STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Greenville County

John C. Hayes, Circuit Court Judge

BRYAN BYRD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002425

APPENDIX

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

November 13 - 15, 2012
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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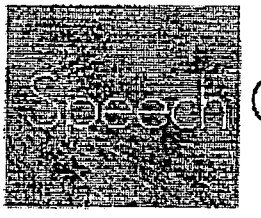


P R O C E E D I N G S

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

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

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

MR. CHAMBERS: Correct, Your Honor.

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

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

MR. CHAMBERS: Yes, ma'am.

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

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

THE COURT: Yes, sir.

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

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

THE COURT: Okay.

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

THE COURT: All right. Yes, sir.

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

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

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

BERRY BUTLER

having first been sworn, testifies as follows:

THE CLERK: Please state your name for the record.

THE WITNESS: Berry Butler.

THE CLERK: You've got to speak up.

THE WITNESS: I'm sorry.

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

THE WITNESS: I'm sorry.

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

Yes, sir.

MR. WESTON: Thank you, Your Honor.

THE WITNESS: Yes, Berry Butler.

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

THE COURT: Perfect.

DIRECT EXAMINATION

BY MR. WESTON:

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

A Yes, sir.

Q And this was your residence that was broken into?

A Yes, sir.

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

A Yes, sir.
Q Were you standing outside and kind of apprised him of what was going on and what had happened?
A Yes, sir.
Q Did you come inside with or behind him as he was confronting the defendant?
A Yes, sir.
Q Where was the defendant at the time that Officer Metcalf first came in?
A He was inside on the floor.
Q All right. And he had been beaten, is that correct?
A Yes, sir.
Q By you and Mr. Rector?
A Yes, sir.
Q And was the defendant conscious when the officer came in or when you came back in?
A Yes, sir.
Q Did you see Officer Metcalf attempting to try to get him under control so to speak?
A Yes, sir.
Q Did the defendant acquiesce or voluntarily come under the control of the officer immediately?
A No, sir.
Q What was he doing?

A He was using profound language, being belligerent.

Q I'm sorry.

A Being belligerent and just using profound language. Just cursing.

Q He was using profanity?

A Yes, sir.

Q And did the officer ask him any questions?

A No, sir.

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

A Yes, sir.

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

A Just to get the situation under control.

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

A Yes, sir.

Q Did you see that happen?

A Yes, sir.

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

A Yes.

Q Was he sort of out of control?

A Screaming and squirming, yelling.

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

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

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

A No, sir.

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

A I don't recall that.

Q You remember him just saying things?

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

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

A Oh, yes, sir. Yes, sir.

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

A Yes, sir.

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

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

to get the situation under control.

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

THE COURT: Mr. Chambers?

CROSS-EXAMINATION

BY MR. CHAMBERS:

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

A Yes, sir.

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

A From what I believe, yes, sir.

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

A He was never unconscious to me.

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

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

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

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

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

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

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

Q And Mr. Rector was not holding him down?

MR. WESTON: Objection, Your Honor.

THE COURT: I'm sorry.

MR. WESTON: He testified he was outside. He doesn't know whether Mr. Rector was holding him down or not.

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

THE WITNESS: I'm not sure.

BY MR. CHAMBERS:

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

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

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

A Uh-huh.

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

A We both held him down.

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

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

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

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

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

A Until the officers arrived.

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

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

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

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

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

A Uh-huh.

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

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

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

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

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

A He ta -- he did tase him.

Q Did he tase him for a second time?

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

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

THE COURT: Any redirect?

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

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

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

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

JAMES RECTOR

having first been sworn, testifies as follows:

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

THE WITNESS: James Rector, III.

DIRECT EXAMINATION

BY MR. WESTON:

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

A Yes.

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

A Yes, sir.

Q And the two of you subdued him?

A Yes, sir.

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

A Yes, he did.

Q What did you do while he was outside?

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

Q All right.

A Or on the floor.

Q Was he trying to get up?

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

had to force him down.

Q Was he conscious?

A Yeah.

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

A Oh, yeah.

Q No. Unconscious?

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

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

A Oh, yeah.

Q How would you characterize what he was doing?

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

Q Don't say what he said.

A Oh, okay.

Q Was he just screaming?

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

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

A Yes, I was.

Q What did you do when the police came in?

A I got off of him.

Q All right. And where were you standing when

the police came over and first began to encounter him?

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

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

A Uh-huh.

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

A Oh, okay.

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

A Okay. Probably to about right there.

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

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

Q What was the officer trying to do?

A Trying to make him stay still.

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

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

Q Did you hear the officer ask him any questions?

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

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

A No, he didn't.

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

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

Q Was he continuing to curse?

A Yeah, he was cussing.

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

A Yeah.

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

A No, sir.

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

A That was it.

Q All right. Thank you, sir.

A Uh-huh.

THE COURT: Mr. Chambers.

CROSS-EXAMINATION

BY MR. CHAMBERS:

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

A Uh-huh.

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

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

Q Okay.

A And you know, as he talked --

Q And you were in the room the entire time?

A Yeah. I was in the room.

Q So you never left the room?

A I never did leave.

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

A Yeah. I heard it.

Q All right.

THE COURT: Anything else?

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

THE COURT: Sir, you can step down.

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

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

JAMES METCALF

having first been sworn, testifies as follows:

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

THE WITNESS: James Metcalf.

DIRECT EXAMINATION

BY MR. WESTON:

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

A Yes, sir. I was.

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

A The victim.

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

A He did briefly.

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

A I entered in front of him.

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

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

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

Q Did you see Mr. Rector in the room?

A I did.

Q Was he near the defendant?

A Yes, sir.

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

A Yes, he was.

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

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

Q What was he -- what was he saying?

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

complying with my orders.

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

A Yes, sir. I did.

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

A No.

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

A No.

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

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

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

A He did.

Q What did he --

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

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

A No, sir.

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

A Yes, sir.

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

A No, sir.

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

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

Q All right, sir. Thank you, sir.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. CHAMBERS:

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

was there?

A No, sir.

Q He was laying on the ground?

A Yes, sir.

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

A No, he was trying to get up.

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

A Yes, sir.

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

A Yes, sir.

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

A Yes, sir.

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

A I did.

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

A Yes, sir.

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

A No, sir.

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

A No, sir.

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

A Yes, sir.

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

A No, sir. I did not.

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

A Yes, sir.

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

A Yes, sir.

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

A Yes, sir.

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

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

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

THE WITNESS: Thank you.

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

THE COURT: All right. Yes, sir.

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

THE COURT: All right.

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

BRYAN BYRD

having first been sworn, testifies as follows:

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

THE WITNESS: Bryan Byrd.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MR. CHAMBERS:

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

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

Q Was anybody holding you down?

A Not that I remember.

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

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

Q Were you conscious when the police officer came in?

A Somewhat. Semi-conscious.

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

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

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

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

Q Do you recall being hit with a taser?

A Yes, sir.

Q Where were you hit with a taser?

A Right here.
Q How many times were you tased?
A Twice.
Q And did you make any statements to the police?
A No, sir.
Q Were you cussing and carrying on and doing all those things?
A I was in too much pain to be doing anything.
Q Okay. Did you make the statement that you broke into the house?
A No, sir.
Q That's all the questions I have for you. Please answer the Solicitor.

CROSS-EXAMINATION

BY MR. WESTON:

Q Mr. Byrd, you said you complied with the officer's instructions?
A Yes, sir.
Q And you said you were laying flat on your stomach?
A Yes, sir.
Q Can you tell the judge how you got hit in the front of your chest if you were laying flat on your stomach and you complied?
A I got hit on the side right here.

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

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

MR. WESTON: Nothing further, Judge.

THE COURT: All right. Anything else?

MR. CHAMBERS: No, Your Honor.

THE COURT: Sir, you can step down.

Anything else from the defense?

MR. CHAMBERS: No witnesses, Your Honor.

THE COURT: All right.

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

THE COURT: Yes, sir.

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

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

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

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

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

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

Do we have the jury yet?

THE CLERK: Yes.

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

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

MR. CHAMBERS: Your Honor, for the purpose of

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

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

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

MR. WESTON: Nothing from the State, Your Honor.

THE COURT: All right.

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

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

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

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

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

THE COURT: Anything from the defense?

MR. CHAMBERS: No, Your Honor.

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

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

(WHEREUPON, each juror responds.)

THE COURT: Yes, sir.

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

THE COURT: Yes, sir.

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

This is a case about a man who surely picked

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

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

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

About 3:30 in the morning, Bryan Byrd entered the home at [redacted] Woodmont Lane here in Greenville by

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Mr. Chambers.

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

THE COURT: Yes, sir.

MR. CHAMBERS: Solicitor.

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

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

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

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

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

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

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

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

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

by preponderance of the evidence.

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

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

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

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

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

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

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

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

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

THE COURT: Thank you.

Mr. Weston, you ready to call your first

witness?

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

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

BERRY BUTLER

having first been sworn, testifies as follows:

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

THE WITNESS: Uh, Berry Butler.

DIRECT EXAMINATION

BY MR. WESTON:

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

A Yes, sir.

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

A At the current time?

Q Yes, sir.

A Uh, [redacted] French Lane.

Q [redacted] French Lane?

A Uh-huh.

Q Who do you live with?

A My mother.
Q I'm sorry.
A My mother.
Q Anybody else?
A My grandfather.
Q I'm sorry?
A Grandfather. I'm sorry.
Q Your mother and your grandfather?
A Uh-huh.
Q All right. And are you married?
A Yes.
Q Are you separated presently from your wife?
A Yes, currently.
Q And how old are you, sir?
A Uh, 41.
Q And where do you -- do you work anywhere?
A Yes, personal trainer.
Q When you say personal trainer, just briefly tell the jury what that means.
A Well, I actually train people for conditioning and self-defense and boxing also.
Q All right. And where do you do that at?
A Mixed Martial Arts.
Q Where at?
A Woodruff. Woodruff Road.

Q And how long have you been doing that there?
A Uh, roughly three years.
Q All right. Do you work anywhere else?
A That's all.
Q You do any personal training for anybody -- for people individually?
A Oh, I do that.
Q All right. And how long have you been doing that?
A A little more than three years. The same.
Q All right. Do you have any boxing background?
A Yes.
Q Would you tell the jury a little bit about that?
A Yes. Just, uh, professionally fighting for -- not at the time, but I been professionally fighting for some time now.
Q Are you from Greenville originally?
A Yes.
Q All right. Uh, I'm going to take you back to April 16th of 2011. All right. I'm going to ask you once again to speak up so the jury can hear you. All right?
A Okay.
Q Where were you living at that time?

A [redacted] Woodmont Lane.
Q And is that here in Greenville?
A Yes.
Q Is that also in Greenville county?
A Yes, Greenville county.
Q Where is that at in Greenville so the jury -- so we can get what part of town you're talking about.
A Between White Horse Road and Augusta Road headed towards the Donaldson Center. I don't know if you are familiar with the Belle Meade area over near there.
Q Okay. Is it near Belle Meade?
A Near Belle Meade, yes.
Q All right. So it's on the south side of Greenville?
A Yes.
Q All right.
A Yes, sir.
Q How long had you been living at that address?
A A few months. Maybe six or seven months.
Q Why were you there?
A Actually, when me and my wife separated, I just got a place of my own.
Q All right. Were you living alone there?
A Yes.
Q All right. Describe to the jury how the house

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

A It's a house.

Q All right. And how many bedrooms?

A Three bedrooms.

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

A Just two of them.

Q All right. Did you have any roommates?

A No.

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

A Yes, sir.

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

A Yes, sir.

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

A Uh, no. No.

Q But you're in pretty good shape?

A Pretty decent shape.

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

A Yes, sir.
Q And were you alone?
A No.
Q Who was there with you?
A James Rector.
Q Who is James Rector?
A A friend of mine.
Q Was he just visiting?
A Yeah, he stopped by somewhere around 11:00-something p.m. and just watching TV.
Q All right. I was getting ready to ask you what were y'all doing?
A Just watching television.
Q And were y'all in the living room watching television?
A Yes, sir.
Q Was there anybody else in the house?
A No, sir.
Q All right. And what -- how did these events start?
A We were just sitting there and back and forth drifting off to sleep. Then I turned around approximately, a little after 3:00 and heard a knock at the door.
Q I'm sorry. Would you speak a little bit

louder?

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

Q All right. And what did you do?

A I got up and said who is it.

Q And did you go to the door?

A Yes.

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

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

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

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

Q All right. Where did you look at? How did you look?

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

Q What did you see when you looked outside?

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

Q Did you recognize him?

A No, sir.

Q All right. Was it somebody you recall at that

point ever having seen before?

A No, sir. I never seen him.

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

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

Q I'm sorry?

A You have the wrong house. I just said you have the wrong house.

Q Okay. So what did you do then?

A Just went back and sat down.

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

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

Q What did you see when you looked out the window?

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

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

A At that point, I didn't.

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

A Yes. Yes.

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

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

A I was just renting.

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

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

Q The rent sign in front of the house?

A Yes, at that time.

Q And you called the number and what happened?

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

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

A It was month-to-month.

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

A Yes, sir.

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

A Uh, no. No, sir.
Q All right. Where was your car or what kind of car did you have at that time?
A A Ford Explorer.
Q Where was it parked at?
A It was parked in the back also.
Q All right. Did that give you some concern?
A It did. It looked very suspicious.
Q All right. What did you do?
A Well, I looked after a while. I just felt this was extremely odd. I dialed 911.
Q Did you talk to the 911 operator?
A Yes, sir.
Q And did you tell them basically what your concern was?
A Yes. Did you ask him to send a police officer?
A Yes, sir.
Q Did you finish your conversation with the 911 operator?
A No. No, sir.
Q All right. We'll come back to that in a minute. I want to ask you if you recognize this, what has been marked as State's Exhibit number 14 for identification only. Do you recognize that?
A Yes, sir.

Q What is this?
A It's the recording of my 911 call.
Q How do you know that, sir?
A Cause I heard it before.
Q Did you put your initials here on here?
A Yes, sir.
Q Did you write that B.B. there?
A Yes, sir.
Q All right. And does this recording actually reflect and depict what you said to the 911 operator and what they said to you?
A Yes, sir.

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

THE COURT: Any objection?

MR. CHAMBERS: No, Your Honor.

THE COURT: It will be so admitted.

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

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

THE COURT: Yes, sir.

BY MR. CHAMBERS:

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

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

A Yes, sir.

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

(Pause.)

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

A Oh, no, sir.

Q Where were they at?

A Outside. Out back.

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

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

Q Okay. Thank you, sir.

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

BY MR. WESTON:

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

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

nervous and distraught. I'm not sure.

Q Did you ever live on McDowell Street?

A No. I never lived on McDowell Street.

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

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

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

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

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

A Yeah. Yeah, a little discombobulated.

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

A I believe so. I remember just seeing it.

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

Q Before you tell us that --

A Okay. I'm sorry.

Q You -- and I'm going to let you get on to it right now. Tell the jury what happened when this tape goes -- when the conversation seems to just go awry. Tell the jury what was happening in your house at that moment as you were talking to that lady.

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

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

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

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

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

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

can take a look at them. Pick them up and look at them. Take your time, sir.

A Yes, sir.

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

A Patio and the whole glass, everything broken through.

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

A This right here is taken from the outside.

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

A This is the patio. This is outside.

Q Is this the back of your house?

A Uh, right on the side.

Q Okay.

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

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

A Yes.

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

A No.

Q Was it locked?

A It was definitely locked.

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

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

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

A Yes, yes.

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

MR. CHAMBERS: No objection.

THE COURT: All right. It will be so admitted.

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

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

THE COURT: Yes, sir.

BY MR. WESTON:

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

A It's the same door from the inside.

Q Is it sort from the side on the inside?

A Yes.

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

A Yes, sir.

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

A Yes, sir. After he came in.

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

A Yes, sir.

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

MR. CHAMBERS: Without objection, Your Honor.

THE COURT: All right then.

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

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

THE COURT: Yes, sir.

BY MR. WESTON:

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

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

A Yes, sir.

Q What does that picture show?

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

Q Is it taken from the inside or outside?

A This is actually from the inside.

Q Looking out onto the deck?

A Yes.

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

A Yes, sir.

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

A Yes, sir.

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

THE COURT: Any objection?

MR. CHAMBERS: No objection, Your Honor.

THE COURT: All right then.

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

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

THE COURT: Yes, sir.

BY MR. WESTON:

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

A Oh, definitely so, yes, sir.

Q Was the door, in fact, locked?

A Yes, sir.

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

A The den here and the living room.

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

A Oh, yes. Yes, sir.

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

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

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

A Patio, yes.

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

A Yes, sir.

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

A Just burst through the whole door.

Q Was he standing up?

A Yes, sir.

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

A I was on the phone.

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

A Uh-huh.

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

A About there. About there.

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

A Yes, sir.

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

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

Q Speak a little bit louder and a lil slower.

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

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

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

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

A I had my gun.

Q I'm sorry?

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

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

A Yes, sir.

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

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

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

A It was up.

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

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

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

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

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

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

Q Now, let's just back up.

A All right.

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

A Yes, sir.

Q Where was he?

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

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

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

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

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

Q James Rector?

A Yes.

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

A No.

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

A (Demonstrating.)

Q And did he strike you with it?

A Well, it hit my arm.
Q All right.
A But it didn't do no serious damage.
Q I'm sorry. You have to speak up.
A I'm sorry. No serious damage but it did hit me, yes, it did hit me.
Q And once you blocked it, what did you do then?
A I went into him to take him down.
Q I'm sorry. You got to speak clearly.
A I'm sorry.
Q Your voice keeps trailing off.
A Once he hit me, I went into him.
Q All right. And did what?
A To take him down.
Q And did you take him down?
A Yes.
Q At this point, was Mr. Rector there as well?
A At that time, he closed in, he closed the gap in.
Q Did he also help take him down?
A Yes. Once I grabbed him. I guess at the time it was all so quick. Yes.
Q I want you to be perfectly candid with this jury. All right, sir?
A Uh-huh.

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

A Yes, Mr. Rector did, yes.

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

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

Q Speak a little louder.

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

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

MR. WESTON: No, that's fine.

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

THE WITNESS: Okay. I'm sorry.

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

THE WITNESS: Okay.

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

BY MR. WESTON:

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

A Beating him.

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

from him?

A Yes, he did.

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

A Yes, he did.

Q Repeatedly?

A Repeatedly, yes.

Q Where at? What part of his body?

A His head.

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

A He was trying to squirm and get away.

Q All right. Was he saying anything?

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

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

A Yes, sir.

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

A Yes, we did.

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

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

back to the den area.

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

A Yes, sir.

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

A Oh, yes, sir.

Q What does it show?

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

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

A Yes, it is.

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

A Yes, sir.

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

A Yes, it is.

Q All right.

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

THE COURT: Any objection?

MR. CHAMBERS: No, Your Honor.

THE COURT: All right then.

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

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

THE COURT: Yes, sir.

MR. WESTON: Thank you.

BY MR. WESTON:

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

A Yes, I do.

Q And what does it show?

A Inside of the kitchen.

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

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

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

things?

A Yes, it did.

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

A Yes, sir.

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

A Yes, it is.

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

A Yes, sir. After.

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

A No, sir.

Q All right. Let me begin with --

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

MR. CHAMBERS: No objection.

THE COURT: All right then.

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

BY MR. WESTON:

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

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

MR. CHAMBERS: No objection to that either.

THE COURT: All right.

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

BY MR. WESTON:

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

A Blood.

Q Whose blood is that?

A Mr. Byrd's blood.

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

A Yes, sir.

Q Were y'all beating him pretty good?

A Yes, sir.

Q Were you mad?

A Oh, I was -- yes, sir.

Q All right.

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

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

MR. WESTON: Thank you, Your Honor.

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

MR. WESTON: Thank you, Your Honor.

THE COURT: Yes, sir.

BY MR. WESTON:

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

A Yes, sir.

Q Any doubt in your mind?

A No doubt.

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

A No, sir. Never.

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

A No, sir.

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

A Certainly not.

Q Was he invited in your house that night?

A No, sir. He wasn't.

Q Did he enter without your consent?
A Yes, sir.
Q What did you think his intention was based on the way he came in and what he did and was saying to you?
A To rob me.
Q All right. Let me show you State's Exhibit 10 just to get a more complete picture of the house. Do you recognize this?
A Yes, sir.
Q What does this picture depict?
A That's the living room.
Q Is that the living room of your home?
A Yes, it is.
Q There's a blue sofa there and an orange sofa, orangish-red sofa and a television. Where were y'all sitting when the person knocked on the door?
A I was sitting here on the blue sofa.
Q And where was Mr. Rector sitting?
A Sitting here.
Q All right. And does this picture accurately depict the living room on the night this incident took place?
A It does. Let me see it real quick.
Q Sure.
A (Reviewing.)

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

THE COURT: Any objection?

MR. CHAMBERS: No, Your Honor.

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

MR. WESTON: Thank you, Your Honor.

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

BY MR. WESTON:

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

A Upwards of 10 minutes.

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

A He was conscious the whole time.

Q Was he raising sand?

A Oh, yes.

Q How did y'all maintain or keep him?

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

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

A Then we heard the officers arrive.

Q When the officers arrived, what did you do?

A I got up to meet them outside.

Q What did Mr. Rector do?

A He stayed there to make sure he stayed down.

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

A Mr. Rector did.

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

A Yes, wouldn't stop talking, yes.

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

A Yes, sir.

Q All right. Where did you meet them at?

A The front door.

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

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

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

A Particularly, I just met with one first.
Q Okay. When you met him, where did you meet him at?
A The door.
Q And did you apprise him of what happened?
A I just wanted to make sure -- let him know, for one, everything was okay and was safe. I didn't want them come in and me be mistaken for anything. That's why I met him at the door.
Q All right. Did you tell him what had happened?
A Yes, sir.
Q What did he do?
A He came inside.
Q And did you follow him back inside?
A Yes, sir.
Q When you walked back into the kitchen or came back, did you see Mr. Rector and the defendant?
A Yes, sir.
Q Where were they?
A They were still in the same spot.
Q All right. Had Mr. Rector gotten up off him at that point?
A When the officer arrived, he finally got up, yes.
Q All right. And did you watch the interaction

between the defendant and the officer?

A Yes, sir.

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

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

Q Was the officer telling him not to get up?

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

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

A Most certainly not.

Q What kind of language was he using?

A Uh, being very vulgar and belligerent.

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

A Absolutely not.

Q Did he attempt to get up?

A Yes, he did.

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

A He told him not to get up.
Q What did the officer finally have to do?
A He commenced to tase him.
Q I'm sorry.
A Tased him.
Q Where did he tase him at?
A On his chest, chest area.
Q At the time he tased him, was the defendant laying on the floor at that point?
A No, he was getting up. He may have been on his knees but he was getting up.
Q Is there any way if he was laying flat on the floor that the officer could have tased him in his chest?
A Oh, no.
Q And you saw him get tased, you saw the prongs hit his chest?
A Yes, sir.
Q What did the defendant do when the prongs hit his chest?
A He went down. I'm not sure at what point he ripped them off.
Q All right. Did he try to get back up again?
A He did. He was doing a lot of moving but then he tased him again.
Q What did the officer do?

A He tased him again.
Q And at that point, did the defendant comply?
A He did at that point.
Q Did other officers arrive on the scene?
A Yes, sir.
Q Once the other officers arrived, were they able to get the defendant under control and get him out?
A Yes, they did.
Q Did you give the officer a statement concerning what happened subsequent to those events?
A Yes, sir.
Q Did you cooperate fully in the investigation?
A Absolutely.
Q Did you give the officers full run of your house to look at, take pictures, do whatever they needed to do to investigate this crime?
A Yes, sir.
Q All right. Now, in the statement you gave the officer, uh, -- I want to show you a copy of the statement that you showed, that you gave the officer. I'm going to ask you to pay particular attention to the last line. Is this a copy of your statement, sir?
A Yes, it is.
Q All right. Looking at the last line, is that true?

A (Reading.) Oh, no, sir. It's not.
Q And the last line refers to when you called 911, is that correct?
A No, sir.
Q I mean, is that what the last line refers to? When you called 911?
A Yeah, it is.
Q And according to your statement, you didn't call 911 until after the officers, after y'all had subdued him, is that correct?
A According to this.
Q According to your statement.
A Yes, sir.
Q Is that true?
A No, sir.
Q When did you call 911?
A Actually when I saw him in the back, that's when I called.
Q You have any idea why you put it that way in the statement?
A At that time, I was so distraught, I -- no. No. I was real --
Q Are you sure you called 911 while the defendant was still outside?
A I did. I did.

Q This is just a mistake?
A It is.
Q All right, sir. Would you consider this place at the time on April 16th of 2011 your home?
A Yes, it is. It was.
Q And did the defendant have your consent to come in there?
A No, sir.
Q And from your perspective, what was his intention to come in there?
A To rob me or whatever.
Q Thank you, sir.

THE COURT: Mr. Chambers.

CROSS-EXAMINATION

BY MR. CHAMBERS:

Q Okay. Your home there on, uh, [redacted] Woodmont Lane, that was the address, correct?
A Yes, sir.
Q Where is it located in Greenville?
A Between Augusta Road and Warehouse Road near Belle Meade.
Q And how many doors are there to that home?
A Three.
Q Three. So there's the front door?
A Yes, sir.

Q And would that open into your living room?
A Uh-huh.
Q And that's where the two couches are and that's where you say that you and Mr. Rector were, is that correct?
A Yes, sir.
Q And then there's the door that comes directly into the kitchen, is that correct?
A Yes, sir.
Q That's the very back door.
A Uh-huh.
Q Then you say there's a third door. Where is that door located?
A It's also between the den and -- it also leads to the den and living room.
Q Is that like a screened porch?
A Yes.
Q Is your house like sort of an open floor plan? Can you see from the living room into the kitchen into where you come in off the screen porch and you can see all of that from standing in your living room?
A From the screen door, you can see the kitchen and the living room was over here, yes.
Q Okay. And let me ask you. I'm going to show you the diagram. Does this look like a diagram of the

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

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

Q So you would say --

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

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

BY MR. CHAMBERS:

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

A The kitchen is not that big.

Q It's not drawn to scale.

A Okay.

Q But would you say that the rooms are --

A Similar format.

Q All right.

A Similar format.

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

A No, I haven't.

Q So you and Mr. Rector were at your home there on [redacted] Woodmont Lane. You were seated on one couch. He was seated on the other. Y'all were trying to stay awake

and watch TV. Is that right?

A Yes, sir.

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

A Uh-huh.

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

A There's a porch you step up on.

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

A Maybe five.

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

A Yes, sir.

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

A Yes, sir.

Q You ask the person who is there?

A Yes, sir.

Q And they responded to you?

A Uh-huh.

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

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

A Correct.

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

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

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

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

Q The motion light is where?

A In the back.

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

A The kitchen.

Q Did you walk back there to that door?

A To the kitchen door?

Q Yes.

A After the light came on?

Q Yes.

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

Q I mean, did you leave the living room?

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

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

A Yes.

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

A Yeah.

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

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

Q When you saw this light come on --

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

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

THE WITNESS: Okay.

BY MR. CHAMBERS:

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

A Yes, I did.

Q Where did you go?

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

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

A No, it's all connected.

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

A Yes.

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

A It's to my left.

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

A Uh-huh. Yes, sir.

Q So then what happened?

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

Q How did you notice it?

A I saw him.

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

A No, I was looking at the window.

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

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

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

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

Q Describe for me what it was he was doing.

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

Q He was walking where?

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

Q So of aimlessly walking around your yard?

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

Q Okay. Where were you standing when you dialed 911?

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

Q So you dialed 911 from the kitchen?

A Uh-huh.

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

A Cell phone.

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

A Yes.

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

A Not the whole time I didn't.

Q Why not?

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

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

A Through the patio.

Q So the screen porch?

A Uh-huh.

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

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

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

A Yes, I was.

Q And you can see him?

A Yes.

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

coming at you in the kitchen?

A Yes, straight line.

Q So you were in the kitchen?

A (No response.)

Q Is that right?

A Yes.

Q So you were standing -- were you standing by the back door or where were you in the kitchen?

A In the walkway.

Q So you were in the walkway that goes into the kitchen?

A Uh-huh.

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

A Yes.

Q Okay. If you could, step down from the witness stand. I'm going to ask you to keep your voice up so you talk so everybody can hear you. Let's say that I'm you and you are the person that you saw, Bryan Byrd. Come at me the way that he was coming at you.

A Just charge forward.

Q So he immediately came through the door charging at you rear and back and took a swing at you?

A Yes.

Q Just right through the door, coming at you taking a swing?

A I'm on the phone. Just charging.

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

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

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

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

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

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

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

A Yes. Definitely took a swing.

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

A Left arm.

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

A Yes. Yes.

Q You suffered any injury to that arm?

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

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

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

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

MR. CHAMBERS: Yes.

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

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

THE COURT: All right.

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

THE COURT: Okay.

BY MR. CHAMBERS:

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

A The den. Right in front of the walkway of the kitchen.

Q So in other words, basically that big room

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

A No. Actually scuffled to the kitchen.

Q Okay. But I thought you had him down.

A We did after the scuffle.

Q Okay. So tell me about this scuffle.

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

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

A Yes.

Q Your friend weighs roughly 300 pounds?

A Uh-huh.

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

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

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

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

Q And you said you were punching him. Where were you punching him?

A In the face.

Q You were punching his face?

A Uh-huh.

Q Both sides of his face?

A It was dark. I was hitting something.

Q How many times would you say you hit him?

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

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

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

THE COURT: Okay.

MR. CHAMBERS: I'm sorry. The Solicitor probably didn't hear me. I wasn't describing it. I was asking him if it was depicting the scene there that evening. I wanted him to look through those.

THE COURT: Okay. All right.

MR. CHAMBERS: I realize he probably didn't hear me.

THE COURT: Okay.

BY MR. CHAMBERS:

Q I want you to look at these. I want you to go through every one of them and tell me if this accurately depicts the scene that was after everything happened there that evening.

A (Reviewing.) Just this picture?

Q All the pictures. There are three sheets worth of pictures.

A (Reviewing.) Yes.

Q So and that shows the rooms that we've been talking about and what things looked like after this scuffle that you described?

A Yes.

MR. CHAMBERS: All right. Your Honor, I would at this point -- I'm sure the Solicitor has a copy of these -- ask that these be entered as

Defendant's Exhibit 2.

THE COURT: All right. Any objection?

MR. WESTON: I would just like to see which ones those are.

THE COURT: Okay.

MR. WESTON: Excuse me one second, Your Honor.

THE COURT: Sure.

(WHEREUPON, there is a pause.)

MR. WESTON: Your Honor, the State doesn't have any objection. My concern is that there are about 15 to 20 small pictures on here. While we don't object to their admissibility and not going to by any means require counsel to go through each picture and having some identified by the witness. We would be here til tomorrow just doing that. I think the depiction is correct as he's describing. I would ask that he be very specific however when he's examining this witness or any other witness concerning what picture he's talking about and that that somehow be relayed to the jury each time.

THE COURT: All right.

MR. WESTON: There's no way they're going to know what picture the person is looking at on each page. That's my only concern. I have no objection

to the admissibility of the picture, Your Honor.

(WHEREUPON, Defendant's Exhibit 2 is admitted into the record.)

BY MR. CHAMBERS:

Q Now, this first sheet of picture, it would appear -- and I'm going to ask you, but are all of those in the kitchen area?

THE COURT: When you say first pictures, are you talking about those six at the bottom?

MR. WESTON: I'm talking, Your Honor, about everything that's on the first page.

THE COURT: First page.

BY MR. CHAMBERS:

Q Is there anything in there that's not in the picture?

A They appear to be.

Q Okay. All right. As we look at these pictures, it would appear that there is blood not only on the floor, but there's blood pretty much everywhere in the kitchen. I mean, you have blood splattered on the cabinets. Is that true?

A Yes, sir.

Q And blood in the door frame, is that true?

A Yes, sir.

Q And it looks like a great deal of blood

actually on the doorknob that goes out, is that true?

A Yes, sir.

Q And that one picture shows on the counter, that is the tire iron, I believe, that one of you used to inflict the head wound on Mr. Byrd, is that correct?

A Yes, sir.

Q All right. And then these next pictures, at least the ones at the very top, that's the picture that we already put into evidence of the door that comes in off the screen porch, correct?

A It is.

Q All right. And where were you when the scuffle, as you described it, ended and y'all finally had him down on the ground and to your satisfaction secured?

A In the den.

Q So he was not in the kitchen?

A After it ended, no.

Q He was in the den?

A When we finally subdued him, yes.

Q So he was in the same room that you and Mr. Rector was sitting in when you first heard the knock at the door?

A In the den area, not over in the living room area.

Q I understand. But it's all one room, right?

A Yes.

Q Basically what you're saying is if we're thinking about it this way is where you and I are right now is the living room, but where the man in the red coat back there is is the den.

A Okay.

Q But we're all in the same room, right?

A Yes. Yes.

Q All right. So he wasn't in the kitchen?

A When he was finally subdued, no.

Q And the two of you continued to hold him down, you said, I believe, until you heard the police outside?

A Yes.

Q And how did you know the police were outside?

A You could hear sirens.

Q You could hear sirens. So they had sirens on coming to the house?

A Uh-huh.

Q All right. And you got up?

A Yes.

Q And walked outside and met the officer. You didn't wait for the officer to come to the door or come into the house?

A Yes.

Q You were standing outside when the officer

walked up?

A I'm not exactly sure if I was standing out there or met him. Somehow I ended up being right at the front door and outside all together. So I'm not exactly sure.

Q And when he walked in, your friend, Mr. Rector, was no longer subduing ---

A When he came in the house --

Q --- Bryan Byrd, is that correct?

A When he came in the house, that's when he got up.

Q Okay. So he got up and just let go of him?

A Yes.

Q All right. And after that is when Bryan Byrd got hit with the taser a couple of times by the deputy, right?

A Yes.

Q And you witnessed all of that?

A Yes.

Q And you were in the room. You said you heard talking but you have no idea what Bryan Byrd said, if anything, to the police officer?

A I'm not exactly sure what he said.

Q All right. Now, you already indicated to the Solicitor that prior to your testimony today, you gave a

sworn statement to the sheriff's office?

MR. WESTON: Objection, Your Honor, to his characterization of it being a sworn statement.

BY MR. CHAMBERS:

Q Okay. Did you give a written statement to the sheriff's office?

THE COURT: Sustained.

MR. WESTON: Thank you, Your Honor.

THE WITNESS: Yes, I did.

BY MR. CHAMBERS:

Q You did. And is that the statement that you signed and was witnessed by a couple of the deputies, correct?

A Yes.

Q All right. I just want to walk you through that statement. In fact, let me stand here with you. We'll go through it together. You can lean up over here if you need to see. You indicated in this statement, I heard a knock on the front door at 3:20 a.m. Very precise about that time. Is there some reason that you knew that it was 3:20 a.m.?

A I looked at the clock.

THE COURT: Will you speak into the mic?

THE WITNESS: I'm sorry.

THE COURT: That's okay.

THE WITNESS: When I heard the knock, I looked at what time it was.

BY MR. CHAMBERS:

Q And you said I asked who it was and the man said something I couldn't understand, right?

A Yes.

Q The man left the front door and I noticed him coming around behind my house, right?

A Yes.

Q Okay. Now, here is where -- I want to ask you did you say to the police officer a few seconds later, I heard the glass on my back door shatter out? Did you say that?

A Something to that effect.

Q Well, it was written there and you signed it?

A Yes.

Q That was the statement you gave?

A Approximately, yes.

Q So you didn't say anything about seeing somebody walking around sort of aimlessly in the back yard?

A No.

Q And worried that he was going to get in your car?

A I didn't see anything.

Q In fact, you said he was coming in the back door. You didn't say anything about it being the door that comes from the screen porch into what you refer to as the den.

A Yes.

Q We established that the back door is the door that comes into the kitchen, correct?

A Yes.

Q According to this statement that you gave, which the date indicates was the same day that all of this happened, you indicated, at least on that date, it was -- from the time that man left the front porch, it was just a few seconds later that you heard the glass break.

A Uh-huh.

Q All right. So you would agree with me that that's considerably different than what you testified to here today, wouldn't you?

A One thing, you understand, this was a year and seven months ago. The second thing, at that time, I was really distraught.

Q So you're saying that a year --

A I can't remember every detail of everything that --

Q So you are saying that a year and seven months

later, you have a much better recollection of what happened than you did on the day this happened?

A Not necessarily so. I'm just saying that --

Q Okay. But you would agree with me that --

MR. WESTON: Objection again, Your Honor. He's not letting him finish his answer ---

THE COURT: If you'll -- if you'll --

MR. WESTON: --- before he asks him another question. He keeps cutting him off.

THE COURT: All right.

MR. CHAMBERS: I'm sorry.

THE COURT: Allow him to fully answer the question.

THE WITNESS: At that particular night, I was really distraught. You've got to understand, I mean, something like that happen and I'm definitely not used to it, anybody wouldn't be.

BY MR. CHAMBERS:

Q But you would agree with me that that's substantially different than what you said here today, wouldn't you?

A Yes.

Q All right. You said I then saw a tall black man coming through my back door.

A Uh-huh.

Q Then you said the man saw me and said not to go anywhere because his friends were outside. Is that right?

A Something to that effect.

Q Now, again, would you agree with me that that's different than what you testified to here a few minutes ago?

A No, I did say that. I did say that he said go out there and his friends. Yeah, he did say that.

Q You also indicated that he was telling you to give it up and he was there to rob you and all that sort of thing. None of that is in this statement, is it?

A Yeah. No. Like I said, that time, that night -- I couldn't recollect every detail I said at that time.

Q Then you said the man swung and hit me with the crowbar on my arm.

A Uh-huh.

Q All right. My friend then grabbed him. My friend and I took him to the ground. Then you say we then struck the man several times in the head with a crowbar the suspect had and the man stopped fighting. All right. Is that what you said?

A On that particular night, I did.

Q Again, that's substantially different than what you testified to a few minutes ago. Would that be fair

to say?

A (No response.)

Q Correct me if I'm wrong. I want to walk back through it a little bit. What I heard you say a few minutes ago was that he swung at you, you blocked it. You then grabbed a hold of him. About that time, your friend came up behind him. Y'all got him down. Then he got back up and y'all struggled all through the house, scuffled all through the house.

A Not all through the house. Just the kitchen and the front part, yes.

Q Just beating on him. You're punching him. Your friend's beating on him in the head.

A Uh-huh.

Q With what you called a crowbar. So that's what you said today.

A That he brought in, yes.

Q Okay. But what you said here again is with -- the suspect had -- we -- we struck the man several times in the head with a crowbar the suspect had and the man stopped fighting, right?

A Uh-huh.

Q That would indicate that it was over at that point, right?

A At the moment, he stopped. Then he started

scuffling and tried to get up.

Q But that's not what you put here. What you put here was that he stopped fighting.

A Yeah. I also said called 911 after too, so, but --

Q That's right. You did discuss that a little bit with the Solicitor and you admitted -- I'm sorry. I don't want to cut you off.

A I was just rattled that night. All the minor details, I couldn't tell you.

Q So you then admitted to the -- you admitted to the Solicitor because it's true, you said after he stopped fighting, I then dialed 911 and walked, uh, out to the sheriff's -- I can't even read what that says. It looks like office, but you didn't go to the sheriff's office, did you?

A No.

Q Okay. So you referred to these differences as minor details?

A Yes, minor details.

Q Minor details. That's all the questions I have for you. Thank you very much.

MR. WESTON: Just a few on redirect, Your Honor.

REDIRECT EXAMINATION

BY MR. WESTON:

Q Let's start with the back end first. This is the same statement he was telling you about.

A Yeah.

Q Take a good look at that. Look at the handwriting. Did you write that or did the sheriff's deputy write that statement? I know you signed it, right?

A The sheriff wrote it.

Q So those are not your words. He's writing down as you telling him things?

A Yes, sir.

Q All right. So this is your statement generally, but is this everything you told him that night?

A No, it definitely couldn't have been everything.

Q So when counsel tries to give the jury the impression that you have changed your story, is that what happened or he just didn't write down everything you said?

A Yes, sir. That's not my handwriting. I didn't write that.

Q Did you tell the deputy how many times -- how many times y'all hit that man in the head?

A No, sir.
Q Did you tell the deputy how many times he said the "F" word to y'all?
A No.
Q You not lying and changing your story today, are you, cause you didn't say that?
A No, no, no, no.
Q So just because it's not in here, does that mean it didn't happen?
A No, that's not true.
Q You sure you not changing your story today?
A I'm positive I'm not changing my story.
Q And you didn't write this, you said, right?
A No, I did not.
Q But generally, everything in here is pretty much the way it happened, right?
A Yes, sir.
Q Now, at the end of it, just to be clear, I think counsel won't mind if I kind of straighten out. I dialed 911. Could it be that you are saying and waited on the sheriff's office?
A It may have been.
Q You didn't walk to the sheriff's office?
A No, no, no, no, for sure, no.
Q Okay.

A You got to understand that's a very rattling moment.

Q That's all I have. Thank you, sir.

THE COURT: Mr. Chambers?

RECROSS-EXAMINATION

BY MR. CHAMBERS:

Q Now, I understand that you said the sheriff wrote this, but you did sign it?

A Yes, I did.

Q And you could have said that's not right. I'm not going to sign that cause that's not right. Couldn't you?

A Yeah, but at that time, he didn't say microdetail everything either.

Q Wouldn't it be fair to say the things you and I just talked about, the differences wasn't how many times he may have uttered the "F" word or anything. Let's be real clear. There's a big difference between calling 911 before this man came in the house like you said or calling 911 after you say he's been subdued. That's a big difference, isn't it?

A Yeah, but the recording is evidence enough that I called before.

Q And it's a big difference to say that hitting him with the crowbar that the suspect had and then the

man stopped fighting as opposed to and then there was a scuffle. That's a big difference, isn't it?

A Well, because in the end result, with the crowbar being struck on him, he did stop fighting.

Q These are words you referred to as small details.

A Yeah.

Q You believe that your testimony here today a year and seven months after this happened is more accurate than what you told the sheriff's office on the day it happened?

A Well, more time to think about what happened actually instead of being rattled that night.

Q Thank you very much.

THE COURT: Anything else, Mr. Weston?

MR. WESTON: Nothing further for this witness, Your Honor.

THE COURT: Sir, you can step down.

Ladies and Gentlemen, let's take about a 10-minute break. All right.

(WHEREUPON, the jury exits at approximately 4:13 p.m.)

THE COURT: Jeff, your next witness, about how long you think he's going to take?

MR. WESTON: Your Honor, this is going to be

P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 14th day of November, 2012 at approximately 9:43 a.m.)

MR. WESTON: The defendant's prior convictions and the State's proof of those prior convictions. I indicated on the record that I would rather put the convictions in. After further reflection, Your Honor, I decided that I have no objection to the stipulation. I do understand -- and I guess we can kind of work through this so it doesn't become an issue later. If we do a stipulation, the Court will only advise the jury that there is -- the parties have agreed to the stipulation that the defendant has been convicted of two or more burglaries.

THE COURT: Okay.

MR. WESTON: He's convicted of four. I have no objection to just the Court saying two or more as opposed to saying four. That is what the statute requires and that's fine.

THE COURT: Okay.

MR. WESTON: The other side of that coin however is or the second point of that however is should the defendant testify, we will, of course, discuss before he testifies what convictions he may

be impeached on.

THE COURT: All right. Sure.

MR. WESTON: I would, of course, reserve the right to argue that he should be impeached on all four of those convictions. But as far as the stipulation, I understand the Court would only say something to the effect to the jury that he has been convicted of two or more burglaries.

THE COURT: Okay. All right. Very well.

MR. WESTON: That's fine with the State.

THE COURT: Okay. All right. Very good. All right.

Let's bring the jury back in.

(WHEREUPON, the jury enters at approximately 9:47 a.m.)

THE COURT: Good morning, Ladies and Gentlemen. I want to apologize to you. I hate to be late. I had a matter to come up related to another case. It had nothing to do with these attorneys whatsoever. But I had another matter come up on another case that I had to deal with first thing this morning, so I am so sorry that we are bringing you in late. I did not want you to think that this is in any way the State or the defense's fault that we left you waiting. It is

entirely 100 percent my fault.

All right. The State ready to proceed?

MR. WESTON: Yes, ma'am, Your Honor.

THE COURT: All right.

MR. WESTON: Your Honor, the State would call Mr. James Rector to the stand.

THE CLERK: Mr. Rector, please come forward. Please stop at the end of the bench. Please place your left hand on the Bible and raise your right hand.

JAMES RECTOR

having first been sworn, testifies as follows:

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

THE WITNESS: James Edward Rector, III.

DIRECT EXAMINATION

BY MR. WESTON:

Q Mr. Rector, where do you live?

A In Greer, South Carolina.

Q And are you from the Greenville area?

A No, sir. I'm from Greer.

Q But you are from the upstate South Carolina area, Greenville, Spartanburg area?

A Yes.

Q How old are you?

A I'm 40.
Q All right. And are you married?
A No, sir.
Q Are you employed?
A No, sir.
Q Uh, let me take you -- let me ask you first just some sort of background questions. Do you know Mr. Berry Butler?
A Yes, I do.
Q How do you know him?
A Through a mutual friend.
Q How would you characterize your relationship with him? Is it business or friendship or what?
A Friendship.
Q All right. And about how long have you known him?
A Let me see, close to about two years now.
Q All right, sir. And let me take you back to up -- excuse me. First of all, do you know the defendant in this case, Mr. Byrd?
A As of now?
Q Let's --
A I never knew him. I don't know him.
Q When was the first time you saw Mr. Byrd?
A When he broke into the house.

Q Back on -- was this April 16th of 2011?
A Yes, sir.
Q All right. Now, prior to April 16th of 2011, as best you can remember, you ever seen him before?
A No, sir.
Q You recognize him today? Looking at him now?
A Yes, I do.
Q Is that the person that you referred to broken into that house that night?
A Yes, it is.
Q Any doubt in your mind?
A No doubt in my mind.
Q All right. Now, where were you at about three o'clock in the morning on April 16th, 2011?
A I was over at Berry Butler's house.
Q And what was your business there or were you just visiting?
A I just came to visit.
Q Okay. About how long had you been there? About what time did you arrive? I'm sorry.
A Probably about something to 11:00, maybe 11 o'clock.
Q Did you just kind of stop by?
A Yes, sir.
Q Y'all didn't have plans to do anything, go out

or do anything like that? Or you just stopped by there?

A No, sir. I just stopped by.

Q All right. Was anybody else there when you got there?

A No, sir.

Q Had you visited there before?

A Yes, I have.

Q Many times?

A Yes, I have.

Q Let me ask you to pull the microphone back towards you a little bit so you don't have to keep leaning up and leaning back every time you answer.

A Okay.

Q All right. And do you know -- you were familiar with this house?

A Yes, sir.

Q This is over on Woodmont Avenue, Woodmont Lane?

A Yes, sir.

Q About where is that at in Greenville? What part?

A If you ever heard of Belle Meade or between Augusta Road and White Horse Road.

Q Like on the south side of Greenville?

A Yes, sir.

Q All right. Down near Interstate 85?

A Yes, sir.
Q All right. And have you had occasion to walk through his house before?
A Yes, sir.
Q All right. How many bedrooms is it that you can remember?
A I think three.
Q Are all three furnished?
A No, sir.
Q How many of them are furnished?
A Just two.
Q And when you answer furnished -- answered my question about furnished, what do you mean by furnished in a bedroom?
A Beds.
Q Dressers and things of that nature?
A Beds, dressers.
Q All right. And have you ever seen anything unusual about this house?
A No, sir.
Q The times you been there, you ever seen any kind of business being run out of this house?
A No, sir.
Q You know if anybody lived there with Mr. Butler as far as you know?

A No, sir.

Q All right. So you came over there that night, April 16th about 11:30, 12 o'clock or so, is that correct?

A Yes, sir.

Q You said, I think nobody was there except Mr. Butler?

A Yes, sir.

Q How long were you there before this incident took place? About what time did this incident took place?

A What time was it? It was in the morning after like 2:30, something close to 3:00.

Q All right. And what were you do -- what were you and Mr. Butler doing?

A Just sit and watching television.

Q And what room were y'all in?

A The living room, den, whatever it's called.

Q A front room in the house?

A Yeah, front room with a couch, where the couches are.

Q All right. And does that face the front door?

A Yes, sir.

Q All right. Let me show you a picture that's already been introduced into evidence. In fact, I'm

going to show you a couple of pictures. Excuse me. Let me show you what has been previously introduced as State's Exhibit number 1 -- I'm sorry -- State's Exhibit number 10 and ask you if you recognize what that picture shows.

A Yes, I do.

Q What is that?

A That's the living room or den.

Q And is that the television y'all were watching?

A Yes, sir.

Q Which of these two -- I want you to hold this picture up so the jury can see it and just point to where were you seated.

A I was seated here.

Q And where was -- could you turn it around a little bit more? Point to where you were sitting.

A Right here.

Q And where was Mr. Butler sitting?

A Right there. All right. So you were seated -- I'm going to show you State's Exhibit number 1 which is another angle of the same sofas. Would you hold that up? Just to be clear, what color sofa were you sitting on?

A The reddish, pinkish couch.

Q And Mr. Butler was on what sofa?

A The green and purple couch.

Q Now, this wall here, is this sort of an edge of a wall here?

A Yes, it was.

Q So if somebody came in this door right here, could they see you when they came in?

A No, sir.

Q From where you were sitting?

A No, sir. Not from where I was sitting.

Q All right. Thank you, sir. Just to be clear, was there anybody else in the house about three o'clock when this happened?

A No, sir.

Q All right. Tell the jury what happened in your own words.

A Okay. Me and Berry was just sitting in the living room where the television is. We were just sitting. I heard some knock at the door.

Q Which door? I'm sorry, sir.

A Uh, the front door. The front door where we was sitting in the living room. We heard somebody say something. Berry just said you got the wrong house.

Q Did you ever get up and go to the door?

A Yes, sir. We went up to the door and somebody mumbled something. You know, couldn't hear, understand what he said. He said you got the wrong house or

whatever. Then after that, we came back. We was just talking. Then all of a sudden, Berry said I saw the sensor light go off. It's in the back, on the back side of the house. So he went out and looked.

Q What did you do when he got up?

A I was still sitting right there in the chair, in the pink chair looking at Berry ---

Q Okay.

A --- go to the back kitchen door.

Q All right.

A And so we went to the back kitchen door. And he looked out the window. He's like what is this. Then he didn't see nothing. He was looking at me. He turned back around. Then we heard -- it's a porch sort of mounted to the house and has another door.

Q Let me stop you right there. Are you describing the back patio?

A The back patio. Yeah, that's it. The back patio door.

Q Did Mr. Butler do anything with his cell phone at that point?

A Once we heard the -- he had it in his hand when he was at the -- at the -- at the -- at the, uh, back door. Then he heard something. Then he heard something pop. It was like the latch popped on the back, on the

patio door.

Q Is that the door that leads into the house or out into the yard?

A That's the door that leads out into the yard.

Q All right. Let me stop you here. I believe everybody knows exactly what you're talking about but I want to be sure.

A Okay.

Q Let me show you what has been introduced as State's Exhibit number 4 and show you, ask you do you recognize that.

A Yes, I do.

Q All right. Now, would you hold that up and around so the jury can see it. When you say the patio door that leads into the back yard, what door are you talking about?

A This door.

Q All right. And what is this door here leading to?

A This door leads into the house.

Q Okay. All right. And which door was it that y'all thought y'all heard the latch pop off?

A The outside door leading to the porch, I mean, leading to the outside.

Q All right. When you heard that, then what did

Mr. Butler do?

A Uh, he looked. He grabbed his phone. He said he was trying to -- I think he called the police if I can remember. Dialing 911. I was looking at him cause I was frantic. I'm looking at him. I'm like, I don't know what's happening. Then the next thing you know, we heard something say clash. That was the middle, the door leading into the house.

Q Was that the door you just pointed to on that last picture?

A Yes, it was.

Q Leading inside the house?

A Yes, it was.

Q All right.

A And then, Berry, I don't know if he hung it up or put it in his pocket or whatever, but he came in. I was behind the --

Q Let me stop you, sir, cause you're getting a little bit ahead of me.

A Okay.

Q When you said just now he came in, who are you talking about?

A Mr. Byrd.

Q All right. Now, did you actually see him come in from where you were sitting?

A Yes, sir.

Q All right. Did he get up -- when did you get up?

A I -- after I heard the door, the first door break, the porch door leading to outside, that's when I stood up. I was looking at Berry. Berry was in the kitchen. By the time I stood up, I was sort of just peeking to see what was going on while Berry was looking at the door. And we heard the clash with all the glass breaking. That's when I saw behind the curtain like a metal object sticking past the curtain door.

Q Uh-huh.

A He couldn't see me. When he came in, he was saying, oh, you got to give up that -- that -- that bread or that cheddar or cheese or something like that.

Q Who said that?

A Mr. Byrd did.

Q All right. And what -- could you repeat slowly what you thought you heard him say? I understand that it was a lot of excitement and you weren't standing next to him but what did you think he said?

A He said, oh, you got to give up that bread, you got to give up that cheese.

Q What did you take that to mean?

A I talking about money is what he was thinking

he talking about.

Q Okay. How did he come in? Did he fall in? Did he skip in? How did he get into the house after the glass was broken?

A Okay. When he broke the door --

MR. WESTON: Your Honor, can you stand up and show us?

THE WITNESS: Okay.

THE COURT: That's fine.

THE WITNESS: Okay.

BY MR. WESTON:

Q Just stand right here. Come down right here. And just assuming this is like, that this area here is where the door is, could you just show the jury -- first of all, let me back up and you tell me about how far away from him you were standing. When I get there, you tell me to stop.

A Okay.

Q I know you were behind the wall, kind of.

A Right. Right.

Q Just give the jury some sense.

A About right there. Come on. Come up a step or two.

Q All right. And you were behind -- there's a wall in between?

A It's a wall, yes.

Q And where is Mr. Butler standing? That way or that way?

A This way.

Q So when the defendant comes in, which way did he go?

A He went towards Berry.

Q All right. And show the jury how he came in and what he did. I'm going to be you just kind of watching it.

A Okay. Okay. When he came in, the curtain was on the door. He had some sort of object. At first, I couldn't see what it was. He moved it like that looking at Berry saying, oh, you got to give up that cheese or bread. And he didn't see me. But I saw him behind the wall.

Q Right.

A He said, you got to give it up. And he took it back.

Q Is he coming towards you or going towards Berry?

A Going towards Berry.

Q Show the jury the direction he went from where you were watching him.

A Okay. As he was coming in, Berry was this way,

in front of me. When he moved the curtain back, all I could see was something sticking. I didn't know if it was a gun or whatever. He was like, you got to give it up. Give it up. And then he rise back like that. Berry -- as he came towards Berry, he hit Berry on the arm like that and I grabbed him.

Q All right. You can take your seat back again. No, stay right there for the moment. Stay right there. We may need to do a little bit more. When did you start to move toward him?

A When I saw him going towards Berry.

Q And how was he holding that whatever object he had? Was he holding it down here?

A When he first came in the door, it was like that. It was like this moving it back coming in. And as he went towards Berry, we revved back and hit Berry.

Q Did he hit Berry? Did he strike him?

A He hit him on his arm. Berry blocked it like that. He sort of went down. I grabbed him after that first lick. And we just started tearing the whole house up.

Q When you say tearing the whole house up, what do you mean?

A I was able to take it out of his hand. I was just trying to beat him over the head with it.

Q When you say took it from him, did you find out what the object was that he had?

A Yeah, once it went up in the air, you could see.

Q What was it?

A It was a tire iron. What you take -- a lug wrench iron.

Q Okay. And did y'all have to wrestle with him to get him down?

A Oh, yeah.

Q And did you take it from him?

A Yeah. I was able to take it from him.

Q When you took it from him, what did you do with it?

A I beat him up side the head with it.

Q All right. Take your seat.

A (Witness complies.)

Q Did y'all struggle with him for a few moments?

A Yeah, we struggled, oh, my goodness. It seemed like, it seemed like for like 10 to 15 minutes trying to wrestle with him.

Q Was it really that long in reality probably?

A I don't really know. But it just seemed like that. It just seemed like that long. I really don't know how long. It was over, I would say, about five

minutes.

Q Did you remember him losing consciousness as far as you can tell at any point during the struggle?

A Oh, no.

Q Was he saying anything?

A No, he was trying to get out and struggling trying to get us off of him.

Q Did Berry, did Mr. Butler also hit him?

A Oh, yeah.

Q Did you hit him with bad intentions?

A Bad inten -- to be honest, I tried to kill him. I ain't going to lie. Cause he broke in a house. And you don't do that. That's just something you don't do. While people there. You never know what's going to happen.

Q All right, sir. Now, after y'all struggled for what seemed like 10 minutes or so, what happened next?

A We was able -- after we got him down and we was able to get him, Berry got on the phone and called the police.

Q He called the police again?

A Yes, sir.

Q All right. Then what happened?

A I was on top of him. I was holding him down cause I had the crowbar just at his back trying to make

sure he don't get up because he was still trying to get up. Once we got him subdued, Berry called 911 and told him we had the person that tried to break into our house down on the floor, can y'all get here. He either checked back or something like that. I had him down trying to make sure he wasn't moving. But I do know he called them. He never did --

Q How long before the police got there after y'all got him under control?

A Man. Probably about 15 -- about 15 minutes, 10 or 15 minutes.

Q And you were holding him down the whole time?

A Yes, I was holding him down.

Q Were you kind of sitting on top of him pretty much?

A Yes, sir.

Q And when the police got there, was Berry still in the kitchen with you holding him down when they first arrived?

A When they first arrived, Berry was in the living room waiting on the police. You know, had the door open waiting on the police so we can wave them down if they need to know where to come.

Q Did the police -- when the police got there -- what did you do when the police came in?

A I got off of him.

Q Did you have the tire iron in your hand when the police came?

A Yes, sir.

Q What did you do with it?

A I think I laid it on the counter top once the police got there. The way we were laying, the way we were halfway in between the den, the living room and the kitchen.

Q Uh-huh.

A So the counter top was right here. So as I got up, I just took the tire iron and set it on the counter top.

Q All right. And what happened when the police arrived? How many officers came in first? Was it just one or two or five or what at first?

A It was just one.

Q And what happened -- you get up and get off of him. Then what did the officer do with him?

A He was sitting there telling him don't move. Don't move.

Q Did the defendant not move?

A Oh, no. He kept moving.

Q What was -- was the defendant quiet?

A Oh, no.

Q What was he -- you don't have to use the word, but what kinds of things was he saying?

A He was cussing. You could hear him cuss. Then if he was saying something else -- put it this way, as he was talking, I was moving backwards closer to the outer door.

Q Was he complying with the police officer?

A Oh, no. No.

Q Did you see the officer tase him?

A Yes, sir. I saw him tase him.

Q Did he tase him more than once?

A Yes, sir.

Q How many times do you remember him tasing him?

A Twice.

Q All right. After the second time, did the defendant comply with him?

A Yes, sir. He complied then.

Q All right, sir. As you were moving away, did you distinctly hear the defendant talking to the officer or yelling at the officer?

A I heard him. Like I said, you can hear him talking, but you couldn't understand the words that was coming out of his mouth, cause he was laying flat on his stomach.

Q When the officer tased him, had he gotten up?

A He was trying to get up.

Q Okay. Once the officer got to the second tasing and the defendant became compliant, uh, did other officers arrive?

A Yes, sir.

Q Did you at some point, y'all just kind of retreated and pushed -- moved out into another room or something?

A Yes, sir.

Q And, uh, did you give a statement to the police?

A Yes, sir.

Q Did you write the statement or did the police officer write the statement and you just signed it?

A The police officer wrote the statement.

Q You just kind of was telling him what was happening as he was writing?

A Yes, sir.

Q In the statement you gave to the police, it's only about a half a page, is that right?

A Yes, sir.

Q Does that contain everything that happened or just sort of a summary of what happened?

A Just sort of a summary of everything that happened in two or three paragraphs.

Q Was it every detail of everything that happened?

A No, sir. It wasn't every detail.

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

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. CHAMBERS:

Q Uh, how did Berry heat his house? Did he use kerosene heaters?

A Yes.

Q How many did he have?

A Let's see, one, two, I think. Two or three.

Q Okay.

A I know it was two in the front room.

Q Two in the front room?

A Yeah.

Q Where were they located?

A One was by the door that Mr. Byrd broke in. The other one was sort of in the middle of the room to keep the room warm.

Q Okay. Any in the kitchen?

A Had kerosene jugs in the kitchen, what you would heat the house up with.

Q You had jars of kerosene?

A Excuse me?
Q There were jars of kerosene that were there?
A Yes, sir.
Q And where were they located in the kitchen, do you know?
A I think against the wall.
Q All right. If I heard correctly when you were talking to the Solicitor a few minutes ago, you were there and you were seated on that one sofa that sort of -- right here.
A Yes.
Q All right. And you are saying that Berry was seated on this other sofa, is that correct?
A Yes.
Q All right. So you are sitting there. It's about 3:00, 3:30. You hear a knock at the front door?
A Yes, sir.
Q That strike you as unusual at all that somebody would be knocking at the door at 3:00 in the morning?
A Yes, it was unusual.
Q But you stayed there on the sofa. You didn't get up?
A No, sir. I didn't get up when he knocked on the door.
Q And Berry went to the door and he said who is

it, is that right?

A Yes, sir.

Q And then you heard some response, but you couldn't tell what the response was?

A Yes, sir.

Q And what did Berry do at that point?

A He just told him you got the wrong house.

Q Okay.

A And he went and sat back down.

Q What else did -- so he sat back down?

A Yes, sir. Excuse me?

Q He just went back and sat back down?

A I mean after -- he looked at me and I looked at him. He was like what. Like how you would do if somebody knocked on the door that time in the morning.

Q Okay. After he sat back down, what did he do?

A He just sat down and started talking.

Q At that point, you weren't worried that some guy knocked on your door at 3:00-something in the morning. Y'all just sat down and kind of talked about it a little bit?

A Yeah.

Q Okay. And how long did y'all sit there and talk?

A About -- a couple of minutes.

Q All right. And then what caused either one of you to get up?

A The motion sensor light on the back came on.

Q Okay. And when you say back, what back are you talking about?

A By the kitchen door.

Q Okay. Is that the one that is in the very back of the house?

A Well, you can see it out the window if the light comes on.

Q But that kitchen door, that's the very back of the house. If I was facing the front door, then the back door would be directly back from where the front door is, right?

A Yes, sir.

Q This other door that we're talking about is really over to the side of the house?

A Yes, sir.

Q All right. So you are saying the motion sensor light came on on the very back?

A Yes, sir.

Q Did you get up then?

A Did I get up?

Q Yeah.

A Uh, Berry got up and went to the window.

Q Okay. So he went to the window.

A Uh-huh.

Q I believe you said he looked and told you he didn't see anything.

A At first he didn't. Then as I said, he didn't see nothing when he looked out the window. But then -- you can't -- the way that it sits is hard to see. If you were to look to see if a person at the patio door. If you looking, you can see the light. Maybe the side of a person.

Q Did he tell you he saw somebody at the patio door?

A Yes, sir. He said I saw somebody. Then, by the time he said that, that's when the door clasp popped.

Q Okay. So pretty much as soon as he told you that he saw somebody, that's when the door, you say, popped?

A Just about.

Q Okay. Were you standing at that point?

A Yes, sir. I stood up.

Q Did you stand before you heard the glass pop or after you heard the glass pop?

MR. WESTON: Objection, Your Honor, to characterization. He said he heard the door clasp pop, not the glass.

MR. CHAMBERS: Okay. I'm sorry.

THE COURT: All right. All right.

BY MR. CHAMBERS:

Q So you talking about the clasp on the door?

A On the patio door.

Q Okay. So you said as soon as you heard that pop is when you got up. You didn't hear it -- you didn't hear glass break. You heard the clasp pop?

A Yes, on the patio door.

Q Okay. Is that what you unlock the screen porch? That's not the door that goes into the house.

A No, that's right. The screen porch.

Q So you stood up. What did you do?

A I was still at the couch, but I was like leaning on the wall.

Q Laying on the wall.

A Leaning. Leaning. You know, just posted up.

Q And where was, uh, -- where was Berry?

A He was at the kitchen door.

Q He was still standing at the kitchen door?

A Yes, sir.

Q All right. Did he leave the kitchen at any point?

A No, sir.

Q So he stayed right back there at the very back

at the kitchen door?

A Yes, sir.

Q All right. I don't know if we have a picture of that. Let's see. But that's all the way back in the kitchen. It's in the very back of the house, right?

A Yes. On the side of the house.

Q Okay. So you're saying he never left that kitchen area. He was by that back door?

A Yes.

Q And that was when the glass broke. He was by that back door?

A Yes, sir.

Q And you are sure of that?

A Yes, sir.

Q That's when you say you saw this man come through the glass and he had, uh, what you saw after he got through the curtain, you say, what you refer to as a crow bar in his hand?

A Yes, sir.

Q Did he then walk into the kitchen?

A Yes, sir.

Q He got all the way into the kitchen?

A Yes, sir.

Q Berry was all the way in the kitchen, all the way back there by that back door?

A Yes, sir. He was at the kitchen door.
Q Never came out of the kitchen. Never left the kitchen door?
A No, he didn't.
Q Did not get into that front room where you were?
A No, sir.
Q Did not get into the doorway of that area, right?
A As he was coming through the door, no, sir.
Q So he stayed, and you are certain of it, right there, back there where the back door is?
A Yes, sir.
Q All right. And so that's where, uh, I guess you say you grabbed a hold of him is your testimony today.
A Yes, sir.
Q All right. Now, so that means that before you grabbed a hold of him, he was in the kitchen?
A Yes, sir.
Q And your testimony today was once he got into the kitchen, all the way back there where that back door is that he swung and he hit him in the arm?
A Yes, sir.
Q All right. And it was after that that you

grabbed it?

A Yes, sir.

Q Would you do me a favor and try not to be too rough with me. I want you to come down here.

A Okay.

Q I want you to act like I'm going toward Berry, all right?

A Uh-huh.

Q And if what I understand you to say is correct, he's got this up. He's already swung?

A Right.

Q So what position was he in after he swung?

A He was going up again.

Q Going up?

A Yeah, and I got it like that.

Q So you grabbed him like that?

A Yes.

Q And that's how you took it away from him?

A Uh-huh.

Q All right. And what did you do with him after that?

A I took it and I was able to hit him over the head with it.

Q So you never grabbed a hold of him. You took it away from him immediately and started hitting him with

it?

A I guess you would say it's a grab and a hit at the same time.

Q All right. So you never, like, wrapped arms around him.

A Well, would you call this wrapping arm?

Q Yeah.

A Okay. Well, I guess that's a wrap arm.

Q Okay. I don't want to put words in your mouth. You are saying all you ever did --

A If this is considered a wrap arm and a hold at the same time.

Q So you got him like that. Then you immediately hit him in the head, right?

A Yes, sir.

Q All right. I appreciate that. You can have a seat.

A (Returns to witness stand.)

Q All right. Now, the Solicitor already covered with you that you gave a statement, is that right?

A Yes, sir.

Q And it was a written statement?

A Yes, sir.

Q And he pointed out to everybody here today that the deputy's actually the one that wrote it down?

A Yes.
Q You didn't write it down?
A Yes, sir.
Q You did get an opportunity to read it?
A After -- later on -- after he wrote it down, he told me to sign it. At the point, I just didn't read it.
Q You mean you signed it without reading it?
A Yeah, I read over it. I read over it.
Q You made sure it was right, didn't you?
A Yes, sir.
Q You wouldn't have signed it if they put anything in there that was incorrect?
A Yes, sir.
Q And that was on the day that all this happened?
A Yes, sir.
Q When it was freshest in your memory?
A Yes, sir.
Q All right. So what I want to do is I want to go through this just a little bit with you. I'm going to get right here so you can read it to make sure that I'm not getting anything wrong.
A All right.
Q It says that on today's date -- first of all, let me ask you this before we get into that. It's one of the things I kind of want to make sure I got right. You

said that when he came in, and I'm talking about Mr. Byrd, Bryan Byrd, that when he came in, as he was going toward Berry to make that swing at him, that he said -- he was saying give up the cheese that he said my buddy's outside?

A Yes, sir. He said -- he was telling Berry that at the back door. That's why Berry didn't go out the door.

Q And did he use that specific word, my buddy?

A Yes. He said my peoples. He said my peoples, I think if I can remember. My peoples out there.

Q Did he use the word buddy?

A Yeah, I think he said -- I can remember him saying my boys, not buddies, but my boys.

Q Okay. All right.

A Uh-huh.

Q All right. So you said I was on the couch at my buddy's house, Berry Butler. So that's you, your word. You are referring to Berry Butler as your buddy?

A Yes.

Q And that was how you would describe him, as your buddy?

A That's my buddy.

Q While sitting there, I heard a subject knock at the front door and say something which I couldn't make

out. So that's correct, right?

A Yes, sir.

Q Then, about five minutes later, I heard -- that would seem like a long time, five minutes. You think it was at least five minutes?

A Close to it.

Q Were you looking at a clock or is it just your estimation?

A Just my estimation.

Q But it was a fairly long time from the time that that person knocked until you, until anything else happened is what you're saying?

A Yes, sir.

Q All right. I heard the back door. So it was more than seconds? It was more than just a few seconds?

A Yes.

Q Okay. I heard the back door rattle like someone was trying to open it. When you say back door, are you talking about the very back door in the kitchen?

A The patio door.

Q Okay. All right. It wasn't the back door, it was the patio door?

A Yes, sir.

Q All right. Berry went to the other door to see if he could see a subject outside but was unable to.

When you say the other door, what door are you talking about?

A The kitchen door.

Q And, uh, he went and said he was unable to see anybody. Now, do you say that because he told you he couldn't see anybody or is that just a guess on your part?

A That's what he said. I was looking at him. That's what he told me.

Q He told you, according to this statement, he didn't see anybody?

A Right.

Q But then you testified today that he did see somebody at the other door?

A Right.

Q Okay. A black male subject came in wearing jeans and a camo jacket. I would imagine that subject is probably the deputy's word, but you understood what that meant and you were okay with that, right?

A Yes, sir.

Q When he came in, I could see he had some type of weapon but it was covered by the window curtain. He then looked at Berry and told him -- you used very specifically the word his buddy was outside waiting and not to move.

A Yes, sir.

Q So if you said that, then he used the word "buddy"?

A Yes, sir.

Q The same word that you used to describe Berry Butler?

A Right.

Q Okay. Then he told him not to move. Said he then -- after telling him that, he then approached Berry. I came from behind him. Is that what you said?

A Yes, sir.

Q All right. Now, in this statement, it seems a little different than what you said a few minutes ago. It says I wrapped my arms around him and I carried him forward.

A Yes, sir.

Q But what you described a few minutes ago when I asked you to demonstrate was no wrapping of arms around anybody or carrying anybody forward, right?

A Uh, you can say that.

Q Well, I gave you the opportunity to say that.

A Yes.

Q If I remembered correctly, what you told me a few minutes ago was you had one hand on his arm. You grabbed the tool and then you immediately hit him with

it.

A Yes, sir.

Q All right. I carried him forward while removing the tool from his hand, which was a crowbar. Then you say after attempting to detain the subject, Berry tried to help secure him striking him multiple times before the subject went to the ground. You don't say anything about hitting him in the head, do you?

A Well, I think I said we were going at it.

Q Okay. And then you said that Berry hit him a few times. Where was Berry hitting him?

A Everywhere.

Q In his face?

A In his face.

Q He hit him a lot in his face?

A At the time, you just at really -- you just know that he's hitting him while you hitting him. But you ain't paying attention to where he's hitting him really. Just hitting him.

Q And Berry is a martial arts expert, right?

A Yes.

Q So if he hits you, he's going to hit you?

A Oh, yeah. It's going to hurt.

Q Okay. And then you say Berry then called 911 and we waited on the sheriff's office.

A Yes, sir.

Q In here, you only indicate that there was a call that was made after all that happened.

A Yes, sir.

Q There was no call beforehand.

A Yes, sir.

Q You don't say anything about two calls being made?

A No, sir.

Q If anybody in this case testified that there was only one call made, that would be incorrect because you remember that there were two calls made?

MR. WESTON: Objection, Your Honor. Pitting witnesses.

THE COURT: All right. If you will rephrase your -- sustained.

MR. WESTON: Thank you.

THE COURT: If you will, rephrase your question.

BY MR. CHAMBERS:

Q But you are certain though that there were actually these two calls that were made?

A First -- like I said, the first one, I know he had his phone. Like I said, I don't know if he called him then. But he did have it in his hand. I was still

-- he was still in the kitchen and I was still by the couch.

Q But based on what you're saying. He wasn't on the phone then when this guy was coming at him with a crowbar in his hand?

A I know, like I said, he had -- well, from my point of view, he had to be if he had the phone like this. I guess that means you talking or somebody's picking up or you waiting or something. After he came in, that's when I just know -- I don't know if he dropped it or put it in his pocket or whatever.

Q But if he made a subsequent call, then he must have held onto the phone.

MR. WESTON: Objection, Your Honor. Calls for speculation concerning what somebody else did from this witness.

MR. CHAMBERS: Your Honor, he did indicate that this person made a phone call. I'm just trying to get at, uh, you know, how it is that he had the phone.

THE COURT: If he's able to answer the question, I will allow him to.

THE WITNESS: Okay. Well, I'm not able to answer that cause I don't know.

BY MR. CHAMBERS:

Q Okay. But you are certain there were two calls made to 911?

A Like I said, the way it looked to me, it looked like it did. I know the first, the last, if it was the last call, the first call, I couldn't hear him.

Q You seemed pretty certain about it a few minutes ---

A Yeah.

Q --- ago when the Solicitor asked you. Uh, you have, uh, some prior convictions, is that correct?

A Yes, sir.

Q You were convicted, I believe, in May of 2010 for Grand Larceny?

A Yes, sir.

Q Then you were convicted in 1997 of Giving False Information to the Police?

A Yes, sir.

Q All right. That's all the questions I have for you.

THE COURT: Mr. Weston.

MR. WESTON: Just a couple of questions on redirect, Your Honor.

THE COURT: Sure.

REDIRECT EXAMINATION

BY MR. WESTON:

Q Mr. Rector, this may not seem like much. It may seem a little bit petty. I just want to make sure everybody understands. When you were asked about the kerosene jars, were they jars or just can containers?

A Plastic containers that look like you put gas in, but it's kerosene instead.

Q And they are not glass?

A No, it's not glass.

Q Like Mason jars or something like that.

A No, sir.

Q Okay. So when you were saying kerosene jars, that was incorrect?

A Yes, sir. That was incorrect.

Q With regard to the questions counsel asked you about where Berry was standing, how long ago was this, about a year and a half?

A Yes, sir.

Q Can you remember exactly where Berry, where anybody was standing exactly a year and a half later? A No, sir.

Q With regard to the question concerning your coming up behind him and I think it was demonstrated grabbing his arm and pulling the knife, did your body touch his body as you were doing that?

A Yes, sir.

Q Would you consider that kind of just grabbing and hugging him?
A Yes, sir.
Q But you remember exactly the position of your body and his body a year and a half later?
A No, sir.
Q Is the statement you gave the police essentially true that are basically what happened?
A Yes, sir.
Q Is what you told this jury today basically what happened?
A Yes, sir.
Q Would you concede that some of the details may be a little bit fuzzy now a year and a half later?
A Yes, sir.
Q Would you also concede that the time frames you're talking about may not be exactly accurate?
A Yes, sir.
Q All right. But did what basically -- what you testified happened basically under oath today happened?
A Yes, sir.
Q Did this man break into that house?
A Yes, sir.
Q Was Berry Butler living there?
A Yes, sir.

Q Was it at night?

A Yes, sir.

Q Thank you, sir.

RECROSS-EXAMINATION

BY MR. CHAMBERS:

Q Now, when I talked to you a few minutes ago, you seemed real certain about your testimony. Are you saying now after your witnesses from the Solicitor that you're not so certain about your testimony?

A No, sir. I'm telling what happened.

Q Okay. So when he asked you if you were hazy on the details, are you saying that you are hazy on the details?

A Our words are not the same.

Q All right.

THE COURT: Anything else, Mr. Weston?

MR. WESTON: Nothing further from this witness, Your Honor.

THE COURT: Sir, you can step down.

THE WITNESS: Okay.

MR. WESTON: Your Honor, the State would call Officer James Metcalf.

THE COURT: All right. I just want to say to the jury now, listen, as we're calling different witnesses up here, if you want to stand and stretch

or do something like that, don't feel like you're chained to your seat. Okay. If anybody needs a break, let me know. We'll probably take a break during this witness' testimony.

THE CLERK: All right, sir. Please place your left hand.

JAMES METCALF

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please be seated. You may state your name for the record.

THE WITNESS: James Metcalf.

DIRECT EXAMINATION

BY MR. WESTON:

Q Officer Metcalf, with whom are you employed?

A Sir?

Q With whom are you employed?

A Spartanburg County Sheriff's Office.

Q And how old are you, sir?

A 25.

Q Are you married?

A Yes, sir.

Q And do you live in Spartanburg county?

A I do.

Q All right, sir. Where did you work prior to -- how long have you been with the Spartanburg Sheriff's

Office?

A Uh, a year and a half.

Q Back in April of last year, were you employed with the Greenville County Sheriff's Office?

A I was.

Q And how long after -- when did -- you said you been in Spartanburg for about a year and a half. That would be some time right after April of last year you left?

A Yes, sir. I believe I left in the first part of June.

Q Why did you -- why did you go to Spartanburg?

A Personal preference.

Q Did you grow up over in the Spartanburg area?

A I did.

Q All right. Now, did you have occasion to respond to the call at [redacted] Woodmont Lane here in Greenville on April 16th of 2011?

A Yes, sir.

Q About what time did you get the call?

A 3:20.

Q About how long did it take you to get there?

A Close to 10 minutes.

Q What was the nature of the call?

A It was given out as a breaking and entering in

progress.

Q All right. And I'm sorry, did you say breaking and entering in progress?

A Yes, sir.

Q All right. Would you describe -- have you ever been to this location before?

A No, sir.

Q Would you describe the location from the outside? Is it a trailer park? How would you describe this area?

A It's a older, I guess, uh, neighborhood type. It's not really like a, uh, subdivision or anything like that. It's just an older area with just single family homes.

Q All right. Are they large homes or small -- smaller homes?

A Just smaller.

Q And when you -- this -- you said this was three o'clock in the morning?

A Yes, sir.

Q Was it during the night time?

A Yes.

Q When you arrived there, did you meet with Mr. Berry Butler, the victim?

A I did. He came outside.

Q All right. Was he coming out as you were pulling up or getting out of your car or what?

A By the time I was out of my car, he was outside.

Q All right. Did you have a conversation with him?

A I did briefly.

Q Did he tell you what was going on?

A Uh, yes, sir.

Q What did he tell you had happened?

A He basically, in a very quick manner, said that a guy had broken in his house through his back door and that him and his friend had pretty much, you know, beat him up and he's still in the house.

Q When you went in, what room did you -- did you enter through the front door?

A Yes.

Q And where did you first see any other parties?

A Uh, basically when you go straight through the front door, it was basically, you know, open all the way to the back wall of the house. Mr. Byrd was laying in the doorway in between the kitchen and, I guess, what they are referring to as the den area. I'm sorry. Mr. Butler's --

Q Mr. Rector?

A Mr. Rector, yes. I'm sorry.
Q All right.
A He was standing probably, I don't know, seven to eight feet to the left of Mr. Byrd.
Q All right.
A Roughly.
Q And what was Mr. Byrd's condition?
A He was, uh, -- he was very bloody. You could definitely tell he had a large wound to his head. He was bleeding a lot.
Q All right. Was there blood around the scene, around where he was?
A Yes, sir.
Q And what was Mr., uh, -- before we get into that, did you have occasion to see the back door?
A I did.
Q Could you describe the back door to the jury?
A Basically, as I went in the house, like I said, if I walk straight in, Mr. Byrd's on the floor to my right, okay, in between the kitchen and the den. To my left, there's a door -- this door that they keep referring to, this glass door that leads onto a back patio. Okay. Directly across -- it's directly across from the kitchen. If you walk in this door, you're pretty much going to walk straight through to the

kitchen. It was a glass door. It was completely busted out. You can -- it was obvious that it was busted out from the outside in.

Q Why is that?

A All the glass was pushed out into the den area that they keep referring to. You could pull a curtain back. There wasn't a single piece of glass outside. It was all inside.

Q All right. And is that -- from your experience in law enforcement, was it your opinion that the glass had been broken from outside in?

A Absolutely.

Q All right. Did you see any -- did you see a tire iron?

A I did see a tire iron.

Q Do you remember where it was?

A I believe I put it in my report. I want to say it was laying on the floor. (Pause.)

Yeah. I want to say it was laying on the floor.

Q All right, sir. Did the tire iron have blood on it?

A It did.

Q All right, sir. I'm going to show you what's been marked as State's Exhibit 13. I'm going to ask you

just to -- in fact, I'm going to pull it out using this tissue. I'm sorry I don't have gloves.

That's okay. I'm just going to lay it right here. Thank you, ma'am.

Do you recognize this?

A Yes, sir.

Q Does that -- does that look like the tire iron that was on the floor or the counter that morning?

A It does.

Q Uh, in terms of size, dimension and the fact that it's a relatively used tire iron?

A Uh-huh.

Q All right, sir. You said --

MR. WESTON: First of all, Your Honor, the State would offer this as State's Exhibit, I think 13, I said.

THE COURT: Any objection?

MR. CHAMBERS: No, Your Honor.

THE COURT: All right. Without objection, it's admitted.

(WHEREUPON, State's Exhibit 13 is admitted into the record.)

MR. WESTON: Your Honor, I'm going to lay this on the table. I'm not going to offer to show it to -- ask the jury to past this around and touch

it or whatever.

BY MR. WESTON:

Q And you said the tire iron, according to your recollection or what's in your report was that it was on the floor. How far away from the defendant was it? Just ballpark?

A Not far. It was near the door that had been broken as best I can remember.

Q All right. Let's talk about the defendant a moment. Do you see the defendant, Mr. Byrd in the courtroom today, is that correct?

A Yes, sir.

Q Is that the man you saw laying on the floor in the pool of blood?

A Yes, sir.

Q Any doubt?

A No doubt.

Q Was he conscious when you came in?

A Yes, sir.

Q Was he talking?

A He was very talkative.

Q Animated? Would you describe him as being animated?

A Very.

Q Obviously, he's injured.

A Uh-huh.

Q Was he cussing?

A Yes, sir.

Q What did you do? What were you trying -- what were you -- what was your first order of business as far as it relates --

A My main goal was, okay, I'm in a house by myself where there was a supposed burglar suspect. Okay. My main goal is to get Mr. Butler and Mr. Rector back and to get Mr. Byrd in a safe position to where I'll be safe. Stay on the ground. Let me see your hands. Make sure you don't have any kind of weapons. You know, I don't want you to getting up and running. I don't want you getting up and attacking me. I want you to stay on the ground and let me see your hands. That was -- that was my main concern.

Q Were those the kind of general instructions that you gave him?

A Yes.

Q Did you question -- ask him any questions?

A No, sir.

Q They were more directives?

A Yes.

Q And was that part of the protocol for an officer in that situation to basically just get control

of the situation?

A Absolutely.

Q All right. And so when you were telling Mr. Butler, I'm sorry, Mr. Byrd to stay on the ground, put your hands out, did he comply?

A Not at all.

Q What was his response?

A A lot of cussing. A lot of cussing towards me. Very noncompliant.

Q Did he attempt to get up?

A Yes, he did. Several times.

Q Did you continue to tell him stay on the floor?

A I did.

Q Was he laying on his stomach, his side or his back?

A He was laying flat on his stomach.

Q All right. And when he attempted to get up after several times, after several times, what did you do?

A I tased him.

Q And where did you tase him? Just point to your body where did you shoot the taser?

A It was somewhere chest, below the chest.

Q Could it have been on his side?

A It could have been towards the side. But

there's no way it could have been on his, directly side of his body. What he did, he's laying flat on the ground. He pushes himself up. He's getting up to his knees. And I tased him.

Q All right. And when you tased him, what happened? Did he go back down?

A The first time I tased him, he went down for a couple of seconds, not the full thing. I know somehow he was able to pull a probe. Basically, these tasers have two probes. If you pull one of them out, it's not going to hook up anymore. It's just going to quit working. Somehow, he was able to get one probe out.

Q What happened after he got the probe out, what did he do next?

A He continued to try to get up.

Q Were you continuing to tell him to stay down?

A Yes, I was.

Q What did you do then?

A I put another cartridge in my taser and I tased him again.

Q And about where did you tase him this time, body-wise?

A Same general area.

Q If he were being compliant and laying on the ground, could you possibly have tased him in the chest or

the side area?

A No, not at all.

Q From a logistics standpoint, can tasers curve?

A No, not at all.

Q All right. They go in a straight line?

A They do.

Q All right, sir. After the second time you tased him, what happened?

A The second time, he got the full tase. I assume that was enough for him to lay there.

Q All right. And did he comply at that point?

A He did.

Q All right. Did you ask him any questions at that point?

A No.

Q Did he continue to talk however?

A He continued to talk a lot, yes.

Q Did he say anything to you about how he came to be there and why he was there?

A He did.

Q Was it -- before you answer, let me make sure we're clear and the jury understands. Was it the result of any questioning from you whatsoever?

A No, I was not questioning him at all.

Q Did you, in any way, insinuate, suggest, coerce

or get him to make the statement I'm getting ready to ask you about?

A No, sir.

Q Was it voluntary on his part?

A It was.

Q Tell the jury what that man told you about how he came to be there and why he was there as he laid on the floor.

A In so many words, I'm not going to say I can remember exactly word-for-word. In so many words, it was to the effect of you already know why I'm here. Why you think I broke in this house? You know it's a gambling house. He was also saying something to the effect that was, I guess as the sheriff's office, knew about it. I felt like he was presuming that we were, you know, protecting a gambling house. That's the way I took it. You know, y'all knew about it, y'all were in on it type of thing.

Q All right. Now, did he specifically say -- use the words that's why I broke in?

A Yes, he did.

Q Are you absolutely sure of that?

A I'm positive.

Q All right. Now, after you got him under control and he's making these statements and sort of

quasi accusations or what have you, or explanations, were you the officer that handcuffed him?

A No, I was not.

Q Who was the officer that handcuffed him?

A Deputy Derosa.

Q Did he arrive on the scene shortly after you?

A Yes.

Q All right. Was EMS called?

A EMS was called, yes, sir.

Q Did they respond and treat the defendant?

A They did.

Q Was the defendant taken straight to the detention center or the hospital?

A No, he was taken straight to the hospital.

Q All right. Did you subsequently meet with and take statements from the victim and the witness, Mr. Rector?

A Yes, sir.

Q Did you write the statements for them?

A I wrote one of -- I wrote one statement, yes, sir.

Q All right. And did they generally tell you what happened?

A Yes, sir.

Q Did you write down every word they said?

A No, sir. Basically, if I'm taking a statement from somebody, I'm not going to write every word. I'm going to write what I need, you know, for whatever the case may be. I have to make sure I include the parts that I need. If I wrote every word that somebody said, it would take a really long time.

Q Okay. Let's just -- a couple of more questions. When you entered the home, about how long were you there from the time you arrived until the time you finally left the scene? Just ballpark.

A An hour, hour and a half.

Q Were you in and out of the house a number of times during that period?

A Yes.

Q And did you ever go out into the back yard?

A Never went to the back yard.

Q Did you go outside on the patio?

A I went to the patio, yes.

Q So you were going from the front of the house to the back a number of times?

A Yes, sir.

Q Did you see anything unusual about this house?

A No, sir.

Q All right. Thank you, sir.

A Yes, sir.

CROSS-EXAMINATION

BY MR. CHAMBERS:

Q So when you got there to [redacted] Woodmont Lane, the -- Berry Butler was outside waiting for you?

A He was.

Q And where was he outside?

A On his front porch or just off of it. I can't remember.

Q Do you -- are there steps that you have to go up to get onto the porch?

A Yes, sir.

Q How many? Do you know?

A I don't know. Four or five.

Q Kind of a high porch up off the ground. So you think that he was -- you don't know if he was on the porch or --

A No, I can not remember if he was standing up on the porch or if he was actually down the steps. I can't remember.

Q But he wasn't walking out of the house as you got there. He was there?

A By the time I got out of my car and was walking, yeah, he was outside.

Q Yeah. He looked like he was standing there waiting for you.

A Uh-huh.
Q So you stopped and you talked to him for a few minutes.
A Not a few minutes.
Q Well, for a few seconds.
A Yes.
Q He told you -- you wanted to know what you were walking into, I'd imagine?
A Yes.
Q So he talked to you about what was going on?
A Uh-huh.
Q That's when you say you walked in and you saw Bryan Byrd.
A Yes.
Q And he was laying on the floor?
A Yes, sir.
Q And he was laying down when you came in, correct?
A Yes, sir. He was.
Q And he was on his stomach?
A Yes.
Q And you said that Rector was also in the room and he was seven to eight feet away?
A Yes, sir.
Q He wasn't holding him down or anything?

A No, sir.
Q Seven to eight feet away from him?
A Yes, sir.
Q And you said you remember that this tire iron here was on the ground?
A Yes, sir.
Q Rector was not holding it?
A No.
Q It wasn't on the kitchen counter?
A No, sir.
Q It was on the floor?
A Yes, sir. The only reason I'm saying that is because that's what my report said. I can not remember.
Q I understand. That's why you write a report.
A Absolutely.
Q You want to be as accurate as you can be in the report because you're going to have to come in at some point and do what you're doing right now, and that's testify.
A Yes, sir.
Q That's also why you take witness statements, wouldn't that be fair to say? You want to make sure those are accurate as well?
A Yes, sir.
Q All right. So where on the ground, if you

remember? If you need to look at your report, feel free to do that.

A I think I just put -- in my report, I think I just put they was on the floor.

Q Okay. But Rector was not holding it and it wasn't anywhere near Rector.

A (Shakes head.)

Q All right. Did you ever have forensics get any fingerprints or anything off of this?

A We had forensics come out and do their thing. I'm not really sure what all they did. I don't know.

Q So you don't know if there were any fingerprints taken off of this or not?

A I do not, no.

Q You don't know if there were any fingerprints taken from anywhere in the house?

A I do not, no, sir.

Q All right. And then when you -- I guess when you approached Bryan is when you say he started trying to get up?

A Yes, sir.

Q And this is all happening pretty fast. I mean, we're sitting here now sort of in calm reflection. But I imagine at the time that's not how things were, is that fair to say?

A Yes, sir.
Q And you say that he was cussing and carrying on. You walked over to him and you told him to stay down?
A Yes, sir.
Q And you say he didn't stay down so you got him with the taser?
A I did.
Q All right. The first time, you're saying that he pulled it out so you had to reload and hit him again?
A I did.
Q And the second time, you said you got him good?
A Yes.
Q All right. Uh, he stayed down?
A He did.
Q You, as part of your training in order to use that, you have to get, at some point, hit with a taser; is that fair? Is that correct?
A Absolutely.
Q And it hurts a lot; doesn't it?
A It does hurt.
Q And it has a pretty long lasting impact on you. It sort of stuns you; doesn't it?
A It does.
Q Most people, when they are hit with it, it's

not unusual for people to scream when they get hit with it; is it?

A No, it's not.

Q All right. And it was after this that you say that he offered up, that he had broken into this residence?

A Yes, sir.

Q He indicated when you were talking with the Solicitor that there was so much going on. I don't ever remember every word that was spoken.

A That's right.

Q But you are clear that he broke into the house?

A Yes, sir.

Q All right. Uh, given that he had given you this admission, did you then, like you did with the, uh, witnesses in this case, did you take a written statement from him?

A I did not.

Q Did you give him an opportunity to give you a statement like that?

A At that moment, no.

Q Well, at any moment.

A I did not.

Q All right. Do you know of anybody who ever sat down with him and took a statement like that?

A No.
Q A statement where he could look it over and indicate whether it was correct or not and sign it?
A Not that I know of, no.
Q You are not the one who handcuffed, uh, Bryan Byrd, are you?
A No, sir.
Q And you didn't take Bryan Byrd to the hospital?
A No.
Q So you don't know anything about Bryan Byrd's condition at the hospital other than he had a very large gaping wound to his head and it was bleeding profusely?
A Pretty much.
Q And there was blood everywhere around him and I guess all around the whole place?
A Uh-huh.
Q You didn't see any injuries to either of the other two people, did you?
A I believe there was a mark on Mr. Butler's arm that we took a picture of.
Q Okay. And do you remember smelling kerosene or gasoline or anything on Bryan Byrd?
A I remember the, uh, -- a lot of the house smelled. Basically the whole house just kind of smelled. I believe there was a kerosene heater that had been

knocked over.

Q And so he went to the hospital. Who accompanied Bryan to the hospital?

A He went to the hospital in EMS. I believe Deputy, uh, Derosa followed EMS to the hospital.

Q Do you have any idea how long he was in the hospital or were you done with him at that point?

A I did have to go to the hospital. Once I left [redacted] Woodmont Lane, I went and spoke with a judge. After I got a warrant, I went to the hospital. I was only there, I don't know, 20 or 30 minutes.

Q Did you take him to the detention center?

A No, I did not.

Q And these statements, you took these statements from Berry Butler and James Rector that very night; is that correct? Or that very morning, I guess.

A Yes, sir. I took one of them.

Q Who took the other one?

A I believe Deputy Payne took Mr. Rector's statement.

Q But y'all follow pretty much the same procedure; is that correct?

A Yes, sir.

Q As far as Mr. Butler's, you wrote that. You said you don't write every word they say -- if you wrote

this down here, then it is a correct account of what you were told; is that right?

A Absolutely.

Q You wouldn't put anything in there that was wrong?

A No, I wouldn't just make stuff up.

Q And you give him an opportunity to look this statement over, right?

A Yes.

Q You tell them if there's anything in there that's wrong, let's correct it; don't you?

A Sure, in so many words.

Q You want to make sure it's accurate. Then you have him sign it, right?

A Correct.

Q And then you witnessed it here, J. Metcalf?

A Yes, sir.

Q There is a place for a notary public. I never seen anybody get it notarized, but you did put a signature on there?

A I did.

Q And the reason for that is he signed it indicating that what was on there was correct?

A Yes.

Q All right. That's all the questions I have for

you. Thank you.

MR. WESTON: Just a couple of questions ---

THE COURT: Sure.

MR. WESTON: --- on redirect, Your Honor.

REDIRECT EXAMINATION

BY MR. WESTON:

Q Uh, counsel asked you about forensics. I want to make sure the jury is clear on your answer. Forensics were called out that night; is that correct?

A Yes, sir. They were.

Q And what is the protocol? What happens when forensics is called?

A Basically, forensics comes out and does a -- if we have anything that needs to be fingerprinted, any evidence that needs to be collected and taken back to the sheriff's office. For any reason. If we need pictures taken. I'm sure you've seen CSI. It's not quite that extreme. But that's our --

Q The pictures we've shown, those were taken by a forensics officer?

A They were, yes, sir.

Q And the tire iron would have been collected by a forensics officer?

A Yes, sir.

Q All right. Now, the other question I have is

you brought your report there with you. Counsel asked you specifically about -- questions about the reason you put things in your report is to make sure you get them accurate at the time it's fresh in your mind, right?

A Yes, sir.

Q You said the defendant made a lot of statements about breaking in or why you broke in or what was going on. Did you make any notes in your report at the time it happened as to what the defendant said about breaking in? I want to make sure we get this accurate.

A I did.

Q Would you read from your report the line of what you wrote that night about what the defendant said? Just read exactly what you wrote.

A The sentence says the subject told me the house was a known gambling house and that's why he was breaking into it.

Q All right. And it was fresher in your mind then than it is now, right?

A Than it is now, yes.

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

THE COURT: Anything else, Mr. Chambers?

MR. CHAMBERS: No, Your Honor.

THE COURT: Sir, you can step down.

THE WITNESS: Thank you.

THE COURT: Ladies and Gentlemen, we've come to a very good time for a break. We'll break for about 10 minutes. Please don't discuss the case with anyone.

(WHEREUPON, the jury exits at approximately 10:53 a.m.)

THE COURT: All right. We're in recess for 10 minutes.

MR. WESTON: Excuse me, Your Honor.

THE COURT: Oh, yes.

MR. WESTON: Before we go off the record, two quick matters.

THE COURT: Absolutely.

MR. WESTON: First of all, this officer is over in Spartanburg. I was wondering if he could be released. I didn't think Mr. Chambers would have any objection.

MR. CHAMBERS: No objection.

THE COURT: Any objection? All right. Thank you, sir, for being here.

THE WITNESS: Thank you, ma'am.

MR. WESTON: Your Honor, the other matter is, I just wanted to make the Court aware of this and make Mr. Chambers aware of it. Officer Derosa is going to be called my next witness. He is the

officer that handcuffed the defendant and transported or went with him to the hospital and transported him to the detention center. During that process, uh, he says in his report the defendant declined to make any statements to him. I noticed that counsel asked this officer about did you give this defendant a chance to give a statement or whatever.

What I would love for him to ask Mr. Derosa that and have Officer Derosa say no, he declined to speak to me. I don't want to put us in a situation where we possibly incur -- possibly run into the possibility of a mistrial based on the defendant's right, constitutional right not to answer questions. I want to make sure that the Court and Mr. Chambers is aware that if he asks that question, the officer is going to say the defendant declined to answer questions. My position would be he's opening the door and asking him directly did you give the defendant an opportunity to talk. He's going to say yes, I did. He declined.

THE COURT: Mr. Chambers, you're not going to ask it exactly like that, are you?

MR. CHAMBERS: No, I'm not going to open the door for that.

THE COURT: If you would please tell your officer not to say he declined to make a statement, just to say no. Okay.

MR. WESTON: Yes, ma'am.

THE COURT: That would be great. All right.

(WHEREUPON, a recess is taken.)

THE COURT: Jeff, you got two more witnesses?

MR. WESTON: Just one more.

THE COURT: Just one more?

MR. WESTON: It should be short.

THE COURT: Okay. Okay. Great. And you've got -- do you know? I probably have to talk to your client.

MR. CHAMBERS: I would want a little bit of a break to be able to discuss it with my client, but I anticipate that he's going to testify.

THE COURT: Okay. All right. Okay.

MR. CHAMBERS: We have had a lot of discussions about it. But obviously, it's just always my practice to allow to just touch base with --

THE COURT: All right. I want you to have as much time as you need to.

MR. WESTON: My witness should only take about -- I know it will be like five minutes on

direct, Your Honor.

THE COURT: Okay. All right. Oh, I'm sorry. I'm sorry.

(WHEREUPON, the jury enters at approximately 11:35 a.m.)

THE COURT: Mr. Weston, you ready to call your last witness?

MR. WESTON: Yes, ma'am, Your Honor.

THE COURT: All right.

MR. WESTON: The State would call Officer Mike Derosa.

THE CLERK: Sir, if you would, please place your left hand on the Bible and raise your right.

MICHAEL DEROSA

having first been sworn, testifies as follows:

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

THE WITNESS: Deputy Michael Derosa.

DIRECT EXAMINATION

BY MR. WESTON:

Q Officer Derosa, with whom are you employed?

A I'm currently employed with the Greenville County Sheriff's Office.

Q How long you been with the Sheriff's Office?

A Since 2008.

Q All right, sir. And did you have an occasion -- and we're going to just kind of cut right through to it here. Did you have an occasion to respond to [redacted] Woodmont Lane on April 16th, 2011?

A Yes, sir.

Q Was it about three o'clock in the morning?

A Uh, I have to look at the time, but it was the early morning hours.

Q All right. Was it still dark outside?

A Yes.

Q All right. And what was the -- was it a call from dispatch that you received or a call from one of the officers already on the scene or what?

A We were, uh, -- we were actually on another call at the time. They gave out a burglary in progress. Deputy Metcalf was the only person in that area.

Q I'm sorry. Let me ask you to repeat that. Did they call out a burglary or a burglary in progress?

A I believe it was a burglary in progress call they gave out. Uh, we were down at Highway 418 at a bar fight. We left there and proceeded out to back up Deputy Metcalf.

Q When you arrived, what did you find? Can you describe the location first?

A It's a neighborhood in the Belle Meade area,

single family home, single story. When I pulled up, Deputy Metcalf's car was already there. The front door was open. I went inside to him where Deputy Metcalf was standing in the dining room area. He had a subject, uh, the taser prongs were connected to him.

Q All right. And where was the subject at? Standing up or sitting down or what?

A At that point, he was laying supine on his stomach, two hands out.

Q And was there a lot -- was there blood around the scene?

A Yes, sir.

Q And what was the -- where were the -- do you remember any, for lack of a better word, civilians or pedestrians, other people there?

A Yes, sir.

Q Uh, where were they?

A I believe both males were standing in the living room area when I got there.

Q All right. Did you go directly into the area where the suspect was?

A Yes, sir. I went directly to Deputy Metcalf who directed me to handcuff the person who was laying on his stomach. He told me to be careful, that he wasn't complying with his commands. I placed the subject in

handcuffs and removed him from the house.

Q All right. Now, when you went -- when you came in the house and went toward the kitchen, back door area; is that correct?

A Yes, sir.

Q Did you have an occasion or the ability to look around and observe the scene?

A Very quickly.

Q All right.

A Deputy Metcalf was by himself for a significant period of time. When we got there, we were basically at a sprint into the house.

Q And when you say "we", how many officers arrived with you?

A Uh, probably three or four.

Q There were a number of other officers who were on the scene that night?

A Yes, sir.

Q All right. Uh, and when you came in, was the scene already secured by Deputy Metcalf? Was the suspect already secured?

A The suspect was laying on the kitchen floor with this hands out. Again, he had taser prongs in him. He wasn't secured in the handcuffs, but he was on the ground.

Q I think you said you handcuffed him, is that correct?

A Yes, sir.

Q And what did you do once he was handcuffed?

A Basically, I checked him for weapons, firearms, anything like that. Picked him up and brought him out of the house.

Q And where did you go with him?

A Uh, went to the end of the driveway, EMS, again because there was a delay at the time we got from Highway 418 up to the Belle Meade area. EMS, we cleared them to pull up. They pulled up and started rendering aid.

Q All right. So he was treated at the scene?

A He was partially treated at the scene. Then he was transported by EMS to Greenville Memorial.

Q And did you follow him to the hospital?

A Yes, sir, I did.

Q Was it your job basically to provide security for him during the transport and at the hospital?

A Yes, sir.

Q Did you stay with him during the entire time at the hospital?

A Yes, sir. Until I was relieved.

Q All right. And was that the extent of your involvement in this matter?

A Yes, sir.
Q Now, uh, had you ever been to this home before?
A No, sir. I haven't.
Q You never received a call to go to this home?
A No, I worked that area for, uh, my entire career. I been in the neighborhood, been around the home, been to the neighbor's home. I just never been to this particular home.
Q Did you know Mr. Berry Butler before that night?
A No, sir.
Q You ever seen him before?
A No, sir.
Q You ever seen Mr. James Rector seated in the back back here?
A No, I haven't.
Q Best you can remember.
A No, sir.
Q All right. Thank you, sir. That's all I have.

CROSS-EXAMINATION

BY MR. CHAMBERS:

Q As a deputy, have you ever had occasions to know anything about or go to what you refer to as a gambling house where people go to gamble?
A Yes, sir.

Q So that's not an uncommon thing, is it?
A We --
Q I mean, they exist. I'm not saying there's one on every block in every neighborhood, but they exist?
A Yes, sir.
Q And the people that run those kind of things, are they typically people who would have firearms and be armed?
A It depends. There's two in particular. I can think of one them carries a firearm and the other doesn't. Both are pretty compliant with us.
Q But it would be a reasonable expectation if you are going to run an illegal business like that that you would probably carry a firearm?
A Are you asking an opinion? I would say yes.
Q Uh, you said that when you got there, everyone were pretty much secured at that point.
A Except for him physically being handcuffed.
Q But he wasn't moving. He was on the ground?
A At that point, yeah.
Q And he had -- still had the taser or whatever you call those things in him?
A Yes, sir.
Q And you said that the officer, the other officer, Metcalf, had advised you to use caution, you

said, because he had been noncompliant. He also indicated to you that, uh, that, that someone else there had told him that he had a firearm, right?

A It was relayed to me that he may be armed, yes.

Q That was based on information that he got from people at the house?

MR. WESTON: Objection, Your Honor. It calls for speculation as to where the person got the information from. He just said the person told him he might be armed.

THE COURT: All right. Sustained.

MR. WESTON: Thank you, Your Honor.

BY MR. CHAMBERS:

Q Well, let me be more specific so that we are not dealing with speculation. Do you have your report with you?

A Yes, sir.

Q Did you put there in your report that it says Deputy Metcalf advised me that he believed the defendant may have a firearm based upon the accounts that were relayed to him.

A Yes, sir.

Q All right. So that would indicate basically what you were told that that was -- that somebody else at that residence would have told you?

MR. WESTON: Objection, Your Honor. He didn't say at the residence. He said somebody else -- accounts that had been relayed to him. He didn't say anything specific about where they came from. I think he's putting words in the officer's mouth.

THE COURT: I will allow the officer to answer. But if he needs to clarify anything, he certainly can.

THE WITNESS: I would make that assumption. Like I said, I was in a sprint to get over to man who was in handcuffs. He said he may armed.

BY MR. CHAMBERS:

Q I guess the most likely people to have said that -- there would have been people that were there. I mean, the Solicitor's right. They could have gotten a phone call by somebody that said, hey, there's a guy there with a gun. But more than likely, it was one of the two people that were there.

A Is that a question?

Q Yeah.

A I -- when you make the assumption, yeah.

Q Okay. Thank you.

THE COURT: Anything else for this witness?

MR. WESTON: Yes, ma'am, Your Honor.

REDIRECT EXAMINATION

BY MR. WESTON:

Q Counsel asked you about this -- about your experience with gambling houses?

A Yes, sir.

Q You got some experience with it?

A Yes, sir.

Q Y'all have raided gambling houses before?

A Yes, sir.

Q You've been a part of that process where y'all have raided gambling houses?

A Yes, sir. I worked several cases where I established probable cause to obtain search warrants and seize gambling equipment.

Q How do y'all find out about a gambling house? Usually. In your work experience.

A Fortunately, they are pretty obvious usually.

Q In what way, sir?

A Well, say on a football Sunday, there will be a line of cars outside of a particular business that's usually closed on Sundays. They are kind of well-established. Unfortunately, we don't really have very strong gambling laws. They are not really well hidden.

Q This is your district that this occurred in, you said, is that correct?

A Yes, sir.

Q Have you ever seen a line of cars outside this man's house on Sunday?

A No, sir.

Q Have you ever heard any complaints about gambling either through Crime Stoppers or anonymous tips about gambling going on at this house?

A No, sir. I haven't.

Q And this is your district?

A Yes, sir.

Q And you had worked it for, you said, I think, about six years?

A Right around five years.

Q And when you came into this house from the outside of the house, did you see anything that would, based on your experience, that would meet the criteria in your mind that make you suspect this is a gambling house from the outside?

A No, sir.

Q Did you see anything when you came into the living room that would give you the impression or that would be an indicia that this was a gambling house?

A No, sir.

Q When you went into the kitchen area and secured the defendant on the floor, was there anything in the surroundings that gave you the impression that this was

anything but someone's dwelling?

A And again, I was in full sprint to kind of get to the guy and handcuff him. I never got that impression, no.

Q Thank you, sir.

THE COURT: Anything else?

MR. CHAMBERS: Nothing, Your Honor.

THE COURT: Sir, you can step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Mr. Weston?

MR. WESTON: Your Honor, the State would ask that the witness be allowed to be excused.

THE COURT: Any objection?

MR. CHAMBERS: No, Your Honor.

THE COURT: I thank you, sir, for being here.

MR. WESTON: With the exception of the other procedural matter we spoke of, Your Honor, the State would like to have that addressed if at all possible.

THE COURT: All right. Very well.

Ladies and Gentlemen of the jury, the parties have stipulated, and that means agreed, uh, that you will take it as a fact that the defendant in this case has been convicted of two or more burglaries prior to this alleged incident. That is an element

you will hear about later. You will hear about it more, an element, uh, of the crime for which he is charged. But as I said, it's stipulated to, that means it is agreed upon and it will taken by you as a fact. All right.

Does that comply with what the State --

MR. WESTON: Yes, ma'am, Your Honor. Thank you. And with that, the State would rest.

THE COURT: All right. Did that comply with the defense's wishes and regards to that stipulation?

MR. WESTON: Yes, Your Honor.

THE COURT: All right. Very well then.

All right. The State has rested. That means we need to take a brief break. I promise you that this break will not be anything near as long as the last break, but I do need you to step to your jury deliberation room for a moment while we take up a legal matter. We will be going to lunch shortly. But I would look more towards our going to lunch around the 12:30 hour or so. All right.

(WHEREUPON, the jury exits at approximately 11:47 a.m)

THE COURT: All right. You want to take a few minutes to speak to your client?

MR. CHAMBERS: I do. For the record, Your Honor, I want to put on that I make a motion for directed verdict.

THE COURT: All right. All right. And your motion is respectfully denied. All right. Uh, let's -- do you think five minutes is enough time to talk to your client?

MR. CHAMBERS: I think five.

THE COURT: How about we say five. And if you need more, you can send out word to us you need more.

MR. CHAMBERS: Actually, if you could give me 10.

THE COURT: 10 minutes.

MR. CHAMBERS: I think in addition to talking to my client, I might want to go take a little break.

THE COURT: Okay. Perfect.

MR. CHAMBERS: Thank you, Your Honor.

(WHEREUPON, a recess is taken.)

THE COURT: I'm going to take a moment to speak with Mr. Byrd.

Will you raise your right hand please?

(WHEREUPON, Bryan Byrd is first duly sworn by the Court.)

THE COURT: Okay. You can put your hand down. Have you had an opportunity to discuss with your attorney whether or not you intend to testify in the trial of this case?

MR. BYRD: Yes, ma'am.

THE COURT: Do you feel like you've had enough time to talk to him about this decision?

MR. BYRD: Yes, ma'am.

THE COURT: Has he answered all your questions with regards to it?

MR. BYRD: Yes, ma'am.

THE COURT: Are you under the influence of drugs or alcohol here today?

MR. BYRD: No, ma'am.

THE COURT: Has anybody forced you into this decision here today?

MR. BYRD: (Shakes head.)

THE COURT: Yes or no.

MR. BYRD: Oh, no, ma'am.

THE COURT: Has anybody promised you anything to get you to make this decision here today?

MR. BYRD: No, ma'am.

THE COURT: You understand this is your decision completely. You understand that?

MR. BYRD: Yes, ma'am.

THE COURT: And that while today is your one opportunity to tell your side of the story, you also understand you have an absolute right to remain silent. You do not have to testify. You know that?

MR. BYRD: Yes, ma'am.

THE COURT: You understand I'll instruct the jury that they may not consider the fact that you did not testify. They may not talk about, even discuss it in any way. It can not come into their decision on this case whatsoever. You understand that?

MR. BYRD: Yes, ma'am.

THE COURT: Uh, I believe the Solicitor has several convictions on your prior record that he intends to use against you if you were to testify. Has your attorney talked to you about that?

MR. BYRD: Yes, ma'am.

THE COURT: You feel like you fully understand everything that he's going to go into asking you about prior convictions?

MR. CHAMBERS: We could perhaps have the Solicitor state for the record, Your Honor.

THE COURT: All right. Let's hear what you're planning to --

MR. WESTON: Yes, ma'am, Your Honor. We got

2004, there are two burglary second convictions and a grand larceny conviction, as well as a possession of burglary tools. My position would be as to those, Your Honor, that the two burglaries and the grand larceny would come in. Uh, I'm not as comfortable on possession of burglary tools although I would think it would come in. I'm sorry, Your Honor.

Later in the year, there's a third burglary, a second grand larceny, a fourth burglary, a third grand larceny, a fifth burglary third conviction and a fourth grand larceny. That's all in 2004. In 2008, there's a burglary second conviction. In 2009, there is a resisting arrest conviction. In 2009, there is a burglary second conviction. Those would be, uh, the offenses the state would proffer, Your Honor.

THE COURT: All right. You understand I may not let him go into -- I may not let him ask you about every one of those. But maybe I will. He might ask you about every one of those convictions. You understand that?

MR. BYRD: Yes, ma'am.

THE COURT: And what is your decision today?

MR. BYRD: Testify.

THE COURT: You're going to testify?

MR. BYRD: Right.

THE COURT: And you fully understand that the Solicitor might be allowed to use every one of those convictions against you. You know that?

MR. BYRD: Yes, ma'am.

THE COURT: All right. Mr. Chambers, any other questions you want me to ask him?

MR. CHAMBERS: No, Your Honor.

THE COURT: All right then. Thank you, sir. Let's talk a little -- Mr. Chambers, let's talk a little bit about these particular convictions. Is there anything you want to --

MR. CHAMBERS: Your Honor, I can't remember what Possession of Burglary Tools carries.

THE COURT: I think it carries up to five, doesn't it?

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

THE COURT: Okay.

MR. CHAMBERS: Obviously, I want to object to anything that I can. But all those appear to be within the 10 years and they appear to meet the statutory requirements of carrying a year or more in prison, either that or involving dishonesty. So --

THE COURT: And normally -- and I'll just say for the record, normally, I might not allow -- I might not allow him to impeach him with convictions for which he actually is standing today. In other words, I might not let him go into the burglary, but the jury has already been apprised that he's got it.

MR. CHAMBERS: There is my dilemma. I mean, typically what I would ask is that he just be -- that they be allowed to say he had felony convictions, you know, rather than specifically what they were. But he already does have two that they were allowed to introduce as part of their case-in-chief. So you know, I mean, there's always a balancing act, a 403 balancing act that you have to do. So I would ask the Court to do that.

Obviously, from our standpoint, anything that we can do to mitigate, we want to do. I know that those are within the rule. And they are where they had at least two. So I mean, I would certainly ask the Court to simply refer to them as felony convictions and ask the Court to consider doing that.

THE COURT: Mr. Weston?

MR. WESTON: Your Honor, while, of course, we would like to, uh, apprise the jury slowly or

individually of each burglary conviction, I can understand the Court's reticence to, uh, and reluctance to allow us to impeach him with burglary convictions. I do think, setting those aside for a moment, I think I would ask the Court to allow to specifically cite the grand larcenies, resisting arrest and possession of burglary tools conviction as they are -- the State would ask the Court to allow us to specifically cite the grand larceny convictions and the resisting arrest convictions by name.

With regard to the burglaries, should the Court take the position that, uh, we can't cite the specific burglaries, I would ask the Court to allow me to cite, to ask him specifically that he has been convicted of at least two burglary convictions in the last 10 years. As to the others, I would like to be able to say, uh, isn't it true that you were also convicted of another felony that carries up to or more than one year on this date and just go through them and refer to them as felonies that carry more than one year.

THE COURT: Okay. I will allow you to do it. I will let you go into the resisting arrest and the grand larcenies, not specifically the burglary

tools. I will let you ask him if he's been convicted of two or more burglaries. All right.

MR. WESTON: Yes, ma'am, Your Honor.

THE COURT: All right then. Is he going to be your first witness?

MR. CHAMBERS: He is going to be my only witness, Your Honor.

THE COURT: Oh, okay. All right. Very well. Let's -- you think he's -- I know it's hard to say. I don't want to limit you in any way. You think he's going to be a lengthy witness?

MR. CHAMBERS: I suspect that he will, yes, ma'am. As far as lunch, I feel confident that we will go past one o'clock.

MR. WESTON: Your Honor, I don't expect my cross-examination to be that lengthy.

MR. CHAMBERS: Oh, well, if he's not -- I was expecting a very lengthy cross-examination.

MR. WESTON: I suspect it will be less -- I'm sure it will be less than 15 minutes, Your Honor.

THE COURT: Okay.

MR. WESTON: Probably --

MR. CHAMBERS: Well, then we might be able to do it.

THE COURT: All right. Let's bring them in

and see how far we get. I hate to break up any testimony.

MR. WESTON: Your Honor, before we bring them in, there's one other matter.

THE COURT: Oh, yes, sir.

MR. WESTON: It's sort of housekeeping and I want to just alert the court. The defendant has written two letters to me specifically, each five or six pages in length, uh, outlining and accusing and basically saying what his -- giving me some idea of what he's going to testify to. Aside from the fact -- and I'm not going to necessarily address my cross-examination of him about the letters -- I get the sense that the defendant is going to get on the stand. And I'm concerned that he is going to be non-responsive to his attorney or overly responsive and start making speeches about things that are not responsive to the question. I understand he's got a right to say yes or no and then explain his answer. But my concern, based on what I read in the letters, is that he is going to be talking about a lot of things that don't respond to the question and I'm going to be objecting. I don't want to over object.

THE COURT: I understand. Let me just say this to you, Mr. Byrd, while it is your day in court

and I want you to tell your side of the story and that is why you are taking the stand is to tell your side of the story. If you start getting far astray from the case that we're in here about or this particular charge that you are on trial for, then I want to be clear with you that I am going to let you know and I'm going to let the jury know that I don't like it and I'm going to stop you.

If I've got to take you off the stand to do it, I will. That won't be good for you. It won't be good for your case. I don't want to do that. I want to say to you that I'm a nice person. But if you cross me on this, I will not be nice. You understand me?

MR. BYRD: (Nods head.)

THE COURT: Okay. As long as we're clear. Okay.

(WHEREUPON, the jury enters at approximately 12:07 p.m.)

THE COURT: Mr. Chambers?

MR. CHAMBERS: Your Honor, I call Bryan Byrd.

THE COURT: All right. Sir, if you'll come forward and be sworn.

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

BRYAN BYRD

having first been sworn, testifies as follows:

THE CLERK: Please be seated.

THE COURT: Mr. Byrd, I think you've got a soft voice. I want you to speak directly into that microphone if you will please.

THE WITNESS: Okay.

THE COURT: Thank you.

THE CLERK: Would you state your name for the record.

THE WITNESS: Bryan Byrd.

THE CLERK: Thank you.

THE COURT: You're going to probably have to get closer.

DIRECT EXAMINATION

BY MR. CHAMBERS:

Q All right. I know you are a little nervous. If you would make sure that I hear you and that everybody and the jury can hear you.

A Okay.

Q All right. And you have the tendency like I do to nod your head at times or say Uh-huh or Huh-uh. But I want you, so that everybody will be clear and we'll have a good record, to answer using words every time you answer a question. You understand that?

A I hear you.
Q Uh, how old are you?
A 28, sir.
Q Okay. I'm having trouble hearing you. So I'm going to ask you to speak up, speak into that microphone.
A 28.
THE COURT: There you go. That's exactly it right there.
BY MR. CHAMBERS:
Q And are you from this area?
A Yes, sir.
Q Lived in Greenville your whole life?
A (Nods head.)
THE COURT: I need you to say yes or no.
THE WITNESS: Yes, sir.
BY MR. CHAMBERS:
Q Back in August of 2000 -- April of 2011, uh, where were you living at that time?
A In Piedmont with my sister.
Q And, uh, did you know Berry Butler at that time?
A Yeah, we -- I don't know him like that, but I been to his house on several occasions.
Q And when you say his house, what house are you talking about?

A Uh, [redacted] Woodmont Lane.
Q And where is that located?
A In Belle Meade.
Q And you say that you have been there?
A On several occasions.
Q How many times you -- so several occasions. When you say several, about how many?
A Seven or eight times.
Q What was your reason for going there?
A Well, his house isn't a regular house and nobody lives there, for one. It's a gambling house, plain and simple. Nothing else to it. Two of the bedrooms, like they say, was furnished, but ain't no beds in it, just mats with sheets on it. The last room in the house is the gambling room with the gambling machines. That's not all that goes on in that house. Also in that house, you might have some dope boys in there, people selling reefa. The door stays swinging just about every day.
Q And is that your reason for going there?
A Well, no, an associate of mine or a friend of mine or whatever used to, I guess you could say he worked for Berry or was friends with Berry, kind of like what Mr. Rector is -- whatever Mr. Rector is to him now.
Q Is that how you got to know Berry Butler?

A Yeah. Somewhat. See, I don't know Berry like that. I know his face or whatever. He know my name Byrd and I know he Berry cause I done been to his house before. I don't know too much more about it. I know he from Kennedy Park. He older than me. I'm 28. He 40, 41.

Q So prior to April the 16th, 2011, you are saying you had been there to that specific house ---

A Oh, yes, sir.

Q --- seven to eight times.

A Probably even more. I'm just making an estimate to how many times I done been there.

Q I want to show you a diagram that's marked Defendant's Exhibit 1 for identification. I want to ask you do you recognize that.

A Yes, sir. I drew it.

Q And when did you draw that diagram?

A Uh, August 24th, 2011.

Q Okay. And what is that a diagram of?

A That's a diagram of the whole house.

Q And when you say the whole house, you're talking about Berry's house that is located at [redacted] Woodmont Lane?

A Yes, sir.

Q And that's the diagram that I showed him

earlier when he testified?

A Yes, sir.

Q And you had somebody -- you signed it and you had somebody notarize it; is that correct?

A Yes, sir.

Q Is that something -- did you draw that from memory?

A Yeah.

Q And that's the entire house?

A I can draw it over again right now without looking at that.

MR. CHAMBERS: Your Honor, at this time, I would ask to admit this into evidence as Defense Exhibit 1.

THE COURT: Any objection?

MR. WESTON: No objection, Your Honor.

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

(WHEREUPON, Defendant's Exhibit 1 is admitted into record.)

BY MR. CHAMBERS:

Q Did you know James Rector prior to April 16th of 2011?

A No, sir. I never seen him over there before.

Q Did you go to [redacted] Woodmont Lane on April the

16th, 2011?

A Yes, sir. In the early morning hours.

Q When you say early morning hours, do you know approximately what time you arrived?

A I don't know the exact time I got there. I was leaving the club with a friend girl. And we were on the way to her house.

Q How did you get there to the house?

A We was at Club Moon, but that's on East North Street. When we left there, we made a left off of East North onto Haywood and went all the way up to Laurens Road. Went all the way up Laurens Road and got on the highway. Got off the highway and, I don't know the exact exit right there, but right there by gas station. Crestfield right there. I had a couple of dollars in my pocket or whatever.

I needed, uh, to holla at my homeboy Goat. That's the one that I know Berry through somewhat or whatever. He used to work for Berry. At the time, I ain't know they done fell out about some money or whatever. Like I'm telling y'all this house is a gambling house. So when I go there, don't nobody knock on the front door or none of that stuff right there. It's three or four cars around back, cars on the side. I know it was one in the driveway. They always park in the

back. I went around back. As I'm coming to the back window --

Q Did you park in the back?

A No, the girl I was with, she parked in the front. She ain't even park. She just pulled over on the side in the front.

Q So she was driving?

A Yeah. I told her I'd be right back.

Q Then what did you do when you got out?

A When I got out, I went around back. Like I was telling you, this a gambling house. A lot of the times, you ain't even got to knock on the door to come in the house. The door be open. I don't mean like open where you can just push it open. You can turn the knob, go on in.

Q Okay. So what did you do?

A I came around back. That's the kitchen right there in front of it. I turned the door knob. As I turned the door knob, it's a dude coming around the corner that's going in the kitchen. Like I said, there's other stuff that go on in this house too. They be selling beer, cigarettes and lots of stuff like that. So as I'm turning the knob, I'm thinking it's going to open, but it don't open. The dude is coming to the frigerator or whatever. He seen me. He look to the left. He seen

me. He go on and open the door for me.

Q And this guy you say, this dude that you saw, was that -- is that either Berry or James Rector?

A That wasn't neither one of them. I seen his -- I seen his face before, but I ain't necessarily know him like that.

Q It wasn't either one of those guys?

A No, it was neither one of those two.

Q So pick it up from there and tell me what happened.

A When I come in the house, the dude done grabbed his beer or whatever out of the refrigerator. He go on back around the corner. The game room is the last room at the end of the hallway. If y'all look on that picture right there, you will see the two rooms that got the beds in it. The room where you don't see nothing in it, that's the room with the machines in it. I guess he go on back there. I step on into the living room. Not the living room, well, not the living room but the kitchen area or whatever.

Rector, the dude right there, he was sitting on the couch. He was already sitting, looking up seeing who coming in the house. Well, I asked him, I'm like where Goat at. I don't see him. I came by there to holla at my homeboy Goat. At the same time, I came to get some

cigars, a couple more cigarettes. I had a pack of Newports on me or whatever, but I needed some more. I wasn't trying to go to the store and buy no more. They sell single Newports in there too.

He look at me and he like, "F" Goat. I'm like, I told you I been to club. So I got a couple of drinks in me. That's my homeboy. I'm like what you mean, "F" Goat?

Q He said what now?

A He said "F" Goat.

Q "F" Goat?

A Yeah, he was like, "F" Goat.

Q What does that mean?

A F--- Goat.

Q Who is Goat?

A That's my homebody.

Q Okay.

A That's the one I kind of know Berry through. That's how -- I been to his house on several occasions. The same one that work for, well, used to work for Berry or sit in there or whatever. With those gambling machines, somebody always got to be in there for when people come over there and they cash out or they get the tickets or whatever. Somebody got to pay out the money if they win. That's probably what Rector doing now.

Q Okay. All right. So you came walking in. He looked up from the couch. He said that to you. Then what happened?

A Well, he ain't just said to me right then. I asked him. I asked him where Goat was at. Goat normally be there. If Goat ain't there, one of my other homeboys be over there, somebody I know from the neighborhood. Oh, another thing, Belle Meade is my old neighborhood, so I know just about everybody that bes around there. The place where Berry is from is right up the street. Everybody know everybody around this area.

After he said "F" Goat, I'm like what you mean, "F" Goat. He like what you mean, what I mean "F" Goat. He stand up. So I get offensive. I'm like what's up, what you trying to say, what you want to do. That's when we coming towards each other. I swing first. But I missed. That's when he grabbed me. Me and him get to tussling in the little area -- if y'all look on the pictures, it's right there beside the heater. We tussling right there in the little kitchen area right there.

Somehow I -- I think I -- I want to say I pushed him up against, up against the wall. He a big wide boy. You know, I'm kind of strong too myself. I pushed him up against the wall. We locked on to each

other. We really ain't throwing no blows. We just locked up, wrestling, tussling. That heater don't never sit right there. That heater always be in a living room somewhere or whatever. After I pushed him up against the wall, like I said, we still locked up. He slinged me around, I think as he sling me around is when his back is up against this window right here. When he slang me around, he throw my shoulder into one of these window panes, which is how I got this right here.

Q Okay. I'm going to have you in a minute show that. For right now, just keep going.

A Okay. After he slang me into the window pane, the momentum from it or whatever, he kind of yanked me right back on up out of there. After he yanked me back up out of there, we still tussling. We still slinging around or whatever.

That's when somebody come from behind and hit me with something. I don't know specifically who hit me. I don't even think Berry was the one who hit me. I ain't even sure Berry was even there when this happened. It might have been the dude that opened the door for me or it might have been somebody else gambling. Like I said, there were four or five cars out back, a car on the side and a car in the front. I'm not sure who hit me. All I know is I'm still tussling with Rector and now this other

dude.

Q Okay. So what happened after that?

A We going at it. I mean, it's a brawl. But the other dude that came in, he keep hitting me. He keep hitting me up side my head.

Q Did you ever see that person?

A I seen him, but -- put it like this, I know it wasn't Berry. I know it wasn't Berry.

Q How long did all that go on?

A Oh, man, I want to say about a minute or so. But while this tussling is going on, I'm protecting my head. I'm protecting my head and I'm wrestling with Rector, trying to get away from Rector and trying to get away from the other dude at the same time. That's how I end up getting my hand all broke up trying to protect my head. I noticed one thing they said in the case, they said I had --

MR. WESTON: Objection, Your Honor.

THE COURT: What's your objection?

MR. WESTON: First of all, this is not responsive to the question of how long this has been going on. Secondly, he's getting ready to say one thing somebody else said and respond to that.

THE COURT: You can't testify as to what someone else told you. I'll ask you to -- I'll ask

you to repeat your question and for you to respond directly to your attorney's question.

BY MR. CHAMBERS:

Q How long did this go on where you were you were getting hit in the head?

A I would say about a minute or so.

Q All right.

A It couldn't have been -- it probably wasn't even a minute.

Q And, uh, during this time, you were trying to protect yourself as you were getting hit in the head?

MR. WESTON: Objection, Your Honor, leading.

THE COURT: Sustained.

BY MR. CHAMBERS:

Q Were you trying to protect yourself as you were being beat in the head?

A Yes, sir. I was protecting my head.

Q And how were you doing that?

A Holding my hand over my head.

Q And at some point, did you lose consciousness?

A Yes, sir. While we was -- the fight started somewhat --

MR. WESTON: Objection, Your Honor. The question was at some point did you lose consciousness. It's a yes or no.

MR. CHAMBERS: He's allowed some leeway to answer the question. It's my question after all.

MR. WESTON: And the question requires a yes or no. It's a "did you lose consciousness".

MR. CHAMBERS: I'm not asking him a yes or no, Your Honor. He's allowed to answer my question in full. You know, if we're going to have an objection every time I ask a question, we're going to be here forever.

MR. WESTON: If he's not going to be responsive, Your Honor, he's right. We will be.

THE COURT: All right. All right. I'm going to ask you to repeat your question.

Mr. Byrd, I want to be real clear. I want you to answer the question that your attorney ask. Alright?

THE WITNESS: Yes, sir. I lost consciousness ---

THE COURT: Okay.

THE WITNESS: --- during the scuffle.

BY MR. CHAMBERS:

Q And do you have any idea how long you were unconscious?

A No, sir.

Q Uh, were things -- where were you when you

regained consciousness?

A I passed out. I think I was in the kitchen. When I came back is when I was like this laying like in the den area where all the blood is at.

Q Was anybody there when you woke up?

A When I came back to, my head was split open. I got all this blood in my eye or whatever. I really can't see. I can see but I can't. At the same time, I'm incoherent.

MR. WESTON: Objection, Your Honor. Again, he asked him was anybody there when he woke up. He is far afield from that. He's not even answered that question yet.

THE COURT: All right. I'll direct you to answer that question, but I'm not going to strike his testimony.

THE WITNESS: When I --

BY MR. CHAMBERS:

Q Was anybody there when you woke up? We'll get to your condition in a minute if we can.

A When I came back to, I think that's when the officer was coming in the house.

Q And what was your condition when you woke up? How did you feel?

A I don't even know how to describe it.

Q Describe it the best you can. Be as detailed as you can.

A I know I was incoherent. I'm laying down. My hand broke. My hand hurting. My head hurting. I'm hurting from all these other blows on my body or whatever. I'm just man down.

Q Are you bleeding?

A Yeah. A lot of blood. Blood everywhere.

Q Are you bleeding from anywhere other than your head?

A Well, the cut on my shoulder. But I had on a pretty nice jacket or whatever. So that really went to much of nothing right there.

Q Other than the officer when you woke up, did you see anybody else?

A No, sir. I ain't see nobody else. I really didn't -- I really didn't see the officer. The only reason I know that the police was in there I could hear the walkie-talkie. I remember hearing the walkie-talkie.

Q Do you remember the police officer talking to you?

A He had to be -- he was saying something to me. I mean, the whole time I'm telling you, I'm incoherent. I'm laying there.

Q Were you talking?

A I don't remember saying nothing at that time.
Q Did you -- were you trying to get up?
A Oh, no, sir. Game over.
Q You say you could hear the walkie talkie. That's how you knew the police were there. Tell us from that point on what was going on, what you could hear, what you could see.
A I don't remember specifically what happened. All I remember was he might have been giving me some orders. He was saying something to me, but I'm telling you, I'm laying there. I might be trying to move around just a little bit, but I'm not trying to get up or nothing. I'm just -- I'm coming back to. I'm kind of rolling around a little bit. That's when I get tased.
Q All right.
A Or the first time I got tased.
Q How were you laying when you were tased?
A I was on my stomach, but I was probably kind of slightly rolled over to the side, my right side.
Q Okay.
A I got hit right there.
Q So you got hit with the taser. You had those prongs that went into your skin. Where did they go into you?
A Somewhere around in here somewhere.

Q Did he tase you a second time?
A Yes, sir.
Q Did those prongs go in in the same area?
A I think so. I'm pretty sure.
Q Okay. Did you ever get up?
A No. When I got up is when I got cuffed and got picked up. I never got up on my own.
Q And was the first officer that came in the one that handcuffed you or did another officer -- was there another officer there?
A Another officer came later and handcuffed me.
Q All right. And after you were handcuffed, what did they do with you?
A I think both of them got on both sides and helped get me up and helped walk me out the front door and down the steps. By the time we got to the end of the driveway, the ambulance was there and I sat on the car or whatever. I think they handcuffed me to the car and put me in the back of the ambulance and took me to the hospital.
Q All right. And how long were you at the hospital? Do you recall?
A I got out the next morning. Yeah. I don't know. About seven or eight hours. Somewhere around there.

Q Did one of the officers go with you?

A It had to be one of them there. But, I mean, when I first got there, they was doing all type of, uh, I guess tests or whatever on me. So I never had no interaction with no officer when I got to the hospital.

Q Did -- I don't want you to get anything the doctor may have told you or anything, but what were the injuries that you have?

A Uh, numerous lacerations to my head. I didn't have just no one. I had one over here. One over here. One back here. One up here. It wasn't just no one. It was all over.

Q Were there any other parts of you that were injured?

A My hand had four or five fractures in it from me protecting my head and shoulder.

Q And when you were released from the hospital, were you placed under arrest at some point?

A Yes, sir. They brought me to the county after they stapled my head up.

Q Did you ever tell the police that you broke into that place?

A No, sir. I never said nothing like that.

Q Did you break in?

A No, sir.

Q Did you break any glass at any doors or anything to come in?

A No, sir.

Q What again was your reason for going there?

A Like I said, I was going by there to see my homeboy Goat or somebody else I might know there. I done been there on several occasions.

Q Did you bring this tire iron?

A No, sir.

Q You ever seen this?

A No, sir. Not before today.

Q Have you ever held this in your hand?

A No, sir.

Q Do you believe this is what you were hit with?

A I'm not even sure.

(WHEREUPON, Defendant 3 is marked for identification purposes.)

BY MR. CHAMBERS:

Q I want to show you what's been marked as Defense Exhibit 3 for identification and let me show the Solicitor before I show it to you. (Pause.)

Is this a picture of you?

A Yeah, that's a picture of me when I got to the county that morning.

Q And that's what was referred to as a booking

photo when you were arrested?

A Yes, sir.

Q What is that that's on your head?

A That's a head wrap to cover up the staples or whatever.

Q Are there any bruises or marks or anything on your face?

A I might have had that little slight scratch right there, but that's all it was.

MR. CHAMBERS: Your Honor, I want to introduce into evidence what has been marked as Defense Exhibit 3.

THE COURT: Any objection?

MR. WESTON: No, ma'am, Your Honor.

THE COURT: All right then. It is so admitted.

(WHEREUPON, Defendant's Exhibit 3 is admitted into the record.)

BY MR. CHAMBERS:

Q Uh, when you were hit with the taser prongs, did it leave any marks on you?

A Yes, sir. It's still right there.

MR. CHAMBERS: Your Honor, with the Court's permission, I would like to have my client come down to where the jury can see him and remove his shirt.

THE COURT: All right.

MR. WESTON: No objection, Your Honor.

BY MR. CHAMBERS:

Q Stand right here. If anybody can't see, I guess you can move closer.

A (Witness complies.)

Q First of all, show the jury where the scar is from where you were, uh, knocked into the glass.

A Right here.

Q Where is it that the taser prongs went in?

A Right there.

Q This spot that's right here?

A Yeah, those two right there.

Q So that's where you said the -- when you were laying down and you were kind of to your side?

A Yeah. I might have even been laying forward on my stomach. I know I wasn't up or nothing.

Q Okay.

A I never got up.

THE COURT: Can all members of the jury -- are you able to see that? Okay. Why don't you show it to them again.

THE WITNESS: Right there. Those two. Those two right there. I'm talking about this right here.

BY MR. CHAMBERS:

Q Okay. You can put your shirt back on and have a seat.

A (Witness complies.)

Q Bryan, do you have a prior criminal history?

A Yes, I do.

Q In fact, you have at least two prior burglaries, is that correct?

A Yes, sir. I do.

Q You have several other felony convictions that are on your record?

A Yes, sir.

Q Were you there at that house to commit a burglary that night?

A No, sir.

Q That's all the questions I have. Please answer any the Solicitor has for you.

THE COURT: Mr. Weston?

MR. WESTON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WESTON:

Q Mr. Byrd, let's start with a little bit of background here. Are you saying that you didn't know James Rector, the gentleman seated in the back back there?

A I don't know him.

Q But you knew Berry Butler seated here in the gray shirt?

A I mean, a little bit.

Q You had seen him seven or eight times you said?

A Yeah. I mean, I ain't seen him just there. I seen him around the hood too. I know Berry when I see Berry. Berry know my name Byrd.

Q You know Berry real well? I mean, well enough to --

A I don't know him like that.

Q He calls you Byrd?

A Yeah, that's my name Byrd.

Q And you call him by his first name?

A Berry. Everybody know Berry.

Q All right. You don't know Officer Metcalf?

A No.

Q You don't know Officer Derosa?

A No, sir.

Q You never had interaction with either one of them as far as you can remember?

A Yes, sir.

Q All right. You deny saying to Officer Metcalf, as he testified, this is a gambling house, that's why I broke in. You remember not saying that?

A Yeah, I remember not saying that.

Q But you were incoherent and you don't remember what all you were saying is what you told your attorney earlier?

A Yes, sir.

Q But you remember specifically not saying that?

A I know I ain't said nothing like that.

Q You said you don't remember exactly what you said cause you were incoherent.

A I probably wasn't saying too much of nothing. I just got my head split open and I'm getting tased by the police.

Q Let's talk about this tasing. You were laying flat on your stomach complying with the police officers instructions the best you could, right?

A I wouldn't say complying. I wasn't doing too much of nothing. I'm laying there. Man down. Ain't no complying or not complying.

Q You weren't doing anything to resist?

A No, I wasn't doing nothing.

Q You have any idea -- tell this jury why you think he would have tased you twice.

A Cause one of those two told him I may have a firearm.

Q So he tased you as opposed to searching you is what you're telling this jury? Twice?

A That's what he did.
Q And he tased you right where? Stand up please.
A (Witness complies.)
Q Point to it, you don't have to take your shirt back off. Just point to it.
A Right in here.
Q You were laying on your stomach and he tased you here. Is that what you're telling this jury? From behind you.
A That's really from the side. If I'm laying down with my arms outstretched, you can hit him. You want me to demonstrate?
Q No, sir. I just did.
A Oh, okay.
Q Thank you. So when the officer says he tased you up here, he's lying?
A The mark don't lie.
Q When the officer said in his testimony under oath he tased you up here as he was getting up, he's lying?
A He got to be lying.
Q Okay.
A Where the mark at.
Q When Mr. Rector says as you were getting up, he tased you up here, he's lying.

A He done told more than one lie today. Hey --

Q When Mr. Butler says the officer tased you up here as you were getting up trying to resist him, he's lying?

A What you think, man?

Q I need a yes or no, sir.

A Yes.

Q They are all conspiring to lie against you?

MR. CHAMBERS: Your Honor, I'm going to object at this point. I wanted to let it go to give my client an opportunity to respond. But he is pitting witnesses at this point.

THE COURT: He's pitting, but he's answered the question.

THE WITNESS: Where's the mark at? Where the mark at? Did I show where the mark was at?

MR. WESTON: Your Honor, I'm going to object to him asking.

THE COURT: And I'm going to strike that. You can't ask the jury a question.

THE WITNESS: Okay. Okay.

BY MR. WESTON:

Q Do you believe that these three people and the other officers involved were in some sort of conspiracy?

A Do I believe? I know they was. Ain't no doubt

in my mind. Like I told you, this a gambling house, man.

Q And the officers are in on it?

A I won't specifically say that they are in on it.

Q You just did in answering my first question. I said do you believe these --

A I thought --

Q Let me finish my question, sir. I asked you did you believe these officers and these men conspired, and you said yes.

A I'm talking about this present situation with this whole burglary situation.

Q So you believe the officers are in on it?

A Yeah, as far as helping them cover up.

Q So this is a cover up?

A You think that tape real? Come on.

Q And it includes the police officers?

A I wouldn't say it specifically includes them, but they know what's going on in that house, man.

Q So when Officer Derosa got on this stand and said -- that's all right. I don't want to pit you against him. What was this friend girl of yours name that came and brought you there?

A Chauncey.

Q I'm sorry?

A Chauncey.

Q Chauncey what?

A I don't know her last name. I know she from, uh, Piedmont.

Q It's three o'clock in the morning. You coming from a club. You get a girl who you don't even know her last name to take you to a gambling house. Is that what you telling this jury?

A We on the way to her spot in Piedmont, man.

Q You told her to wait for you, you said.

A Yeah. I told her I'd be right back. I'm just going to get some cigars and see if my homeboy Goat there. Maybe get a couple of rubbers or whatever cause I ain't had no condoms on me. I'm leaving the club.

Q You deny pulling the prongs out?

A I never pulled nothing out. Matter of fact, I only got tased once but shocked twice.

Q You remember the letter you sent me back on June the 21st of last year?

A I wrote you.

Q All right. Let me ask you something. I only have a couple of more questions and I'm going to leave you alone. Is this the letter?

A Yes, sir.

Q I want you to look at the second page. Third

page. I'm sorry. You see where I got a staple right there. Put it up on the counter here please. You see where I got that staple. I got that. Would you read out loud what you said to me in that letter word-for-word so the jury can hear you?

A (No response.)

Q Just read it, sir.

A I don't know who Berry Butler --

Q Read -- excuse me. Speak loudly so they can hear you.

A I don't know who Berry Butler --

Q Excuse me, sir. Could you please speak up?

A I said I don't know who Berry Butler is and he don't know me, but I don't think he was there when this went down.

Q I don't know who Berry Butler is and he don't know me. That's what you said back then, isn't it?

A Yes, sir.

Q But now you know Berry Butler?

A I do know Berry.

Q Y'all on a first name basis now, aren't you?

A No, we not on no first name basis.

Q In June of last year, you didn't know who Berry Butler was; did you?

A That's what I said in the letter, but I --

MR. WESTON: Nothing further, Your Honor.

THE COURT: Mr. Chambers, any other questions?

REDIRECT EXAMINATION

BY MR. CHAMBERS:

Q Explain what you were about to tell them about what you wrote in the letter.

A Ain't no telling what kind type of defensive ploy I was trying to get at with that whole letter, but I do know Berry. I don't know what I was writing about. If I read the whole letter in full, I probably know what my defensive strategy was.

Q You wrote -- you wrote -- you wrote the Solicitor a couple of times?

A Yeah. I wrote him a couple of times.

Q Did you have some concerns as you were preparing for your case because you kept getting assigned new lawyers?

MR. WESTON: Objection to relevancy, Your Honor.

THE WITNESS: Yes.

THE COURT: I'll allow it.

BY MR. CHAMBERS:

Q Did you?

A What was the question again?

Q Did you have some concerns about --
A Oh, yeah. I had a lot of concerns.
Q Cause you kept getting different lawyers. How many lawyers have you had in total on this case?
A Three.
Q All right. Did that cause you some concerns?
A A lot of concern.
Q And is that the reason for you writing these letters to the Solicitor?
A Yes, sir. I wrote more than him. I got an investigation started while --

MR. WESTON: Objection, Your Honor.

THE COURT: Yes, sir.

MR. WESTON: He is -- that's not responsive. He's starting to talk about a whole bunch of other things that are not responsive to the question.

THE COURT: All right. I ask you to respond only to the questions asked of you.

BY MR. CHAMBERS:

Q Is your testimony today truthful?
A Yes, sir.
Q All right.

MR. CHAMBERS: That's all the questions I have, Your Honor.

THE COURT: Mr. Weston, any other questions?

MR. WESTON: A couple of questions, Your Honor.

THE COURT: Yes, sir.

RECROSS-EXAMINATION

BY MR. WESTON:

Q So what this was is a defensive ploy? That's your words.

A I don't know what I was thinking about when I wrote that. But --

Q Were you on drugs?

A No.

Q You were in the detention center.

A Yes.

Q You weren't on drugs or drunk?

A No.

Q You hadn't been beaten and incoherent. You knew exactly what you were doing when you wrote that. You may not remember now why, but you knew exactly what you were doing when you wrote this letter, didn't you?

A Yeah. It was a purpose for me putting that lie in there. Trust me.

Q And there's no purpose for you to lie today to keep from getting convicted of burglary?

A Put it like this. I know Berry. Berry know my name Byrd.

Q Even though he said he didn't know you. You said you didn't know him.

A If that's the case, how could I draw his whole house then? Explain that.

Q I'm sorry, sir. What I say isn't evidence. I can't answer your questions. I apologize. I'm sorry about that. You admit that in October of 2004, you were convicted of Burglary second degree?

A Yes, sir.

Q In October of 2004, you were convicted of another count of burglary in the second degree?

A I guess so. I don't --

Q You don't remember how many times you been convicted of burglary?

A I mean, I know I got some burglary convictions on my record.

Q Okay. In addition, in October of 2004, you were convicted of Grand Larceny; weren't you, sir?

A Yes, sir.

Q In October of 2004, you were convicted of another felony that carries more than one year; weren't you, sir?

A Yes, sir.

Q You were convicted of another grand larceny; weren't you, sir?

A Yes, sir.

Q And you were convicted of another felony that carries more than one year; weren't you, sir?

A Yes, sir.

Q And you were convicted of another grand larceny; weren't you, sir?

A Yes, sir.

Q And you were convicted of another felony that carries more than one year; weren't you, sir?

A Yes, sir.

Q And you were convicted of another grand larceny that year; weren't you, sir?

A I was convicted of a lot of stuff in 2004.

Q Let's talk about 2007. In 2007, you were convicted of another felony that carries more than one year; weren't you, sir?

A Yes, sir.

Q In 2009, you were convicted of resisting arrest; weren't you, sir?

A Yes, sir.

Q Why should we believe you? Why should we believe anything you say?

A Cause I'm telling the truth.

Q But you lied in the letter you sent to me when you said you didn't know Berry Butler?

A Yeah.

Q On purpose, you lied to me. But you are telling this jury the truth?

A Yeah, I lied to you on purpose.

MR. WESTON: I don't have any questions, Your Honor.

THE WITNESS: I do know Berry though.

THE COURT: Mr. Chambers, any other questions?

MR. CHAMBERS: No questions. No questions, Your Honor.

THE COURT: Sir, you can step down.

Mr. Chambers?

MR. CHAMBERS: Defense rests, Your Honor.

THE COURT: All right. Uh, Mr. Weston, do you anticipate any -- anything else?

MR. WESTON: No, ma'am, Your Honor.

THE COURT: All right then.

Ladies and Gentlemen, we have come to the end of the testimony and evidence in this case. When you return from your lunch break, you will hear arguments from the attorneys, final arguments on the -- from the attorneys and you will hear my charge on the law. At that point, the case will be in your hands to decide this afternoon.

Ladies and Gentlemen, we're going to take a break until 2:15. I'm going to ask you to be back in your jury deliberation room at 2:15. At that time, we'll begin, as I said, closing statements. Please don't discuss the case with anyone. Thank you so much.

(WHEREUPON, the jury exits at approximately 12:46 p.m.)

THE COURT: All right. Let's talk a little bit about the charge. Pretty much, my charge is just standard from the charging book. Let's talk about the burglary charge itself. I know that, uh, you already stipulated to the two burglaries. What about use of a deadly weapon? Are you all -- is the State asking for a charge on that other than --

MR. WESTON: No, ma'am, Your Honor. That's not -- we neglected to put that in the indictment.

THE COURT: Okay. All right. Okay. All right. All right. Then we won't go into that.

(Pause.)

I normally -- y'all might -- I might have already talked to both of y'all about this before, but I've been sending my written charge back to the jury. It's worked really well. It cuts down on the questions a great deal. I give an instruction on how

to use the charge, that you can't pick and choose parts of it. You got to look at it as a whole. If either of you have any objections to my sending my written charge back, I'll certainly hear from you.

MR. WESTON: None from the State, Your Honor.

THE COURT: All right.

MR. CHAMBERS: I don't have any objection to that, Your Honor. And for the record, I want to renew my motion for directed verdict.

THE COURT: All right. Thank you, sir. It's noted and respectfully denied. Anything else we need to take up before we reconvene?

MR. WESTON: Nothing from the State, Your Honor.

THE COURT: Anything from the defense?

MR. CHAMBERS: No, Your Honor.

THE COURT: See y'all back at 2:15.

(WHEREUPON, a lunch recess is taken.)

THE COURT: Are we ready to bring the jury back in?

MR. WESTON: Yes, ma'am, Your Honor.

THE COURT: All right.

(WHEREUPON, the jury enters at approximately 2:24 p.m.)

THE COURT: All right, Ladies and Gentlemen.

I hope that you all had a good lunch. We are now to the argument portion of the trial. After that, I will charge you on the law and then the case will be in your hands.

Mr. Weston? I'm thinking I'm in a civil case.

Yes, sir.

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

Solicitor.

Ladies and Gentlemen, you've heard all the evidence you're going to hear. And in a few minutes, you're going to do what you were brought here to do, and that's go back and discuss what the facts are in this case and come to a verdict. As you were told from the outset, the Solicitor has the burden of proof to prove beyond a reasonable doubt that Bryan Byrd is guilty of burglary first, specifically that he went to the home back in April of 2011, April 16th, 2011 of Berry Butler and broke in with the intent to commit a crime therein. And you have to decide if they have proven to you beyond a reasonable doubt each and every element of that offense.

As you do that, folks, I want to go back to something I said to you at the beginning. I want

you to think through out this does this make sense to me. Does it make sense? If something doesn't make sense, then it probably didn't happen the way that you're being told that it happened. And if that's the case, then you got reasonable doubt.

So let's start with the very premise of this whole thing to begin with and that is that Bryan Byrd, at 3:30 in the morning, just shows up at some random house. Now, we are led to believe by Berry Butler and James Rector that they didn't know Bryan Byrd. Neither one of them ever laid eyes on him before and that he had never been to their home before. Of all their houses in Belle Meade that he could have picked at 3:00 to 3:30 in the morning, the one that he picked apparently to burglarize was one that he had never been to before with no apparent reason to go there.

You had to further believe that at 3:00 to 3:30 in the morning, he walked up on the front porch, climbed up those five steps onto this raised porch, knocked on the front door and then heard the voice of a man say who is it. Then after hearing and knowing that there was a man who was awake and home, mumbled something, walked off the front porch, apparently walked around the house, broke open a

side door off of a screen porch and walked in, apparently to rob him armed with nothing more than a tire iron.

Now, I would submit to you that that in and of itself, none of that makes sense. It just doesn't make sense. It doesn't sound like somebody who really planned on what is essentially a home invasion, the kind of thing that we all heard about that somebody would try to pull off.

First of all, to go rob somebody, you have to think that they have something. And if they are true to their word, this is not a gambling house. This was not anything where any elicit activity was going on. There wouldn't be any reason for anybody in the world to think that that was a place to rob. On the other hand, I guess if it was a gambling house, it could certainly be argued that that would give him the incentive to go and burglarize it. But knowing that that sort of thing is going on, would you walk in there already knowing that there is at least one man at home and awake, walk in there with a tire iron in your hand not know whether they had a gun, I would think expecting that they had a gun unless you were armed yourself. It doesn't make sense.

Sir, it doesn't make sense.

You have to start looking at who is telling the truth in this case. Okay. More importantly, do you believe beyond a reasonable doubt that the people put up by the prosecutor are telling you the truth? It's not merely just a contest between who you believe the most. That's what we talked about in a civil case. Here, you have to believe beyond a reasonable doubt that what they told you is true and that it adds up to establish the crime in this case.

So let's look at what each one of these witnesses have to tell you. There was a lot of difference. There was differences in what the two witnesses said, not only at the time they testified on the stand in court yesterday and today but big differences between what they said on the actual day this happened and when they testified in court.

You always know when a prosecutor thinks he has problems when he is trying to explain away discrepancies, when he is saying to them things like, well, you didn't write that statement down yourself, did you? That's something the deputy did. He realizes that there are some real important details that they got wrong and that are inconsistent, not only with one another but from

their statements on that day and their statements when they came in here to testify.

Why does that matter? I mean, yeah, it's true, we can get a few details wrong here and there. But think about it. If something, the way that they described really happened to you, don't you think you'd be able to remember the details? And certainly, wouldn't you be able to get them straight? When do people have trouble keeping things straight? When they are lying. When you got two people trying to tell the same lie, it gets even harder. That's when you have to start looking at the circumstances to see whether what they are telling you, even with all these inconsistencies isn't corroborated in any way.

Let's start out. Like I said, we already got this backdrop. This whole thing doesn't make sense anyway. There's usually a reason for that. Let's start out with this notion that Bryan Byrd never been in that house before and that they didn't know him. That is absolutely false. How do you know that? Defendant's Exhibit 1.

Y'all get to look at that, Defendant's Exhibit 1. Proof positive that Bryan Byrd was familiar with that house, had been there more than once and

probably knew the person or people who were at that house. He told you nobody lived there. It was just there. We didn't hear any evidence to the contrary other than them saying he lived there. You didn't hear about anything being in the bedroom or anything like that. You don't see any pictures of anything like that.

We know that this is reliable for a couple of reasons. One, because when Berry Butler was on the witness stand, one of the first things I did, I came over here and I said, all right, Mr. Butler, I want you to take a look at that diagram. Does that look like a diagram of your house? Yeah. Is that an accurate diagram of your house? Pretty much. He said there is a couple of things here and there that might be a little different, but that is an accurate diagram of my house. He testified to that.

If you don't remember it, this young lady over here took down everything that was said. You can come back in here and she will play that testimony for you if you don't remember it. But I suspect that you remember it. You remember me coming over here and showing that to him. I suspect that you remember it.

Then, Bryan took the stand and he told you

yeah, I did that and I dated it August 24th. I signed it. I had it notarized. The bottom line is Berry Butler corroborated. This is drawn from memory a diagram of this house.

So as you listen to everything else that you're going to hear and as you go back and deliberate, you ask yourself how could anybody draw from memory a diagram, a correct diagram of a house that they had never been to. Certainly couldn't have done it having busted through the door and getting into this immediate scuffle with everybody where he got his brains beat out. It would have had to have been because he had been there, as he said, on at least seven or eight occasions before. I almost don't want to go any further. That proves that he had been there and that proves that they are lying and that ought to be enough right there to raise reasonable doubt. But folks, there's a lot more. There's a lot more.

Now, this is where the inconsistencies come in. Berry Butler said on the witness stand that after he heard the knock at the door, he then was alerted, he went back and sat down on the couch, which I find odd anyway. Somebody knocked on my door at three o'clock in the morning, I'd be trying to figure out

what the hell was going on. But he went and sat back down on his couch and started talking to his friend.

Then they saw the light come on in the back. So he said he got up. Walked to the back kitchen door looking outside. And he says, on the witness stand yesterday, that I saw somebody out behind my house. And they were walking around out there for several minutes. I said you mean just wandering around aimlessly? Yeah, just wandering around the cars, just wandering around out there. I couldn't really tell what he was doing. Then I saw him walk. Right after that is when he heard somebody come through the door.

That is when he says that he made the 911 call. That's when he says he made the 911 call. You get to listen to that. I want to point out a couple of things about that 911 call that ought to give you some question. I'm sure the Solicitor is going to say it was all right there on the phone. You could hear it happen. Well, you don't know what you would hear.

You heard him call. You have no way of knowing when that call was made. You have know way to know when that call was made. You don't know what was

any of that noise in the background. The only voice you could hear was the voice, supposedly of Berry Butler. He said it was his voice. He was saying Come on, come on. Then you hear what sounds like some scuffling and stuff going on.

What you don't hear, what you don't hear is what they say that Bryan was saying that he came through and he never stopped talking, that he was saying things like give up the cheese, man, and I got some friends outside or I got a buddy outside or whatever it was he was saying. He was shouting all these cuss words, just carrying on. You don't hear any of that.

And then sort of inexplicably, the phone goes off. He says I don't remember. Strangely, I might have just turned it off and put it in my pocket which would have been a strange thing to do if somebody was waving at you with a tire iron in his hand. That's probably because it didn't happen that way. You can listen to it.

Strangely, when he does call, he says to the 911, she wants to know where he is. It sounds like -- I couldn't quite make it out. Either McDonald's or McDowell or something like that. But nothing at all like Woodmont, [redacted] Woodmont Circle. I'll grant

you, if somebody says is that Woodmont Avenue, you might get that wrong. I'm not going to nitpick but you're not going to say McDonald's or McDowell. To try and excuse that away as just being nervous is just wrong.

More importantly, what he testified to on the stand contradicts what he said to the police officer, in fact, contradicts what he and James Rector said to the police officer about that 911 call. If you remember what he said in his statement, which I went through line by line with him on the witness stand was, uh, he came -- he was coming at me. He swung. He hit me on -- this is Berry Butler -- hit me on my arm. After that, my friend grabbed him. We took the crow bar away from him and hit him with it until he went down. Basically, he went down and then it was over. And then I called 911. That's what he said. Then I called 911. Not beforehand. Never mentioned anything about beforehand. That's important.

But why would they change it? Because they realized after they listened the 911 call, -- the Solicitor lets them listen to it -- it doesn't sound right. It doesn't sound like when the call would have been made. So they had to fix it. Then you go

back and say, well, you know, I'm just so shook up. You remember that. You remember that. You remember that.

He said I punched him. I was punching him in the face and we scuffled. But all of this was supposed to be taking place in the area of the door that he referred to as the den. It was basically just all one big room in the kitchen, but not back in the kitchen itself. He said we scuffled.

In his statement, he says pretty much we beat him until he went down, which makes sense, you know, if you think about it. If you just beating on somebody, they probably would go down and especially if you are accompanied by a 300-pound friend sitting on them.

Here's the other thing that's strange and sort of unbelievable. Ask yourself does that make sense. They supposedly get him down on the ground and are holding him down and then call 911 and are waiting on the police. And yet, now -- and there's a difference here again between the statement on that day and the testimony. Berry Butler says when he testified that when I heard the police pull up I got up and walked out and my friend stayed there holding him down. In his statement, he just said I

walked out and waited for the police and waited for the sheriff. That's what he said.

Again, if you don't remember any of this, if you get back there and somebody says I don't remember all that, you can listen to the testimony. She's got it. He says I walked out and waited for the police. I don't know about you but if really I had had to scuffle all over the house with somebody the way they said they did with him and I finally got him subdued, I would be real upset if the other guy walked out and left me sitting.

Here's what's even stranger. When the police officer gets there, when the sheriff's deputy gets there, he says that Berry Butler is out there waiting for him, not that he's walking out the door but he's out there. He can't remember for sure, but he might even have been off the porch. Down off this porch with the five steps.

Then when he walks in, this is even stranger. This person who they said was never unconscious, who continued to fight and struggle and tried to get away, remember, they testified to that, that with all that, then when the sheriff's deputy walked in, Rector was seven to eight feet away from him and the tire iron was on the floor. Does that make sense to

you? Does that make sense to you that this person who they say continued to fight and struggle and never give up? Does it make sense to you that if he was in a condition to fight and struggle and never give up, that when they got up off of him, he wouldn't have tried to make a run for it? Why not? Nothing good had happened to him at any point up to then. Why not try to get away?

When the police officer walks in, he's real clear about that. That's what he saw, Rector seven to eight feet away, tire iron on the ground, and he walked up to him and he said that he didn't comply and he tried to get up. I give all the deference in the world to police officers. I hope that nothing that I said or done here is something that y'all are going to construe is that Randy Chambers is anti-police. They do a very important job.

With that said, that doesn't mean that everything that's testified to by police officers when they come in here is completely accurate. That's not to say that I think they are lying. It's just to say that sometimes in the heat of a moment they may do things that in the calm reflection of hindsight, they probably wouldn't have done.

Here's what I mean by that. This is important.

It may have seemed like a minor thing when we were talking about it earlier, but the second officer that came in, Derosa, testified that he was the one that handcuffed Bryan Byrd. And he said that Deputy Metcalf told him that based on information that he had been given that he might have a firearm. That's reason enough to tase somebody if you thought they had a firearm.

The Solicitor laid down on the floor to demonstrate how he couldn't have been hit in the chest and all that kind of stuff. The testimony that he got hit in the chest came from the police officer. The testimony that he got hit in the chest then came from, I think, Mr. Rector. But what Bryan told you was it was kind of in that area but it was in my side right here. Guess what? He stood up, took his shirt off, came over here and showed you where the prongs went in. Then he walked down here so that all of you can see where the prongs went in. To quote Bryan when he testified, the marks don't lie. They didn't bring anything.

I would think that if you were going to tase somebody -- and so that you know what this is, it's actually metal prongs that goes into somebody's skin and penetrates the skin and then they send an

electric current through there. That's going to leave a mark. You saw the mark. You saw the mark. All of you got to look at it. It corroborates what Bryan said. What they said is not corroborated. What he said is corroborated.

Mr. Rector testified that -- and his was again a little bit different, both on that -- from what Butler said and from what he said in his earlier statement. He said that he heard the knock at the door, there was some discussion back and forth and then the person left and then they saw the light. He said that he didn't get up from the couch where he was sitting until he, until he heard the door open. That's when he stood up. He didn't come out from behind the wall.

It is important to note a couple of things that are inconsistencies. First, he said it took a long time. Think, about it if you're sitting there. Five minutes. Again, I will say we don't know if it was actually five minutes. I mean, people have a tendency in situations like that to make time longer than it is. But it is certainly an indication that it took a while as opposed to what Mr. Butler said which is that it's just a matter of seconds. At least that's what he said in his statement.

When he testified, he said that he walked right up behind that back yard aimlessly for a good long time. He said it took about five minutes before they saw that light go on. Then later on is when they heard that noise. But importantly, he said -- and this is based on the fact that his friend is talking to him -- that his friend didn't see anything. That's in direct contradiction to what Butler said when he said he saw the guy wondering around his back yard. He said he didn't see anything until he saw him go to that side door.

Here's the other thing. I asked him several times, because I'll be honest with you, I wanted to nail him down to this. He said that it was at the kitchen door. Right back there, all the way at the kitchen door is where Butler was standing, he said, when Bryan Byrd supposedly came in with this in his hand and charged at him. He said, and I asked him and I was giving him every opportunity to say something that was consistent with what Butler told you? Did Butler move toward it? No. So he was right back there at the kitchen door? Yeah. That's where it happened. That's where it happened.

Now, the Solicitor got up and said you're kind of hazy on the details, aren't you? Yes, sir. I

am. I'm hazy on the details. He didn't like what he said. He realized that that's a problem. These aren't minor details. These are two people trying to tell a lie and not being able to get it right.

Something else Rector said, and again, this is the detail. They always say the devil is in the details. I say the truth's in the details. Somebody's telling something and they are making it up, they tend to put their own kind of stamp on it. You know what I mean?

Here's what I -- here's what I mean by that. In his statement to the police, Rector said I was at my buddy's house. That was the word he used. I guess the reason that that stood out to me is Buddy sounds like a word that a middle-age white guy like me would use talking about one of his friends. It doesn't sound like a word that most young black men use. I don't mean that in any kind of racist way at all. I don't and I hope nobody takes it that way. It's just -- that's how it struck me. It wasn't the word that anybody else in describing this would use.

Then, what's funny though is that Rector says that when Bryan came in, he says I got a buddy outside. I asked him, cause again, this was an important point. I wanted to make sure I nailed it

down. Is that the word that he used? Yeah. He said buddy. Well, you got to hear from Bryan. Do you think he would have said I got a buddy outside? He may say it's insignificant. But again, I say the truth is in the details.

A couple of other things that are real important about what Rector said is, first of all, he said that -- and I got it down here to demonstrate. He said that he got up to Bryan. Bryan had already swung, he said. Had hit Burnett. I keep wanting to call him Burnett. Let's call him Berry. Had hit Berry and was about to swing again.

He said I got one hand and he demonstrated. One hand on his arm. Then I took the other -- the other, I took it away from him. I just took it away from him. I immediately started hitting him. He said it was kind of an all-in-one motion. I took it away from him and started hitting him.

He told the Solicitor because the Solicitor asked him about it. He said were you hitting him hard. Yeah. He said, and I wrote it down in big letters because it impressed me. He said I was trying to kill him, trying to kill him. Why is that important? It is important because you got these two people who testified and said this man never

lost consciousness. Never.

Now, Bryan testified and said I did lose consciousness. I don't know how long, but I did lose consciousness. I was in the kitchen last thing I remember. Then I woke up in the den, which is where the police officer came in. It was in that sort of den doorway area where the police officer said he found him.

And again, I want you to use your common sense. You've got somebody -- I don't care what size they are, but especially somebody as big and strong as that young man sitting back there, who by his own testimony is hitting you trying to kill you and he wasn't unconscious? Everybody talked about how bad that head wound was, that he was bleeding everywhere. He told you about also his hand and everything else. He fractured -- his hand was fractured from trying to protect himself putting it up on top of his head. That's how hard he was getting ahead. You got to ask yourself, who do I believe there. Who makes the most sense?

Again, and here's one of those details that I want you to think about. When you talk about do the fact corroborate what somebody is saying, when Bryan testified, first of all, he said, I want you to

think about what he said. He said I been there seven or eight times before, didn't know Rector. Knew Berry a little bit. We weren't friends or anything but I knew him. I knew him from going over there. First of all, we know that Bryan's telling the truth.

I'm going to take you back once again because I really don't feel like I can talk about this enough. This diagram. He had been there, folks. Berry corroborates that. Any notion that he had never been there, you can forget about. It is not true. It's a lie. There's no other way to characterize it. It is a lie because you have proof it's a lie. But the other thing is this, you've got both of these people, Rector and Berry both say in their statements that they gave originally that we hit him, he went down and it was over. Nothing about a scuffle. He went down and it was over. Berry even said I went out to wait for the police. But then after the fact, they see these pictures and they realize there's stuff all over the floor in this kitchen. There's stuff everywhere. That's the Solicitor's picture. In the living room den area, there's nothing disturbed. But man, there's stuff everywhere and there's blood everywhere.

Now, what did Bryan tell you happened? Bryan said I went over there. If the fact that he couldn't remember this young lady or didn't know this young lady's last name is important, then God bless you. I don't think it would be the first time that somebody met up with somebody at a club and didn't know their last name. Okay. I don't think there's anything unusual about the fact that she didn't stick around. Okay.

But be that as it may, he said he stopped, went in there, a place he had been before that we know. Okay. He said he went through -- walked around and went through the kitchen door and saw somebody getting a beer out by the refrigerator. All of that's back there by that back door. And he said that's when Rector appears and they start getting into it about this guy and then they do what young men sometimes do and they sort of got into a tussle with each other. He told you back there by that back door is where that tussle started.

Again, if you want to know if Bryan is telling you the truth, all you got to do is look at the evidence in this case and you will know he's telling you the truth. All right. First of all, he told you that in this scuffle I got thrown up against

that door and it broke a window and it cut me. He showed you the scar from the cut. They could very easily say -- and I can anticipate that's what the Solicitor's going to do -- well, we don't know where that scar came from. He could have gotten that anywhere.

Aha. You got pictures. You got pictures. What do you see folks with no other explanation in the world for it? You see the door covered in blood. Not a little bit of blood, a lot of blood. That door knob is covered in blood. That door jam and everything is covered in blood. This cabinet here is covered in blood. He's bleeding all over the kitchen which is where he said the scuffle was taking place and where he said that somebody then came up behind him and started beating on him with a tire iron. Right in there. Consistent with what he had to say.

Then he says, you know, they talk about how they hit him in the face. That's when he went down. You can look at the picture that was taken and you can see that there are no bruises or marks to his face as though he had been punched. But there is a very large bandage showing where he had been beaten in the head. So what he has said to you is

corroborated by the facts. All of their wild and inconsistent statements are not and furthermore don't make sense.

The Solicitor is probably going to say though he confessed. You got that. He confessed. Well, it's strange to me that the two other supposed witnesses didn't hear him say anything. They say they never left the room. They say he never stopped talking, but they didn't hear a confession about that. The officer says that he did. Maybe he heard something about a gambling house. Maybe he heard something along the words of breaking in. But folks, Bryan told you that he didn't confess to anything like that. Everything else he said has been corroborated by the facts.

I'll put it to you this way. You are talking about somebody who had been beaten senseless with a tire iron and had been tased twice before the officer said he said that. You would call into question anything that he would have had to say if he said it. Under those circumstances, if that's what happened, why wouldn't the officer just say that this -- why wouldn't you give him the opportunity to sit there and write it out the way you did the other two witnesses, to look it over and

say, yeah, that's accurate. That's what I said. They didn't do that. And you know what? They have the burden of proof. They make the case.

You know, we can't rely on anything that they tell you in this case frankly. I mean forensics were called out there, but did you hear anything about what they did. Did you hear anybody from forensics? You did not.

You heard that there was another police officer because when I was asking, uh, the lead deputy on the case about taking the statement from Berry and from Rector -- I took the one from Berry, I didn't take the one from Rector. So he said another officer did it. I forget what he said his name was. But another officer. Where is that officer? Did he not have anything to say? I mean, if he's taking statements from people, wouldn't you like to hear from him? I mean, they choose what they bring you. They get to decide. They have the burden of proof. You didn't hear it from -- we don't even know who he is.

We have this whole thing about he's supposed to have a weapon, a gun, a firearm. Where did that come from? Derosa certainly thought that that was a possibility. He wrote it in his report. Then he

had to testify to it when he came in here. We don't really know what they did out there. I can tell you one thing, they moved the evidence around. I think any of us know, even those of us that are laymen at this point that one of the things that you do as a police officer is you preserve the crime scene. We heard testimony from a couple of people that that tire iron was on the floor. Guess what? When you look through this pictures, where do you see it. On the counter. If you remember the testimony is where, uh, James said he put it. He said he put it on the counter. So when the police officer told you that he saw it on the floor, either he was wrong or somebody moved it. But we know that James Rector said that he put it on the counter.

So there's a lot wrong with this case, folks. I know the other thing the Solicitor is going to tell you is he's lying. Bryan's lying cause he said he didn't know Berry Butler. He sent me a letter that said he didn't know Berry Butler. And he did do that. He did do that. He told you that that was not correct. He testified when he took the stand that he did know. I -- you know, he said he didn't know if that was some sort of defense strategy or what.

But I want you to keep something in mind. I want you to keep something in mind. The Solicitor, you think this is a conspiracy and on and on. He wants you to think that this guy is crazy and that he can't be believed and all that. That's what all this is aimed at. Okay. But folks, ask yourself, even if you're somebody -- and they're going to talk about the fact that he had these prior convictions, that he's guilty of burglary in the past. And that is true. But none of that makes him guilty of this burglary that was supposed to have happened on April the 16th, 2011. That's not proof.

You can consider that for impeachment purposes just the same way that you can consider that James Rector was convicted of grand larceny and giving false information to police. But this young man, if you find yourself in jail charged with something you didn't do and you know people aren't telling the truth, you might start thinking that there is a conspiracy against you especially when you know what really happened. So bear that in mind.

And bear in mind as you consider whether or not he knew Berry Butler. I'll go through it one more time. The diagram, the detailed diagram of the house he was supposed to have never been in before

owned by a person or leased by a person, I guess I should say, that he was supposed to not know.

As we look at it -- and I'm going to wrap up, I promise. It's always harder for me to go sit down. I'm always worried that I'm going to leave something out. I'm always worried that there is something I should have said but didn't. I'm certainly worried about the fact that because he has this burden of proof that the Solicitor gets to get up after me and talk and I don't get to respond to anything he has to say. He gets to respond to everything I said. That's just the way it is because he's got the burden.

But as you look at this, first of all, like I said -- and I'm going to repeat myself just a little bit so bear with me. Does it make sense? Does it make sense to begin with that you would try to perpetrate a home invasion against somebody you know is home with nothing more than a tire iron in their hand. Does it make sense that there are all these inconsistencies between what was said on the day of the crime and the day of testimony and the inconsistencies between the two witnesses on both of those days. Particularly when it comes to when this 911 call that was made. Rector even saying that

there were two 911 calls. One before and one after. How do you get that wrong? And if he's right, where's the other 911 tape? I'd like to hear it. That he was subdued and then to come in later and say that he scuffled and none of the stuff that they say is corroborated by the evidence.

But you may say to yourself, but the door was broken out. Folks, they may have been trying to cover for the fact that they beat him near dead. So they make all this up and they do all this to cover. I don't know. But that's every bit as plausible, probably more plausible than what they are telling you.

What Bryan told you is at every turn corroborated by the evidence. He had been there. Corroborated by the diagram. He was hit and scuffled in the kitchen. Corroborated by the pictures. He was unconscious. I would put to you corroborated by common sense. He was tased here. Corroborated by the marks you saw on him. He was knocked up against the door and cut and then later was being beat in the head back there by that back door and all over the kitchen. Corroborated by these pictures that show blood everywhere.

Y'all get to talk about that. You get to

consider the evidence. You're going to apply the law that Her Honor is going to give you. I'm going to shut up and I'm going to go sit down. I appreciate you being here. It's an important day for Bryan Byrd. I know you are going to give due consideration and you're going to hold them to their burden, which is beyond a reasonable doubt. If any of you have any hesitation, if you get back there and you're not sure and you say to yourself this doesn't make sense to me, you're going to find, you're going to say he's not guilty. If somebody tries to talk you into it, you're going to say no, they got the burden and the facts don't bear it out. In fact, the evidence corroborates what Bryan Byrd had to say. So just remember that. It doesn't make sense. It doesn't make sense, folks. There's a reason for that. Thank you very much.

THE COURT: Thank you, sir. Let's take a five-minute break.

(WHEREUPON, the jury exits at approximately 3:08 p.m.)

THE COURT: All right. We'll be in recess for five minutes.

(WHEREUPON, a recess is taken.)

THE COURT: All right. Let's bring the jury

back in.

(**WHEREUPON**, the jury enters at approximately 3:30 p.m.)

THE COURT: Mr. Weston.

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

THE COURT: Yes, sir.

MR. WESTON: Your Honor.

You've heard all the evidence. In a few moments, the case will be yours to decide. At the conclusion of my remarks, uh, Judge Verdin will instruct you on the law. After that, you will go back and deliberate and decide what the facts of this case are.

With regard to the law, she's going to tell you you should take the law as she's given it to you. You've taken an oath to decide the facts of this case and determine the facts of this case based on the law that she will give you. I agree you should take the law from her. I would like to, at the beginning of my closing argument, kind of just point out a few matters that I think she's going to take up with you about the law and I'm going to ask you to pay particular attention to.

She's going to tell you that the State has the

burden of proof. The verdict has to be unanimous. She will give you the definition of reasonable doubt. As Mr. Chambers said in his opening statement that I agree with him wholehearted, we're not required as the State to prove the case beyond any possible doubt, only beyond a reasonable doubt. I agree that's more than a preponderance of the evidence or more than 51 to 49 percent, but it is not an absolute. It is a doubt that you can assign a reason to. I don't think he's guilty or I don't think they proved the case because it's a doubt that would make a reasonably prudent person strong in their beliefs hesitate to act. Simply, I'm convinced his guilty.

She's going to tell you about the credibility of witnesses and that you as the jurors have the responsibility for deciding whose telling the truth and whose not. She's going to tell you that you can believe all of the witness' testimony, none of the witness' testimony or part of the witness' testimony. She's going to tell you you can believe one witness over five or six, but credibility -- and I want you to listen carefully to it because credibility is important here.

With that backdrop, let's talk about the

evidence in this case, the evidence I believe the State has presented that should convince you beyond a reasonable doubt that this defendant on the morning of April 16th, 2011 at about 3:00 or 3:30 in the morning entered the home of Mr. Berry Butler without his consent with the intent to commit a crime. That's burglary.

As you heard Her Honor tell you at the conclusion of our case, there's been a stipulation by the defense that Mr. Byrd has two or more prior convictions for burglary which means that if you find that he committed this burglary, it's Burglary in the First degree because of that. However, the other predicate for Burglary First, in the nighttime, is clearly satisfied. There is no question this happened at about 3:00 or 3:30 in the morning. It happened at night. So in short, there's no question that this would be a Burglary First if you find that he committed a burglary.

Now, taking out the predicates. Two or more prior convictions. Satisfied. Stipulated to. Nighttime. No question. That leaves us with, did this man enter that man's home, his dwelling, without his consent with the intent to commit a crime. Let's talk about the evidence that we put

forward.

First, you heard from Mr. Butler. He is an employed resident of Greenville who said I don't know that man from Adam's house cat. I never met him before. I don't know him. He had not been in my house as far as I knew. I was at home at three o'clock in the morning with my friend minding my own business when somebody knocked at my door. I went to the door and they mumbled something. I told them I think you got the wrong house. The same thing most of us would have said. I went and sat back down and watched TV with my friends.

Contrary to what Mr. Chambers said, I guess all of us don't react like him. I might not have gone and sat right back down. I might have made sure he left my yard. But does that mean he's lying because he didn't react the way Mr. Chambers wanted him to react as a homeowner? He then said I heard -- I saw the motion sensor light go on. I got up. I called 911. I heard somebody -- I saw him or somebody walking around the back of my house.

Y'all heard the 911 tape. He'd have to be Denzel Washington to fake this. This was somebody calling 911 to report exactly what he told you on this witness stand was happening. While he was on

the phone, both Mr. Berry and Mr. Rector heard something moving on the back patio, the latch being broken on the patio door or something to that effect. At which point, that man came through the window with this tire iron and tried to rob him. Give up the bread. Give up the lettuce. Give up the cheese. Whatever it was. But he basically was saying I'm trying to rob you.

I'm not going to talk about the physical evidence right now. I'll get back to that in a few moments. Tiny did he realize, as I said in my opening, that there was somebody else in the house. Came up behind him and the two of them subdued them. I don't know whether it was appropriate for Mr. Rector to say to y'all I was trying to kill him, but I ain't mad at him about that. If somebody's coming into my house trying to kill me, then they get what they get. They get this. I'm glad Mr. Byrd is not dead.

But Mr. Chambers mentioned in his opening about the rights of Mr. Byrd. He has rights as a defendant. But don't we have the right to be secure in our homes? Aren't we tired of home invasions? Mr. Chambers says who would rob a house with a tire iron, wouldn't you come into a home invasion with a

gun? Most criminals are stupid. This was obviously stupid on his part. This is the result. But because he didn't have a gun and used a tire iron, Mr. Chambers says y'all should let him go.

Mr. Rector said -- excuse me, Mr. Butler says we wrestled around with him. Mr. Rector said we wrestled around with him. We took the tire iron. We beat him. We wrestled around with him. The pictures showed there a little bit of blood almost everywhere because they don't remember exactly where everybody was wrestling, where they were from moment to moment a year and a half ago.

Mr. Chambers would suggest, once again, that y'all let him go because the truth is in the details, as he said. Because they don't remember and say the exact same thing happened in this frantic traumatic moment. Y'all should let him go according to Mr. Chambers because the truth is in the details. That means they are lying. They don't remember how many times they hit him or whether or not he would call what he did grabbing the weapon and putting his arm around him or whether you would call it a bear hug in a statement. That means he's lying. Cause they didn't get it exactly right on this witness stand. They didn't remember exactly

what happened a year and a half ago. According to Mr. Chambers, that means they are lying.

One of the things the judge will tell you about credibility is what are the reasons for lying. Why would somebody be testifying a certain way? Do they have anything to gain? There is no question he's got everything to gain. I'm going to talk about his story in just a little while but let's talk about these two gentlemen. Mr. Butler lived in this house. Even according to this, this -- his own drawing, as Mr. Chambers referred to it, I'm going to come back to this later, has beds, it's basically a house. It has the word "bed" in two bedrooms.

And by the way, the thing that's missing in here, he keeps talking about a gambling house with poker machines and all that. When you go back there, look for the poker machines on this picture. Look for where there could possibly be some gambling house going on here or is this just a house? That's the problem with lying. You can't remember everything. He forgot to put in the gambling stuff. He forgot to put in some sort of a table where people would play cards for high stakes. He forgot to put in video poker machines. He forgot to put in anything that you would think of would go on in a

gambling house. This is just a house.

They said they waited for the police to come. They held him down five minutes, three minutes, 15 minutes. Over the last year or two, think about all the things, events that happened in our house. Think about your granddaughter or your daughter's baseball game or basketball game or your son's speech in some class at school or speech in a Christmas program a year or two ago.

Can you remember exactly how long it was? Was it three minutes? Was it five minutes? Seemed like forever because it was my child. I loved watching him or her do what they did. I don't remember exactly how much it was or how long it was. Because I don't remember, that means, according to Mr. Chambers my child did not give that Christmas speech, that I'm making that up? My child didn't hit that game-winning shot with what I say was two seconds left or probably was about 15 seconds at the time because that's the way I remember it. Does that mean I'm making it up and that's a lie?

Berry Butler has no reason to lie. He's in his house at three o'clock in the morning. James Rector has no reason to lie. He's got no dog in this fight. It's not his house. He doesn't know

this man. He's got no reason to make this up. Berry Butler has no reason to be Denzel Washington and fake this 911 call. If you believe the defendant, he faked this call. This was all a setup.

When y'all go back there, if you want to replay it, replay it. If it sounds like this is some sort of a fake, then you got to find him not guilty and let him go. But if you believe that the evidence shows that this was a legitimate 911 call that was happening in space and in time just like their testimony said it was, then their version of events is correct even though there were some details that they were inconsistent on.

If you believe Mr. Chambers, you got to find him not guilty because they didn't tell the exact same story that each other told. They didn't remember the exact same way. They didn't remember the exact same way they told the police officer a year and a half ago. You got to let him go because their memories are not perfect. They remembered this man broke in the house. They remembered they beat him and held him til the police came. They remember the police came and got him and took him away. Simple as that.

Let's talk about Officer Metcalf. He responded. First of all, he doesn't know him. He doesn't know Mr. Butler. He does not know the witness. He didn't say he's got -- he doesn't have any ax to grind with Mr. Rector, Mr. Butler or Mr. Byrd. He's never been to this house before. He's never heard any complaints about this house. Gambling or otherwise. Why would he make that up? He is a police officer.

He got a 911 call. This is important, he said of a burglary in progress. Officer Derosa, when he testified, the call was burglary in progress. 911 call. The burglary was in progress. When he said this and stopped talking because he had to go fight off this man, the dispatcher called out there's a burglary in progress. Either all three of them and the dispatcher are part of some grand conspiracy or that's exactly what was happening. The burglary was in progress.

Officer Metcalf told you I arrived on the scene. I found Mr. Butler outside or coming outside. He wasn't exactly sure either. But once again, Mr. Chambers would have you believe that if Mr. Butler doesn't remember whether he was standing at the door, whether he had stepped outside or

whether he was on his way to the door as the officer arrived, you got to find him not guilty because the truth is in the details. So if you don't remember exactly where you were when the police arrived and somebody breaks in your house and tries to kill you with a tire iron gets to walk free if Mr. Chambers is to be believed.

Of course, he doesn't remember exactly where he was, whether he was opening the door, whether he was on the porch. It's a year and a half ago. What does it matter whether he was opening the door or whether he was already out on the porch or standing in the yard when the police officer arrived? They basically are saying the same thing. They are saying the same thing Mr. Rector said. Mr. Butler left and went out the way to meet the police. They are all saying the same thing. But because they don't say it exactly the same way, Mr. Chambers would have you believe his client should walk away from this. The truth is in the details. Not that detailed, Ladies and Gentlemen. Not that detailed.

Officer Metcalf testified he came in, he saw the defendant lying on the floor, blood everywhere. He couldn't remember. He said in my report, I have that the, uh, tire iron was on the floor. But he

said I'm not sure. He already heard the -- he was in here testifying. He heard him say something about it was on the counter. He said I put in my report it was on the floor. I'm not sure. It's been a year and a half -- he said it's been a year and a half ago.

Mr. Rector testified that when a police officer came in, I laid it on the counter and stepped away. Mr. Chambers would have you believe or would want you as jurors to say well, since Mr. Rector said he had just stepped away from it and the officer said he was about six or eight feet from it when I came in and the tire iron was, we're not sure whether it was on the floor or on the counter when I got there. The truth is in the details. You've got to let him go. You've got to find him not guilty because of that. They don't remember exactly whether he was three feet, whether he was just getting up off it or whether he was six feet away when the officer walked into the room. What does it matter? They are saying the same thing.

Officer Metcalf testified that he was simply trying to get this defendant under control. All three of them testified that the defendant was animated, out of control, cussing. Officer Metcalf

said he was cussing me. What had he done other than walked in and said, listen, let me get a handle on this situation, lay still and put your hands down. But he's cussing the officer. According to the defendant, that never happened. All three of these people are lying on him. Once again, Ladies and Gentlemen, credibility. Why would they lie about that?

The answer about whether he was animated or whatever lies in the tasing. Mr. Chambers would have you believe that police officers, if a police officer comes upon somebody and somebody says I think he might have a gun, that they take out their taser and tase them. Think about that for a moment. That doesn't happen. They say put your hands up. Officer in this case said put your hands out cause he's laying on the floor. No officer walks in and says he got a gun. Okay, I'm tasing him. That's not the way it works. That ain't even the way it works on TV let alone in real life. We know that.

What he was trying to do and what this defendant was trying to do in this testimony is explain away why he got tased. There was no question about it. He couldn't deny that. He couldn't make up a lie for that. But he had to come

up with a reason for why not get tased. Oh, yeah, cause somebody said something about I had a gun. So they just tase me. Does that happen in real life, Ladies and Gentlemen? The officer gave you and these gentlemen gave you an explanation as to why he got tased. The officer will say stay down, keep your hands out because he's trying to get a handle on the situation cause he might have had a gun or he might, as Mr. Chambers said, tried to get up and flee.

The officer didn't know for sure. He had heard what he thought might be the circumstances. This guy had broken into this house, but he didn't know. For all he knew, these men were armed. He's in there by himself. He's just trying to get a handle on the situation. He's got a possible suspect. He says put your hands out. Stay down.

Then, there was -- the strangest part of Mr. Chambers' argument to y'all about these -- the tasing. First of all, what officer, assuming he's laying flushed out on the ground -- I'm not going to lay back down, I promise you -- assuming he's laying flush on the ground, when is the last time you saw an officer tase somebody, reach around up under them, if he's laying down, and stick the taser on

them? You shoot the taser. That's what they do. We've seen that enough on TV to know they don't just go to you and just stick it up on you and, in this case, stick it up under you so it gets right here.

He -- basically, what happened was, as the officer and both of those witnesses explained, he kept trying to get up. He got up on his knees. The officer tased him. He fell down. He got up again. Officer tased him again. It wasn't the question of the officer reaching down up under him and tasing. Mr. Chambers said that proves what he's saying is true because of those marks. It proves he was tased. It doesn't prove he was tased while he was laying down. It doesn't have anything to do, I think, where he -- that he was laying down. In fact, it substantiates that he was up -- upright because he was tased here. Even if it wasn't in the center of his chest, it was still here. It wouldn't have happened had he been laying on the ground. It doesn't prove or disprove whether he was trying to get up or not. Common sense tells you that officers don't just tase people for no reason. You don't leave your common sense at home when you come serve on a jury.

The most damning thing, once he gets him

somewhat calmed down, Officer Metcalf told you from this witness stand under oath that this defendant said this is a gambling house, that's why I broke in. I broke in. That's what the officer said this man said to him. His response that he testified is I was incoherent. I was saying a lot of things. I don't remember what I was saying. I do remember not saying that. Credibility, Ladies and Gentlemen. Who are you going to believe? Why would this officer put that in his report if it didn't happen?

The officer testified that he had no knowledge of this being a gambling house. He had never been there before. He didn't know these people. He had never had a call from them. He had no Crime Stoppers reports about this being a gambling house. This happened as he was coming upon the defendant. How could this officer possibly have used the word gambling house in his report unless this guy said it? He had just come up on this guy. He's trying to get him under control. Why would he use the word gambling house? How would he know that -- that that's what the backdrop of this is that this guy's going to claim unless he said it. He said this is a gambling house, that's why I broke in. He broke in.

Officer Derosa testified he came in and he

handcuffed him. Everything to him looked like this was just a house. Two bedroom, one bath, bath and a half, whatever. Just a house. He took the defendant to the hospital or escorted him to the house and then to jail. That's the evidence pretty much, orally at least from the witness stand. These pictures basically don't tell you a whole lot in terms of proving whether or not or exactly what happened inside. It substantiates where everybody was sitting or where they say they were sitting. There's nothing to contradict that. But these, and it shows you, we've got pictures in evidence about that there was blood all over the place. But we know that. That's not even in dispute.

Mr. Chambers made a big deal over the fact that who was hitting who where. Is that an issue? The defendant admits he got beat pretty bad. Mr. Rector and Mr. Butler admit we beat him pretty bad. The only issue is whether or not he was breaking in the house or whether his story, his cockamamy story is true or not. And I'm going to get to that in just a moment.

These pictures do tell you one telling thing though. And I want to ask you when you get back to the jury room take a good look at Exhibits 3, 2 and

1. They are the pictures of the door. Ladies and Gentlemen, you don't need CSI to see where this glass is. You don't need CSI to see where this glass is. You don't need CSI Miami. You don't need Horatio to tell you what this glass being inside this door means. I grew up with Columbo and Barnaby Jones, but I know glass on the inside of the door means it was broken from the outside. That's Physics 101.

His story is he was already inside, gets into a fight with somebody because it's almost laughable. He gets into a fight with a guy because he says where is Goat. The guy says F Goat. And they start fighting. Then somebody else jumps in and starts beating him with a crow bar. Then this grand conspiracy of coverup starts. If that's true, Ladies and Gentlemen, then how does the glass get broken on the inside? How does it come from the outside to the inside unless -- and he didn't say this.

After they beat him up and he's unconscious, they put on some gloves, took the glass from outside because remember he says that it happened when he was inside and got pushed up into the door towards the outside. They went outside with gloves on, took

the glass up, moved it to the inside before they called the police. That's what they would have had to have done. There is no but, no question this glass was broken from the outside as someone or something was coming in. That's physics.

You know why he didn't address that? Cause he ain't got no explanation for that. Some things you can't make up a lie to cover. When you get your -- when you see your child with their hand in the cookie jar, hard for them to come up with the reason for why they have their hand in that cookie jar when they are not supposed to. This is Physics 101.

Now, I will be the first to concede this is not like building a building. A trial is not -- proof in a criminal trial is not like building a building. It's not like some architect or engineer would do. In those cases, everything has to fit right into place. We're talking about people. We're talking about people who get excited, people who remember things differently.

If that gentleman in the back back there got up and walked out of here right now and I asked each one of you what color tie he was wearing. You get at least four or five different answers even though y'all -- he's been in here for 15 or 20 minutes.

Most of you at least some point seen it. Most all of you would say there's a guy sitting on the back row. He was a white guy. He was kind of tall. But in terms of what color his tie was, whether he was sitting one foot in, three feet in, five feet in, we're people. We're not -- this is not a building. This is a criminal trial. Yeah, there are going to be differences. There's going to be distinctions.

Let's talk about the defendant's version for a moment. Ladies and Gentlemen, I would suggest to you it is improbable, implausible and it was impossible. It's impossible because of physics. The fight couldn't have been happening on the inside. This was what somebody came into.

He starts by saying some woman, a friend girl at three o'clock in the morning, drops him off at a gambling house and waits outside for him. A friend girl he doesn't even remember her last name. He didn't expect anybody to ask him that. When I asked him, it caught him off guard. I don't remember her last name. It's three o'clock in the morning. She's taking him. He doesn't even know her last name. But she's taking him to a gambling house to buy cigars and condoms. Is this not only a gambling house but it's a 7/11 too? Ladies and Gentlemen,

that is ridiculous. The story is ridiculous how he came to a gambling house at three o'clock in the morning to buy cigars and condoms and had a woman waiting outside for him while they did that. What happened to this mysterious woman?

Oh, by the way, the officers arrived and said they didn't see any cars there. Where was the car in the driveway, the four or five cars around the back that he talked about? Part of the grand conspiracy when all this was happening. They were setting the glass up and moving the glass and faking the 911 call. Everybody headed up and left evidently. Part of this conspiracy, everybody is against him.

He goes into the club. He walks in. He doesn't break in. He walks in. So when he comes in, according to his story, this door is in tact and it's closed behind him. He starts talking to somebody who works there. It wasn't Mr. Rector, I don't think, or it may have been Mr. Rector. He's not sure. He says where's Goat. Oh, by the way, he stops there to get condoms, cigars and to holla at my boy Goat at three o'clock in the morning. A woman who he just met in the club is going to take him there to do that?

He's hollering at his boy, Goat. Goat is not there. He says when he -- he says where's Goat. The guy cusses him or cusses the reference to Goat. He then takes umbrage at that and bucks up and goes at the guy. He said, by the way, he started walking toward me. I walked -- and he said, and it's kind of telling -- I swung at him, which means he started the fight in his own story. In his own story, he started the fight. The guy and he started tussling and then some other guy who has nothing to do with this, who may or may not have even heard him make a reference to Goat or why he's there or who he is picks up something and hits him in the head and then start to wail on him. That's his story.

As I said, for it to be true, it has to, number one, defy physics with this glass and, number two, it would require then that everybody in there decided once they beat him up and he's unconscious, okay, now we got to figure out what to do. We got to get rid of the poker machines.

I seen poker machines. I played video poker a few times when it was still legal. Those things are huge. They look like -- I've never moved one but they look like they weigh a lot. They are definitely very cumbersome. You don't just get

somebody and like let's pick this one up and move it. You actually try to move out poker machines before the police get there? Why would you call the police if this is a gambling house? Why would you just not pick him up, take him out by the curb and lay him down and go on back in the house? Why would they call the police to come to a gambling house if that's what these people are supposedly running? To hear Mr. Chambers tell it, that's what happened. If you believe his story, that's what's going on here.

He's running a gambling house and he's there gambling or hanging out with. Why would they call the police? When is the last time you remember hearing about somebody at a gambling house or a house of prostitution or where they are making meth or doing any kind of major crime call the police to come there? Does that make sense to you, Ladies and Gentlemen?

Let's talk about these pictures. Mr. Chambers put a lot of stock in this picture. He said this is a fact. He said this is a fact five times. Every time, this is a fact. He's been there before. Because of this picture? Where is the gambling machine? He said there was no beds, there was just stuff laying on the floor. When y'all look, you'll

see there's no beds in here. Basically, what he drew was a basic house.

I'm going to tell you about how this could have happened as I get near my closing, which I'm not far from by the way, I promise you. Let me just say right now it's a burglary. When you burglarize, it's not unusual that you would have cased the house, which means at some point before that you looked in a window. This is a small -- as the officer said, this is a low income small community of houses. These are not big houses. You think it's not hard to come up with this if you walked around this house once or twice to figure out where everything was? This does not make it as Mr. Chambers says a fact. What it makes it is another figment of his imagination. But I'm going to tell you a little bit more about that in the end.

Finally, with regard to credibility, consider these people, these two gentlemen, consider the two officers. When you are considering the credibility of the defendant, consider this. The judge is going to tell you that you can use prior convictions to consider credibility to determine whether somebody's telling the truth or not.

This man was convicted in 2004 with two counts

of Burglary second degree, four counts of Grand Larceny, one count of Resisting Arrest and four other felony convictions that carry over one year. That's ten priors of dishonesty. He wants you to believe what he's saying. He admitted to the officer -- he admitted what he did to the officer. What he's saying in this story doesn't make sense. He told you on this witness stand and I asked him three or four different ways, three or four different times. He said it in direct to his own lawyer, I know Berry. I know Berry Butler. He calls me Byrd. Remember he said that? He calls me Byrd. I know Berry. He calls me Byrd. Been there seven or eight times.

Last June, he wrote to me and he said -- I made him read his own words. I don't know who Berry Butler is and he don't know me. But I don't think he was there when this went down. These are his words and he admitted it. He called it at that time -- today, he called it a legal ploy. He is a burglar. And today, he was a liar. He didn't know Berry Butler. His story has -- in order for him to premise his story about how he got in this house and how this happened, he had to know Berry Butler now. So he tells y'all I know Berry. He calls me Byrd.

Back in June, he did not know Berry Butler and Berry Butler didn't know me. Just like Berry Butler said, I don't know him. He doesn't.

Ladies and Gentlemen, in closing, let me say two things. Number one -- there are four possible scenarios. Number one, the things that these two men and the two police officers and what this evidence shows are true, that at about 3:30 in the morning on March, excuse me, on April 16th of 2011, that man came in the house through that door with a tire iron and tried to rob her and rob these people. He got beat up. He got held. The police came and they arrested him. That's one scenario.

Second scenario is some woman dropped him off at a gambling house. He was let in or he came in. He got into a fight. He got beat up badly. He was knocked unconscious. While unconscious, the owners or the proprietors of this house staged so that this looks like a regular residence, faked the 911 call, the police came and made up a reason to tase him. He did absolutely nothing wrong. The police were complicit in this, including the 911 operator. All these people are complicit in framing him.

Number three, and this brings us back to this picture. Berry Butler said he'd been living there a

little over six months. Not too long. I suggest to you, Ladies and Gentlemen, there is a possibility this may have been at one time a gambling house. I suggest to you he may have been in that house before. Before Berry Butler moved there. That's a possible scenario. That's how he knew about what the layout of the house generally was, the rooms and whatever. But as I said at the outset, Ladies and Gentlemen, boy, did he pick the wrong house and the wrong people to rob because Berry Butler now lived there. He was, this was his dwelling. He was not running a gambling house. He was not bothering anybody.

Finally, Ladies and Gentlemen, let me say this. In the face of all the overwhelming evidence against this man today, the fact that the homeowner told you what happened, the fact that an eyewitness to it told you what happened and told pretty much the same story, the fact that the physical evidence says he broke into that house and supports their story and totally contradicts his, the fact that you have the weapon that he used and that he was subsequently beat with in front of you, the fact that he admitted to the officer this is a gambling house that's why I broke in, the fact that he told me a year ago I

don't know this man but came in here and lied through his teeth to y'all I know Berry he calls me Byrd, given all of the overwhelming evidence, Ladies and Gentlemen, if in this day and time the fact that you got that the victim and the witness and maybe one of the officers got the distance wrong -- that detail wrong, if the victim can't remember exactly where he was sitting on the porch when the police came and it's a little bit inconsistent with what the officer said he was on the porch or on the step, in spite of all of this evidence, if the fact that the witness says I grabbed him like this and grabbed the knife and that's different from in my statement when I said I bear-hugged him, if that detail, if those kinds of details means you got to let that man go free, then heaven help us all because we are now requiring perfection from victims and witnesses.

Ladies and Gentlemen, they told y'all the truth. The officer told y'all the truth. And heaven help us if a man like this can walk away because his lawyer points out about five or six details that are inconsistent and he draws you a picture of a house even though he comes here and lies to you boldfaced when he says he knew somebody that he told me a year ago he didn't know. He's a

liar. Everything he said after his name was a lie. I ask that you find him guilty. Thank you.

THE COURT: All right, Ladies and Gentlemen. We've now gotten to the portion where I'm going to charge you on the law. I'll tell you that generally, my charge on the law takes about 20 minutes or so. After that point, I'm going to release you to retire to your jury deliberation room at which time I want you to decide if you want to begin your deliberations today or if you would like to begin in the morning first thing. But I would let you make that decision because I know that you all have obligations outside of here.

All that being said, Mr. Foreperson, Ladies and Gentlemen of the jury, you have seen and heard the evidence presented as well as the arguments of counsel. It now, therefore, becomes my duty and obligation to instruct you on the law that is applicable in this case. It will be your duty and obligation to begin your deliberations through which process you will decide the facts, apply the law as instructed by the Court and render fair and impartial decisions.

It is your exclusive duty to determine what the facts are. You do that based upon your own

commonsense examination and evaluation of the testimony and other evidence received during the trial of the case. You twelve jurors alone will decide what weight, value and effect that is to be given to any particular testimony or other evidence received. Your ultimate goal is to simply reach the truth in this matter and, by doing so, you will have fulfilled your obligation as jurors and that is to give both the State and the defendant a fair and impartial trial based upon the evidence presented and the law applicable to this case.

In this case, the State of South Carolina through the Circuit Solicitor has charged the defendant with the criminal offense known as First Degree Burglary. The allegations charging the defendant with this crime is set forth in the indictment that has been explained to you.

As I have previously explained, the indictment is not evidence in this case and may not be considered by you as evidence against the defendant. The indictment will be in the jury room with you but serve only one purpose and that is to serve as the verdict forms on which the jury's unanimous decision will be written.

As to the charge set forth in the indictment,

the defendant has entered a plea of not guilty. That plea of not guilty has therefore placed upon the State the burden of proving the allegations that are set forth in the indictment the burden of proving each of the essential elements of any crime charged and, therefore, the burden of proving the guilt of the defendant to the satisfaction of you 12 jurors beyond a reasonable doubt before a verdict of guilty could be returned as to any indictment.

The burden is never upon a defendant to prove that he is not guilty or to prove that he is innocent because in some cases, that might not be possible. The burden is always upon the State because they have made the allegations to prove the defendant guilty beyond a reasonable doubt.

You are further instructed that it is a vital, important and cardinal rule of law that every defendant in a criminal trial, no matter how serious the offense might be for which he stands charged, the defendant shall always be presumed innocent of that charge and that presumption of innocence shall be with the defendant from the moment of his arrest and throughout the course of the criminal process and even throughout the course of the actual trial.

The presumption of innocence shall be with the

defendant even as you go into your jury room to begin your deliberations and that presumption of innocence shall be with him there and be with him forever unless you 12 jurors determine that he is no longer entitled to that presumption of innocence. It is only if, unless and until you are satisfied of the defendant's guilt beyond a reasonable doubt that he would no longer be entitled to the presumption of innocence.

I remind you that during this trial, you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case. I also have the duty to rule on the admissibility of evidence offered during this trial. You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record in this case during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made part -- and any exhibits which have been made a part of the record in this case along with any stipulations of counsel.

I have the additional duty to charge you on the law applicable to this case. As the presiding

judge, I am the sole judge of the law in this case. It is your duty as jurors to accept and apply the law as I now state it to you. If you already have any idea as to what the law is or what the law ought or should be and it does not agree with what I tell you now the law is, you must abandon this idea because you are sworn to accept the law and apply the law exactly as I state it to you.

And I will stop for a moment and tell you I am going to give you these -- my instructions in written form and I'll give you a charge on how to deal with those instructions in the jury deliberation room.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts. A trial judge can not intimate, state, comment on or make any statement to a trial jury about the facts in the case. Since you, the jury, are the sole judge of the facts in this case, you are not to infer from what I might have said during the progress of this trial in ruling upon the admissibility of evidence or otherwise or anything that I say now during the course of this instruction to you that I have any opinion on the facts in this case. I do not. The law does not allow me to have

an opinion about the facts in this case. This is a matter solely for you, the jury, to determine. As jurors, it is your duty to determine the effect, value and weight and truth of the evidence presented during this trial.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you were told that it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or preponderance of the evidence. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty. In criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If, on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant

the benefit of the doubt and find him not guilty.

There are two types of evidence which are generally presented during a trial: direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact such as an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Excuse me. Circumstantial evidence is based on inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all the evidence in this case. After weighing all the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Necessarily, you must determine the credibility

of the witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth. In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety.

You may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the appearance and manner of a witness while on the witness stand. In other words, you are to judge a witness' credibility in the same way you would judge a person's credibility in your daily life.

A statement alleged to have been made by the defendant has been admitted into evidence in this case. While the Court has determined that this statement is admissible, I instruct you that you make the ultimate decision of whether or not the

defendant made the statement. If the defendant did make the statement, you must determine whether the statement was made by the defendant voluntary and of his own freewill. This means that the statement was not caused by pressure, force, fear, threats, coercion or intimidation or by hope or promise of leniency or reward of any kind.

In determining whether the statement was voluntary, you should consider both the characteristics of the defendant and the details of any questioning. Some of the factors you must consider are the age of the defendant, the defendant's education or lack of education, the defendant's mental ability or capacity, the defendant's IQ or intelligence, the defendant's background and environment, the place and length of detention, the nature of the questioning, and the advice or lack thereof to the defendant of his constitutional rights including but not limited to the right to remain silent, that any statement could be used against him in a court of law and the right to have a lawyer present, that if a lawyer -- that if he could not afford a lawyer, a lawyer would be appointed to represent him and that he could stop making a statement at any time. You must carefully

consider all the surrounding circumstances before you give any weight to an alleged statement.

The State had the burden of proving beyond a reasonable doubt the alleged statement was voluntary. If you determine it was, you may give the statement any further consideration that you deem proper. You must decide what weight, if any should be given to the alleged statement. If you determine the alleged statement was not the free and voluntary statement of the defendant, you should not consider the statement at all.

The defendant is charged with Burglary -- excuse me -- with First Degree Burglary. The State must first prove beyond a reasonable doubt that the defendant entered a dwelling without consent. A dwelling is any building or a portion of building in which a person ordinarily sleeps. A building constructed as a dwelling that has never been occupied can not be considered a dwelling for purposes of burglary. But a building is a dwelling even if the residents are temporarily absent from the building.

In order to prove that the defendant entered the dwelling, the State does not have to show that the defendant's entire body entered the dwelling.

The smallest entry is sufficient. It may be any part of the body such as a hand or foot or even an instrument such as a hook or other instrument. In addition, the State does not have to prove that force was used to gain entry. If a person enters a building by using deception, artifice, trick or misrepresentation to get consent to enter, this is an entry without consent.

Next, the State must prove beyond a reasonable doubt that the defendant intended to commit a crime, either a felony or misdemeanor at the time of the entry. The mere entry into a dwelling without consent is not burglary. If the intent to commit a crime is formed after the entry, it is not a burglary. On the other hand, if the defendant intended to commit a crime at the time of the entry, it is a burglary even if the intent was abandoned after entry. It does not matter that the intended crime was not completed. Intent may be shown by the acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent.

The State must also prove beyond a reasonable doubt that the defendant entered or remained in the dwelling in the nighttime. Nighttime is the period

between sunset and sunrise during which there is not enough daylight to recognize a person's face except by artificial light or moonlight.

The State may also prove beyond a reasonable doubt that the defendant has a prior record of two or more convictions for burglary and/or housebreaking. The parties have stipulated or agreed to this fact evidence of prior offenses committed by the defendant was not offered to prove the defendant has bad character or to prove that the defendant committed the burglary on this occasion. The prior convictions may be considered by you only for the purposes of determining whether or not it satisfies that element of the offense that makes it first degree burglary if you enter a dwelling without consent to commit a crime and you have two prior convictions for burglary and/or housebreaking.

Before you can even consider evidence of the defendant's prior burglary or housebreaking convictions, you must first find that the State has proven beyond a reasonable doubt that a burglary was committed by the defendant. If you find beyond a reasonable doubt that the burglary was committed, then you may consider the evidence of the prior convictions as evidence of one of the circumstances

which would make the burglary first degree burglary. If you do not find beyond a reasonable doubt that the defendant committed these alleged prior offenses, then you can not return a verdict of first degree burglary.

I will give you a copy of these instructions in written form. During your deliberations, you may refer to the instructions to guide your decision making. You must consider the instructions as a whole and not follow some and ignore others. Please return the instructions to the court at the time your verdict is rendered.

Ladies and Gentlemen, your verdict must be a unanimous one.

Mr. Foreperson, when the jury agrees on the verdict, you will write the verdict on the back of the indictment and sign your name as foreperson. Then knock on the jury room door and inform the bailiff that you have reached a verdict. At that time, we will receive you back into the courtroom for your verdict.

I ask that you now return to your jury deliberation room but do not begin deliberations until you are told by the bailiff to do so. There are some matters that must be discussed with the

attorneys before you begin your deliberations. It will be your signal to begin your deliberations when you have received all the exhibits, you've received my instructions in written form and you have received a copy of the indictment in this case.

Mr. Foreperson, I want to point out to you that this verdict section is where you will write guilty or not guilty and sign and date it.

Now, I told you earlier that I'm going to let you decide if you want to begin your deliberations at this point or whether you were prefer to resume deliberations first thing in the morning. If you will, retire to your jury room. Do not discuss this case, except do discuss whether or not you would like to begin your deliberations. If you will, tell the bailiff of your decision and we will either send them back to you or excuse you for the day. Okay. Thank you so much.

(WHEREUPON, the jury exits at approximately 4:26 p.m.)

THE COURT: Any objection to my charge on the law from the State?

MR. WESTON: Your Honor, we don't have an objection. It's probably -- I don't remember you defining reasonable doubt. You probably did. I

just may have missed that.

THE COURT: I did.

MR. WESTON: Okay. That's fine.

THE COURT: I did. I was moving -- I have to admit I was moving a little fast. A little faster than I probably would if I didn't send back the written charge.

Anything from the defense? Any objection?

MR. CHAMBERS: No, and I can vouch for the fact that you did define reasonable doubt.

THE COURT: Okay. Okay. Very good. All right then. Will y'all check and make sure all the exhibits are together?

MR. WESTON: Yes, ma'am, Your Honor.

THE COURT: And get them together. And we'll get a copy of the charge in written form.

(WHEREUPON, there is a pause.)

MR. WESTON: Your Honor, the evidence looks fine to me.

THE COURT: Looks all together. Okay. Very good.

(WHEREUPON, there is a pause.)

MR. WESTON: I'm sorry?

THE COURT: They want to deliberate. I thought they would want to. I just wanted to be

sure.

(WHEREUPON, jury deliberation begins at approximately 4:31 p.m.)

(WHEREUPON, the Court resumes at approximately 6:22 p.m.)

THE COURT: All right. First one, first thing, the first note that we got earlier was we would like to listen to the tape. They wanted to listen to the 911 tape. My law clerk closed everything else on her computer and let them listen on her computer.

The next one we got is we can't come up with a decision on this case. This is the latest. I've got an Allen charge to give them. I'm going to give them an Allen charge and dismiss them for the evening. Unless anybody's got any objection, I'm going to bring them back tomorrow morning.

MR. WESTON: Nothing from the State, Your Honor.

THE COURT: All right.

MR. CHAMBERS: You know, I'm not a big fan of an Allen charge but I don't have any real basis to object to it, I guess.

THE COURT: You know, at this late hour, all I know is to give them that. Or I can let them go

for the evening, bring them back and give them an Allen charge in the morning.

MR. CHAMBERS: If I had a preference, I would probably rather do the latter, Your Honor.

THE COURT: Okay.

MR. CHAMBERS: Just to let them go and give them the Allen charge in the morning.

THE COURT: All right.

MR. WESTON: That's fine with me, Judge.

THE COURT: All right. Let's bring them back in. We'll do that first thing in the morning.

(WHEREUPON, the jury enters at approximately 6:24 p.m.)

THE COURT: Mr. Foreperson, it's my understanding from your note that you have said that are you unable at this point to come up with a decision in this case. Here's what we're going to do. We're going to adjourn for the evening. I'm going to bring you back in the morning and give you some further instruction and let you deliberate tomorrow morning a little bit longer and see if you are able to reach a verdict.

We'll begin our deliberations tomorrow morning at 9:30. Do be in your jury room. We'll bring you back in at 9:30 and give you some brief instructions

about continuing with your deliberations. I thank you so much for your service. I do have to ask you to please not discuss this case with anyone else. All right. Thank you so much.

(WHEREUPON, the jury exits at approximately 6:25 p.m.)

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

THE COURT: All right.

MR. WESTON: Thank you, Judge.

THE COURT: Thank you. See y'all back tomorrow morning at 9:30.

(WHEREUPON, the Court recesses for the day at approximately 6:26 p.m.)

P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 15th day of November, 2012 at approximately 9:39 a.m.)

THE COURT: All right. Y'all want to bring the jury in.

(WHEREUPON, the jury enters at approximately 9:41 a.m.)

THE COURT: Good morning, Ladies and Gentlemen. As we talked about last night, it's my understanding that you all were unable to reach a verdict last night and sent me a note to that regard. And I appreciate you letting me know about that.

Ladies and Gentlemen, you stated you have been unable to agree on a verdict in this case. As I instructed you earlier, the verdict of the jury must be a unanimous one. When a matter is in dispute, it isn't always easy for even two people to agree. So when 12 people must agree, it becomes even more difficult. In most cases, absolute certainty can't be reached or expected.

However, you have a duty to make every reasonable effort to reach a unanimous verdict. In doing this, you should consult with one another, express your own views and listen to the opinions of

your fellow jurors. Tell each other how you feel and why you feel that way and discuss your differences with open minds.

Although the verdict of the jury must be a unanimous one, every one of you has the right to your own opinion. The verdict you agree to must be your own verdict, the result of your own convictions. You should not give up your firmly held beliefs merely to be in agreement with your fellow jurors. The majority should consider the minority's position and the minority should consider the majority's position. You should carefully consider and respect the opinions of each other and reevaluate your position of reasonableness, correctness and impartiality. You must lay aside all outside matters and reexamine the questions before you based on the law and evidence in this case.

If you do not agree on a verdict in this case, I must declare a mistrial. In that case, it does not mean that anybody wins. It just means that at some future time, I will try this case with some other jury sitting exactly where you now sit. The same participants will come and the same lawyers will ask pretty much the same questions and give pretty much the same answers and we will go through

this process again.

You were selected in the same manner from the same sources any further jury will be. There is no reason for me to suppose that a case will ever been submitted to 12 more intelligent, impartial, conscientious or competent jurors than you are or that more or clearer evidence will be produced on one side or the other. I therefore ask you, based on these instructions, to return to your deliberations and continue to deliberate. Thank you so much.

(WHEREUPON, the jury exits at approximately 9:43 a.m.)

THE COURT: We'll be in recess pending the verdict.

MR. WESTON: Thank you, Your Honor.

(WHEREUPON, jury deliberation resumes at approximately 9:44 a.m.)

(WHEREUPON, the Court resumes at approximately 10:12 a.m.)

THE COURT: We've got another note. They are asking for written statements from the police officers and other participants. Bring them back in. I will tell them they can only consider the evidence that's been sent back to them. They can

only consider that evidence that was admitted at trial. However if they need to hear any testimony, then we can have portions of it sent back. We'll have to send Teresa flowers. But anyway, I'll bring them back in and say that unless there's any objection to that.

MR. WESTON: No, ma'am, Your Honor.

THE COURT: All right. Any objection to that, Randy?

MR. CHAMBERS: No, Your Honor.

THE COURT: Okay. Good.

(WHEREUPON, the jury enters at approximately 10:13 a.m.)

THE COURT: Ladies and Gentlemen, I've got a note from you, Mr. Foreperson, that says you all would like the written statements from police officers and other participants. The only things that you may consider are the evidence that's been admitted during trial have been sent back to you to consider. However, I will tell you that if you'd like to hear testimony, we can play back testimony for you. However, as far as the written statements are concerned, they are not admitted into evidence and they can not be -- I can not send it back to you. All right. If there's any portion of

testimony that you do want to hear, any witness testimony or any portion of a witness' testimony, if you would, please let me know. It will take a moment for my Court Reporter to cue things up.

Next order of business is equally as important in my mind and that is if you all believe that you have some deliberating yet to do, if you would, please let the bailiff know. It takes us about one hour to get lunch here. If you believe that we need to bring in lunch, and we are happy to do it, we want you to take the time you need to make this determination. If you feel like you need lunch, if you would, please let the bailiff know about that too. Okay. Thank you so much.

(WHEREUPON, the jury exits at approximately 10:15 a.m.)

(WHEREUPON, Court's Exhibit 3 is marked for identification purposes.)

THE COURT: We'll be in recess pending a verdict.

MR. WESTON: Thank you, Your Honor.

THE COURT: Thank you.

(WHEREUPON, a recess is taken from approximately 10:16 a.m. to 10:32 a.m.)

THE COURT: All right. Ladies and

Gentlemen, I've gotten a note asking to hear Officer Metcalf's testimony. My Court Reporter has got it cued up for you. We're ready to listen. Now, she's going to do her best to make it as loud as possible. If you have problems hearing, let us know. This may take one second. We're going to test it a little bit okay.

(WHEREUPON, the entire testimony of James Metcalf is replayed for the jury.)

THE COURT: All right. All right. Ladies and Gentlemen, probably your first order of business when you get back or close there to is to order your lunch if you've not already done that. All right.

(WHEREUPON, the jury exits at approximately 11:01 a.m.)

(WHEREUPON, a recess is taken.)

(WHEREUPON, the Court resumes at approximately 11:24 a.m.)

THE COURT: It's my understanding the jury has a verdict. Y'all ready to bring them back in?

MR. WESTON: Yes, ma'am, Your Honor.

(WHEREUPON, the jury enters at approximately 11:25 a.m.)

THE COURT: Mr. Foreperson, it's my understanding that the jury has reached a verdict.

Is that correct?

THE JUROR: Yes, Your Honor.

THE COURT: All right. If you will, hand the indictment to the bailiff.

(WHEREUPON, the verdict form is passed to the Court.)

THE COURT: All right. The verdict form appears to be in order.

THE CLERK: Your Honor, this is case 2011-GS-23-3835, the State versus Bryan Keith Byrd indicted for Burglary in the first degree. The verdict, we, the jury, find the defendant guilty. It is signed by our foreperson.

Ladies and Gentlemen, if you agree this is the verdict you reached in your deliberation room, would you please raise your right hand?

(WHEREUPON, each juror responds.)

THE COURT: All right. Anything further from the State before I release the jury?

MR. WESTON: No, ma'am, Your Honor.

THE COURT: Anything from the defense before I release the jury?

MR. CHAMBERS: No, Your Honor.

THE COURT: All right. Ladies and Gentlemen, Thank you so much for your service in this case. I

know it's been a long case. I want to speak to you before you do leave. So I would like for you to go back to your jury deliberation room. I'll be heading right back there.

(WHEREUPON, the jury exits at approximately 11:28 a.m.)

THE COURT: All right. I'm going to release the jury. Then we'll come back. Will y'all be ready to move to sentencing? I know you have a couple of motions. I'll be back in just a moment.

(WHEREUPON, a short recess is taken.)

THE COURT: All right. I'm sorry. Go ahead.

MR. CHAMBERS: I would make a motion for a judgement not withstanding the verdict and a motion for a new trial.

THE COURT: All right. Well, while it's clear that the jury struggled with it, I do believe there was sufficient evidence to support the verdict and your motions are respectfully denied. All right. Y'all want to come forward and do sentencing?

(WHEREUPON, counsel and the defendant approach the bench.)

MR. WESTON: Your Honor, before we begin, I would just point out that the victim is not present

today. He was advised that the jury would continue to deliberate this morning. He chose -- I told him that should there be a guilty verdict, he would have a right to be heard. He decided not to be here. He did not want to express any opinion as to sentencing.

THE COURT: Okay.

MR. WESTON: But he did -- he was advised that he had the right to be here today.

THE COURT: And I've heard Mr. Byrd's record. Of course, we heard the facts of the case. Is there anything else the State would like to add?

MR. WESTON: No, ma'am, Your Honor.

THE COURT: All right. Mr. Chambers?

MR. CHAMBERS: Your Honor, Mr. Byrd wants an opportunity to speak to the Court.

THE COURT: Of course.

MR. CHAMBERS: So I'll let him do that rather than for me to say anything in his behalf.

THE COURT: All right. Yes, sir.

MR. BYRD: Your Honor, I feel like my trial was unfair. There was a lot of stuff that wasn't introduced into evidence about as far as me being covered in kerosene. They didn't see the pictures of the victim and the witness showing no marks on

their body. Berry Butler said he got hit in the arm. The officer say he got hit in the arm, shoulder mark or whatever. The picture showed no mark on his arm.

The tape that was played yesterday, I told Randy about it, but I guess he was busy listening or whatever. The tape that was played yesterday was edited or something like that. You might --

THE COURT: You think the 911 tape was edited?

MR. BYRD: Oh, I don't think. I don't think. I know for sure. Randy Chambers is my third attorney.

THE COURT: Uh-huh.

MR. BYRD: I heard the tape four or five times before.

THE COURT: Uh-huh.

MR. BYRD: I remember key things being said that I did not hear being said when it was played yesterday. All I'm asking you to do is I want to know the length of the tape right there, the same tape they heard. That's all I want to know so it can be compared to future, you know, whenever I got somebody I know to get a hold to the original from the law enforcement center to see how much the time

difference is.

THE COURT: I will tell you that that -- all the evidence that was admitted at trial is kept in safekeeping in the clerk's office. So if it ever does need to be compared one day, it will be there to be compared. Uh, it will -- it's been marked and tagged and it will be kept in the Clerk's office here. That is not at the Solicitor's office or in anyone else's office. But that's in the Clerk of Court's office.

MR. BYRD: So it's no way I can find out the timing on that tape?

THE COURT: I'm telling you that the tape itself, which is the best evidence, not what I say the time is on the tape, which I don't know what it is, but the best evidence is what is in, what will be in safekeeping in the Clerk's office. Okay. Anything else you would like to say? Anything with regards to sentencing?

MR. BYRD: I guess I'm speechless to be honest. The evidence right there, both of them say he called the police after the situation happened. You call the police before the situation happened. Somebody breaking in your house, you talking on the phone to 911. Come on, man.

They say the heater was knocked over. Look at the pictures, the heater just sitting there. Forensics come out there. My fingerprints ain't on nothing. I had no mask, no gloves, no weapon on my person. All three of them say I got tased in the chest. The taser marks were on the side. They all seen.

The officer said I admitted to guilt and I took it to trial. The thing about this officer. Can you get me that over there? I got some things I need to talk about. When I first got locked up for this situation right here, about a month later, I started flipping through the blue pages or whatever. I know it didn't happen and I know this is a gambling house and I know they pretty much had to see those machines and I know the police had been on several occasions before.

Well, I run across Internal Affairs in the blue papers. I know Internal Affairs look into any type of misconduct or something going wrong with officers. So I wrote a letter to Internal Affairs. I don't know who it was going to. It just said to whomever this may concern. Two days later, a sergeant from the sheriff's office named, uh, Nate Brooks come see and pulled me out and wanted to talk

to me. He got a folder with a picture on the front of it with some paperwork on the inside. I can tell by the way he approach me and asked me about the situation, he know -- he know some things about it already. He really just come to pick my brain and see what I know.

I tell him everything I just told the people yesterday about the situation and what was going on at the house and all this is a set up. They probably thought they was killing me. If you look at the amount of blood, that's probably what they thought. He tell me at the end of the little conference or whatever, Mr. Byrd, ain't nothing I can do for you. I'm just hearing your side of the story. I say okay.

A day or two later, I get my discovery. I get my discovery, I make copies of just about -- I ain't going to say everything, but Derosa's and Metcalf's statement and the police report and the forensic stuff. I sent all that off to them with another long detailed letter breaking down the whole situation.

Two days later, he comes and sees me again. We talk about the situation again. Now, he know he got to do something about it. He's like, Mr. Byrd, what

you want to do about the situation. I'm like you need to look into it or something cause it's all right here. I mean, this a simple situation. If two people saying they called the police after something happened and they really called before, that's supposed to be looked into by the police right then and there if you both think or convinced that you called the police after, but you really called before.

To end this little thing or whatever, this little meeting, he say do you want to file a formal complaint. Yes, sir. I do want to file a formal complaint. Wrote the formal complaint out. A couple of days later, I mailed it out to him. That day, I got this right here from him.

THE COURT: Uh-huh. (Reviewing.)

Okay.

MR. BYRD: Notice on the paperwork, it says usually within a period of 30 days, I will get a -- usually within a period of 30 days, I will get a final disposition and that a special investigator has my file and he will report to the sheriff and I'll hear something back usually within a period of 30 days. A month passed, two months passed, three months passed. I don't hear nothing from him.

THE COURT: Uh-huh.

MR. BYRD: In case you want to see, this is the first letter I sent.

THE COURT: All right. You sent him a -- you saying you sent him a letter?

MR. BYRD: That's the first letter.

THE COURT: Okay. Where are we going with this?

MR. BYRD: Two or three months, later --

THE COURT: You saying you never got any response from him on the investigation?

MR. BYRD: I never got the response and I never heard from nobody.

THE COURT: Never. And you continued to write letters?

MR. BYRD: Yes, ma'am. Two or three months later, I write him again and I asked him what's going on with the situation.

THE COURT: Right.

MR. BYRD: I don't hear nothing from him this time. The first times I wrote him, he came to see me. I think he really just pick my brain to see how much I really know.

THE COURT: Right.

MR. BYRD: Well, after I don't hear nothing

from him, I write Sheriff Steve Loftis. I don't hear nothing from him neither. It's like forget me, forget whatever my complaint is or whatever. In January of this year, I write him again. Except for this time, I'm asking him, you know, --

THE COURT: Would you pass me that stuff up? Would you give it to me?

MR. BYRD: January of this year, I write him again.

THE COURT: Uh-huh.

MR. BYRD: Three months after I wrote him and Sheriff Loftis. I'm asking them what's up with this situation. Why are you ignoring me? Do I need to take my complaint to somebody else over your head or whatever?

THE COURT: Right.

MR. BYRD: Two weeks later, I get a letter from him.

THE COURT: All right.

MR. BYRD: Saying the reason they couldn't investigate my complaint and everything that I'm talking about in this case is because Officer Metcalf no longer works for them.

THE COURT: He does not. Evidently, he's been employed by the Spartanburg Sheriff's Office.

MR. BYRD: This is the letter I got from him. As you heard Metcalf say yesterday, he left pretty much right after this situation right here. I write Nate Brooks again saying, you know, if you noticed in that letter, he said he wrote me and sent me something in the past. But all mail at the detention center is legal mail. They make sure you get it. Matter of fact, I think they document it.

THE COURT: Okay.

MR. BYRD: So I tell him this when I write him back. I was like I can prove you ain't sent me nothing over here.

THE COURT: Okay.

MR. BYRD: He sent me this saying pretty much the same thing. I'm saying all this to say that Mr. Metcalf leaving Greenville County Sheriff's Department got something to do with this case.

THE COURT: How about it got something to do with he lives in Spartanburg County?

MR. BYRD: I know it goes something to do with this case. This was a gambling house. They had poker machines in it. That drawing I drew had nothing in it was the game room. I know the police done been on several occasions. Like I said, the tape that these people heard yesterday is not the

original version. If you could somehow set something up where that could be compared to the tape that at the law enforcement center or 911 center or whatever to see if it's the same amount of time cause he played it from beginning to end as far as, uh, -- it should be the right amount of time. The same thing they got should be the same thing that's on that disk, right? Right?

THE COURT: I'm sure so.

MR. BYRD: What if it wasn't?

THE COURT: Sir, that's the tape that was entered into evidence. As I said, I'm here today to talk to you about sentencing. I'm not here to talk about whatever your theory of the case is. You put your theory forward that the police were trying to cover up a gambling house and the jury found you guilty. All right. I've got to sentence you here today. You have a horrendous, horrendous record to be so young. I need for you to tell me something to help you with sentencing. Do you understand where we are?

And you have an excellent, excellent attorney who tried an excellent case and took angles and raised doubts for the jury that I could not have even considered in this case, but he did. And you

put him in a situation where you are doing all the talking about this and you are standing next to one of the finest attorneys in South Carolina and he can't even say -- you're not even giving him a chance to say anything on your behalf.

It's time to get serious about where we're standing right now, that is, that I can give you between 15 years and the rest of your life. I need to find out from you something that helps me make a decision about that. We've heard about your record. We've heard it is horrid. We've heard the facts of the case. We've heard the verdict. Tell me something about you. Tell me something that says I shouldn't put you in jail for the rest of your life. Or if you don't have it to say, let your lawyer say it for you. I'm seriously asking you, Mr. Byrd. We're at this moment. All I'm hearing is conspiracy theory. I've got that. And I understand that you think the jury was wrong. I understand that. I need to know something about you.

MR. BYRD: I got a family out there. I got a grandma. I got a mama. My mama be in and out of jail. She just got out not too long ago. She might be out there on drugs right now. I got a little sister out there that needs me. She about 15 or 16.

She running away from home and doing all type of crazy stuff that I can't control cause I'm in here. I got six other sisters that I ain't seen in a while besides my oldest sister. I got another sister. My other four sisters live with my daddy up there in Washington somewhere. I got a lot of people that need to see me out there.

I'm just standing here. I can't believe what's done happened. I can't believe I'm going through this situation. I can't believe I been found guilty of something that didn't even happen.

MR. CHAMBERS: Your Honor, if I could. He -- certainly Bryan didn't ask me to say anything on his behalf, but I feel compelled to say something for him. That is -- you know, I am the third lawyer that he's had. He's had several investigators who've worked on his case. I can certainly understand from his standpoint. I think I would feel the same way that he has some suspicion about how this system has worked. He has been really sincere in telling me that he was not guilty.

Of course, I done everything that I can. I put forth the best case that I thought I could put forward for him. I'll second-guess myself probably as much or more as he is second-guessing me at this

point. And I realize at some point he's going to file a PCR. I know those things are coming. I'm going to file a notice of appeal so this case will go up on appeal.

But the things that I would like the Court to know about Bryan is this -- he alluded to this a little. But he is in many ways sort of the product of his raising, which all of us are. Some of us are fortunate enough to have parents who work hard and make sure we have a better life than they had. He, unfortunately, didn't have that.

He's a smart young man. He was a talented football player who if somebody could have got to him at the right time, he would have probably gone on to college, played ball, gotten an education. Instead of being somebody with a terrible criminal record would be somebody who was out earning a living and having a good life and maybe raising kids to do even better than he did. But he didn't do that.

But one of the things that I believe and especially for a young man like this, I was actually talking to Jeff about this yesterday in something Jeff said, and that is this notion of redemption. I think if we just lock him away forever, then he

doesn't have an opportunity to redeem himself. But if he has an opportunity to get out while he's still a young man and he takes that time for reflection and improvement and gets rid of some of the bitterness and suspicion that he has that he might have an opportunity to still contribute something to society and have a good life for himself. I would ask the Court to take that into consideration as you pass sentence.

THE COURT: Mr. Chambers, I appreciate your argument on behalf of him. I -- that's what I needed was to hear something about you. I needed to hear something about Bryan Byrd.

MR. BYRD: I wasn't finished, Your Honor.

THE COURT: And your attorney said it -- I'm always amazed with folks who have these excellent attorneys appointed to them and seem to not want them to talk. But I appreciate your argument on behalf of him. That does give me a human side to him and it changes the number from what I was thinking down significantly.

Uh, he's on probation?

PROBATION AGENT: Your Honor, he's on probation for Attempted Burglary Second. I'm not sure if they want to handle that today. The victim

is Food Lion. We have contacted them previously and the letter came back. We could go ahead and handle that today.

MR. BYRD: I rather do it later.

THE COURT: All right. We'll deal with it later. All right. I'll tell you Mr. Byrd -- I don't want you to give up any right that you have. But let me just tell you, if you wanted to deal with that today, I would run that concurrent with any sentence that I would give you. But I don't want you to forego any right that you have.

MR. BYRD: I would, but I'm pretty sure something is going to be found out about this case within the next year so far as everything I just told you. And I wouldn't want you to sentence me when they figure that situation out which would probably call for a retry or immediate release or whatever, I wouldn't want to have to be still stuck in there behind that. So I'll deal with that later.

THE COURT: I see. I understand. I understand. Just to let you know, I don't know that they will put off your probation violation hearing for that length of time. Okay. But like I said, I don't want you to forego any right that you might have.

All right. I've taken everything into consideration. You know, you were facing a load of time. There's no way around the fact that I've got to give you a good clip of time. It's a minimum of 15 years.

I'm going to take into account the fact that, uh, you are young and I'm going to take into account that you weren't dealt a good set of cards family-wise early on. I'm taking all those things into consideration. I also have to take into consideration that -- I'm going to be honest with you, Mr. Byrd, when I tell you I don't think I've ever heard a record as bad as yours at your age. It's a horrendous record. Don't give me that look. I hear cases all day every day. I don't think I've ever heard a record as bad as yours. You got to get real about that. That record is awful. I take all that into consideration. I'm going to sentence you to 20 years and give you credit for 579 days time served. Good luck to you.

(WHEREUPON, Court's Exhibits 4 and 5 are marked for identification purposes.)

(WHEREUPON, the proceedings conclude at approximately 11:53 a.m.)

FORM 5

STATE OF SOUTH CAROLINA)
)
County of Greenville)
)
Bryan Keith Byrd 305294)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

FILED-CLERK OF COURT
GREENVILLE S.C.
PAUL D. WICKENSIMER
2014 SEP 8 PM 2 37

APPLICATION FOR

POST-CONVICTION RELIEF

2014-CP-23- 04924

INSTRUCTIONS – READ CAREFULLY

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

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

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

1. Place of detention S.C.D.C. Broad River Correctional Institution, 4460 Broad River Rd, Columbia, S.C. 29210

2. Name and location of Court which imposed sentence Greenville County Court of General Sessions

3. Name(s) of co-defendant(s) (if any) 0

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2011-GS-23-3855

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) November 15, 2012

(b) 20 years, violent

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty V

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. applicant dismissed his own appeal

ii. _____

iii. _____

(c) the date of each such result:

i. Wednesday, August 20, 2014

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) N/A

(c) _____

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

(a) See additional page - Ineffective Assistance of Counsel A1-A

(b) See additional page - Prosecutorial Misconduct B

(c) See additional page - Newly discovered evidence C

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

(a) see additional page

(b) see additional page

(c) see additional page

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii. N/A

iii. N/A

iv. N/A

350

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

No

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/A

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

(a) N/A

(b) N/A

(c) N/A

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

(a) your arraignment and plea? N/A

(b) your trial, if any? Randall Chambers

(c) your sentencing? N/A

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? K. Jay Anthony

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

(a) the name and address of each attorney who represented you:

i. Randy Chambers 804 Laurens Road, Greenville, S.C. 29607

ii. K. Jay Anthony P.O. Box 3565 Spartanburg, S.C. 29306

iii.

(b) the proceedings at which each such attorney represented you:

i. Trial attorney

ii. Appellate Counsel

iii.

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

See additional page

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

NO

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of Greenville)

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

Bryan K Byrd

SWORN to and subscribed before me this 21st day of August, 2014.

Susan N. Frye (L.S.)
Notary Public

My Commission Expires: [illegible] 2018

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

I, Bryan Keith Byrd, 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.

Bryan K Byrd
Applicant

SWORN or affirmed to and subscribed before me this 21st day of August 2014.

Susan H. Frye
Notary Public

My Commission Expires: [illegible] 5, 2018

BYRD v State
P C R
Post Conviction Relief
Form number (5) five Application

In the court of common pleas

Questions and answers from Application

Question number (10) ten
State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:

Ineffective Assistance of Counsel (A)

(A-1) Counsel failed to study recording of alleged incident with applicant prior to trial

(A-2) Counsel failed to challenge 911 recording of alleged incident

(A-3) Failing to object to and allowing testimony that was inconsistant with the 911 tape presented at trial

(A-4) Failing to say and make clear to jurors that call was in fact staged. And failing to say and make clear to jurors that the victim and witness were the ones that should be on trial

(A-5) Failing to object to the redacted version of the 911 call, which took away the chance for the jurors to hear and know the contents of the original call

(A-6) Not putting statements into evidence

(A-7) Not properly tying shoulder injury into defensive theory, and not putting evidence of it into evidence

(A-8) Not putting forensics on the stand

(A-9) Failing to tie into defense the fact that applicant was covered in gas, and call Sergeant Corich, a potential defense witness, who could substantiate this

(A-10) Failing to get picture of victims arm into evidence

(A-11) Failing to investigate the circumstances surrounding officer Metcalf, and not calling officer Zach Hinton, whose testimony would've been material to the outcome of the trial

(A-12) Failing to object to officer Metcalf's testimony of applicants alleged confession

Prosecutorial Misconduct (B)

Newly discovered evidence (C) (Documents 1-17)

Question number (11) eleven
State concisely and in the same order the facts which support each of the grounds set out in (10)

Doc. 1 of 3.5

Ineffective Assistance of Counsel (IAC)

Counsel failed to study recording of alleged incident with applicant prior to trial.

Applicant met trial counsel for the first time on 6/26/2012, which is shown on his professional visitation log being sent with this application (Document #1)

During this first meeting, Counsel talked to applicant for about 20 minutes. Applicant was one of 4 or 5 meeting w/ him that morning.

At this meeting counsel told applicant that he was unsure as to what was going on with his case as far as a trial date went, but that he'd get back with him when he knew something.

At no point during this meeting did counsel present or go over this recording with applicant

The next time applicant saw counsel was on 11/8/2012 which is also shown on (Document #1) being sent with this.

At this meeting counsel told applicant that his trial would begin the following week. Applicant asked when they were going to go over this recording. He had studied it before with his prior counsel (Michael Cullinan) and knew its importance to the defense. Counsel told applicant that he'd never heard the 911 call, and even showed him an empty CD case. Counsel also told applicant that he'd be back on 11/12/12 to study the recording in preparation for the trial. Counsel did not show.

The next time applicant saw counsel was when he was ushered into the courtroom on 11/13/12 to pick his jury

The recording presented at trial (exhibit 14 was in fact an edited version of the original. As stated before, applicant went over this 911 call several times with his counsel prior to trial counsel.

Had counsel went over this recording with applicant he wouldve been aware of it's contents and been prepared to object to it's admissibility or present a defense against it.

By counsel not going over this 911 recording with applicant which wouldve been a professional norm by any competant lawyer, Applicant was denied his right to effective assistance of counsel as guaranteed him by the 6th and 14th Amendment of the U.S. Constitution.

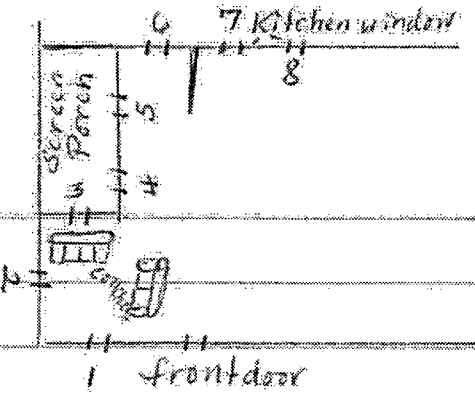
(A2)

Counsel failed to challenge 911 recording of incident by:

1) Not cross examining victim or pointing out in closing argument that the caller told the 911 dispatcher that "It's some guys outside trying to cause trouble, I don't know what they're up to."

On this call to 911, the caller - said to be the victim - told the dispatcher "It's some guys out side trying to cause trouble, I don't know what they're up to." By saying this he made two references as to seeing more than one person outside that he felt by having seen or presently seeing were trying to cause trouble.

This was the basis and reasoning of the call.
This statement was made 30 seconds into the call.
Later in the call the 911 dispatcher asked the caller "Do you know who" they are because she literally believed there to be more than one person outside.
The statement of the victim on the night of the incident was that he saw the applicant coming behind his house (Trans. p 138, ll. 7-9)
His trial testimony was that he was made aware of the applicants presence by his back motion light (Trans. p 85, ll. 13-15) And then saw the applicant walking back and forth in his backyard at which point he called 911 (Trans. p 85, ll. 18 - Trans. p 123, ll. 19-20) (Trans. p 124, ll. [redacted] 8-10)
Although the victim never attested to ever having seen or being aware of anyone else outside of his residence other than the applicant, he also testified that he was unsure as to how many people were outside of his residence when this call was made (Trans. p 85, ll. 21 - Trans. p 89, ll. 15-16.)
With this applicant will draw a blueprint of the residences windows as drawn by him prior to trial and used as (Defense exhibit 1) which was identified by the victim (Trans. p 119, ll. 3-19)
The purpose of this is to show that the caller had more than enough views to see one or multiple persons outside and couldn't have been confused as to how many people were actually outside of his residen



There are 8 windows, plus the front door that makes all of the outside viewable.

States Exhibit 10 shows, Window 1, 2

States Exhibit 1 shows, Window 3, 4, 5, 6

States Exhibit 5 shows, Window 8 - which is to the right of 7

In a situation like this, it is a likely reaction for the victim to be looking outside while making this call. He would have to be to come to the conclusion that there was someone, or "some guys" outside.

This statement made by the caller is also important because the victims testimony was that once the applicant burst out his patio window, he open his back door and did not run because of threats by the applicant about others with him outside of the residence (Trans. p98, ll. 9-22.

If the caller had knowledge or was aware anyone else other than applicant - as told to the 91 dispatcher - then there would be no need for a ruse to stop him from running.

Since this blueprint shows that the victim ha ample views, some of which would've been lit by a motion sensor light, Then the caller (victim)

actually saw two or more persons outside of his residence. Or he wanted the dispatcher to think that.

Counsel never went over this recording with applicant prior to trial. Even if he had never heard the recording before himself, he still should've been aware of this comment by the victim when he testified to not knowing how many people were outside (Trans p. 89, ll. 15-16, Right before (Exhibit 14) was played.

The defense was that this 911 call was in fact staged to attract officers to a residence and justify the beating of the applicant with a fire iron.

Counsel should've vigorously cross examined the victim and witness - who makes no mention of multiple persons outside in his statement or trial testimony - And pointed out in his closing argument that that statement was made by the caller to make the situation seem more serious while staging the call.

2. Failing to point out that there was no other voice on the call but the callers. And explaining why

According to (exhibit 14) and the 3 CD's which have been provided to the applicant since the trial, The caller was on the line a full minute before this glass was burst out.

Through out this minute there is no other voice on the call but the caller's. There is no other voice in the background, nor is there any verble interaction between the caller (victim) and the witness, whose testimony was that the caller told him he saw somebody (Trans pr 178, ll. 13) during the time that the caller would've been on the line with the dispatcher.

The call itself proves the witness' testimony to be untrue There is no verbal interaction between the caller and anyone

In a real situation such as this, there would be some thing said between the two - if the witness was actually inside as he and the victim attested.

The defense was that this 911 call was in fact staged to

attract the cops to a residence and justify the beating of the applicant.

If this happened the way the defense is implying then there wouldn't be any verbal interaction between the victim and the witness because he wasn't inside the residence during this minute before the glass burst.

Counsel should've pointed out and made clear to jurors through cross examination and closing argument the reason there was no verbal interaction during the call.

3. Failing to point out that this alleged fight lasted no longer than 30 seconds.

Starting around 1:20 into this 911 call what sounds like a fight or scuffle breaks out, and ends no longer than 30 seconds later, when everything gets quiet.

The victims testimony was that this fight lasted upwards of 10 minutes (Trans p, 110. ll. 13)

The witness testimony was that this fight lasted 10-15 minutes (Trans p, 168 ll. 20-21) Then after being questioned about the timing, said it was about 5 minutes (Trans p, 168 ll. 25 - p169 ll. 1)

The defense was that this 911 call was in fact staged to attract the cops to a residence and justify the beating of the applicant.

If this happened the way the defense is implying then what sounds like a fight wouldn't last long at all.

Counsel should've pointed out and made clear to jurors through cross examination and closing argument the reason neither the victim or the witness knew the actual timing of the fight.

4. Failing to point out that the caller or someone else purposely hung up the phone on the 911 dispatcher and did not answer when the dispatcher called back.

At around 1:50 into this 911 call what sounds like a scuffle ends and everything gets quiet. Nothing is heard on the line until a few seconds later when

the victim or someone else picks up the phone, mashes two buttons, then purposely hangs up on the dispatcher. And does not answer when the dispatche calls back.

This is proven by applicants incident recall sheet from this 911 call which will be sent with this application and labeled as (Document ~~#~~ 2)

The fact that whoever hung the phone up mashed buttons on the face of the phone before doing so means that they were aware of the dispatcher still being on the line, yet they hung up.

Since the defense was that this call was in fact staged, then counsel should've vigorously cross examined the victim and witness on who actually hung up the phone and why.

5. Failing to point out that the witness was unaware of the 911 call details. Failing to object to the witness' false testimony about there being a second call to 911, and not making clear to jurors that there was only one call made to 911.

The overall testimony of the victim and witness is that the witness was on the couch when the victim went to the kitchen. At which point he made a call to 911. According to the witness' testimony (Trans. p 190 ll. 23 - p 191 ll. 9) he was not able to confirm whether or not the victim was on the phone at this time.

As shown earlier in point 2 of this issue there is no proof that the witness was even there when this call took place because of the quietness in the background and the lack of verbal interaction between the victim and witness, which would be common in a situation like this

During the witness' direct examination he testified that the victim made another call to 911 (Trans. p 170 ll. 2-7, Trans. p 169 ll. 18-20) and told them that they had

the person that tried to break into their house down on the floor, can ya'll get here.

This is untrue. There was only one call made to 911. Counsel should've objected to this deliberate false testimony.

The victim and witness' statement on the night of the incident was that this call to 911 was "after" everything took place, when in fact it was before.

This was a major argument for the defense

It is clear by the witness' testimony that he was unsure or unaware of the actual call made to 911, yet was sure about a call and what was said during it that was not even made.

Someone purposely hung up the phone on the 911 dispatcher, and did not answer when she called back. There would be no way for the witness to think or get the idea that anything was said to anyone from 911 'After' this happened.

The defense was that this 911 call was in fact staged to justify the beating of the applicant

During his closing argument counsel should've pressed upon jurors the fact that the witness was unaware of what, in a situation like this, he would have to have knowledge of.

Also during his closing argument, counsel made a comment about where this second 911 call that the witness attested to was. But did not tell jurors outright that there was in fact only one call made to 911. By not doing this, the jurors were left to wonder whether or not there was a second call made to 911 as said or rather stated by the victim and witness in their statement.

Counsel should've objected to this false testimony, and made clear to jurors that there was only one 911 call made.

In conclusion:

Applicant was found on the floor of this residence beaten.

The statements and trial testimony of the victim and witness were [redacted] reasonably corroborated by the events heard on this 911 call.

The applicants testimony was that he was familiar w/ the residence, and had come there to see a friend at which point a fight ensued where the applicant was ganged and beaten by the witness and another unknown male until losing conciousness.

Applicants testimony was also that the victim was not there when this took place.

Since this is so the defense would have to be that the events heard on this 911 call were in fact a staged event.

The only way to reasonably imply or give the impression to the jurors that the applicant did not commit this crime is to out right attack and challenge the credibility of this 911 call.

Counsels defensive preperation should've been built around and geared toward the clues that showed this call was staged.

If counsel had studied the 911 tape with this in mind the 5 topics mentioned in this issue should've been either a pre-planed cross examination and argument. Or cross examined and pointed out in argument once the victim or witness testimony, contrary to the actual events of this call presented itself.

Any competant lawyer presenting a reasonable defense in a case like this would've done so.

Had counsel attacked the version of the call presented at trial (Exhibit 14) the outcome would've been different.

By counsel not doing so, applicant was denied his right to effective assistance of counsel as guaranteed him by the 6th and 14th Amendment of the U.S. Constitution.

(A3) Failing to object to and allowing testimony that was inconsistant with the 911 tape presented at trial.

The statements and trial testimony of the victim and witness were that once the applicant burst the glass at this residence, he made entry and then threats which according to them was the reason the victim didn't run into the back yard.

The 911 call presented at trial had these threat allegedly said by the applicant omited.

The reason applicant knows this is because he studied the original 911 call with his prior counsel (Michael Cullinan) while [redacted] preparing for trial in the fall of 2011. (Document #1) being sent with this application shows Cullinans frequent visits around this time.

The 911 call applicant and prior counsel went over had these threats on it.

Trial counsel never went over or listened to the 911 call with applicant prior to trial. When the tape was played (Exhibit 14) applicant made counsel aware that the recording being played was not the same 911 call that him and prior counsel studied.

Counsel ignored applicant and did nothing.

Counsel allowed the victim and witness to attest to thes threats on direct examination and did not object as he should've. Then he allowed them to confirm their own statements on his cross examination.

Counsel spoke on the lack of these threats on the recording during his closing argument (Trans p. 294 ll. 6-13)

If counsel had ever made any reasonable trial preparation he would've known that these threats were not on the recording provided him by the State. And if he'd been provided the original version of this call, then he would've known the 911 tape played at trial was a edited version.

Applicant feels that this was a deliberate oversight on counsels part. If he knew enough to make a statement concerning the lack of threats during his closing argument, then he had to have known this when he allowed and did not object to this testimony by the victim and witness.

By counsel not objecting to and allowing this testimony on his own cross examination that was inconsistent with the recording presented, Applicant was denied his right to effective assistance of counsel as gauranteed him by the 6th and 14th Amendment of the U.S. Constitution.

(A-4)

Failing to say and make clear to jurors that call was in fact staged. And failing to say and make clear to jurors that the victim and witness were the ones that should be on trial.

The testimony of the victim and witness was corroberated by the 911 tape presented at trial.

Any reasonable defense would have to be one that is geared toward exposing this call as a staged act.

Since this is so, it would be routine to say out right (likely during opening argument) that the call was staged

Counsel never said call was staged, but once made a suggestion during closing argument that "They (the victim and witness) may have been trying to cover for the fact that they beat him near dead" (Trans p. 313 ll. 8-10)

To only once make a mere suggestion (A maybe) to jurors of what the defense would've had to have been is a deficient performance well below the reasonable norm.

Also counsel did not paint a picture or say that the victim and witness were guilty of an assortment of crime

To effectively say that the applicant didn't commit this crime is to say that the victim and witness staged this call and should be the ones on trial. Failing to do so was unreasonable.

Counsel had a duty to make clear to jurors that the 911 call was in fact staged and not merely suggest it. Counsel also had a duty to make clear to juror. that the victim and witness were in fact the guilty ones in this case.

Had he done so the outcome of the trial likely would've been different.

Counsels actions or lack there of denied him his right to effective assistance of counsel as gauranteed him by the 6th and 14th Amendment of the U.S. Constitution.

(A-5)

Failing to object to [redacted] the redacted version of the 911 call, which took away the chance for the jurors to hear and know the contents of the original (Actual) call

Background / Facts

In the fall of 2011 applicant was preparing to go to trial with his prior counsel - Michael Cullinan - (Document# 1) being sent with this application will show his frequent visits around this time.

Through Cullinan applicant learned the contents of the original version of the 911 call. Cullinan had it down loaded to his cell phone. On each of those visits they went over it. Play - Rewind - Play. Applicant learned the contents almost verbatim.

On the day of the trial in the later part of January 2012 applicant was taken to the Greenville County Courthouse where he sat in a holding cell half the day. Finally applicant was taken to a meeting room where Cullinan was waiting for him. Cullinan told applicant that he was being taken off of his case and that he'd just come from some type of meeting between the solicitor and judge where a bunch of topics about the case had been discussed. He also told applica that the 911 call had been one of the topics, but the applican can't remember what all was told to him.

Applicant met trial counsel on 6/26/12. At that meeting they only talked about 20 minutes. Applicant was one of 4 or 5 meeting him that day. At no point during that meeting did applicant discass that 911 call with counsel.

After that applicant wrote counsel a number of time but received no response or visit.

The next time applicant saw counsel was on 11/8/12 where counsel told him that he was going to trial next week Applicant knew the importance of the 911 call to the case and asked when would they go over it. Counsel told him that he'd never heard it and showed him a empty CD case. He said he'd be back the day before the trial to go over it.

The next time applicant saw counsel was when he was ushered into the court room to pick his jurors

The 911 call (Exhibit 14) was introduced into evidence through the victim on the first day of the trial. As soon as it came on, applicant caught on immediately that what he was hearing was in fact another version of what he'd learned through prior counsel Mike Cullinan. Applicant immediately grabed counsel by the elbow and made him aware of this. Counsel ignored him and did nothing about it.

The next morning while sitting in a holding cell, applicant told the bailiff to go get counsel. When he arrived applicant asked counsel why he didn't report this to the judge. Counsel told applicant that ① that call was the original version ② he didn't know what he was talking about and ③ the judge wouldn't do anything about it.

Applicant then told counsel that if he didn't report this to the judge, he would. Counsel then told him that if he told this to the judge "he might as well try the case on his own." App took this as a threat that counsel wouldn't represent him to the best of his ability. When the trial resumed applicant didn't report this to the judge, unsure of what would be the outcome.

After his conviction, applicant was finally given a

chance to speak for himself (Trans p. 370 ll. 5-p371 ll. 17) He reported this to the judge and she told him that (Exhibit 14) would be in the clerk of courts office if it would need to be compared to another version.

Both counsel and the solicitor stood there and said nothing, as if they didn't know what the applicant was talking about.

Applicant is 100% positive that (Exhibit 14) was in fact a redacted version of the original 911 call.

Applicant is also convinced that counsel knew this also.

Since coming to S.C.D.C. the applicant has been provided 3 CD's of that 911 call. All of which are redacted versions.

The first came from applicants former appellate counsel, Lanelle Durant. As soon as applicant was assigned appealant counsel he made her aware of this 911 call issue. Durant then got the all call CD from applicants trial attorney. Whether or not it actually came from counsel, applicant is unsure. Durant sent applicant a copy of what was sent to her and a letter, which will be included with this as (Document #3)

When applicant was allowed to listen to the disk sent him he found out that it was the same thing as what was played during his trial - A redacted version lasting 2.05.

After his conviction applicant wrote Michael Cullinan on several occasions seeking help in his situation. Applicant didn't hear back from him until June 28, 2012 where tells him in a letter (Document #4) that he wanted to make sure what him and applicant studied was the same recording played at trial. Applicant is unsure whether or not the recording he sent is what Lanelle Durant sent him, or whether or not she actually got the recording from applicants trial counsel as her letter said. Applicant is also unsure if Michael Cullinan sent that letter. It would make no sense for Cullinan to send a version of the

911 call that he knew applicant knew was an edited version.

The second 911 tape came from the Greenville County Sheriffs office. It too was a redacted version of the 911 call lasting 2:05. Applicant wrote back asking why they had sent him that version and (Document #5) which is included with this application was their response

On Sept 27, 2013 applicant received a letter from his appellant lawyer, Lanelle Durant, saying that a lawyer named K Jay Anthony was being assigned to his case. Applicant immediately sent him a letter telling him about the 911 call situation. Anthony came a visited applicant in November 2013 before submitting his initial brief, At that meeting Anthony told applicant that he knew Michael Cullinan, and that he'd try to get the original version of that call. Not long later, applicant received another CD that supposedly came from Michael Cullinan. It too was a edited version of that 911 call. (Document #6) being sent with this application is K Jay Anthony's response.

By trial counsel not objecting to redacted version of the 911 call he took away the jurors chance to know that:

(1.) <u>The caller didn't give his name to the dispatcher.</u>

On the original call applicant clearly remembers that once the caller got dispatch on the line she asked for the callers name to which the caller gave no reply

This is also confirmed by the incident recall sheet sent with this (Document #2) that says "10-24 states that someone was breaking in." According to (Document #7), a <u>10-24</u> is a 'Complainant'. Which means the caller did not give his name.

The dispatcher asked for the callers name at the begining of the call. This missing part is what made the applicant realize that the recording being played at trial (Exhibit 14) was a edited version. This is also important because the applicants testimony was that the victim (caller) wasn't even there when he was ganged by the

witness and a unidentified male.

The only reason this would've been removed from the original version of the 911 call is to influence the jurors impression of whether or not the call was an actual event.

Since the defense was that this was in fact a staged 911 call, the jurors should've known that the caller, who called from inside the home before anything happened, did not give his name to the dispatcher when she asked.

(2.) There was someone outside of door, kicking or banging against it while saying something to someone inside, who says nothing back.

On original call applicant also remembers that after the caller finally gets his address right, there was a part where someone who had to be right outside of the door - cause of the sound - begin saying "let me in," and some other things to either the caller or someone else close to the door, while kicking or banging against it.

The caller or whomever the person outside was talking to inside said nothing verbal to initiate any conversation between the two. And the caller didn't respond to whoever was outside.

The testimony of the victim and witness was that the victim was in the kitchen and the witness was sitting on the couch, in the living room. Their testimony was that they heard a clasp pop on the patio door right before the glass was shattered out of the door that the intruder came through. They made this seem as if this was one quick event. As if they had no idea what was about to happen.

This missing part proves their statements and trial testimony to be untrue. It also proves that the caller had to know that there was just one man outside instead of "some guys outside trying to cause trouble"

For demonstrative purposes, applicant is sending States evidence/exhibit 1 (Document # 8) and exhibit 10

(Document #9) As mentioned in A-2 of this application, (Exhibit 10) shows windows 1, 2. (Exhibit 1) shows windows 3, 4, 5, 6.

All of the windows are covered, meaning whoever is outside cannot see who's inside. If whoever was standing outside could not see inside then the question would be how they would know that someone was right there, especially since the caller or whoever they were talking to said nothing to initiate a conversation, nor made any response to whomever was outside.

Also, the caller didn't tell the dispatcher that there was a man on his back patio banging against the door, which would be common in a situation like this where some one outside poses a threat.

That was the very reason for the call.

As mentioned earlier in this application, there was no verbal interaction between the victim and witness while inside of the home.

This missing part taken out of the original call under lines the picture that there was no one inside the home but the caller, which would prove that this call had to be staged.

Jurors should've known that the caller was not in the kitchen as him and the witness testified, but was in fact standing right by the door that would eventually be burst through.

The defense was that this was a staged call. Jurors should've also known that the intruder knew someone was right by the door that he could not see through even without anything being said.

(3.) Caller saying "I think they're trying to break in" then sliding heater in front of door as a defensive mechanism.

On original call, applicant remembers that after the intruder banged or kicked the door, the caller told the dispatcher "I think they're trying to break in," at which point a heater was slid across the floor.

Since the call shows that the victim was right there by the door, and States Exhibit 1 shows a heater in front of the door that was burst through, it is likely that that [redacted] is the heater sat there as some form of defense.

As mentioned before, the victim and witness' testimony was that the victim was in the kitchen and the witness was on the couch. This part here also places the victim by the door that was burst through and proves their testimony to be false.

This part was removed from (Exhibit 14) and the only reason for doing so would be to wrongfully influence jurors impression of whether or not the call was staged or an actual event.

Since the defense was that this call was staged, the jurors should've known that the caller told the 911 dispatcher that he thought they were trying to break in - before it even happened - and that his idea of protection or stopping this was to put a kerosene heater in front of the door.

(4.) <u>There were threats made by the intruder after busting out the glass as the victim and witness attested to.</u>

On original call, applicant clearly remembers that once this glass was burst out there were in fact threats made while the victim was still on the phone.

Both the victim and witness' statement said that these threats were made by the intruder

Both the victim and witness were allowed to testify that these threats were made by the intruder.

(Exhibit 14) has these threats removed

Applicant knows for a fact that the voice making these threats is not his, which would mean that the call had to be staged.

As stated throughout this issue, the only reason for removing this would be to "wrongfully influence jurors impression of whether or not this was an actual event

The defense was that this 911 call was in fact staged. The jurors should've had a chance to judge the voice of the person

making threats for that of the applicant since he testified in his own defense.

In Conclusion:

Applicant made the judge aware that (Exhibit 14) was an edited version of the original 911 call (Trans p. 370 ll. 5-3, ll. 17) Both counsel and the solicitor made no comment to confirm or deny this.

Applicant feels and is very much convinced that counsel was well aware that (Exhibit 14) was an edited version of the original 911 call. It would explain why counsel didn't go over it with applicant prior to trial, why counsel didn't object to (Exhibit 14) being introduced into evidence through the victims testimony, why counsel didn't report this to the judge once applicant made him aware, and why counsel stood there and said nothing while applicant told the judge about this.

The manufacturing of that 911 call is in itself obstruction of justice, because it was made with the intent to wrongfully influence the jurors impression of that call and lead to the conviction of applicant.

The playing of it at applicants trial is a deliberate false hood on the court for whomever was involved. It was also a violation of SC Court Rules and a violation of applicants due process rights.

Counsel should've objected to the admissibility of that recording. Had he done so, the outcome of applicants trial would've been different.

(A-6) Not putting statements into evidence

Counsels cross examination of the victim and the witness started off with him first going on and reconfirming what their testimony had been on direct. Then he took both of their statements to the stand, walked them through the contents, and pointed out the differences between their testimony on direct and their statements on the day of the incident.

There were several differences and the jurors should've had those statements to examine while deliberating. Especially since counsel knew that they contradicted their testimony on direct examination.

Officer Metcalfs statement should've also been entered into evidence. His statement and testimony was that applicant confessed to this crime. A Denno hearing was held before trial and the judges decision was that the alleged confession was a spontaneous utterance that should be left up to the jury to decide on.

Metcalfs testimony was that applicant was tased twice then he made this confession before any of the other officers arrived. But according to the sequence of events in his statement, applicant couldn't have said this until after the officers were there, and applicant was hand cuffed and identified.

Also Metcalfs statement only listed one taser cartridge as turned in.

Applicants testimony was that he was tased twice. He took off his shirt and showed the marks to the jurors.

Metcalfs testimony was that he tased applicant changed cartridges and tased applicant again. This would take two cartridges. His statement lists the serial numbers for just one

On the first day of deliberation the jury foreman sent out a note (Courts Exhibit 2) to the judge saying that they couldn't come up with a verdict. On the second day of deliberation the jury foreman sent out another note (Court's Exhibit 3) to the judge saying they wanted to see the statements of everyone involved.

The judge brought the jurors back into the court room and told them that they couldn't see statements because they hadn't been entered into evidence.

Had the jurors saw those statements while deliberating the out come of that trial would've been different. Applicant was denied his right to effective assistance of counsel as gauranted him by the 6th and 14th Amend.

(A-7) Not properly tying shoulder injury into defensive theory and not getting evidence of it into evidence.

The testimony of the applicant was that he got the gash on the inside of his shoulder while tussling with the witness who threw his shoulder through one of the panes in the glass paned door that would

eventually be the point of entry by the intruder. (Trans p. 258 ll. 1-16)

Applicant stood before jurors and demonstrated exactly how him and the witness locked up and how the witness swung his body which led to his shoulder crashing into a pane on the glass paned door.

On the night of the incident, applicant had on a cotton Polo top and a Camo jacket.

The victim and witness never attested to having a knife or cutting applicant. Nor did their testimony explain how applicant would've gotten gash that took a number of stitches to close on the inside of his shoulder.

Applicants explanation for the gash was the only logical one. Since there was no other explanation but that one this had to have happened the way applicant said it did.

This proves the victim and witness' testimony to be untrue

Counsel was unprepared to tie applicants injuries or lack there of into the defense. The only reason why there was a mug shot of applicants face (Defense Exhibit 3) (Document ##10) which showed no damage, was because applicant made counsel aware of his lack of injuries while listening to the victim (who was supposed to be a personal trainer and martial arts specialist, who applicant testified was not even there) testify how he beat him. Applicant showed counsel his wrist band with his picture on it. This is proved by the date at the bottom of (Document ##10) which says 11/14/2012 - which means that that mug shot was printed out on the second day of the trial. Which also means that counsel had never thought to see how bad [redacted] applicant had been beat up.

Counsel should've had medical records entered into evidence so that jurors could see and know that this injury to applicants shoulder did in fact happen when and how applicant attested it did.

Counsel casted doubt about this injury in his closing argument when he anticipated that the solicitor might say that applicant could've gotten that scar anywhere (Trans p. 306 ll. 25 - p. 307 ll. 15) Then said that the proof of applicants testimony on how his shoulder was injured was in the pictures in evidence which showed blood

covering the door in the kitchen where applicant said the scuffle was taking place.

If counsel was in the least bit aware of applicants account of events concerning his shoulder injury he would know that the door applicant was talking about was the one that was eventually burst through by the intruder. The door in the kitchen had no window panes.

Counsels argument about the shoulder injury confused jurors.

The jurors should've had a full understanding of applicants shoulder injury and had tangible proof by way of medical records from that night.

Counsels lack of providing medical records into evidence prejudiced applicants defense and had he done so the out come of the trial would've been different.

By doing this counsel denied applicant his right to effective assistance of counsel as gaurantee'd him by the 6th and 14th Amendment of the U.S. Constitution.

(A-8) Not putting forensics on the stand

On the night of the alleged incident forensics was called out to the scene and processed it. Pictures were taken and certain areas were checked for finger prints.

One of the spots checked for prints was the outside frame of the door that was burst through. None of the prints found - if any - matched applicants.

The original 911 call proves the intruder to be on the outside of this door - kicking, banging, talking - for some time before bursting inside.

Applicant was found to have no weapons, masks, or gloves on his person when arrested. Nor was there any in the pictures.

No prints of the applicant were found there or any when that was checked. Also the fire iron allegedly used by applicant to make entry was checked for prints and none were found that matched applicant.

Counsel should've called forensics to the stand so that the jurors could know that although applicant had no gloves, his prints were not found on this door that he allegedly burst through.

Also, a cell phone stun gun was found on the floor of the crime scene and collected. It didn't belong to applicant, and the victim and witness never a mention ing of it in their statements or trial testimony.

A cell phone stun gun is a taser which has the power to incompacitate an individual. It also would likely be used in a situation where someone is breaking in - if it was actually happening.

As shown in (A-5) of this application, the caller slid a heater in front of the door as a defense. The victim never made a mentioning of getting a weapon other than his attempt at going out to his car to get a gun which was stopped by threats from the intruder.

The victim and witness' test was that this fight that could be heard on the 911 call lasted 10 minutes or more. The jurors should've known that the victim and witness had a stun gun at their disposal yet did not use it.

Counsel should've put forensics on the stand so that the jurors could know about the lack of applicant fingerprints where they likely would've been since he had no gloves. And the cell phone stun gun that was found at the scene.

Had counsel done so the outcome of the trial would've been different. By doing this counsel denied applicant his right to effective assistance of counsel as gauranteed him by the 6th and 14th Amendment of the U.S. Constitution.

(A-9) Failing to tie in the defense the fact that applicant was covered in gas, and call Sergeant Couch, a potential defense witness, who could substantiate this.

Applicants testimony was that he was ganged and eventually knocked unconcious. When he came back to, he found himself to be laying in a pool of blood on the floor that was also covered in Kerosene. At no point in his testimony did he, the victim or witness mention how the floor would've come to be covered in gas.

(States Exhibit 8) shows the floor coated in kerosene and a gas can. It also shows pooled blood by the counter, which means applicants head had to have been there for some

time.

The forensic report (Document # 11) says the items on the floor were coated in kerosene. It also says that pictures were taken of the victims and witness' clothes. It makes no mention of them having kerosene on them which they would if the gas can had been knocked over during this fight. There also would likely be injuries from slipping and falling - The victim and witness had none. There also would be wet foot prints throughout the crime scene - The pictures taken show none.

The gas can was either knocked over during the fight. Or the kerosene was purposely poured on the applicant and floor.

On the morning of the incident, applicants clothes were washed when he arrived at the Greenville County Detention Center because of the strong gas odor. While applicant was there his clothes were washed again because of this. Sergeant Couch, whose over the laundry there would've attested to this. When counsel met with applicant on 11/8/12 he said that Couch would be at the trial. Counsel didn't call him nor did he adequately tie into the defense the fact that the applicant was covered in kerosene, yet the victim and witness wasn't.

This is also important because applicant was tased twice while laying in this kerosene which could've set him on fire. Considering the amount of kerosene on the ground and the fact that a gas can sat in the middle of the kitchen in plain sight, the officer would've had to have known applicant was either covered in kerosene or surrounded by it. This was a reckless oversight on behalf of the officer (or officers, depending on why Metcalf only lists serial numbers for one taser, and whether or not he was actually the first officer on the scene - which will be discussed later in this application) and the jurors should've known about it.

Counsel abandoned this issue of material fact. He asked no questions concerning this to the victim, whose house it was, yet his first questions to the witness (Trans p. 174 ll. 9 - p. 175 ll. 6) were about how the house was heated and where the gas jugs were.

Counsel asked Metcalf did he smell gas on applicant and his answer was that the whole house smelled and

there was a heater that was turned over. (Transp, 21 ll. 21 - p, 218 ll. 1)

If counsel had ever paid attention to the crime seen photos he would know that both heaters were upright (which should've already been a focal point if applicant burst through this glass paned door) and that Metcalf only reason for saying this would be to justify why applicant would smell like kerosene.

In closing argument counsel presented nothing as to why he asked the witness about the heating of the house and gas jugs. Or why he asked Metcalf about smelling gas on applicant.

Since the defense was that the victim and witness staged all of this to justify beating applicant, the lack of kerosene on the victim and witness, and the fact that applicant was covered in it - which would've been the testimony of Sergeant Couch - should've been pointed out as another purposeful act on behalf of the victim and witness. Jurors also should've known that applicant was gased twice while laying in this kerosene.

Abandoning this issue of material fact prejudiced the defense, and had counsel adequately presented this to the jurors the outcome of the trial would've been different.

By doing this counsel denied applicant his right to effective assistance of counsel as gauranteed him by the 6th and 14th Amendment of the U.S. Constitution.

(A-10) Failing to get picture of victims arm into evidence

The statement and trial testimony of the victim was that applicant burst through glass, made threats, then charged victim at which point applicant hit the victim in the arm with a fire iron.

The statement of the witness was that he grabed applicant and removed the fire iron from applicant before he hit the victim, but his trial testimony was that applicant did in fact hit the victim.

The police report says "Suspects actions: Assaulted victim. Applicant was charged with no assault. A pictur was taken of the victims arm. It shows his arm to have no mark or bruise.

On cross examination counsel attempted to introduce pictures of the victims arm into evidence (Trans p. 127 ll. 16-

p. 128 ll. 13) but the solicitor objected because of there being 8-10 pictures on the page counsel showed the victim while on the stand.

As mentioned earlier in this application, applicant had been preparing for trial in the fall of 2011 with prior counsel Michael Callinan. From what applicant remembers there was only one picture of victims arm. (State Exhibit 12) which is a picture of the victims arm is one large photo. What other pictures counsel could've had of the victims arm applicant does not know.

When counsel attempted to introduce these pictures into evidence his words to the judge were "I already got a couple of things marked so I'm going to make this Defendants Exhibit 3" which would mean that whatever counsel showed the victim while on the stand hadn't been marked as a defense exhibit at the beginning of the trial as it should've been. Since this is so the question is how would the solicitor object to the admissibility of a picture or pictures that he had no way of knowing what they were. Counsel showed him nothing before approaching the victim on the stand.

During his objection the solicitor gave counsel the option to cut out the picture of the victims arm and submit that into evidence, but counsel didn't.

(States Exhibit 12) shows the victim holding his arm in a position that would be inconsistent with blocking a blow from a fire iron.

It is common knowledge that if the victim was actually hit with this fire iron there would be a bruise or mark. The lack of a bruise or mark on the victims arm was a direct contradiction to the victim and witness' account of the events. It was the beginning of this alleged fight that the victim and witness thought lasted 10 minutes or more. Without it there is no proof that applicant ever had fire iron in his possession.

The defense was that this was a staged incident to justify the beating of applicant. By approaching the stand and having the victim identify what was supposed to be a bruised or hurt arm, and showing no proof otherwise, jurors were left to believe that the victims arm was in fact harmed.

Counsel had a duty to make sure that the jurors saw that there was nothing wrong with the victims arm when

there should've been if applicant had in fact hit him with a fire iron. Had the jurors had this picture while deliberating the outcome of the trial would've been different.

By not getting this picture into evidence counsel denied applicant his right to effective assistance of counsel as guaranteed him by the 6th and 14th Amendment of the U.S. Constitution.

(A-11) Failing to investigate the circumstances surrounding officer Metcalf, and not calling officer Zach Hinton, whose testimony would've been material to the outcome of the trial.

Officer Metcalfs police report (Document ## 12) and trial testimony was that he was the first on the scene of this incident, that he based applicant cause he failed to follow orders, and that applicant confessed to crime.

According to the sequence of events in his statement, this alleged confession would've happened after the other officers got there. His testimony at trial was that this confession was before the other officers arrived.

Officers Metcalfs testimony played a major part in applicants conviction. After an Allen charge it was the last thing presented before the jurors before deliberation.

Counsel failed to investigate the circumstances surrounding officer Metcalf. Had he done so he would've known how vital officer Zach Hinton's testimony would've been to the outcome of applicants trial.

Not long after applicant came to the Greenville County Detention Center he wrote to Internal Affairs at the Greenville County Law Enforcement Center. Applicant has a copy of this letter On 5/25/2011 Nate Brooks visited applicant (Document ## 1) to discuss the contents of the letter, which were about how his case was being handled and what had happened.

Although Brooks had a folder with him that had a picture of applicant on the front, his conclusion to this meeting was that he could do nothing about applicants complaints because he was just hearing his side.

A couple of months later when applicant received his discovery he wrote Nate Brooks again. On 7/26/2011 Brooks visited applicant again and a investigation about officer Metcalfs excessive force and the situation as a whole was started.

382 (Document #13) is what was given to applicant. It says that "usually in a period of 30 days - complainant will receive a final disposition.

40 days passed and applicant heard nothing, at which point he wrote NateBrooks back, but received no response. In the early part of Jan 2012 applicant wrote NateBrooks again wanting to know what was going on since he hadn't heard anything. (Applicant has a copy of this letter)

(Document #14) was NateBrooks response to applicant. In the letter he tells applicant that he had previously written him and told him that he couldn't investigate because the officer in question no longer worked for the agency. This is untrue. NateBrooks never wrote applicant anything whatsoever.

Applicant wrote NateBrooks again asking why would he lie and requesting his final disposition (Applicant has a copy of this letter) (Document #15) was NateBrooks response to applicant.

Unknown to applicant at the time, officer Metcalf resigned from the Greenville County Sheriffs office on 4-20-11, which was 4 days after applicants arrest on 4-16-11. (Document #16) is his alleged letter of resignation.

Applicant is unsure as to why NateBrooks would come and see him twice, then start an investigation into an officer and case that he would've had to have known no longer worked for the agency. Again, when Brooks visited applicant on 5-25-11 he had a folder with applicants picture on the front. Applicant made the judge at trial aware of all this (Trans p, 372 ll. 18 p, 377 ll. 17)

Applicant feels and is convinced that the investigation, or what was supposed to be an investigation, was started just to see what applicant knew, and make him feel like something was being done about his situation - when in fact nothing was being investigated.

As stated before in this application, applicant was to go to trial with prior counsel Michael Cullinan in Jan 2012. On the day that the trial was supposed to be held applicant met with Cullinan in a meeting room at the courthouse. He was then told that he would not be going to trial that day and that Cullinan was being taken off of his case.

Applicant clearly remembers being told that some investigator had spoken to a officer name Zach Hinton who told him that the residence where this alleged incident took place

was in fact a ticket house. Running tickets is gambling. Therefore he basically said that the home was a gambling house. Applicant knew that the name Zach Hinton was familiar. Later on he ran across it again when looking at his incident recall sheet.

At applicants first meeting with counsel he made him aware of what had been told to him about officer Hinton, and about his investigation by Nate Brooks. Applicant remembers that counsel didn't want to discuss either one of those topics.

At applicants second meeting with counsel on Nov 8th 2011 he asked about Hinton since counsel had never responded to any of his letters in which Hintons name was mentioned. Applicant clearly remembers counsel telling him that "He couldn't find him" Applicant took this to mean that Hinton was no longer an officer.

Applicant feels and is convinced that Nate Brooks lack of truthfulness concerning the investigation, and counsels failure to follow upon this and call Zach Hinton as a witness at trial was due to the fact that he really was [redacted] the first officer on the scene of this incident as the incident recall shows.

Since being in S.C.D.C. applicant has made an effort to understand his incident recall sheet, mainly because he knew for a fact that the 911 call played at his trial (Exhibit 14) was an edited version. And because officer Zach Hinton was listed as a potential witness, (Trans p, 40 ll. 20 21) but not called to testify.

According to info provided to applicant by Wesley Smith of the Greenville County Sheriffs office (Document # 7) "08" over an officers name is a disposition code meaning "Turned over to" which would mean that the present situation or incident is under that officers control.

(Document #2) is the first page of the incident recall. The two pages behind it which I will name (Document # 17 & 18, are the next in line of the incident recall.

On (Document #2) officer Metcalf is the first officer to show up an 'Enroute' - meaning on the way, at 3:24. Zach Hinton shows up enroute at 3:24. Robert Parrish shows up at 3:25. Mike Derosa at 3:26. All of the officers were on the way at the same time.

Metcalf, Derosa and Parrish eventually show up as 'Onscene' yet Hinton appears at 3:26 with an 08 over his name. Applicant is convinced that the reason Hinton didn't show up

as 'Onscene' like the others is because he arrived at 3:26, and that the situation would've been turned over to him because Metcalf was the first to show up as 'Enroute'. Also convincing applicant of this is the way 08 is used in the rest of the incident recall, as far as officers being left on the scene after others have left.

Lt Hinton is in fact the first responder as the incident recall sheet shows his testimony would be material to applicants trial because he would've had to have been there when applicant made this alleged confession. He may also have based applicant which would explain why Metcalf only lists the serial number for one deployed taser in his report - when there should be two.

If applicants conclusions and assumptions are incorrect, then it needs to be made clear exactly when Hinton arrived, which he did since he was listed as a potential witness at trial.

For him to be listed counsel would have to know what his involvement was in this incident and what his testimony would be - if he had done any type of investigation, which would be a reasonable norm.

Applicant had made him aware of officer Zach Hinton, yet he did not call him as a witness and use material at his disposal to impeach Metcalf's testimony.

Applicant feels and is convinced that this was a deliberate oversight on counsels part, and by doing this counsel was not a advocate of applicant at trial.

Counsels conduct undermined the proper functioning of the adversarial process and applicants trial cannot be relied on as having produced a just result.

Had counsel used what he would've had to have known to impeach Metcalfs testimony, the outcome of the trial would've been different.

Counsels actions or lack there of denied applicant his right to effective assistance of counsel as guaranteed him by the 6th and 14th Amendment of the U.S. Constitution.

(A-12) Failing to object to officer Metcalf's testimony of applicants alleged confession

Before applicants trial began a Jackson vs Deno hearing was held. The judge found that applicants alleged confession was a voluntary statement and that it was a spontaneous utterance

and not elicited in any way by a government act.

When officer Metcalf attested to this alleged confession by applicant counsel failed to object to this testimony, so that if overruled it could be examined on appellate review.

By failing to object counsel denied applicant his right to effective assistance of counsel as gaurenteed him by the 6th and 14th Amendment of the U.S. Constitution

(B.) Prosecutorial Misconduct

Jeff Weston, the prosecutor at applicants trial commited prosecutorial misconduct in several respects.

• A prosecutor may not express personal opinions about the defendants guilt or credibility.

During the prosecutors closing argument he said that "Most criminals are stupid. This was obviously stupid on his part. This is the result" (Trans p, 320 ll. 1-2) By saying this the prosecutor gave his personal opinion of an alleged action comitted by applicant that he hadn't proven yet.

The prosecutor also said "His cockamamy story" (Trans p, 331 ll. 21) which is to say that applicant made up his testimony.

The prosecutor also called applicant a liar "He's a liar. Everything he said after his name was a lie" (Trans p, 342 ll. 25 - p, 343 ll. 1)

• A prosecutor may not appeal to jurors to act as conscience for the community or make remarks likely to inflame the passions of jurors

The prosecutor did exactly this when told jurors that "Aren't we tired of home invasions" (Trans p, 319 ll. 23)

• A prosecutor may not vouch for the credibility of witnesses

The prosecutor did this on several occasions throughout his closing argument by saying,

"Berry Butler has no reason to lie - James Rector has no reason to lie" (Trans p, 322 ll. 22-24)

"He's got no reason to make this up. Berry Butler has no reason to be Denzel Washington and take this all call" (Trans p,

386 (23 ll. 1-3)

- "Why would he make that up? He is a police officer" (Trans p, 324 ll. 8-9)

"Why would they lie about that?" (Trans p, 327 ll. 7-8

"Ladies and Gentlemen, they told yall the truth. The offic told yall the truth" (Trans p, 342 ll. 18-19)

"Common sense tells you that officers don't just take people for no reason" (Trans p, 329 ll. 22)

- A prosecutor may not make material misstatements of fact or law.

"Give up the bread, Give up the lettuce. Give up the cheese. Whatever it was, But he was basically saying I'm trying to rob you" (Trans p, 319 ll. 6-7)

This comment made by the prosecutor in his closing argument was in reference to threats said to be made by applicant which were not on the 911 call presented (Exhibit 14) These threats were on the original recording that applicant studied with prior counsel, as stated earlier in this application.

- A prosecutor may not knowingly present false evidence

As stated through out this application, applicant was preparing to go to trial with prior counsel (Michael Cullinan) in the fall of 2011 (Document #1) Through him applicant learned the original version of the 911 call.

Since this is so it should be assumed and expected that the prosecutor was preparing for trial also. If this is the case, which would be a reasonable norm, the prosecutor would've had to have studied that call for himself.

Since this is so there is no way that the prosecutor wouldn't have known that the 911 call presented at applicants trial (Exhibit 14) was in fact a edited version.

By presenting this false evidence, the prosecutor committed prosecutorial misconduct, and likely made himself party to obstruction of justice and a conspiracy. Applicant says this from the stand point of looking at this 911 call situation as a whole, and what it would've have to have taken to bring this

about. As stated before applicant has 3 CD's of this edited 911 call, one of which came from the Greenville County Sheriff's Dept, that they swear is accurate and true (Document #5)

The prosecutor also asked questions of the victim and witness concerning these threats and the number of 911 calls made that he knew would lead to false testimony. False testimony that he did not correct as he should've

Once again if applicant knew that this recording was an edited version after having not heard the original in almost a year, then the prosecutor knew this.

Applicant told the judge about this and he stood there and said nothing

The prosecutors deliberate misconduct and presentment of evidence that he knew to be false violated applicants due process rights, therefore applicants trial cannot be relied upon as having produced a just result.

(C) Newly discovered evidence.

On January 17, 2014 applicant received his trial exhibit. While going through them he noticed that States exhibit 11, a picture of the tire iron applicant allegedly had, sat on a bloodied counter and next to it was a broken chain link, which is used to avoid entry of a door.

The door allegedly burst through by applicant had no chain link on it as shown in State exhibit 1

The reason this is so important is because the witness's testimony is that he heard a clasp pop on the patio door which alerted him and the victim to the intruders presence (Trans p. 161 ll. 24 - p. 162 ll. 1)

The victim didn't attest to hearing this. His testimony was that he was in the kitchen when this glass was burst through. As shown in (A-5) of this application the victim was in the den sometime before anything took place.

The placement of this chain link that in all likelyhood would've had to have come from the patio door would fall under newly discovered evidence because trial counsel had no way of knowing what the witness's testimony would be. There was no mention of a chain popping in his statement.

This picture that shows the tire iron and chain link

was one of the small pictures in defense exhibit 2. But applicant is unsure whether jurors saw defense exhibit 2 because his list of exhibits receipt (Document # 19) shows that defense exhibit 2 was not entered into evidence which it should've been (Trans p. 133 ll. 2-3. Even if it had been seen by them they would've had no way of knowing the significance of that chain link and what it could only mean.

The defense was that this was a staged incident to justify the beating of applicant.

Since this is so, the victim would be the one on the inside (which the tape shows) and the witness would be the one on the outside pretending to be the intruder. He also would be the one to have knowledge of this chain link being popped off the patio door.

It is common knowledge that this chain link would not just be sitting on this counter. next to a fire iron that a officer said in his report was on the ground.

With there being questions to Metcalf's overall testimony, the fact that there is a chain link on that counter is material to applicants guilt or innocence.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2014-CP-23-4924
COUNTY OF GREENVILLE)	
)	
Bryan Keith Byrd,)	
S.C.D.C. No. 305294,)	
)	
Applicant,)	
)	**RETURN**
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

In response to the post-conviction relief application filed September 8, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the October 2011 term of General Sessions for first-degree burglary (2011-GS-23-3835). Randall L. Chambers, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On November 15, 2012, the Honorable Letitia H. Verdin sentenced the Applicant to twenty (20) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. K. Jay Anthony, Esquire perfected the Applicant's appeal. The Court of Appeals dismissed the appeal – pursuant to the Applicant's request – by order filed September 23, 2014. The remittitur was sent on November 11, 2014.

Attached herewith and incorporated herein by reference are the records of the Greenville

County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

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

1. Ineffective assistance of counsel:
   a. Failed to study a recording of alleged incident with the Applicant.
   b. Failed to challenge 911 recording of alleged incident.
   c. Failed to object to improper testimony regarding 911 recording.
   d. Failed to tell jurors the 911 recording was staged and that the victim and witness were the ones who should be on trial.
   e. Failed to object to the "redacted version of the 911 call."
   f. Failed to put statements into evidence.
   g. Failed to include the Applicant's injured shoulder as part of defense theory.
   h. Failed to call forensic investigators as witnesses.
   i. Failed to call Sergeant Couch as a witness to testify that the Applicant was covered in gas upon Couch's arrival to the crime scene.
   j. Failed to admit a picture of victim's arm into evidence.
   k. Failed to call Officer Zach Hinton as a witness.
   l. Failed to object to Officer Metcalf's testimony regarding the Applicant's alleged confession.
2. Prosecutorial misconduct:
   a. Expressed personal opinions of the Applicant's testimony during closing arguments.
   b. Called the Applicant "a liar" during closing argument.
   c. Inappropriately inflamed the passions of jurors by acting as the conscience of the community.
   d. Personally vouched to the credibility of witnesses.
   e. Made material factual misstatements.
   f. Knowingly presented false evidence when introducing the "redacted" 911 tape.
3. Newly discovered evidence:
   a. State's Exhibit 11 contradicts the victim's testimony.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is

without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v.

Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged evidence:

> (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citation omitted) (emphasis added). The Applicant has not shown that the alleged evidence meets any of the requirements for after-discovered evidence. The Respondent submits the Court should summarily dismiss this allegation.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: _____
Attorneys for Respondent

February 12, 2015

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE BRYAN KEITH BYRD, 305294 Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2014-CP-23-4924 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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Bryan Keith Byrd, 305294
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29210

DATED this 12th day of February, 2015.

Judy A. C. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)

Bryan Keith Byrd,)
) TRANSCRIPT OF RECORD
Applicant,) 2014-CP-23-4924
-vs-)
)
The State,)
) October 25, 2016
Respondent.) Greenville, South Carolina

B E F O R E:

HONORABLE JOHN C. HAYES, III, JUDGE

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

BRIAN P. JOHNSON, ESQUIRE
Attorney for the Applicant

PATRICK L. SCHMECKPEPER, ESQUIRE
Attorney for the Respondent

Margaret A. Woods
Circuit Court Reporter

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MR. SCHMECKPEPER: Thank Your Honor. This is Bryan Byrd vs. the State of South Carolina, 2014-CP-23-4924. Applicant was indicted in October of 2011 for first degree burglary, he was represented by Randy Chambers. State called the case to trial and the applicant was found guilty. On November 15th 2012 he was sentenced by Judge Verdin 20 years imprisonment. A timely notice of appeal was filed by the South Carolina Court of Appeals, that issue was briefed; however, at applicant's request the appeal was dismissed and the remittitur was sent on November 11th 2014. This application was filed September 8th 2014, this point gonna turn matters over to opposing counsel.

THE COURT: All right, Mr. Jenkins [sic].

MR. JOHNSON: Johnson. Thank Your Honor.

THE COURT: All right, this is one a the ones that has a great number of, uh, allegations so I'm gonna ask if you'll, it could also could help me if you'd kinda isolate 'xactly what the concerns of Mr. Byrd are.

MR. JOHNSON: Yes, sir, Your Honor, and I I think I can do that, we, my client and I went over it. Uh, that there, uh, the primary issue has to do with a, uh, an audio, uh, recording, Judge, um, that is essentially covered in 81 to 85 but essentially, Judge, what's, what my client is alleging is that that there was an audio recording that was improper or otherwise doctored and he intends on presenting evidence in

order to prove that the actual audio recording should have been longer. Uh, Your Honor, the other allegations that he, uh, attempt to pursue that are essentially separate from that issue itself is the, uh, failing to investigate circumstances surrounding Officer Metcalf, uh, and then, uh, the third one has to do with, uh, pictures of the victim's arm into evidence, oh, excuse me, . . .

(Attorney/client conference held off the record.)

MR. JOHNSON: All right, well, Judge, I I'm sorry, my my client was directing me, the second one is concerning the arm and the third is it it is involving Officer Metcalf and that would essentially essentially three compartment -- compartmentalized issues, Judge, as contained.

THE COURT: All right, and I I lost you, s -- the second is what?

MR. JOHNSON: The second one, uh, is Officer Metcalf.

THE COURT: Well that's what I got then ---

THE APPLICANT: The armed ---

THE COURT: --- you said he corrected you.

THE APPLICANT: --- robbery.

MR. JOHNSON: The armed -- he -- well, I I don't if the order matters ---

THE COURT: It doesn't, it ---

MR. JOHNSON: --- but ---

THE COURT: --- doesn't but I was gonna ---

MR. JOHNSON: Okay.

THE COURT: So what's the other one?

MR. JOHNSON: The other one is, uh, uh, failing to get a picture of the victim's arm into evidence.

THE COURT: Okay. I got ya, okay.

MR. JOHNSON: Okay. Uh, at this time, Your Honor, I'd like to call, uh, my client Bryan Byrd to the stand.

THE COURT: All right, Mr. Byrd, please come up and be sworn.

THE CLERK: Mr. Byrd, please step up to the witness booth and place your left hand on the Bible and raise your right hand best you can.

(Whereupon, the applicant came forward.)

BRYAN KEITH BYRD, having been first duly sworn, testified as follows:

THE CLERK: Thank you, you may be seated. Please state your full name for the record.

THE APPLICANT: Bryan Keith Byrd.

(Whereupon, a discussion was held off the record.)

DIRECT EXAMINATION BY MR. JOHNSON:

Q. And, Mr. Byrd, I know you got a lotta papers, will you let me know if if if you're ready now or ---

A. Yeah, you might wanna come over here now.

THE COURT: All right, you need to speak up a little so the court reporter ---

THE APPLICANT: Okay.
Q. Do you need time to go through your paperwork, are you prepared to to ---
A. I have ---
Q. --- move forward?
A. --- everything lined up.
Q. All right. Okay, please speak into the microphone so the judge and everyone can hear you, okay? All right, now, Bryan, uh, you're currently housed in what, uh, place at Department of Corrections?
A. Uh, Broad River Correctional.
Q. And what type of, uh, what what's the length of your sentence you will serve?
A. Uh, 20 years.
Q. Okay. And your your trial counsel was who?
A. Uh, Randy Chambers.
Q. Okay. Now you you filed an application for post-conviction relief, is that correct?
A. Yes.
Q. And making, uh, several allegations as not only listed but as communicated, uh, today before the Court, uh, just immediately by your counsel, by myself.
A. Yes.
Q. All right. Um, at this time, um, concerning your allegations regarding 81 to 85, I'm gonna ask you to

communicate to the Court, uh, the support for those allegations.

A. Okay. We go, um, Your Honor, I'm go go into the background about the issue and while I do that go have you look over several documents, I -- he told me earlier that he'd have to enter it into evidence, I don't know how it's gonna work, whether he does that first 'fore he give it to you but, uh, ---

Q. Well well well Bryan, uh, if if you'll say what the documents are, I can approach the attorney general with it and ask for it be submitted, you have to do it one by one, okay?

A. We start off with my professional visitation log from, uh, Greenville County Detention Center. On it it shows that ---

Q. Hold on, let me ---

A. Oh, oh, ---

Q. --- show it ---

A. --- oh, oh, ---

Q. --- to him first, ---

A. --- okay.

Q. --- okay?

A. Okay.

(Whereupon, opposing counsel examined the document.)

MR. SCHMECKPEPER: Respectfully, Your Honor, I'd have to object to the introduction a this document or it's not

properly authenticated, uh, and that's my objection ---

THE COURT: All right, ---

MR. SCHMECKPEPER: --- and that's the first ---

THE COURT: --- I I'll allow ---

MR. SCHMECKPEPER: --- time I've seen it.

THE COURT: --- it in. I'll allow it in for whatever value it may have over objection.

MR. JOHNSON: Yes, sir, Your Honor, uh, enter this as, uh, Applicant's Exhibit 1.

THE COURT: All right, and what we may have to do at some point is make a copy for the record and return his to him.

MR. JOHNSON: Yes, sir, Your Honor.

(Inmate visits log marked Applicant's Exhibit No. 1 for identification and admitted into evidence.)

MR. JOHNSON: All right, permission to publish to to Your Honor?

THE COURT: All right.

BY MR. JOHNSON:

Q. All right. Uh, Bryan, what i -- what is he lookin' at here, I'm not gonna ask you a question.

A. Uh, that's my professional visitation log from the Greenville County Detentive [sic] Center and on it you can see the, uh, the numerous visit from Michael Cullinan in the, uh, the months of December 2011 and January 2012 because that was my lawyer before Randy Chambers and through him is how I learn

of the CD and contents of the CD. On those visits right there when he was comin' to see me, he had the CD, well the the audio downloaded onto his phone, he never had a CD case or a CD although this right here (indicating) is from, uh, Walt Wilkins sayin' that he's sendin', uh, Michael Cullinan CD so I guess this would be Exhibit No. 2.

(Whereupon, opposing counsel examined the document.)

MR. JOHNSON: And I'd like ---

MR. SCHMECKPEPER: No objection.

MR. JOHNSON: --- like to have this marked as Applicant's Exhibit 2.

THE COURT: All right, in without objection.

(Letter from Walt Wilkins marked Applicant's Exhibit No. 2 for identification and admitted into evidence.)

BY MR. JOHNSON:

Q. Now, Bryan, uh, ---

MR. SCHMECKPEPER: Sorry, excuse me.

Q. Okay. Now, Bryan, what you're sayin' is, uh, this is, uh, ---

A. That -- yeah, what I'm showin' that for is because that shows that Michael Cullinan was given a CD from the solicitor's office so he either downloaded the contents from that CD onto his phone or he may have got the recordin' from, uh, if you s -- look at the bottom part a that page, it shows that they can go online and get contents from

Greenvillecounty.org using his, uh, his login so I don't know if he got it from the CD that was given to him or he went online and got the contents but the contents that was on his phone that I study with him was the original CD.

Q. Okay, Bryan, where are we?

A. Uh, like I was sayin' throughout throughout those visits when he was comin' to see me he had the recordin' that I knowed it on his phone and I learned the recordin' almost verbatim, word for word, especially since it's supposed to be me sayin' certain things on this. Our main defense was gonna be that this was not my voice. Uh, at this point I'm gonna give you the victim and witnesses' statements and they're, um, testimony throughout the trial about me makin' these threats on direct examination and cross-examination by Mr. Chambers.

Q. Now, Bryan, I believe he can, he can review the, uh, the testimony in the transcript ---

THE COURT: Yeah, I've ---

Q. --- itself.

THE COURT: --- I've got transcript that ---

A. Oh, ---

THE COURT: --- I've got ---

A. --- okay.

THE COURT: --- all a that.

A. Okay.

Q. If you wanna direct him through what you want him to read

in the transcript.
A. I just want him to see the part where they testified to these threats and wrote about them in their own statements.
Q. But for the record if you will, uh, publish the, uh, page number and and the lines, uh, that he he can find those specific pieces of testimony and ---
A. Uh, ---
Q. --- get you to say the victim and say their names and everything so that he understands.
A. For the victim, uh, his direct examination was on page, uh, 98 and it started at line 2 and ended at 12 and for his cross-examination it was on page 141 and it started at line 1 and ended at line 9, that's the victim Berry Butler. For the witness James Rector, his direct examination was on page 164 and it started at line 13 and stops at 25 and on his direct, uh, on his cross-examination by Mr. Chambers, it's on page 185 and it starts at line 1 and goes all the way to line 14.
Q. 'kay, in relation to those, uh, pieces of, uh, testimony, uh, please illustrate to the Court what you, what you want the Court to pay attention to.
A. I just want to go on and get that in and I, and I wanted to point out that both the victim and witness said in their statements that the call was after all that was supposed to have happened happened when the call was actually before.
Q. Okay, so be clear, Bryan, just to make sure everybody's

clear, uh, in their statements that you have, ---

A. Um-hum.

Q. --- uh, they're sayin' that everything happened, they called after everything had happened.

A. Yeah, both of 'em clearly say that they called 911 after all this happened.

Q. Okay, and but in the transcript you're saying that they actually acknowledge that that it happened before.

A. Yes.

Q. Okay.

A. Uh, on the day of the trial, I can't remember the exact date, but I was brought over here to the courthouse and I sit in a holdin' cell for half the day, uh, after that I was pulled out and and taken to another holdin' cell where I met with, uh, Mr. Cullinan, he told me that he was bein' taken off my case. He said that he had just got into it with the judge and the solicitor about different aspects of my case, I can't remember everything he told me but one a the things he told me was he said somethin' about the ---

MR. SCHMECKPEPER: Your Honor, ---

A. --- 911 ---

MR. SCHMECKPEPER: --- I object ---

A. --- tape ---

MS. SCHMECKPEPER: --- at this point, I I object to hearsay.

THE COURT: And I sustain the objection, he would have to come testify and all.

MR. JOHNSON: Well, uh, okay, think Michael's in France.

BY MR. JOHNSON:

Q. Uh, uh, can you, can you portray to the Court your understanding of why Michael was taken off your case without saying what Michael told you.

A. To this day I don't know the exact reason why the man was taken off a my case.

Q. Did he express some sort of concern about the CD?

A. Yes, he said somethin' about the CD and a couple ---

Q. You can't say what he said.

A. Okay.

Q. All right, Bryan, now with with that established that he expressed some concern, uh, continue on with your . . .

A. Okay. I met, uh, Mr. Chambers on 6/26/2012 for the first time and I mighta talked to him for about ten to fifteen minutes 'cause there was six or seven of us down there in Cove A, uh, Cove B meetin' with him that day and only, like I said, only talked to him for about ten to fifteen minutes because he didn't know much about my case. He told me that he had just been given the case. At no time durin' this this little meeting did we go over the CD or scu -- discuss any a the details about the CD, never went over anything about the CD. Uh, after this I wrote Mr. Chambers throughout the rest a the

summer and I think I got a letter from him on November the 6 tellin' me that he would, he might, uh, I can't remember the details a the letter but he said that somethin' might be comin' up later. Uh, on November 8th is when he came and seen me and I still remember the first thing he said to me when I walked in there, and he was like, Are you ready to go home, and I was like, Yeah, he was like, Well you go to trial next week, so I get to lookin' at him, you know, like, Are you serious, because this is our second meetin', I just got a letter from him the week before, we we haven't even had a chance to sit down and talk about the case or a possible defense or how we're gonna do this, so I tell him my side a the story and, uh, I ask him about the CD, about the 911 recording and when when are we go over this, this is very important because this is demonstrative evidence, this is what allegedly was supposed to have happened. He pulls out a CD case without a CD and tells me that he never even heard the recordin' before so I press upon him the importance of us goin' over this before trial because it's demonstrative evidence about the whole case. He tells me that he be, 'cause this was on a Thursday and my trial started on a Tuesday, so he told me that he'd be back that Monday with the CD so we could go over it. The next time I met Mr. Chambers was when I was bein' ushered into, uh, the courtroom to pick my jurors, we never went over any recordin' before trial.

Q. Okay, Bryan, what, so after, uh, next time, I guess the third time you met was in the courtroom and I believe you ---

A. Yes.

Q. --- stated that he have a time to prepare as you ---

A. Yeah, ---

Q. --- requested.

A. --- we we never, we never went over anything about the recordin' over -- or CD, never had anything on his phone, we never listen to the recordin' together, never. On the first day a the trial, the tape was introduced into evidence through the victim's testimony and not the 911 operator. It was introduced into evidence by the victim of identifyin' his initials on the CD as havin' gone over it with the solicitor, I don't know when but they supposed to had went over the CD together before the trial. Um, pages 87, it starts on page 87 of my transcript line 21 through, uh, page 88 in line 9 is where this, uh, call is introduced into evidence through the victim's testimony and, uh, the judge asked Mr. Chambers did he object, he say, No, Your Honor. As soons the, as the tape co -- came on, I caught on immediately that what I was hearin' was a edited version a what I had learned through Michael Cullinan. I pulled Mr. Chambers to the side, I grabbed his elbow and told him what was goin' on and I'm not gonna say he jerked away from me but he pulled away from me and told me he was tryin' to pay attention. I didn't get to talk to him no

more for the rest a that day because at the end a, that was the first day a the trial, at the end of that day they just ushered me out the courtroom and it went like it just broke up and everybody was standin' around talkin', they ushered me outta the courtroom, he stayed there so we didn't get to talk about nothin' with the recordin' for the rest a that day.

The very next mornin' on the second day a the trial when I was sittin' in the holdin' cell, I told the bailiff to go ahead and get him so we could talk about this. When he came in there, I asked, I was like, Why you ain't tell the judge about this, and his response was that I didn't know what I was talkin' about and that there's no need to tell her because she's not gonna do nothin' about it so I look at him like you can't be serious, so I tell him, I said, Man, if if you don't go in and tell her, I'm gonna go in there and tell her and that's when he tells me that, Mr. Byrd, if you go in there and tell her, you might as well be representin' yourself, I took that as a threat that he wouldn't do his job to the best a his ability. I still wanted to come out here and tell her but I had, I had never been in trial before, I was in here by myself, I had no family members, I was on my own so I figured I might as well just roll with the punches 'cause I aint know what else to do, he told me not to say nothin'. After I was found guilty I was finally given my chance to report this to the judge. On pages, on page 370 a my transcript starting at

line 5 and endin' at line 19 on 371 is where I'm tellin' her about the recordin' that was played at my trial, how I told him that that was a edited version of the CD and he did nothin' about it, neither him or the solicitor s -- made any type a comments about this recordin' or what was supposed to have happened.

Um, since I've been in SCDC, SCDC I've I've written so many people and I did so much, I had this thing investigated by the disciplinary counsel or the Supreme Court, uh, I written Judge Verdin, uh, Brian Johnson, I have copies a all these letters, I mean, would it be easier if I didn't put this into, uh, evidence or you, would it be better if you just skimmed over these letters?

THE COURT: Well what, I I'll, that I'll leave that up to you and your attorney although letters you sent after the trial, uh, don't don't have any impact on, would not have any, uh, value or any weight or any relevance what happened before the trial and after trial, the fact that you later called Judge Verdin or others, called their attention complaints, uh, I can't consider them, I can only consider your testimony and anyone else's regarding what happened before trial, what happened at the trial.

A. I kept sayin' sit all that up here then. Oh, ---

Q. Now, Bryan, I think if you, uh, simply, uh, just put the the Court on notice of or why you wrote the letters and and

just move on from there, there's no reason to put them into evidence.

A. Because this was demonstrative evidence and if a alternate version was made, which it was, and played at my trial, somebody need to find out who made it and why. This is of everything that allegedly happened, why would another version be made and I brought this up at at trial, nobody said anything and up until now nothin' has been done, everybody, I didn't, I ain't gonna say they called me a liar but I have felt like I've been belittled over the last three years concernin' this issue for real, done caused me a a lotta health problems. I'm takin' anxiety meds now, blood pressure pills, I never had health problem before this, never. When I was little I I I mighta had a little asthma problem but, uh, I guess we can go on get into the proof. I have two CDs with me today, Your Honor.

(Whereupon, a discussion was held off the record.)

You say audio you wanna play it through one time?

Q. Well, uh, Your Honor, let me ask, uh -- Bryan, you just, you've been mentioning the audio, okay, it it is, uh, the audio, the audio played at trial, how how long was it?

A. Two minutes and six seconds.

Q. Okay, and, uh, I believe, attorney general, I've approached you and showed you a copy but, Your Honor, I'd like for permission to publish the audio, I believe that, uh,

that Mr. Byrd needs it to, uh, support his claim.

THE COURT: Okay.

MR. SCHMECKPEPER: And just to clarify, this is the audio that was played at trial.

MR. JOHNSON: Yes.

MR. SCHMECKPEPER: I have no objection, Your Honor.

MR. JOHNSON: And, Your Honor, uh, I have it on my laptop, if I may approach closer, ---

THE COURT: Yeah.

MR. JOHNSON: --- I don't think it could be ---

THE COURT: Yeah, ---

MR. JOHNSON: --- necess ---

THE COURT: --- we, that we ---

MR. SCHMECKPEPER: May I approach also, Your Honor?

THE COURT: Yes.

MR. JOHNSON: I don't think it be necessary to, uh, put it on speaker or anything, I think you'll be able to hear it just fine.

(Whereupon, a discussion was held off the record.)

MR. JOHNSON: Permission to publish, Judge?

THE COURT: Yes.

(Whereupon, the attorney began to play the 911 audio.)

MR. JOHNSON: 'scuse me, Judge, I'd start it over, I don't know how I did that. I guess I was playin' it for you, Patrick, 'scuse me.

(Whereupon, the attorney began to play the 911 audio.)

THE COURT: I can't hear it.

(Whereupon, a discussion was held off the record.)

THE COURT: That -- all right, for the record I've, I listened to the, uh, tape.

BY MR. JOHNSON:

Q. All right, Bryan, uh, was that the audio that was played at trial?

A. Mean, yes.

Q. Okay. All right, now please communicate to the Court, uh, your problems with that audio.

A. Uh, ---

Q. Oh, excuse me.

A. --- throughout my time at SCDC I've come up with two recordings and both a them are the same thing that you just heard but I wanna put this into evidence. This CD right here (indicating) came from the sheriff's department, this (indicating) is the the letter from, uh, Wesley Smith a the Sheriff's Department and it says, I have received payment of the required fee from your grandmother this morning, enclosed please find a copy of the 911 call for Case Number 1152639 incident recall. Can you, uh, come here.

(Attorney/client discussion held off the record.)

THE APPLICANT: Put, still put that in, I want him to hear. We'll do the comparison off the CD from the police

department.

MR. JOHNSON: Your Honor, can we approach briefly?

THE COURT: (No audible response.)

THE APPLICANT: Ya'll ---

(Whereupon, a bench conference was held off the record.)

THE COURT: Your attorney tells me he has has downloaded that onto his computer and not play the CD but could play that, that's my understanding.

MR. JOHNSON: That's that's that's, yeah, but I ca -- I'm not allowed to speak with you like that, Bryan, so I was wantin' to approach Your Honor.

THE APPLICANT: I just, I just wanted to to make sure that what you were hearin' was what you just heard and it's the same version and that's why I had the CD from the police department.

THE COURT: Well if it's the same version, what's, wha -- what's what's it, ---

THE APPLICANT: Okay then, ---

THE COURT: --- what what I need to know about it?

THE APPLICANT: --- I just, I just wanna make sure you knew that.

THE COURT: All right.

THE APPLICANT: Well ---

THE COURT: Have you heard ---

THE APPLICANT: --- it it, it's it's not a problem, I

just wanted to make sure that you were aware that that version what you just heard is the same version on this CD, two minutes and six seconds.

MR. SCHMECKPEPER: I I I've never seen that CD before, I have no idea but . . .

THE APPLICANT: That look here, man, you see that? that come from the sheriff's department ---

THE COURT: But the fact ---

THE APPLICANT: --- with that case ---

THE COURT: --- it says ---

THE APPLICANT: --- number's ---

THE COURT: --- sheriff's ---

THE APPLICANT: --- on it.

THE COURT: --- department doesn't mean he's seen it even though prepared through the sheriff's records.

MR. JOHNSON: Well Your Honor, maybe, uh, if we can move on at appropriate break if I can ask if, uh, opposing counsel could take a listen to it to make sure it's the same ---

THE COURT: All right, ---

(Indiscernible cross-talk.)

THE COURT: --- take a listen to it and also, I could take it back and listen to it on my computer.

MR. JOHNSON: Yes, sir, Your Honor.

MR. SCHMECKPEPER: And, Your Honor, and, Your Honor, my only concern is authentication so just over my objection.

THE APPLICANT: Here you go.

BY MR. JOHNSON:

Q. All right, Bryan, let's, uh, move on. Uh, so you have that other CD that you got from the sheriff's office ---

A. Yeah.

Q. --- and so you've reported it's it's gonna, that that basically your testimony is it's the same as what we just listened to, is that correct?

A. Yes, but you're ---

Q. Okay.

A. --- gonna have to replay the recordin' for him for me to show him that that's a alternate version, ---

Q. Okay.

A. --- 'member what I -- someone has to ---

Q. Yes, sir, ---

A. --- hear it played.

Q. --- so, uh, Mr. Byrd, uh, what is it that you have that tends to prove that you believe it's an alternate version?

A. You need to play it the 54 seconds and part of, uh, before we do that I need to get this into evidence. This (indicating) is my incident recall sheet and this is what the 911 people typed up as far as the officers comin'. Yeah, this kinda the same thing but I rather him look at this because I got more written on it.

MR. JOHNSON: Your Honor, I believe, uh, applicant's

asking to admit the incident recall, uh, looks like he has made some some notations on it himself but otherwise it is the incident recall, he's asking for that to be admitted into evidence, I've given opposing counsel previously a copy of the same.

THE COURT: All right.

MR. SCHMECKPEPER: Your Honor, I just received this, um, again, my objection is still lacking, uh, any any sort of authentication.

THE COURT: All right, well I'll receive it into evidence over objection for whatever value it may have.

MR. JOHNSON: Yes, sir, Your Honor. May I enter this as a . . .

(Whereupon, a discussion was held off the record.)

MR. JOHNSON: All right. Your Honor, I, uh I don't believe I put on the record I actually enter that as Applicant's Exhibit 3 over over objection, Your Honor.

(Incident recall marked Applicant's Exhibit No. 3 for identification and admitted into evidence.)

BY MR. JOHNSON:

Q. All right, Bryan, uh, so what's the judge lookin' at now?

A. He's lookin' at the incident recall from the night a the incident and you need to play the recordin' or at least play it around .54 so he can hear that that's when the confirmation for off Crestfield ---

Q. Try that.
A. --- just ---
MR. SCHMECKPEPER: Yeah, that should be ---
THE COURT: I mean, I I heard him say off Crestfield, I don't ---
A. Oh, ---
THE COURT: --- remember ---
A. --- but I I ---
THE COURT: --- hearing the second ---
A. --- I want you to hear hear the time of when he said that.
MR. JOHNSON: Okay, Your Honor, uh, Patrick, if I may approach, Your Honor, I've, uh, fast forwarded the recording to, uh, ---
THE COURT: Fifty seconds.
MR. JOHNSON: --- to 50 seconds, ---
THE COURT: All right.
MR. JOHNSON: --- uh, and I'll press play.
(Whereupon, the 911 audio was played.)
THE APPLICANT: Okay.
THE COURT: What else?
THE APPLICANT: This call started at 3:23, right?
THE COURT: No, oh, I I can't say -- well, no, you don't ask me questions. Go ahead.
THE APPLICANT: Well, uh, ---

MR. JOHNSON: Yeah, ---

THE APPLICANT: --- I I ---

MR. JOHNSON: --- yeah, ---

THE APPLICANT: --- done tell ya'll ---

MR. JOHNSON: --- you testified, Bryan.

THE APPLICANT: Okay. This call started at 3:23, Your Honor.

BY MR. JOHNSON:

Q. And that's according to the ---

A. The incident recall it it shows that the call started 3:23, the confirmation for off Crestfield accordin' to the CD was at at least 51 to 54 seconds into the call, that would mean that the call would have had to have start within the first 10 to 15 seconds of the minute 3:23.

Q. Okay. What else ---

A. Okay.

Q. --- you would like ---

A. I always could prove when the call start or around the time that the call start, I never could come up when the call ended. A couple months back I got my incident detail from, uh, the sheriff's department, I think it was from public records at the sheriff's department and it shows that the call ends at 3:25:52 making this call almost 3 minutes long and not 2 minutes and 5 seconds or 2 minutes and 6 seconds.

Q. Bryan, do you have a copy of that?

A. Yes, right here (indicating).

MR. JOHNSON: Your Honor, I'd like to have this marked as, uh, Applicant's Exhibit 4, uh, I'll give it ---

(Whereupon, a discussion was held off the record.)

(Whereupon, opposing counsel examined the exhibit.)

MR. JOHNSON: --- ask that it be entered into evidence, Your Honor.

MR. SCHMECKPEPER: Same objection, Your Honor.

THE COURT: All right, that'll be admitted with the same understanding.

(Incident detail marked Applicant's Exhibit No. 4 for identification and admitted into evidence.)

BY MR. JOHNSON:

Q. Okay, Bryan, uh, I have Applicant's Exhibit 4, I've given you a copy, ---

A. Okay.

Q. --- uh, ---

A. Um-hum.

Q. --- to put in front of you, can you please tell the judge what he should be looking for.

A. On the second page it shows that the line, on second page it shows that the line disconnected and was tryin' to call back at 3:25:52, I've already showed that the call would have had to have start within the first 15 seconds of the minute 3:23 and the paperwork the incident detail shows that the call

ended at 3:25:52, you can also see that on the incident, uh, recall at 3:25 where it says, Line disconnected, tryin' to call back. The call started within the first 15 seconds of the minute 3:23 and it ended at 3:25:52, this call is almost 3 minutes long and not 2 minutes and 6 seconds. My purpose for showin' you the victim and witness's statements from earlier statements and trial testimony heard from earlier is about the threats that they say I made while this was going on. When you listen to the re -- recording just now there were no threats on the recordin', I learned through Michael Cullinan had these threats on, that was gonna be our defense that that was not my voice. Now it wasn't as clear as me talkin' into this mic 'cause it was a background noise but if you talk to me and you list to that recordin', that's not you, that was my main defense. Also, if you look at like the size of, uh, on the incident recall where I got 1 minute, 2 minute, 3 minute, you can pretty much tell that this call was almost 3 minutes long as well 2 from lookin' at the sides, the events on the side right there (indicating).

Q. Okay, Mr. Byrd, is there anything else that you want him to know about the recording?

A. Uh, there's nothin' else I want him to know about the recordin' but I would like to know who made it and what was they purpose for making it 'cause this was demonstrative evidence. This either happened or it didn't happen, what you

hearin' is either real or fake. You felt like or who or whoever was responsible for making that recording if they felt like that was a actual event, why would a alternate version be made?

MR. SCHMECKPEPER: Your Honor, I just object at this point because the applicant's ---

THE COURT: Well ---

MR. SCHMECKPEPER: --- arguin' ---

THE COURT: --- he just -- I ha -- he's just arguin' now as I unders -- now you're just presentin' your argument as to, ---

THE APPLICANT: Okay.

THE COURT: --- I, I mean, I've got no control, I've got no way of findin' who made it or why it was made so, uh, I mean, I I understand your concern and understand what you're sayin' but ---

THE APPLICANT: Okay.

THE COURT: --- there's no value in your case as to who or why 'cause I can't determine that, I've got to go on the record.

THE APPLICANT: Okay.

THE COURT: All right, solicitor.

BY MR. JOHNSON:

Q. Mr. Byrd, uh, ---

A. That the concerning this issue with the the, um,

concernin' this issue with the phone call, I find that, uh, that Mr. Chambers was ineffective ---

Q. You believe that mist -- Mr. Chambers ---

A. Yes, yes, I believe that Mr. Chambers was ineffective and I have five points to show his ineffectiveness, the first one would be him not goin' over the recordin' with me. As mentioned before Mr. Chambers never went over this recordin' with me prior to trial nor did he come back on the day before my trial to go over it with me. This CD was demonstrative evidence a what supposedly was supposed to have happened so any defense would have to be built around refuting and explaining what was being heard. Since Mr. Chambers did not go over this 911 tape with me prior to trial or know its contents for himself since he allowed the victim and witness to testify to threats being made that were not on the recordin' that was played at trial then he could not have had a reasonable trial strategy. Had he went over with the court recording with me prior to trial dependin' on what version would've been made available to him, whether it been the original or the edited which we just went over, I would have made him aware that the recordin' was in fact the edited version a what I had learned through Michael Cullinan which likely would have led to the finding out of who made that version and what their purpose was for doin' so, that's my first point him not going over the recordin' with me.

My second point is Mr. Chambers failin' to challenge the 911 tape and he did this by by; one, not cross-examining the victim or pointing out durin' close a arguments that the caller told 911 is some guys outside tryin' to cause trouble, I don't know what they're up to, by the victim sayin' this he made two references to seein' more than one person, the dispatcher's response to this comment was her asking, Do you know who they are, likely because she also thought they were mo -- there was more than one person outside. The statement from the victim on the night of the incident was that he saw a man comin' behind his house, his trial testimony was that he ma -- he was made aware of the intruder's presence by a motion sensor in the backyard, he also attested that he saw the intruder walking back and forth in the backyard which was his purpose for makin' the call. This statement is also important because the victim's testimony was that after the intruder burst out the patio window he opened the back door and was about to run but threats by the intruder tellin' him that he had friends or buddies outside that were shootin' him is what stopped him. By sayin' this the victim either actually saw two people or wanted the 911 dispatcher to believe that there was more than one person outside, this recording of what al -- was of what allegedly had happened and any reasona -- reasonable defense would have to refute it. It was very important that the jury be made aware that the caller made two

references to seein' more than one person while on the phone with the dispatcher but wrote in his statement and attested to having just seen one. Mr. Chambers also failed to challenge this 911 tape by failing to point out that there was no other voice in the background and explaining why. According to the 911 tape, the victim was on the phone a full minute before his glass was burst out, throughout this time there was no other voice but the caller's and there was no verbal interaction between the victim and witness. The witness's testimony was that the victim told him that he saw someone durin' the time that he was on the phone, the call proves this to be untrue. In a situation like this with two guys who have called 911 because of a guy or guys being outside then there likely would be some type of verbal interaction between the two prior to the glass being burst out. The recording was a what was supposed to have happen, any reasonable defense would have to refute it by implying that what was being heard was in fact a staged event where the witness would have had to have played the part of the intruder which would explain why there's no verbal interaction between the victim and witness, it was very important that the jurors be made aware of the lack of verbal interaction and explainin' why.

THE COURT All right.

A. I just, I need some some water.

THE COURT: Need some water?

A. Yeah.

THE COURT: All right.

(Whereupon, water was handed to the applicant.)

A. That was my second point and, uh, Mr. Chambers failin' to challenge the 911 tape.

My third point is him failing to point out that the caller or someone else purposely hung the phone up on the 911 dispatcher and did not answer when they called back. At the end of the call, the victim or witness picks up the phone that they knew was still on because they mash two buttons then purposely hung up on 911 and did not answer when they called back, this is of shown on the the incident recall you have over there where it says, uh, No answer on CB, the CB stands for call back, so nobody answered on the call back and if you paid attention to the recordin', at the end you hear someone mashin' two buttons before the call ends, meanin' someone picked up the phone, mash two buttons and then hung the phone up knowing that 911 was on the line and did not answer.

Uh, during Mr. Chamber's closing argument he said that and his, and these were his words, And then sort of ex -- inexplicably the phone goes off, he says, I don't remember, strangely I might have just turned it off and put it in my pocket which would have been a strange things -- thing to do if somebody was waiving at you with a tire iron in his hand, that's probly because it didn't happen like that.

Mr. Chambers made the statement while addressin' the events on the recordin' and the hanging up at the end, for him to say that the victim's possible reason for hangin' up the phone was because somebody was waiving a tire iron in his hand then he couldn't be aware of the basic details of the case, the intrude -- the the intruder, the intruder approachin' the victim came before that, that was at the beginnin' of the recordin', so for him to say that that was the reason why the phone was hung up, that was it, that that that aint even in the see sequence of events, that the phone was hung up at the end of everything, the intruder havin' the tire iron is when the glass is bein' burst out so for him to say that he confused the jurors. The recording was what was supposed to have happened, any reasonable defense would have to refute it by implying that what was being heard was in fact a staged event since this is so it was very important that the jurors know that either the victim or the witness purposely hung the phone up on the 911 on operator and did not answer when they called back.

Uh, my third point far as the the the ineffective ineffectiveness part is him, Mr. Chambers, failing to object to and allowin' testimony that was inconsistent with the 911 tape presented at trial. The statements and trial testimony of the victim and witness were that once the intruder burst out the glass he made threats about his friends being outside,

as stated and demonstrated earlier, these threats were removed from the 2 minute and 6 version of the recordin' played at my trial; also, as stated earlier I learned the recordin' through Michael Cullinan and the version he had had these threats on it. Mr. Chambers made a comment durin' his close a argument about the lack of threats or anything I said being on the recording, if he knew this then then he should have known this when he allowed the victim and witness to attest to these threats on direct examination and then on his own cross-examination. Mr. Chambers should have objected to the victim' and witness's testimony which was inconsistent with the recording that was played and he should have cross-examined them about the lack of threats being on the recording.

My fourth point of, uh, ineffectiveness is Mr. Chambers failing to say and make clear to jurors that the call was in fact staged and failing to make clear to jurors that the victim and witnesses are the ones that should be on trial. The testimony of the victim and witness was reasonally corroborated by the 911 recording, any defense in this case would have to be get toward exposing it as a staged act, Mr. Chambers never said this but once durin' his closing argument he said that, Folks, they may have been trying to cover for the fact that they beat him near dead so they made all this up to cover, I don't know. To only once make a

suggestion a what the defense would have to be in this case is a deficient performance in itself.

And my last, uh, point of, uh, ineffectiveness concernin' this recording is Mr. Chambers failing to object to the redacted version of the 911 call which took away the chance for the jurors to know the contents of the original recordin'. The first thing that they were denied to know was that the caller did not give his name to the dispatcher when she asked, this part missin' at the beginnin' of re -- of the recording is what alerted me to the fact that the the recording being played at my trial was a edited version of what I had learned through Michael Cullinan, I told Mr. Chambers about this while the recordin' was playing yet he did not report this to the judge. My testimony at trial was that I went to this residence and was gang and knocked unconscious by two individuals one of which was not the victim, this might explain why the caller did not know his own address. The defense in this case would have to be that the the recording was a staged events, since this is so it was important that the jurors know that the caller did not give his name to the dispatcher when she asked.

Point two. The second thing that they were denied to know was that there was someone outside of a door kicking or bangin' against it while saying something to the caller inside who didn't respond. On the original call I also remember a

part where the intruder starts banging against the door and yelling before the glass was burst out, this part missing is important because the overall testimony of the victim and witness was that the intruder burst out the glass while the victim was in the kitchen, the caller never told the dispatcher that a man was on his porch nor did he respond to what the intruder who likely could not see him was saying. I had a picture of a, the living room where it shows all the curtains but I I ain't even go take the time try to introduce that into evidence. Uh, this part missin' is also important because the sound of it and another part that was missin' places the victim right by the door instead of in the kitchen as he said. This part missin' is also important because by it the jurors could have made and judged as to whether that was my voice askin' or makin' these comments.

The third thing that they were denied to know was the caller saying, I think they're trying to break in, then sliding the heater in front of the door as a defensive mechanism. On the original call I remember a part where after the intruder banged against the door the caller said, I think they're trying to break in, then slid a heater in front of a door which clearly can be seen.

(Whereupon, a discussion was held off the record.)

Q. Okay, Bryan, you were goin' through your, uh, application, I believe you started to refer to it State's

Exhibit 1, is that correct?

A. Yes.

MR. JOHNSON: Uh, Your Honor, uh, Mr., uh, Byrd just made reference to, uh, State's Exhibit 1 from trial which is now Applicant's Exhibit 5, I'd like to request this be moved into evidence.

MR. SCHMECKPEPER: No objection.

THE COURT: All right, in without objection.

(Photograph marked Applicant's Exhibit No. 5 for identification and admitted into evidence.)

MR. JOHNSON: Permission to publish, Judge?

THE COURT: Yes.

BY MR. JOHNSON:

Q. Uh, Mr. Byrd, please tell the judge what he's looking or the Court.

A. I wanted him to see that the, uh, the heater was right there by the door and that the windows were covered, that's why I said on the last part of the issue that he likely could not see who was, uh, who the intruder was speakin' to him and third part is, okay, I'd start, wait a minute, I just go back up a couple lines so you can pick up as to what I was goin', uh, speakin' on. On the original call I remember a part where after the intruder banged against the door the caller said, I think they're tryin' to break in, then slid a heater in front of a door which clearly can be seen in that pictures that was

just published. As stated earlier the victim' and witness's statements and testimony was that this just happened before they knew what was going on, the original call proves this to be untrue and places the caller by the door in anticipation instead of in the kitchen, this part missin' is also important because I had no marks or bruises to my face and the caller who had ample time to grab a weapon decided to slide a heater in front of a door before the glass is burst out. Since the defense in this case would have to be that the call was in fact staged, it would have been important that the jurors know that the caller was not in the kitchen caught off guard when the glass was burst out but was instead sliding a heater in front of a door that he just told the operator was about to be broke in.

The fourth point. The fourth thing the jurors were denied to know was that there were threats made by the intruder after the burstin' outta the gla [sic] as the victim and witness attested to. On the original call that I learned through Michael Cullinan, there were threats made by the intruder after the glass was burst out, both the victim and witness said that, said this in their statement and were allowed to attest to these threats at trial, get the 911 tape played had these threats removed, of all the parts missin' from the edited version this is the most powerful because it denied the jurors a chance to judge the voice of the intruder

for their minds which was gonna be part of defense that Mr. Cullinan had planned. Since the defense in this case would have to be that the call was in fact staged, it would have been important that the jurors have a chance to judge the voice for their minds and had they had their chance they would have known it was not mines and I would have not been convicted. In conclusion, Mr. Chambers' actions or lack thereof concernin' the 911 tape which was demonstrative evidence changed the outcome of my trial by him not going over the recordin' with me prior to trial, by him not challengin' the recordin', by him failing to object to and allowing testimony inconsist -- inconsistent with the recording, by him failing to say and make clear to jurors that the call was in fact staged which would have to be the defense and by him failing to object to the redacted version of that 911 call he denied me my right to effective assistance of counsel as guaranteed me by the Sixth and Fourteenth Amendment of the U.S. Constitution and all that is one issue.

Q. And that's the 81 through 85, is that ---

A. Yeah, ---

Q. --- correct, Mr. Byrd?

A. --- that's the whole thing.

Q. Okay. Um, Mr. Byrd, are you prepared to go through, uh, it's the, uh, the problems with, uh, James Metcalf's testimony as it compared to to Mr. Hinton?

A. Uh, that's the last, just the next one is, uh, about the arm.

THE COURT: Picture the arm.

Q. Mr. Byrd ---

THE COURT: Tell us about ---

Q. --- is ---

THE COURT: --- the ---

Q. --- prepare ---

THE COURT: --- arm.

A. Yeah, uh, ---

Q. --- prepared to discuss the arm at this time. Whose arm are we talkin' about?

A. The victim's arm.

Q. And this Berry Butler?

A. Yeah.

Q. Okay. All right, please communicate with the Court, uh, circumstances regarding the arm.

A. Okay. I also feel Mr. Chambers was ineffective by failin' to get the picture of the victim's arm into evidence. The testimony of the victim who was said to be a martial arts expert was that once the intruder burst out his glass with a tire iron he entered the home and then hit him in the arm with the tire arm [sic] at which point the witness grabbed him from behind, that was the witness's, uh, statement, I meant the the victim' statement. The witness's statement on the night of

the incident was that he grabbed the intruder from behind and wrapped his arms around him as he approached the victim; however, his testimony at trial was that the vixim [sic] actually did get hit. On the night of the incident, the forensics team took a picture of the victim's arm and it had not a mark, bruise, or scratch on it, I was not charged with an assault or possession of a deadly weapon during a violent crime and the tire iron which was tested came back negative for my prints. At trial Mr. Chambers attempted to introduce this picture into evidence by having the victim identify it but the solicitor objected to it because he said that there were other pictures on the page that may or may not be relevant. State's Exhibit 12 which was not introduced into evidence was a blown up picture of the victim's arm, how the solicitor knew what else was on Mr. Chamber's page I don't know. Back in 2013 I wrote the clerk of court for a copy of all the exhibits at my trial, uh, I need put this into evidence, this (indicating) is what was sent to me.

Q. If this is a a copy of a letter sent from the clerk, I believe we could, uh, ---

A. And this this thing that's, both a them, they show ---

Q. Okay, Mr. Byrd, first thing we have is a a letter dated January 14, 2014, uh, it looks like a, uh, letter from the clerk of court, is that correct?

A. Um-hum.

Q. And what was attached to that letter?
A. These pictures, the defense exhibits, and the one that didn't get in but I, I'll get to that, get that. That's good.
Q. Okay.
A. Oh, oh, uh, on the night of the, okay, at trial Mr. Chambers attempted to introduce this picture into evidence by havin' the victim identify it but the solicitor objected to it because he said that there were other pictures on the page that may or may not be relevant. State's Exhibit 12 which was not introduced into the evidence was a blown up picture of the victim's arm. Okay, I just went back too far. Back in 2013 I wrote the clerk of court for the copy of all the exhibits at my trial, when I searched through the defense exhibits, I found a picture of what Mr. Chambers attempted to introduce into evidence. The pictures on the page are of the victim and witness but none of them show the victim's arm. According to the transcript, the picture that Mr. Chambers had the victim identify was not marked as a defense exhibit. The page of pictures that Mr., uh, Johnson has in his hand is of the victim and witness but there's no picture of the victim's arm on it and that's what was sent to me by the clerk of court, all the exhibits, so ---

MR. JOHNSON: Your Honor, ---

A. --- Mr. Chambers approach the, um, the victim while he was testifyin' and show him that picture right, show him that

picture.

MR. JOHNSON: Well, Your H -- Your Honor, uh, I'd like to move this into evidence as Applicant's Exhibit 6, I've showed to ---

MR. SCHMECKPEPER: And, Your Honor, I think my objection is to relevance. If there's not a picture of the victim's arm, I'm not sure how it proves that somebody ---

THE COURT: Well, I I I'm gonna take a look at it, that crossed my mind also but I will allow it in over objection.

MR. JOHNSON: Thank you, Judge.

(Clerk's letter and photographs marked Applicant's Exhibit No. 6 for identification and admitted into evidence.)

BY MR. JOHNSON:

Q. All right, Mr. Byrd, I'll, uh, pu -- all right, Mr. Byrd, I'll publish it to the judge, um, ---

A. The ---

Q. --- Applicant's Exhibit 6 which includes the clerk's letter and the pictures attached to it.

A. Yeah, the last last page is the the unmarked exhibit of the victim and witness but as you can see there is no picture a the victim's arm on that page.

Q. Now why is that relevant? Tell the Court why why that means somethin'.

A. Because me supposedly hittin' the victim in the arm is how this whole altercation started after I supposedly burst

out this glass. If there was no mark on his arm which the blown up picture State's Exhibit No. 12 shows then he coulda have been hit in the arm which further shows that this was a staged act.

Q. So to answer the question, Mr. Byrd, so basically the fact that they don't have a picture of his arm that to you means that there was no damage to his arm, is that correct?

A. Well well not only that, my purpose for this issue is to show that Mr. Chambers had the victim identify a picture that was not even on there and left them to to, left the jurors to actually think that there may be a mark on that man arm, that picture did not get into evidence. Jeff Weston objected to the picture because -- well, not to the picture but to the page of pictures because he said there was multiple pics that may or may not be relevant ---

THE COURT: I'm ---

A. --- but as you see ---

THE COURT: --- though it might help me a little bit 'cause I'm little bit confused keep ta -- keep talkin' about Exhibit No. 12 ---

A. Okay, ---

THE COURT: --- is that ---

A. --- this ---

THE COURT: --- a picture a the arm ---

A. No.

THE COURT: --- actual.

Q. Well well well, Bryan, we have to put it into evidence when you ready.

A. Well put it in there then.

MR. JOHNSON: Your Honor, I'd like to have this entered as, uh, Applicant Exhibit 7.

(Whereupon, a discussion was held off the record.)

THE COURT: Any objection?

MR. SCHMECKPEPER: Beg the Court's indulgence, Your Honor.

(Pause.)

MR. SCHMECKPEPER: Your Honor, my objection is it doesn't appear this exhibit was actually introduced into evidence but it was only marked for identification.

THE APPLICANT: I said that it was not introduced into evidence.

THE COURT: Well I think his point is though that it was available, could have been available and coulda been used so, uh, I'll allow it in over objection.

MR. JOHNSON: Yes, sir, Your Honor.

THE APPLICANT: Your Honor, that's the only other picture taken of the victim ---

THE COURT: All right, ---

THE APPLICANT: --- or witness.

THE COURT: --- you gotta wait a second.

THE APPLICANT: Okay.

(Photograph marked Applicant's Exhibit No. 7 for identification and admitted into evidence.)

MR. JOHNSON: Permission to publish, Your Honor?

MR. SCHMECKPEPER: And, Your Honor, just to clarify, I'm not even sure that the record establishes that that's of the victim.

THE COURT: Now all we have is his testimony.

MR. SCHMECKPEPER: Yes, Your Honor.

BY MR. JOHNSON:

Q. Okay, Mr. Byrd, what's the judge looking at right there?

A. He's lookin' at a piction [sic] of the, um, the victim's arm. If you read his statement, he says that he got hit in the arm, that's why they took a picture of his arm. Um, if you look at the the last page that that was published before that, all the other pictures of the victim and witness, that picture's not with that. My purpose for presentin' this issue is because Mr. Chambers had the victim identify a supposed mark on his arm when he couldn't have even been lookin' at a picture of his arm because that's what was sent to me as far as the trial exhibits from the clerk a court, everything else is marked. As I said he tried to introduce that into ev -- evidence and it was not a marked exhibit, that's that's what he showed to the victim on the stand: a page of pictures that didn't e -- didn't even have a picture of the man's arm on it.

THE COURT: All right, I got that, let's move on.

A. Okay. Mr. Chambers not gettin' this picture into evidence denied me my right to effective assence -- assistance of counsel as guaranteed me by the Sixth and Fourteenth Amendment of the U.S. Constitution and I'm done with that issue.

THE COURT: Okay, let's go on to the last one then.

BY MR. JOHNSON:

Q. Mr. Byrd, uh, I believe that the last issue you've chosen to pursue today is regarding Officer Metcalf, is that correct?

A. Yes, yeah.

Q. Please explain to the Court circumstances regarding Officer Metcalf.

A. I also feel Mr. Chambers was ineffective for failin' to investigate the circumstances about Officer Metcalf which were readily available and failing to object to his false testimony and not calling on Zach Hinton whose testimony was material to the outcome of my trial. With this I wanted to introduce, uh, huh, this is, uh, Metcalf's statement from the night of the incident.

(Whereupon, opposing counsel examined the document.)

(Whereupon, a discussion was held off the record.)

MR. SCHMECKPEPER: I object to hearsay, Your Honor.

THE COURT: Yes, sir.

MR. JOHNSON: And and, Your Honor, I don't think he's

offerin' for the truth of the matter asserted, think he's offering it to show the context of within which his, uh, allegation's being made.

THE COURT: Well, over objection I'll allow it in for whatever value it may have.

MR. JOHNSON: That's, like to introduce as, uh, Applicant's Exhibit 8.

(Supplemental report marked Applicant's Exhibit No. 8 for identification and admitted into evidence.)

BY MR. JOHNSON:

Q. All right, Mr. Byrd, uh, now -- well permission to publish, Judge?

THE COURT: (No audible response.)

Q. Mr. Byrd, please tell the the Court what it is that you want him to to look for in that report.

A. Officers Met -- Officer Metcalf's statement on the night of the incident says that he was the first on the scene and that he had to tase me twice because I refused to follow his orders, after tasin' me it says that I made a confession as to why I had committed this crime, you'll see that on the last line of his, uh, statement. According to the sequence of events in his statement, his alleged confession would've happened after the other officers got there, his testimony at trial was that this was before they got there. At the *Denno* hearing before the trial, the victim and witness both testify

that they had not heard me make any kind of confession. At the end of the trial the jurors were given an Allen charge when they could not come up with a verdict, afterwards Metcalf's testimony was the only thing replayed to them before returning to deliberate again. During my time in SCDC I have constantly looked at my incident recall sheet which I showed you early earlier, I wanted to know the meaning of certain codes. In February 2014 I received a letter from the sheriff's office telling me the meaning of certain codes.

Q. And what's your understanding of of the codes as 'ccording to this incident recall now, you have an understanding of that?

A. Yeah, that's what this is for, right?

Q. Okay, could you please just tell the judge what your understanding of certain codes as as pertaining to the incident recall?

A. The code 08 over a officers names means turned over to, meaning the situation, whatever it may be, is turned over to that officer. If you look at the incident recall sheet which you looked at earlier about the, uh, 'bout the phone call, it shows that both Officer Metcalf and that officer named Zach Hinton both show up as in route in the minute 3:24. At 3:26 the incident detail, I mean, the incident recall shows Hinton with an 08 over his name meaning the situation was turned over to him, nowhere does his name show up throughout the rest a

the incident recall so that's has to be when he arrived. According, 'ccording to a dispatcher that I talked to from ---

THE COURT: That be hearsay, ---

A. --- the sheriff's ---

THE COURT: --- I can go ahead and tell ya now that's hearsay.

A. Okay.

THE COURT: Go ahead.

A. Well from my understanding of the incident recall the situation was turned over to Zach Hinton before James Metcalf got there. Zach Hinton got there at 3:26 as the incident recall shows and Mr. Metcalf got there at 3:29 making Mr. Metcalf's statement a lie and his trial testimony as well.

Q. And you reference earlier *Denno* hearing, you talk about a *Jackson vs. Denno* hearing to see whether or not your statements were gonna come into court, is that correct, ---

A. Yes.

Q. --- your your alleged issues, is that correct?

A. Um-hum.

Q. Okay, well say yes or no please.

A. Yes.

Q. And you're sayin' at the end a the trial they, uh, reviewed Officer Metcalf's testimony again.

A. Yes, they did, they replayed it, they replayed his testimony, that was ---

Q. That ---

A. --- the last thing they heard before goin' back to deliberate again.

Q. And this was after a Allen charge, you mean, a a charge asking them if they could just come to a decision ---

A. Yeah.

Q. --- the jury to come to a decision, that correct?

A. Yeah, well at the end a the second day they they hadn't came up with a decision and I think they gave, they mighta gave them the Allen charge at the end a the second day or the beginnin' a the next mornin' but I know it was after the Allen charge that they heard Mr. Metcalf's testimony replayed.

Q. Mr. Byrd, what else, uh, what would you like to add as far as this issue is concerned?

A. In this issue earlier I said that Mr. Chambers didn't use material ready or -- readily available, a little bit after or I was arrested for this charge I started writin' Internal Affairs over there at the law enforcement center and my first letter was on 5/17/2011, I didn't know who it was goin' to but shortly after that I had, I also name Nate Brooks come see me, you could see that on my professional visitation log, at the bottom it says Nate Brooks, he came to see me and we talked about my case and I I I gave him my concerns about what had happened to me as far as me bein' tased and and what was goin' on at this house ---

Q. Now be careful, Mr. Byrd, there's no hearsay, okay?
A. Okay. Um, he told me at the time that there was really nothin' he could do about it because he was just hearin' my side a the story so when I got my, uh, my discovery I wrote him again and, uh, he came to see me again, as you can see on the professional visitation log when he came to see me this time he gave me this paperwork right here (indicating) the acknowledgement of a complaint, said, The Greenville County sheriff's Office hereby acknowledges the receipt of a complaint filed against one of its members ---

MR. SCHMECKPEPER: I object to relevance as to I'm not sure what this has to do with any a the claims he's actually raising.

THE COURT: Was this a complaint by you about ---

THE APPLICANT: Yes, this was about, this this was about James Metcalf, this is a ---

THE COURT: Well that's got, it's -- I'll I'll -- well you go offer ---

MR. JOHNSON: No.

THE COURT: --- it, try to offer it into evidence?

MR. JOHNSON: Well, Your Honor, I believe, I don't know if he wants to offer that specific document, I think it just needs to be established that that document exists and I think Mr. ---

THE APPLICANT: Put it ---

MR. JOHNSON: --- Byrd ---

THE APPLICANT: --- in.

MR. JOHNSON: --- is going to ---

THE APPLICANT: Put it in.

MR. JOHNSON: Okay. All right, Your Honor, I I would like to offer this into evidence.

THE COURT: All right, I -- over -- you object this next one?

MR. SCHMECKPEPER: I haven't seen it yet, Your Honor.

(Whereupon, opposing counsel examined the document.)

MR. SCHMECKPEPER: And, Your Honor, I object on the grounds of hearsay and also authentication, this is an unsigned document.

THE APPLICANT: That's a copy.

MR. SCHMECKPEPER: Oh.

THE COURT: All right, let me see it.

THE APPLICANT: It's just them bleached out the signature.

(Whereupon, the Court examined the document.)

THE COURT: I sustain the objection, it has, it has no relevance anything that's before the Court.

BY MR. JOHNSON:

Q. And, Mr. Byrd, I think, um, it can be established that you filed a complaint and there was acknowledgement of that complaint, is that correct?

A. Yes.

Q. Okay, now let's move forward, uh, with your testimony.

A. Well when they started the, um, the investigation it says on the thing that usually within a period of 30 days from the date shown below I will hear sumtin' back from a representative of the sheriff's office notifyin' me of a final disposition of the complaint, for 90 days I didn't hear anything from anyone so I wrote again ---

THE COURT: Well what's that got to do with your claim?

A. It it it it all, 'member I say Mr. Chambers had, uh, material readily available to look into Mr. James Metcalf, well 90 days after I had, 90 days after the investigation was started I didn't hear nuttin' so I wrote again. I didn't hear nuttin' then so another 90 days went by and on January 25th 2012 I received a letter from Nate Brooks sayin' that, As presented in previous, in a previous letter sent you, the deputy in question is no longer an employee of this agency and this office has no authority to investigate in regards to a potential policy violation. After that I wrote him back on 2/13/2012 and he wrote me back and said that, As presented to you in pre -- in the previous letter, the deputy in question is no longer an employee with this agency; therefore, this office has no authority to investigate in regards to a potential policy violation. Respectfully, this will be my last communication in regards to this matter. Please relate

any other correspondence regardin' this issue through your attorney. I made Mr. Chambers aware a what was goin' on with the situation with James Metcalf and I found out later on that James Metcalf resigned from the sheriff's office on 4/20/2011 which is four days after my arrest so that's why I say there was material readily available for him to find out that Mr., uh, that James Metcalf' statement and trial testimony was a lie. He have a copy of this incident recall, he could talk to, uh, Nate Brooks and find out what was goin' on with with James Metcalf and use that as a way to, uh, go against his testimony at trial. The incident recall show that his whole testimony was a lie so if I had this then he had this, one name, period.

Q. Mr. Byrd, is there anything else with James Metcalf currently?

A. In conclusion, Zach Hinton which is the officer that the incident recall sheet shows arrived first was listed as a potential witness at the trial that they asked the jurors did they know, the incident recall shows that he was in fact the first on the scene and according to Michael Cullinan he admitted to an investigator ---

MR. SCHMECKPEPER: Your Honor, I object again to hearsay, neither of these people are here.

THE COURT: Yeah, I sustain the objection.

A. Okay. By Mr. Chambers not investigatin' the

circumstances surroundin' James Metcalf with the material that was readily available and the not objecting to his false to the testimony he denied me my right to effective assistance of counsel as guaranteed me by the Sixth and Fourteenth Amendment of the U.S. Constitution, that's my last issue.

Q. All right, Mr. Byrd, uh, depending on what the Court wants to do, please any questions that attorney ---

THE COURT: Well I think we need to take a lunch break so we'll break till, uh, say 2:30.

MR. JOHNSON: Yes, sir, Your Honor.

MR. SCHMECKPEPER: Thank Your Honor.

(Whereupon, a recess was taken.)

THE COURT: Mr. Byrd, uh, now State's gonna ---

THE APPLICANT: Um-hum.

THE COURT: --- cross-examine.

CROSS-EXAMINATION BY MR. SCHMECKPEPER:

Q. Afternoon, Mr. Byrd. I just ---

A. Good afternoon.

Q. --- wanna go through with you for a moment if you don't mind, um, to clarify your allegations and I think your first list of allegations kind of boils down to you believe that the 911 tape entered at trial was not the same as the original and that your counsel was ineffective for failing to bring that up, is that fair to say?

A. Pretty much I just proved that it, the recordin' was

longer than 2 minutes and 6 seconds.

Q. Now do you ha ---

A. Yes, I do feel that he was ineffective for not going over the recordin' with me before trial 'cause had he done so we would've discovered this before the trial and got this straightened out.

Q. And now do you have a different version of the 911 tape or it's just, it's just out there somewhere?

A. I don't have the different version but I just proved that the call is almost 3 minutes long on paper, that's not my allegation, that's that's taking paperwork provided me by different agencies and showin' that the call was almost 3 minutes long.

Q. And your next allegation and I'm not sure what the exact order was, failure ---

THE COURT: Arm, ---

Q. --- to admit ---

THE COURT: --- the arm is second.

Q. Yes, yes, Your Honor, and that was the the -- did you say hold on a second, Your Honor?

THE COURT: Second he had is the picture of the arm.

Q. Correct, so your your next allegation is failure admit a photograph of of the victim's arm and then skipping over that one your third allegation, failure to investigate Officer Metcalf, now if you could, if you could clarify that for me.

A. Officer Metcalf's testimony and his statement was a lie, I just proved that on the incident recall sheet with the 08 over his name which means turned over to, I learned that through the the Greenville County Sheriff's Office.

Q. So you're you're alleging Officer Metcalf lied and your counsel was ineffective failing to bring that out or discover he was lying.

A. Yes, I found that out by studyin' the incident recall. If I had found it out then he coulda found it out as well.

Q. And what pacifically was he lying about, ---

A. His whole, ---

Q. --- that just a ---

A. --- his whole testimony, his whole, his his testimony was that he was the first responder, that he tased me twice because I refused to follow his orders and that sometime afterward I admitted confession as to why I committed this crime. The victim and witness both testified at my *Denno* hearing that they did not hear this.

Q. How ---

A. The incident recall sheet showed that he's not even the first responder, Zach Hinton is the first officer on the scene 3 minutes before James Metcalf so his whole testimony is a lie.

Q. Mr. Hinton's not here today.

A. No, but the paperwork showed that he was the first

responder.
Q. And the the record would res -- would would reflect that your attorney actually did contest the officer's credibility, is that a fair, is that correct?
A. When?
Q. During his closing arguments what -- the record will reflect that if that's true, correct?
A. He might have made a, said a few things in close a arguments about believin' police officers or sumtin' like that but the material to go against his testimony was readily available in the incident recall and as again I say if I figure this out, how he doesn't know this, I'm not a lawyer.
Q. I have no further questions. Thank you.
THE COURT: All right, any redirect?
REDIRECT EXAMINATION BY MR. JOHNSON:
Q. Mr. Byrd, and that only in response to the question that you were a -- you were just asked is there somethin' that you like to offer in response to, uh, the questions you were just asked by the attorney general?
MR. SCHMECKPEPER: I'd object, Your Honor, I think that that, that's not, it's asking, it's eliciting an argument from the applicant.
THE COURT: I'll let him go ahead.
A. I just feel like I really don't even know what to say. I just broke down evidence tamperin', I just proved that the CD

that the police department has is 2 minutes and 6 seconds is almost 3 minutes long and I proved that on paper so I don't, I don't, I don't get how I could lose this PCR application, that's evidence tamperin', that's against the law, right? I think ya'll need to be tryin' to figure out who made that CD because it's one thing for for for me to have a CD from, uh, Mr. Chambers or Mr. Cullinan or whoever else was on my case or maybe even one from the solicitor because maybe they can take the original and make up a copy and and duplicate it or whatever but to have a CD from the the Greenville County Sheriff's Office tainted evidence, c'mon, man, they supposed to have nothin' but the original of anything you ever get from them. For them to be passin' out that, that that means they would have to be backin' tainted evidence, point, blank, period. Somebody need to find out who made that recordin', that, I think that goes above and beyond ineffective assistance a counsel or a prosecutorial misconduct, that's that's a crime right there.

Q. All right, Mr. Byrd, thank you, I have no further questions.

THE COURT: You can step down, thank ya.

(Whereupon, the applicant left the stand.)

MR. JOHNSON: Your Honor, that's the applicant's case.

THE COURT: All right. State.

MR. SCHMECKPEPER: May it please the Court, Your Honor,

this that point the State moves for summary judgment, um, at least as far as allegations 1 and 3. Concerning the altered tape allegations, uh, I don't think there's been any showing of deficiency, in any event I think there's certainly been no showing of prejudice sufficient for the applicant to meet his burden. Uh, all applicant said, all the applicant has said is that there's been a tape out there that wasn't admitted, um, even if that's true that other tape hasn't been presented before this court, um, and there's no way for the applicant to show, prove that would be prejudicial.

Concerning the, I'm I'm and I'm sorry, the second allegation which I'm also moving for summary judgment on, the only thing that's been admitted is a picture of a person's arm, there's nothing linking that to the victim, there's nothing in the e -- in the record or in evidence showing that that's actually the victim so I would submit again that the the applicant can't meet his burden there either.

Uh, concerning the third allegation failure to investigate Offer -- Officer Metcalf, uh, I'd like to take testimony on that one.

MR. JOHNSON: Thank Your Honor. I I I think that, uh, my client certainly has put in enough evidence, uh, for the Court to to take this to a final decision certainly, uh, furthermore, of the evidence that that comes in is was his testimony that that was a picture of the, uh, his uncontested

testimony that was a picture of alleged victim's arm, um, also part of a document that was forwarded to him by clerk's office and and so, Judge, I think there's certainly enough material, uh, to take this to to a final decision and ask that you consider that this time.

THE COURT: Well, uh, I'm gonna deny the motion for summary judgment, uh, and take it under advisement, not the motion but take the case under advisement. I I believe that, uh, we've reached this point and there is a, I don't know if there's a scintilla of evidence, uh, think there's enough evidence to to require court to issue a complete order in which a a meaningful appeal could be taken if, uh, Mr. Byrd determines he wishes to appeal if he loses of course. All right, thank you.

MR. SCHMECKPEPER: Thank, Your Honor, in that case I'd call Randy Chambers.

THE COURT: Okay, and I'm gonna still take it under advisement.

(Whereupon, the witness came forward.)

THE CLERK: Mr. Chambers, please raise your right hand.

RANDALL LEE CHAMBERS, having been first duly sworn, testified as follows:

THE CLERK: Thank you, you may be seated and please state your full name for the record.

THE WITNESS: My full name is Randall Lee Chambers.

DIRECT EXAMINATION BY MR. SCHMECKPEPER:

Q. Afternoon, Mr. Chambers.

A. Good afternoon.

Q. If you could briefly just describe your background in criminal criminal law for the Court.

A. Well let's see, after I graduated from, uh, the University Louisville School of Law in 1988, uh, I was, uh, commissioned an officer in the, uh, United States Navy, served in the JAG Corps. Uh, for two years I was stationed in Charleston where I did, uh, trial work as a, uh, military defense counsel and then I was in Washington D.C. for two years at the Navy Yard where I worked at the Navy Marine Corps, uh, appellate review activity as a, uh, a defense counsel there as well. When I left the Navy in '92 or at least when I left active duty in '92, I went to work in the solicitor's office here, I worked as a prosecutor from, uh, 1992 to 1998. In '98 I went into private practice, been in private practice ever since, uh, mai -- doing mainly criminal defense for most a that time.

Q. So and by the time you represented the applicant you already had a substantial background in criminal law, ---

A. Yes.

Q. --- criminal defense. Do you remember approximately when you were appointed in this case?

A. You know I don't. I I'll I'll, uh, well, this has been

reset at least once, I've been thinkin' a couple a times, and when you first sent all this to me I I went through the transcript, went through my notes and all those things and, uh, then I just kinda lost track of it and low and behold I looked up I was here today so I haven't reviewed any a this recently, I did review it when I first got it. Uh, what I do remember about being appointed is that, uh, as the the petitioner's already indicated, Michael Cullinan was originally, uh, assigned this case and had actually worked on it for a period of several months I believe before I got it, he got a job somewhere in that time frame with the State Department, and, uh, left the public defender's office. Now Michael stuck around, was still here in town for a little bit before he, uh, he went to, uh, hi -- whatever position he had with the State Department 'cause I actually got together with him after I met with Mr. Byrd for the first time and and and talked to Michael a little bit about the case.

Q. That kind of answered my next question: Did you review his file notes or or at least talk to him 'bout the case?

A. I did and, uh, that part stands out to me because as, uh, Mr. Byrd indicated I did go to the jail shortly after gettin' his case, met with him for a little bit and he's right, wasn't a very long meeting but one a the things that he raised in that initial meeting, uh, and and he indicated that he didn't know there were this supposed different tape until we

got to trial, he was talkin' about the tape issue from the first time that I talked to him because I went back to Michael Cullinan to to to, you know, talk to him to see, you know, if if if he had this cop, you know, basically just discuss that with him, I I I remember that.

Q. And and putting the tape issue for aside for one moment, so you did -- did you review discovery in this case and review it with the applicant?

A. I did. He had all of the discovery before I was even assigned to represent him but, yeah, we talked about it.

Q. And and you went, you go over his tape issue so des -- describe the applicant's, what the applicant told you 'bout the tape.

A. Well well the first time that I talked to him and he he indicated that he, that Michael at some point in the past had played something for him that was different than the one that we had when I took over the case and I don't remember exactly what the time frame or anything was but he believed that it had been altered, that it was shorter than the original, uh, and and, you know, when I talked to Michael and also to Bernice Anderson, who I believe it was Bernice, it's whoe -- whoever his assistant was at the time and I'm thinkin' it was Bernice 'cause she's one a the assistants down there, uh, you know, he said that everything he had was in the file.

Q. Did you talk to Michael specifically about the 911 tape?

A. Well, yeah, I ask him, I said is there, are you aware of any discrepancies with the 911 tape and he told me that he wasn't.

Q. From that point until trial were you able to discover any discrepancies with 911 tape?

A. I never found any. You know, he talked about it a lot and I was concerned about it. I talked to Jeff Weston who was the assistant solicitor that was prosecuting the case, I've known Jeff for a long time and and, uh, I said, Jeff, I mean, you know, I'm told that there is at least one other copy that may be longer that may have something on it so have ya'll redacted this, have you done anything to it, and he said that it was in the same, it was the same recording that he had gotten from the sheriff's office. Now whether he went, you know, whether the sheriff's office did anything with any kinda recording or what, I don't know, but I wasn't able to find out any kind of discrepancy from talkin' to Michael Cullinan or from talkin' to Jeff Weston.

Q. And moving on to the applicant's other allegations, he's also alleged that you were ineffective for failing to admit a photograph of the victim's arm.

A. Yeah, I really don't have any recollection a that, I mean, listen, I've tried a lotta cases, I think I'm pretty good at it, uh, you know, I, first of all, and I'll I'll say this: I believe, uh, what Mr. Byrd told me about what happened

in this case, I mean, just to give you a little background 'cause I think that it's pertinent: He told me from the beginning that this place that he went was a liquor and gambling house and and there, you know, there are those things in the community. He told me that there were gambling machines in there, uh, and that he had gone there, uh, to gamble and to do those things and, uh, and then, and then that all this happened at later. My position was that and this is based on Mr. Byrd told me and also based on lookin' at the discrepancies that I saw in goin' through the discovery is that there had been an altercation and that they came up with this robbery story as as a way to, uh, throw the police off. You know, they moved before the police got out there. We believe that they had moved all the gambling machines and anything incriminating outta there, we believe that they had staged, that they had called 911 and reported a robbery that didn't happen and and that was always our defense in this case.

Q. And that that was just a theory you represented to the jury, is that ---

A. That's exactly ---

Q. --- correct?

A. --- right and so as far as the photograph goes, uh, part a that would be that he wa -- that thi -- that this alleged victim in the case was not attacked the way that he said he he

he was and a course, you know, a lot, I woulda pointed out anything that that corroborated that through cross-examination and then, and then argument. I don't remember specifically anything about a photograph, if I had a photograph that would have indicated that there was nothing wrong with his arm, I would have, you know, certainly put that into evidence or at least questioned the officer about it, you know, I don't, I don't know but I I don't have a specific recollection about that.

Q. And did you in fact point out discrepancies between; for example, testimony of the witnesses and the 911 call?

A. I did.

Q. Finally, let's talk about Officer Metcalf. I think the allegation as I understood it is you, the applicant's alleging you were ineffective in failing to poi -- point out that officer Metcalf was lying about his arrival at the scene.

A. I, you know, listen, you -- first of all, as far as doin' an investigation into Officer Metcalf, I never knew there was an issue with Officer Metcalf, I mean, as far as I was concerned, he was just another officer that had responded out there and he was testifying at trial. Uh, there were things about what mis, uh, Officer Metcalf said that I don't believe were consistent with the other evidence and I pointed that out, uh, I, if if and and and again, it's been a while since I've looked at that transcript but I do believe that I was

asking other people, Did you hear this confession that my client was supposed to have made, I don't think anybody other than Metcalf heard this supposed confession, uh, ---

Q. That that, and that would be reflected in your closing argument and cross-examination.

A. Exactly, yeah, and and the reason for asking other people if they heard it, uh, was to point out, I mean, they would have heard it, somebody else in there should've heard it and that was the whole thing with Metcalf but as far as, I mean, I don't know of any mechanism to just keep a a a witness from testifyin' which is kinda what it seemed he was drivin' at, that I was supposed to make some sort of an objection that this was a lying witness and he should not be allowed to testify, I don't know any mechanism to do that but, you know, I I cross-examine as best he could and I argue the discrepancies in the, uh, closing argument.

Q. So just and that just so I can kinda summarize, and correct me if I'm wrong, is it fair to say that while the applicant's alleging you shoulda pointed out that Officer Metcalf was lying, that was a part of cre -- that was indeed part of your strategy ---

A. Yeah.

Q. --- and then while he says you should've admitted the photograph to show the witnesses were lying your strategy was to show that the witnesses weren't being truthful.

A. That's what I was tryin' to do, I mean, ya have to, listen, you have to walk kind of a tight rope with police officers anyway 'cause you can alienate a lotta jurors by just standin' up and outright callin' a police officer a liar on the stand but, you know, so what you do is you just point out discrepancies, you point out that nobody else heard this alleged confession. I mean, I was tryin' to do anything that I could to build reasonable doubt in the case. Listen, anytime I have a case where a client is convicted, you know, I'll go back and second guessin' a thousand different things that I did: could I have done it differently, could I have done it better, you know, I don't like to see anybody get convicted.

Q. And the jury had a hard time with this, isn't that correct?

A. Well they deliberated for a long time and they came back at some point, told the judge they weren't gonna be able to make a decision and he gave them an Allen charge and then they went out and they eventually came back and and found Mr. Byrd guilty.

Q. But it wa -- it was more than five minutes deliberations.

A. Oh, absolutely, yeah.

Q. And I guess my last question's just bringing it back to the authen -- the 911 tape allegation of, it's correct to say or it's fair to say that you did investigate the tape in

accordance with the applicant's, uh, applicant's wishes?

A. I mean, as best I could, I mean, ---

Q. And if -- I'm ---

A. I, I mean, I don't have any, I don't have any evidence that anybody tampered with that 911 tape.

Q. And if there were evidence would you have presented that at trial?

A. Certainly. I mean, I would have moved to have it excluded and, frankly, I would think that somebody, uh, would would would have been prosecuted for, uh, tampering with evidence.

Q. Thank you, Mr. Chambers, I don't have anymore questions.

A. Okay.

THE COURT: Yes.

MR. JOHNSON: Thank thank Your Honor. Beg the Court's indulgence.

CROSS-EXAMINATION BY MR. JOHNSON:

Q. All right, Mr. Chambers, do you, do you recall how many times you had an opportunity to meet with Mr. Byrd before the trial after you were appointed?

A. I really don't. I didn't, I didn't, I didn't take, uh, particularly good notes in my file. Uh, you know, I, I'm sure I didn't meet with him as often as he wanted me to but we we we met, uh, both here and at the, uh, that both at the jail and at the courthouse on several occasions.

Q. Did you -- during those, uh, meetings were you able to, uh, take a computer or or or something of that nature over to the jail?

A. I did. I did take a computer one time and that I believe that's the incident that he's talkin' about where I had an empty, uh, CD case, that actually I do recall that that actually happening and when I went to him, I said, Oh, the the CD case is is empty, uh, and so I had to go back and, uh, but at that point my recollection is he'd already heard the, ya know, I -- he'd already heard the CD that that that that that we had I believe 'cause he was familiar with it, ya know, 'cause he was tellin' me from the beginning like I said that there were discrepancies, that was not a new issue.

Q. So so, uh, so you have a situation where that there was no CD present so I suppose you weren't a -- actually able to go over the recording with Mr. Byrd.

A. Not on that, not at that time but I I'm, I fe -- I know at some point we did because like I said, from the very beginning he's seen -- he he was talkin' about this.

Q. Now when you're talkin' about the, uh, photograph of the arm, did you, uh, -- Your Honor, is it possible that I can see, uh, the exhibits?

THE COURT: (No audible response.)

Q. Thank you. Mr. Byrd, uh, put into evidence a photograph, purported photograph of the alleged victim's arm ---

A. Okay.
Q. --- and, uh, would you have agreed that that arm is not, uh, well it do, I know it's a black and white picture but does it appear to be injured?
A. (Coughed.) Excuse me. No, I mean, it it doesn't appear to be injured, it ---
Q. Okay.
A. --- shows this one particular part. You know, my recollection was that the, uh, testimony was that he had held his arm up in a defensive position so any, had there been injury I would -- it would have been to this (indicating) side of the arm I would think but, no, to answer your question specifically, I do, I I do not see any injuries here.
Q. Do you recall whether or not there was any other pictures in the, uh, discovery provided to you by the State of of of of the victim's arm? I know we have that picture right there, picture, the one you just saw but do you recall if there were any other photographs of of the victim ---
A. I re ---
Q. --- and ---
A. --- honestly don't have any recollection a that at all, I mean, I know we had pictures but at this point, you know, I don't, I don't remember what all them were.
Q. Well well do you recall the circumstance by which you approached the the witnesses with, uh, pictures of the

photograph, do you recall that situation?
A. I mean, I vaguely recall cross-examining them but I don't remember anything about the, uh, what pictures I may have approached them with, what I asked them about.
Q. Now the situation with Officer Metcalf, um, you were present when Mr. Byrd gave his testimony concerning, uh, the issues with him, is that correct?
A. I was.
Q. Okay. Um, if if this was true that he was discharged from the service four days after that arrest, would that have been something that you would have used if you'd a known that?
A. I guess it would have depended upon the circumstances under which he was dischar -- I didn't understand him to be discharged, I thought that he, that he resigned so if there was an issue as far as him being discharged and and and and and what those grounds were, I was never made aware of it, I never knew anything about it.
Q. Now that the circumstances of a resig -- resignation are sometimes, uh, precipitated by a a a wrongful act or something of that sort and just in your experience did -- is that something that you would agree with: sometimes that, uh, some people resign under under the pressure of something else?
A. Yeah, I mean, like I said, I mean, certainly, I mean, I, if if there were suspicious circumstances that that that that

that caused him to be fired or if he resigned under pressure, had I known about it then I would probably have tried to use that in whatever way I could to benefit the defendant but I don't, I don't e -- I never knew anything before trial about that, I'm I'm, to be quite honest with ya, I may not have even known until we went to trial that he wasn't workin' for the sheriff's office anymore, I don't, I don't, honestly don't recall that. I don't recall Officer Metcalf ever being an issue other than I f -- didn't feel like he was being completely truthful a -- in his testimony.

MR. JOHNSON: Beg the Court's indulgence.

BY MR. JOHNSON:

Q. Do you recall whether or not, uh, the, uh, victim and and victim's witness, uh, testified that there were, uh, threats made to them by Mr. Byrd or or by whomever was trying to enter the home and and come inside the home, do you recall whether or not they made threats?

A. To be quite honest with ya, I I would have to, uh, look at the transcript again, I mean, I I'm sure that it would be i -- if if that's the case, it would be in the transcript but I don't have an independent recollection.

MR. JOHNSON: Your Honor, I have no further questions.

MR. SCHMECKPEPER: Nothing from the State, Your Honor.

THE COURT: You can step down be excused, ---

THE WITNESS: Thank Your Honor.

THE COURT: --- thank you for your time.

THE WITNESS: Oh, sorry. May I be excused, Your Honor?

(Whereupon, the witness left the stand.)

THE COURT: You may, yes, sir. Anything else from the State?

MR. SCHMECKPEPER: Your Honor, the State rests.

THE COURT: Anything else from applicant?

(Attorney/client discussion held off the record.)

MR. JOHNSON: Beg the Court's indulgence briefly.

THE COURT: Okay, sure.

(Pause.)

MR. JOHNSON: Your Honor, uh, just Mr. Byrd in reply, just ---

THE COURT: All right.

MR. JOHNSON: --- briefly.

(Whereupon, the applicant returned to the witness stand.)

THE COURT: Be careful. Still under oath.

DIRECT EXAMINATION BY MR. JOHNSON:

Q. All right, Mr. Byrd, uh, you were here when, uh, your trial counsel just gave testimony, is that correct?

A. Yes, sir.

Q. Uh, I'd like to ask, uh, if in reply, uh, to his testimony if you have, uh, some testimony to give to the Court for clarification.

A. I just want it to be known that Mr. Chambers allowed the

victim and witness both to attest to threats bein' made by me that are not on the recording but in the closin' argument he made a statement about the lack of threats so if he knew about the lack of threats to to say enough in the closin' argument, why would he allow them to attest to this during their direct and cross-examination?

Q. And so you're referring to, uh, why allow the fact to come into evidence if if you then disagreed with it, is that correct?

A. Um, ---

Q. Why allow the facts to come into -- why ---

A. Yeah, ---

Q. --- try to push ---

A. --- yes, ---

Q. --- the facts ---

A. --- yes, yes, yes.

Q. Okay. All right. Uh, in reply is there anything else that you wish wish to say?

A. Uh, I raised prosecutorial misconduct in my re -- application but I don't see Jeff Weston and I think he would have a better idea as to what's going on with this recording'.

MR. SCHMECKPEPER: And, Your Honor, I'd object at this point to raising allegations in this, in in reply, they ---

THE COURT: He, ---

MR. SCHMECKPEPER: --- weren't raised in his case in

chief.

THE COURT: --- yeah, he he he's required present it in his case in chief and he's not really raising it now, he just was indicating why he's not pursuing it I guess.

THE APPLICANT: I'm not, that that it's not up to me pursue it, I put that in my application, is that ---

THE COURT: Oh, it is? I'm sorry, I'm -- what -- this is your chance and this is -- that do you -- you do have the burden of proof.

THE APPLICANT: Well, Your Honor, I ---

THE COURT: No, ---

THE APPLICANT: --- I ---

THE COURT: --- I mean, I don't want you to go away with any misconception and think just because you put it in writing and you made the comment that you made then that this court has to address that, you got, it's a matter of proof. You got to prove your claim, you can't just throw somethin' out and expect me or any other trial judge to either find that you, that it wasn't misconduct or that it wasn't, ---

MR. SCHMECKPEPER: Right.

THE COURT: --- it's just a vacuum.

THE APPLICANT: Well, I I I re -- have repeatedly told Mr. Johnson that, uh, Jeff Weston needed to be here, I've told him then, I've told him investigate my claim about this recordin', nuttin' has been done period about this issue. I

told him to put in the thing about the probation, I ain't get a chance to speak on the issue with the probation. My probation was violated for catchin' this charge. I had only been on the streets si -- sixty days before I caught this charge from another beef, I ain't even have a chance really violate probation. My main reason for bein' violated was this charge here. They came and got me two years after bein' found guilty of this charge and violated the probation. I signed a paper and five minutes later I was in fronta judge by myself, I was not represented by a lawyer or nothin' and I was told by the probation officer, he told me that if this conviction was overturned since the judge was running in that other 10-year sentence concurrent, it will, it will automatically killed it because the main purpose for me bein' violated was this conviction. I have done everything in my power to make sure my hearing today be straight but I can't, I can't make Mr. Johnson make Jeff Weston come here or make him investigate this claim. Right now I'm sittin' here I feel like I'm on my own here, man, I feel like I have no advocate. I just presented evidence of of evidence tamperin' and I -- man.

BY MR. JOHNSON:

Q. Mr. Byrd, in reply to the testimony given by Mr. Chambers, is there anything else that you'd like to add? I know you said that he never met with you just to discuss the CD, is that somethin' that you'd like to address?

A. Yes. Yes, he, he's, I think I heard him sayin' sumtin' about some we went over the CD or I talked to him about the CD, if we did have any type a discussion about the CD before and I I made him aware about some discrepancy in the CD, why was this not brought up before now? This shoulda been handled before my trial. There was no pretrial motion allowin' a redacted version a that CD. I've studied a couple cases and in a couple cases sometimes they make a redacted version when there is parts that are inaudible or sometime they come up with a transcript for the jurors to read along so they'll know what's goin' on, there was no pretrial motion in my case for a redacted version a that CD. The CD that the sheriff's department have, uh, that the CD that's that's on his computer, the CD that I got from a lawyer, all them is 2 minutes and 6 seconds, I just proved their call is almost 3 minutes long. They say I made threats after this glass was burst out and a couple more other things happened but if you listen to that recordin', those events are not on that recordin', what happened to that? I think that question comes above and beyond, uh, the decision of, uh, ineffective assistance of counsel.

Q. Mr. Byrd, anything else that you'd like to add?

A. That's it, I aint got ---

THE COURT: Do you have ---

A. --- nuttin' else to say.

MR. SCHMECKPEPER: Nothing from State, Your Honor.

THE COURT: Okay, we'll adjourn, I'll take it under advisement.

MR. JOHNSON: Yes, sir, Your Honor, thank you.

THE COURT: All right.

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on October 25, 2016 at the time and place heretofore set forth; and that the foregoing pages numbered from 4 through 83, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

March 6, 2017

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

RECEIPT FOR EXHIBITS

Case # 2014 GS CP 23 - 4424 Judge John C. Hayes

Plaintiff Bryan K. Byrd Atty Brian P. Johnson

Defendant The State Atty Patrick Schmeckpeper

Received from Maggie Woods, Circuit Court Reporter, the following exhibits:
P=Plaintiff, D=Defendant, S=State, C=Court, J=Joint

		EV			EV
A-1	Inmate visits log	✓			
A-2	Letter from Matt Wilkins	✓			
A-3	Incident Recall	✓			
A-4	Incident Detail	✓			
A-5	Photo	✓			
A-6	Photos/letter dated 1/14/14	✓			
A-7	photo	✓			
A-8	Supplemental Report	✓			

Received by Jan White **, Clerk of Court**

Date Oct. 25, 2016

480

6/19/2013 4:15:54PM
Job Number 499373

Inmate Visits

Inmate 0504 BYRD, BRYAN KEITH Sex M Race B DOB 03/10/1984 Booked 04/16/2011 Cell

From Date	Time	To Date	Time	Type	Visitor	Status
11/08/2012	18:00	11/08/2012	19:20	Professional	CHAMBERS, RANDY	Visited
06/26/2012	09:55	06/26/2012	11:10	Professional	CHAMBERS, RANDY	Visited
01/18/2012	10:22	01/18/2012	10:40	Professional	CULLINAN, MIKE	Cancelled App (Phone
01/18/2012	08:30	01/18/2012	09:54	Professional	WELCH, MIKE	Visited
01/13/2012	14:15	01/13/2012	14:57	Professional	CULLINAN, MIKE	Visited
12/30/2011	10:20	12/30/2011	10:49	Professional	CULLINAN, MIKE	Visited
12/19/2011	10:21	12/19/2011	10:58	Professional	CULLINAN, MIKE	Visited
12/08/2011	09:00	12/08/2011	10:30	Professional	CULLINAN, MIKE	Visited
12/05/2011	10:40	12/05/2011	12:35	Professional	CULLINAN, MIKE	Visited
09/07/2011	12:29	09/07/2011	13:16	Professional	STARKS, J.C.	Visited
08/17/2011	10:54	08/17/2011	11:45	Professional	CULLEN, MIKE	Visited
07/26/2011	10:22	07/26/2011	10:52	Professional	BROOK, NAT	Visited
05/25/2011	10:20	05/25/2011	10:38	Professional	BROOKS, NATE	Visited
05/24/2011	10:35	05/24/2011	11:04	Professional	SHERIFFIS, GREENVILLE COUNTY	No Show
04/25/2011	09:03	04/25/2011	09:57	Professional	PATEL, NIHAR	Visited

**********End of Report**********

GREENVILLE COUNTY
DETENTION CENTER - RECORDS
CERTIFIED COPY
6/19/13
Current Date

Applicant's
1
10-25-16

13th Circuit Public Defender
DEC 07 2011
Initials: JB

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

Solicitor
W. Walter Wilkins

December 7, 2011

Michael Cullinan, Esq.
305 East North Street, Ste 123
Greenville, SC 29601

Re: STATE OF SOUTH CAROLINA vs. BRIAN KEITH BYRD
Burglary (After June 20, 1985) - First Degree / Warrant # I432915

Dear Mr. Cullinan:

Pursuant to Rule 5 (C) South Carolina Rules of Criminal Procedure, Continuing Duty to Disclose, the State has recently received additional evidence or material previously requested or ordered, which is subject to discovery or inspection under this rule. The additional discovery is as follows:

1. CD-R, dated 11/21/11, Case #11-052639;
2. Incident Recall, 4 pages.

Please note that the State may introduce video recording(s) relevant to this case, which are also available for viewing and downloading on the internet, at www.greenvillecounty.org, using the attorney log-in screen in the Solicitor's Department. Instructions for downloading and viewing video(s) can be found at the log-in screen. Please let me know if you have problems accessing this information, and I will assist you. (VIDEO AVAILABLE IN GREENVILLE COUNTY CASES ONLY AT THIS TIME). There may also be a 911 recording available in this case. Please provide a blank CD to receive a copy. Otherwise, you may contact my investigator to make an appointment to listen to the recording.

If you have any questions regarding this defendant's case(s) or need any further assistance, please do not hesitate to contact me.

Sincerely,

Jeff Weston
Assistant Solicitor

Applicant's
2
10-25-16 (W)

Applicant's 3 10-25-16 (W)

GREENVILLE CO SHERIFF'S OFFICE — PAGE: 000001
Date: 05/08/13 Time: 14:44 — Requested By: BEAUFORD, RENE

I N C I D E N T R E C A L L

Incident	Time	Type	Pri	Dispo	Address / Location	Bldg	Apt	Callers Name / Callers Address / Callers Phone	P-unit	Close Date/ Time	Operator
					BEAT TEAM/Dist AREA						
SO110416052639	03:23	85C	1	05	[redacted] OFF CRESTFIELD S06A 06 06			MALE 864-325-0989	SO/C28	11/04/16 10:36	SO1009

Date	Time			Operator
11/04/16	03:23	Primary Event: MAIN Opened: 11/04/16 03:23	08	ELLIS, JAMIE
11/04/16	03:23	Incident Initiated By: SO/ELLIS, JAMIE		ELLIS, JAMIE
11/04/16	03:23	Original Location : OFF CRESTFIELD	08	ELLIS, JAMIE
11/04/16	03:23	Mod Circumstance CHANGED To: P		ELLIS, JAMIE
11/04/16	03:23	Units Recommended		GETTIG, MISTY
11/04/16	03:24	Stat SO/C28 05-ENROUTE Loc: 5 WOODMONT LN		GETTIG, MISTY
11/04/16	03:24	Officer 1 Name: METCALF, DREW Officer 2 Name:		GETTIG, MISTY
11/04/16	03:24	Primary Unit CHANGED To: SO/C28		GETTIG, MISTY
11/04/16	03:24	10-24 STATES THAT SOMEONE WAS BREAKING IN/CAN HEAR A LOUD 10-81 10-35	08	ELLIS, JAMIE
11/04/16	03:24	Stat SO/C23 05-ENROUTE Loc: 5 WOODMONT LN		GETTIG, MISTY
11/04/16	03:24	Officer 1 Name: HINTON, ZACH Officer 2 Name:		GETTIG, MISTY
11/04/16	03:25	Caller Phone CHANGED To: 864-325-0989		ELLIS, JAMIE
11/04/16	03:25	Caller Name CHANGED To: MALE		ELLIS, JAMIE
11/04/16	03:25	Stat SO/K13 05-ENROUTE Loc: 5 WOODMONT LN		GETTIG, MISTY
11/04/16	03:25	Officer 1 Name: PARRISH, ROBERT Officer 2 Name:		GETTIG, MISTY
11/04/16	03:25	LINE DISCONNECTED/TRYING TO CB	08	ELLIS, JAMIE
11/04/16	03:26	Stat SO/C33 05-ENROUTE Loc: 5 WOODMONT LN		GETTIG, MISTY
11/04/16	03:26	Officer 1 Name: DEROSA, MIKE Officer 2 Name:		GETTIG, MISTY
11/04/16	03:26	NO ANSWER ON CB	08	ELLIS, JAMIE
11/04/16	03:26	Stat SO/C23 08		GETTIG, MISTY
11/04/16	03:26	Officer 1 Name: HINTON, ZACH Officer 2 Name:		GETTIG, MISTY
11/04/16	03:28	C33 ADV HE IS 10-5 SIGNAL ONE	02	GETTIG, MISTY
11/04/16	03:29	Stat SO/C28 06-ON SCENE Loc: 5 WOODMONT LN		GETTIG, MISTY
11/04/16	03:29	Officer 1 Name: METCALF, DREW Officer 2 Name:		GETTIG, MISTY
11/04/16	03:31	C33 DOWNGRADING TO PRIORITY	02	GETTIG, MISTY
11/04/16	03:31	C28 ADV RTA NEEDS ONE UNIT SIGNAL ONE	02	GETTIG, MISTY
11/04/16	03:31	C33 SIGNAL ONE	02	GETTIG, MISTY
11/04/16	03:33	K13 SIGNAL ONE	02	GETTIG, MISTY
11/04/16	03:39	Stat SO/C33 06-ON SCENE Loc: 5 WOODMONT LN		GETTIG, MISTY
11/04/16	03:39	Officer 1 Name: DEROSA, MIKE Officer 2 Name:		GETTIG, MISTY
11/04/16	03:39	Units Recommended		GETTIG, MISTY
11/04/16	03:39	Stat SO/C30 05-ENROUTE Loc: 5 WOODMONT LN		GETTIG, MISTY
11/04/16	03:39	Officer 1 Name: CUNNINGHAM, CHARLIE Officer 2 Name:		GETTIG, MISTY
11/04/16	03:39	Stat SO/C30 06-ON SCENE Loc: 5 WOODMONT LN		GETTIG, MISTY
11/04/16	03:39	Officer 1 Name: CUNNINGHAM, CHARLIE Officer 2 Name:		GETTIG, MISTY
11/04/16	03:40	Stat SO/C04 05-ENROUTE Loc: 5 WOODMONT LN		GETTIG, MISTY
11/04/16	03:40	Officer 1 Name: DONOHUE, PATRICK Officer 2 Name:		GETTIG, MISTY
11/04/16	03:40	Stat SO/K13 06-ON SCENE Loc: 5 WOODMONT LN		GETTIG, MISTY
11/04/16	03:40	Officer 1 Name: PARRISH, ROBERT Officer 2 Name:		GETTIG, MISTY
11/04/16	03:46	Stat SO/C04 06-ON SCENE Loc: 5 WOODMONT LN		GETTIG, MISTY
11/04/16	03:46	Officer 1 Name: DONOHUE, PATRICK Officer 2 Name:		GETTIG, MISTY
11/04/16	03:54	Stat SO/C14 05-ENROUTE Loc: 5 WOODMONT LN		GETTIG, MISTY

1 minute / 2 minute / 3 minute

-54 seconds into recording

1.14 into recording 3:24:09

-Call ended at 3:25:52

- when he arrived

- when he arrived.

Incident Detail

Incident Number	Address	Caller Name	Caller Phone
LSO110416052639	[redacted]WOODMONT LN	MALE	[redacted]

Incident Type	Incident Type Description	Location
85C	BURGLARY RESIDENCE	OFF CRESTFIELD

Create Time	Dispatch Time	Arrival Time	Closed Time
Apr 16, 2011 3:23 AM	Apr 16, 2011 3:24 AM	Apr 16, 2011 3:29	Apr 16, 2011 10:36 AM

Dispo Code	Disposition Text
05	INCIDENT REPORT TAKEN

Primary Officer	Star Number	Beat	Agency
METCALF, DREW	1269	S06A	SO

Other Officers Assisting:

Officer	Star Number	Officer	Star Number	Officer	Star Number
None		None		None	

Comments:

Applicant's 4 10-25-16

04/16/2011 03:23:35	Primary Event: MAIN Opened: 11/04/16 03:23
04/16/2011 03:23:35	Incident Initiated By: SO/ELLIS, JAMIE
04/16/2011 03:23:35	Original Location : OFF CRESTFIELD — .54 seconds into the recording
04/16/2011 03:24:09 LOUD 10-81 10-35	10-24 STATES THAT SOMEONE WAS BREAKING IN/CAN HEAR A → 1.14 into recording

COPY 4/11/16

Also shows that call started around the first 15 seconds of the minute 3:23

04/16/2011 03:25:52 LINE DISCONNECTED/TRYING TO CB
→ Call is almost three minutes long and not 2:06

04/16/2011 03:26:32 NO ANSWER ON CB

04/16/2011 03:28:12 C33 ADV HE IS 10-5 SIGNAL ONE

04/16/2011 03:31:25 C33 DOWNGRADING TO PRIORITY

04/16/2011 03:31:49 C28 ADV RTA NEEDS ONE UNIT SIGNAL ONE

04/16/2011 03:31:51 C33 SIGNAL ONE

04/16/2011 03:33:44 K13 SIGNAL ONE

04/16/2011 03:54:49 IAAssocInc LFR110416001432 UPDATE PriUnt to FR/927

04/16/2011 04:12:56 IAAssocInc LFR110416001432 First Unit Arrived: FR/927 06

04/16/2011 05:02:38 IAAssocInc LFR110416001432 UPDATE Dispo to FR MAIN

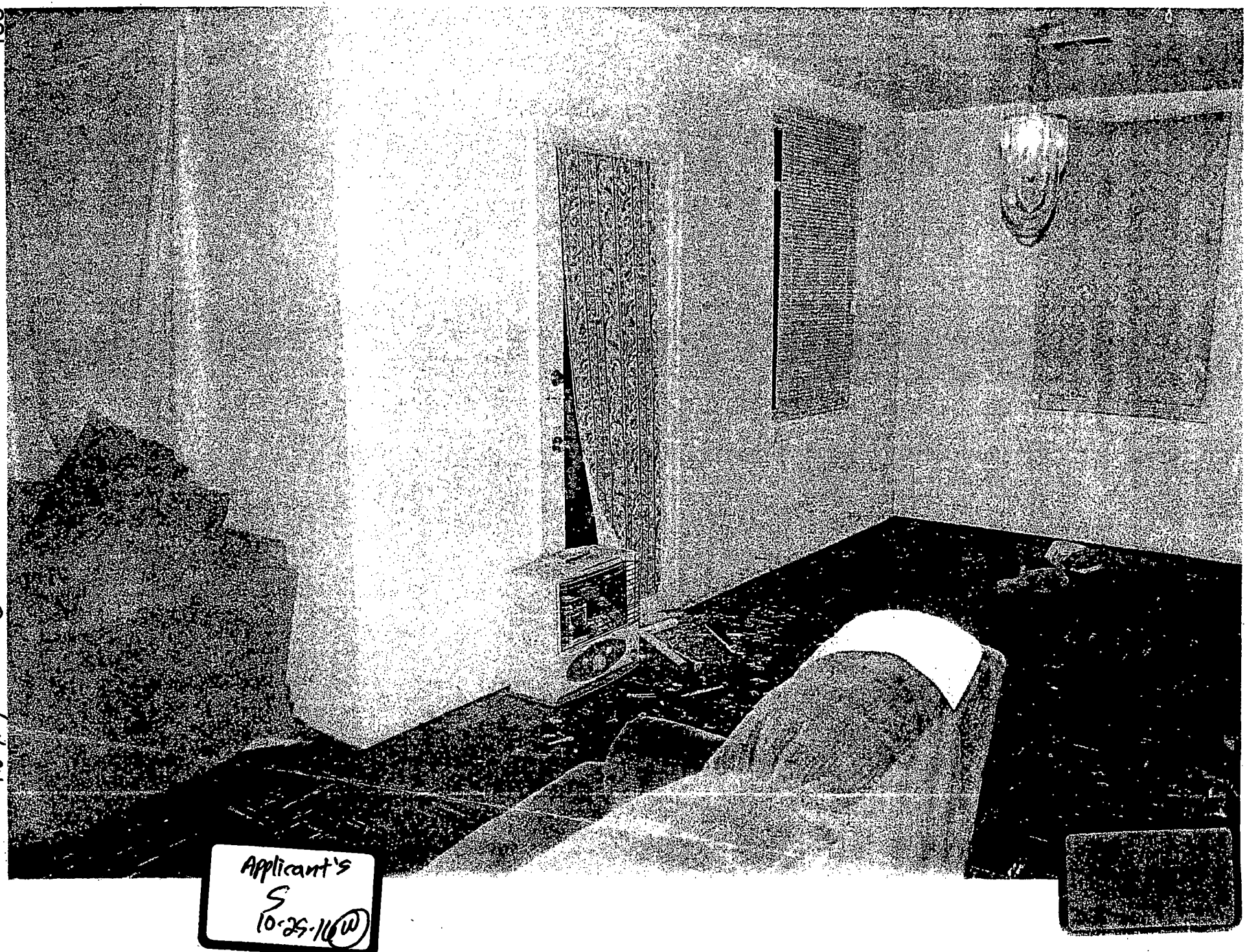
04/16/2011 10:36:44 Route Closed: MAIN 03

04/16/2011 10:36:44 Incident Closed: 11/04/16 10:36

COPY
4/11/16

1. Greenville Forensics

485



Applicant's
S
10-25-11(W)

Plaintiff #21

Greenville County

Office of the Clerk of Court

Greenville, South Carolina

Paul B. Wickensimer
Clerk of Court

Circuit Court Division
Greenville County Courthouse
305 East North Street
Greenville, South Carolina 29601
(864) 467-8551 FAX (864) 467-8540

January 14, 2014

Bryan Byrd #305294
B.R.C.I.
4460 Broad River Rd.
Columbia, SC 29210

Dear Mr. Byrd:

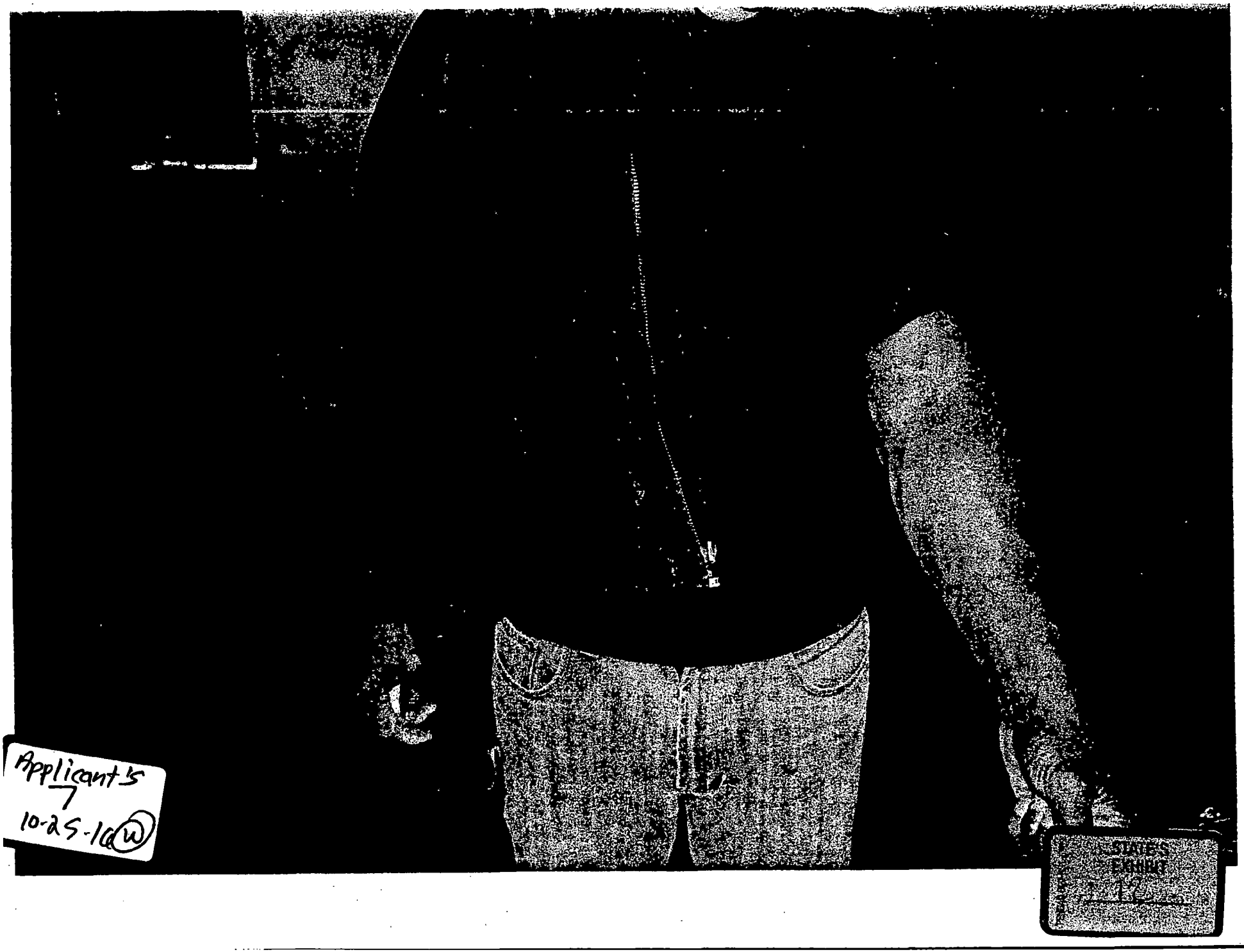
We are in receipt of your letter postmarked 12/30/2013. Enclosed please find the copies you requested with the following exception:

- State's Exhibit 14. A copy of this exhibit was mailed to you previously on 6/12/2013. If you wish to receive an additional copy, payment of the standard copy fee of $.25 per page for plain copies or $1.25 for certified copies must be paid in advance.

Sincerely,
Clerk of Court
Greenville County General Sessions

Applicant's 6 10-25-16 (W)

1. Greenville Forensics



Agency I.D. SC0230000 EC5 04/19/2011 10:17:10 GREENVILLE COUNTY [redacted] Supplemental Report 11000052639

488

☐ Original Report ☐ Status Change ☐ Additional Victims ☐ Additional Stolen Property Incident Type Burglary 1st Degree (RTA)

☒ Supplemental Report ☐ Other Report ☐ Additional Defendants ☐ Additonal Recovered Property Patrol District 06 Page 1 of 2 Pages

I. D. OVERFLOW

☐ Complainant ☐ Victim ☐ Subject ☐ Runaway ☐ Wanted ☐ Arrest ☐ Missing ☐ Jail ☐ Other

Subject's Name (Last, first, Middle)	Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth

Address	City	State	Zip Code	Patrol District	Day Phone	Evening Phone

Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.

☐ Victim No. ___ Visible Injury ☐ Yes ☐ No Explain: Complaint of any Non-Visible Injuries ☐ Yes ☐ No Victim Using Alcohol ☐ Yes ☐ No ☐ Unk Drugs ☐ No ☐ Yes Type: Two-Man Veh ☐ One Man Veh ☐ ALONE ☐ Detective ☐ Other ☐ ASSISTED ☐

Subject No. ___ Using Alcohol ☐ No ☐ Yes ☐ Unk Using Drugs ☐ No ☐ Yes Type: ☐ Arrested on Current Offense ☐ Unk ☐ Cleared By Arrest on Prior Offense

Arrestee Armed ☐ Yes ☐ No Weapon Type ☐ On View Arrest ☐ Summoned ☐ Custody

Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority

Arrest Location

NARRATIVE

Overflow:

Burglary Information
ENTRY POINT: Rear Door, ENTRY METHOD: Break Glass, INSTRUMENT USED: Other/Unknown, VICTIM LOCATION: Present, SUSPECT ACTIONS: Assaulted Victim, Other/Unknown

---

BYRD, BRIAN KEITH:Subject 1
Subject Types: Suspect, Warrant Arrest

DL STATE/NUMBER: SC/011570888 DOB: 03/10/1984

RECTOR, JAMES:Witness 1

RACE: Black, SEX: Male, RESIDENT: Primary Jurisdiction [redacted]

Applicants 1 & 2 10-25-16

Narrative:
I ARRIVED AT THE INCIDENT LOCATION AND MET WITH THE VICTIM, BERRY BUTLER.

THE VICTIM MET WITH ME OUTSIDE OF HIS RESIDENCE AND ADVISED ME THAT AN UNKNOWN BLACK MALE BROKE INTO HIS RESIDENCE AND THAT HE WAS STILL INSIDE. WHEN I ENTERED THE RESIDENCE I OBSERVED A BLACK MALE LAYING ON THE FLOOR AND BLEEDING FROM HIS HEAD. THE VICTIM SAID THAT HE AND HIS ROOMMATE HIT THE SUBJECT SEVERAL TIMES IN THE HEAD WITH A CROW BAR THAT THE SUBJECT USED TO ENTER THE HOME WITH. I DID OBSERVE THE GLASS ON THE BACK DOOR OF THE HOME BUSTED OUT AND A CROW BAR LAYING ON THE FLOOR. I THEN ADVISED THE SUBJECT TO PLACE HIS HANDS BEHIND HIS BACK AND TO NOT MOVE. THE SUBJECT THEN AT THAT TIME ATTEMPTED TO JUMP UP ON HIS FEET AND WAS YELLING "FUCK THIS." I TOLD THE SUBJECT TO STAY ON THE GROUND AND HE CONTINUED TO GET UP. THE SUBJECT WOULD NOT LISTEN TO MY COMMAND TO STAY ON THE FLOOR AND I THEN DREW MY TASER (S/N X00-525170) AND DEPLOYED IT (CARTRIDGE S/N C310074NW) INTO THE CHEST AREA OF THE SUBJECT. THE SUBJECT THEN FELL BACK TO THE GROUND BUT CONTINUED TO TRY AND GET UP. I THEN ADVISED DISPATCH THAT I NEEDED A UNIT SIGNAL ONE TO MY LOCATION. THE SUBJECT CONTINUED TO TRY AND GET BACK UP AND I TASED HIM A SECOND TIME. THE SUBJECT THEN COMPLIED AND LAYED ON THE GROUND WITH HIS HANDS OUT. AT THAT TIME DEPUTY DEROSA (C33) ARRIVED ALONG WITH DEPUTY CUNNINGHAM (C30). DEPUTY DEROSA THEN PLACED THE SUBJECT IN HAND CUFFS. I ADVISED THE SUBJECT THAT HE WAS UNDER ARREST FOR BURGLARY AND HE WAS IDENTIFIED AS BRIAN BYRD. THE SUBJECT TOLD ME THAT THE HOUSE WAS A KNOWN GAMBLING HOUSE AND THATS WHY HE WAS BREAKING IN TO IT.

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value

ADMIN

Subject Identified	Subject Located				
☒ Yes ☐ No	☒ Yes ☐ No	☐ Active ☐ Admin Closed ☐ Unfounded	☐ Arrested Under 18 ☒ Arrested 18 and Over	☐ Ex-Cleared Under 18 ☐ Ex-Cleared 18 and Over

Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
METCALF, JAMES	04/16/2011	C28 / 01269	DONOHUE, WILLIAM	04/16/2011	C04 / 00828
		/	Follow Up Investigation ☐ Yes ☒ No (officer)		/

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE Bryan Keith Byrd, #305294, Applicant, vs. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS THIRTEENTH JUDICIAL CIRCUIT C.A. No.: 2014-CP-23-4924 ORDER ENTERED COMPUTER

FILED IN COURT
GREENVILLE CO. S.C.
PAUL E. WORKENSIMER
2016 NOV 18 AM 11 38

Applicant filed this application or Post-Conviction Relief September 8, 2014. The matter was heard October 25, 2016. Applicant was represented by Brian P. Johnson, Esq. The State was represented by Patrick Schmeckpeper, Esq.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the October 2011 term of General Sessions for first-degree burglary (2011-GS-23-3835). Randall L. Chambers, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On November 15, 2012, the Honorable Letitia H. Verdin sentenced the Applicant to twenty (20) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. K. Jay Anthony, Esquire perfected the Applicant's appeal. The Court of Appeals dismissed the appeal – pursuant to the Applicant's request – by order filed September 23, 2014. The remittitur was sent November 11, 2014.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons[1]:

1. Ineffective assistance of counsel:
    a. Failed to study a recording of alleged incident with the Applicant.
    b. Failed to challenge 911 recording of alleged incident.
    c. Failed to object to improper testimony regarding 911 recording.
    d. Failed to tell jurors the 911 recording was staged and that the victim and witness were the ones who should be on trial.
    e. Failed to object to the "redacted version of the 911 call."
    f. Failed to admit a picture of victim's arm into evidence.
    g. Failed to object to Officer Metcalf's testimony regarding the Applicant's alleged confession.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. *See Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney

[1] In his application, Applicant lists a number of reasons which were not developed at trial and are therefore deemed abandoned.

performance is measured by its "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

While Applicant's testimony was creative and involved, same does not warrant the Court addressing each of the numerous theories of Applicant. What the Court will do is isolate the main thrust of Applicant's presentation as best the court has been able to digest it.

Applicant postures that an audio recording of a 911 call was an edited/redacted version of the actual 911 call on the incident in question. Applicant has presented no credible evidence as to how, if at all, the 911 tape introduced differs from what he claims to be the correct, complete version. This, of course, is a failure of proof upon which the Court can rely to make a finding that the tape of the 911 call introduced at trial differed at all from some other CD. Therefore, Applicant has failed to carry his burden of proof as to any of his allegations of ineffective assistance of counsel on the 911 call issue.

Applicant testified that trial counsel was ineffective for not putting into evidence a picture of the victim's arm.[2] Applicant placed in the record a black and white picture of an arm, supposed to be that of the victim in Applicant's case. Trial counsel testified he had no recollections of any

[2] The victim allegedly had sustained an injury to his arm during the burglary. (Trial Record p. 100, l. 25 through p. 101, l. 1).

picture of the victim's arm. However, he testified if there had been a picture that showed no injury, he would have put it into evidence.

Applicant also asserts that trial counsel was ineffective for not investigating Officer Metcalf's statement. The heart of this argument seems to be that Officer Metcalf resigned four days after Applicant's arrest and that Metcalf lied in his testimony. In sum, Applicant did not present any evidence that Officer Metcalf's resignation was related to the arrest of Applicant and Applicant presented no evidence to support his claim that Officer Metcalf's testimony was anything but truthful. I find Applicant's allegations that trial counsel's representation of Applicant was ineffective to be of no avail on the grounds of Officer Metcalf's testimony.

Applicant's trial counsel testified for the State. Trial counsel testified that the 911 tape was an issue with Applicant from the day of their first meeting. Trial counsel testified he believed there was merit in Applicant's defense that he was the victim of a staged event. Trial counsel testified he knew of no discrepancies between the tape played at trial and some other tape.

I find that trial counsel provide to Applicant representation well within the range of competence required in criminal cases, rendered adequate assistance to Applicant, and made all significant decisions in the exercise of reasonable professional judgment. Therefore, Applicant is not entitled to Post-Conviction Relief. Applicant's Application is therefore denied and dismissed with prejudice.

This Court hereby advises Applicant that he must file and serve a Petition for Writ of Certiorari within thirty (30) days of the service of this Order to secure appellate review. *See* Rules 203 and 243, South Carolina Appellate Court Rules (SCACR). The Applicant's attention is directed to Rule 243, SCACR, for the procedures following the filing and service of the Petition.

IT IS SO ORDERED.

October 31st, 2016
Greenville, South Carolina

John C. Hayes, III
Presiding Judge

WITNESSES

J A Metcalf

Greenville County Sheriffs Office

4/16/2011

ARREST WARRANT NUMBER

I432915

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

We the jury find the defendant guilty.

Foreperson of Petit Jury

Date: 11/15/12

494

DOCKET NO. 2011-GS-23- WJW 003835

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

11-15-12 October **TERM 2011**

THE STATE

vs.

BRIAN KEITH BYRD

Indictment for

0079

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

RECEIVED

MAY 20 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY FIRST DEGREE

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

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

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

SOLICITOR