1 defendant James Arthur Bryant as to kidnapping is guilty.

2 06-GS-279, we, the jury, by unanimous consent find that the  
3 defendant James Arthur Bryant as to assault and battery with the  
4 intent to kill is guilty.

5 06-GS-2303, we, the jury, by unanimous consent find that the  
6 defendant James Arthur Bryant as to assault and battery with the  
7 intent to kill is not guilty.

8 We, the jury, by unanimous consent that the defendant James  
9 Arthur Bryant as to assault and battery of a high and aggravated  
10 nature is guilty.

11 THE COURT: ... Alright.

12 Let me hold the forms, please.

13 Mr. Foreman, I have in my hands your verdicts, and you have  
14 found this defendant guilty of assault and battery with the intent  
15 to kill as regards to the victim Lasha Bryant. As to the victim  
16 Lasha Bryant, you found him guilty of burglary in the first degree.  
17 As to defendant Lasha Bryant with regards to kidnapping, you have  
18 found him guilty.

19 With reference to the victim Nelson Hayward, you have found  
20 him guilty of assault and battery with the intent to kill.

21 With reference to his son, Tamar Bryant, you have found guilty  
22 of assault and battery of a high and aggravated nature.

23 Correct?

24 MR. FOREMAN: Yes, Your Honor.

25 THE COURT: The jury agreed with that.

VERDICT

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1           You may be seated.

2           Mr. Foreman, ladies and gentlemen, none of you asked to give  
3 up your time this week to come to court to sit as finders of the  
4 facts, and, certainly, none of you asked to sit in this particular  
5 case but having done so, you have done your duty in accordance with  
6 the law and with your oath, and this Court, these victims and the  
7 people of Georgetown County are in your debt, and you have their  
8 gratitude.

9           There's an interesting thing about jury service. You know, we  
10 never get to participate in our government unless, one, you are  
11 elected to a position or, secondly, unless you are appointed. The  
12 only exception where you actually participate in your government  
13 that I know of is jury service, and by your service today you have  
14 actually participated in our judicial system as an active  
15 participant.

16           Now, I was not entitled to a factual opinion during the trial  
17 of the case and, as I told you, I certainly had none and certainly  
18 disclosed it.

19           But having now heard all of the evidence, I - - I can tell you  
20 that your verdict based on the law and evidence in this case was  
21 totally justified.

22           The evidence in this case was just simply overwhelming. There  
23 were not only four eye-witnesses to the occasion but one of them  
24 was his own son.

25           In addition to the eye-witnesses, of course, there were

VERDICT

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1 threats made to this estranged wife on the day before. In  
2 addition to that, he was already under a restraining order not to  
3 see her.

4 These were questions of fact for you to decide, of course, but  
5 those were the questions before you. . Four eye-witnesses, one of  
6 which was the son, door broke down, stick caused the beating,  
7 difficulties in the night before.

8 I am glad, frankly, that this defendant does not stand before  
9 me for murder because that could have easily occurred at this  
10 event, murder, totally unnecessary.

11 But I want to thank you, all of you, for your services.

12 You know, this criminal domestic violence is something we've  
13 been dealing with and should have dealt with for years in a serious  
14 manner, and the word has got to go that our judicial system is not  
15 going to permit this sort of conduct of criminal domestic violence  
16 from outraged husband for reasons best known to him wants to get -  
17 - kill or hurt his wife.

18 By your decision, trust me. You have stopped some of that  
19 some place some day because the word is going to go, now, that our  
20 jury system is not going to permit these men to go out there and  
21 beat these helpless women. Just not going to have it and properly  
22 so.

23 I want to thank all of you for your services, and you are now  
24 excused for the day and for the week. . You have my gratitude, and  
25 I thank you for your services. You are now excused.

## MOTIONS AND RULING OF THE COURT

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1 (The jury is released for the day and for the week and departs  
2 the courtroom.)

3 THE COURT: Alright, sir.

4 Mr. Fox, I'll never know more about this case than I know  
5 right this minute. I'll hear any post-trial motions that you may  
6 have.

## MOTIONS AND RULING OF THE COURT

7  
8 MR. FOX: Your Honor, I would renew or make a motion, ah,  
9 to set aside the verdict as being clear weight of the evidence.  
10 The Court is familiar with that. So I won't reiterate. You've  
11 heard the testimony and the evidence on both sides presented by  
12 both sides.

13 I'd also renew my objection and motion in regarding testimony  
14 that was introduced and allowed by the Court regarding the incident  
15 the night before, um, those motions previously made, and I would  
16 renew those motions and request a new trial based on our belief  
17 that that was an error to admit those and unduly prejudiced the  
18 jury.

19 THE COURT: Well, with reference to the night before in my  
20 view it's clearly permissible under several views.

21 One, it was a continuing act because the second act occurred  
22 so close to that event; and, certainly, it's admissible, too, under  
23 Lyle in my opinion because it meets the criteria of Lyle of  
24 identification, motive and the other things that Lyle mentions.

25 So, that is respectfully denied.

SENTENCE OF THE COURT

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1 Have the defendant come forward.

2 (Defendant comes forward and stands before the Court with his  
3 counsel.)

4 SENTENCE OF THE COURT

5 THE COURT: Is there anything further from the State? I  
6 have, of course, heard all of the evidence in the case.

7 MR. MODICA: Your Honor, we previously discussed the  
8 defendant's record. Do you want me to go over that again now?

9 THE COURT: Let's have it for the record.

10 MR. MODICA: Yes, sir.

11 In 1985, I'm sorry, in 1984, he was convicted of resisting  
12 arrest.

13 In 1985, he was convicted of shoplifting.

14 And that's all the State is aware of, Your Honor.

15 THE COURT: Alright, sir.

16 Mr. Fox, anything you want to tell me?

17 MR. FOX: Your Honor, only Mr. Bryant is thirty-nine  
18 years old. He has been in jail since his arrest in March, I  
19 believe the 8<sup>th</sup>. Um, we would request credit for those couple of  
20 months.

21 The Court's heard what record he has. Most of it is very old  
22 and, ah, shoplifting and resisting arrest twenty years ago. This  
23 has not been Mr. Bryant's character or habit.

24 Although it is no defense and it wasn't an issue at trial and  
25 we did not go into it as Your Honor knows from, ah, the

## SENTENCE OF THE COURT

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1 conversation this morning with Mr. Bryant and what he has always  
2 told me is he was so very, very drunk this night, I would, again,  
3 it wasn't an issue. It didn't go to his alibi. We weren't  
4 claiming intoxication.

5 THE COURT: Let me say this to you. I hear him - - I hear  
6 you say that, and I heard him say that earlier but that's certainly  
7 inconsistent with his employer's testimony who say he saw him  
8 thirty minutes later, and he was ready to go to work.

9 MR. FOX: Well, no, Your Honor. Not to disagree with  
10 Your Honor, in fact, the testimony from his boss was he was such a  
11 bad condition that following morning that he didn't work all day.  
12 He slept in the truck,

13 And it is no excuse whatever his condition, voluntary  
14 intoxication, for what happened but what he said this morning I do  
15 believe is true from his point. He doesn't remember. It is no  
16 excuse. It is no justification. These people did not deserve to  
17 suffer the way they did because of what he did and because of  
18 intoxication but I do point out and don't think and his record does  
19 not reflect - -

20 THE COURT: Anything further?

21 MR. FOX: - - this to be his character.

22 No, Your Honor.

23 THE COURT: Well, there's obviously great concern I have  
24 hear, and I - - as I've told the jury, I'm so glad he's not  
25 standing here before me for murder.

## SENTENCE OF THE COURT

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1 MR. FOX: Yes, sir.

2 THE COURT: Easily could have been, and it in my view would  
3 have been a death penalty case, too.

4 This client for whatever reason, first he violated the court  
5 order by seeing his estranged wife the night before. Then he takes  
6 a stick, breaks the door down, goes upstairs, beats his wife, beats  
7 the gentleman with her and puts his own son in extreme danger,  
8 grabs his wife, and the evidence is just simply overwhelming.

9 I've never seen a case this strong. There were four eye-  
10 witnesses. No question about it.

11 It's a horrible case.

12 What you want to tell me, Mr. Bryant?

13 MR. BRYANT: That I was drinking that night, and I still  
14 don't know if I did it or not because I was so intoxicated but  
15 that's all I can say. If I did it, I'm sorry but I don't remember  
16 doing it.

17 THE COURT: Well, I don't see how you could have any  
18 question in your mind that you did it when your own son who loves  
19 you identified you.

20 MR. BRYANT: Yeah. Well, that's what I decided to plead  
21 guilty cause if he said I have to believe it but - -

22 THE COURT: No, sir.

23 MR. BRYANT: - - I don't know.

24 THE COURT: Well, the evidence is just simply overwhelming.  
25 Well, I'm sorry that you put yourself in this position, and I

## SENTENCE OF THE COURT

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1 take no pleasure in imposing sentences in these such circumstances  
2 but this was a terrible case, and the facts also suggest that, in  
3 fact, you thought you had killed her and were glad of it if you  
4 believe that one testimony of that lady there.

5 THE COURT: Alright, Mr. Bryant.

6 With reference to burglary in the first degree it is the  
7 sentence and judgment of this court that you be confined for a  
8 period of twenty-five years;

9 With reference to kidnapping twenty-five years concurrent;

10 With reference to assault and battery with the intent to kill  
11 as to your wife, Lasha Bryant, twenty years concurrent.

12 With reference to the victim, Tamar Bryant, where you were  
13 convicted of assault and battery with the intent to kill I sentence  
14 you to three years consecutive.

15 Anybody who would go in and do what you did when their young  
16 son was there has no regard for anything, and so as to your wife,  
17 I've given you twenty-five years for the burglary, and I'm going to  
18 give you three years for the assault upon your young son  
19 consecutively.

20 With reference to the other assault against Nelson Hayward,  
21 I'm going to sentence you to twenty years concurrent.

22 Thank you so much.

23 MR. MODICA: Your Honor, just for the record, in regard to  
24 Tamar Bryant, you saying three years consecutive on assault and  
25 battery of a high and aggravated nature?

## SENTENCE OF THE COURT

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1 THE COURT: Yes, I thought I said that. Why you want to  
2 say it for the record? Isn't that what I said?

3 MR. MODICA: I thought you said abwik.

4 THE COURT: No, sir. Assault and battery of a high and  
5 aggravated nature. He was found not guilty of intent to kill, and  
6 I, frankly, don't think he was guilty of intent to kill but I,  
7 frankly, don't think he didn't care who and where he hurt including  
8 his young son.

9 MR. MODICA: Yes, sir.

10 THE COURT: So, the intention is that he serve twenty-five  
11 on the one charge against his wife for burglary in the first degree  
12 and three additional years for putting his own son in such a  
13 desperate situation.

14 MR. MODICA: Thank you very much.

15 THE COURT: Alright. Thank you.

16 Mr. Fox, as Public Defender, the Court expresses to you its  
17 appreciation for your outstanding services in this case.

18 MR. FOX: Thank you, Your Honor, and, also, I appreciate  
19 your giving me the opportunity during trial to track down and  
20 follow up on some witnesses and leads during the trial, and that  
21 made my job easier.

22 THE COURT: For post-conviction relief purposes if that  
23 develops, it's clear to me that you fully informed him of the  
24 possible negotiations of sentencing there.

25 MR. FOX: That's correct.

## SENTENCE OF THE COURT

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1 THE COURT: But, of course, I would never have under the  
2 facts in this case I never would have accepted it to start with.

3 MR. FOX: Thank you, Your Honor.

4 MR. MODICA: Your Honor, may we approach as soon as you're  
5 ready?.

6 THE COURT: Yes, sir.

7 (The Court adjourns the trial of this case and addresses other  
8 matters before the Court.)

9 - - - END OF TRANSCRIPT - - -

TRIAL

GENERAL SESSIONS JURY SELECTION

CASE NO. 06-6522-271, 278, 279, 279, 303 DATE: May 30, 2006

PLAINTIFF: State ATTORNEY: Matthew Modica AS

DEFENDANT: James Arthur Bryant ATTORNEY: Dora Biagiante AS  
Eric Fay APD

PRESIDING JUDGE: Edward B Cottingham COURT REPORTER: LINDA W. MCCALL

STRIKES

JUROR #	NAME	RACE	SEX	COURT	STATE	DEF.	ACCEPT
7	Ronald Brown	AA	M				✓
10	John Cherry	C	M				✓
137	Robert Row	C	M		X		
92	Sandra Bellamy	C	F			X	
113	Peter Groot	C	M			X	
112	Henry Green	AA	M				✓
57	Jimmy Miller	C	M			X	
142	Vicky Stickell	C	F			X	
138	Terra Samson	C	F			X	
60	James Moody - Foreman	C	M				✓
69	Homer Reed	AA	M				✓
117	Melanie Hipkins	C	F			X	
94	Henry Byrd	AA	M		X		
64	Scott Peka	C	M		X		
49	James Lambert	C	M				✓
87	Edna Yarbrough	C	F				✓
42	Daisy Johnson	AA	F				✓
90	Clarence Barrimore	C	M			X	
116	Jimmy Hicks	AA	M		X		
98	Cicely Crawford	AA	F			X	
51	Kathy Mantgault	AA	F				✓
22	Patrick Duggan	C	M			X	
140	Michael Smith	C	M			X	
146	Delores Watkins Pittman	AA	F				✓
89	Kathryn Bancroft	C	F				✓
53	Eric Massengill	C	M				✓
	<u>Alternates</u>						
4	Michael Benton	C	M			X	
110	Shannon Grayson	AA	F		X		
32	Carlene Gauler	C	F			X	
132	Cory Owens	C	M				✓
62	Susie Poston	C	F				✓

CERTIFICATE OF COURT REPORTER

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1 STATE OF SOUTH CAROLINA )

2 COUNTY OF GEORGETOWN )

3

4 I, the undersigned Linda W. McCall, Official Court

5 Reporter for South Carolina Court Administration, do hereby

6 certify that the foregoing is a true, accurate and complete

7 Transcript of Record of all the proceedings had and evidence

8 introduced in the trial of the captioned case, relative to

9 appeal, in the Court of General Sessions of Georgetown County,

10 South Carolina.

1 I do further certify that I am neither of kin, counsel,

12 nor interest to any party hereto..

13 October 21, 2006

14 *Linda W. McCall*

15 Linda W. McCall

16 Official Reporter

17

18

19

JD

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

2009-CP-22-0477

James A. Bryant, # 315781,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL WITH PREJUDICE

FILED  
GEORGETOWN COUNTY S.C.  
2009 AUG 28 PM 2:35  
ALMA Y. WHITT  
CLERK OF COURT

This matter came before the Court pursuant to an Application for post-conviction relief filed April 1, 2009, by James A. Bryant. Respondent made its Return on May 22, 2009. An evidentiary hearing was convened at the Horry County Courthouse on July 28, 2009. The Applicant was present in court and represented by Paul Archer, Esquire. The Respondent was represented by Christina J. Catoe, Assistant Attorney General.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from Georgetown County. The Applicant was indicted in April 2006 for assault and battery with intent to kill (ABWIK) against victim Lasha Bryant (2006-GS-22-276); burglary in the first degree (2006-GS-22-277); kidnapping (2006-GS-22-278); ABWIK against victim Nelson Heyward, III (2006-GS-22-279); and ABWIK against victim Tamar Bryant (2006-GS-22-303). J. Eric Fox, Esquire, represented the Applicant on the charges.<sup>1</sup> On May 30 – June 1, 2006, the Applicant was tried before the Honorable Edward B. Cottingham and a jury. He was convicted on all counts, but the jury found him guilty of the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN) regarding the 2006-GS-22-303 indictment against Tamar Bryant. Judge Cottingham sentenced the Applicant to twenty years for ABWIK

<sup>1</sup> The trial transcript incorrectly states that the Applicant was represented by Stuart Mark Axelrod, Esquire.

against victim Lasha Bryant, twenty-five years for burglary in the first degree, twenty-five years for kidnapping, twenty years for ABWIK against victim Nelson Heyward, III, and three years for ABHAN against victim Tamar Bryant. All sentences were to run concurrently except for the three-year sentence.

A Notice of Appeal from trial was timely filed by Attorney Fox, and an appeal was perfected on the Applicant's behalf by Kathrine H. Hudgins, Esquire. The issues on appeal included whether the trial court erred in refusing to accept the Applicant's guilty plea, and whether the trial court erred in allowing evidence of the Applicant's prior bad acts. The South Carolina Court of Appeals affirmed the convictions on January 14, 2009 in a *per curiam* Opinion (2009-UP-032). The case was remitted to the circuit court on January 30, 2009.

#### STANDARD OF REVIEW

In a post-conviction relief proceeding, the applicant bears the burden of proving his or her allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, supra. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, supra, at 109, 525 S.E.2d at 517 (citations omitted). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. When a defendant challenges his conviction after a trial, the proper consideration is whether there is a reasonable probability that, absent the errors, the fact-finder would have had a reasonable doubt respecting guilt. Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007). (citations omitted). In order to receive relief, an applicant must prove both ineffective assistance and resulting prejudice. See, e.g., Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

#### Allegations

In his original and Amended PCR Applications, Mr. Bryant alleged that his custody was unlawful for the following reasons:

- (1) Ineffective assistance of trial counsel, in the following particulars:
  - a. Failure to argue fatal variances in the indictments;
  - b. Failure to request a psychological evaluation prior to trial;
  - c. Failure to object to the qualifications of the State's expert witness;
  - d. Failure to obtain an independent crime scene and forensic expert;
  - e. Failure to object to the State's prejudicial use of prejudicial photos;
  - f. Failure to adequately investigate and prepare for trial;
  - g. Failure to object to the trial court's erroneous malice charge;
  - h. Failure to object to hearsay testimony;
- (2) Denial of his right to present evidence of actual innocence and denial of his right to exculpatory evidence;
- (3) Ineffective assistance of appellate counsel – failure to argue the directed verdict issue on appeal;

(4) Denied due process of law – Applicant was denied a fundamentally fair trial by prosecutorial misconduct; and

(5) Court lacked subject matter jurisdiction.

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003):

#### FINDINGS OF FACT

In considering the Applicant's case, this Court had before it the Applicant's PCR file, the records of the Georgetown County Clerk of Court regarding the convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the direct appeal records. Both the Applicant and his former trial attorney, Eric Fox, Esquire, testified at the hearing. This Court carefully listened to all of the testimony, and found the testimony of Mr. Fox to be credible on all issues. The Applicant's testimony was not credible.

The Applicant testified that crimes in question allegedly took place on February 10-11, 2006. He was arrested on March 8, 2006, almost a month later. His ex-wife alleged that the Applicant entered her apartment in the night and beat her, her boyfriend (Nelson Hayward) and her son with a stick. She also alleged that he dragged her down the stairs and choked her. The Applicant stated that Eric Fox was appointed to represent him, and he saw Mr. Fox about 90 days after his arrest for about fifteen minutes. He stated that Mr. Fox told him that he was going to trial the following Monday. He stated Mr. Fox told him that he would not be able to get a bond hearing. The Applicant stated that the next time he saw Mr. Fox was when they picked the jury. He stated that he and Mr. Fox did not talk about any potential defenses prior to trial.

The Applicant further testified that there were no fingerprints taken from the wooden stick allegedly used to beat his ex-wife and her boyfriend. He stated that his prints would not have been found on the stick. However, he acknowledged that he did not know if there were, in fact, any latent prints on the stick or if prints could have been developed from it.

The Applicant stated that he told Mr. Fox that he had an alibi for the time of the crime; specifically, that he was with his boss, who picked him up for work that morning. He also stated that he was "stone drunk" that morning. He acknowledged that he told the trial judge during an attempt to plead guilty that he was so drunk on the night of the crime that he did not know if he committed it or not. (See Trial Transcript, page 216, lines 23-24). The Applicant also stated that phone records would have refuted Octavia Taylor's testimony that he confessed to her over the phone. He stated that these calls never happened and that he was not even home at the time. However, the Applicant admitted that he did not have any phone records to present at the PCR hearing to prove this.

The Applicant acknowledged that his ex-wife and son both identified him at trial, but he stated that his ex-wife lied and made his son lie also. He testified that his ex-wife forced his son to lie at trial by using threats of boot camp. He stated that she had done this in the past, and he told his attorney that there was a report with the Georgetown County Sheriff's Department would that would have proven this. However, he stated that his attorney called the wrong police department and was unable to obtain the report. He stated that Mr. Fox refused to ask his son about the report at trial. However, he acknowledged that Mr. Fox did cross-examine his ex-wife and son regarding their motivations, and that he argued these issues in his closing.

The Applicant testified that Nelson Hayward, his ex-wife's boyfriend and one of the victims, had been unable to identify the Applicant as the perpetrator. The Applicant also stated that Mr. Hayward said that the Applicant was not, in fact, the man who attacked him. He stated that the police knew this because they tried to get Mr. Hayward to identify him. However, Mr. Fox refused to call Mr. Hayward as a defense witness at trial. The Applicant indicated that he heard a rumor that the real perpetrator was a drug dealer who got robbed.

The Applicant further testified that his attorney should have objected to Dr. Manning's

qualifications because of an inconsistency between the State's request and his area of expertise. He stated that his attorney should have objected to the burden-shifting malice charge that was given to the jury. He stated that his appellate lawyer was ineffective for failing to argue that he was entitled to a directed verdict on these charges. The Applicant also stated that his lawyer failed to object to the hearsay testimony of Octavia Taylor. However, he acknowledged that the "hearsay" testimony to which he was referring was his own testimony.

Eric Fox, Esquire, testified that he was appointed to represent the Applicant sometime in the weeks following his arrest. He stated that he met with the Applicant and spent "much more" than fifteen minutes face-to-face with the Applicant. He testified that he and the Applicant discussed the Applicant's version of the facts, the indictments, the possible punishments for the offenses, and potential defenses. They discussed and reviewed all of the discovery materials on May 19<sup>th</sup>, 2006, and discussed the options as far as pleading guilty or going to trial. Counsel also advised the Applicant regarding his upcoming trial date the week of May 30, 2006.

The Applicant told Mr. Fox that he was at home, two miles from the crime scene, when this incident occurred. He stated that he had an alibi because his boss picked him up that morning for work around 6:30 am. He also told counsel that he had been drinking heavily on the night of the crime. Counsel stated that despite this, he had no concerns regarding the Applicant's competency and saw no reason to request a mental evaluation. Counsel did inform the Applicant that voluntary intoxication would not be a proper defense to these charges.

Counsel stated that he investigated the facts of the case in preparation for trial. Counsel stated that he saw no reason to hire an independent crime scene expert, since the crime scene was no longer in the same condition when he was appointed to the case. He stated that he did not have the wooden stick fingerprinted, and had no idea if prints could have been developed off of the stick. He stated that he did not obtain any phone records regarding Octavia Taylor, because he felt that she

was an unbelievable witness in any event. At trial, he pointed out that the police did not even seem to believe her.

In his investigation of the case, counsel spoke with the Applicant's mother and the Applicant's former boss, Mr. Grimes. Counsel confirmed the Applicant's alibi defense with Mr. Grimes and ultimately called Mr. Grimes as an alibi witness at trial. Counsel also called Investigator Sparkman to testify regarding investigations that were not performed by the State. Counsel used Sparkman's testimony to show that the police did not do any fingerprinting; did not obtain a search warrant for the Applicant's residence; did not submit any blood or DNA for testing; did not take any statements from Octavia Taylor; and did not obtain any phone records regarding Octavia Taylor.

Counsel stated that at the Applicant's request, he did talk to the victim Nelson Hayward. Counsel learned that Mr. Hayward would not have been a helpful defense witness because, although he could not positively identify the Applicant, he said he could not say who committed the crime because he did not have an opportunity to see his assailant. Therefore, counsel chose not to call Mr. Hayward as a witness, although he did point out to the jury (through the testimony of the Applicant's ex-wife) that Mr. Hayward had a criminal record and was not supposed to be at the apartment where the incident occurred due to Housing Authority rules.

Counsel also used the ex-wife's testimony to show the jury that she had reasons to lie and to force her son to lie about who committed this crime. Specifically, counsel pointed out that she had sent her son to boot camp in the past to try to influence him, and counsel suggested that she used the same tactic in this case to get him to lie and say that the Applicant committed this crime. Further, counsel cross-examined the son on this issue as well; he admitted that his mother sent him to boot camp previously and that she used it to threaten him. Counsel stated that the Applicant did, at the last minute, inform him that there was a report that would confirm that some sort of incident

occurred. He stated that he looked into it and eventually spoke with the correct persons, including an attorney named Crosby; however, he learned that no such incident reports existed.

Counsel testified that he did not see any plausible basis for challenging the expert qualifications of Dr. Manning, the State's expert witness. Counsel also stated that although many photographs were introduced at trial, he reviewed the photographs and did not see any reason to object to them, since they were not unduly prejudicial and were illustrative of the witnesses' testimony.

Counsel stated that he had sufficient time to prepare for trial. He stated that he and the Applicant discussed the evidence and the likelihood of success at trial. They also discussed the Applicant's right to testify at trial. Although the Applicant initially had planned to testify, he later changed his mind and waived his right to testify. Counsel noted that prior to trial, the State made a plea offer for fifteen years, which incorporated all of the pending charges. Counsel and the Applicant discussed this offer on May 19, 2006, and discussed it again the week the trial was to begin. The Applicant ultimately chose to reject the offer and proceed to trial. However, near the end of trial, the Applicant tried to plead guilty, but Judge Cottingham refused to accept the plea after the Applicant indicated that he could not admit guilt because he was too drunk that night to remember committing the crime.

Counsel stated that he did request and receive a jury charge regarding alibi. He stated that he did not find the malice charge to be burden-shifting or otherwise objectionable. He stated that he did not have any new evidence to present to support a motion to reconsider the three-year consecutive sentence which the Applicant received for ABHAN against his son. Finally, counsel testified that following trial, he filed a notice of appeal on the Applicant's behalf in order to preserve his rights, and an appeal was thereafter perfected.

### CONCLUSIONS OF LAW

This Court finds that Mr. Fox's testimony refutes the Applicant's allegations. This Court finds that counsel conducted a reasonable investigation; that counsel adequately prepared for trial; and that counsel performed reasonably at trial. Counsel fully presented the Applicant's alibi defense to the jury, and he cross-examined the ex-wife and son regarding their motivations for lying about the Applicant being the perpetrator. Counsel also spoke with the victim, Nelson Hayward, and determined that he should not be called as a witness since he would testify that he had been unable to get a good look at his assailant. Although counsel did not have the wooden stick tested for fingerprints, and did not obtain Octavia Taylor's cell phone records, he did call Investigator Sparkman as a defense witness and used his testimony to show that the State failed to fully investigate the case and failed to investigate those things in particular.

Further, this Court finds that even if counsel had rendered deficient performance for failing to obtain the cell phone records or failing to fingerprint the wooden stick, the Applicant failed to prove prejudice where he did not present the cell phone records or fingerprint results at the PCR hearing. Therefore, any prejudice is purely speculative – for all the Court knows, the cell phone records might have confirmed that the phone calls did occur; similarly, the wooden stick might be covered in the Applicant's fingerprints. See, e.g., Porter v. State, 368 S.C. 378, 386-87, 629 S.E.2d 353, 358 (2006); Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005); Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (mere speculation is insufficient to prove prejudice in a PCR case).

Regarding other specific allegations not addressed above: This Court finds that counsel had no reason to request a psychological evaluation of the Applicant, notwithstanding that the Applicant used alcohol on the night of the incident. This Court finds that counsel was not deficient in failing to object to Dr. Manning's qualifications, and was not deficient in failing to obtain an independent

crime scene expert. Further, this Court finds that the Applicant failed to prove that counsel was ineffective for failing to object to the State's photographs. See Porter, Dempsey, and Bannister, supra. This Court further finds that counsel had no basis to object to alleged hearsay testimony of Octavia Taylor, since the testimony was that of the Applicant himself and was therefore a party admission under Rule 801(d), SCRE. This Court also finds that counsel had no basis to object to the malice jury instruction since it was not erroneous or burden-shifting. (See Trial Transcript, p. 229; p. 275).

This Court further finds that a directed verdict was clearly not warranted in this case, and therefore, appellate counsel was not deficient for failing to raise this issue on appeal. (See Trial Transcript, pages 38-101). In addition, this Court finds the Applicant's allegations regarding fatal variances in the indictments, prosecutorial misconduct, and lack of subject matter jurisdiction to be without merit.

In conclusion, this Court finds that the Applicant failed to rebut the presumption that counsel's conduct fell within reasonable professional norms. Further, this Court finds no errors sufficient to undermine confidence in the outcome of the trial. Therefore, the Applicant failed to show any entitlement to post-conviction relief.

#### CONCLUSION

For all of the reasons discussed above, this Court finds and concludes that Mr. Bryant's post-conviction relief Application must be denied and dismissed with prejudice for failure to meet his burden of proof under Strickland v. Washington, 466 U.S. 668 (1984), and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

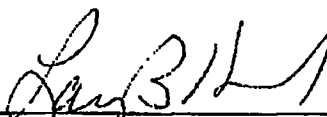
Counsel's attention is directed to Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), and Rule 59(e), SCRPC, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S.C. Code Ann. § 17-27-80 (2003).

This Court further advises that if Applicant desires to secure appellate review of this Order, a notice of appeal must be filed and served within thirty (30) days of the service of this Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

**IT IS THEREFORE ORDERED THAT:**

1. The Application for post-conviction relief is **DENIED** and **DISMISSED** with **PREJUDICE**.
2. The Applicant must remain in the custody of the State for the completion of his sentence.

AND, IT IS SO ORDERED this 25 day of Aug, 2009.

  
\_\_\_\_\_  
Larry B. Hyman, Jr.  
Presiding Judge  
Fifteenth Judicial Circuit

CONWAY, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

2009-CP-22-0477

James Bryant,

Applicant,

v.

State of South Carolina,

Respondent.

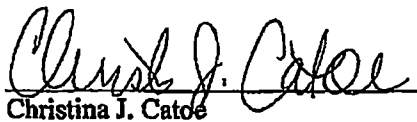
**CERTIFICATE OF SERVICE BY MAIL**

FILED  
GEORGETOWN COUNTY, S.C.  
2009 AUG 28 PM 2:56  
ALMA Y. WHITE  
CLERK OF COURT

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 **ORDER OF DISMISSAL WITH PREJUDICE** in the above-captioned matter on the following person by depositing in the United States mail, postage prepaid:

**Paul Archer, Esquire  
8231 Ocean Highway  
Pawleys Island, SC 29585**

DATED this 26<sup>th</sup> day of August, 2009.



Christina J. Catoe  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

James A. Bryant #315781,  
Petitioner,

v.

State of South Carolina,  
Respondent.

IN THE COURT OF COMMON PLEAS

Case No.: 2014-CP-22-00812

PETITION FOR WRIT OF  
HABEAS CORPUS

FILED  
GEORGETOWN COUNTY, S.C.  
2014 AUG 27 PM 3:45  
ALMA WHITE  
CLERK OF COURT

The petitioner, James A. Bryant, #315781 respectfully moves this Honorable Court to convene an evidentiary hearing and to grant the writ of habeas corpus on the issues presented in this petitioner for WRIT OF HABEAS CORPUS pursuant to South Carolina code of law 17-17-10, 17-17-30.

The petitioner brings forth this WRIT OF HABEAS CORPUS to protect his rights to be free from a conviction based upon insufficient evidence to sustain each and every element of the charged offense. The insufficient evidence permeated petitioner's entire judicial proceedings such that petitioner's only means to right this wrong is through HABEAS CORPUS.

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UNAVAILABILITY OF DIRECT APPEAL

As a threshold matter, the state habeas corpus is the only available avenue and the appropriate mechanism by which this petitioner can have this current issue adjudicated under South Carolina law and legal jurisprudence.

This STATE HABEAS CORPUS is not being instituted as a substitution for the appeal process established by the South Carolina legal jurisprudence. The petitioner's constitutional issue that the evidence adduced at trial shows that no rational trier of facts could have found proof of guilt beyond a reasonable doubt is not reviewable upon direct appeal.

South Carolina Appellate Court rule 201 defines who may appeal and what may be appealed. Subsection (b) of South Carolina appellate rule 201 specifically sets the parameters that "only a party of aggrieved by an order, judgement, sentence or decision may appeal." This is significant because there is no actual written order, judgement, sentence or decision issued by Judge Edward B. Cottingham which specifically adjudicates insufficient evidence to sustain the conviction of petitioner's trial. Because there is no written order, judgement, sentence or decision on this specific issue, the appeal mechanism is barred and unavailable to Petitioner Bryant. (SEE: Brunson v. American Koyo Bearin, 367 S.C. 161, 623 S.E.2d 870 (S.C. App. 2005). "South Carolina adheres to the final judgement rule, which provides that, an appeal lies only from a final judgement." SEE also Fulmer v. Cain, 380 S.C. 466, 670 S.E.2d 652 (S.C. 2008) and State v. Isaac, 747 S.E.2d 677 (S.C. 2013).

UNAVAILABILITY OF POST-CONVICTION PROCEDURE ACT

As a threshold matter, the state habeas corpus is the only available avenue and the appropriate mechanism by which the petitioner, James A. Bryant, #315781, can have his current issue adjudicated under South Carolina law and legal jurisprudence. This state habeas corpus is not being instituted as a substitution for post-conviction relief as established by the UNIFORM POST-CONVICTION PROCEDURE ACT.

The petitioner's constitutional issue that the evidence adduced at trial shows that no rational trier of facts could have found proof of guilt beyond a reasonable doubt is not cognizant under the mandated parameters of the Uniform Post-Conviction Procedure Act, thereby rendering the Uniform Post-Conviction Procedure Act unavailable to the petitioner, James A. Bryant, #315781.

The Uniform Post-Conviction Procedure Act defines who may utilize its mechanism and under which specific circumstances the mechanism trigger. (SEE: generally South Carolina Codes of law 17-27-20). The petitioner, Bryant, is specifically challenging the insufficiency of the evidence upon which his convictions rests. The Post-Conviction Procedure Act 17-27-20(a)(6) specifically says "That this section 'shall' not be construed to permit collateral attack on the grounds that the evidence was insufficient to support a conviction."

This subsection of the Post-Conviction Procedure Act creates a bar which prohibits the petitioner from bringing this issue under the Uniform Post-Conviction Procedure Act as a matter of law. So clearly, as a matter of fact and as a matter of law, the Uniform Post-Conviction Procedure Act is not and will not ever be available to an individual

who alleges insufficient evidence to sustain a conviction in South Carolina as the ACT is presently written.

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**STATEMENT OF THE CASE**

The petitioner (James Bryant) was indicted on April 5, 2006 by the 'Georgetown Grand Jury' on charges of 'Burglary First (1st)' under indictment number 2006-GS-22-277; kidnapping under indictment number 2006-GS-22-278 and three (3) counts of assault and battery with intent to kill under indictment numbers 2006-GS-276; 279 and 303. On May 30, 2006, the petitioner proceeded to trial before the 'Honorable' Edward B. Cottingham and a jury. Whereas he was subsequently found guilty on all charges 'AS' indicted, with the exception of having been found guilty of the lesser included offense of assault and battery of a high and aggravated nature upon indictment number 2006-GS-22-303. The Honorable Judge Cottingham sentenced the petitioner (James Bryant) to 'Concurrent' terms of twenty-five (25) years confinement within the South Carolina Department of Corrections for all charges. The State of South Carolina was represented by 'Matthew J. Modica, Esq. and Eric J. Fox, Esq. of Conway South Carolina represented the petitioner in this matter.

A timely 'Notice of appeal' was filed on June 2, 2006. Petitioner's convictions and sentences were thereby affirmed by the South Carolina Court of appeals on January 14, 2009. This exhausted the petitioner's state remedies upon his 'Habeas' grounds, one (1) and two (2) (involving direct appealable issues). Thereafter, the petitioner filed an application for Post Conviction Relief (Doc. #2008-CP-22-477), within two (2) months of the dismissal of his 'Direct Appeal'. The PCR addressed the remaining grounds for relief, grounds three (3) and four (4), issues of Ineffective Assistance of Counsel (defense and appeal). An evidentiary hearing was held before the 'Honorable' Judge

Larry B. Hyman, Jr., on July 28, 2009. The petitioner was represented by Paul Archer, Esq., and the State of South Carolina by Christina J. Catoe, Assistant Attorney General. The PCR Court filed its ORDER of DISMISSAL on August 28, 2009. In said ORDER, the PCR Court so noted that 'it had considered petitioners case and it addressed all issues stated in petitioner's 'Habeas' grounds three (3) and four (4).'

The petitioner then proceeded to file a timely 'Petition for Writ of Certiorari' after serving his 'Notice of Intent to Appeal' on August 27, 2009. The petitioner was represented on said appeal by Robert M. Pachak, Esq., an Appellate Defender from the South Carolina Commission on Indigent Defense, whom perfected the petition and addressed defense counsel's 'Failure to Object' to the 'Incorrect Malice Charge'. The petitioner has made every conceivable attempt to preserve and have these remaining grounds reviewed by the South Carolina State Supreme Court, having submitted two (2) 'Request to Supplement the Record' with his own 'Pro-Se Brief' or for the Honorable Court to 'allow' Appellate defender to 'Re-Brief' all said grounds for relief!

However, this has NOT been permitted by the highest court of South Carolina. See: attachments A-D. The South Carolina State Supreme Court 'DENIED' the petitioners 'Writ of Certiorari' on April 7, 2011. The 'Remitter' was issued on April 25, 2011, and the petitioner filed a timely 'Writ of Habeas Corpus' on issues A-J on August 20, 2012. The District Courts 'Granted Summary Judgment' to the respondents. The petitioner then filed a timely 'Motion for reconsideration'. On April 8, 2013, the District Court subsequently 'Denied' the petitioner's 'Motion for Reconsideration'. The petitioner then responded with the filing of a timely 'Notice of Intent to Appeal.'

Service was made upon the State of South Carolina. Said 'Notice of Intent to Appeal' was thereby 'Denied' on June 18, 2013. Therefore, the petitioner has filed a further appeal of their decision before this 'Honorable Court'.

QUESTIONS PRESENTED

1). Whether the extra added aggravating circumstances of subsection §16-11-311~~(A)~~(2)(3) as fact-offense elements of burglary first degree were sufficient to sustain the convictions where this evidence did not go the grand Jury and were not specifically charged within the indictment upon which the petitioner was indicted?

2). Whether the Grand Jury indicted Petitioner Bryant on subsection §16-11-312(A) or §16-11-311(A) in the indictment returned upon him by the Grand Jury in this case, and was the amendment to this indictment sufficient to sustain the convictions and sentences?

ARGUMENT IN SUPPORT OF ISSUES (1) AND (2)

Petitioner, Bryant points to the indictment that was returned upon him by the grand jury, SEE: indictment #2006-GS-22-277, which reads: "That James Arthur Bryant did in Georgetown County, on or about February 11, 2006, without consent and with intent to commit a crime therein, enter the dwelling of Lasha E. Bryant, located at 12 Avant Court, Georgetown S.C., causing bodily harm to: Lasha E. Bryant and/ or Nelson Heyward, III and/or Tamar Bryant, in violation of section (16-11-312(A)), South Carolina Code of Laws, 1976, as amended." This is the language clearly written that is contained within the body of the indictment returned upon petitioner, (Bryant), by the grand jury which is controlling: SEE: indictment #2006-GS-22-277 at (App. pg. 414) with amendment from (16-11-312(A)) to (16-11-311(A)). SEE: also Exhibit 1 (copy of amended indictment) First, let us note that this indictment does not allege a violation of statue (16-11-311(A)) in the body of said indictment nor does this indictment charge (16-11-311(A)(1) (2) or (3)), because this is not what the grand jury found and passed within the indictment voted on and returned by the grand jury itself, as a matter of law, and as a matter of fact. SEE: indictment #2006-GS-22-277. (The State relies on the Caption, and the Back of the indictment) SEE: (App. pg. 26 Line 6 - Line 10) which it is not a part of the "Findings of the grand jury" pursuant to: State v. Lark, 64 S.C. 350, 353, 42 S.E. 175, 176-77 (1902). The Lark Court held: that it is the body of the indictment that is controlling. We conclude the reference to the statue in the caption does not make the indictment sufficient, because the

caption is not part of the "Findings of the Grand Jury." The back of the indictment also, was not a part of the grand jury's findings within the indictment in question. "Wherefore" the "uncharged acts evidence" that were used to convict petitioner Bryant, (16-11-311(A)(1)(2)(3)) was "insufficient to submit to the jury for a charge of burglary first degree," as the petitioner was not indicted on the charge of burglary first degree in the indictment returned upon him by the grand jury in his case. SEE: State v. Bostick, 392 S.C. 134, 708 S.E.2d 744. Also SEE: statue (16-11-312(A)) and statue (16-11-311(A)(1)(2)(3)). As a matter of fact the statue in violation of in the indictment returned on Petitioner Bryant, was statue (16-11-312(A)). Clearly, this statue is what was voted on and passed by the grand jury, and this fact cannot be negated by the state because only the grand jury was in the room when they voted and passed upon their findings (if anyone other than the grand jury was in the room, then this was error in law also as the grand jury proceedings are closed to the public). The indictment was stamped true bill as required by law, thus making it a matter of law, and a matter of fact. SEE: State v. Wilkes, 346 S.C. 67, 70, 550 S.E.2d 332, 333-34 (CT. App. 2001) (Citing 42 C.J.S. Indictments and Informations 113 (1991)).

"Therefore," a designation in the caption cannot enlarge or diminish the offense charged in the body of the indictment. (Nor the back of the indictment). Clearly, the State depends on this error in law to uphold the unconstitutional conviction(s) and sentence(s) thrust upon the petitioner in this case, as a matter of law. As a matter of fact the "uncharged acts evidence" of "nighttime," specifically "nighttime" was the sole reason for the first degree burglary charge, that was

admitted into evidence after the substantive amendments of the indictment by the court. SEE: (Ap. pg. 203 Line 8 - Line 12) and the State does not care about the petitioner's (5) Fifth Amendment rights to be tried only on the charges contained in an indictment returned by the grand jury. SEE: (App. pg. 203 Line 13 - Line 20). The fact-offense element of nighttime (16-11-311(A)(3)) must be charged in the indictment SEE: U.S. v. Davis, 184 F.3d 366, the Davis Court held: that if a fact is an offense element it must be charged in the indictment. With the use of this insufficient "uncharged acts evidence," combined with instructions given that were inadequate, allowed the jury to convict petitioner, Bryant, on a basis and statute different from that advanced by the grand jury. SEE: State v. Guthrie, 572 S.E.2d 309. In Guthrie, the Court held: That to allow this sort of action in the dissent would articulate an amendment rule with no boundaries or parameters. The rule set forth in the dissenting opinion allows for "Amendment Ambush" on the eve of trial. Moreover, under the rule advanced by the dissent, a multifaceted criminal charge containing alternative grounds for aggravation is thrust upon a defendant at trial with an indictment containing only one of the alternatives. The implementation of such an amendment procedure would create evidentiary conundrums of gargantuan proportion to a defendant as the trial commences. As a matter of fact, this is exactly what happened in Petitioner Bryant's trial. Clearly, this act violated Petitioner Bryant's Fifth Amendment (5) rights to be tried only on the charges contained in an indictment returned by a grand jury; SEE: U.S. v. Clemente, 22 F.3d 477 (2nd Cir. 1994) (citing United States v. Helmsley, 941 F.2d 71, 89 (2nd Cir. 1991), cert. denied, \_\_\_ U.S. \_\_\_ 112 S.Ct. 1162, 117 L.Ed. 2d 409 (1992); United States v.

Mollica, 849 F.2d 723, 730 (2nd Cir. 1988); also SEE: United States v. Stirone, 80 S.Ct. at 273-74. SEE: (App. pg. 26 Line 6 - Line 14). The unconstitutional amending of the indictment from statue (16-11-312(A)) to statue (16-11-311(A)) which clearly changed the nature of the charge and increased the penalty at the same time, in violation of S.C. Codes of law subsection 17-19-100. Also SEE: (App. pg. 202 line 18 - App. pg. 204 Line 10) and also SEE: the "Charge of the Court." (App. pg. 225 Line 1 - Line 18). But, specifically see: (App. pg. 203 Line 8 - Line 12) where the Court states verbatim: The Court:

- 8) The elements of burglary, first degree, here is
- 9) Primarily the "nighttime" and with intent to commit a felony therein
- 10) It ~~will~~ be a deadly weapon. I'm not sure about that but there's
- 11) enough here, the "nighttime" standing alone that it's sufficient to
- 12) make it burglary in the first degree.

Petitioner, Bryant's Fifth Amendment (5) rights were indeed violated by this "substantive" amending of the indictment upon which he was indicted. As a matter of pure law, the safely guarded embodiment of the Sixth (6) and Fourteenth (14) Amendments rights of a criminal defendant to have notice of the charges pending against him were violated by the use of these "uncharged acts evidence" that were not specifically alleged or charged within the indictment upon which Petitioner Bryant, was indicted. SEE: U.S. v. Davis, 184 F.3d. 366, the petitioner (Bryant), also asserts, that the jury that convicted

him, did so on the basis of "insufficient evidence," the state also based their case on the insufficient "acts evidence" to sustain the conviction(s) and sentence(s) of Petitioner Bryant. "However," the "uncharged acts evidence" as fact-offense elements of burglary first degree were not returned in the indictment upon petitioner by the grand jury; SEE: State v. Quarles, 261 S.C. 413, 200 S.E.2d 384. Because the aggravated circumstance (16-11-311(A)(3)) is "nighttime" clearly, time is of the "essence" in this particular case as well as this particular crime, and it is not a matter of form that can be corrected or amended. "Therefore," by the use of these "uncharged acts evidence," it clearly changed the nature of the offense charged, in violation of S.C. Code Ann. Section 17-19-100. SEE: Clair v. State 478 S.E.2d 54 (S.C. 1996); also SEE: State v. Guthrie, 572 S.E.2d 309.

The Court Held: That amendments to an indictment are permissible if:

- (1) They do not change the nature of the offense,
- (2) The charge is a lesser included offense of the crime charged on the indictment, or
- (3) the defendant waives presentment to the grand jury and pleads guilty. Indictment and Information 159(1); Also SEE: State v. Myers, 313 S.C. 391, 438 S.E.2d 236 (1993). The South Carolina Code Ann. Section 17-19-100 (1985) states in pertinent part: If (A) There be any variance between the allegations of the indictment, and the evidence offered in proof thereof, the court before which the trial shall be had may amend the indictment (according to the proof, if the amendment be because of a variance) if such amendment does not change the nature of the offense charged. "However," again we must note that the indictment upon which Petitioner Bryant was indicted does not allege the "uncharged acts evidence" that were entered

into evidence during his trial, clearly, this changed the nature of the offense charged violating South Carolina Code Ann. Section 17-19-100. In essence: The state cannot prove an element not founded and passed by the grand jury and not alleged ~~within~~ the indicted offense, because the indictment is invalid to the element not charged within it. "Therefore," the indictment then fails to give an accused a valid notice of what he must be prepared to defend, elementary speaking. Furthermore, it is elementary that every ingredient of the crime must be charged in the indictment. A general reference to the provision of the statute is insufficient. It is well established that a failure to recite an essential element of an offense is not amenable to harmless error review. U.S. v. Spruill, 118 F.3d 221 (4th Cir. 1997). The petitioner was not put on proper notice of all essential elements of the charged offense intended to be charged by the state pursuant to: S.C. Code of Law, section 16-11-311(A)(1)(2) and (3). The indictment in question here fails to allege the aggravating circumstances that were entered into evidence in violation of section 17-19-100 and in accordance with the clearly established constitutional rights of the accused. S.C. Const., Art. 1, Sect. 11; U.S. Const. Amend. Five (5): Grand Jury Clause. Neither instructions nor petit jury verdict can satisfy after the fact Fifth Amendment right to be tried upon charges found by the grand jury. U.S. v. Hooker, 841 F.2d 1225, 1228 (4th Cir. 1988). As the grand jury must consider and find to be present all necessary elements of the crime charged, and the indictment must reflect the grand jury's findings as to all elements necessary of the crime to be constitutionally

sufficient. SEE: Almond v. Edwards, 854 F. Supp. 439. The common law requires in South Carolina remain the same in every particular, as they stood at common law of olden times. State v. Judge, 208 S.C. 492, 38 S.E.2d at 715. The intent of the legislature is clearly written into the language of the statute 16-11-311(A)(1)(2) and (3) (1976). For an accused to be lawfully convicted of this statute within the state of South Carolina, not only must all of the essential elements of the crime charged be proven beyond a reasonable doubt, it must also be alleged in the indictment returned against him by the grand jury in accordance with the clearly established constitutional rights of the accused. S.C. Const., Art. 1, Sect. 11; U.S. Const. Amend. (5). The petitioner, James A. Bryant, #315781, asserts that his petition for a writ of habeas corpus contains constitutional deprivations of his Fifth (5) Amendment, Sixth (6) Amendment, and Fourteenth (14) Amendment rights that warrants the issuance of the writ, and his petition contains an adequate statement of the facts thereof, to make possible preliminary, an intelligent judgment on the merits of his claims within his petition. Crosby v. State, 126 S.E.2d 843. The petitioner has exhausted all available post-conviction relief remedies, as well as other remedies such as federal habeas corpus. The petitioner sets out the facts of his claims and makes a prima facie showing that entitles petitioner to relief. Welch v. MacDougall, 143 S.E.2d 455. Petitioner Bryant's petition for habeas corpus on itself supports the requested relief, thus, making it an appropriate petition. Hunter v. State, 477 S.E.2d 203. Habeas Corpus is available to the petitioner, because other remedies such as post-conviction relief is inadequate and unavailable

as defined by: South Carolina Codes of Laws § 17-27-20(A)(6), that specifically says "That this section 'shall' not be construed to permit collateral attack on the grounds that the evidence was insufficient to support a conviction," and direct appeal is unavailable, because there is no actual written order, judgment, sentence, or decision issued by Judge Edward B. Cottingham, which specifically adjudicates insufficient evidence to sustain the conviction of Petitioner Bryant's trial. So direct appeal is barred to Petitioner Bryant. SEE: South Carolina Appellate Court Rule 201, subsection (b); S.C. Const., Art. 1, § 18; Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998); Gibson v. State, 495 S.E.2d 426 (S.C. 1998). Petitioner's constitutional rights have been violated, which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (S.C. 1990).

REASONS FOR GRANTING THE WRIT

The petitioner has exhausted all available post-conviction relief remedies, as well as other remedies, such as federal HABEAS CORPUS; The act is inadequate and unavailable to petitioner by the rule governing S.C. Code Ann. 17-27-10. The petitioner's only means of getting his constitutional claims adjudicated on is by state habeas corpus. Petitioner, Bryant claims that his Fifth (5), Sixth (6), and Fourteenth (14) Amendment rights were violated by a substantive amendment of the indictment upon which he was indicted, and returned by the grand jury, and that the evidence adduced at trial was insufficient to sustain his convictions and sentences, as it was fundamental error that goes directly to the foundation of the petitioner's convictions and sentences, which in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. Simpson v. State, 329 S.C. 43, 46, 495 S.E.2d 429, 431 (1998) and habeas corpus is petitioner Bryant's only avenue for relief, which continues to be available as a constitutional remedy. Gibson v. State, 329 S.C. at 42, 495 S.E.2d at 428. Butler v. State, 334 S.E.2d 813, 106 S.Ct. at 869. Simply put, this action has merits and calls for an evidentiary hearing on them and should not be summarily dismissed. To do so would be to deny Petitioner Bryant the fundamental right to have his claims heard and adjudicated upon their legal and constitutional merits. Further, the petitioner has set forth in his petition constitutional claims that more than well meet the standard delineated in Butler v. State, [SIC] and do very well indeed, which in the setting, constitute a denial of fundamental fairness

shocking to the universal sense of justice, as well as public interest in such matters. Gibson, Supra; Butler, Supra. To bar this case would continue to uphold a mockery of the justice system, and a fundamental miscarriage of justice and fairness shocking to the universal sense of justice, which has proceeded to exist for years. U.S. Const. Amends. Five (5), Six (6), and Fourteen (14). This action must be heard as the following: "A STATE HABEAS CORPUS" pursuant to S.C Code Ann. § 17-17-10 et. seq. and S.C. Const. Art. 1, § 18. Gibson, 329 S.C. at 41, 495 S.E.2d at 428 or in the "ORIGINAL JURISDICTION" of the Supreme Court pursuant to S.C. Const. Art. 5 § 5. Gibson, Supra; Butler, Supra. To not hear this case without review, would result in a gross miscarriage of justice. Butler v. State, 334 S.C. 813, 106 S.Ct. at 869. The evidence was insufficient to submit to the jury on the issue of petitioner's guilt of burglary first degree, S.C. Code Ann. § 16-11-311(A)(1)(2)(3). State v. Bostick, 392 S.C. 134, 708 S.E.2d 774. As well as being insufficient to sustain Petitioner Bryant's convictions and sentences as a matter of law, this error in law made Petitioner Bryant's trial so egregiously unfair as to deny him a fair trial. Therefore, we must honor the mandatory constitutional rights of an accused established by our legislature many years ago; to do otherwise would result in an abandonment of the requirement to even have an indictment or a written waiver thereof. The resources of our judicial branch are better served by requiring compliance on the front end with this clear, unambiguous, and long-standing constitutional prerequisite to any criminal proceeding. State v. Bullock, 574 S.E.2d 17 (N.C. App. 2002); State v. Pressler, 176 N.E.

2d 308 (Ohio App. 1960); and see eg. Ex parte Cole v. State, 842 So.2d 605 (Ala. 2002). The grand jury exists not merely to investigate and accuse, but as a curb on the unbridled power of the sovereign and to issue valid indictments; to do otherwise results in a denial of an accused's long-standing constitutional rights and would vanish the Constitution altogether, as well as the Fifth (5) Amendment Grand Jury Clause.

#### CONCLUSION

For the legal reasons and principles cited in this state habeas corpus petition, with initial brief, the conviction(s) and sentences(s) should be vacated, reversed for trial, or a judgment of acquittal entered.

Exhibit 1

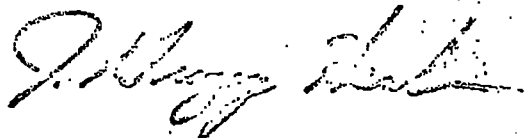
STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GEORGETOWN )

INDICTMENT FOR  
 Burglary 1<sup>st</sup> Degree

At a Court of General Sessions, convened on April 5, 2006, the Grand Jurors of Georgetown County present upon their oath:

That James Arthur Bryant did in Georgetown County on or about February 11, 2006, without consent and with intent to commit a crime therein, enter the dwelling of Lasha E. Bryant, located at 12 Avant Court, Georgetown, SC, causing bodily harm to: Lasha E. Bryant and/or Nelson Heyward, III and/or Tamar Bryant, in violation of Section 16-11-312(A), South Carolina Code of Laws, 1976, as amended.

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




---

SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

James A. Bryant, #315781,  
Petitioner,

v.

State of South Carolina,  
Respondent.

2014-CP-22-00812

AFFIDAVIT OF  
JAMES A BRYANT #315781

FILED  
GEORGETOWN COUNTY, S.C.  
2014 AUG 27 PM 3:56  
ALMA Y. WHITE  
CLERK OF COURT

I, James A. Bryant #315781, do hereby swear, attest, depose and say the truth to the following:

- 1) That the indictment returned by the Grand Jury in his case does not allege the fact-offense element of "nighttime". See: indictment #2006-GS-22-277.
- 2) That his convictions and sentences rest solely on this fact offense element that was not specifically alleged in the indictment returned upon him by the Grand Jury.
- 3) That Petitioner Bryant was not put on notice of this "uncharged act evidence" that violated his Fifth (5), Sixth (6), and Fourteenth (14) Amendment rights and S.C. statute 17-19-100.
- 4) That this insufficient "uncharged act evidence" was submitted to the jury in violation of petitioner's Fifth (5) Amendment rights and S.C. Const. Art. 1, Sect. 11, the Bill of Rights, and U.S. Const. Amends. Six (6) and Fourteen (14).
- 5) That the South Carolina Attorney general's office refused to answer petitioner's Rule 36, Request for Admission.
- 6) That the solicitor's office for the 15th judicial circuit refused to answer petitioner's Rule 36 Rules of Civil Procedure Request for admissions.

- 7) That this substantive amendment of the indictment that petitioner was indicted on was fundamental as it goes directly to the foundation of petitioner's convictions and sentences in violation of his Fifth (5) Amendment rights that are per se and requires reversal as a matter of law.
- 8) That the indictment that was returned by the Grand Jury on Petitioner Bryant was in violation of section 16-11-312(A), second degree burglary. SEE: indictment #2006-GS-22-277.

*SI James A. Bryant #315781*  
 James A. Bryant #315781

SWORN AND SUBSCRIBED TO BEFORE ME  
 THIS 29<sup>th</sup> DAY OF July 2014

*Susan H. Frye*  
 Notary Public For South Carolina

My Commission Expires: \_\_\_\_\_

2014-CP-22-00812

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

I, James A. Bryant # 315781, 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.

James A. Bryant # 315781
Applicant

SWORN or affirmed to and subscribed before me this

29th day of July 2014
Justin H. Frye
Notary Public

My Commission Expires:

FILED
GEORGETOWN COUNTY, S.C.
2014 AUG 27 PM 3:57
ALMA Y. WHITE
CLERK OF COURT

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

James A. Bryant, #315781,  
Petitioner,

v.

State of South Carolina,  
Respondent.

CERTIFICATE OF SERVICE

2014-CP-22-00812

FILED  
GEORGETOWN COUNTY, S.C.  
2014 AUG 22 PM 3:58  
ALMA Y. WHITE  
CLERK OF COURT

I, JAMES A BRYANT, #315781, do hereby certify on this 18 day of July 2014, that I served the foregoing petition for state corpus and APPIDAVIT in support of, as well as a certificate of service in this matter by depositing a true copy of it in the United States mail, postage prepaid on July 18 2014, addressed to the following indicated below:

(1). Alan Wilson  
Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211-1549

(2). Jimmy A. Richardson, II  
Fifteenth Circuit Solicitor  
P.O. Box 1276  
Conway, S.C. 29526

(3). Clerk of Court  
Alma Y. White  
P.O. Box 479  
Georgetown, S.C. 29442

SWORN AND SUBSCRIBED TO BEFORE ME  
THIS 18 DAY OF July 2014

Alma Y. White  
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES July 2018

James A. Bryant #315781  
James A. Bryant #315781  
Moultrie-2052  
4460 Broad River Road  
Columbia, S.C. 29210

STATE OF SOUTH CAROLINA, )  
 )  
 COUNTY OF GEORGETOWN )  
 )  
 James A. Bryant, #315781 )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 State of South Carolina )  
 )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 15<sup>TH</sup> JUDICIAL CIRCUIT

**MOTION AND AFFIDAVIT TO  
 PROCEED IN FORMA PAUPERIS**

FILE NO.

2014-CP-22-00812

I, James A. Bryant, #315781, being duly sworn, state that I am the Plaintiff and that I do not have the funds available to pay the costs of filing and service in the present matter. I hereby request that the complaint be filed and service made without costs.

Sworn to and Subscribed before me )  
 this day of 2 )

Notary Public for South Carolina )  
 My Commission expires )

\_\_\_\_\_  
 Signature of Plaintiff or  
 Person Filing Complaint on Behalf of  
 Plaintiff

**ORDER**

- Leave is *granted* to proceed in forma pauperis without payment of the filing fee
- Leave is *granted* to proceed in forma pauperis without payment of the service costs
- Leave is *denied* to proceed in forma pauperis.

Dated: August 26, 2014  
 Georgetown, South Carolina

*Margaret T. Culbertson*  
 \_\_\_\_\_  
 JUDGE/CLERK OF COURT

FILED  
 GEORGETOWN COUNTY, S.C.  
 2014 AUG 27 PM 3:48  
 ALMA J. SMITH  
 CLERK OF COURT

NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.



STATE OF SOUTH Carolina )  
 County OF Georgetown )  
 JAMES A. BRYANT #315781 )  
 Plaintiff )  
 vs. )  
 STATE OF SOUTH Carolina )  
 Defendant, )

FILED  
 GEORGETOWN COUNTY, S.C.  
 2014 SEP 26 AM 11:12  
 ALMA Y. WHITE  
 CLERK OF COURT

Certificate of

File NO: 2014-cp-22-00812

I, James A. Bryant #315781, do hereby certify on this 22 day of September 2014, that I served the foregoing motion for appointment of Counsel as well as certificate of service in this matter by depositing a true copy of it in the United States mail, postage prepaid on September 22 2014, addressed to the following below:

- (1) ALAN WILSON  
 ATTORNEY General  
 P.O. Box 11549  
 Columbia, South Carolina 29211-1549
- (2) Jimmy A. Richardson II  
 Fifteenth Circuit Solicitor  
 P.O. Box 1276  
 Conway S.C. 29526
- (3) Clerk of Court  
 ALMA Y. White  
 P.O. Box 479  
 Georgetown, S.C. 29442

s/ James A. Bryant #315781  
 James A. Bryant #315781  
 moultrie -2052  
 B. Road River Road  
 Columbia, S.C. 29210

SWORN AND subscribe to before me  
 this 22nd day of September 2014  
Susan N. Frye  
 NOTARY PUBLIC FOR South Carolina  
 my commission expires March 5, 2018

STATE OF SOUTH CAROLINA  
 County of Georgetown

James A. Bryant #315781,  
 Plaintiff,

vs.

State of South Carolina,  
 Defendant.

IN THE COURT OF COMMON PLEAS  
 15th Judicial Circuit

MOTION TO RECONSIDER ORDER  
 DENYING LEAVE TO PROCEED IN  
 FORMA PAUPERIS AND AFFIDAVIT

File No.: 2014-CP-00000000

FILED  
 GEORGETOWN COUNTY, S.C.  
 2014 SEP 25 AM 11:40  
 ALMAY WHITE  
 CLERK OF COURT

The plaintiff, James A. Bryant #315781, respectfully moves this Honorable Court to reconsider the order denying his **MOTION AND AFFIDAVIT FOR LEAVE TO PROCEED IN FORMA PAUPERIS** that was filed on August 26, 2014. The plaintiff (Bryant) received this order on September 12th 2014. The plaintiff is an indigent, incarcerated individual, and his only means of bringing his petition for habeas corpus is through in forma pauperis status. The plaintiff has attached a financial statement from South Carolina Department of Corrections Headquarters, and makes this request pursuant to: S.C. Code Ann. 17-27-60 (1976). SEE: Michau v. Al Cannon, 2006 WL 7286082. South Carolina Court of Appeals, based on the following authorities, Ex parte Martin, 321 S.C. 533, 471 S.E.2d 134, 135 (1995)(citing Smith v. Bennett, 365 U.S. 708 (1961)(an Indigent Prisoner may not be required to pay a filing fee for petitioning for a writ of habeas corpus). Lakes v. State, 333 S.C. 382,

385, 510 S.E.2d 228, 230 (CT. App. 1998)(The Lakes Court held: The judge should have allowed Lakes to proceed in forma pauperis in his petition for a writ of habeas corpus, because he was an indigent, incarcerated individual) Plaintiff also makes this request pursuant to Rule 3(b) Rules of Civil Procedure.

*James A. Bryant* #315781  
James A. Bryant #315781  
B.R.C.I. Moultrie - 2035  
4460 Broad River Rd.  
Columbia, S.C. 29210

September 17<sup>th</sup>, 2014

Columbia, South Carolina

M14  
252

BCCI

**INMATE TRUST FUND ACCOUNT REPORT  
for SOUTH CAROLINA COURT FILING FEES**

2014-CP-22-0081

**INSTRUCTIONS TO INMATE:** Complete top portion then give to your mailroom. When returned from Accounting, you must mail this form with any payment to the Court.

By signing my name below, I am asking the Financial Accounting Office of the South Carolina Department of Corrections to complete this report. In accordance with SC Code of Laws §24-27-100 and 150, I authorize payment of the full filing fee. If I have insufficient funds in my account at this time to pay the court's full filing fee, I authorize SCDC to deduct the initial and subsequent payments until payment is completed.

INMATE NAME (print): JAMES A. Bryant

SCDC # 315781

INMATE SIGNATURE: James A. Bryant

I plan to file this action in the SC County of Georgetown

The section below is for SCDC - Financial Accounting Branch's use ONLY.

- (1) Total deposits to inmate's account for preceding six months' period\* ..... \$ 0
- (2) Twenty percent (20%) of line 1 ..... \$ 0
- (3) Account balance - current date ..... \$ 0
- (4) PAYMENT AMOUNT \*\*  
(lesser of line 2 or line 3)  
Enclosed check # \_\_\_\_\_ \$ 0

FILED  
GEORGETOWN COUNTY, S.C.  
2014 SEP 30 PM 4:33  
ALMA Y. WHITE  
CLERK OF COURT

**\*\*NOTE to COURT:** If payment is for partial fee, Court must notify SCDC once case is accepted and filed. Send notice with case # and balance owed to address below. SCDC will NOT process any additional payments until notification is received from Court.

South Carolina Department of Corrections  
Financial Accounting - Room 234  
PO Box 21787  
Columbia, SC 29221-1787

\*Admission date is noted here if inmate incarcerated less than six months   /  /  

Prepared by [Signature] Financial Accounting Branch - SCDC

7/16/14

Date : 5/5/2014 10:59:17 AM

In reference to: Roster ID: 172-01-12-2015 NJ/ Judge Larry Hyman  
ET Rm 3-A Roster Mtg 9:30 am

Case 2014CP2200812 - James A. Bryant vs. South Carolina  
State of

Dear Clerk, I am writing to find out  
if this Judge is the same Judge that I had  
at my PCR Hearing in 2009 at Horry County  
Courthouse His Name was Larry B. Hyman Jr.  
and if this is the same Judge, I would respect-  
fully request that He (Judge Hyman) recuse him-  
self from my case pursuant to Appellate Court  
rule 501, Judicial Conduct, Canon 3 (E)(1)(a)

s/ James A. Bryant #315781

FILED  
GEORGETOWN COUNTY, S.C.  
2014 DEC 30 PM 2:18  
ALMA Y. WHITE  
CLERK OF COURT

THE Honorable ALMA Y. White  
 Clerk of Court Georgetown County  
 P.O. Box 479  
 Georgetown, S.C. 29442

Feb. 2, 2015

FILED  
 GEORGETOWN COUNTY, S.C.  
 2015 FEB - 6 AM 9:44  
 ALMA Y. WHITE  
 CLERK OF COURT

RE: Case No 2014-CP-22-00812

Dear Clerk,

I James A. Bryant #315781, am evoking my legal rights pursuant to S.C. Code Ann. Statute §24-27-100 and 150 using my inmate Trust Fund account to proceed with my writ of Habeas Corpus petition. Section §24-27-150 states that even if a prisoners trust account does not contain sufficient funds to make the first-time payment required by Section 24-27-100, the civil action may still be filed, and payments of ten percent of the preceding months income in the petitioner's trust account shall be made from that account as soon as funds are available. If there is anything else that I need to do please advise me with the notice from your office as soon as possible.

Thank you very much  
 James A. Bryant #315781

On the 3rd day of February, 2015  
 Susan N. Frye

My Commission Expires  
 March 5, 2018

# The South Carolina Court of Appeals

James A. Bryant #315781, Appellant,

v.

The State of South Carolina, Respondent.

Appellate Case No. 2015-000185

The Honorable Benjamin H. Culbertson  
Georgetown County  
Trial Court Case No. 2014CP2200812

FILED  
GEORGETOWN COUNTY, S.C.  
2015 APR 24 AM 9:16  
ALMA Y. WHITE  
CLERK OF COURT

---

## ORDER

---

Appellant has failed to pay the initial filing fee, as required by Rule 203 of the South Carolina Appellate Court Rules, (SCACR), and this Court's letter dated March 5, 2015. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY *Jay A. Kiteley*  
CLERK

Columbia, South Carolina

**FILED**  
3-20-15

cc:  
James A. Bryant, 00315781

Joshua L. Thomas, Esquire  
Alan McCrory Wilson, Esquire



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1838  
www.sccourts.org

April 20, 2015

The Honorable Alma Y. White  
PO Box 479  
Georgetown SC 29442-0479

## REMITTITUR

Re: James A. Bryant v. The State of South Carolina  
Lower Court Case No. 2014CP2200812  
Appellate Case No. 2015-000185

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

FILED  
GEORGETOWN COUNTY, S.C.  
2015 APR 24 AM 9:16  
ALMA Y. WHITE  
CLERK OF COURT

Enclosure

cc: James A. Bryant, 00315781  
Joshua L. Thomas, Esquire  
Alan McCrory Wilson, Esquire

ALMA Y. WHITE  
CLERK OF COURT Georgetown County  
Court of Common Pleas  
P.O. Box 479  
Georgetown, S.C. 29442

MAY 15, 2015

IN RE: 2014-CP-22-00812 STATE HABEAS CORPUS  
Petition

2015 MAY 29 AM 10:58

Dear Clerk,

I am writing your office about my pending Habeas Corpus petition. I would like to have a Jury trial on my case at bar, also I would like to know is whether my case is on the docket for a hearing on the merits of my claims. If there is anything that I need to do to proceed in this matter please let me know as soon as possible so that I can get it done. please let me know the status of my case or petition if it has been transferred for a matter for hearing pursuant to statute § 17-17-100, I will wait on your response in this matter.

Thank you very much  
James A. Bryant #015781

Alma Y. White  
Georgetown County Clerk of Court



P. O. Box 479 • 401 Cleland St.  
Georgetown, SC 29442

Date: May 20, 2015

James A. Bryant #315781 v. State of South Carolina  
Case Number: 2014-CP-22-00812

TO: James A. Bryant #315781  
BRCI-Moultrie 2052  
4460 Broad River Road  
Columbia, SC 29210

In response to your request regarding:

- A *PCR Form*. Enclosed is a PCR form.
- Legal advice*. The Clerk of Court is prohibited from providing *legal advice*. If you have an attorney, please contact for assistance.
- Information from your file(s)*. Records in this office are open to the public. Please contact a relative, friend or your attorney to research your case(s) and make copies at a minimum cost of \$ .50 per page. Office hours are 8:30 a.m. – 5:00 p.m. Monday through Friday.
- Being *relieved from your attorney*. The Clerk of Court has no authority to *relieve* a Defendant of an attorney. A Circuit Court Judge must address this request.
- Correction(s) on *Sentencing Sheet*. The Clerk of Court has no authority to adjust or change information on a sentencing sheet. Please contact your attorney for legal advice.
- Forwarding information* to the Solicitor/attorneys/judges/etc. Your documents are being returned. The Clerk's office accepts no responsibility for forwarding information to a third party.
- Clocking and filing motions/documents etc.* Contact your attorney to properly file motions/documents/etc. [This is a Pro Se case. Your document(s) have been clocked and filed].
- A copy of a deposition(s)*. Contact the attorney(s) involved in the case for copies.
- The status of your pending case(s)*. Contact your attorney or the Solicitor's Office at P.O. Box 1688, Georgetown, SC 29440.
- Expungement information/application*. Contact the Solicitor's Office.
- A detainer*. Contact the Solicitor's Office.
- Information on the following *warrant(s)*: \_\_\_\_\_  
At this time, this office has no record of the warrant(s) in question. Contact the arresting agency.
- A copy of a transcript(s). You will need to contact the Court Reporter.
- Other:*

Thank you.

Clerk of Court



## The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE: (803) 734-1000  
FAX: (803) 734-1499

June 4, 2015

The Honorable Alma Y. White  
Clerk of Court for Georgetown County  
Post Office Box 479  
Georgetown, SC 29442-0479

Re: *State v. Bryant*, Case No.2014-CP-22-00812

Dear Ms. White:

This will acknowledge correspondence from Mr. Bryant received in this office on June 4, 2015. We are forwarding Mr. Bryant's correspondence to you for any assistance you may be able to give him.

Very truly yours,

CLERK

Enclosure

cc: Mr. James Bryant #315781

FILED  
GEORGETOWN COUNTY, S.C.  
2015 JUN 18 AM 8:42  
ALMA Y. WHITE  
CLERK OF COURT

The Honorable Daniel E. Shearouse  
Clerk of the Supreme Court  
P.O. Box 11330  
Columbia, S. C. 29211

June 1, 2015

**RECEIVED**

JUN 04 2015

RE: Case NO 2014-CP-22-00812

S.C. SUPREME COURT

Dear Clerk,

I am writing this Court about the above case number in reference to a State Habeas Corpus petition in the Georgetown County Court of Common Pleas. I have tried at least (5) times to get some information about my case but the Clerk's office has denied me access to the Court everytime. I can't even get a filing date on my petition or any other information about my case. I am pro se but the Clerk's office keeps on saying get your lawyer to get this information please advise me of any options that I may try to obtain this information about my case\ petition

Thank you very much  
James A. Bryant #315781

THE HONORABLE ALMA Y. WHITE  
 CLERK of COURT for GEORGETOWN COUNTY  
 POST OFFICE BOX 479  
 GEORGETOWN, SOUTH CAROLINA 29442-0479

DATE: JUNE 22, 2015

RE: BRYANT V. STATE, Case NO: 2014-CP-22-00812

FILED  
 GEORGETOWN COUNTY S.C.  
 2015 JUN 24 PM 3:19  
 ALMA Y. WHITE  
 CLERK OF COURT

DEAR MS. WHITE:

I JAMES A. BRYANT #315781 A PRO-SE LITIGANT IN THE ABOVE CAPTIONED "STATE HABEAS CORPUS" ACTION, I HAVE WRITTEN YOUR OFFICE MANY TIMES TO OBTAIN THE EXACT FILING DATE OF MY "STATE HABEAS CORPUS" PETITION BUT YOUR OFFICE HAS MADE IT IMPOSSIBLE FOR ME A PRO-SE PETITIONER TO HAVE ACCESS TO THE COURT AND THIS INFORMATION. I HAVE WRITTEN THE SOUTH CAROLINA STATE SUPREME COURT ABOUT THIS MATTER IT IS CLEAR TO ME THAT THIS DENIAL OF ACCESS TO THIS INFORMATION IS BEING DONE ON PURPOSE BECAUSE OF THE SERIOUSNESS OF MY CONSTITUTIONAL VIOLATIONS IF IT WAS NOT SO YOUR OFFICE WOULD NOT DENY ME ACCESS TO THIS SIMPLE REQUEST FOR AN EXACT FILING DATE OF MY "STATE HABEAS CORPUS PETITION." I AM NOT ASKING YOUR OFFICE FOR ANY LEGAL ADVICE IN ANY FORM OR FASHION JUST A SIMPLE FILING DATE. FURTHERMORE, I RECEIVED WRITTEN NOTICE ON FEB. 10, 2015 AS PER THE JUDGE

THAT A CERTIFIED COPY OF MY TRUST ACCOUNT WAS REQUIRED. THIS CERTIFIED COPY OF MY TRUST ACCOUNT WAS SENT TO THE CLERK OF COURT AS REQUIRED, AND ON APRIL 20, 2015 I RECEIVED FROM YOUR OFFICE WRITTEN NOTICE THAT SOUTH CAROLINA DEPARTMENT OF CORRECTIONS WERE NOTIFIED. THE PETITIONER, JAMES A. BRYANT #315781 WROTE YOUR OFFICE ASKING FOR THE FILING DATE OF HIS STATE HABEAS CORPUS PETITION AND RECEIVED A WRITTEN NOTICE THAT THE CLERK OF COURTS OFFICE IS PROHIBITED FROM PROVIDING LEGAL ADVICE, AGAIN I, JAMES A. BRYANT #315781, THE PETITIONER IN THIS MATTER AM NOT ASKING YOUR OFFICE FOR ANY LEGAL ADVICE JUST A SIMPLE EXACT FILING DATE OF MY CIVIL ACTION A "STATE HABEAS CORPUS" PETITION. PRISONERS HAVE A CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS PURSUANT TO SOUTH CAROLINA STATE CONSTITUTION ARTICLE 1, SECTION 9

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 22nd DAY OF JUNE, 2015.

NOTARY PUBLIC for SOUTH CAROLINA  
My Commission Expires  
MY COMMISSION EXPIRES March 5, 2018

*Susan H. Dye*

*S/James A. Bryant #315781*  
JAMES A. BRYANT #315781  
B.R.LI - MOUHRIE 2052  
4460 BROAD RIVER ROAD  
COLUMBIA SC, 29210

Jennifer Lawrence

2014 CP 22 00812

**From:** Jessica Kinard [JKinard@scag.gov]  
**Sent:** Tuesday, November 24, 2015 12:41 PM  
**To:** Jennifer Lawrence  
**Subject:** Bryant v. State - 14-CP-22-00812  
**Attachments:** Bryant, James - ltr from S Ct. responding re status (00802241xD2C78).pdf; Bryant, James - closing letter (00665566xD2C78).pdf; Bryant, James - remittitur and order (00656832xD2C78).pdf

Ms. Lawrence –

I am writing to follow up from our earlier phone call. After further investigation, I can confirm that this case has been closed. As I mentioned, this matter was appealed to the SC Court of Appeals, which dismissed the matter for failure to pay a filing fee at the appellate level. (He, of course, would have needed to originally pay the \$150 filing fee with your office for the habeas corpus filing, as Judge Culbertson denied him the right to proceed in forma pauperis.) This, along with the remittitur, was sent to Mr. Bryant, my office, and your office. This was also sent to Mr. Bryant again in July of 2015 by my predecessor, Joshua Thomas. It is not clear to me what Mr. Bryant believes to be outstanding, as all of the orders make sense chronologically and all loose ends appear to be tied up. As we discussed, I believe that Mr. Bryant will continue to file requests for information until his case is marked as disposed by your system.

On another note, I am unsure of how your office handles cases involving the trust system with SCDC, so Mr. Bryant may be concerned that he is still paying on a resolved case, if that is possible. For that matter, he may be upset that his case never had a hearing, but there was simply no need for one.

I am attaching the letter I received today from Mr. Shearouse at the Supreme Court, which brought this all to my attention. I am also attaching a copy of the order and remittitur from the Court of Appeals (though this should already be in the file) and our customary closing letter that is sent to the solicitor's office.

I am happy to write another letter to Mr. Bryant attempting to explain the issue, but I do not believe it will be fruitful unless and until the public index reflects that the case is resolved.

Please let me know if I can provide any further information, and thank you for your assistance.

Jessica E. Kinard  
 Assistant Attorney General  
 Post-Conviction Relief – 4<sup>th</sup> and 15<sup>th</sup> Circuits  
 Office of the Attorney General  
 State of South Carolina  
 P.O. Box 11549  
 Columbia, SC 29211-1549  
 Direct: 803.734.9603

FILED  
 GEORGETOWN COUNTY, S.C.  
 2015 NOV 25 AM 11:29  
 ALMA Y. WHITE  
 CLERK OF COURT



15  
JK

# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT  
BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211  
TELEPHONE: (803) 734-1000  
FAX: (803) 734-1489

November 5, 2015

Mr. James A. Bryant #315781  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, South Carolina 29210


Re: *Bryant v. State*, 2014CP2200812 (Habeas Corpus Action)

Dear Mr. Bryant:

This responds to your letter dated November 3, 2015. Please be advised that this Court cannot consider this *ex parte* communication about your case that is pending in the circuit court. If you need assistance with your case, I would encourage you to consult with an attorney.

I note that the only information that is available to me about your case is what is shown by the public case index for Georgetown County. I have enclosed a copy of that public index. For your future reference, you can access the public case index for Georgetown County at <http://publicindex.sccourts.org/georgetown/publicindex>. Any additional information that you need about this case will need to be obtained from the Clerk of Court for Georgetown County.

Very truly yours,

  
CLERK

Enclosure

cc: Office of the Attorney General (with copy of letter)

**RECEIVED**

NOV 24 2015

Referred to Shearouse/dm

Answered \_\_\_\_\_

ATTORNEY GENERAL'S OFFICE  
 RECEIVED 11-24-15  
 ADMINISTRATIVE INSTRUCTIONS  
 FILE  
 OPEN  
 END  
 HAVE COPIES MADE  
 ROUTE TO \_\_\_\_\_  
 ORDER: TRANSFER PT  
 PEN RECORDS CLERK RECORDS  
 OTHER: \_\_\_\_\_

*11/24/15*  
*222*

THE HONORABLE DANIEL E. SHEAROUSE  
 CLERK, SUPREME COURT OF SOUTH CAROLINA  
 POST OFFICE BOX 11330  
 COLUMBIA, SOUTH CAROLINA 29211

November 3, 2015

**RECEIVED**

NOV 05 2015

RE: BRYANT V. STATE, CASE NO. 2014-CP-22-00812 **S.C. SUPREME COURT**

DEAR MR. SHEAROUSE:

This office received a Letter from me James A. BRYANT, on June 4<sup>th</sup> about the above referenced Case BRYANT V. STATE, I am writing this Court about my case because my filing fee of \$150.00 has been paid in full and this case has been going nowhere what I mean by this is that I can't get any information about this case from the Attorney General's office, the Clerk of Courts office in Georgetown County. I have written Judge Benjamin H. Culbertson to see if my case was on the trial docket but nobody would give me any information at all, The Common Pleas Court Clerk keeps saying contact the Attorney General's office, The Attorney General's office says contact the Court of Common Pleas office. and this is the game that is being played to deny me access to the Court and to have my constitutional issues adjudicated on the

merits of my claims, I have done everything that I know of to have my day in Court, and to be Free from an Illegal Conviction on that STATE HABEAS CORPUS is available to me as a remedy pursuant to Statutes §17-17-10 et §17-17-30. Please forward a copy of this letter to All the Justices of the Supreme Court because the Law does not apply to everyone if it did then I would not be writing this letter and asking that it be forwarded to all the Justices of this Court.

Thank you for your kind services

James A. Byrd #315781



ALAN WILSON  
ATTORNEY GENERAL

June 10, 2015

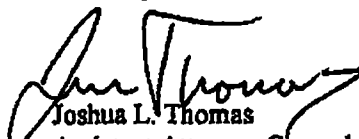
The Honorable Jimmy A. Richardson  
Solicitor, Fifteenth Judicial Circuit  
Post Office Drawer 1276  
Conway, SC 29526

Re: James A. Bryant, #315781 v. State of South Carolina  
2014-CP-22-812

Dear Solicitor Richardson:

Enclosed please find the **Remittitur and Order** in the above post-conviction relief. We are closing our file in the above case.

Sincerely,

  
Joshua L. Thomas  
Assistant Attorney General

JLT/nb  
Enclosure

cc: David M. Tatarsky, Esquire, SCDC  
Trisha Allen, Victim Services



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11628  
COLUMBIA, SOUTH CAROLINA 28211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 28201  
TELEPHONE: (803) 734-1880  
FAX: (803) 734-1838  
www.sccourts.org

April 20, 2015

The Honorable Alma Y. White  
PO Box 479  
Georgetown SC 29442-0479

### REMITTITUR

Re: James A. Bryant v. The State of South Carolina  
Lower Court Case No. 2014CP2200812  
Appellate Case No. 2015-000185

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

Enclosure

cc: James A. Bryant, 00315781  
Joshua L. Thomas, Esquire  
Alan McCrory Wilson, Esquire

# The South Carolina Court of Appeals

James A. Bryant #315781, Appellant,

v.

The State of South Carolina, Respondent.

Appellate Case No. 2015-000185

The Honorable Benjamin H. Culbertson  
Georgetown County  
Trial Court Case No. 2014CP2200812

---

ORDER

---

Appellant has failed to pay the initial filing fee, as required by Rule 203 of the South Carolina Appellate Court Rules, (SCACR), and this Court's letter dated March 5, 2015. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY

*Jay A. Kite*  
CLERK

Columbia, South Carolina

**FILED**

**3-20-15**

---

cc:

James A. Bryant, 00315781

Joshua L. Thomas, Esquire  
Alan McCrory Wilson, Esquire

---

11/1/11

---



**State of South Carolina**  
**The Circuit Court of the Fifteenth Judicial Circuit**

**Benjamin H. Culbertson**  
 Resident Circuit Judge

P. O. Box 479 (zip code 29442)  
 401 Cleland St. (zip code 29440)  
 Georgetown, South Carolina  
 Telephone: (843) 545-3030  
 Facsimile: (843) 545-3282  
 Email: bculbertsonj@sccourts.org

**MEMORANDUM**

To: Alma White, Clerk of Court  
 From: Benjamin H. Culbertson (Initial: BMK)  
 Subject: Bryant v. State (2014-CP-22-812)  
 Date: January 6, 2016

**Alma:**

Now that the plaintiff has paid all filing fees in full, please schedule this action for hearing during the next Post-Conviction Relief term for the 15<sup>th</sup> Judicial Circuit.

Notify the Attorney General's Office of the scheduled hearing. This is a *pro se* action that was served on the Attorney General's office and appears to be similar to a PCR action. However, the Attorney General, at present, has not filed responsive pleadings.

Thank you.

FILED  
 GEORGETOWN COUNTY, S.C.  
 2016 JAN -6 PM 4:42  
 ALMA Y. WHITE  
 CLERK OF COURT

JAMES A. BRYANT #315781  
B.R.C.I - MOULTREE - 2052  
4460 BROAD RIVER ROAD  
COLUMBIA, S.C. 29210

October 19, 2015

RE: CASE NUMBER 2014-CP-22-812

DEAR Judge Culbertson, I AM writing this letter to see if my case has been put on the docket. my filing fee of \$150.00 dollars has been paid in full. If my case has not been put on the docket I would like to know when it will be put on the docket so this matter can be heard. Please let me know about this matter as soon as possible. Thank you for your kind services

S/ James Bryant #315781

STATE OF SOUTH CAROLINA  
 COUNTY OF GEORGETOWN

James A Bryant,  
 Plaintiff(s),

-vs-

South Carolina State of,  
 Defendant(s).

IN THE COURT OF COMMON PLEAS  
 JUDICIAL CIRCUIT  
 CASE NO.: 2014CP2200812  
 APPOINTMENT OF COUNSEL OR GAL  
 (Select one.)

ORDER  
 AMENDED ORDER

TYPE OF CASE/PROCEEDING: (Check one.)

- |  |  |  |
|--|--|--|
| <input checked="" type="checkbox"/> Post-Conviction Relief (PCR)/habeas case | <input type="checkbox"/> Adoption                  | <input type="checkbox"/> Juvenile          |
| <input type="checkbox"/> SVP case  | <input type="checkbox"/> Custody and/or Visitation | <input type="checkbox"/> Abuse and Neglect |
| <input type="checkbox"/> Minor Name Change                                   | <input type="checkbox"/> Other: Habeas Corpus 530  |  |

It appears James A Bryant, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

It further appears that: (Select only one.)

- counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
- counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on:
- counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
- court appointed counsel has obtained , Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
- Other: .

Therefore, it is ordered that James Falk hereby is appointed as (Select one.)

counsel     lead counsel (if capital PCR case)     guardian ad litem  
 for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

(If Death Penalty PCR Case) It is further ordered that , Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED  
 January 7, 2016

*Jennifer Lawrence, Deputy for*  
 Circuit Judge     Clerk of Court

Plaintiff Attorney:

James Falk	
3 Broad Street, Suite 450	
Charleston, SC 29401	

Defendant Attorney:

Jessica Elizabeth Kinard	
PO Box 11549	
Columbia, SC 29211-1549	

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at [www.sccid.sc.gov](http://www.sccid.sc.gov) and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.

FILED  
 GEORGETOWN COUNTY  
 CLERK OF COURT  
 2016 JAN -7 AM 11:03

STATE OF SOUTH CAROLINA )  
 COUNTY OF GEORGETOWN )  
 )  
 James A. Bryant, #315781, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2014-CP-22-00812

**RETURN AND MOTION TO DISMISS  
 PETITION FOR WRIT OF  
 HABEAS CORPUS**

FILED  
 GEORGETOWN COUNTY  
 2016 JAN 26 AM 11:31  
 ALMA Y. WHITE  
 CLERK OF COURT

This matter comes before the Court by way of a document filed August 27, 2014 and captioned "Petition For Writ of Habeas Corpus." The Respondent submits the petition should be summarily dismissed because it fails to support the requested relief.

I.

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Georgetown County. The Petitioner was indicted at the April 2006 term of the Georgetown County Grand Jury for Burglary – First Degree (2006-GS-22-277), kidnapping (2006-GS-22-278), and three (3) counts of assault and battery with intent to kill (2006-GS-22-276, 279, 303). He was represented by J. Eric Fox, Esquire. Petitioner proceeded to a jury trial before the Honorable Edward B Cottingham on May 30, 2006. On June 1, 2006, the Petitioner was found guilty as indicted, with the exception of being found guilty of the lesser included offense of assault and battery of a high and aggravated nature on indict number 2006-GS-22-303. Judge Cottingham sentenced the Petitioner to twenty-five (25) years' imprisonment for each charge, to be served concurrently.

A notice of appeal was filed with the South Carolina Court of Appeals on June 2, 2006, and was perfected. Petitioner's conviction and sentence were affirmed on January 14, 2009 in an

unpublished opinion. State v. Bryant, 2009-UP-032, filed January 14, 2009. The remittitur was issued January 30, 2009.

Thereafter, Petitioner filed his first application for post-conviction relief (PCR) on April 1, 2009, and an amended application on July 22, 2009 (Case No. 2009-CP-22-477). The State made its return on May 29, 2009<sup>1</sup>. An evidentiary hearing was convened on July 28, 2009 before the Honorable Larry B. Hyman, Jr., at which Petitioner was represented by Paul Archer, Esq. Petitioner pursued the following claims for relief:

1. Ineffective assistance of trial counsel.
2. Denial of right to present evidence of actual innocence
3. Denial of right to exculpatory evidence.

Judge Hyman denied and dismissed the application with prejudice in a written order signed August 25, 2009 and filed August 28, 2009. Petitioner filed a notice of appeal on August 27, 2009. The appeal was perfected with the filing of a petition for writ of certiorari by Robert Pachak, Esquire, of the South Carolina Office of Appellate Defense on January 29, 2010. The State filed its return to petition for writ of certiorari on March 8, 2010. During this process, Petitioner twice requested leave to file a pro se brief in support of his case, but neither of these requests were addressed by the Court. Certiorari was denied on April 7, 2011, and the remittitur was returned to the circuit court on April 25, 2011.

Petitioner filed a petition for federal habeas corpus relief on June 3, 2011. In it, he listed the following grounds for relief:

1. The judge erred in refusing to suppress prejudicial prior bad act testimony about a confrontation between the appellant and his estranged wife.
2. The judge erred in refusing to accept an Alford plea.
3. Ineffective Assistance of Counsel (Trial and Appeal Counsels)
  - a. "Was Appellant Counsel ineffective for failing to argue the directed verdict issues on Appeal?"

---

<sup>1</sup> The state did not file an amended return in response to the amended application.

- b. "Was Counsel ineffective for not arguing that the State's evidence at trial was in fatal variances with the allegations within the indictments?"
  - c. "Was Defense Counsel ineffective in failing to obtain or at least requiring a psychological evaluation for Applicant before going to trial?"
  - d. "Was Counsel ineffective for failing to object to the State's witness as a qualified expert?"
  - e. "Was Defense Counsel ineffective for not obtaining an independent crime scene and forensic expert?"
  - f. "Was Counsel ineffective for failing to object to the State's prejudicial use of prejudicial photos?"
  - g. "Did Counsel fail to adequately investigate and prepare for trial and thereby committing ineffective assistance?"
  - h. "Was Counsel ineffective for not objecting or taking exception to the Trial Court's erroneous Malice Charge?"
  - i. "Was counsel ineffective for not objecting to hearsay testimony?"
4. "Denial of Due Process by Prosecutorial Misconduct"

These were supported by a lengthy memorandum of law. The state filed a motion for summary judgment on or about October 13, 2011. Prior to this, Petitioner filed a motion for default on or about September 14, 2011. Ultimately, United States Magistrate Judge Kaymani D. West issued a report and recommendation on May 31, 2012, which recommended granting the motion for summary judgment and denying Petitioner's motion for default judgment. Petitioner filed an objection to the report and recommendation, but the Honorable R. Bryan Harwell adopted the report and recommendation over Petitioner's objections in an order dated August 20, 2012. This order also denied the granting of a certificate of appealability. Regardless, Petitioner appealed this matter to the United States Court of Appeals for the Fourth Circuit, which dismissed his request on June 18, 2013. Petitioner also requested a rehearing *en banc*, which was denied. The mandate of the district court took effect on June 13, 2013.

## II.

In his current Petition for State Habeas Corpus, filed on April 27, 2014, Petitioner alleges the following grounds:

1. "Whether the extra added aggravating circumstances of subsection §16-11-311(3) as fact-offense elements of burglary first degree were sufficient to sustain the convictions where this evidence did not go to the grand Jury and were not specifically charged within the indictment upon which the petitioner was indicted?"
2. "Whether the Grand Jury indicted Petitioner Bryant on subsection §16-11-312(A) or §16-11-311(A) [*sic*] in the indictment returned upon him by the Grand Jury in this case, and was the amendment to this indictment sufficient to sustain the convictions and sentences?"

Attached herewith and incorporated herein by reference are the records of the Georgetown County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

### III.

Petitioner has filed a writ of habeas corpus in the Court of Common Pleas. Respondent submits that a state habeas petition must be filed in the original jurisdiction of the South Carolina Supreme Court. See Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998). A habeas corpus petition must support the requested relief. Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998); Hunter v. State, 316 S.C. 105, 447 S.E.2d 203 (1994). Although the allegations in the petition are to be treated as true, the Petitioner must make out a *prima facie* case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, 329 S.C. at 40, 495 S.E.2d at 428.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief

(PCR) remedies. *Id.*; Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998); Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, 329 S.C. at 42, 495 S.E.2d at 428. Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. *Id.* PCR is not rendered “unavailable or inadequate” merely because the petition might be dismissed as successive.

In fact, any matter that is cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (2003), “must be raised in PCR application, and may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts.” Al-Shabazz v. State, 338 S.C. 354, 365, 527 S.E.2d 742, 748 (2000); Simpson, 329 S.C. at 46, 495 S.E.2d at 431. The Uniform Post-Conviction Procedure Act (the Act) is “broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention.” Gibson, 329 S.C. at 41, 495 S.E.2d at 428. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by the petitioner on direct appeal. *Id.*

Thus, “[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application.” Keeler v. Mauney, 330 S.C. 568, 571, 500 S.E.2d 123, 124 (Ct. App. 1998). “Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court.” *Id.* Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, cert. denied, 498 U.S. 972, 111 S.Ct. 442 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only issue when there has been a

constitutional violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. Butler, 302 S.C. at 468, 397 S.E.2d at 88; (cited by Gibson, supra and Pennington, supra). Respondent submits that Petitioner's allegations fail to meet the standards required for the issuance of this extraordinary writ. (see Gibson, supra.) Therefore, this petition must be dismissed.

In addition, Respondent submits that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post-conviction relief application. Therefore, these claims cannot be raised in a Petition of Habeas Corpus in the Circuit Courts of South Carolina. Accordingly, the Petitioner should be summarily dismissed.

Further, if the Court should choose to construe this as an application for post-conviction relief, the Court should summarily dismiss the current application because it is clearly successive to the Applicant's prior request for PCR relief. Successive applications for post-conviction relief are clearly disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised ... in the previous application." [Emphasis in original]. Id., 305 S.C. at 450,

409 S.E.2d at 394. If the Petitioner could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Petitioner bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. at 245, 262 S.E.2d at 737; Aice, 305 S.C. at 150, 409 S.E.2d at 394. The Petitioner could have raised the new grounds for relief in his prior post-conviction relief application. The Petitioner has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications.

Respondent submits that this petition, if it should be construed as an application for PCR, should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Petitioner was convicted of the offenses he challenges in this Petition on June 1, 2006. The Court of Appeal's decision was filed, after the Petitioner's unsuccessful appeal, on June 14, 2009. The Petitioner was therefore required to file his application before June 15, 2010. This Application was filed on August 27, 2014, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c)(1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ...

that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

## IV.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests that the matter be summarily dismissed.

## V.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests the matter be summarily dismissed.

Respectfully submitted,


ALAN M. WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

KAREN C. RATIGAN  
Senior Assistant Deputy Attorney General

JESSICA E. KINARD  
Assistant Attorney General

By:

  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3737

January 22, 2016

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

JAMES A. BRYANT, #315781

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-22-00812

AFFIDAVIT OF SERVICE BY MAIL

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 and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire  
 38 Broad St., Suite 350  
 Charleston, SC 29401

DATED this 22 day of January, 2016.

2016 JAN 26 AM 11:32  
 ALMA T. WHITE  
 CLERK OF COURT  
 J. CL. JOHN COULI

*Norma Bigbee*  
 Norma Bigbee, Legal Assistant

JAMES A. Bryant # 315781  
 BRCI - moultrie 2052  
 4460 Broad River Road  
 Columbia, SC 29210

Date: May 9, 2016

ALMA Y. WHITE  
 CLERK OF COURT

2016 MAY 23 AM 11:29

FILED  
 GEORGETOWN COUNTY, S.C.

RE: BRYANT V. State, Case no: 2014-CP-22-00812

Dear Clerk,

I am writing your office about my Court appointed attorney Mr. James K. FALK who was appointed in January of 2016. Mr. Falk came to Broad River Correctional on January 27, 2016 and he wasted all the time on another client of his and I only saw him for (5) minutes. at that Mr. FALK didn't know anything about my case he told me that he has not even looked at my petition I never saw Mr. Falk again. I have written Mr. FALK (3) Times "However" Mr. FALK refuses to even correspond with me on any level and this kind of behavior from an appointed attorney is not excepted by any means. I feel as though Mr. Falk cant be trusted and I would like to have Mr. FALK taken off my case and another attorney appointed in his place. I sent your office a letter with some legal work asking Mr. FALK to amend and file in my behalf and to send me a copy of this paperwork but he refuses to communicate with me.

James Bryant

James Bryant #315781

June 20, 2016

Mag A-10-A

Macdougall Correctional Inst.

1516 Old Gilliard Rd.

2014-CP-22-00812

Ridgeville, S.C. 29472

Dear Clerk,

I, am writing your office to let you know that I have a new address. I was transferred on June 20<sup>th</sup> 2016. I have written my Lawyer Mr. James FALK also about my change of address

Thank you.

James A. Bryant #315781

Mag A-10-A

Macdougall Corr. Inst

1516 Old Gilliard Rd.

Ridgeville, SC 29472

ALMA X. WHITE  
CLERK OF COURT

2016 JUN 24 PM 4:27

FILED  
GEORGETOWN, S.C.

STATE OF SOUTH CAROLINA )  
 COUNTY OF ~~COLLETON~~ <sup>GEORGETOWN</sup> )  
 James Bryant )  
 vs. )  
 State of South Carolina )  
 Respondent )

COURT OF COMMON PLEAS )  
 FOR THE <sup>15<sup>TH</sup> JF</sup> 14th JUDICIAL CIRCUIT )

2014-CP-22-00812

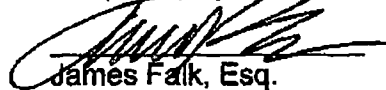
Petitioner's Response to  
 Respondent's Motion to  
 Dismiss Habeas Corpus

FILED  
 GEORGETOWN COUNTY, S.C.  
 2016 JUL 19 AM 8:54  
 ALMA Y. WHITE  
 CLERK OF COURT

To: Jessica Kinard, Office of the SC Attorney General

Petitioner t James Bryant, by counsel and through undersigned counsel hereby files a Response to Respondent's Motion to Dismiss Petitioner's Writ of Habeas Corpus. As its Response, undersigned counsel offers the attached 5 page memorandum which is attached hereto as exhibit A.

Respectfully Submitted,



James Falk, Esq.  
 PO Box 1058  
 Charleston, SC 29402  
 (843) 606- 6007  
 (843) 972 9005 fax  
 jfalklaw@gmail.com

**CERTIFICATE OF SERVICE**

Undersigned certifies that on July 15, 2016 a copy of the above was sent by email to Respondent's Counsel Jessica Kinnard at jkinard@scag.gov.



James Falk

EXHIBIT A

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

JAMES A. BRYANT #315781  
Petitioner,

Case No: 2014-CP-22-00812

v.

ANSWER TO RESPONDENTS  
MOTION TO DISMISS  
PETITION FOR WRIT OF  
HABEAS CORPUS

STATE OF SOUTH CAROLINA  
Respondent,

Comes now the petitioner respectfully filing Answer to the Respondents Return and Motion to Dismiss Petition for Writ of Habeas Corpus. The petitioner asserts the following answers to rebut the Respondent's positions and warrants the denial of the Respondent's Motion to dismiss:

1). The Respondent argues in its return and Motion to Dismiss that a State Habeas Corpus petition must be filed in the original jurisdiction of the South Carolina Supreme Court, and that this petitioner's claim should be dismissed for failing to be filed in the original jurisdiction of the South Carolina Supreme Court. The Respondent uses Keeler v. Mauney, to support this position. (SEE: Respondent's Motion to dismiss pg.4) The Respondent's argument is without merit.

The case the Respondent uses to support its claim actually undermines the Respondent's position. Keeler, in Keeler v. Mauney, 330 S.C. 568, 500 S.E. 2d 123 (ct. App. 1996), actually filed his habeas petition in the circuit court and the circuit court granted the State habeas writ to Keeler. The State appealed this decision to the S.C. Supreme Court arguing the circuit court erred in

granting the writ of habeas corpus. The State argued Keeler was procedurally barred from raising the malice charge issue in a habeas corpus petition because he could have raised the issue in his PCR application. This is the factual and legal history of Keeler v. Mauney

This petitioner's case is distinguishable and distinctly different from Keeler in that petitioner BRYANT'S issue of Insufficient Evidence to Sustain the conviction and sentence of his trial is prohibited from review under the uniform post-conviction Act. The S.C. Code of Law §17-27-20 (a)(6) specifically states an exception where the claim of "evidence was insufficient to support a Conviction" is not a claim which can be reviewed under the uniform Post-Conviction Act. But petitioner may bring his claim in the circuit court via habeas corpus because it is reviewable under S.C. Code of Law §17-17-10. Because petitioner Bryant's claim is one that can be entertained in the trial court and it does not involve a question of significant public interest or an emergency, the original jurisdiction of the S.C. Supreme Court cannot be invoked by petitioner Bryant. The Respondent's arguments are meritless and the motion to dismiss must be denied.

2). The Respondent argues in its Return and motion to dismiss that to warrant a hearing the petition must include the two allegations to support the petition described below. First, the petition must allege that the petitioner has exhausted all available post-conviction relief remedies and that exhaustion includes the filing of an application, the rendering of an order adjudicating the issues. The Respondent uses Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998) and Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). to support this position. (See: Respondent's Motion to dismiss pg.5) the Respondent's argument is without merit.

The cases the Respondent uses to support it's claim clearly undermines the Respondent's position. Pennington, in Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994) actually did not file an application for post-conviction relief but instead Pennington, filed a motion for petition for writ of habeas corpus and the circuit court ordered Pennington to file an application for post-conviction relief within thirty days or the petition for habeas corpus would be dismissed at the end of the period. The petitioner did not file the application for post-conviction relief and the circuit court dismissed the petition and the petitioner appealed this decision to the South Carolina Supreme Court arguing whether the circuit properly dismissed the petitioner's petition for writ of habeas corpus without and evidentiary hearing. This is the factual and legal history of Pennington v. State, 312 S.C.

436, 441 S.E. 2d 315 (1994).

The petitioner's case is distinguishable and distinctly different from that in Pennington in that petitioner Bryant has filed a PCR in 2009 right after the petitioner's Direct appeal was affirmed, the PCR Court filed it's Order of Dismissal on August 28, 2009. The petitioner (Bryant) timely petitioned for writ of Certiorari after serving his Notice of to appeal on September 27, 2009, The South Carolina Supreme Court Denied the petitioner's writ of Certiorari on April 7, 2011 and the petitioner filed a timely Federal Writ of Habeas Corpus on August 20, 2012 and the District Court granted Summary Judgement to the Respondents where as the petitioner then timely filed in the District Court a "Motion for Reconsideration" on April 8, 2013 this was also denied, the petitioner appealed this denial by filing a timely "Notice of Intent to Appeal" service was made upon the Respondent's. On June 18, 2013, the intent to appeal was also denied clearly the Respondent's argument are meritless and the Motion to dismiss must be denied.

3). The Respondent argues that the claims made in the petitioner's petition for writ of habeas corpus could have been raised in a post-conviction relief application.

Therefore, these claims cannot be raised in a petition of habeas corpus in the circuit courts of South Carolina, and the petitioner should be summarily dismissed (See: Respondent's Return and motion to dismiss pg.6). The Respondent's argument on this issue are without merit.

The Statute the Respondent uses to support it's claim S.C. Code Ann. §17-27-90 (1985) and the case that the Respondent cites Land v. State, 274 S.C. 243, 262 S.E. 2d 735 (1980) undermines the Respondent's position on this issue also. Because S.C. Code Ann. §17-27-20(a)(6) prohibits the petitioner's issue of "Insufficient evidence to sustain the conviction and sentence" from review under the uniform post-conviction Act, the petitioner may bring his claim in the circuit court via habeas corpus because it is reviewable under S.C. Code of Law Status §17-17-10. Because petitioner Bryant's claim is one that can be entertained in the trial court and it does not involve a question of significant public interest or an emergency, the original jurisdiction of S.C. Supreme Court cannot be invoked by petitioner Bryant. The Respondent's arguments are meritless and the motion to dismiss must be denied

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2014CP2200812

James A Bryant

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order; (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

Oral Motion to Relieve Attorney Falk Denied.  
Motion to Dismiss Petition for Writ of Habeas Corpus Granted.

FILED  
LINA Y. WHITE  
CLERK OF COURT  
2014 JUL 22 AM 10:20

This order  ends  does not end the case.  
Additional Information for the Clerk: \_\_\_\_\_

*Attorney Jessica Kinard is to prepare a formal order.*

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*Miriam T. Culbertson*

2148

7/19/2016

Circuit Court Judge

Judge Code

7/14/2016

Date

For Clerk of Court Office Use Only

This judgment was entered on July 22, 2016, and a copy mailed first class or placed in the appropriate attorney's box on July 22, 2016, to attorneys of record or to parties (when appearing pro se) as follows:

James Kristian Falk PO Box 1058 Charleston, SC 29402

Caitlin Bazan Hastings PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Spdy Bailey Deputy*

Court Reporter *Grace Hurley*

Alma Y. White - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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\_\_\_\_\_

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN ) 2014-CP-22-00812

James Arthur Bryant,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	July 19, 2016
	)	
The State,	)	
	)	
Defendant.	)	

B E F O R E:

Honorable Benjamin H. Culbertson  
Georgetown County Courthouse  
Georgetown, South Carolina

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

James Falk, Esquire  
Attorney for Plaintiff

Jessica Kinard, Esquire  
Attorney for Defendant

Grace L. Hurley, CVR-CM-M  
Circuit Court Reporter

Bryant v. State

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1 (There were no exhibits marked during the hearing.)  
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1 (On the record, July 19, 2016.)

2 THE COURT: All right. This is case number 2014-CP-22-  
3 812, James Bryant versus State of South Carolina. The matter  
4 comes before the Court today for trial. Please give the court  
5 reporter your name and who you represent.

6 MS. KINARD: Jessica Kinard for the State.

7 THE COURT: All right.

8 MR. FALK: James Falk appointed for Mr. Bryant.

9 THE COURT: All right. I understand we have some  
10 preliminary matters before we get into the trial; is that  
11 correct?

12 MR. FALK: Yes, Your Honor.

13 THE COURT: All right. What do we want to deal with  
14 first?

15 MR. FALK: Your Honor, I have spoken with my client and I  
16 have received a letter, a copy of a letter that he had sent to  
17 the Supreme Court, and I think he would -- he does not want me  
18 to represent him in this case.

19 THE COURT: All right.

20 MR. FALK: And would ask that I be removed.

21 THE COURT: All right. Mr. Bryant, if you'd please  
22 stand. You're James A. Bryant?

23 MR. BRYANT: Yes, sir.

24 THE COURT: All right. Mr. Bryant, Mr. Falk, who is your  
25 court-appointed attorney has delivered to me a copy of the

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1 letter that you sent to the South Carolina Supreme Court  
2 voicing some displeasure in his representation and has also  
3 delivered to me the letter of response from the Supreme Court  
4 that says that if you have good cause you can file a motion to  
5 have him relieved. Now, I understand you have not filed a  
6 motion to have him relieved, but do you want to proceed with a  
7 motion to have him relieved as your --

8 MR. BRYANT: Yes. Yes, sir.

9 THE COURT: Okay. All right. Why is it that you want  
10 him relieved as your attorney?

11 MR. BRYANT: This man is conspiring against me to have my  
12 case dismissed.

13 THE COURT: Okay. Now, how is he conspiring? What has  
14 he done?

15 MR. BRYANT: He's lying all the time. The man wouldn't  
16 even give me a copy of the -- what I asked him to file in a  
17 minute in the file that he wouldn't even give me a copy of it.  
18 He's hiding it from me. I haven't seen it yet. I don't know  
19 what he filed.

20 THE COURT: Well, what is it you gave -- what is it  
21 you're wanting a copy of?

22 MR. BRYANT: What he supposed to file pursuant to Rule  
23 11. He's supposed to file a return to the State for what the  
24 State is saying.

25 THE COURT: Well, and we've got a return filed.

1 MR. BRYANT: I don't have it.

2 THE COURT: Okay. Well, and I don't want you to get  
3 confused, Mr. Bryant, with an attorney's performance that you  
4 disagree with and an actual conflict. Okay. Now, Mr. Falk is  
5 the attorney. He practices law. He knows procedure. He  
6 knows how to file motions, how to file responsive pleadings,  
7 how to proceed in a trial. It's a lot like if you went to the  
8 hospital and the doctor tells you you have to have surgery.  
9 Well, you can follow the doctor's advice and get the surgery  
10 or you can reject the doctor's advice and not get the surgery,  
11 but if you follow the doctor's advice and you get the surgery,  
12 you don't get to tell the doctor how to perform the surgery  
13 because he's the doctor. It's the same thing in the legal  
14 proceeding. You can follow the advice of your attorney. You  
15 can get an attorney appointed to represent you or you can  
16 represent yourself, whichever you prefer, but if you get a  
17 lawyer to represent you, you don't get to dictate how he  
18 represents you. Okay?

19 MR. BRYANT: But I do get to tell him not to file  
20 something that going to get my case dismissed and he knowing  
21 this, that'll happen and he file it anyway.

22 THE COURT: Well, but he's the lawyer. I'm sure he's got  
23 a reason for filing it. He knows the procedure. Let me ask  
24 you this, have you been to law school? Are you licensed to  
25 practice law?

Bryant v. State

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1 MR. BRYANT: No. But I know more than he know.

2 THE COURT: Okay.

3 MR. BRYANT: So he tell me hisself. Out of his own mouth  
4 he say I know more about it than him. So what kind of lawyer  
5 tell you that?

6 THE COURT: Well, there's a lot of lawyers that know a  
7 lot more than me. Lawyers -- that's their profession.

8 MR. BRYANT: Yeah. But they don't tell their client,  
9 "You know more about this law than, than I know." What lawyer  
10 tell his client that?

11 THE COURT: All right. Well, Mr. Bryant, you have  
12 several choices. Okay. Number one is you can hire whatever  
13 lawyer you want to hire to represent you. If you are deemed  
14 indigent, which you have been deemed indigent, you have the  
15 right to have a court-appointed attorney, which Mr. Falk is  
16 your court-appointed attorney. If you want a court-appointed  
17 attorney you can get one but you don't get to pick who you  
18 get. The third option is that you can represent yourself. So  
19 unless you can show me more of a conflict in Mr. Falk  
20 representing you in this case, in other words, the only  
21 restriction is Mr. Falk cannot represent you if he has an  
22 interest in the outcome of this case that is different than  
23 the outcome that you desire or if he is representing another  
24 party to this action. In other words, he can't represent the  
25 State of South Carolina and you.

1 MR. BRYANT: Well, I think he doing that by hiding the  
2 filing --

3 THE COURT: Well, you're going --

4 MR. BRYANT: -- because there's something in the filing  
5 that going to get my case automatically dismissed. That's why  
6 he don't want me to see it.

7 THE COURT: Well, you're going to have to show me more  
8 than just saying that.

9 MR. BRYANT: Well, I, I need, I need the return first. I  
10 need to see it first and then I'll know.

11 THE COURT: Is this the, the one that you handed me this  
12 morning that he told you to file?

13 MR. FALK: Yes, Your Honor.

14 THE COURT: Okay. Let's show him -- show him that what,  
15 what you filed. See, to complicate matters, Mr. Bryant, I  
16 think he filed exactly what you told him to file.

17 MR. BRYANT: I don't see why the problem why he won't  
18 give me a copy of it if he did that. So why you couldn't give  
19 me this right here?

20 THE COURT: All right. Mr. Bryant, anything further you  
21 want to say?

22 MR. BRYANT: I just want to know why he couldn't send me  
23 a copy of this.

24 THE COURT: Okay. All right. I'm going to deny the  
25 motion to relieve you as his attorney. I'm going to let Mr.

Bryant v. State

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1 Falk continue as his attorney. Okay? All right. Anything  
2 else preliminary before we get started? I understand there's  
3 an outstanding motion; is that correct?

4 MS. KINARD: Yes, Your Honor. There's a motion to  
5 dismiss by the State. I'm happy to give some preliminary  
6 background and proceed into argument if the Court is ready.

7 THE COURT: All right. Go ahead.

8 MS. KINARD: Would you like me to give some procedural  
9 history?

10 THE COURT: Please. Thank you.

11 MS. KINARD: Thank you. Initially this matter came  
12 before the court by way of a document filed August 27<sup>th</sup>, 2014,  
13 captioned Petition for rate -- excuse me, Writ of Habeas  
14 Corpus that was filed pro se by Mr. Bryant. Mr. Bryant is  
15 presently confined pursuant to orders of commitment with the  
16 South Carolina clerk -- excuse me, Clerk of Court for  
17 Georgetown County. He was indicted the April 2006 term of the  
18 Georgetown County Grand Jury for burglary first degree,  
19 kidnapping, three counts of assault and battery with intent to  
20 kill. He was represented at trial by Mr. Eric Fox. They  
21 proceeded to a jury trial before Judge Cottingham on May 30<sup>th</sup>,  
22 2006, and on June 1<sup>st</sup> he was found guilty as indicted with the  
23 exception of being found guilty of the lesser included offense  
24 of assault and battery of a high and aggravated nature on one  
25 of the indictments. Judge Cottingham sentenced him to 25

1 years imprisonment for each charge to be served concurrently.  
2 The Applicant filed an appeal on June 2<sup>nd</sup>, 2006, and was  
3 perfected. His conviction and sentence were affirmed January  
4 14<sup>th</sup>, 2009, in an unpublished opinion.

5 After that he filed his first application for post-  
6 conviction relief April 1<sup>st</sup>, 2009, which he amended July 22<sup>nd</sup>,  
7 2009. A return was filed by the State May 29<sup>th</sup>, 2009, and an  
8 evidentiary hearing was convened on July 28<sup>th</sup>, 2009, before the  
9 Honorable Larry B. Hyman, Jr. Ultimately all of his claims  
10 were dismissed with prejudice. Mr. Bryant filed an appeal,  
11 and it was perfected by a Petition for Writ of Certiorari  
12 filed by Robert Pachak of the Office of Appellate Defense.  
13 The, the Petitioner twice requested leave to file a pro se  
14 brief in his own support. Neither of these were addressed by  
15 the court. Certiorari was denied April 7<sup>th</sup>, 2011. Remittitur  
16 was returned April 25<sup>th</sup>, 2011. Later Petitioner filed a  
17 Petition for Federal Habeas Corpus relief June 3<sup>rd</sup>, 2011. This  
18 was ultimately denied, although it was supported by a lengthy  
19 memorandum of law from the Petitioner -- I'm sorry. I should  
20 be saying Applicant. He also included a filing for a Motion  
21 for a Default on September 14<sup>th</sup>, 2011. Ultimately, U.S.  
22 Magistrate Judge West issued a report and recommendation,  
23 recommended granting the Motion for Summary Judgment that was  
24 filed by the State. This was adopted by the Honorable Bryan  
25 Harwell and an order was issued August 20<sup>th</sup>, 2012. Although

1 the order denied the granting of a Certificate of  
2 Appealability he nonetheless applied -- appealed to the U.S.  
3 Court of Appeals for the Fourth Circuit which dismissed his  
4 request June 18<sup>th</sup>, 2013. As I stated before, this Petition for  
5 State Habeas Corpus was filed April 27<sup>th</sup>, 2014. There's a bit  
6 of confusion about this matter as Mr. Bryant filed to proceed  
7 in forma pauperis. This was denied by this Court and a Form 4  
8 order stated that the action would end as a result of that  
9 denial even though the Petitioner filed a Motion to Reconsider  
10 that order. Because of that, this was closed with the Clerk  
11 of Court for Georgetown County and later reopened by order of  
12 this Court. At such time the State filed a Return and Motion  
13 to Dismiss. That was on January 26<sup>th</sup>, 2016, and we are now  
14 present before this Court to hear that Motion to Dismiss, and  
15 if needed it's my understanding for an evidentiary hearing.

16       Regarding the Motion to Dismiss itself, the State's  
17 position is that, first of all, this was filed, this being his  
18 Petition for Habeas Corpus was filed in the Georgetown County  
19 Courts. The State argues that any State Habeas Petition must  
20 be filed in the original jurisdiction of the South Carolina  
21 Supreme Court. Part of this reason is because oftentimes  
22 State Habeas Petitions are used as a kind of loophole to  
23 circumvent the PCR procedure, and it is codified that any  
24 matter that can be heard through the PCR procedure should be  
25 heard through PCR. It is also codified that an Applicant

1 Petitioner only gets one PCR proceeding, which Mr. Bryant  
2 certainly has had and that was seen through to its full  
3 conclusion including an appeal process.

4 THE COURT: All right. Now, what is it that says Habeas  
5 Corpus must be filed with the Supreme Court?

6 MS. KINARD: That's a case Keeler v. Mauney. It is also  
7 -- well, it's basically it's case law. It's not exactly  
8 codified. Case law states that anything that falls within the  
9 sections in the PCR Act, which is 17-27-10, and subsequent  
10 should be filed as a PCR procedure. The State argues that the  
11 nature of these allegations, which speak to the elements of  
12 the crime, are technically those that should be addressed  
13 either actually through the direct appeal procedure or through  
14 PCR procedure and that State Habeas is not the appropriate  
15 ground for these.

16 THE COURT: All right. And I understand that argument.  
17 My question is is there any appellate decision or statute that  
18 says Habeas Corpus proceedings must be initiated in the  
19 Supreme Court?

20 MS. KINARD: Yes, sir. That is in both Gibson v. State  
21 and Keeler v. Mauney, which I have and I can hand up if the  
22 Court would like.

23 THE COURT: Okay. If you don't mind.

24 MS. KINARD: Yes, sir.

25 THE COURT: Thank you, ma'am.

Bryant v. State

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1 MS. KINARD: And again, that does speak a little bit to  
2 the nature of the relief requested. Mr. Bryant in the filing  
3 that was just addressed here before we got in the Motion to  
4 Dismiss he argues that these cases are not on point which  
5 certainly we would disagree with. Mr. Bryant phrases these  
6 issues in that filing, which actually the State would object  
7 to its submission as it was filed pro se originally by Mr.  
8 Bryant and then filed again with a cover letter by Mr. Falk.  
9 The States believes that's hybrid representation and that the  
10 Court should not consider that filing due to that nature.

11 THE COURT: All right. What did he file as a hybrid  
12 representation?

13 MS. KINARD: The, the document that was just filed today  
14 that he had an issue with where he's calling the return.

15 THE COURT: Okay.

16 MS. KINARD: It's in your packet without the cover sheet  
17 and it was titled Answer to Respondent's Motion to Dismiss.

18 THE COURT: That's what I had just, just handed him.

19 MS. KINARD: Yes, sir. Do you need another copy?

20 THE COURT: Well, I guess my question is did -- had Mr.  
21 Falk -- let me look through this file. Had you filed a  
22 return?

23 MR. FALK: Your Honor, that is what I filed as the  
24 return.

25 THE COURT: Okay. All right.

1 MR. FALK: And Your Honor, certainly in these situations  
2 there are Rule 11 issues. I felt that that was the best way  
3 to articulate my client's positions.

4 THE COURT: I got you. Okay.

5 MR. FALK: And I, I think maybe Faretta should not apply  
6 in the PCR setting is where I'm trying to accommodate my  
7 client's legal positions which I might not always fully  
8 endorse.

9 THE COURT: Okay. Well, and I'm going to -- I'm, I'm not  
10 going to strike that as hybrid representation because Mr. Falk  
11 filed it. Even though it was prepared by his client, he is  
12 the filing party. I grant if, if, if Mr. Bryant had done an  
13 end-run and filed it without his attorney's approval then  
14 you'd have hybrid representation, but just simply because Mr.  
15 Bryant prepared it, Mr. Falk filed it on his behalf I'm not  
16 going to throw it out on that grounds.

17 MR. FALK: Thank you, Your Honor.

18 THE COURT: All right.

19 MS. KINARD: Thank you, Your Honor. And I certainly  
20 respect that position. I believe it was sent to the Clerk of  
21 Court before Mr. Falk filed it, though I do understand your  
22 ruling on that.

23 THE COURT: Yeah. As long as that there -- as long as  
24 there are not dual responses I'm going to permit it.

25 MS. KINARD: Yes, sir.

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1 THE COURT: All right.

2 MS. KINARD: Anyway, in addressing his issues there,  
3 though the allegations in his Petition for Habeas Corpus they  
4 speak directly to sufficiency of evidence as well as how that  
5 evidence fits the elements of the indictment, and there is  
6 specific language in the PCR Act that states you cannot use  
7 PCR to challenge sufficiency of the evidence, and I believe  
8 that Mr. Bryant is trying to go back around and actually try  
9 and do that by questioning the indictments, which can be  
10 addressed in other ways. That's really the issue is there is  
11 a change in one of the indictments. He doesn't believe the  
12 elements were met, and he's looking to get around that by  
13 challenging the sufficiency of the evidence through Habeas  
14 Corpus rather than through PCR.

15 THE COURT: Well, I mean, was that issue addressed on PCR  
16 or the Federal Habeas Corpus or do you know?

17 MS. KINARD: No, sir, but it could have been.

18 THE COURT: Okay. It could have been but was not.

19 MS. KINARD: And, and that's the standard.

20 THE COURT: I got you.

21 MS. KINARD: Is it could have been. So therefore, the  
22 State maintains that this is a -- technically it should be a  
23 successive PCR filing. We've also opposed it to the grounds  
24 of that it's filed outside of the statute of limitations for  
25 PCR filings. It's over, I believe, 10 years, six years I

1 believe after the statutory filing period would have ended.  
2 So therefore, it could be, it could be addressed on the  
3 grounds of latches as well. There are multiple reasons why  
4 this should not be submitted simply procedurally.

5       Regarding some further case law, there is the case of  
6 McCall v. State. The citation is 247 S.C. 15. It's a 1965  
7 case that says Habeas Corpus relief isn't available if the  
8 Defendant would still be imprisoned on other charges, and  
9 that's clearly the case here. If only one indictment is  
10 invalid or there's only one indictment that is at issue here  
11 that Mr. Bryant has brought up and he would still be  
12 imprisoned on all the other charges for the same sentence.

13       THE COURT: Okay. So what indictment is he alleging  
14 error in?

15       MS. KINARD: Beg the Court's indulgence. To quote his  
16 petition, [as read], "Whether the extra added aggravating  
17 circumstances of Subsection 16-11-311 sub three as fact-  
18 offense elements of burglary first-degree were sufficient to  
19 sustain the convictions where this evidence did not go to the  
20 Grand Jury and were not specifically charged within the  
21 indictment upon which the Petitioner was indicted."

22       THE COURT: All right.

23       MS. KINARD: Secondly, [as read], "Whether the Grand  
24 Jury indicted Petitioner Bryant on Subsection 16-11-312 sub A  
25 or 16-11-311 sub A in the indictment returned upon him by the

1 Grand Jury in this case and was the amendment to this  
2 indictment sufficient to sustain the convictions and  
3 sentences?" So it's just an issue with the burglary first-  
4 degree indictment, and there's still the, the ABWIK and  
5 kidnapping indictments that carry the same sentence from  
6 trial.

7 THE COURT: All right. Thank you.

8 MS. KINARD: I believe that sums up most of our opinions,  
9 most of our arguments. If there's anything further I would be  
10 happy to address it.

11 THE COURT: All right.

12 MS. KINARD: Thank you.

13 THE COURT: Mr. Falk.

14 MR. FALK: Your Honor, first, as far as the  
15 jurisdictional question as a, as a beginning point, Article 5  
16 of the South Carolina Constitution, Section 11 grants the  
17 Supreme Court original jurisdiction to hear Writs of Habeas  
18 Corpus but it does not grant the Supreme Court exclusive  
19 jurisdiction to hear Writs of Habeas Corpus. We would argue  
20 that under -- excuse me -- Article 5, Section 11 grants the  
21 Circuit Courts general rights to hear all claims and Article  
22 5, Section 5 grants the Supreme Court right to hear -- gives  
23 it original jurisdiction to hear the Habeas Corpus Petition  
24 but it does not, as I say, grant it exclusive jurisdiction.  
25 My client, under the statute he is incarcerated and under 17-

1 17 -- South Carolina Code 17-17-10 he's entitled to file a  
2 Writ of Habeas Corpus. I mean, he's -- in that he is -- he's  
3 incarcerated by a law that he -- or by reasons which he thinks  
4 are illegal or unlawful, he feels he's unlawfully detained,  
5 he's -- has a right to file a Habeas Corpus. He can file it  
6 in Circuit Court. He can file it in, in the South Carolina  
7 Supreme Court. It is not an exclusive jurisdiction. If you  
8 look at the -- if you look at Mauney decision had the court  
9 there said, if you read that decision, that was not -- that  
10 case was not dismissed based on the fact that it wasn't. That  
11 case was filed in Circuit Court. There was a -- there was an  
12 Habeas Petition that was filed in Circuit Court. The Mauney  
13 court dismissed the case on other grounds but did not dismiss  
14 the case on the grounds that the Circuit Court had no  
15 jurisdiction. That certainly would be the first factor to  
16 look to, I mean, jurisdiction of the court. That'd be the  
17 primary grounds for dismissal. That's not the grounds for  
18 dismissal in that case, and I think it's because Circuit Court  
19 does have the right to hear a Habeas Corpus Petition. So I  
20 think that he has a right to be here. He has a right to file  
21 the Writ. He's not, he's not in the wrong forum. He's not in  
22 the wrong venue at this point.

23 The next question is whether or not he has -- this is  
24 something that could have been dealt with in a PCR petition.  
25 Our argument is that under -- excuse me. Under 17-27-20, sub

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1 A, sub 6, this is the only grounds on which he is not able to  
2 file a petition for a, for a PCR relief is where he is, he is  
3 questioning the substantial -- he's questioning the -- whether  
4 or not there was sufficient evidence to sustain the verdict.  
5 That's why we're here today. There is a very real problem  
6 with the indictment in this case. If you look at the  
7 indictment that was filed it reads on its face a burglary one  
8 indictment. However, if you look at -- which is the  
9 controlling portion of the indictment, which is the paragraph  
10 that says that [as read], "James Arthur did in Georgetown  
11 County on or about February 11<sup>th</sup>, 2006, without consent and  
12 with the intent to commit a crime therein enter the dwelling  
13 of Lasha E. Bryant located at 12 Avant Court, Georgetown,  
14 South Carolina, causing bodily harm to Lasha E. Bryant and/or  
15 Nelson Heyward and/or Tamar Bryant in violation of", and  
16 here's the interesting part, it was originally written as in  
17 violation of 16-11-311, excuse me.

18 MR. BRYANT: 312.

19 MR. FALK: 312 which is second, which is second degree  
20 burglary. So he's indicted on a second-degree burglary  
21 charge. Although it says first-degree on the front there are  
22 no facts in that paragraph and I will -- this is -- was in the  
23 file that I received.

24 THE COURT: I mean, was that issue addressed on appeal  
25 and if not why not? As I understand he appealed his

1 conviction and that was affirmed. Was it addressed and if not  
2 why wasn't it?

3 MR. FALK: I was not, I was not representing him on the  
4 appeal.

5 THE COURT: Okay. But someone represented him on his  
6 appeal.

7 MR. FALK: Yes, Your Honor. But still, you can't -- it's  
8 our argument that he wouldn't -- this is a faulty indictment  
9 which would infect the entire proceedings. This was -- there  
10 was no -- there's no allegation in that paragraph on the  
11 indictment which has any of the factors which would take a  
12 burglary second to a burglary first, namely that it was  
13 committed by somebody with prior convictions or that it was  
14 done at night or the harm to the victim component of it. So I  
15 mean, this is a -- so then he goes to trial. On the date of  
16 trial he's going to trial all of a sudden on a first-degree  
17 indictment where he was originally indicted under second-  
18 degree.

19 THE COURT: Well, I mean, the -- so the code section in  
20 the indictment says second-degree and that was amended, but  
21 the indictment caption say burglary first-degree and the title  
22 page says first-degree; correct?

23 MR. FALK: Yeah. But the -- but, but our point is is  
24 that it's the caption can't rule, can't control over the facts  
25 that were alleged in the indictment. There was nothing

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1 alleged in that indictment that would make that a first-degree  
2 burglary. There's plenty alleged that would make that second-  
3 degree burglary.

4 THE COURT: All right. Anything else?

5 MR. FALK: All right. So, and our -- my client's  
6 position would be that had -- that this is a significant flaw  
7 in the entire proceedings that he was -- he's entitled to be  
8 -- not stand for an infamous crime unless it's -- been  
9 something has been presented to the Grand Jury. There was no  
10 waiver of presentment. This -- he was not indicted on the  
11 lesser included offense. So he went forward on a case where  
12 he was then on the day of trial all of a sudden -- I mean,  
13 this is indictment by ambush. I mean, he was -- calls into  
14 trial and now he's facing a burglary first indictment and  
15 having to prepare himself on the day of trial presumably for a  
16 burglary first indictment when there was -- he has -- that  
17 indictment provided not -- insufficient notice to him to know  
18 what he had to defend himself against because that indictment  
19 provided insufficient notice for him to know that he had to  
20 respond to whether or not it was at night, whether he had the  
21 criminal record, whether or not there was the injury that  
22 would make it a -- go from a second to a first.

23 THE COURT: Well, and I understand your argument. I  
24 don't have the trial transcript in front of me. Was there an  
25 objection raised at that time to an amendment of the

1 indictment? Was there a request for a continuance for  
2 preparation? What transpired when the indictment was amended  
3 at the trial court level?

4 MS. KINARD: If I may, Your Honor, you do have a copy of  
5 the trial transcript and it's on page 26.

6 THE COURT: Okay. That's what you provided this --

7 MS. KINARD: Yes, Your Honor.

8 THE COURT: -- morning the -- okay. I thought that  
9 was a prior --

10 MS. KINARD: I -- I'm almost positive that's the trial  
11 transcript.

12 THE COURT: Okay. Oh, okay. I got it right here. Okay.  
13 According to the transcript his counsel consented to it saying  
14 it was just a scrivener's error so that he -- all I can  
15 interpret is that he was prepared to go first on burglary one.  
16 It says --

17 MR. FALK: Your Honor, it would be our position that  
18 that's not something that trial -- that's not a waiver of a  
19 right that trial counsel could make on his client's behalf. I  
20 mean, that's his constitutional right.

21 THE COURT: Yeah. But it kind of defeats his argument  
22 that he was ambushed where you've got his attorney saying, [as  
23 read], "That's a scrivener's error. We knew it was burglary  
24 first not burglary second." So it -- you can't, I mean, I  
25 understand your jurisdictional argument, but the question is

1 is you can't say he was ambushed. It says, [as read], "Mr.  
2 Modica: Your Honor, prior to that we had approached and I had  
3 requested the ability to move to amend indictment 06-GS-22-277  
4 to correct a section. It says 312. It should say 311. It  
5 does say burglary first on the back of it. It has 311. It  
6 does say burglary first on the back. Court: My  
7 understanding, Mr. Fox, you don't object to that, it being  
8 merely a scrivener's error, he being charged on the face of  
9 the indictment and other language with burglary first-degree.  
10 Mr. Fox: That's correct, Your Honor. No objection from the  
11 Defendant. None, Your Honor. The amendment is so  
12 authorized."

13 MR. FALK: Your Honor, when we spoke yesterday there was  
14 an idea whether or not we were going to have Mr. Fox here  
15 today because I think that's something that, I guess, we would  
16 need testimony from him from if we're going to get to the  
17 merits of his client.

18 THE COURT: Well, all right. Go ahead. Any other  
19 arguments?

20 MR. FALK: Your Honor, may I speak with my client?

21 THE COURT: Yeah. Well, and also, I need you to address  
22 what is he, what is he asking in this Habeas Corpus? If he  
23 prevailed, what does he want me to rule --

24 MR. FALK: Your Honor, the only thing that --

25 THE COURT: -- because you've still got a kidnapping that

1 he's serving time for. You've got, what is it, armed robbery  
2 -- what was the kidnapping?

3 MS. KINARD: Kidnapping, two counts of assault and  
4 battery with intent to kill and one count of assault and  
5 battery of a high and aggravated nature.

6 THE COURT: Okay. So he's still got those. So what  
7 actual relief is he asking for?

8 MR. FALK: Your Honor, he's, he's asking for a Habeas  
9 Corpus release -- to be released because he -- it, it's our  
10 position that the defect in this -- I mean, certainly this is  
11 a case based on the burglary. Everything else falls from  
12 that, and the defect in the burglary indictment would infect  
13 the entire case.

14 THE COURT: Okay. All right. You need to speak with  
15 him?

16 MR. FALK: But Your Honor, could my -- yeah. My client  
17 maybe address some points?

18 THE COURT: Well, talk to -- you let him talk to you  
19 first.

20 (Mr. Falk and Mr. Bryant confer.)

21 MR. FALK: Your Honor, I just want the -- my -- I spoke  
22 with my client. I just want to amplify two points. One is  
23 our first point is that we don't believe that the trial court  
24 has the right to make a scrivener's, to say there's a  
25 scrivener's error in the indictment, and again, my point is is

1 that I don't think trial counsel has the right to waive that  
2 indictment issue without my client's consent, that it's the  
3 Grand Jury to determine what he's going to be indicted on and  
4 what facts he's going to be indicted on. The second point is  
5 and what I said is that this is the -- this case was all about  
6 the burglary first conviction and that the problem with that  
7 indictment spills over onto the entire rest of the trial.  
8 Therefore, my point was it infected the rest of the trial and  
9 the rest of the indictments.

10 THE COURT: All right.

11 MR. FALK: Can my client though still address the Court?

12 THE COURT: No. That's hybrid representation.

13 MR. FALK: Okay.

14 THE COURT: Only one at a time. All right. Ms. Kinard,  
15 anything in reply?

16 MS. KINARD: Very briefly, Your Honor. I think it's  
17 clear on the trial transcript record if we're going to defer  
18 to that and I believe it properly is considered at least in  
19 PCR. So therefore, I'd make the analogy to consider it in  
20 Habeas Corpus, lines -- well, through 11 through 17, Mr. Fox  
21 as representative of Mr. Bryant says that they agree it's a  
22 scrivener's error and that there is no objection from the  
23 Defendant. It is not a far stretch to presume that Mr. Fox  
24 looked down at Mr. Bryant, he said, "Yep. Let's go forward."  
25 Furthermore, excuse me, past that an indictment is a notice

1 document. They knew why they were there. They knew what they  
2 had to defend, and they were certainly on notice that they  
3 needed to defend against the burg first by this conversation  
4 with the judge in the trial transcript. Regardless of all of  
5 that, however, the State maintains that procedurally this is  
6 an improper petition. Looking at Keeler v. Mauney the last  
7 paragraph says that he could have raised his charge in his PCR  
8 application, and his petition to the Circuit Court for Writ of  
9 Habeas Corpus is therefore procedurally barred. Because this  
10 arises in the trial transcript it is obviously something that  
11 could have been raised at his first PCR challenge, if not in  
12 his direct appeal issue, and additionally, as the Court  
13 reiterated, because he is still going to be incarcerated on  
14 other issues there is really no relief left for him under  
15 McCall v. State because these other charges are still out  
16 there. Even if this burglary charge is revisited, there is no  
17 relief granted or available to him under Habeas Corpus due to  
18 the nature of the other charges that will still survive.

19 THE COURT: All right. Do you have that case, McCall v.  
20 State?

21 MS. KINARD: No, sir. I apologize. I do not. I have  
22 the citation.

23 THE COURT: That's all right.

24 MS. KINARD: It's 247 S.C. 15. It's also cited, too, in  
25 the Gibson case that I did hand up.

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1 THE COURT: Oh, it is?

2 MS. KINARD: I believe. Yes, Your Honor, the discussion  
3 portion the first case.

4 MR. FALK: Your Honor, if I could just address one point  
5 and without --

6 THE COURT: All right. Excuse me. Let -- can you bring  
7 me that return back that I gave him to review, too? Thank  
8 you. Thank you. Hold for one second, Mr. Falk. Let me take  
9 a look at this and then I'll give you an opportunity. All  
10 right, Mr. Falk.

11 MR. FALK: I was just making the point that I don't  
12 believe that the trial court has the -- I think, as I said,  
13 it's my client's position that he has the absolute right  
14 whether or not he's going to waive any defect in an  
15 indictment, and certainly I'm sure Your Honor has presided  
16 over many sentencing hearings in which the Defendant has  
17 waived presentment to the Grand Jury but he has always got a  
18 signature on the indictment saying that the client has waived  
19 his rights. I mean, even in a sentencing hearing, the Court's  
20 not going to go on something other than either the Court --  
21 the Defendant being sworn under oath, advised of his rights  
22 and then saying that he's making a knowing waiver of his right  
23 to proceed with the defective indictment. My, my point as far  
24 as how I believe this case can be distinguished from McCall is  
25 that if -- it's my understanding under the facts of the McCall

1 is that you had a June 1962 sentence for, I guess, possession  
2 of a handgun, and it was to run consecutive with a sentence  
3 that was imposed in February of 1962. So I believe that those  
4 were -- it's -- would look to me as though McCall was  
5 addressing two separate proceedings. I think that's important  
6 in our case because it's my client's position that the fact  
7 that they went forward on the improper indictment voided the  
8 entire proceedings of which he was convicted. So all the  
9 indictments that flowed after the invalid burglary first  
10 indictment voided the rest of the proceeding and that's how  
11 you can distinguish the present case from McCall where it was  
12 clearly two separate proceedings and just a sentence that was  
13 to run consecutive.

14 THE COURT: All right. All right. Ms. Kinard, if I  
15 could get you to prepare an order, I'm going to grant the  
16 motion to dismiss. I disagree with you on original  
17 jurisdiction being in the Supreme Court. I agree with Mr.  
18 Falk's argument that it can be brought in Circuit Court. I  
19 may be wrong on that issue but I'm, but I'm not dismissing on  
20 that. The reason I'm dismissing it is, number one, I think it  
21 is duplicative. It could have been raised in the PCR, could  
22 have been raised on the appeal, could have been raised in the  
23 Federal PCR. It was not raised at that time, and so, I think  
24 it is duplicative, number one. Number two, I am persuaded by  
25 McCall versus State which says that the only relief available

1 in a Habeas Corpus proceeding is an absolute or conditional  
2 release from custody or detention and where there are -- where  
3 he is in custody or detained or serving a sentence on other  
4 charges you can't grant the relief requested in the Habeas  
5 Corpus proceeding. So as I read the McCall v. State, I can't  
6 grant the relief he's asking because he's still serving a  
7 sentence for the kidnapping and the assault charges. So I'm  
8 going to grant the Motion to Dismiss on those grounds. All  
9 right.

10 MS. KINARD: Thank you, Your Honor.

11 THE COURT: If you would prepare the order, make sure Mr.  
12 Falk reviews it before you submit it to me for signature.  
13 Okay?

14 MS. KINARD: Yes, Your Honor.

15 THE COURT: All right. Anything further?

16 MS. KINARD: Not from the State.

17 THE COURT: Anything further, Mr. Falk?

18 (Mr. Falk and Mr. Bryant confer.)

19 MR. FALK: Nothing further at this time.

20 THE COURT: All right. Make sure you also put in the  
21 order where he -- it was -- that I entertained an oral motion  
22 to dismiss Mr. Falk as his attorney even though there was no  
23 written motion, and I denied it finding that Mr. Bryant was  
24 dissatisfied with the representation, but I did not find any  
25 conflict of interest in Mr. Falk's representation. All right?

1 MS. KINARD: Thank you, Your Honor.

2 MR. FALK: Thank you, Your Honor.

3 THE COURT: Thank you very much. All right. Mr. Bryant,  
4 thank you very much.

5 MR. BRYANT: You know when you asked this man if he had  
6 anything else to say, I, I told him to ask you something. He  
7 refused to do it.

8 THE COURT: Well, that's because he's the lawyer. He  
9 doesn't have to. That's what I'm saying. You can't tell the  
10 doctor how to perform surgery. You can't tell the mechanic  
11 how to repair a car. You either do it yourself or you follow  
12 their representation. You don't tell the lawyer how to try  
13 your case. He's the lawyer, and that's, that's way -- that --  
14 I mean, I don't take my taxes to a CPA and then tell him how  
15 to fill it out. He's the expert. That's why I go to him.

16 MR. BRYANT: That's why I had want him dismissed because  
17 he wouldn't do what I wanted him to do very simple.

18 THE COURT: All right. Thank you very much.

19 MR. BRYANT: And, and another thing, too, on this return  
20 I notice that the one I want him to file, the writ, he only  
21 did it to me. You see what I'm saying? So obviously he had  
22 something else filed the other time. So I was right by  
23 reporting him to the Supreme Court because he was trying to  
24 blow my case.

25 THE COURT: Thank you, sir.


1 MR. BRYANT: You're welcome.  
2 THE COURT: All right. Anything further?  
3 MR. FALK: Thank you, Your Honor.  
4 THE COURT: All right.  
5 MS. KINARD: Thank you, Your Honor.  
6 (Adjourned.)  
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## C E R T I F I C A T E

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I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the Hearing held in the case of James Arthur Bryant versus the State of South Carolina held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on July 19, 2016.

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



Grace L. Hurley, CVR-CM-M

Official Reporter

January 28, 2017.

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS )  
FOR THE FIFTEENTH JUDICIAL CIRCUIT )

James A Bryant, #315781, )

Case No.: 2014-CP-22-812 )

Petitioner, )

v. )

ORDER OF DISMISSAL )

State of South Carolina, )

Respondent. )

FILED  
GEORGETOWN COUNTY, SC  
2016 NOV 15 PM 1:28  
ALMA Y. WHITE  
CLERK OF COURT

This matter came before the Court by way of a document filed August 27, 2014, which was titled "Petition For Writ of Habeas Corpus." Respondent filed a return and motion to dismiss on January 26, 2016, to which Petitioner filed a *pro se* response on or about July 15, 2016. The Court convened a hearing to decide the pending motion on July 18, 2016 at the Georgetown County Courthouse. Petitioner was present and represented by James K. Falk, Esquire. Jessica E. Kinard, Esquire was present on behalf of the South Carolina Attorney General's Office. Respondent submits the petition should be summarily dismissed because it fails to support the requested relief.

At the call of the case, Mr. Falk represented to the Court that Petitioner had filed a motion to relieve him as counsel. In addressing this issue, the Court questioned the Petitioner regarding his reasons for the motion. Petitioner stated that he believed that Mr. Falk was not acting in his best interest, particularly by not relaying a filing to the Petitioner.<sup>1</sup> Petitioner additionally expressed concern regarding a broad conspiracy intent on having any case he filed

<sup>1</sup> The filing with which Applicant had an issue was actually written by the Applicant and sent to Mr. Falk and the Attorney General's Office. It was captioned as an Answer to the State's Motion to Dismiss. Mr. Falk added a cover sheet and filed the same document at the Georgetown County Courthouse before the hearing. At the hearing, the State objected to this as hybrid representation, but the Court allowed it to be considered, as the filing had been adopted and signed by Mr. Falk.

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dismissed. The Court explained that, unless Mr. Falk had a demonstrable conflict of interest in his representation of the Petitioner, he could not allow Mr. Falk to be relieved. The Court thoroughly explained the system of attorney/client relationships, especially in matters where an attorney is appointed. Petitioner's motion was denied, and the parties proceeded to argument regarding the State's motion to dismiss.

I.

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Georgetown County. The Petitioner was indicted at the April 2006 term of the Georgetown County Grand Jury for Burglary – First Degree (2006-GS-22-277), kidnapping (2006-GS-22-278), and three (3) counts of assault and battery with intent to kill (2006-GS-22-276, 279, 303). He was represented by J. Eric Fox, Esquire. Petitioner proceeded to a jury trial before the Honorable Edward B Cottingham on May 30, 2006. On June 1, 2006, the Petitioner was found guilty as indicted, with the exception of being found guilty of the lesser included offense of assault and battery of a high and aggravated nature on indict number 2006-GS-22-303. Judge Cottingham sentenced the Petitioner to twenty-five (25) years' imprisonment for each charge, to be served concurrently. A notice of appeal was filed with the South Carolina Court of Appeals on June 2, 2006, and was perfected. Petitioner's conviction and sentence were affirmed on January 14, 2009 in an unpublished opinion. State v. Bryant. 2009-UP-032, filed January 14, 2009. The remittitur was issued January 30, 2009.

Thereafter, Petitioner filed his first application for post-conviction relief (PCR) on April 1, 2009, and an amended application on July 22, 2009 (Case No. 2009-CP-22-477). The State made its return on May 29, 2009. An evidentiary hearing was convened on July 28, 2009 before the Honorable Larry B. Hyman, Jr., at which Petitioner was represented by Paul Archer, Esq. Judge Hyman denied and dismissed the application with prejudice in a written order signed

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August 25, 2009 and filed August 28, 2009. Petitioner filed a notice of appeal on August 27, 2009. The appeal was perfected with the filing of a petition for writ of certiorari by Robert Pachak, Esquire, of the South Carolina Office of Appellate Defense on January 29, 2010. The State filed its return to petition for writ of certiorari on March 8, 2010. During this process, Petitioner twice requested leave to file a pro se brief in support of his case, but neither of these requests were addressed by the Court. Certiorari was denied on April 7, 2011, and the remittitur was returned to the circuit court on April 25, 2011.

Petitioner filed a petition for federal habeas corpus relief on June 3, 2011. In it, he listed the following grounds for relief:

1. The judge erred in refusing to suppress prejudicial prior bad act testimony about a confrontation between the appellant and his estranged wife.
2. The judge erred in refusing to accept an Alford plea.
3. Ineffective Assistance of Counsel (Trial and Appeal Counsels)
  - a. "Was Appellant Counsel ineffective for failing to argue the directed verdict issues on Appeal?"
  - b. "Was Counsel ineffective for not arguing that the State's evidence at trial was in fatal variances with the allegations within the indictments?"
  - c. "Was Defense Counsel ineffective in failing to obtain or at least requiring a psychological evaluation for Applicant before going to trial?"
  - d. "Was Counsel ineffective for failing to object to the State's witness as a qualified expert?"
  - e. "Was Defense Counsel ineffective for not obtaining an independent crime scene and forensic expert?"
  - f. "Was Counsel ineffective for failing to object to the State's prejudicial use of prejudicial photos?"
  - g. "Did Counsel fail to adequately investigate and prepare for trial and thereby committing ineffective assistance?"
  - h. "Was Counsel ineffective for not objecting or taking exception to the Trial Court's erroneous Malice Charge?"
  - i. "Was counsel ineffective for not objecting to hearsay testimony?"
4. "Denial of Due Process by Prosecutorial Misconduct"

These were supported by a lengthy memorandum of law. The state filed a motion for summary judgment on or about October 13, 2011. Prior to this, Petitioner filed a motion for default on or about September 14, 2011. Ultimately, United States Magistrate Judge Kaymani D.

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West issued a report and recommendation on May 31, 2012, which recommended granting the motion for summary judgment and denying Petitioner's motion for default judgment. Petitioner filed an objection to the report and recommendation, but the Honorable R. Bryan Harwell adopted the report and recommendation over Petitioner's objections in an order dated August 20, 2012. This order also denied the granting of a certificate of appealability. Regardless, Petitioner appealed this matter to the United States Court of Appeals for the Fourth Circuit, which dismissed his request on June 18, 2013. Petitioner also requested a rehearing *en banc*, which was denied. The mandate of the <sup>district</sup>~~distinct~~ court took effect on June 13, 2013.

## II.

In his current Petition for State Habeas Corpus, filed on April 27, 2014, Petitioner alleges the following grounds:

1. "Whether the extra added aggravating circumstances of subsection § 16-11-311(3) as fact-offense elements of burglary first degree were sufficient to sustain the convictions where this evidence did not go to the grand jury and were not specifically charged within the indictment upon which the petitioner was indicted?"
2. "Whether the Grand Jury indicted Petitioner Bryant on subsection §16-11-312(A) or §16-11-311(A) [*sic*] in the indictment returned upon him by the Grand Jury in this case, and was the amendment to this indictment sufficient to sustain the convictions and sentences?"

Petitioner filed a motion to proceed *in forma pauperis* along with his petition, which was denied by this Court on August 27, 2014. Petitioner filed a motion to reconsider this ruling on or about September 23, 2014, along with a request for appointment of counsel. This Court denied the motion for reconsideration via a form 4, which indicated that the action was concluded. In early 2016, Respondent was informed that Petitioner's trust account had been paid with the Georgetown County Clerk of Court. Upon receiving this information, Respondent contacted the Clerk of Court in order to resolve the issue of this outstanding matter. The instant hearing was scheduled and held at the instruction of this Court.

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MHC

### III. Findings of Fact and Conclusions of Law

The Court has reviewed the record in its entirety and has heard arguments presented at the motion hearing. The Court has further had the opportunity to observe the entire record present before it. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Based on a review of procedure as reflected in the transcript, this Court finds that the indictments returned upon the Petitioner by the Grand Jury were sufficient to sustain these convictions. Primarily, Petitioner asserts that the handwritten amendments to the indictments are not proper and capable of indicting him, thus amounting "trial by ambush" because he did not have adequate notice of the charges. Upon review of the record and hearing arguments of counsel, this Court finds that the amendment to the indictment was made with full knowledge and awareness of both Petitioner and his trial counsel. This is clear on page 26 of the trial transcript, where a formal motion to amend the indictment is made, the Court characterizes it as a correction of a scrivener's error, the Defendant (now Petitioner) agrees, and the amendment is made. It is clear that there was a joint understanding between the parties and a ratification by the Court of this amendment.

The Court finds that Petitioner's current habeas corpus petition is a successive application, as it presents issues which could have been raised on direct appeal or post-conviction relief. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). Petitioner argues that the issue of the amended indictment is one that is determinative of whether the evidence was sufficient to

support a conviction, and therefore is an exception to the type of claim that may be considered through post-conviction relief pursuant to S.C. Code Ann. §17-27-10(A)(6).<sup>2</sup> Based on the analysis above regarding the scrivener's error, the Court does not find that there is any valid allegation or attack regarding the sufficiency of evidence simply because there was an error in the cited section of the indictment. For these reasons, Petitioner's request for relief on this basis is denied.

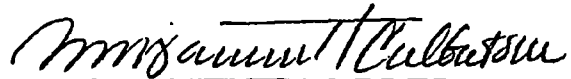
Primarily, the Court finds that Petitioner's request for relief is barred under McCall v. State, 247 S.C. 15, 145 S.E.2d 419 (1965). The inquiry on habeas corpus is limited to the legality of the prisoner's present detention. Id., 247 S.C. at 18, 145 S.E.2d 419-20. The only remedy which can be granted is release from custody, whether absolute or conditional. McCall, 247 S.C. at 18. The writ is not available to test the legality of a conviction or sentence where a decision in the prisoner's favor will leave him in lawful confinement under another existing sentence. Id., citing Bearden v. Manning, 238 S.C. 187, 119 S.E.2d 670; Bowers v. State, 241 S.C. 282, 127 S.E.2d 881; Balkcom v. Chastain, 220 Ga. 265, 138 S.E.2d 319; Pippin v. Sheffield, 220 Ga. 179, 137 S.E.2d 627. Petitioner is currently incarcerated on multiple convictions not at issue in this case. Because the specified relief regarding this individual charge will not allow Petitioner to be released from incarceration due to his service on other charges, Petitioner is not entitled to relief. The Court cannot grant Petitioner's requested habeas relief under McCall, as doing so would have no effect due to the additional prison sentences Petitioner is serving.

<sup>2</sup>“(A) Any person who has been convicted of, or sentenced for, a crime and who claims: ... (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy; may institute, without paying a filing fee, a proceeding under this chapter to secure relief. Provided, however, that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.”  
(emphasis added)

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BHC

IT IS THEREFORE ORDERED that the application for post-conviction relief is denied and dismissed *with prejudice* based on Petitioner's pending motion for reconsideration of his sentence.

AND IT IS SO ORDERED this 15 day of NOV., 2016.



BENJAMIN H. CULBERTSON  
Chief Administrative Judge, Common Pleas  
Fifteenth Judicial Circuit

Georgetown South Carolina