

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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AUG 31 2018

S.C. SUPREME COURT

CERTIORARI TO AIKEN
COUNTY Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Appellate Case No. 2018-000033

DAGGART BERNARD FRAZIER,

respondent,

v.

STATE OF SOUTH CAROLINA

petitioner.

APPENDIX

ALAN WILSON
Attorney General

JULIE A. COLEMAN
Assistant Attorney General
S.C. Bar No. 102214

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

ATTORNEYS FOR PETITIONER

SUSAN B. HACKETT
SC Commission of Indigent Defense
Post Office Box 11589
Columbia, South Carolina 29211
(803) 734-1343

ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA

ORIGINAL

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BERNARD DAGGART FRAZIER,

APPELLANT

APPELLATE CASE NO. 2014-001178

RECORD ON APPEAL

ROBERT M. PACHAK
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

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SC Court of Appeals

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF AIKEN

CIRCUIT COURT
2014-GS-02-00359

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 BERNARD DAGGART FRAZIER,
6 Defendant.

7
8 HEARD ON MONDAY, MAY 19,
9 TUESDAY, MAY 20 AND WEDNESDAY, MAY 21, 2014
10

11 BEFORE:

12 THE HONORABLE DONALD B. HOCKER
13 AND A JURY
14

15 APPEARANCES:

16 Counsel on behalf of the State:

Kevin N. Molony, Esq.

17 Samuel Brian Grimes, Jr., Esq.

18 Counsel on behalf of the Defendant:

19 Michael D. Routzong, Esq.
20

21 Cheri L. Young, RPR
22 Official Court Reporter
23 P O Box 5232
24 Aiken, SC 29804-5232-1154
25

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1 ON MONDAY, MAY 19, 2014 AT 3:24 P.M.:

2 THE COURT: Solicitor, I've been provided requests
3 for voir dire from the defense. Any objections from the
4 State?

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

6 (Defendant enters courtroom.)

7 THE COURT: Okay. Ladies and gentlemen of the jury
8 panel, we are going to begin.

9 I keep referring to this trial, and let me identify
10 the trial for you. It is the State of South Carolina
11 versus Daggart Bernard Frazier. And, Mr. Frazier, would
12 you please stand? Just face the jury panel for just a
13 moment and then I'll allow you to take your seat. Just
14 turn around. Thank you very much, sir.

15 Now, members of the jury panel, I have before me
16 what are called indictments. There are three. I'm going
17 to explain these to you as far as what the information the
18 indictments contain.

19 These indictments are not evidence in this case.
20 They're not evidence of any guilt on the part of the
21 Defendant. There has to be a mechanism in order to get a
22 case from point A to point B. Point A being the initial
23 stage of the case, point B being the trial. There has to
24 be a mechanism, and that mechanism is by way of an
25 indictment. So it just lists -- it puts the Defendant

1 and and the Defendant's attorneys on notice of what the
2 charges are.

3 But again and I'll tell you this later on in the
4 proceeding that these indictments, these three pieces of
5 paper, they're not evidence, not to be considered as
6 evidence at all. But they do contain three charges and
7 I'm going to list out these charges for you and read what
8 the indictments contain.

9 The first one is an indictment for burglary in the
10 first degree which alleges that Daggart Bernard Frazier
11 did in Aiken County on or about December 16th, 2013,
12 willfully and unlawfully enter the dwelling of Jacqueline
13 Kay (verbatim) located at [REDACTED] Beech Island,
14 South Carolina, without consent with the intent to commit
15 a crime therein and the Defendant entered or remained
16 during the nighttime and/or was armed with a deadly
17 weapon, all in violation of Section 16-11-311 of the Code
18 of Laws of South Carolina.

19 The second indictment is for possession of a weapon
20 during the commission of a violent crime. And this
21 alleges that Daggart Bernard Frazier did in Aiken County
22 on or about December 16, 2013, possess or visibly display
23 a weapon during the commission or attempted commission of
24 a violent crime, to wit, burglary in the first degree all
25 in violation of Section 16-23-490, Code of Laws for South

1 Carolina.

2 And the third indictment is assault and battery in
3 the third degree which alleges that Daggart Bernard
4 Frazier did in Aiken on -- that's in Aiken County, on or
5 about December 16th, 2013, willfully and unlawfully injure
6 and/or offer to attempt to injure Stacey Gantt with the
7 present ability to do so all in violation of 16-3-600
8 Section E Subsection One, Code of Laws for South Carolina.

9 Is any member of the jury panel related by blood or
10 marriage to either Daggart Bernard Frazier or Stacey Gantt
11 or Jacqueline Key? If so, please stand.

12 (No response.)

13 THE COURT: And let me just -- I failed to mention
14 to you at the outset of this series of questions, the same
15 rules apply. If you want to respond to a question but
16 don't want to do it in open court or if there's just a
17 concern that you have concerning this particular case, I'm
18 going to give you the same opportunity for you to come
19 down front at the conclusion of the series of questions.

20 All right. Next question.

21 Does anyone have a close personal or social
22 relationship with either Daggart Bernard Frazier,
23 Jacqueline Key, or Stacey Gantt? If so, please stand.

24 (No response.)

25 THE COURT: Now, I'm going to provide to you a list

1 of potential witnesses in this case: Jacqueline Key;
2 Lashanda Washington; Stacey Gantt; Kathy Hayes with the
3 Aiken County Sheriff's Office; Jason Todd with the Aiken
4 County Sheriff's Office; Ricky Brown; James Frazier;
5 Kierra Martin.

6 Anyone on the jury panel related by blood or
7 marriage to any of the people I've just listed, or does
8 anyone on the jury panel have a close personal or social
9 relationship with any of those names I've just -- or those
10 people whose names I've just given? If so, please stand.

11 (No response.)

12 THE COURT: I'm going to allow at this time for the
13 lawyers who are involved in this case -- and I'll tell you
14 they're all excellent attorneys. They've worked real hard
15 getting this case ready for trial and will likewise do an
16 excellent job during the presentation of this trial. I'm
17 going to give them an opportunity to introduce themselves
18 and anyone who is assisting them at their respective
19 tables.

20 First, Solicitor?

21 MR. MOLONY: Thank you, Judge.

22 Good afternoon, ladies and gentlemen. My name is
23 Kevin Molony. This is Sam Grimes. We're both assistant
24 solicitors here in Aiken and we'll be prosecuting this
25 case for the State.

1 THE COURT: All right. For the defense?

2 MR. ROUTZONG: Good afternoon. Michael Routzong.

3 MR. HAYES: David Hayes for the Aiken County Public
4 Defenders Office.

5 THE COURT: Thank you very much, counselors.

6 Any member of the jury panel ever been represented
7 by any of the attorneys involved in this case or their
8 respective offices? If so, please stand.

9 (No response.)

10 THE COURT: Is any member of the jury panel related
11 by blood or marriage to, or have or ever had any close
12 personal or social relationship with any of the attorneys
13 involved in this case or anyone in their respective
14 offices?

15 Yes, ma'am, your number and your name?

16 THE JUROR: 73, Kasey Hearne. And Kevin Molony is
17 a friend of mine.

18 THE COURT: Okay. The fact that Solicitor Molony,
19 is a friend of yours, would that prevent from you being
20 fair and impartial to both the State and the defense in
21 this case?

22 THE JUROR: No.

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

24 THE JUROR: Uh-huh.

25 THE COURT: Has any member of the jury panel

1 already, for whatever reason, formed or expressed an
2 opinion about any issue or matter involved in this case?
3 If so, please stand.

4 (No response.)

5 THE COURT: Any member of the jury panel aware of
6 any bias or prejudice towards either the State or the
7 defense in this case? If so, please stand.

8 (No response.)

9 THE COURT: I don't believe this is the case, but I
10 have to ask it anyways. Is there any member of the jury
11 panel that was a member of the grand jury which issued the
12 three indictments in this case that I just explained to
13 you a moment ago? If so, please stand.

14 (No response.)

15 THE COURT: Is there any member of the jury panel
16 who is a member of, contributor to any group which has as
17 its primary concern the promotion of law enforcement or
18 victim's rights? These groups would include, not limited
19 to, however, but would include MADD, SADD, or Citizens
20 Against Violent Crime.

21 If so, please stand.

22 (No response.)

23 THE COURT: Has any member of the jury panel or any
24 member of your family been a victim of burglary, robbery,
25 theft or any violent crime? If that applies to you,

1 please stand.

2 Yes, ma'am, your name and number?

3 THE JUROR: 109. My name's Mary Lott. My sister
4 was robbed at gunpoint.

5 THE COURT: Okay. The fact that your sister
6 sometime in the past had been robbed at gunpoint, would
7 that prevent you from being fair and impartial; both to
8 the State and the defense in this case?

9 THE JUROR: No, sir.

10 THE COURT: Thank you, ma'am. Yes, ma'am, your
11 number and name?

12 THE JUROR: Juror 95, Barbara Keller. Before I was
13 married living at home we were burglarized four times.

14 THE COURT: Okay. The fact that your home was
15 burglarized four times, would that prevent you from being
16 fair and impartial to both the State and the defense in
17 this case?

18 THE JUROR: No, sir.

19 THE COURT: Thank you, ma'am.

20 This is kind of a similar question. I'll still ask
21 it. Any member of the jury panel or any member of your
22 family been a victim of any crime?

23 Yes, sir, your number and name?

24 THE JUROR: Number 140, my wife was sexually
25 assaulted.

1 THE COURT: I couldn't hear you, sir.

2 THE JUROR: I said, my wife was sexually assaulted.

3 THE COURT: Okay. Would that prevent you from
4 being fair and impartial to both the State and the defense
5 in this case?

6 THE JUROR: No, sir.

7 THE COURT: Thank you, sir.

8 Is there any member of the jury panel or any of
9 your close friends or relatives police officers, State Law
10 Enforcement Division Officers, employed in the Solicitor's
11 Office of the Second Judicial Circuit, State Attorney
12 General's Office, federal law enforcement agencies, state
13 law enforcement agencies, or any prosecutor's office? If
14 so, please stand.

15 Oh, I'm sorry. You stood up and I'm looking down.
16 Let me start over here on the left.

17 Yes, ma'am, your number and name?

18 THE JUROR: 108, Melissa Long. My brother-in-law
19 is a police officer in North Augusta.

20 THE COURT: The fact that your brother-in-law is a
21 police officer in North Augusta, would that prevent you
22 from being fair and impartial to both the State and the
23 defense in this case?

24 THE JUROR: No, sir.

25 THE COURT: Yes, sir. Number and name?

1 THE JUROR: Number 140, Larry Postles. I used to
2 live a couple doors down from Mr. Thurmond.

3 THE COURT: 'You used to live a couple doors down
4 from whom?

5 THE JUROR: Mr. Thurmond.

6 THE COURT: Okay. Would that prevent you from
7 being fair and impartial to both the State and the defense
8 in this case?

9 THE JUROR: No, sir.

10 THE COURT: Yes, sir?

11 THE JUROR: Juror Number 72, Matthew Harvey. 'My
12 father is an Aiken County Sheriff's Deputy.

13 THE COURT: Okay. The fact that your father is an
14 Aiken County Sheriff's Deputy, would that prevent you from
15 being fair and impartial to both the State and the defense
16 in this case?

17 THE JUROR: No, sir.

18 THE COURT: Okay. Thank you. Yes, ma'am?

19 THE JUROR: Number Four, Stephanie Aubuchon. My
20 husband is a North Augusta Public Safety Officer.

21 THE COURT: Okay. The fact that your husband is an
22 officer, would that prevent you from being fair and
23 impartial to both the State and the defense in this case?

24 THE JUROR: No, sir.

25 THE COURT: Now, does any member of the jury panel

1 know of any reason whatsoever why you should not be a
2 juror in this case, again, with the emphasis being on the
3 ability to be fair and the ability to be impartial to both
4 the State and the defense in this case?

5 Now I'm going to give you an opportunity, like we
6 did before, to form a line and come down and speak with me
7 privately if anyone needs to speak with me privately
8 concerning any concern about this case, or if you wanted
9 to answer a question but did not want to do so in front of
10 everybody else.

11 Is there anyone? Stand please, okay.

12 (Jurors approach front of courtroom, form a line.)

13 THE COURT: For the record, I need your name and
14 number.

15 THE JUROR: 122, Barbara Morgan.

16 THE COURT: You want off?

17 THE JUROR: I know everybody. So you tell me, my
18 biggest concern and I didn't want to say this, I don't
19 know if I ... (inaudible). That was my concern and I
20 didn't want to mess up with anybody by saying that, yeah.

21 THE COURT: Yeah, I mean, yeah, yeah.

22 THE JUROR: I want to do it.

23 THE COURT: You know, I'm going to leave it up to
24 the lawyers so I'm going to keep you with us. I
25 understand what you're --

1 THE JUROR: No, I just want to make sure.

2 THE COURT: We'll just see what the lawyers want.

3 THE JUROR: I figured you were going to do that,
4 but I wanted to make sure I came forward.

5 THE COURT: Okay. Thank you.

6 Yes, ma'am, your number and your name? Get a
7 little closer, I'm not going to bite you.

8 THE JUROR: 175, Jessica Thompson.

9 THE COURT: Okay. Ms. Thompson.

10 THE JUROR: My car was broken into a couple years
11 ago.

12 THE COURT: Okay. I'm sorry.

13 THE JUROR: Yes.

14 THE COURT: Would that prevent you from being fair
15 and impartial to both the State and the defense?

16 THE JUROR: No.

17 THE COURT: Thank you.

18 MR. MOLONY: I've got a Juror Number 69, worked
19 with him in business.

20 THE COURT: Okay, 69.

21 (Off-the-record discussion.)

22 THE COURT: Members of the jury panel, I have one
23 additional question that I failed to ask.

24 Is there any member of the jury panel or any of
25 your family members ever been the victim of the crime of

1 criminal domestic violence? We normally shorten it down
2 to an acronym, CDV. If that applies to you, please stand.

3 Yes, sir, your number and name?

4 THE JUROR: Brian Collins. My daughter was a
5 victim of a domestic violence.

6 THE COURT: The fact that your daughter was a
7 victim of CDV, would that prevent from you being fair and
8 impartial to both the State and the defense in this case?

9 THE JUROR: No, sir.

10 THE COURT: Yes, ma'am. In the reddish top.

11 THE JUROR: 39, Jacqueline Darrisaw, and I had a
12 CDV.

13 THE COURT: Okay. You were a victim of a CDV?

14 THE JUROR: Yes, sir.

15 THE COURT: The fact that you were a victim of a
16 CDV, would that prevent you from being fair and impartial
17 to both the State and the defense in this case?

18 THE JUROR: No.

19 THE COURT: Okay. Yes, ma'am?

20 THE JUROR: Number 81, I also had a CDV.

21 THE COURT: You were a victim of a CDV?

22 THE JUROR: (Nods head.)

23 THE COURT: The fact that you were a victim of a
24 CDV, would that prevent you from being fair and impartial
25 to both the State and the defense in this case?

1 THE JUROR: No, sir.

2 THE COURT: Thank you, ma'am.

3 From the State, any exceptions or objections to the
4 Court's voir dire?

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

6 THE COURT: And from the defense?

7 MR. ROUTZONG: No, sir.

8 THE COURT: Okay. Thank you very much.

9 Ladies and gentlemen of the jury panel, we're
10 probably about 15 minutes, roughly, and we'll be finished
11 with this selection process. I know that several jurors
12 have had to use the restroom. So if you feel like you can
13 remain with us about another 15 minutes, then hopefully we
14 can get you out. Okay?

15 Madam Clerk, if you will proceed with preparation
16 of the list.

17 THE CLERK: How many alternates?

18 THE COURT: One alternate. You think we'll be okay
19 with one?

20 MR. MOLONY: Yes, sir.

21 THE COURT: Okay.. One alternate.

22 And while the clerk is preparing the list, let me
23 tell you how this works. If your name is called out,
24 bring all your stuff with you, if you have any stuff with
25 you, and come down and turn around and face both the

1 counsel tables. And then they will make a determination
2 whether or not they want you to sit on the jury or not and
3 they'll use different terminology.

4 If you're not selected, please don't take personal
5 offense to it. Okay? (Laughter.) Each side has their
6 reasons for a type of juror that they want on their trial
7 jury. So it's nothing personal. Don't be offended by
8 it. You may be sad that you were not selected because
9 you're anxious to serve. That's okay. Or, you may be
10 just very happy that you were not selected. It all
11 depends. But the point being is don't take offense to
12 it. Okay.

13 Madam clerk, you may proceed. Are the lawyers
14 ready? Y'all good?

15 MR. MOLONY: Yes, sir.

16 MR. ROUTZONG: Yes, sir.

17 THE CLERK: If I call your name, please come to the
18 front, bring your belongings with you, come to the front,
19 turn around and face the audience, please.

20 Juror 61, Pamela Fischer.

21 (White female comes forward.)

22 THE CLERK: What say you for the State?

23 MR. MOLONY: Please present Ms. Fischer.

24 THE CLERK: What say you the defense?

25 MR. ROUTZONG: Please excuse Ms. Fischer.

1 THE CLERK: Please return to your seat.
2 Number 72, Matthew Harvey.
3 (White male comes forward.)
4 THE CLERK: What say you for the State?
5 MR. MOLONY: Please present Mr. Harvey.
6 THE CLERK: What say you for the defense?
7 MR. ROUTZONG: Please excuse Mr. Harvey.
8 THE CLERK: Please return to your seat.
9 Number 12, Glenisha Boyd.
10 (Black female comes forward.)
11 THE CLERK: What say you for the State?
12 MR. MOLONY: Please present Ms. Boyd.
13 THE CLERK: What say you for the defense?
14 MR. ROUTZONG: Please seat Ms. Boyd.
15 THE CLERK: Please have a seat in the jury box.
16 One twenty-two, Barbara Morgan.
17 (White female comes forward.)
18 THE CLERK: What say you for the State?
19 MR. MOLONY: Please present Ms. Morgan.
20 THE CLERK: What say you for the defense?
21 MR. ROUTZONG: Please excuse Ms. Morgan.
22 THE CLERK: Please return to your seat.
23 One ninety, Coreece Williams.
24 (Black female comes forward.)
25 THE CLERK: What say you for the State?

1 MR. MOLONY: Please present Ms. Williams.
2 THE CLERK: What say you for the defense?
3 MR. ROUTZONG: Please seat Ms. Williams.
4 THE CLERK: Please have a seat in the jury box.
5 One ninety-four, Thomas Wood.
6 (White male comes forward.)
7 THE CLERK: What say you for the State?
8 MR. MOLONY: Please present Mr. Wood.
9 THE CLERK: What say you for the defense?
10 MR. ROUTZONG: Please seat Mr. Wood.
11 THE CLERK: Please have a seat in the jury box.
12 Number 89, Patti Jeffcoat.
13 (White female comes forward.)
14 THE CLERK: What say you for the State?
15 MR. MOLONY: Please present Ms. Jeffcoat.
16 THE CLERK: What say you for the defense?
17 MR. ROUTZONG: Please seat Ms. Jeffcoat.
18 THE CLERK: Please have a seat in the jury box.
19 Twenty-three, Jason Carey.
20 (White male comes forward.)
21 THE CLERK: What say you for the State?
22 MR. MOLONY: Please present Mr. Carey.
23 THE CLERK: What say you for the defense?
24 MR. ROUTZONG: Please seat Mr. Carey.
25 THE CLERK: Please have a seat in the jury box.

1 One twenty-three, Christine Morgan.

2 (Black female comes forward.)

3 THE CLERK: What say you for the State?

4 MR. MOLONY: Please present Ms. Morgan.

5 THE CLERK: What say you for the defense?

6 MR. ROUTZONG: Please seat Ms. Morgan.

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

8 Number Three, John Henry Allen.

9 (White male comes forward.)

10 THE CLERK: What say you for the State?

11 MR. MOLONY: Please present Mr. Allen.

12 THE CLERK: What say you for the defense?

13 MR. ROUTZONG: Please excuse Mr. Allen.

14 THE CLERK: Please return to your seat.

15 Twenty-five, Larry Causey.

16 (White male comes forward.)

17 THE CLERK: What say you for the State?

18 MR. MOLONY: Please present Mr. Causey.

19 THE CLERK: What say you for the defense?

20 MR. ROUTZONG: Please excuse Mr. Causey.

21 THE CLERK: Please return to your seat.

22 That's no strikes for the State, five strikes for
23 the defense.

24 One thirty-four, Cecilia Petty.

25 (White female comes forward.)

1 THE CLERK: What say you for the State
2 MR. MOLONY: Please present Ms. Petty.
3 THE CLERK: What say you for the defense?
4 MR. ROUTZONG: Please seat Ms. Petty.
5 THE CLERK: Please have a seat in the jury box.
6 One forty-seven, James Riggs.
7 (White male comes forward.)
8 THE CLERK: What say you for the State?
9 MR. MOLONY: Please present Mr. Riggs.
10 THE CLERK: What say you for the defense?
11 MR. ROUTZONG: I'm sorry. What number again was
12 that?
13 THE CLERK: One forty-seven.
14 MR. ROUTZONG: One forty-seven. Please seat
15 Mr. Riggs.
16 THE CLERK: Please have a seat in the jury box.
17 One eighty-five, Karen West.
18 (White female comes forward.)
19 THE CLERK: What say you for the State?
20 MR. MOLONY: Please present Ms. West.
21 THE CLERK: What say you for the defense?
22 MR. ROUTZONG: Please seat Ms. West.
23 THE CLERK: Please have a seat in the jury box.
24 Forty-nine, Austin Effler.
25 (White male comes forward.)

1 THE CLERK: What say you for the State?
2 MR. MOLONY: Please present Mr. Effler.
3 THE CLERK: What say you for the defense?
4 MR. ROUTZONG: Please seat Mr. Effler.
5 THE CLERK: Please have a seat in the jury box.
6 Ninety-seven, Mary Kendrick.
7 (Black female comes forward.)
8 THE CLERK: What say you for the State?
9 MR. MOLONY: Please present Ms. Kendrick.
10 THE CLERK: What say you for the defense?
11 MR. ROUTZONG: Please seat Ms. Kendrick.
12 THE CLERK: Please have a seat in the jury box.
13 One-o-four, Michelle Lamar.
14 (Black female comes forward.)
15 THE CLERK: What say you for the State?
16 MR. MOLONY: Please present Ms. Lamar.
17 THE CLERK: What say you for the defense?
18 MR. ROUTZONG: Please seat Ms. Lamar.
19 THE CLERK: Please have a seat in the jury box.
20 And alternate?
21 THE COURT: One alternate, Madam Clerk.
22 THE CLERK: 38, Jaunstin Darby.
23 (Black male comes forward.)
24 THE CLERK: What say for the State?
25 MR. MOLONY: Please excuse Mr. Darby from this

1 case.

2 THE CLERK: Please return to your seat.

3 Thirty-three, Vernelle Crawford;

4 (Black female comes forward.)

5 THE CLERK: What say you for the State?

6 MR. MOLONY: Please present Ms. Crawford.

7 THE CLERK: What say you for the defense?

8 MR. ROUTZONG: Please excuse Ms. Crawford.

9 THE CLERK: Please return to your seat.

10 One twenty-one, Mollie Nixon.

11 (White female comes forward.)

12 THE CLERK: What say you for the State?

13 MR. MOLONY: Please present Ms. Nixon.

14 THE CLERK: What say you for the defense?

15 MR. ROUTZONG: Please seat Ms. Nixon.

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

17 THE COURT: Okay. Ladies and gentlemen of the
18 jury, congratulations. And what I'm going to ask that you
19 do is to be escorted by the bailiff to your jury room for
20 just a few moments. You'll get to kind of see where
21 you'll be spending a little time at. You can get a chance
22 to kind of introduce yourselves a little bit and then
23 we'll bring you back out with further instructions.

24 Now, I'm going to tell you something that you're
25 going to hear me say throughout the whole proceeding. You

1 cannot start discussing anything about this case
2 whatsoever among yourselves until you're instructed to do
3 so which will be at the conclusion of the case. Okay.

4 So Mr. Whittle, if you'll escort them back to the
5 jury room. We'll get you back out shortly.

6 (Jury exits courtroom at 3:59 p.m.)

7 THE COURT: Everybody be at ease for just a moment
8 okay.

9 (Off-the-record discussion.)

10 THE COURT: Ladies and gentlemen of jury panel, I
11 can't excuse you yet. I've got a few little matters we
12 need to attend to but I am going to give you a break. If
13 you need to use the restroom, do that. For those that
14 smoke, you shouldn't be smoking, but if you need to smoke,
15 go on out to wherever the smoking areas are outside but
16 try to be back in here in 10 minutes. See if you can.

17 Okay?

18 (Break taken at 4:03 p.m. At 4:17 p.m. the trial
19 resumed:)

20 THE COURT: Is the jury panel back in?

21 THE BAILIFF: Yes, everybody's back in.

22 THE COURT: Ladies and gentlemen of the jury
23 panel. I was thinking that the rest of you dodged the
24 bullet but we've had to excuse already two jurors so we're
25 back in the selection process. So, I see some smiling

1 faces. That's a good sign. That's a good sign. Okay.

2 All right.

3 So, the ones we have back, if you'll bring them on
4 out I'll explain to them what we're doing and we'll start
5 back.

6 (Jury enters courtroom at 4:19 p.m.)

7 THE COURT: Okay. I realize you're short a
8 couple. We've gone ahead for various reasons, legitimate
9 reasons naturally, to excuse the alternate juror and then
10 one of the main jurors. So we're back in the selection
11 process. We're going to get you two new ones to join
12 you. So I'm going to turn it over to the clerk to
13 continue with the jury selection process. So just be
14 patient with us it shouldn't take too long. Okay?

15 THE CLERK: One-twenty, Carrie Mitchell.

16 THE COURT: This is for the main juror first.

17 (White female comes forward.)

18 THE CLERK: What say you for the State?

19 MR. MOLONY: Please present Ms. Mitchell.

20 THE CLERK: What say you for the defense?

21 MR. ROUTZONG: Please excuse Ms. Mitchell.

22 THE CLERK: Please return to your seat.

23 Number four, Stephanie Aubuchon.

24 (White female comes forward.)

25 THE CLERK: What say you for the State?

1 MR. MOLONY: Please present Ms. Aubuchon.
2 THE CLERK: What say you for the defense?
3 MR. ROUTZONG: Please excuse Ms. Aubuchon.
4 THE CLERK: Please return to your seat.
5 Number 140, Richard Postles.
6 (Black male comes forward.)
7 THE CLERK: What say you for the State?
8 MR. MOLONY: Please present Mr. Postles.
9 THE CLERK: What say you for the defense?
10 MR. ROUTZONG: Please excuse Mr. Postles.
11 THE CLERK: Please return to your seat.
12 Twenty-eight, Dwayne Clark.
13 (White male comes forward.)
14 THE CLERK: What say you for the State?
15 MR. MOLONY: Please present Mr. Clark.
16 THE CLERK: What say you for the defense?
17 MR. ROUTZONG: Please seat Mr. Clark.
18 THE CLERK: Please have a seat in the jury box.
19 THE COURT: Okay. And the alternate.
20 THE CLERK: One ninety-one, Darrin Williams.
21 (Black male comes forward.)
22 THE CLERK: What say you for the State?
23 MR. MOLONY: Please present Mr. Williams.
24 THE CLERK: What say you for the defense?
25 MR. ROUTZONG: Please seat Mr. Williams.

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

2 THE COURT: Mr. Williams, you are the alternate.

3 Okay. Ladies and gentlemen of the jury, I'm going
4 to impose on you, once again, just to go back to your jury
5 room for just a moment. You can introduce yourselves to
6 the two new members and we'll get you back out shortly.
7 Okay?

8 (Jury exits courtroom at 4:24 p.m.)

9 THE COURT: Any exceptions or challenges to jury
10 selection on behalf of the State?

11 MR. MOLONY: No, sir, Your Honor.

12 THE COURT: And from the defense?

13 MR. ROUTZONG: No, sir.

14 THE COURT: Thank you very much. All right. Now,
15 you can breathe a sigh of relief if that is what you want.

16 Let me explain to you that your presence here, even
17 though just today, is so valuable to the whole process.
18 And for those of you who were not selected, all of you who
19 were not selected, and if you're unhappy about that then
20 I'm sorry and I really hope that you get a chance in the
21 future to serve.

22 Serving on a jury is considered by many to be the
23 second highest civic responsibility that we all have,
24 second only to serving in the military. And so it's an
25 awesome responsibility. And so, you know, if you are

1 disappointed then I sincerely hope that next go around
2 that you'll be able to be selected whether it's on a
3 criminal jury or on a civil jury.

4 Now I've been informed that we will have no further
5 need for jurors other than the trial jury that we've
6 already selected. So you are excused for the remainder
7 of the week. We don't even have to ask you to utilize the
8 call-in system because we know that we don't have any
9 other trials scheduled.

10 Now, with that said, if any of you want to sit in
11 and observe this trial or we'll probably be handling other
12 matters as well as just the trial. If you're interested,
13 you are certainly free to stay with us, or come back
14 tomorrow if you like. But if you got other things you
15 need to do, then you certainly are free to leave now.

16 And have a great evening, great week and nice
17 seeing everybody.

18 (Jury panel exits courtroom at 4:27 p.m.)

19 THE COURT: Gentlemen, let's put on the record what
20 we did back in chambers concerning the two jurors. Juror
21 Number 123, who was Christine Morgan. Even though it was,
22 there was some discussion about whether or not she knew
23 some family members related to the, one of the alleged
24 victims and even the defense, she pretty much indicated
25 that she did but it really wouldn't interfere with her

1 being fair and impartial.

2 But she did have a physical condition that I felt
3 like that would make it pretty uncomfortable for her to
4 sit very long in the jury box.

5 So as a result of that I excused her.

6 The alternate, Juror Number 121, Mollie Mixon, had
7 indicated that she had previously been a victim of a
8 criminal domestic violence act. And she showed some
9 hesitation whether or not she could be fair and impartial
10 to both the State and the defense. So consequently I
11 excused her.

12 It was per agreement with both sides that we
13 conduct the selection of the two new jurors in the manner
14 in which we did. That was agreed by both sides as well as
15 the Court and that's how we handled that. Okay.

16 Now, I've got a motion that is still outstanding
17 from the Defendant. How do you want to handle that? Do
18 you want to just give me the basics of that motion? And
19 then I'll swear the Defendant in and allow him to tell me
20 whatever he wants to tell me concerning that. Is that how
21 you want to handle it, counsel?

22 MR. ROUTZONG: Your Honor, as it is his motion, I
23 don't really have anything I could add to it.

24 THE COURT: Okay. All right. All right.

25 Mr. Frazier, would you please stand and I'll -- Madam

1 Clerk, would you swear Mr. Frazier in?

2 (Defendant placed under oath.)

3 THE COURT: Mr. Frazier, I have been informed
4 that -- you correct me if I'm misstating what you're
5 asking the Court. Okay?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: But I think I've been informed that
8 you're wanting a continuance in order to give you an
9 opportunity to get another attorney. Is that basically
10 what you're requesting?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. All right. Tell me about it.

13 THE DEFENDANT: Well --

14 THE COURT: You need to speak up, okay. So we can
15 hear you.

16 THE DEFENDANT: In December Mr. Routzong's been to
17 the jailhouse to see me one time, was to sign a form. We
18 haven't discussed nothing about my case or nothing. And
19 then I've been calling over there to attempt to offer,
20 sometimes I get in, sometimes I don't.

21 Everything that I've been asking on my behalf he
22 haven't been doing, you know what I'm saying. So
23 conversation have been broken down, you know what I'm
24 saying. So I just hoping y'all appoint me another
25 attorney.

1 As a matter of fact, I came in here in March for a
2 trial but I feel as though it was a conflict of interest
3 going on because a couple other public defenders doing my
4 case as well. We're in the room, a public defender coming
5 in with a message from the solicitor so I feel as though
6 it's a conflict of interest going on.

7 THE COURT: All right. Well, we got basically a
8 couple issues here.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Now, as I understand it
11 back in March there was some discussion with your family
12 members to actually retain --

13 THE DEFENDANT: Yes, sir.

14 THE COURT: -- a lawyer, but for whatever reason
15 that never came about. Is that correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. But the case got continued then
18 in order to give your family enough time to try to hire a
19 lawyer if they were able to; correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. Now, you've stated that you
22 believe Mr. Routzong has not devoted enough time to your
23 case.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And that's based upon what, sir?

1 THE DEFENDANT: Because he hasn't been to the jail
2 but for one time for me to sign a form and that was it.
3 He hasn't sit down and talked to me or nothing. He only
4 talk to me here.

5 THE COURT: So he's been to see you one time in
6 jail?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And has he talked with you here?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. All right. Well, let me ask
11 Mr. Routzong. As an officer of the court, do you believe
12 you have spent enough time with Mr. Frazier in preparation
13 of this case?

14 MR. ROUTZONG: It seems the more I talk to him and
15 it's been -- he's correct in that it's been mostly, I
16 really don't know specifically, I know several times over
17 the phone. We've discussed the basic issues about the
18 case. There are things that tend to come out the more he,
19 I ask him about a different thing or sometimes he doesn't
20 mention something and it comes out.

21 That was the case, I think, in this time. But I
22 think this case comes down to his testimony versus her
23 testimony. It's not a lot of other collateral witnesses
24 or testimony --

25 THE COURT: Okay.

1 MR. ROUTZONG: -- that are going be particularly
2 helpful. The jury believes him, that's fine. We can
3 bring all of this out on cross-examination and direct.

4 THE COURT: Okay. So if I understand you
5 correctly, counselor, you feel like, you know, whatever
6 amount of time or numbers of times that you've talked with
7 Mr. Frazier that you feel like that's adequate and you're
8 ready to go forward. Is that a correct statement?

9 MR. ROUTZONG: Yes, sir.

10 THE COURT: All right. Now, Mr. Frazier, the third
11 issue is that you believe that there is a conflict of
12 interest. You indicated that there was some other people
13 in jail who knew something about your case.

14 THE DEFENDANT: Yes, sir. Other attorneys in the
15 office.

16 THE COURT: Okay. Other attorneys in the public
17 defender's office?

18 THE DEFENDANT: Yeah. Uh-huh.

19 THE COURT: Well, let's say, Mr. Hayes -- who's
20 seated right next to you -- if he knows something about
21 your case. He's in the PD's office -- where would that
22 present a conflict of interest?

23 THE DEFENDANT: I'm saying he know about something
24 I don't know about. They tell me something he heard.

25 THE COURT: All right. So, other public

1 defenders, other lawyers in the public defender's office
2 know things about your case that you don't know. Is that
3 what you're telling me?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Where does that create a conflict of
6 interest?

7 THE DEFENDANT: Because, number one, I should have
8 heard from -- or everybody else heard except my attorney.

9 THE COURT: You should have heard, what? You
10 got -- you need to speak up. Okay?

11 THE DEFENDANT: Number one call, they come there
12 with a message I need to take their plea, you know what
13 I'm saying. Solicitor, I need to take this plea.

14 THE COURT: All right. So they've mentioned to you
15 that there was a 9-1-1 call and whatever's in the 9-1-1
16 call they feel like maybe that would justify you maybe
17 offering a plea; is that what you're saying?

18 THE DEFENDANT: They were trying to force me to
19 take a plea.

20 THE COURT: Okay. So you feel like a conflict of
21 interest arises out of their efforts to try to get you to
22 plead guilty. Is that where the conflict of interest is?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. All right.

25 Other than their efforts to try to get you to plead

1 guilty, are there any other conflicts of interest that you
2 feel like exist to justify what you're asking for?

3 THE DEFENDANT: No, sir.

4 THE COURT: Okay. Have they threatened you?
5 Twisted your arm? Done anything like that to try to get
6 you to plead guilty?

7 THE DEFENDANT: No, sir.

8 THE COURT: Okay. All right. So we've covered
9 three areas: You felt like Mr. Routzong has not spoke
10 with you enough; their efforts to try convince you to
11 plead guilty; and what's the other one? Three things.
12 Help me out, lawyers. Mr. Routzong has not seen you
13 enough.

14 THE DEFENDANT: Yes, sir.

15 THE COURT: They tried to get you to plead guilty
16 and you believe that's a conflict of interest. There's a
17 third thing.

18 MR. MOLONY: The 9-1-1 tape he referenced, Your
19 Honor, that he said he should have been the first to
20 listen to.

21 THE COURT: All right. Is that correct?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Anything else that you are
24 relying on to support your request to release Mr. Routzong
25 as your attorney, continue the case, and get you another

1 lawyer?

2 THE DEFENDANT: No, sir.

3 THE COURT: Is there anything else?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay.

6 THE DEFENDANT: Also on my behalf I'm also asking
7 to subpoena phone records and public safety records.
8 Haven't done none of that. Nothing.

9 THE COURT: Okay. Well, and I don't want to speak
10 for Mr. Routzong but, you know, sometimes a lawyer makes
11 the final decision on how to represent a client. And it
12 may be, and I don't know, that it may be that he's made
13 the decision not to subpoena those records because he
14 believes it would not be to your benefit.

15 I don't know that. I'm just making that kind of
16 general observation. You know, if you want to take a
17 minute, talk with him about that specific issue and maybe
18 he can resolve your concern, if he has not, why he has
19 not. I'll give that you.

20 I just want to get on the record every reason why
21 you want me to grant your motion. Okay? I want to get
22 that out on the table. And then -- is there anything
23 else?

24 THE DEFENDANT: No, sir.

25 THE COURT: Okay. All right. Let's -- why don't

1 you just take a few minutes and discuss that with him.
2 Yeah, if you'd rather go back there, we'll all be at ease
3 for just a moment. Let's kind of regroup as far as what
4 we have left to do today.

5 (Thereafter other matters were heard. The hearing
6 of this case resumed at 4:49 p.m.)

7 THE COURT: Mr. Routzong, have you had an
8 opportunity to discuss, I think it's kind of one issue
9 that Mr. Frazier had concerns about concerning possibly a
10 failure to subpoena some records or something? Do you
11 want to address that please, sir?

12 MR. ROUTZONG: Your Honor, I really don't see the
13 -- I really don't see his point. Maybe there is a point,
14 but I think the greater issue right now has been kind of a
15 complete breakdown in communication. I think that could
16 affect his cooperation and his, outcome of this trial. I
17 think he's not willing to listen to anything I tell him.

18 THE COURT: Right.

19 MR. ROUTZONG: And, perhaps another attorney would
20 be able to have a more fortuitous outcome for him. I
21 don't know the answer to that question, but there have
22 been, I would characterize it as a substantial breakdown
23 in communication.

24 THE COURT: All right. Well, Mr. Frazier, if you
25 would stand.

1 You know, I've not heard anything to give you a
2 viable basis to have Mr. Routzong excused as your
3 attorney.

4 He's an excellent attorney. I don't know how long
5 he's been practicing but I would assume a fair amount of
6 time. He's been at this before. And since there were
7 efforts to continue last time -- of course, I realize a
8 little different request because you thought maybe your
9 family could hire private counsel which did not happen but
10 since this Court has dealt with this request before, I
11 don't see any reason to continue this case nor to excuse
12 Mr. Routzong as your attorney.

13 You know, he's making decisions. He has an ethical
14 responsibility to you, Mr. Frazier, to provide the best
15 representation possible. And I'm confident he's going to
16 do that.

17 Now will he agree with everything you want him to
18 do? Probably not. But he's going to make tactical
19 decisions. I assume Mr. Hayes is going to be assisting in
20 some fashion. He's an excellent attorney too. They're
21 going to make decisions.

22 And you can shake your head all you want to, sir,
23 but I'm just telling you that I don't see where you're
24 going to get any better representation than what you've
25 got here today.

1 And, again, for them to not agree with every
2 position that you take is not grounds to continue this
3 case, once again, and appoint another lawyer. That's just
4 not a legal basis to do it.

5 Now, and I know this is not going to happen but if
6 at any time during the course of this trial I believe that
7 the representation is deficient in some way, that your
8 best interests are being compromised by certain decisions
9 that the lawyers may make, then I'll certainly address
10 that. And I'll be aware of that, even though I do not
11 anticipate that happening. I'll be very cognizant of
12 that.

13 And to make sure because one of my jobs, one of my
14 responsibilities is to make sure that all of your
15 constitutional rights are fully protected. And I'm going
16 to make sure that that happens, but just because a request
17 is made to get you another lawyer that in and of itself,
18 you know, doesn't require me to grant that request.

19 I have to find some really good, sound legal
20 reasons to grant your request. And I've not seen any.
21 Okay?

22 So, I'm going to deny your request. I would
23 admonish you and encourage you to cooperate with your
24 attorneys to the very best that you can because otherwise
25 if you don't, if you are unhappy about this ruling or

1 whatever, and you decide, well, I'm just not going to
2 cooperate, that's just not going to be of much benefit to
3 you.

4 So I would strongly encourage you to cooperate and
5 listen to what your fine attorneys are advising you.
6 That's their job. That's why they're lawyers. They're
7 here to represent you and advise you to the best of their
8 ability. Okay?

9 THE DEFENDANT: They're not doing it.

10 THE COURT: Okay. Anything further? We need to
11 go ahead and get this jury back out and get them excused.
12 Anything else we need to deal with on this case this
13 afternoon?

14 MR. MOLONY: No, sir, not from the State.

15 MR. ROUTZONG: No, sir.

16 THE COURT: All right. Thank you very much.

17 If you'd bring the jury out. I'm going to start
18 back at 9:30 -- good with everybody? Good with
19 everybody? -- in the morning.

20 MR. MOLONY: Yes, sir.

21 (Jury enters courtroom at 4:54 p.m.)

22 THE COURT: Ladies and gentlemen of the jury.
23 We're going to go ahead and break for this afternoon.
24 We're going to start back promptly at 9:30. And so make
25 sure you allow yourself enough time to get here on time so

1 we can start.

2 I'll tell you that if for some reason at 9:30 we
3 haven't gotten you back in here, I want you to understand
4 that we're working. I can assure you one thing. Anytime
5 that you're sitting back in that jury room before you
6 deliberate, we are doing something on the case. We're not
7 just sitting back and drinking coffee and having a good
8 time. We're not doing that. We're working.

9 So I'll excuse you for this evening. I caution
10 you, remind you, don't -- you know, family, friends who
11 you're going to be coming in contact with are going to ask
12 you about jury service. And nothing wrong with saying,
13 "Yeah, I've been picked on a jury."

14 But leave it at that. Don't talk to them, well,
15 hey, I think this is the case, these are the charges or
16 whatever. Do not do that. That's a violation of your
17 oath that you will get tomorrow to serve on this jury.
18 So, just change the conversation if that comes up. Don't
19 discuss it among yourselves when you're sitting back in
20 the jury room before we start back.

21 So have a good evening and we'll see you at 9:30 in
22 the morning.

23 (Jury exits courtroom at 4:56 p.m.)

24 THE COURT: Okay. We'll be in recess on this case
25 until 9:30 in the morning. I know, Solicitor, I think you

1 have a matter that we need to deal with.

2 MR. THURMOND: I don't. I had a real quick plea,
3 Mr. Routzong had a client come from Wrens, Georgia, to
4 plead...

5 END OF DAY'S PROCEEDINGS IN THIS CASE: 4:57 P.M.

1 ON TUESDAY, MAY 20, 2014 AT 10:10 A.M.:

2 THE COURT: We're back on the record in the State
3 versus Daggart Frazier.

4 It's -- before we bring the jury out, I just want
5 to go back and kind of reiterate what we did yesterday
6 late concerning the Defendant's motion for continuance.
7 We can do that but I understand we have a matter involving
8 possibly a 9-1-1 tape that we need to discuss at this
9 time -- or kind of bring me up to speed, Solicitor, if you
10 would.

11 MR. GRIMES: Yes, Your Honor.

12 We have a 9-1-1 call from, it's actually two calls
13 but there's really only one in question. The victim's son
14 who is at the incident location the night that this
15 occurred called 9-1-1. You can hear the victim's son
16 talking to the dispatcher at 9-1-1. And most of their
17 discussion is about where this incident location is. He's
18 calling from a cell phone and I guess there's limited
19 ability to track the location from the cell phone. The
20 son of the victim is dyslexic, so he doesn't know the name
21 of the road. He's told the name of the road from his mom,
22 and he's having trouble communicating with the dispatcher
23 about the name of the road. So there's kind of a
24 conversation that goes on about what's the name of this
25 road where the house is located, where the incident

1 location is so that the police can respond.

2 The majority of the conversation between the
3 victim's son and the 9-1-1 dispatcher is about where this
4 location is so the police can come. The dispatcher asked
5 the son, you know, to spell the address, to tell her what
6 road it's off of.

7 And you can kind of tell from the 9-1-1 tape that
8 he's having a hard time conveying any of this information
9 but he's -- he's -- at the same time he's having
10 difficulty telling the dispatcher where this incident
11 location is, he's also explaining to her what's going on
12 there. He talks about this guy came in with a gun and
13 basically the ruckus that's going on inside the house. He
14 mentions that the Defendant put his hands on him and those
15 descriptions are basically without provocation from the
16 dispatcher who's continuing to try to learn the address of
17 this incident location.

18 She did ask him one question that I recall about
19 the Defendant himself, she asked what his name was. The
20 son of the victim who's on the phone with this 9-1-1
21 dispatcher did not give her the name of the Defendant.

22 After this call goes on for a while and I'm kind of
23 trying to describe so that it, it's probably five or six
24 minutes of this part of the phone call where the
25 dispatcher really just doesn't have any idea where the

1 incident location is. The son gives the phone to his
2 mother who explains to the 9-1-1 dispatcher what the
3 address is and then they talk about that law enforcement's
4 on their way.

5 The defense has a motion to exclude that portion of
6 the phone call that's involving the son of the victim. He
7 is not here to testify. The State's position is that it's
8 the excited utterance exception to hearsay, basically
9 wanting to introduce that portion of the tape and that
10 that portion of the tape is to non-testimonial in nature
11 so that there wouldn't be a Crawford confrontation clause
12 issue.

13 THE COURT: Well, I'm going to hear from the
14 defense in just a second. I'm probably going to have to
15 listen to it.

16 MR. GRIMES: Yes, sir.

17 THE COURT: I mean, I understand what you've
18 explained to me. It's very clear. I understand, but
19 probably to get the full flavor of it, I'm going to have
20 to listen to the 9-1-1 call.

21 MR. GRIMES: Yes, sir.

22 THE COURT: But let me just hear from the defense
23 and certainly you can respond. Mr. Routzong?

24 MR. ROUTZONG: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MR. ROUTZONG: Basically our objection is twofold,
2 I think. I'm asking the Court to get the State to tell us
3 why they think it is that there's an exception under the
4 hearsay rules. I think they've already done that.

5 There are, I think, three elements to that. I'd
6 ask the Court to listen to the tape and find those three
7 elements. That would be under Sims, Your Honor, Supreme
8 Court South Carolina -v- Sims and they have three elements
9 and it's in the rules as well.

10 THE COURT: What's that cite?

11 MR. ROUTZONG: 348 SC 16.

12 THE COURT: Okay. We'll take a look at that case.

13 MR. ROUTZONG: And the other objection I would
14 make, Your Honor, is, I believe the solicitor is telling
15 the Court or making an accurate statement of what the law
16 is under the federal constitution. I have not been able
17 to find any consideration of the issue of confrontation
18 under Article One Section 14 of the South Carolina State
19 Constitution.

20 My argument, Your Honor, without that person
21 here -- he has a due process right to confront his
22 witnesses against him. If that person is not here, it's
23 cumulative then really. They can elicit all of this
24 testimony from the witnesses that they already have, and I
25 would ask the Court to find that it's not admissible.

1 THE COURT: Okay. We'll take a look at that.

2 Do we have any other motions that we need to deal
3 with before we get into the case from either the State or
4 the defense?

5 MR. GRIMES: Not that I'm aware of, Your Honor.

6 THE COURT: Okay. What is the length of this 9-1-1
7 call? Roughly.

8 MR. GRIMES: I think it's about six minutes.

9 THE COURT: All right. Let me before -- because I
10 don't want to forgot. I want to go back. I'm not
11 changing my ruling as to yesterday, but I want to make
12 sure that this record is crystal clear concerning the
13 Defendant's request to continue the case, slash, have
14 Mr. Routzong and Mr. Hayes' released as his attorney.

15 Mr. Frazier, listen to me very carefully. I want
16 to make sure that I correctly and specifically address, or
17 state, rather, each one of your basis for your motion for
18 a continuance, slash, releasing they lawyers. Okay?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now if I misstate anything or don't
21 include everything, then I want you to tell me. Okay?

22 THE DEFENDANT: (Nods head.)

23 THE COURT: Or you may agree that I've stated it
24 correctly.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: That's totally up to you. Okay?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. First basis is that you
4 don't believe that your lawyers -- and I realize
5 Mr. Routzong is your primary lawyer but since Mr. Hayes is
6 here as well, I'm going to say lawyers -- have not spent
7 enough time with you as far as meetings, conferences, that
8 sort of thing. Number one.

9 Number two, you felt like there was a conflict of
10 interest with respect to two issues. One, that they were
11 forcing you or trying to force you into pleading guilty to
12 some offense. And the second conflict of interest is that
13 other public defenders knew about your case other than
14 these two lawyers here. And then your fourth (verbatim)
15 ground was that you felt like some records, I think maybe
16 phone records, but I'll just generically say records, you
17 felt like those needed to be subpoenaed and for whatever
18 reason your lawyers decided not to issue a subpoena for
19 those records.

20 Now, is that a correct statement and summary of the
21 grounds that you argued yesterday in support of your
22 motion for a continuance and I'll use the word, slash,
23 releasing these lawyers. Is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Anything else other than what I've

1 stated?

2 THE DEFENDANT: No, sir.

3 THE COURT: Thank you very much. All right.

4 Let's be at ease for just a few moments. I'm going
5 to take a look at State versus Sims and then I'll listen
6 to the 9-1-1 call.

7 MR. GRIMES: Your Honor, we have some additional
8 cases that would probably be relevant to this 9-1-1 call.

9 THE COURT: Okay.

10 MR. GRIMES: And I have copies of them for you,
11 Your Honor.

12 THE COURT: Okay. Great. Thank you.

13 (Break taken from 10:20 a.m., until 10:31 a.m., and
14 the trial resumed:)

15 THE COURT: Solicitor, if you will go ahead and let
16 me listen to the 9-1-1.

17 MR. GRIMES: Yes, sir.

18 THE COURT: The portion that is in dispute.

19 MR. MOLONY: Yes, sir.

20 (9-1-1 recording played for the Court).

21 THE COURT: Okay. We're back on the record.

22 Anything further from the defense on your motion to
23 exclude this, at least the portion of the 9-1-1 call that
24 was played in camera? Mr. Routzong, anything further on
25 that?

1 MR. ROUTZONG: Just to reiterate, Your Honor,
2 there's two reasons. The one is the excited utterance,
3 and then the other one, I don't see any case law
4 concerning Article One Section 14 on the issue of due
5 process when it comes to 9-1-1 calls.

6 THE COURT: Solicitor, anything further on this?

7 MR. GRIMES: Yes, Your Honor. Just in relation to
8 the excited utterance argument and I will tell you -- I'm
9 not sure. I think I highlighted a copy of those cases and
10 I may have actually handed that copy up to the Court
11 but --

12 THE COURT: Yeah. You -- one of the case you did
13 have highlighted. Do you want it back?

14 MR. GRIMES: No, sir, Your Honor. I just was
15 wondering where it went.

16 In the Ladner case it basically cites to the Sims
17 case that defense counsel was referring to in regards to
18 the three conditions for excited utterance. Of course, a
19 declarant -- availability of declarant is immaterial for
20 this type of hearsay exception.

21 But the -- I think all three of the elements are
22 present and it's fairly obvious based on the phone call
23 itself and will be even stronger foundation laid for that
24 based on the other testimony that's going to come out here
25 in court that there was a startling event that the

1 declarant was under the stress of that excitement and that
2 the stress of that excitement or the stress and excitement
3 that he was experiencing was caused by the startling
4 event.

5 I think those elements are satisfied, probably
6 based on the audiotape itself but if not they'll be
7 satisfied by the other testimony of what happened inside
8 the house that night.

9 So I think it does qualify for the excited
10 utterance hearsay exception.

11 THE COURT: Okay.

12 MR. GRIMES: In regards to the confrontation clause
13 issue or the state constitution version of that, I would
14 rely on the case law that we've presented to the Court and
15 I would point out she did ask him, and I think the case
16 law kind of expresses that it may not even be relevant or
17 not whether or not she's asking questions about who
18 committed the crime and what the crime was as long as it's
19 related to law enforcement responding and trying to help
20 at the incident location.

21 But she did ask about who the Defendant was and he
22 didn't respond to that question. He essentially explained
23 to her what's going on at the incident location and asking
24 for her to respond or send somebody to respond. And
25 that's important because the dispatcher's going to need to

1 know what type of response or what type of help is
2 necessary there. So any of that discussion that occurred
3 on the audiotape would be known testimony.

4 THE COURT: Thank you very much.

5 Yeah, I think it's pretty clear that, number one,
6 that the 9-1-1 call does fall under the excited utterance
7 exception. If nothing else when the gentleman said, "I'm
8 hiding in the bathroom," you know, that would certainly
9 tend to lend itself to believing that it was stressful,
10 startling situation.

11 So and under the confrontation clause while State
12 versus Brockmeyer, B-R-O-C-K-M-E-Y-R-E, which is November
13 of 2013, South Carolina Supreme Court case, does not deal
14 with a 9-1-1 call, certainly the rationale in that case
15 and the holding in that case would cause this Court to
16 believe that the statements made by the gentleman on the
17 9-1-1 call were not testimonial, were not for purposes of
18 offering testimony to be used in court. It was to report
19 what this gentleman perceived to be happening at the time
20 of the call.

21 So taking everything into consideration, the motion
22 by the defense to exclude this portion of the 9-1-1 call
23 is denied but you're certainly protected on the record.

24 Anything further before we bring the jury out?

25 MR. GRIMES: Nothing from the State, Your Honor.

1 THE COURT: Okay. From the defense?

2 MR. ROUTZONG: No, sir.

3 THE COURT: Okay. All right.

4 Give me one second. I got get my computer and then
5 we'll bring the jury out and get going...well, maybe.
6 It's not working.

7 (Off-the-record discussion.)

8 THE COURT: We're back on the record and we have
9 one other point that, Mr. Routzong, you want to put on the
10 record to further support your motion to exclude the 9-1-1
11 call?

12 MR. ROUTZONG: Yes, sir.

13 One of the things that the individual mentions on
14 the record in the 9-1-1 call is that the Defendant has a
15 gun. That's an element of the crime that he's charged
16 with. At least one, actually two of the crimes he's
17 charged with.

18 And I think without the ability to confront that
19 witness, to cross-examine that witness, that under Article
20 One Section 14, Mr. Frazier's constitutional rights are
21 being infringed.

22 THE COURT: Okay. You're protected on the record
23 and that's denied.

24 MR. ROUTZONG: Thank you, Your Honor.

25 THE COURT: Okay. Anything else before I bring the

1 jury out?

2 MR. MOLONY: No, sir, Your Honor.

3 THE COURT: Okay. Mr. Whittle, if you'd get the
4 jury out, please.

5 (Jury enters courtroom at 10:52 a.m.)

6 THE COURT: Let the record reflect the jury's back
7 in. Good morning.

8 THE JURY (COLLECTIVELY): Good morning.

9 THE COURT: Now if you remember what I told you
10 when we adjourned yesterday, if you're sitting back in the
11 jury room it does not mean that we're out here not doing
12 anything. We have been working.

13 As a matter of fact, about 9:30, I actually dealt
14 with an entirely different matter and that took some
15 period of time. And then we've been dealing with some
16 legal issues in this particular case. So we have been
17 working.

18 But we're ready to start the trial of the case and
19 the first thing we need to do is, Madam Clerk, would you
20 swear this trial jury in, please?

21 (Jury impaneled.)

22 THE CLERK: Have a seat.

23 THE COURT: All right. The second thing we need to
24 do is I need to appoint a forelady of the jury.

25 Now let me emphasize with you that a forelady of

1 the jury, their vote carries no more weight than everybody
2 else's vote. Okay. But I have to have a person to wear
3 several hats. One is, I need a person to speak for the
4 jury. If there's a concern or a question or an issue that
5 needs to be brought to the Court's attention, then I need
6 a spokesperson for the jury. That's hat one.

7 Hat two is, I need a person to make sure that
8 everyone on the jury follows the instructions that I give
9 you, that I will give you in just a moment.

10 And, thirdly, when you do receive this case to
11 start your deliberations to make a decision on the issues
12 before you, I need someone to handle those deliberations.
13 Not that -- again, not what they, the foreperson believes
14 or their vote or anything carries any more significance,
15 it does not, but I need someone to conduct those
16 deliberations.

17 And I'm confident that all 13 of you would do an
18 excellent job however I can't have 13 forepersons. I only
19 can have one.

20 So Ms. West, I am going to appoint you as the
21 Forelady of this jury. Now, you will -- you don't need to
22 move right now but the next time you come in you will
23 maintain that first seat, the empty seat, at all times.
24 That will be your chair.

25 And of course the alternate, Mr. Williams, you will

1 maintain that seat at all times.

2 Everybody else, you can sit where you like. Now,
3 it's been my experience that juries tend to, or jurors on
4 a jury tend to like to sit in the same seat. It's kind of
5 like going to church. You know, you got your own pew and
6 dare anybody to sit in your pew at church, but that's
7 going to be totally up to you. Whatever you feel more
8 comfortable with, if you want to stay in the same seat or
9 not, that doesn't matter but the Forelady and the
10 alternate do have their designated seats. Okay.

11 All right. With that said, I'm going to give you
12 a kind of preliminary instruction on what we'll be doing
13 and after I do that then the lawyers will make opening
14 statements to you, and I'll explain that in just a little
15 bit.

16 But before we begin this trial of this case, I want
17 to tell you that this trial probably will be different
18 from what you might expect. Many people don't have the
19 opportunity to attend actual court sessions as you are
20 doing here today.

21 And you may think from watching television or
22 movies or reading books that trials are always full of
23 high drama, intense action and riveting circumstances.
24 While all of these things may be true at times, this trial
25 is not for entertainment.

1 It is a fundamental part of our democracy, a search
2 for the truth in an effort to make sure that justice is
3 done between the parties before the Court. Searching for
4 the truth and making sure that justice is done is often
5 slow, deliberate and repetitive. The opposite of what you
6 may have seen on television or seen in movies or read in
7 books.

8 This courtroom is a place of honor, dedicated to
9 the protection and preservation of citizen's rights
10 through what many have called to be the greatest justice
11 system ever created. No question about that.

12 Now the attorneys appearing before you are
13 advocates for the parties they represent. First and
14 foremost, they are officers of the court, sworn to uphold
15 the integrity and fairness of our judicial system and to
16 help you in the search for the truth. You should expect
17 them to be professional, competent and ethical in the
18 representation of their client's interests which no
19 question they will. I'm satisfied of that.

20 Remember that you have taken an oath to try this
21 case and reach a fair and just verdict. And so you as
22 members of this trial jury are expected to be
23 professional, reasonable, and ethical as well.

24 I want to thank you now, once again, for accepting
25 your responsibility to serve on jury service and for your

1 contribution today to our justice system.

2 What I will now say is intended to serve just an
3 introduction, as I stated a moment ago. These remarks are
4 not a charge on the law in this case. I will instruct you
5 on the law in this case applicable to this case at the end
6 of the trial before you retire to consider your verdict.

7 This is merely an explanation of the procedure that
8 we will follow in the trial of this case so that you may
9 better understand what may be happening.

10 Now, you're not permitted to take any notes during
11 this trial so what that requires you to do is to pay very
12 close attention to everything that goes on in this case so
13 you'll have a very clear and accurate memory of everything
14 that is done and said in this case.

15 Now, before the jury was selected as we were going
16 through the process yesterday, if you'll remember, I
17 published for the whole jury panel the three indictments.
18 And as I explained to you at that time and I will explain
19 to you again now that the indictments are simply the
20 charging papers to get this case to trial and not in any
21 way evidence of any of the allegations that the
22 indictments contain.

23 The Defendant has exercised his constitutional
24 right and has pled not guilty to these three indictments.
25 Therefore, that places the burden on the State of South

1 Carolina to prove each and every element of each charge
2 beyond a reasonable doubt and therefore it will be your
3 duty as jurors to decide whether or not the State has met
4 that burden of proof.

5 Your purpose as jurors is to find and determine the
6 facts. You are the sole and exclusive and absolute judge
7 of the facts. If at any time I make any comment regarding
8 the facts during the course of this proceeding, and I'll
9 try not to, but if I do, you must disregard those
10 comments.

11 You are to determine the facts from the testimony
12 you hear and other evidence introduced in court, and it's
13 up to you to determine the inferences which you feel may
14 properly be drawn from the evidence.

15 It is especially important that you perform your
16 duty of determining the facts diligently and
17 conscientiously because ordinarily there's no way to
18 correct an erroneous determination of the facts by a jury.

19 Now on the other hand, and with equal importance
20 and emphasis, the same law that makes you the judge of the
21 facts makes me the judge of the law. The law as given by
22 the Court is the only law that you may consider. You
23 must accept what I give you. You must follow what I give
24 you, even though you may disagree with it. I cannot tell
25 you what the facts are, and you can't disagree with me

1 about what the law is or should be.

2 Now I will instruct you fully on the law at the
3 conclusion of this case. There may be times during the
4 course of this trial that I will need to give you some
5 brief instruction or explanation of the law but the bulk
6 of the law will be given to you at the conclusion of the
7 case.

8 Your job is to take the law as I give it to you,
9 apply it to the facts as you find them from the testimony
10 of the witnesses and any other evidence that is
11 introduced.

12 And as I've already instructed you and you will
13 hear this from me throughout the entire proceedings, you
14 can't start your discussions among yourselves about this
15 case or begin your deliberation until I tell you it is
16 time to do so. Consequently, you can't talk among
17 yourselves, with friends, family members, anybody that you
18 may come into contact with concerning this case.

19 And it is equally important, and I think I
20 mentioned this to you when you were on the jury panel,
21 that you can't do any independent research. That's why I
22 instructed you about your cell phones. You can't do any
23 independent research into this matter.

24 I don't know if there will be any media coverage in
25 this case or not. I would have no way of knowing that,

1 but if there is any coverage, whether it's on the radio,
2 newspapers, television, you are not to consider that
3 whatsoever.

4 It's very, very important, Madam Forelady and
5 ladies and gentlemen of this jury, that you keep an open
6 mind and not decide any issue in this case until all of
7 the evidence has been presented, closing arguments have
8 been made to you, and I have fully instructed you on the
9 law in this case.

10 It is your solemn responsibility to determine the
11 guilt or innocence of the Defendant. And your verdict
12 must be based solely on the evidence as it is presented to
13 you in this trial and the law as I instruct you at the
14 close of the trial.

15 Now I will mention something to you, that there may
16 be times when one of the lawyers may object to something
17 that happens or may say, "Judge, I've got a matter of law
18 and we need to discuss it outside of the jury's
19 presence." Consequently I may have to send you back to
20 your jury room but it still applies that when you're in
21 there we're out here working. Okay?

22 And the reason why we have to, a lot of times, do
23 it outside your presence is that it may require me to
24 discuss some of the facts with the lawyers and I don't
25 want to discuss those facts in your presence because,

1 again, you are the sole and absolute and exclusive judge
2 of what the facts are in this case as you find them.

3 Okay. With that preliminary instruction, I'll
4 first ask the State: Is there any objection or exception
5 to the Court's preliminary charge?

6 MR. MOLONY: Not by the State, Your Honor.

7 THE COURT: And from the defense?

8 MR. ROUTZONG: No, sir.

9 THE COURT: Okay. Now the lawyers will make
10 opening arguments to you. They're not evidence. It's
11 just their statement as to what they believe this case is
12 about, what they believe the evidence will be. So it will
13 be kind of a summary to you of where they think this case
14 is going to go and what you'll be hearing and seeing as
15 far as evidence in this case.

16 First from the State.

17 MR. MOLONY: Thank you, Your Honor. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 MR. MOLONY: Mr. Routzong, Mr. Hayes, ladies and
21 gentlemen. Good morning.

22 THE JURY (COLLECTIVELY): Good morning.

23 MR. MOLONY: On the night of December 16th, 2013,
24 around seven o'clock p.m., Jackie Key was hanging out at
25 her residence at [REDACTED] in Beech Island, South

1 Carolina, with her son and two friends. They were in the
2 living room listening to Christmas music, doing what a lot
3 of people enjoy doing during the holiday season, hanging
4 out with friends, hanging out with family.

5 You will hear testimony that this little Christmas
6 gathering was violently interrupted by the Defendant,
7 Daggar Frazier.

8 The evidence will show that the Defendant bust in
9 Jackie's back door armed with a black handgun, proceeds to
10 physically assault one of her guests while terrorizing the
11 other ones in the house.

12 All of this happened in a matter of minutes. The
13 three charges against the Defendant happened in a matter
14 of minutes.

15 And I was thinking about it this morning. A lot
16 can happen in a matter of minutes. And I thought about a
17 trip my dad and my brother and I went on to a football
18 game last year. I'm a big Carolina fan. So if you're a
19 Clemson fan, I'm sorry. But we went to Missouri to the
20 game.

21 And at the game Carolina is getting killed three
22 and a half quarters. We're in the nosebleed section.
23 It's freezing cold. We're playing horrible. Our starting
24 quarterback has not been playing, his knee's been hurt.
25 Connor Shaw, our star quarterback, hobbles in the game,

1 brings us back. Scores two touchdowns in the final couple
2 minutes. Sends it into overtime, and then makes the forth
3 down conversion in overtime and sends it into double
4 overtime. And finally Missouri's kicker hits the upright
5 in double overtime and we win.

6 In a matter of minutes, I went from wanting to jump
7 off that stadium in my nosebleed section watching us get
8 pummeled, to hugging and jumping around with strangers
9 celebrating Carolina.

10 Now those couple of minutes that I had are a little
11 different than the couple of minutes that the Defendant
12 was involved in that night, December 16th. The Defendant,
13 unlike Connor Shaw, he didn't have a football in his hand
14 and a bum knee. The Defendant had a very healthy knee,
15 one capable of knocking the door off the hinges.

16 And his hand didn't have a football in it. It had
17 this black pistol. And you'll hear from everybody in the
18 house that was there that that pistol looked real to them.

19 That's it, ladies and gentlemen. There will be
20 testimony about what happened, the relationship between
21 Jackie and the Defendant. They had known each other for
22 years.

23 There will also be some testimony he didn't live
24 there, he never lived there. And they weren't dating or
25 boyfriend and girlfriend during the time of this

1 incident. As a matter of fact, he hadn't been there in
2 over a month.

3 Three charges in this case. I wrote on this. I
4 apologize, it's like a third grader handwriting but these
5 are the three charges that we're here for today. Burglary
6 first degree. And the Judge, like he said, is going to
7 tell you the law at the end of this. This is just a
8 little bit of an overview for you to be thinking about
9 when you're hearing the facts.

10 Number one, entering someone else's residence
11 without consent with the intent to commit a crime inside
12 that house and one of these aggravating circumstances must
13 be present, either at night, which the testimony will
14 prove this was, or armed with a deadly weapon, which the
15 testimony will prove the Defendant had in his hand.

16 In a matter of minutes, this is what the evidence
17 will show happened. The possession of a weapon during the
18 commission of a violent crime, that he had a gun when he
19 committed the burglary first or what appeared to be a
20 gun.

21 And lastly the assault and battery third degree is
22 when he goes and unlawfully injures or offers to injure
23 Stacey Gantt, an individual that was in the living room
24 with Jackie that night. That's it.

25 This is the rundown version of the law. And like I

1 said, the Judge will tell you, if anything I got written on
2 this is different, then obviously listen to the Judge.

3 But the Judge told you the State bears the burden in this
4 case. It's not unlike any other criminal case anywhere in
5 this country. The State bears the burden of proving the
6 Defendant guilty beyond a reasonable doubt. And that
7 simply means that you're firmly convinced at the end of
8 this thing -- it won't last long -- that the Defendant
9 committed this crime, that those elements have been proven
10 to you by the State. It's not beyond any doubt, it's
11 not -- you're firmly convinced.

12 You get to use your common sense and the Judge will
13 tell that. It's something you've all used your whole
14 lives. It's something that you didn't have to check in at
15 the metal detector downstairs. You bring it with you and
16 you use it everyday. You use that, you apply it to the
17 evidence, the testimony that you'll hear in English, to
18 the law and at the end of this thing, Mr. Grimes and I are
19 confident that the burden of proof will be met.

20 We welcome that burden with open arms in this
21 case. It's an important case. It's important for
22 everybody involved, but it's not going to be very
23 difficult.

24 I thank for your time.

25 THE COURT: Thank you, Solicitor. Mr. Routzong?

1 MR. ROUTZONG: If it please the Court.

2 Ladies and gentlemen, a couple of minutes ago you
3 took an oath. And I want to stand up here -- first of
4 all, by the way, my name's Michael Routzong. I represent
5 Mr. Frazier. I'm his lawyer.

6 A couple of minutes ago you took an oath. What
7 does that oath really mean? You know, we bandy these
8 words 'reasonable doubt' and 'presumption of innocence'.
9 We talk about that all the time. But what does it really
10 mean? Because you took an oath to do that, you took an
11 oath to presume Mr. Frazier's innocence. And you've taken
12 that oath to maintain that presumption of innocence until
13 you go back there for the final collective gathering to
14 decide what are the facts in this case.

15 And I'll break that down for you. What it means to
16 be presumed innocent is that the State's wrong. You have
17 to sit right here right now with the attitude and the
18 mind set everything he just told you is wrong, and that
19 all the witnesses that they present are not truthful.
20 They're not telling the truth. It doesn't correspond to
21 what actually happened. If you don't do that you've
22 broken your oath.

23 Now when you go back there and you start your
24 deliberations after the Judge charges you, that
25 presumption of innocence remains with him until you

1 collectively make a decision about what happened.

2 Remember, you took an oath to do that.

3 Now, the rest of the State's story, it really comes
4 down to a couple of things. Did he have consent to go in
5 the house? Did he have an intent to commit a crime?

6 His Honor will explain all of that stuff to you,
7 but you understand what that means. And if you don't
8 find either of those things, then he's not guilty. And
9 that's what you're here to decide. Nothing else. You're
10 not back here -- going back there to get closure to the
11 accusers. You're not going back there to come to some
12 kind of a compromise.

13 You stick to your guns, you determine individually
14 what happened and you come together collectively. And if
15 you can't make that decision, you don't have to
16 compromise. You can stick to your guns and say, "I don't
17 think the State's proven it beyond a reasonable doubt."
18 That's what you took an oath to do, not to go back there
19 and seek closure or anything else. This is too
20 important. And you took an oath.

21 And I really appreciate -- on behalf of Mr. Frazier
22 and Mr. Hayes, I appreciate your service.

23 THE COURT: Thank you, Counselor. All right.
24 State prepared to call its first witness?

25 MR. MOLONY: Yes, sir. Your Honor. The State

JACQUELINE KEY - DIRECT BY MOLONY

1 calls Jacqueline Key.

2 JACQUELINE KEY, having been duly sworn, was
3 examined and testified as follows:

4 THE CLERK: Have a seat in the witness box. State
5 your full name for the Court and spell your last, please.

6 THE WITNESS: My name is Jacqueline Key, K-E-Y.

7 THE COURT: Your witness, Solicitor.

8 MR. MOLONY: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. MOLONY:

11 Q. Jacqueline, do you mind if I call you Jackie?

12 A. No, sir.

13 Q. Is that what you go by?

14 A. I don't mind.

15 Q. Jackie, where do you live currently?

16 A. [REDACTED]

17 Q. How long have you been at that address?

18 A. Almost two years.

19 Q. Now do you rent that home or do you own it?

20 A. I rent.

21 Q. Who is your landlord?

22 A. Rick Brown.

23 Q. Do you remember signing any paperwork when you and
24 Mr. Brown came in contact with one another in regards to
25 this home?

JACQUELINE KEY - DIRECT BY MOLONY

1 A. Yes.

2 MR. MOLONY: Your Honor, may I approach?

3 THE COURT: Certainly.

4 BY MR. MOLONY:

5 Q. Jacqueline, I'm going to show you what has been
6 pre-marked for identification as State's Exhibit Eight.
7 I'm going to ask if you'd just take a second and take a
8 look through it and let me know if you recognize it.

9 A. (Complies.) Yes, sir.

10 Q. What is this?

11 A. A lease.

12 Q. And who is this lease between?

13 A. Me and Ricky Brown.

14 Q. Is this the lease that you and Mr. Brown entered
15 for the residence at [REDACTED]

16 A. Yes, sir.

17 Q. Thank you.

18 Your Honor, at this time the State would move to
19 introduce Exhibit Eight.

20 THE COURT: Okay. What says the defense?

21 MR. ROUTZONG: No objection, Your Honor.

22 THE COURT: Without objection it will be State's
23 Exhibit Number Eight into evidence.

24 (State's Exhibit No. 8, lease agreement, received
25 into evidence.)

JACQUELINE KEY - DIRECT BY MOLONY

1 BY MR. MOLONY:
2 Q. Now, Jackie, do you know the Defendant in this
3 case?
4 A. Yes.
5 Q. How long have you known him?
6 A. Around 18 years.
7 Q. I'm going to take you back to December 16th of
8 2013. Where were you living during that time?
9 A. [REDACTED]
10 Q. The same place you're living now?
11 A. Yes.
12 Q. And what was your relationship like with the
13 Defendant at that time?
14 A. At that time we wasn't together.
15 Q. Did the Defendant ever live with you at [REDACTED]
16 [REDACTED]?
17 A. No.
18 Q. Did he have a key to the residence?
19 A. No.
20 Q. Did he have a toothbrush or clothes in the house?
21 A. No.
22 Q. When was the last time, if you remember, the
23 Defendant being at that residence prior to December 16th,
24 2013?
25 A. It was about a month, around a month.

JACQUELINE KEY - DIRECT BY MOLONY

1 Q. Well, getting back to the night of December 16th,
2 2013, explain to the jury who, if anyone, was at your
3 residence that night.

4 A. It was me and my son, Deontray, Lashanda Washington
5 and Stacey Gantt.

6 Q. Who is Lashanda Washington?

7 A. She's a friend.

8 Q. And what about Stacey Gantt?

9 A. A friend. I just met him, I guess, about two weeks
10 prior.

11 Q. And what were y'all doing that night?

12 A. Having a drink and listening to Christmas music.

13 Q. Where were y'all sitting? Inside? Outside?

14 A. Inside. The living room.

15 Q. Was it dark outside?

16 A. Yes, sir.

17 Q. Jackie, please explain to the jury what, if
18 anything, interrupted y'all sitting there listening to
19 Christmas music that night.

20 A. Bernard did. We heard banging on the door, really
21 loud banging on the door. And then the next thing I know
22 he kicked in the door. The door -- I mean, we just
23 heard, some say 'boom', and he basically staggered, I
24 guess, he hit the door so hard.

25 And then he came over, put the gun to Stacey's head

JACQUELINE KEY - DIRECT BY MOLONY

1 and said, "Who you, nigger?" "Who you?" And then they
2 struggled and they struggled outside the door. And I ran
3 in the back to see where my son was and he was on the
4 phone calling 9-1-1.

5 It was -- I mean, it happened so quick. It's like
6 when we seen the gun, everybody basically scattered, but he
7 had Stacey with the gun to his head and they were
8 struggling.

9 Q. Okay.

10 Your Honor, may I approach?

11 THE COURT: Certainly.

12 BY MR. MOLONY:

13 Q. Jackie, I'm going to show you what's been
14 pre-marked for identification as State's Exhibits One
15 through Seven and ask if you'd just take your time and
16 look through each one. Let me know when you're done and
17 if you recognize them.

18 A. (Complies.) Yes, sir. I do.

19 Q. And what are these pictures of?

20 A. Where I live. The house I live in.

21 Q. The residence at [REDACTED]

22 A. Yes, sir.

23 Q. Is this residence in Aiken County?

24 A. Yes, sir.

25 Q. And are these fair and accurate representations of

JACQUELINE KEY - DIRECT BY MOLONY

1 your residence there at [REDACTED]

2 A. Yes, sir.

3 MR. MOLONY: Your Honor, at this time the State
4 would move to introduce Exhibits One through Seven.

5 THE COURT: What says the defense?

6 MR. ROUTZONG: No objection, Your Honor.

7 THE COURT: Without objection, will be Numbers One
8 through Seven, exhibits on behalf of the State into
9 evidence.

10 MR. MOLONY: Thank you, Your Honor. I ask
11 permission for the witness to be able to step down.

12 THE COURT: Sure.

13 (State's Exhibit Nos. 1 through 7, photographs,
14 received into evidence.)

15 THE COURT: Madam Witness, when you do that you'll
16 be probably facing the jury, I would assume. Make sure
17 you speak up a little louder so my court reporter can
18 still hear what you have to say.

19 BY MR. MOLONY:

20 Q. All right. Jackie, I'm showing you what's now been
21 admitted as State's Exhibit One. Is that your residence
22 at [REDACTED]

23 A. Yes, sir.

24 Q. And State's Exhibit Two, explain what the jury's
25 looking at here.

JACQUELINE KEY - DIRECT BY MOLONY

- 1 A. The kitchen and the living room.
- 2 Q. Now is this the living room? Is this how the
3 living room was set up on December 16th of 2013?
- 4 A. Yes, sir. The couch was here and one chair there,
5 and the fireplace was on that side.
- 6 Q. Okay. And y'all were in there listening to
7 Christmas music. If you would, just point to the
8 picture. Where was Stacey Gantt sitting during that time?
- 9 A. Here.
- 10 Q. Where the fireplace is in that photo?
- 11 A. Yes, sir.
- 12 Q. And what about Lashanda, where was she?
- 13 A. She was sitting here.
- 14 Q. And yourself?
- 15 A. I was sitting on the sofa with Stacey.
- 16 Q. Okay. And what about your son?
- 17 A. He was sitting over on the armored (verbatim) chair
18 with Lashanda.
- 19 Q. Now while you're listening to Christmas music I
20 believe you testified you started hearing banging?
- 21 A. Yes, sir.
- 22 Q. Where was that banging coming from?
- 23 A. The back door and the window.
- 24 Q. Okay. And do you see the back door in this photo
25 at all?

JACQUELINE KEY - DIRECT BY MOLONY

1 A. A little bit here.

2 Q. Okay. So, and explain what -- I think this is
3 State's Exhibit Three. Is -- what's this view from?

4 A. Okay. This is the room we sitting in, and the
5 door that he came maybe, came bust through, it was like on
6 this side.

7 Q. Being Four?

8 THE COURT: Ms. Key, you're going to need to speak
9 up a little bit at least so I can hear you.

10 THE WITNESS: Okay. I'm sorry.

11 THE COURT: I know you're soft spoken, but we need
12 to hear what you have to say.

13 BY MR. MOLONY:

14 Q. Okay. And this is State's Exhibit Four. Explain
15 what is pictured in this.

16 A. Okay. This is the door he bust through. And,
17 well, this is it after it was fixed. All of this, the
18 wall was torn out, the frame was torn out. That night
19 when it happened, I had to get someone to nail a board
20 across the back in order to stay there.

21 Q. And this is State's Exhibit Six. Is this a close-
22 up of the same door?

23 A. Yes, sir.

24 Q. And again for the record, this is, I think you just
25 testified, after it had already been fixed?

JACQUELINE KEY - DIRECT BY MOLONY

1 A. Uh-huh.

2 Q. And State's Seven?

3 A. This is where the landlord, he tried to fix it but
4 you can see where it was busted. It's still busted.
5 He's not finished.

6 Q. You can have a seat.

7 A. (Returns to witness stand.)

8 Q. Jackie, you stated that after the Defendant came in
9 and getting into it with Stacey, that everybody just
10 scattered?

11 A. Uh-huh.

12 Q. And you saw your son on the phone?

13 A. After they scuffled out the door, I ran in the back
14 looking for my son because I didn't see which way he went
15 because it happened so quick. And when I got in the back
16 he was on the phone with 9-1-1 and he was asking me, you
17 know, what the road was that --

18 MR. ROUTZONG: Objection, Your Honor.

19 THE COURT: Sustained.

20 MR. ROUTZONG: Hearsay.

21 THE COURT: Don't repeat what your son said, ma'am.

22 THE WITNESS: Okay.

23 THE COURT: Objection is sustained.

24 BY MR. MOLONY:

25 Q. Did you see him on the phone at that time?

JACQUELINE KEY - DIRECT BY MOLONY

1 A. Yes.

2 Q. At some point did you get on that, on the phone?

3 A. Yes.

4 Q. Was it during that same conversation?

5 A. Yes.

6 MR. MOLONY: Your Honor, may I approach?

7 THE COURT: Sure.

8 BY MR. MOLONY:

9 Q. Jackie, I'm going to show you what's been marked
10 for identification as State's Exhibit Nine and ask you if
11 you recognize this.

12 A. Yes.

13 Q. What is this?

14 A. A 9-1-1 call.

15 Q. What is this? Are these your initials on this
16 call?

17 A. Yes, it is.

18 Q. Is this a fair and accurate copy, true and accurate
19 copy of the 9-1-1 call your son and yourself made that
20 night?

21 A. Yes, sir.

22 MR. MOLONY: Your Honor, at this time, the State
23 would move to introduce Exhibit Nine into evidence and ask
24 that we publish it to the jury.

25 THE COURT: Okay. Other than what has already

JACQUELINE KEY - DIRECT BY MOLONY

1 been noted on the record, Mr. Routzong, any other
2 objections?

3 MR. ROUTZONG: No, Your Honor. I just -- I would
4 like to approach for just a second, Your Honor, if I
5 could.

6 THE COURT: I'm sorry?

7 MR. ROUTZONG: Could we have a sidebar for just a
8 second, Your Honor?

9 THE COURT: Sure.

10 (Off-the-record discussion.)

11 THE COURT: Mr. Routzong, other than what has
12 already been noted for the record, any other objections to
13 this request for the 9-1-1 CD coming in?

14 MR. ROUTZONG: No, sir.

15 THE COURT: Thank you very much. Will be marked as
16 Number Nine into evidence.

17 (State's Exhibit No. 9, CD containing 9-1-1 call,
18 received into evidence and played for the jury.)

19 BY MR. MOLONY:

20 Q. Now, Jackie, you testified that the Defendant and
21 Stacey exited the house. Did the Defendant ever re-enter
22 your residence?

23 A. He did.

24 Q. And what, if anything, did he do when he re-entered
25 your house?

JACQUELINE KEY - DIRECT BY MOLONY

1 A. When he came, he came through the front door and he
2 had blood and stuff all over his arms. And he was kind of
3 staggers-like. And he put -- had blood and stuff on the
4 walls and he came toward me. I was standing in the
5 kitchen. And I thought he was going to hit me but he hit
6 the refrigerator and put a dent in the refrigerator.

7 Q. State's Five that has been entered into evidence,
8 Jackie, is this your refrigerator?

9 A. Yes, sir.

10 Q. And is this the dent that the Defendant put in --

11 A. Yes, it is.

12 Q. -- the refrigerator? Now, when the Defendant
13 leaves and 9-1-1 is called, did you ever call 9-1-1
14 yourself?

15 A. I called them again because they -- it took them
16 too long to get here and I called them again.

17 MR. MOLONY: May I approach, Your Honor?

18 THE COURT: Certainly.

19 BY MR. MOLONY:

20 Q. Jackie, I'm going to show you what's been marked as
21 State's Exhibit 10 and ask you if you recognize this.

22 A. Yes, sir.

23 Q. And have you listened to it?

24 A. Yes, sir.

25 Q. What is it?

JACQUELINE KEY - DIRECT BY MOLONY

1 A. A 9-1-1 call.

2 Q. Are these your initials on this?

3 A. Yes.

4 Q. Is this a true and accurate copy of the 9-1-1 call
5 you made later that night?

6 A. Yes.

7 MR. MOLONY: Your Honor, at this time the State
8 would move to introduce Exhibit 10.

9 THE COURT: Okay. And what says the defense?

10 MR. ROUTZONG: I don't object, Your Honor.

11 THE COURT: Without objection, it will be Number 10
12 for the State into evidence.

13 MR. MOLONY: Thank you, Judge. And I ask that it
14 be published to the jury.

15 THE COURT: Okay.

16 (State's Exhibit No. 10, CD, containing 9-1-1 call,
17 received into evidence and played for the Jury.)

18 BY MR. MOLONY:

19 Q. Jackie, at that time were you scared?

20 A. Yes.

21 Q. Did the Defendant have consent that night to enter
22 your residence?

23 A. No.

24 Q. Now the one that you -- I think you called him
25 Daggart earlier, but the person that you testified entered

JACQUELINE KEY - DIRECT BY MOLONY

1 your house that night with a pistol, assaulted Stacey, do
2 you see him in the courtroom here today?

3 A. Yes.

4 Q. And if you would for the record, please, identify
5 him.

6 A. He's sitting over there, Daggar Bernard Frazier.

7 THE COURT: Let the record reflect that this
8 witness has identified the Defendant.

9 MR. MOLONY: Thank you, Judge.

10 Q. Now, Jackie, after this event did the police show
11 up that night?

12 A. Yes.

13 Q. Okay. Did you speak with the Defendant any more
14 that night?

15 A. Yes.

16 Q. Explain to the jury how -- when that happened, how
17 it happened.

18 A. After he left he called me back and he, he was
19 like, "Fuck the police." Excuse my -- what I said, but...

20 MR. ROUTZONG: Objection, Your Honor.

21 THE WITNESS: That's what he said.

22 THE COURT: Wait.

23 THE WITNESS: And he --

24 THE COURT: Wait a minute, ma'am. The nature of
25 your objection?

JACQUELINE KEY - DIRECT BY MOLONY

1 MR. ROUTZONG: Hearsay, Your Honor. She's
2 repeating, purportedly repeating what the Defendant said.

3 MR. MOLONY: Your Honor, it's a statement against
4 interest exception to the hearsay rule.

5 THE COURT: Well, because I was unable to hear what
6 she said, Madam Forelady, ladies and gentlemen of the
7 jury, I'm going to excuse you for just a moment. It will
8 probably be a good time to have a morning break anyways.
9 So we'll take about a 15-minute break and I can deal with
10 this matter and we'll bring you back out and continue.
11 Okay.

12 I remind you not to discuss anything about this
13 case among yourselves.

14 (Jury exits courtroom at 11:40 a.m.)

15 THE COURT: Okay. Solicitor, would you repeat the
16 question? And, ma'am, would you give the same answer that
17 you just gave and I'm going to try to hear it this time
18 and then we can entertain the objection.

19 So, Solicitor?

20 MR. MOLONY: Yes, sir, Your Honor.

21 Q. Jackie, the conversation you had that night with
22 the Defendant, explain what the Defendant said to you.

23 A. When he called me he said, "Fuck the police."

24 THE COURT: Okay.

25 THE WITNESS: And he said, "Did you call and -- did

JACQUELINE KEY - DIRECT BY MOLONY

1 you call them?" And I told him no because he still had
2 that gun and I didn't know what he was going to do.

3 THE COURT: Okay. All right. Now, restate your
4 objection on the record, Mr. Routzong.

5 MR. ROUTZONG: It's hearsay, Your Honor. That's
6 not a statement against interest to allegedly hold the
7 police in low regard. That's not a statement against
8 interest. That's penal interests.

9 THE COURT: Okay. Well, he is the Defendant. I
10 mean, and there was no questioning by the police. I'm
11 just trying to understand where you're coming from here.

12 MR. ROUTZONG: She purports to repeat something
13 that he said and that's hearsay by definition. And
14 there's not any exception, at least that I'm aware of.
15 And I guess the burden would be on Mr. Molony to actually
16 demonstrate there is an exception.

17 She's repeating what he said. That's hearsay by
18 definition.

19 THE COURT: Solicitor?

20 MR. MOLONY: It is a statement made by the
21 Defendant. There could be an issue in the case about
22 consent, entering this residence, if he's telling her "F
23 the police" --

24 THE COURT: Right.

25 MR. MOLONY: -- wondering if she called the police,

JACQUELINE KEY - DIRECT BY MOLONY

1 I think it's clearly a statement against the Defendant's
2 interests.

3 THE COURT: But the basis for your objection is
4 hearsay; correct?

5 MR. ROUTZONG: Yes, sir.

6 THE COURT: Okay. Let's go ahead and we'll take
7 our morning 15-minute break. I'll take a look at it.
8 We'll come back in on the record and I'll let you know
9 what I'm going to rule.

10 Everybody be at ease for about 15 minutes.

11 MR. MOLONY: Yes, sir. Thank you.

12 (Break taken at 11:58 a.m. At 12:07 p.m., the
13 trial resumed:)

14 THE COURT: Okay. The defense made a motion to --
15 or an objection, rather, to exclude the statement by this
16 witness concerning what was allegedly said by the
17 Defendant during a phone conversation. The defense basis
18 for the objection was that it was hearsay. I overruled
19 the objection on two grounds.

20 One, Rule 108 would allow the statement against
21 interest to be made which is not hearsay. And, secondly,
22 quite honestly, and I don't want to be crude about this
23 and I'm not going to be crude, but it's not offered to
24 prove the truth of the matter asserted as a practical
25 matter.

JACQUELINE KEY - DIRECT BY MOLONY

1 But your objection is so noted on the record,
2 Mr. Routzong.

3 MR. ROUTZONG: Thank you, Your Honor.

4 THE COURT: Thank you. All right. Anything
5 further?

6 MR. MOLONY: No, sir, Your Honor.

7 THE COURT: Okay. Bring the jury out, please,
8 Mr. Whittle.

9 (Jury enters courtroom at 12:09 p.m.)

10 THE COURT: Let the record reflect the jury's back
11 in. You may proceed, Solicitor.

12 MR. MOLONY: Thank you, Judge.

13 BY MR. MOLONY:

14 Q. Jackie, I believe the last question I asked you
15 was: The night of December 16th, 2013, did you ever speak
16 with the Defendant any more that evening?

17 A. Yes.

18 Q. Okay. And explain to the jury how that happened.

19 A. He called me after he left and he was like, "Fuck
20 the police." And then he was, like, "did you call the
21 police?" And I told him no because he still had the gun
22 and I didn't know what he was going to do.

23 Q. This was after you actually -- State's Exhibit 10,
24 the second 9-1-1 call -- after you had actually called the
25 police?

JACQUELINE KEY - DIRECT BY MOLONY

- 1 A. Uh-huh.
- 2 Q. And so why did you tell him no?
- 3 A. Because I was afraid he might come back if I told
- 4 him that I did because he still had the gun.
- 5 Q. Jackie, briefly, just to summarize. Did the
- 6 Defendant have consent to enter your house that night?
- 7 A. No.
- 8 Q. You pointed the Defendant out. Was he the one who
- 9 assaulted your guest that night, Stacey Gantt?
- 10 A. Yes.
- 11 Q. Did the gun look real to you?
- 12 A. Yes.
- 13 Q. Were you scared?
- 14 A. Yes.
- 15 Q. At that time, December 16th, 2013, was there --
- 16 were you and the Defendant fighting over anything?
- 17 A. No.
- 18 Q. To your knowledge, was he mad about anything?
- 19 A. No.
- 20 Q. Were you mad at him about anything at that time?
- 21 A. No, sir.
- 22 MR. MOLONY: Thank you, Your Honor.,
- 23 Jackie, please answer any questions Mr. Routzong
- 24 has for you.
- 25 THE COURT: Cross-examination.

JACQUELINE KEY - CROSS BY ROUTZONG

1 MR. ROUTZONG: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. ROUTZONG:

4 Q. Good morning, Ms. Key.

5 A. Good morning.

6 Q. Ms. Key, it's been your testimony that you've known
7 Mr. Frazier for about 18 years?

8 A. Yes, sir.

9 Q. And during that 18-year period of time you would
10 characterize your relationship as being
11 girlfriend/boyfriend or fiancée?

12 A. Off-and-on relationship.

13 Q. Say again?

14 A. Off and on.

15 Q. But he was your boyfriend?

16 A. At one point, yes.

17 Q. During that 18 -- and sometimes he paid the rent?

18 A. No. I worked.

19 Q. Sometimes he did give you some money?

20 A. Yeah, he have.

21 Q. Sometimes he bought food?

22 A. No.

23 Q. He never bought food?

24 A. No.

25 Q. He didn't have any clothes at your house?

JACQUELINE KEY - CROSS BY ROUTZONG

- 1 A. No.
- 2 Q. Not a toothbrush as the solicitor said?
- 3 A. No.
- 4 Q. And this relationship had been going on for 18
- 5 years, that's your testimony?
- 6 A. It really hadn't been 18. It really hadn't been 18
- 7 because, like I said, it was on and off.
- 8 Q. For 18 years?
- 9 A. We've been knowing each other that long.
- 10 Q. Well, let's talk about on the 16th. It's your
- 11 testimony that you were hanging Christmas decorations.
- 12 Was there Christmas music? Kind of paint a picture for us
- 13 a little bit.
- 14 A. Well, me and my son and his friend and Stacey, we
- 15 was just chilling at home. It was coming up to Christmas,
- 16 and we was listening to Christmas music and having drinks.
- 17 Q. And your testimony was you knew Stacey for about
- 18 two weeks?
- 19 A. Yes.
- 20 Q. And you'll agree with me that when the police came
- 21 that night and asked you about him, you refused to tell
- 22 the police his name?
- 23 A. I can't remember that. I know I told them Stacey.
- 24 I didn't know his last name.
- 25 Q. You didn't know his last name? You invited him in

JACQUELINE KEY - CROSS BY ROUTZONG

1 your house and you've known him for two weeks?

2 A. Because we hung out at the pub.

3 Q. Do you admit or deny telling the police that, that

4 you wished that your guest remain unnamed? Do you admit

5 or deny that?

6 A. I don't remember.

7 Q. Do you remember what you said in your statement?

8 A. That he bust the door in, like he did.

9 Q. Well, in the context you're referring to Mr. Gantt,

10 do you remember what you said in your statement? Didn't

11 you, in fact, refer to him as 'the man'?

12 A. Yes.

13 Q. Only?

14 A. Uh-huh.

15 Q. You didn't even tell the police in your statement

16 the name Stacey?

17 A. Well, well, I thought I did. I don't -- I mean,

18 what was the big deal? Well, he was there.

19 Q. You don't have to read this out loud but I just

20 wonder if you can tell me if you recognize that.

21 A. Yes.

22 Q. What is that?

23 A. My statement.

24 Q. If you can just read it to yourself. Don't read it

25 out loud, just to refresh your memory.

JACQUELINE KEY - CROSS BY ROUTZONG

1 A. (Complies.) At this point maybe I said 'man'
2 because I was still upset. I mean, when you've got a gun
3 going around in your house, I mean, who thinks straight?
4 Because we wasn't thinking straight.

5 Q. Were you thinking about the fact that Mr. Gantt's
6 married?

7 A. I don't know anything about that. He told me he
8 wasn't.

9 Q. He told you he wasn't married?

10 A. Uh-huh. And we were only friends. We just met.

11 Q. But now you know he's married?

12 A. Yeah. I haven't seen him in, until today.

13 Q. Ms. Key, during this 18-year relationship you have
14 with Mr. Frazier, you'll agree with me that sometimes he
15 spent overnight at your house?

16 A. I don't deny he done spent the night at my house.

17 Q. You're just denying that he hasn't spent time at
18 your house recently?

19 A. He don't live with me. That's what I said. He
20 didn't live with me. And I did not say he haven't spent
21 the night because he have spent the night before.

22 Q. So you're denying -- you're denying that he would
23 spend the day at his brother's house and then come to your
24 house every night? You're denying that?

25 A. Yes.

JACQUELINE KEY - CROSS BY ROUTZONG

- 1 Q. And I know you've testified about how scared you
2 were and how horrible this situation. You talked about
3 there was a gun and threats against your life and that
4 kind of thing, but the next day you went to see him;
5 didn't you?
- 6 A. Yes.
- 7 Q. That was on the 17th?
- 8 A. Uh-huh. And when I went I called the police.
- 9 Q. You called the police?
- 10 A. Uh-huh.
- 11 Q. Well, did the police come?
- 12 A. They didn't come that day.
- 13 Q. They came on the next day?
- 14 A. Yeah.
- 15 Q. On the 18th?
- 16 A. And I called them then.
- 17 Q. And what your testimony is, you called the police
18 but the Aiken County Sheriff's Office never came to rescue
19 you on that day, and he had this gun that you're so scared
20 of and you're telling these folks right here and myself
21 that you went up to him the next day in spite of the fact
22 that he had this gun, you say, and you sat in the car and
23 drank beer with him?
- 24 A. No, sir. I didn't.
- 25 Q. You didn't?

JACQUELINE KEY - CROSS BY ROUTZONG

1 A. The reason why I went the next day is because he
2 had the gun, and I had told him that I didn't call the
3 police because I knew if I told him I called the police he
4 may come back or either he was going to go to Augusta.

5 And when I went to North Augusta, because I know he
6 be at his brother's house, I called the police and asked
7 them -- and told them where he was. And I sat there
8 waiting, you know, to see if they was going to come but
9 they had to, being that we were in the county they had to
10 get North Augusta to go down there with them.

11 And they didn't do it that day. They did it the
12 next day.

13 Q. How so?

14 A. But during the period of time that I was sitting
15 there I'm on the phone with the police because I was, like
16 I said, he, he had the gun. And I was afraid what he was
17 going to do with the gun. I mean, I know I don't
18 suppose -- probably don't supposed to say it happened
19 before, but it have between me and him. That wasn't the
20 first time he done put a gun to my head.

21 Q. And my question was: On the 17th, you're telling
22 these folks that you called the police, a damsel in
23 distress, there you are so afraid and yet as luck would
24 have it they didn't come? That's what you're telling
25 them?

JACQUELINE KEY - CROSS BY ROUTZONG

1 A. Like I said --

2 Q. That's a yes or no question.

3 A. He was in North Augusta. That's city limit.

4 THE COURT: Ma'am, just answer the question yes or
5 no, then you can explain your answer all that you want to.

6 THE WITNESS: Okay.

7 THE COURT: Repeat the question.

8 THE WITNESS: Can you repeat that, please?

9 BY MR. ROUTZONG:

10 Q. What you're telling these folks, and I want to make
11 sure I'm as clear as I can be, that on the 17th, the day
12 after this horrible incident happened, you get in your
13 car, you drive over to Mr. Frazier's house, you make
14 contact with him at his house, and you sit in the car and
15 you say you called the police and as luck would have it
16 they wouldn't show up. Here you are, damsel in
17 distress. Is that what you're telling us?

18 A. They didn't come that day, no.

19 Q. And you called them?

20 A. Yes.

21 Q. That's what I want to know.

22 A. Can I explain?

23 THE COURT: You can explain your answer, ma'am.

24 THE WITNESS: Okay. Like I said, the night that
25 everything occurred he called me. And he said, "F the

JACQUELINE KEY - CROSS BY ROUTZONG

1 police." He asked me, did I call them and I told him no
2 because I didn't know what he was going to do or
3 anything. And then I know he run because this is not the
4 first incident with the gun because he done put a gun to
5 my head before.

6 And what I did, I went to North Augusta where I
7 know he be. And I called the police on my way there, and
8 I asked them to come get him. You know, and explained to
9 them what had happened at my house. And they told me that
10 that was the city limit.

11 And the next day is when, you know, I kept calling
12 back and I called and asked to speak to Michael Hunt. And
13 they wanted to know why I wanted to speak to Michael
14 Hunt. And they finally, you know, told me that they was
15 going to send, I think they said, four police officers
16 from the city, and one car from the county. And I
17 pointed him out to them.

18 But that was the reason because I'm tired of being
19 afraid because of that gun he have.

20 BY MR. ROUTZONG:

21 Q. And you're so afraid that the first thing you do
22 the next day after this happened is you drive over to his
23 house to where you know he's got a gun? That's what
24 you're telling us.

25 A. I just tried to explain what happened.

JACQUELINE KEY - REDIRECT BY MOLONY

1 Q. Nice try. So on the 17th, your testimony is you
2 didn't go to Mr. Frazier's house to sit there and ask him
3 for money or drink beer. That never happened?

4 A. I think it was that second day, I was sitting there
5 on the phone with the policeman and then when he came up
6 to my car I said, you know, "Buy me a beer," because I was
7 trying to play it off until the police got there. That's
8 why I asked him that.

9 Q. And my question was: You're saying that he didn't,
10 or you didn't ask him for money? You didn't sit there --

11 A. No, I did not.

12 Q. -- drinking beer with him?

13 A. No, I did not. He never entered my car.

14 Q. He didn't tell you that he wasn't going to give you
15 any more money and it was over? He never said that?

16 A. No, he didn't say that because it was already over.

17 MR. ROUTZONG: (Conferring with client and
18 Mr. Hayes.)

19 I don't have any other questions, Your Honor.

20 THE COURT: Redirect?

21 MR. MOLONY: Briefly Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. MOLONY:

24 Q. Jackie, just to be clear. Mr. Routzong kept
25 stating that it was an 18-year relationship between you

JACQUELINE KEY - REDIRECT BY MOLONY

1 and the Defendant. On direct you testified that you had
2 known him for 18 years; is that right?

3 A. Yes.

4 Q. And had you been exclusive boyfriend/girlfriend for
5 18 years?

6 A. No.

7 Q. And at the time on December 16th, were you
8 boyfriend and girlfriend?

9 A. No.

10 Q. Had he been staying at your house?

11 A. No.

12 Q. Now you said it had been approximately a month or
13 so prior to that the last time he had been at your
14 residence; is that right?

15 A. Yes, sir.

16 Q. Let me ask you this. On State's Exhibit Six which
17 has been entered into evidence --

18 A. Uh-huh.

19 Q. -- the month or so prior when he came to your
20 house, did he use his shoe to enter your residence that
21 night as well?

22 A. No.

23 Q. Did you open the door for him?

24 A. Yeah.

25 MR. ROUTZONG: Objection, Your Honor. Beyond the

JACQUELINE KEY - REDIRECT BY MOLONY

1 scope.

2 THE COURT: Okay. The objection is it's not proper
3 redirect?

4 MR. ROUTZONG: That's correct, Your Honor.

5 THE COURT: And your position, Solicitor?

6 MR. MOLONY: Your Honor, he's alleging that there's
7 this ongoing relationship between the two.

8 THE COURT: If it's related to the relationship,
9 whether it's 18 years or something less than that, if
10 your questioning is related to that, I will overrule the
11 objection at this time but you may want to renew.

12 Let's just see how he does with it. Okay?

13 MR. ROUTZONG: Yes, sir.

14 BY MR. MOLONY:

15 Q. Ultimately a month ago prior to December 16th when
16 he entered your house --

17 A. Uh-huh.

18 Q. -- did you open the door for him?

19 A. Yes, ma'am -- yes, sir. I'm sorry.

20 Q. That's okay.

21 A. Uh-huh.

22 Q. And on December 16th, 2013, you didn't open the
23 door for him, did you?

24 A. No.

25 Q. Okay. Now, Mr. Routzong said that you were so mad

JACQUELINE KEY - REDIRECT BY MOLONY

1 at him and so scared of him that you went to his house
2 where you knew he had a gun. You're explaining it to the
3 jury. Were you scared of the Defendant after the 16th?
4 A. Yes.
5 Q. And you called the police the 16th and they showed
6 up at the house; is that right?
7 A. Yes.
8 Q. And the 17th he was still out, he hasn't arrested
9 at that point?
10 A. No.
11 Q. And were you still scared of him?
12 A. Yes.
13 Q. And you were continuing to try to contact the
14 police to have them come arrest him?
15 A. Yes.
16 Q. And the next day?
17 A. I called them again and directed them to where he
18 was.
19 Q. Okay.
20 A. Because, like I said, this is not the first time he
21 have come in my house with a gun. When I lived in North
22 Augusta --
23 Q. Just, let's end it there.
24 Thank you, Jackie.
25 THE COURT: Anything on recross?

LASHANDA WASHINGTON - DIRECT BY GRIMES

1 MR. ROUTZONG: Just briefly, Your Honor.

2 RECROSS-EXAMINATION

3 BY MR. ROUTZONG:

4 Q. The police actually arrested Mr. Frazier, to your
5 knowledge, on the 18th. That would be the day after that
6 you say you tried to call the first time --

7 A. No --

8 Q. -- but the police didn't show up?

9 A. -- the incident happened that Monday. That Tuesday
10 I went down there, and they didn't -- the 18th is when
11 they arrested him.

12 Q. That's correct. Thank you.

13 THE COURT: Thank you for your testimony, ma'am.
14 You can step down.

15 THE BAILIFF: Watch that step.

16 THE COURT: Solicitor?

17 MR. MOLONY: Thank you, Your Honor.

18 MR. GRIMES: Thank you, Your Honor. The State
19 calls Lashanda Washington.

20 LASHANDA WASHINGTON, having been duly sworn, was
21 examined and testified as follows:

22 THE CLERK: Have a seat in the witness box. State
23 your full name for the Court and spell your last, please.

24 THE WITNESS: My name is Lashanda Washington,
25 W-A-S-H-I-N-G-T-O-N.

LASHANDA WASHINGTON - DIRECT BY GRIMES

DIRECT EXAMINATION

BY MR. GRIMES:

Q. Good afternoon, Ms. Washington.

A. Good afternoon.

Q. Are you familiar with Ms. Key?

A. Yes, I am.

Q. How are you familiar with Ms. Key?

A. I was introduced to her by her son, Tray.

Q. Okay. And you know her son?

A. Yes.

Q. Okay. Have you been to Ms. Key's house?

A. Yes, sir. On several occasions.

Q. Have you been to Ms. Key's house prior to December 16th of 2013?

A. Oh, yes.

Q. Were you at Ms. Key's house on December 16th?

A. Yes, sir.

Q. And who all was there?

A. It was myself; her son, Tray; Mr. Gantt; and Ms. Key.

Q. And what was going on?

A. We were getting ready -- it was Christmas holiday, the week of Christmas. So we were just having drinks and playing Christmas music and just trying to do what families normally do during the holidays.

LASHANDA WASHINGTON - DIRECT BY GRIMES

1 Q. Okay. Can you speak up just a little bit for me?

2 A. Yes, sir. Yes.

3 Q. What happened that night that was noticeable?

4 A. We were in, like I say, in the living room area
5 listening to the music. There was an initial knock at the
6 front door, the way I remember, at the front door. And
7 I'm kind of, like, waiting on somebody to open the door.
8 It's not my house. I'm a guest as well. The knock
9 intensifies, you know. Nobody answers the door.

10 So now the knock moves from the door, the front
11 door to the kitchen window. She has a big, kind of, like,
12 bay window that the door was behind there because, like, I
13 was sitting, I, like, coming through the kitchen they was,
14 like, boom, boom, boom.

15 And by this time it's, "Open the MF-ing door." So
16 I'm, like, okay, it's time to move because something's
17 wrong.

18 And the next thing I know it's, like, boom. The
19 back door was in. He enters the residence. Mr. Gantt and
20 Ms. Key was sitting on the couch. I was sitting in the
21 chair adjacent to them. Tray was on the arm of the
22 chair.

23 At the point he initially enters, the gun was
24 visible. I didn't see the gun drawn at the time. He had
25 it in his hand, down. Approached Mr. Gantt. Asked him

LASHANDA WASHINGTON - DIRECT BY GRIMES

1 specifically, "Who are you here with?" "Who are you here
2 with?" Just like that. And then the next thing I know he
3 hits him. He assaulted him. Hits him with his hand.

4 Q. You say, he hits who?

5 A. Mr.

6 Q. Just tell me who.

7 A. Mr. Daggart, if I'm saying the name correctly.

8 Q. Daggart?

9 A. Hit Mr. Gantt. He can't retaliate because he hit
10 with him with one hand and had the pistol in the other
11 hand. By that time he gets up and tries to run. When
12 they head to the back door, I run out the front door.

13 My vehicle -- I get in my vehicle. I go around the
14 corner. I was trying to find someone to call because I
15 didn't have my cell phone because I'm afraid at that point
16 to get out of the car. I'm also afraid to really just
17 leave the area because my friend is still there and her
18 son, you know, and everything.

19 So, I go around the corner sitting there. I'm
20 blowing the horn, blowing the horn. Nobody comes out of
21 the house. So I come back. I cut my headlights off. I
22 kind of pull adjacent to Jackie's yard.

23 So I exit my vehicle at this time. I went and I
24 see Mr. Gantt on the ground, Mr. Daggart over him beating
25 him. At that point --

LASHANDA WASHINGTON - DIRECT BY GRIMES

1 Q. Where is this in the front?

2 A. When I came back around the corner, now I'm in the
3 front of the house. And I kind of pulled up in the yard.
4 There no fence. It just kind of runs across like yards
5 do. And I cut my lights off on approaching the house.
6 Once I exit the vehicle he was assaulting -- Mr. Gantt was
7 on the ground. Mr. Daggart over him, he was still
8 assaulting him.

9 At that point he just, he broke and run from him.
10 Mr. Gantt ran. Then Mr. Daggart walked right in front of
11 me in front of the house. Didn't never point the gun at
12 me but he said, "I'm not even talking to you." At that
13 point I'm, like, "I'm not talking to you."

14 I have nothing to say because I'm, like, right
15 there. He re-entered the house. Jackie was -- I guess
16 Jackie was in the kitchen but at that point I'm still
17 outside in the yard.

18 From there the police came and I gave them my
19 statement.

20 Q. Was the Defendant gone when the police came?

21 A. Yes.

22 Q. I'm going to ask you about you State's Exhibit One.

23 A. That's Jackie residence.

24 Q. That's her residence?

25 A. Uh-huh.

LASHANDA WASHINGTON - DIRECT BY GRIMES

1 Q. And what's this? If you can kind of show us a
2 little bit. And I'll try step back. Where is the front
3 door?
4 A. This the front door, right here (indicating).
5 Q. Okay. And when you were talking about the back
6 door, where is the back door?
7 A. That is this door.
8 Q. So it's kind of on the side?
9 A. Yeah, the side door.
10 Q. And then on the other side of that truck, is that
11 the front yard?
12 A. Yes. That's the front yard.
13 Q. And when you came back to the residence after
14 driving around the block --
15 A. Uh-huh.
16 Q. -- where were they in the yard?
17 A. Where? At this point Mr. Gantt had his truck
18 parked over here. It wasn't in Jackie's driveway. It was
19 on the grass area. So when I came back, they was in
20 this -- because he had his SUV. It was parked. So
21 they're basically in front of that fighting. Really
22 wasn't a fight. He was pretty much being pummeled.
23 Q. Okay. You said Mr. Gantt's vehicle was parked in
24 the front yard?
25 A. Yeah. It was on the grassy area because this would

LASHANDA WASHINGTON - DIRECT BY GRIMES

1 be her driveway. Specifically he was more on this side,
2 but this still consists of her yard, but it was here.

3 Q. Okay. If someone were to approach the house from
4 the outside, would it appear that that vehicle was in the
5 front yard?

6 A. Yeah, it still would.

7 Q. Okay. If you could kind of use that photo and
8 explain to us, you mentioned that there was some knocking
9 at the front door?

10 A. Yes, sir.

11 Q. And I think at another window, and then at the back
12 door. If you can just show us how that occurred.

13 A. Okay. This is the door. This is the front door.
14 This is where the initial knocking began at. There's a
15 window that's directly behind this tree that you really
16 can't see, but this is a kitchen area. And this is where
17 the second knock occurred. And by the time it got to the
18 side of the house it was, like, boom, and the door was in
19 and he was in there.

20 Q. Okay. And one moment, please.

21 A. Yes, sir.

22 Q. When Stacey left that yard or Mr. Gantt, when he
23 left that yard you said he kind of broke and ran?

24 A. Yes.

25 Q. Was that on foot?

LASHANDA WASHINGTON - CROSS BY ROUTZONG

1 A. Yes.

2 Q. So he left his car there?

3 A. He had to go.

4 Q. Okay. Did Mr. Frazier live there?

5 A. Not that I know of. Not to my knowledge.

6 Q. Are you aware of anybody else living there other
7 than Ms. Key?

8 A. No. I've spent the night over there on occasion
9 but I wasn't living there. And, like I said, I've been --
10 since we initially met each other, I've been at the house
11 on several occasions maybe, you know, we'll go out
12 sometimes to the pub and we would come back because and I
13 live alone so I would have some company.

14 And on the occasion I was there, he never came
15 except that one night.

16 MR. GRIMES: Thank you. Please answer any
17 questions defense counsel has for you.

18 THE COURT: Cross-examination?

19 MR. ROUTZONG: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. ROUTZONG: --

22 Q. Good morning.

23 A. Good morning.

24 Q. I guess it's afternoon now, isn't it?

25 A. Afternoon.

LASHANDA WASHINGTON - CROSS BY ROUTZONG

1 Q. Let me see. How long have you known Ms. Key?

2 A. Oh, I know her now for about six months, seven
3 months, yes, sir. And I initially met Tray.

4 Q. Do you remember writing a statement to --

5 A. Yes, sir.

6 Q. -- the police?

7 A. Yes, I do.

8 Q. That night, about what time did you get to the
9 house?

10 A. To be honest with you, I don't know exactly what
11 time it was because I wasn't really paying attention to
12 the time. I mean, we just arrived there. It wasn't like
13 I walked in and looked at the clock. We went in and
14 started listening to music and stuff and we had food and
15 stuff there as well.

16 Q. They're alleging that this incident took place
17 around seven o'clock in the evening. Had you been there a
18 couple hours already?

19 A. We hadn't been there that long. No, I hadn't been
20 that long at all. I don't think it had been two hours.
21 I'd say maybe an hour, if that, because I know we was
22 sitting in the room listening to music. So it wasn't
23 like -- hadn't been there a couple hours, I don't think.

24 Q. Well, when you got there Mr. Gantt was already
25 there?

LASHANDA WASHINGTON - CROSS BY ROUTZONG

- 1 A. Yes, when I got there he was there.
- 2 Q. Okay. Do you know how long he was there before
- 3 you got there?
- 4 A. I'm not sure.
- 5 Q. And when you got there Ms. Key, she introduced you
- 6 to Mr. Gantt?
- 7 A. Well, I kind of met him too. We met at the pub so
- 8 we, I mean, I kind of met him during the same time she did
- 9 because we were out that night at the pub when she
- 10 initially met Mr. Gantt. We kind of met him together.
- 11 Q. When was that?
- 12 A. It was in December but I don't know -- I don't know
- 13 the exact date. I can't tell you that, sir.
- 14 Q. That's okay. Was it a couple weeks before this was
- 15 alleged to have happened? Or a week?
- 16 A. Probably about three, three to four weeks, maybe.
- 17 Yeah, probably. Because, I mean, we had seen him at the
- 18 pub before but on that occasion he came over and kind of
- 19 introduced himself.
- 20 Q. What pub was that?
- 21 A. River Front Pub on Broad Street.
- 22 Q. Where is that at?
- 23 A. On Broad Street. In Augusta, Georgia.
- 24 Q. Oh, in Augusta?
- 25 A. Yes, sir.

LASHANDA WASHINGTON - CROSS BY ROUTZONG

1 Q. Okay. So you were, already were familiar with
2 Mr. Gantt?

3 A. Somewhat. Not really in depth but just, you know,
4 hi, how are you doing, kind of socializing and talking.

5 Q. Do you know his last name?

6 A. No.

7 Q. You didn't?

8 A. No, sir. It was no need for that. I mean, I'm --
9 like, I'm Lashanda and, like, I'm Stacey.

10 Q. Well, you said you remembered the statement you
11 made to the police?

12 A. Yes, sir.

13 Q. Do you remember not identifying Mr. Gantt in the
14 statement?

15 A. Well, the officer asked me to write exactly what I
16 saw and that's what I did. And at the point, like I say,
17 we were all under extreme duress. That was a very bad
18 situation. I -- even sitting here now reliving it, I'm
19 not feeling too well.

20 But what I did, I wrote specifically what I said in
21 that statement, said he assaulted one of her guests, if
22 I'm not mistaken. I recall what I said but at that point
23 his name -- I was just trying to write exactly what I saw.

24 Q. And you'd known him about three or four weeks?

25 A. Yes, sir. But, I mean, I was not trying to be

LASHANDA WASHINGTON - CROSS BY ROUTZONG

1 in depth with him like that. I'm a very social person so,
2 I mean, I introduced myself. I don't meet a stranger, but
3 I'm not, like, what's your birth date, you know, and all
4 of that, your last name. I just never had an in depth
5 conversation like that.

6 Q. When does someone stop being a stranger, after one
7 week or two weeks?

8 A. Well, depends on the individual.

9 Q. And you identified him -- let me ask the question
10 this way.

11 A. Yes, sir.

12 Q. You met Mr. Gantt the same time at the same pub --

13 A. Uh-huh.

14 Q. -- as Ms. Key?

15 A. Uh-huh.

16 Q. And, he was your friend too?

17 A. Well, like I say, we were associates. I don't say
18 that we had established a friendship, but we had a rapport
19 with each other.

20 Q. Do you own firearms?

21 A. No, sir.

22 Q. Have you ever had any firearm training?

23 A. No, sir.

24 Q. When this is alleged to have happened, what you
25 heard was (makes sound) like that?

LASHANDA WASHINGTON - CROSS BY ROUTZONG

1 A. What I initially heard, I mean, initially it was
2 kind of, like, (makes sound), first knock at the front
3 door.

4 Q. At the front door?

5 A. Yes, sir. First few knocks.

6 Q. And nobody answered the door?

7 A. No, sir.

8 Q. And you never heard anybody say what kind of gun
9 this was?

10 A. No, sir. But I've seen firearms before. I mean,
11 I've been to gun shops. I've been to pawn shops. I've
12 considered getting one being that I live alone, so I've
13 seen guns. So I kind of know, I can tell pretty much.
14 I'm not saying I'm an expert, but I know what I saw.

15 Q. Because you were very specific in your statement.
16 You said it was a nine millimeter.

17 A. Yes, sir. That's exactly what it appeared to be.

18 Q. But you're not really sure?

19 A. Black.

20 Q. It was black?

21 A. Yes, sir.

22 Q. Well, I believe I got your testimony right. You
23 said the knock on the door and then there was kind of all
24 hell broke loose, I guess, for lack of a better way of
25 putting it. And you were -- everybody scattered.

LASHANDA WASHINGTON - CROSS BY ROUTZONG

1 You heard that testimony?

2 A. Yes.

3 Q. Everybody scattered. Ms. Key testified everybody
4 went every different way.

5 A. I know I was getting out the way. I didn't want to
6 die.

7 Q. Which way did you run?

8 A. I ran out the front.

9 Q. Out the front door?

10 A. Yes, sir. Because, like I said, at that point when
11 he came in that back door I didn't know I had -- when he
12 came in with that gun and he focused his attention on
13 Mr. Gantt, that was my flight-or-fright experience. It
14 was time for me to get out. I was not going to stick
15 around to wait and see what was going to happen next.
16 When he directed his attention directly to him, I was
17 trying to get out of harm's way.

18 Q. So when that door (makes noise) boom, breaks
19 open --

20 A. I mean, it's like the door comes in and he's
21 there. So it's not like the door came in and he's
22 standing at the door. The door came in and it's not that
23 much of a distance from where her kitchen is, because the
24 kitchen -- I mean, you come in, there's a laundry room.
25 It's not really a laundry room. It's a washer and a dryer

1 right where the side door is. And once you make it
2 through there you're already in the kitchen and the living
3 room is right here.

4 So, I mean, it's nothing to get there in a matter
5 of seconds.

6 Q. So when all of that happened you're not hanging
7 around. You're just not wasting any time. You're not
8 running towards that. You're running away from it,
9 towards the front door?

10 A. Yes, sir. Not just to it, out of it.

11 Q. And you're not wasting any time?

12 A. No, sir.

13 MR. ROUTZONG: Just a minute, Your Honor, please.

14 THE COURT: Sure.

15 (Defense counsel conferring.)

16 MR. ROUTZONG: I don't have any other questions,
17 Your Honor.

18 THE COURT: Any redirect from the State?

19 MR. GRIMES: None, Your Honor.

20 THE COURT: Okay. Thank you for your testimony.

21 THE WITNESS: Yes, sir. Thank you, Your Honor.

22 THE COURT: Any short witnesses that we might could
23 put one more in before lunch or not?

24 MR. GRIMES: Your Honor, the next witness is
25 probably going to be a few minutes.

1 THE COURT: Okay. All right.

2 Madam Forelady, ladies and gentlemen of the jury, I
3 believe this is a good time now that we break for lunch.
4 It's 20 till. Let's be back at 2:15. That will give you
5 an hour and a half.

6 And I remind you not to discuss this case among
7 yourselves or discuss it with anyone you may come in
8 contact with over lunch.

9 Have a good lunch, and we'll see you back at 2:15.

10 (Jury exits courtroom at 12:44 p.m.)

11 THE COURT: Anything we need to take up before we
12 break for lunch?

13 MR. MOLONY: No, sir, Your Honor.

14 THE COURT: Defense?

15 MR. ROUTZONG: No, sir.

16 THE COURT: Okay. All right.

17 We'll be in recess until 2:15. Everybody have a
18 good lunch.

19 MR. MOLONY: Thank you.

20 (Luncheon recess taken. At 2:18 p.m., the trial
21 resumed:)

22 THE COURT: Thank you very much. Have a seat.
23 Ready to bring the jury out?

24 MR. MOLONY: Yes, sir, Your Honor.

25 THE COURT: Okay. All right.

STACEY GANTT - DIRECT BY MOLONY

1 MR. ROUTZONG: Yes, sir.

2 THE COURT: All right. Bring the jury out, please,

3 ma'am.

4 (Jury enters courtroom at 2:19 p.m.)

5 THE COURT: Let the record reflect the jury's back

6 in.

7 Solicitor, you may proceed.

8 MR. MOLONY: Thank you, Judge. The State calls

9 Stacey Gantt.

10 THE COURT: Come around please, sir.

11 STACEY GANTT, having been duly sworn, was examined

12 and testified as follows:

13 THE CLERK: Please have a seat in the witness box.

14 State your full name for the Court and spell your last.

15 THE WITNESS: Stacey Gantt, G-A-N-T-T.

16 DIRECT EXAMINATION

17 BY MR. MOLONY:

18 Q. Stacey, were you at Jackie Key's residence on

19 December 16th, 2013?

20 A. Yes, sir.

21 Q. Okay. And around seven p.m. that night, what were

22 y'all doing at Jackie's house?

23 A. In the living room listening to music.

24 Q. Was it dark outside?

25 A. Yes, sir.

STACEY GANTT - DIRECT BY MOLONY

- 1 Q. What, if anything, interrupted y'all while you're
2 sitting there listening to music?
- 3 A. A couple of knocks and then a couple more bangs and
4 then a kick.
- 5 Q. Okay. And where were these knocks and bangs coming
6 from?
- 7 A. Well, one comes, came from the front door. Then
8 the big knocks and the bang came from the side door.
- 9 Q. And the kick, what happened when you heard a kick?
- 10 A. When I heard the kick someone came in waving a gun.
- 11 Q. And did you get a look at the gun?
- 12 A. Yes, sir.
- 13 Q. What color was it?
- 14 A. Black.
- 15 Q. Did that gun appear real to you at the time?
- 16 A. It did.
- 17 Q. All right. Where were you at whenever this
18 individual entered the residence?
- 19 A. Sitting on the couch.
- 20 Q. What room?
- 21 A. In the living room.
- 22 Q. Okay. Explain what he did.
- 23 A. He came in waving the gun. Do I have to say what
24 he said?
- 25 Q. Well, did he say anything to you at that time?

STACEY GANTT - DIRECT BY MOLONY

1 A. Yeah. Yes, sir.
2 Q. What, if anything, did he say?
3 A. He said, "Who the fuck are you?" "Get the fuck
4 out."
5 Q. What happened next?
6 A. He proceeded to hit me with the gun and I threwed
7 my arms up and we got to scuffling on the floor.
8 Q. Where did he hit you?
9 A. Tried to hit me upside the head.
10 Q. And did he miss?
11 A. He hit me but it kind of, like, it was a graze but
12 he hit me.
13 Q. And you said you were on the floor?
14 A. We scuffling.
15 Q. Okay. And what happened next?
16 A. I kind of broke loose and he proceeded to follow me
17 out the door that he kicked in and I got outside.
18 Q. Okay. Do you eventually make it out of there that
19 day?
20 A. I did.
21 Q. That night?
22 A. I did.
23 Q. Where did you go?
24 A. I went around the corner and up the street.
25 Q. Okay. Where did you stop?

STACEY GANTT - DIRECT BY MOLONY

1 A. It was a guy standing outside and I explained to
2 him what had just happened. And he let me kind of stay
3 right there until everything had kind of cooled down.
4 Q. Okay. Take you back a little bit. When you exited
5 the residence that night, Jackie's house, running out, did
6 you see another vehicle in the yard at that time?
7 A. It was, like, a pickup truck.
8 Q. Okay. Now, when you were with this gentleman down
9 the road who's letting you kind of hide out with him,
10 what, if anything, did you see at that time?
11 A. It was a truck came up the street flying real fast.
12 Q. Okay. And was there anything, any similarities
13 between the truck that was at Jackie's house and the truck
14 you saw going really fast?
15 A. It appeared to be the same truck to me.
16 Q. So what did you do at that time?
17 A. I walked back down and went back around the corner
18 to her house. The police had got there by then.
19 Q. Okay. What, if anything, did you notice in regards
20 to your truck at that time?
21 A. I had -- my window was busted.
22 Q. Which window?
23 A. The driver's side front.
24 Q. And had that window been busted out when you pulled
25 up that day, that night?

STACEY GANTT - DIRECT BY MOLONY

1 A. No, sir. No, sir.

2 MR. MOLONY: Your Honor, may I approach?

3 THE COURT: Certainly.

4 BY MR. MOLONY:

5 Q. Stacey, I'm going to show you State's Exhibit

6 One --

7 A. Uh-huh.

8 Q. -- and ask if you can kind of point were, you know,

9 where your truck was. Where did you park your truck that

10 night

11 A. Like, right here in the grass.

12 Q. Would that have been visible from the main road?

13 A. Yes, sir.

14 Q. Now, specifically, was this guy that came in and

15 that assaulted you, did you know him?

16 A. No, sir.

17 Q. Have you ever seen him before in your life?

18 A. No, sir.

19 Q. Do you see him in the courtroom here today?

20 A. Yes, sir.

21 Q. Could you please identify him for the record?

22 A. The gentleman sitting right there (indicating).

23 THE COURT: Well, now, I see four gentlemen sitting

24 at that table.

25 THE WITNESS: The gentleman at that table, at the

STACEY GANTT - CROSS BY ROUTZONG

1 end in front of the water jugs.

2 THE COURT: Okay. Let the record reflect he
3 identified the Defendant.

4 BY MR. MOLONY:

5 Q. Have you ever been married?

6 A. No, sir.

7 Q. Thank you, Stacey. Please answer any questions
8 Mr. Routzong has.

9 THE COURT: Cross-examination by the defense.

10 CROSS-EXAMINATION

11 BY MR. ROUTZONG:

12 Q. Good afternoon, Mr. Gantt.

13 A. How are you doing?

14 Q. Just to help me kind of understand what you're
15 testifying to. So you're seated on the love seat?

16 A. The couch.

17 Q. And you hear a knock at the door?

18 A. Yes.

19 Q. (Makes sound.) About like that?

20 A. A little bit louder than that.

21 Q. And I think you testified there was some bangs and
22 then a kick?

23 A. Yeah.

24 Q. And then your testimony is Mr. Frazier came into
25 the room?

STACEY GANTT - CROSS BY ROUTZONG

- 1 A. Correct.
- 2 Q. And your testimony is that you guys got in a little
- 3 bit of a tussle and that you broke loose and you went
- 4 outside and left?
- 5 A. Yes, sir..
- 6 Q. And you never called the police?
- 7 A. I didn't.
- 8 Q. You actually testified that you went to somebody
- 9 else's house and there was some gentlemen out front and
- 10 you explained to them what happened?
- 11 A. I did.
- 12 Q. And you didn't call the police?
- 13 A. No.
- 14 Q. You had your cell phone?
- 15 A. It was in the truck.
- 16 Q. But you had one with you?
- 17 A. It was in my truck.
- 18 Q. Where was your truck?
- 19 A. Parked on the grass.
- 20 Q. In front of you?
- 21 A. Sir?
- 22 Q. You actually ran away, you went on foot?
- 23 A. I ran past my truck.
- 24 Q. Oh, you went --
- 25 A. I couldn't get in it.

STACEY GANTT - CROSS BY ROUTZONG

- 1 Q. Well, at some point in time your testimony is you
2 ran down, you met some people and you didn't ask them to
3 call 9-1-1?
- 4 A. Correct.
- 5 Q. And Ms. Key is in the house with a man waving a
6 gun?
- 7 A. Yes.
- 8 Q. And you didn't go to those people and say, "Hey,
9 call 9-1-1"?
- 10 A. They had already called. They called.
- 11 Q. That's a good question. So you're in this tussle
12 and you're wrestling around on the floor, that's what your
13 testimony is; right?
- 14 A. Correct.
- 15 Q. And you broke loose and you left?
- 16 A. Uh-huh.
- 17 Q. Did you come back at any time and talk to the
18 police?
- 19 A. I did.
- 20 Q. When was that?
- 21 A. After everything -- after what happened cleared, I
22 came back around and the police was there.
- 23 Q. But you didn't tell them what your name was?
- 24 A. They didn't ask me. They said they didn't even
25 need me.

RICKY BROWN - DIRECT BY GRIMES

1 Q. But you're the victim of an assault?

2 A. I was.

3 MR. ROUTZONG: I don't have any other questions,
4 Your Honor.

5 THE COURT: Okay. Anything on redirect from the
6 solicitor?

7 MR. MOLONY: No, sir, Your Honor.

8 THE COURT: Thank you for your testimony, sir. You
9 can step down.

10 MR. GRIMES: The State calls Ricky Brown.

11 RICKY BROWN, having been duly sworn, was examined
12 and testified as follows:

13 THE CLERK: Please just have a seat in the witness
14 box. State your full name for the Court and spell your
15 last.

16 THE WITNESS: My name is Ricky Brown, B-R-O-W-N.

17 DIRECT EXAMINATION

18 BY MR. GRIMES:

19 Q. Mr. Brown, good afternoon.

20 A. Good afternoon.

21 Q. How do you know Ms. Key?

22 A. She a tenant of mine. She's been a resident of
23 mine in Beech Island.

24 Q. She's both -- who owns [REDACTED]

25 A. I do.

RICKY BROWN - DIRECT BY GRIMES

1 Q. The property there?
2 A. I own it.
3 Q. This is State Exhibit Number Eight. Is that the
4 lease agreement for that property?
5 A. Yes, sir, it is.
6 Q. And who leases that property from you?
7 A. Jackie Key.
8 Q. Okay. And was she the tenant in that property in
9 December of 2013?
10 A. Yes, sir. She were (sic).
11 Q. Is anybody else reflected on the lease?
12 A. No, sir.
13 Q. Do you know Mr. Frazier?
14 A. No, sir. I do not.
15 Q. Do you know anything about him staying there?
16 A. I never seen him before.
17 Q. Okay. Are you familiar with this incident that
18 we've been here on today?
19 A. On the night of the incident I received a call from
20 Ms. Key and she kind of informed me that there had been an
21 incident there and the back door had been broken or kicked
22 in.
23 Q. Do you remember about what time you got that call?
24 A. I don't exactly recall the time, but it was about
25 nine or 10, something like that.

RICKY BROWN - DIRECT BY GRIMES

- 1 Q. That was at night?
- 2 A. Yes, sir.
- 3 Q. And did you go out there the next day?
- 4 A. I didn't go that night. I went out to assess the
- 5 damage, I think, the day after.
- 6 Q. Okay. And what did you see when you got there as
- 7 far as the damage goes?
- 8 A. The door had been forced open. There's a dead
- 9 bolt on the door, as indicated, that the bolt was locked.
- 10 It had sliced through the jamb of the door, therefore
- 11 breaking the jamb we have and breaking the casing from the
- 12 wall, the door casing.
- 13 Q. Before we go there, what's your occupation?
- 14 A. I'm a public safety officer at public -- Aiken
- 15 Public Safety.
- 16 Q. That's in the City of Aiken?
- 17 A. That's correct.
- 18 Q. And this property is in Beech Island, so you're
- 19 only associated with this incident by being the landlord
- 20 at that property; is that correct?
- 21 A. That's correct.
- 22 Q. Okay. But you did see the damage to the door?
- 23 A. Yes, sir.
- 24 Q. Did it appear that the door was unlocked or locked
- 25 when it was forced open?

RICKY BROWN - DIRECT BY GRIMES

1 A. It was locked.

2 Q. It was locked. And if you could just kind of
3 explain that to us. I think State's Exhibit Number Seven
4 kind of shows the lock part of the door --

5 A. Yes, sir.

6 Q. -- for the door casing. If you could kind of
7 explain that to us.

8 A. Well, when securing a door the bolt is usually the
9 main locking mechanism for the door. It goes into the
10 door casing, into the framing of the door.

11 Q. Uh-huh.

12 A. That had been -- the jamb of the door which the
13 bolt go through, had been split which usually associated
14 with a door being kicked in. The doorjamb had been split
15 in half. Therefore the bolt coming out of the jamb
16 through the door casing go around the outside of the
17 door. That had been stripped from the wall, therefore
18 pulling the sheet rock off the wall in that area.

19 Q. All right. And does that -- is that shown in
20 Defense Exhibits (verbatim), I believe you have Six and
21 Seven?

22 A. Yes, sir.

23 Q. Is that what's in those pictures?

24 A. Yes, sir.

25 Q. Could you kind of show a little bit on Defendant's

RICKY BROWN - CROSS BY ROUTZONG

1 Exhibit -- or State Exhibit Seven the, this area between
2 these two brass plates? Was that broken when you got
3 there?

4 A. It was split in half. Yes, sir.

5 Q. Okay. And did you make any repairs to that?

6 A. That particular door, I was able at that time to
7 put the jamb back together and replace the casing with a
8 new casing, and took a nail gun and nailed several nails
9 into the casing, therefore putting it back together with
10 glue.

11 Q. Yes, sir.

12 Please answer any questions defense counsel has for
13 you.

14 CROSS-EXAMINATION

15 BY MR. ROUTZONG:

16 Q. Good afternoon, Mr. Brown.

17 A. Good afternoon. How are you?

18 Q. Okay so far.

19 You don't have any knowledge about this other than
20 you're talking about the door a little bit?

21 A. None at all.

22 Q. Did you go out -- do you go out to the house
23 frequently?

24 A. Not that frequent. The house was well taken care
25 of therefore it's, it don't require a lot of attention.

1 I've been out several times with minor repairs but nothing
2 major.

3 Q. So you're not aware of any problems with the door
4 before this night?

5 A. There wasn't any before that night.

6 Q. But you don't check it all the time?

7 A. Not all the time.

8 MR. ROUTZONG: I don't have any other questions,
9 Your Honor.

10 THE COURT: Anything on redirect?

11 MR. MOLONY: Nothing further from this witness.

12 THE COURT: Thank you for your testimony, sir. You
13 can step down.

14 THE WITNESS: Okay.

15 THE COURT: You're free to leave or you're welcome
16 to remain with us.

17 THE WITNESS: I think I'm ready to leave. Thank
18 you.

19 THE COURT: Solicitor?

20 MR. MOLONY: At this time the State rests.

21 THE COURT: All right.

22 Madam Forelady, ladies and gentlemen of the jury,
23 in light of fact that the State has rested, there are a
24 few matters I need to take up with the lawyers.

25 So I'll ask that you retire to the jury room. And,

1 again, I instruct you not to begin discussing anything
2 about this case among yourselves. We'll get you back out
3 shortly.

4 (Jury exits courtroom at 2:37 p.m.)

5 THE COURT: Okay. Anything from the defense at
6 this juncture?

7 MR. ROUTZONG: Your Honor, at this time we move for
8 a directed verdict on behalf of the Defendant.

9 THE COURT: Okay.

10 MR. ROUTZONG: Viewing the evidence in the light
11 most favorable to the State, Your Honor, we don't feel the
12 State has met its burden of proof on the elements of
13 burglary.

14 They haven't shown any intent to commit a crime.
15 Without that, Your Honor, they don't have any possession
16 of a weapon during a violent -- commission of a violent
17 crime.

18 THE COURT: And there is some case law that
19 indicates -- (conferring with law clerk). There is some
20 case law that indicates that entering a dwelling in the
21 nighttime, that that can satisfy the intent to commit a
22 crime.

23 And, what I think the testimony was is that
24 allegedly that an assault took place while -- once the
25 Defendant got into the residence.

1 Do you want to chime in on this, one of the two
2 solicitors?

3 MR. MOLONY: Yes, sir. There was also some
4 testimony that the Defendant would have seen another
5 vehicle outside prior to kicking in the door, showing his
6 intent to find out who was driving this unknown vehicle at
7 the time, to go to his intent to commit a crime when he
8 did enter the residence.

9 THE COURT: But I want to give you the benefit
10 because we had this issue come up in -- recently. I can't
11 remember where. So I just want to give you the benefit
12 of what we were able to uncover in that particular case.

13 MR. MOLONY: Your Honor, I believe the testimony
14 that the jury's heard at this point is that immediately
15 after entering the residence the Defendant approaches
16 Stacey Gantt.

17 THE COURT: Right. The allegations of an assault.
18 That's right.

19 It says, this is under McMillan versus State:
20 Unexplained breaking and entering of a dwelling in the
21 night is itself evidence of intent to commit a larceny --
22 and that particular case involved larceny, but the crime.

23 And then coupled with the proof that there are
24 allegations of an assault once he got into the residence,
25 I think certainly there's evidence to send the case to the

1 jury.

2 Anything further from the State?

3 MR. MOLONY: No, sir, Your Honor.

4 THE COURT: Anything further from the defense?

5 MR. ROUTZONG: No, sir.

6 THE COURT: Okay. All right.

7 At this time if you want to explain to the
8 Defendant -- I have to advise him of his rights concerning
9 whether or not to testify or not and then y'all can inform
10 me if you're at a point to be able to let me know.

11 So give me just a second. Let me pull up the
12 script.

13 Madam Clerk -- Mr. Defendant, if you'll please
14 stand. Madam Clerk, would you please swear him in?

15 THE CLERK: Yes, sir.

16 (Defendant placed under oath.)

17 THE CLERK: He's sworn.

18 THE COURT: Just remain standing, please, sir.

19 Mr. Frazier, at this time I'm going to explain to
20 you certain of your rights. If you do not understand
21 anything that I say, please let me know. If you want me
22 to explain anything in more detail, please let me know.

23 And do you understand so far what I have indicated
24 to you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay. We have now reached the stage of
2 the trial where you may present your defense. You have
3 the right to claim the protections given to you by the
4 Fifth Amendment to the Constitution of the United States.

5 And this amendment states in part: No person shall
6 be compelled in any criminal case to be a witness against
7 himself. This means, Mr. Frazier, that you cannot be
8 required to testify in this case.

9 You have the right to testify on your own behalf.
10 However, no one can make you testify. This is a personal
11 right and no one can waive this right except you, sir. If
12 you decide to testify, you'll be subject to the same rules
13 that govern other witnesses and you may be examined and
14 cross-examined on any relevant issue in this case.

15 In addition, if you have any convictions involving
16 dishonesty or false statement or for crimes punishable by
17 imprisonment for more than one year, and this Court
18 determines that the probative value of admitting this
19 evidence outweighs its prejudicial effect to you, the
20 solicitor will be able to introduce your record to attack
21 your credibility.

22 If you decide to testify, this decision on your
23 part must be freely, voluntarily and intelligently made
24 with knowledge of the protections given to you by the
25 fifth amendment and the consequences of your decision to

1 testify.

2 If you decide not to testify, I will instruct the
3 jurors that they cannot give the fact that you did not
4 testify any consideration whatsoever and that there's to
5 be absolutely no prejudice to you because you did not
6 testify.

7 It is left entirely up to you whether or not you
8 testify. You certainly can talk and discuss further with
9 your attorneys, if you have any family members, friends,
10 anyone, but the final decision will be left entirely up to
11 you.

12 Mr. Frazier, have you understood what I've
13 explained to you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Do you have any questions about
16 what I have explained to you?

17 THE DEFENDANT: No, sir.

18 THE COURT: Okay. Have you had enough opportunity
19 to discuss this issue with your attorneys, whether or not
20 you should testify or should not testify?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. Do you need any more time to
23 discuss that issue with them?

24 THE DEFENDANT: No, sir.

25 THE COURT: Is that a "no," sir?

1 THE DEFENDANT: No, sir.

2 THE COURT: Okay. Has a decision been made,
3 Mr. Counselor, whether or not he's going to testify?

4 MR. ROUTZONG: He tells me he is, Your Honor.

5 THE COURT: Okay. All right.

6 Is that your decision to testify, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you made the decision to testify
9 in this case freely, voluntarily and intelligently?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And have you fully understood
12 everything that I have instructed you?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Thank you very much. You can
15 have a seat, sir.

16 And I do find that Mr. Frazier has freely,
17 voluntarily and intelligently made the decision to testify
18 on his behalf in this case.

19 Okay. Just so I can kind of have an idea. Other
20 than your client, do you intend to put up -- there's one
21 other witness on your witness sheet. Do you intend to put
22 that person up or you haven't decided yet?

23 MR. ROUTZONG: That person hasn't come to court
24 yet, but I think based on the testimony that we already
25 have, Your Honor, she's probably not necessary.

1 THE COURT: All right. Does the State anticipate
2 any reply case or you don't know yet?

3 MR. MOLONY: As of right now, no, sir, Your Honor.

4 THE COURT: Okay. Well, certainly I'm not going to
5 hold you to that. I'm just trying to get an idea.

6 Probably what we'll do is go ahead and finish
7 testimony. But we haven't worked on the charges, so we
8 may send the jury home a little early today.

9 MR. MOLONY: Whatever you decide, Your Honor.

10 THE COURT: You know, it's going to take a little
11 while to get the charges put together.

12 MR. GRIMES: Yes, Your Honor. We do have requests
13 to charge when the Court's ready to consider them.

14 THE COURT: All right. We'll figure out exactly
15 what we're going to do once we get all the testimony in.
16 Okay?

17 Do y'all need any break time with Mr. Frazier
18 before you put him up?

19 MR. HAYES: Can we have a few minutes, Judge?

20 THE COURT: Sure. And let me just -- before we
21 recess. Yesterday in chambers, there was some issue --
22 and you may have resolved it, I don't know -- about, if
23 there is a prior record.

24 Is there going to be any discussion necessary
25 there?

1 MR. MOLONY: Your Honor, we met this morning,
2 Mr. Routzong and I. And I believe we are in agreeance
3 (verbatim) with the four prior convictions the State would
4 be allowed to use should the Defendant testify.

5 THE COURT: Okay. And can you just give me the
6 heads up?

7 MR. MOLONY: Sure. It's a 1995 grand larceny.

8 THE COURT: Okay.

9 MR. MOLONY: A '96 false information to law
10 enforcement; 2006 possession of crack; 2008 possession of
11 crack, second.

12 THE COURT: Okay. What date on the last one,
13 Solicitor?

14 MR. MOLONY: 2008.

15 THE COURT: Okay. Mr. Routzong, is that correct,
16 the statement as to what's been agreed to --

17 MR. ROUTZONG: Yes, sir.

18 THE COURT: -- concerning impeachment?

19 MR. ROUTZONG: Yes, sir.

20 THE COURT: Okay. All right. Y'all need about 10
21 minutes?

22 MR. HAYES: Yes, sir.

23 THE COURT: Sure. We'll be in recess for about 10
24 minutes.

25 (Break taken at 2:47 p.m. At 3:08 p.m., the trial

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 resumed:)

2 THE COURT: Thank you very much. Have a seat.
3 Let's bring the jury out, please, sir.

4 THE BAILIFF: All right, sir.

5 (Jury enters courtroom at 3:09 p.m.)

6 THE COURT: Let the record reflect the jury's back
7 in.

8 Mr. Routzong, I turn it over to you, sir.

9 MR. ROUTZONG: Thank you, Your Honor.

10 The defense calls Mr. Daggart Frazier.

11 THE COURT: Come around, sir.

12 DAGGART BERNARD FRAZIER, having been duly sworn,
13 was examined and testified as follows:

14 THE CLERK: Please have a seat in the witness box.
15 State your full name for the Court and spell your last.

16 THE DEFENDANT: Daggart Bernard Frazier,
17 F-R-A-Z-I-E-R.

18 DIRECT EXAMINATION

19 BY MR. ROUTZONG:

20 Q. Mr. Frazier, let me know if you need any water or
21 anything or --

22 A. Yes, sir.

23 Q. -- if I can help you out. Mr. Frazier, how long
24 have you known Ms. Key?

25 A. About 19 years.

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

- 1 Q. How old are you?
- 2 A. Thirty-seven in a couple more days.
- 3 Q. How old is Ms. Key?
- 4 A. Forty-eight years old.
- 5 Q. So she's a little bit older than you?
- 6 A. Eleven years..
- 7 Q. Now you've heard some testimony from Ms. Key that
- 8 you had an off-and-on relationship for a period of 18
- 9 years, and that at some point in time before this incident
- 10 date, December 16th, that that relationship had broken
- 11 off?
- 12 A. Yes, sir.
- 13 Q. Was your relationship broken off?
- 14 A. No, sir.
- 15 Q. When was the last time you spent the night at her
- 16 house?
- 17 A. December 15th.
- 18 Q. The night before this incident?
- 19 A. 2013.
- 20 Q. Mr. Frazier, tell me a little bit about how this
- 21 relationship worked. Where did you spend your daytime
- 22 hours at?
- 23 A. My brother, James Frazier house.
- 24 Q. Were you spending the daytime over there?
- 25 A. Because the neighborhood that he stays in, they

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 burglarize around there a lot, breaking into. So I watch
2 his house while he's at work during the daytime.
3 Q. What time does he usually come home?
4 A. Eight o'clock.
5 Q. About what time would you usually -- well, let me
6 ask the question this way. What would you do after he
7 comes home?
8 A. I probably walk around the corner or something.
9 Q. And what were you doing?
10 A. Go to a friend's house or something.
11 THE COURT: What was your answer, sir? I couldn't
12 hear you.
13 THE DEFENDANT: Oh, Walk around the corner to a
14 friend's house.
15 THE COURT: Okay.
16 BY MR. ROUTZONG:
17 Q. How often would you go to Ms. Key's house?
18 A. Basically every night.
19 Q. So after -- let me ask the question this way or
20 maybe explain it this way. So after you would go to your
21 friend's house, you might go over to Ms. Key's house?
22 A. Yeah.
23 Q. And your testimony is that happened almost every
24 night?
25 A. Yes, sir.

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 Q. On December 16th, where were you before you went to
2 Ms. Key's house?
3 A. James' house, my brother house.
4 Q. About what time did you leave?
5 A. It was right before eight o'clock. He hadn't
6 gotten home yet at that time.
7 Q. Sometime before eight o'clock?
8 A. Yes, sir.
9 Q. About what time did you get to Ms. Key's house?
10 A. I guess it took around about 10 minutes to get
11 there.
12 Q. So you're at Ms. Key's house something, about 10
13 minutes -- or some period of time before eight o'clock?
14 A. Yes, sir.
15 Q. When you -- how did you get over there?
16 A. I drove.
17 Q. When you got to Ms. Key's house, what did you do?
18 A. I pulled in the front yard and got out the truck.
19 I walked to the door, knocked on the door.
20 Q. Anybody come to the door?
21 A. No, sir.
22 Q. What did you see? Before you went up to the front
23 door, what did you see?
24 A. I seen a blue Tahoe vehicle and her two cars in the
25 yard and Lashanda vehicle's in the driveway also.

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

- 1 Q. Did you know whose car that was?
- 2 A. I know the car's Lashanda car.
- 3 Q. How about the other vehicle?
- 4 A. No, sir.
- 5 Q. Your testimony is that you knocked at the door and
- 6 nobody came to the door?
- 7 A. Yes, sir.
- 8 Q. What was going through your mind?
- 9 A. I wondered what was going on, why nobody was not
- 10 answering the door.
- 11 Q. Anything else going through your mind?
- 12 A. No, sir.
- 13 Q. And you were wondering this at the same time,
- 14 you've testified, that you didn't know whose car that was?
- 15 A. Yes, sir.
- 16 Q. Did you have any concern?
- 17 A. Yes, sir.
- 18 Q. What were those concerns?
- 19 A. I was wondering what going on. I'm -- family, my
- 20 wife and stepson in the house. So I wondering what was
- 21 going on, why nobody done answered the door.
- 22 Q. What did you do next?
- 23 A. So I knocked a couple more times, no answer. So I
- 24 walked to the back of the house, windows always open, I
- 25 mean, the blinds always open in the living room. So I see

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 them in the living room. So I wonder why don't they open
2 the door.

3 Q. Who did you see?

4 A. Ms. Key, Ms. Lashanda, Deontray, the guy that I
5 don't know who he was at the time.

6 Q. What was going through your mind then?

7 A. When I'm knocking on the window they not answering
8 the door. She's not saying nothing. I'm worried. I
9 don't know what's going on, who he is. She's not
10 saying nothing. Normally -- I don't know what's going
11 on. Nothing. So I goes back to the door. Knocking
12 again. No one answer. Go like this (indicating) and the
13 door come open, just goes in.

14 Q. What were you feeling?

15 A. What was I feeling? I'm just wondering what's
16 going on with my family in the house. That's it.

17 Q. And what did you intend to do when you went through
18 the door?

19 A. Just to see why she's not talking. For some reason
20 she's not talking.

21 Q. Did you intend to do anything else?

22 A. No, sir.

23 Q. Let's back up a little bit. Going back to your
24 relationship with Ms. Key. What did you -- in terms of
25 helping her out, what did you ever do?

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 A. Help pay all her bills in the house.
2 Q. Be more specific. What kinds of things?
3 A. Rent, light bill, cable bill, phone bill, and water
4 bill. Every month.
5 Q. How did you pay that?
6 A. I gave her money. I get a Green Dot money-back
7 card and she transfer it to some up little, some kind of
8 debit card. She don't know how to do it. She give me the
9 information. I used to do it off of my cell phone.
10 Q. What else did you buy for the house?
11 A. Groceries, soap; everything for the house.
12 Q. And this was -- you were doing these kinds of
13 things up until when?
14 A. Until I came to jail.
15 Q. Going back to that night, Mr. Frazier, you're
16 coming through the door, you see everybody in the room.
17 Maybe I should ask the question this way. Who did you see
18 in the room? Who was in the house?
19 A. Lashanda, Jacqueline Key, the guy, and Deontray.
20 Just them four.
21 Q. Then what did you do?
22 A. I'm talking to her.
23 Q. What did you say?
24 A. What did I say? I be, "What's going on?" "Why you
25 don't open the door?" She was not talking, period. I

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1 don't know what's going on. While I'm talking to her the
2 guy sitting beside her, he saying something to her. I
3 blocked him out. So I didn't respond to him. I'm still
4 trying to see what's going on with her.

5 So by this time he jumps up at me, swung at me. So
6 I defended myself. And we got to tussle. We both went
7 out the front door.

8 Q. When you both went out the front door, what
9 happened then?

10 A. We went to his Tahoe. He was trying to get in. We
11 were fighting right there against the door.

12 Q. What was your concern, if any, about him getting
13 into the Tahoe?

14 A. I felt like he was trying to get something to hurt
15 me. I don't know who he is. He's going to the truck for
16 a reason. I don't know what's going on, especially when
17 he jump and swung on me. I don't know what's going on.

18 Q. Once again, you don't know him?

19 A. I don't know him. Never seen him a day in my life.

20 Q. At this point in time after you -- there's this
21 strange man, you don't know who he is, and he's in there
22 with this lady that you've had this long-term relationship
23 with --

24 A. Yes, sir.

25 Q. -- after all of this, what were you feeling?

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- 1 A. After that?
- 2 Q. Yes.
- 3 A. I was upset, highly upset.
- 4 Q. Can you be more specific?
- 5 A. I was pissed off.
- 6 Q. Why?
- 7 A. Because we been together 18 years and I wonder
- 8 what's going on. Why, you know. I'm hurting. So I went
- 9 back in the house just to talk to her. I was screaming
- 10 but wasn't trying to do no harm to no one. Didn't do no
- 11 harm to no one.
- 12 Q. Mr. Frazier, there's been testimony that when you
- 13 came in the house that you had in your hand a gun. Did
- 14 you have a gun in your hand?
- 15 A. No, sir.
- 16 Q. What did you have in your hand?
- 17 A. A cell phone.
- 18 Q. What color is it?
- 19 A. All black.
- 20 Q. So it's your testimony that you didn't wave a gun
- 21 around, you didn't point a gun at anybody?
- 22 A. No, sir.
- 23 Q. And why is that?
- 24 A. I had a cell phone in my hand, cell phone S3 with
- 25 an OtterBox to it. Okay. Dropped in the process of the

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

- 1 altercation. I mean, me and the guy, Stacey, had it.
- 2 Q. Mr. Frazier, when the police arrived, were you
- 3 there?
- 4 A. No, sir.
- 5 Q. Where did you go?
- 6 A. I just left because I was angry. I was always
- 7 hoping -- I was just going to leave until I cooled off.
- 8 So I left.
- 9 Q. Did you know that the police had been called?
- 10 A. No, sir.
- 11 Q. I know that your testimony is that you were angry?
- 12 A. Yes, sir.
- 13 Q. But specifically, you were angry and you left. But
- 14 why did you leave?
- 15 A. Why did I leave?
- 16 Q. Yes, sir.
- 17 A. Because I was really pissed off. I didn't want to
- 18 get in no trouble, so I just up and left.
- 19 Q. What were you afraid was going to happen, if
- 20 anything?
- 21 A. I got in trouble.
- 22 Q. Mr. Frazier, you've heard testimony that on the
- 23 17th of December, that's the day after this incident?
- 24 A. Yes, sir.
- 25 Q. Ms. Key admitted that she came to see you?

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 A. Yes, sir.

2 Q. About what time did she come to see you?

3 A. I can't be able to say the time, but it was just

4 starting to get dark during that time that she came to see

5 me.

6 Q. Why do you think she came to see you?

7 A. To get me to come back home.

8 Q. Why do you think that?

9 A. Why do I think that? Because we, we was a couple

10 one time. Only reason she would come.

11 Q. Did she ask you for anything?

12 A. Yes, sir.

13 Q. What did she ask you for?

14 A. Money.

15 Q. Anything else?

16 A. Asked me would I buy her a beer.

17 Q. Did you buy her a beer?

18 A. Yes, sir.

19 Q. Did you give her the beer?

20 A. No, sir. My uncle went to the store to get it. He

21 brought it back. He handed it to her.

22 Q. After she got her beer, what happened?

23 A. We sat in the car. We talked for a little while.

24 Q. What did you guys talk about?

25 A. Trying to get me to come back home.

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1 Q. The police never came?
2 A. No, sir.
3 Q. Did you see her call the police?
4 A. No, sir. She wasn't on the phone at all.
5 Q. About how long did she stay?
6 A. She stayed about two hour, probably longer than
7 that.
8 Q. Were you still mad?
9 A. Yes, sir. Yes.
10 Q. What did you tell her, if anything, before she
11 left?
12 A. What did I tell her? I wasn't coming back. It was
13 over with. You know, you get him to pay the bills and
14 everything, I'm not coming back. It's over with. I'd
15 rather sleep out here in the street, in the woods. I'm
16 not coming back there. I don't trust you no more.
17 Eighteen years. Ain't no trust now. Got to go. Have to
18 move on. I hurt. Just have to deal with it.
19 Q. After she left, and that was on the 17th --
20 A. Yes, sir.
21 Q. -- what did you do?
22 A. We still out there at my brother house. Out there
23 in the yard talking.
24 Q. Did you stay there all night?
25 A. No, sir.

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1 Q. Where did you go?

2 A. I left there probably about 10 or something, walked
3 up the street to Deluxe Inn, the motel right on Martintown
4 Road. I stayed there.

5 Q. Why did you stay there?

6 A. Because I ain't -- I wanted to be by myself. I
7 didn't want to be around nobody. I wanted to get my
8 thoughts together.

9 Q. On the 18th, do you remember that day?

10 A. Yes, sir.

11 Q. Do you remember Ms. Key, she testified she came
12 back on the 18th? Do you remember that?

13 A. Yes, sir.

14 Q. What happened with that? When did she come back?

15 A. It was afternoon when she came. I was on the
16 porch. Me and my uncle and my cousin was on the porch
17 drinking. And she pulled up, like, and laid out there.
18 So I'm still sitting there, ain't paying her no
19 attention. So she called me to come to the car.

20 MR. MOLONY: Objection, Your Honor. It's hearsay.

21 THE COURT: Okay. Don't quote what somebody told
22 you, sir..

23 THE DEFENDANT: Yes, sir.

24 So, I didn't go out there to the car, period. I
25 stayed on the porch. I ain't even come off the porch or

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

- 1 nothing. I was talking, front of the porch, to her.
- 2 BY MR. ROUTZONG:
- 3 Q. How long did she stay out there?
- 4 A. She stayed right there for about 30 minutes.
- 5 Q. And then what happened?
- 6 A. She left.
- 7 Q. Did anything happen after that, to you?
- 8 A. No, sir.
- 9 Q. When did the police come and get you?
- 10 A. I'd say around about an hour and a half or two
- 11 hours after she left.
- 12 Q. Was -- who was it? Was it Aiken County or --
- 13 A. It was North Augusta at the door when I opened the
- 14 door.
- 15 Q. Say again.
- 16 A. North Augusta Public Safety.
- 17 Q. How far do you live from the police station?
- 18 A. Well, I live at my brother house. It's, like,
- 19 about three minutes away. Three minutes right down on
- 20 Buena Avenue, Buena Vista Avenue. Three minutes away.
- 21 Q. Your brother's house is three minutes house?
- 22 A. From the police department.
- 23 Q. Mr. Frazier, is there anything else you'd like to
- 24 tell the jury?
- 25 A. Yes, sir.

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 Q. What is that?

2 A. Well, I know people try to put me out to be a bad
3 person. I'm not that bad person they're trying to put me
4 out to be. I was living there the whole time, paying the
5 bills the whole time.

6 Going on here when all of this happened. Dropped
7 my cell phone. She gets it, see other females in it. So
8 that's why it come to this. That's why it come to this.
9 Didn't drop the cell phone it wouldn't have come to this,
10 period.

11 And as far as me calling back, stated something
12 about the police. I couldn't call them back because I
13 ain't had no phone to call them with. I couldn't call no
14 one, nobody.

15 And when I left, left the scene I got someone else
16 to dial the number up to call my brother, let him know
17 what happened. He told me not to go back home, stay where
18 I was. So, he was trying to contact me, but he couldn't.

19
20 But she calls my cousin off of my cell phone that I
21 dropped in the house and called females on the cell phone
22 that she saw in there off the cell phone. She called my
23 cousin. Put him in jail for life. He got about 15
24 charges on him, this and that, now. He gone for life now
25 this time. So, my cousin came and found me where I was.

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1 At the same time my brother was trying to call to see what
2 was going on with me but he couldn't contact me because
3 she had the cell phone.

4 So when my cousin come to get me I called my
5 brother cell phone. He was saying, "my lady, Kierra
6 Martin out looking for you." I said, "I seen her up
7 Martintown Road." so he said, "let me get call her and
8 get her turned around." She turns around and comes to the
9 motel and comes and talks in the parking lot.

10 Ever since then she's been coming, checking on me.
11 She was there also when Ms. Key was there.

12 Q. Mr. Frazier, one more time.

13 A. Yes, sir.

14 Q. Did you have consent to go in that house?

15 A. I felt like I had consent because I was living
16 there. My possessions in that house; clothes, ID.
17 Everything that I own is in that house. Basically
18 everything I helped paid for that's in there.

19 Q. When you went in that house, what did you intend?

20 A. See what was going on with my family, why she's not
21 answering the door, why she's not talking.

22 MR. ROUTZONG: Beg the Court's indulgence.

23 (Pause.)

24 Q. Mr. Frazier, I only have one other question.

25 Actually a couple questions.

DAGGART BERNARD FRAZIER - CROSS BY MOLONY

- 1 A. Yes, sir.
- 2 Q. You've been convicted of grand larceny?
- 3 A. Yes, sir.
- 4 Q. Giving false information to a police officer?
- 5 A. Yes, sir.
- 6 Q. And been convicted of possessing crack twice?
- 7 A. Yes, sir.
- 8 Q. That's the same Bernard Frazier?
- 9 A. Yes, sir.
- 10 Q. Are you telling the truth today?
- 11 A. Yes, sir.
- 12 MR. ROUTZONG: Your witness, Solicitor.
- 13 THE COURT: Cross-examination.
- 14 MR. MOLONY: Thank you, Judge.
- 15 CROSS-EXAMINATION
- 16 BY MR. MOLONY:
- 17 Q. Mr. Frazier, how are you doing, sir?
- 18 A. I'm doing alright. How about yourself today, sir?
- 19 Q. I'm going good.
- 20 A. That's great.
- 21 Q. You know, after listening to your testimony there's
- 22 a lot of things I think you and I would agree on. You
- 23 would agree with me that you've known Jackie for a long
- 24 time; right?
- 25 A. Yes, sir.

DAGGART BERNARD FRAZIER - CROSS BY MOLONY

- 1 Q. And that you actually went to Jackie's house that
2 night, December 16th?
- 3 A. Yes, sir. I did.
- 4 Q. I think you said a little after eight o'clock?
- 5 A. No, sir. It was before eight.
- 6 Q. Before eight. But it took you 10 minutes to get
7 there?
- 8 A. Yes, sir.
- 9 Q. Eight o'clock, safe to --
- 10 A. Somewhere.
- 11 Q. -- say? So you were there, [REDACTED]
- 12 A. Yes, sir.
- 13 Q. I show you State's Exhibit One. Is this where you
14 pulled up to?
- 15 A. Yes, sir.
- 16 Q. You'd also agree that you saw a vehicle you didn't
17 recognize in the yard; didn't you?
- 18 A. Yes, sir.
- 19 Q. Do you agree that you knocked on the window,
20 knocked on the door, ultimately banging on the side door;
21 right?
- 22 A. Yes, sir.
- 23 Q. And that ultimately you kicked the door open;
24 right?
- 25 A. No, sir.

DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 Q. Okay. So there's one thing we'll disagree on. You
2 didn't kick the door open. It just opened up when you hit
3 it?

4 A. Yes, sir.

5 Q. Okay. Now, you would agree that you did testify
6 that you were angry and, quote, pissed off at that time;
7 right?

8 A. Not at that time, sir.

9 Q. Okay. So you're happy right now. You know, is
10 that normally how you enter the house?

11 A. No, sir.

12 Q. Now, you also would agree, right when you walked in
13 the house that you immediately approached this male that
14 was in the room?

15 A. No, sir.

16 Q. You went and talked to Jackie first?

17 A. Yes, sir.

18 Q. Okay. Where was the male when you approached her?

19 A. He was sitting right beside her. She was
20 sitting -- he was sitting here, she was sitting there
21 (indicating).

22 Q. Okay. So we can agree that they were sitting on
23 the couch together?

24 A. Yes, sir.

25 Q. And your testimony is that you approached Jackie?

DAGGART BERNARD FRAZIER - CROSS BY MOLONY

- 1 A. Yes, sir.
- 2 Q. And began, what, having a conversation with Jackie
- 3 at that time?
- 4 A. Trying to have a conversation with her but she
- 5 wasn't responding. Just wouldn't say nothing. I didn't
- 6 know what was going on.
- 7 Q. So at that point you became angry?
- 8 A. No, sir.
- 9 Q. So you're still calm and collected?
- 10 A. Yes, sir.
- 11 Q. Now you would agree that on a jail call you
- 12 admitted that you walked in the house and, quote, jumped
- 13 on that boy; right?
- 14 A. No, sir.
- 15 Q. You're denying that you said on a jail call that
- 16 you entered her house and you jumped on a boy?
- 17 A. We got to fighting. Yes, sir. I mean, we got to
- 18 fighting, yes, sir, but not just enter the dwelling,
- 19 jumped on him, no, sir.
- 20 Q. Are you admitting or are you denying the fact that
- 21 you said on a jail call, "I jumped on the boy"?
- 22 A. On the jail call, no, sir.
- 23 Q. You're denying that?
- 24 A. Yes, sir. I did not say it on the 9-1-1 call.
- 25 Q. No. On the jail call. You were in jail, you make

DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 a phone call, you say, "I jumped on the boy"; did you or
2 didn't you?

3 A. No, sir.

4 Q. So you're denying it?

5 A. I called Georgia-Carolina Bondman to let them know
6 I was back in jail on some new charges, not to go off my
7 bond because I'm here and why. And so my old lady, she
8 say I came in the house and jumped on such-and-such.
9 That's how it went. Just like that. I didn't say I just
10 jumped on him, no. I didn't just jump on him for nothing,
11 you know. He had to do something to me for me to put my
12 hands on him. He had to strike me first.

13 Q. Is that what you said?

14 A. Sir?

15 Q. Or is that what you said -- or is that what you're
16 saying right now in front of them?

17 A. I ain't saying all of that. What I'm saying now.

18 Q. Adding a little to it?

19 A. Yeah.

20 Q. Okay.

21 A. Jump on a guy for nothing? I don't know him, so
22 why should I jump on him?

23 Q. You would admit you hit the guy in the room --

24 A. Yeah --

25 Q. -- the guy that's sitting right here; right?

DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 A. -- after he hit me.

2 Q. That you'd never seen before --

3 THE COURT: Wait a minute. We got to make sure
4 that only one speaks at a time.

5 Solicitor, ask the question, Mr. Witness, wait
6 until the question is completely asked and then you can
7 respond --

8 MR. MOLONY: Yes, sir.

9 THE COURT: -- because the court reporter, as good
10 as she is, it makes it difficult for her to pick up all
11 the testimony with you both talking at the same time.

12 THE DEFENDANT: Yes, sir.

13 BY MR. MOLONY:

14 Q. Mr. Frazier, this is the man you hit that night?

15 A. Yes, sir.

16 Q. And you didn't know him --

17 A. I --

18 Q. -- before then? You'd never seen him before?

19 A. -- never seen him before.

20 Q. Okay. So we can agree that you went in the house,
21 it was nighttime, and you hit him?

22 A. Yes, sir.

23 Q. All right. Now I believe your testimony is that
24 you were holding a black, a big black cell phone?

25 A. Yes, sir.

DAGGART BERNARD FRAZIER -- CROSS BY MOLONY

1 Q. Okay. So we would disagree with exactly what was
2 big and black and in your hand that night.

3 And -- now, you stated you were living at your
4 brother's house during this time?

5 A. No. I stayed at [REDACTED] I go to my
6 brother's house every day to watch his house.

7 Q. Is [REDACTED] in Beech Island, three miles from
8 the North Augusta Department of Public Safety?

9 A. Three miles? I don't know how many miles it is.

10 Q. You testified on direct that where you were living
11 was three miles from the North Augusta Department of
12 Public Safety.

13 A. Well, my brother, James, where he live at.

14 Q. Where's he live?

15 A. [REDACTED].

16 Q. Okay. When you were arrested and you went to the
17 jail, what did you tell them your address was then?

18 A. 419, but they ain't put it on the form. They put
19 an old address on there.

20 Q. Okay. So, the bond paperwork that you signed on
21 the 19th of December that has [REDACTED], the address
22 you just stated, your brother's address, listed as your
23 address, they messed up on this?.

24 A. The 19th of December?

25 Q. Yeah.

DAGGART BERNARD FRAZIER - CROSS BY MOLONY

- 1 A. I, I wasn't here the 19th of December.
- 2 Q. This is when it's dated. Right beside your
3 signature. I'm just asking -- your testimony is that they
4 messed this up; right?
- 5 A. Yeah.
- 6 Q. So you really told them that it was [REDACTED]
- 7 A. But they said they couldn't use it.
- 8 Q. Oh, okay.
- 9 A. They couldn't use it because she was a victim.
- 10 Q. Oh, so you had to find another address?
- 11 A. They put that in there.
- 12 Q. Oh, they just did that?
- 13 A. Yeah.
- 14 Q. And luckily it was your brother's?
- 15 A. Yeah. I used it before when was on probation. I
16 used that address when I was on probation one time before.
- 17 Q. Okay. All right. Now, you'd agree that you ran
18 from the house?
- 19 A. Yes, sir.
- 20 Q. And you stated on direct that you were scared you
21 were going to get in trouble?
- 22 A. Yes, sir.
- 23 Q. The big thing that you say is that your intent, I
24 think was the question, your intent when you entered that
25 house was to just approach Jackie and talk to her; right?

DAGGART BERNARD FRAZIER - CROSS BY MOLONY

- 1 A. Yeah. See what's going on.
- 2 Q. But I thought you were scared for the safety of
- 3 your family?
- 4 A. I am. That's my family. I am.
- 5 Q. Okay. So you walk in and you see this guy sitting
- 6 on the couch but you approach her?
- 7 A. Oh, I'm not walking past him because I don't know
- 8 who he is. I'm standing right there so I can see him also
- 9 at the same time. So he's sitting right there. I'm
- 10 standing right here. Right here. I'm talking to her.
- 11 Q. Okay. So, "Hey, Jackie how you doing"?
- 12 A. Baby. I don't call her by her name.
- 13 Q. Oh, it's baby?
- 14 A. Yeah.
- 15 Q. And he tried to hit you first is your testimony?
- 16 A. Yes, sir.
- 17 Q. And after this your testimony is that she was
- 18 trying to get you back home? She needed you back home?
- 19 A. Yeah.
- 20 Q. Okay. You heard the 9-1-1 call? You've been
- 21 sitting right there; haven't you?
- 22 A. Yes, sir. I heard it.
- 23 Q. So all of that is fake too, her wanting you to go
- 24 to jail is fake?
- 25 A. It's real because I heard it.

DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 Q. I'm sorry?

2 A. It's real. I heard it.

3 Q. Okay. She changed this -- State's Exhibit 10 and
4 11, all of that attitude and all of that fear changed
5 overnight whenever she saw you the next day?

6 A. Yes, sir.

7 Q. Okay. And you were paying all the bills and doing
8 all of that, right?

9 A. Yes, sir.

10 Q. Where were you working?

11 A. Where, was I working?

12 Q. Where were you working?

13 A. I was doing mechanic work.

14 Q. Mechanic work?

15 A. Yes, sir.

16 Q. This blue Tahoe that you saw out front, that didn't
17 make you real happy; did it?

18 A. What do you mean?

19 Q. It didn't make you happy seeing another car out
20 front. So we'd agree on that?

21 A. It didn't make me mad. I just ain't know who it
22 was. I didn't bother me at all. I just didn't know who
23 it was. Because I know the family member vehicle. I know
24 all the family vehicles. It wasn't one of them. It's a
25 strange vehicle. I don't know who it is. So, yeah, I'm

DAGGART BERNARD FRAZIER - CROSS BY MOLONY

- 1 concerned.
- 2 Q. You testified that you told Jackie, I'm not coming
3 back. I don't trust her. I'm going to the streets. I'm
4 moving on; is that right?
- 5 A. I sleep in the street.
- 6 Q. Rather than ever go back there?
- 7 A. Yeah.
- 8 Q. But you're writing her letters while you're in
9 jail, weren't you?
- 10 A. I love her. We've been together 18 years off and
11 on. You just can't let that go just like that.
- 12 Q. So you apologized. I'm sorry?
- 13 A. I said, going to take some time to just let go.
14 You just can't let go like that. If you love her you're
15 going to try to work things out. I'm pretty sure you
16 would.
- 17 Q. I may, but you were the one saying that you're
18 going into the streets, you're moving on, you don't trust
19 her, you ain't coming back; right? You said that. Isn't
20 that what you said?
- 21 A. Yes, sir.
- 22 Q. Okay. And you would agree that you wrote her a
23 letter while you're in jail; right?
- 24 A. Yes, sir.
- 25 Q. And you sent it to her, you said, "Sweetheart, I am

DAGGART BERNARD FRAZIER - REDIRECT BY ROUTZONG

1 in tears because I know I really hurt you." You said
2 that, didn't you?
3 A. Yes, sir..
4 Q. And "I'm so sorry. I admit that I was absolutely
5 wrong, dumb, foolish and stupid"; right?
6 A. Yes, sir.
7 Q. "Could you please forgive me"; right?
8 A. Yes, sir..
9 Q. "Please give me another chance. I'm going to do
10 right, I promise."
11 A. Yes, sir.
12 Q. Okay. You did write that to her. --
13 A. Yes, sir.
14 Q. -- after you were not coming back because you don't
15 trust her and you'd rather sleep in the street?
16 A. Yes, sir.
17 MR. MOLONY: Okay. Thank you, Mr. Frazier. I
18 don't have any further questions.
19 THE COURT: Anything on redirect?
20 MR. ROUTZONG: Yes, Your Honor.
21 REDIRECT EXAMINATION
22 BY MR. ROUTZONG:
23 Q. Mr. Frazier, the State seems very surprised by a
24 couple things that you've testified to on cross-
25 examination.

DAGGART BERNARD FRAZIER - REDIRECT BY ROUTZONG

- 1 A. Yes, sir. I know.
- 2 Q. The 17th and the 18th of December, did you intend
3 to go back to her?
- 4 A. No, sir.
- 5 Q. What was in your mind?
- 6 A. No more. Can't do it no more.
- 7 Q. You heard Ms. Key testify that you guys had an
8 off-and-on relationship?
- 9 A. Yes, sir.
- 10 Q. What do you -- would you agree with that?
- 11 A. That's false.
- 12 Q. Did you ever get mad at her and not see her for a
13 while?
- 14 A. When we did get mad at one another it's just been
15 for a night. That's the longest it's ever been, one
16 night. Longest it's ever been.
- 17 Q. So to make sure I understand what your testimony is
18 is that you guys could get mad and then make up and then
19 get mad and make up?
- 20 A. Yes, sir.
- 21 Q. Like all the rest of the people that are married in
22 the world?
- 23 A. Yes, sir.
- 24 Q. Or have a relationship?
- 25 A. Yes, sir. Every relationship have their ups and

DAGGART BERNARD FRAZIER - REDIRECT BY ROUTZONG

1 downs.

2 Q. The State's perplexed by the fact that Barton Road
3 is showing up on your bond paperwork?

4 A. Yes, sir.

5 Q. And your testimony is you didn't have any intent on
6 that --

7 MR. MOLONY: Your Honor, I object. This is all
8 leading.

9 THE COURT: Okay. Try to restate, counsel.

10 BY MR. ROUTZONG:

11 Q. Why did you put [REDACTED] down?

12 A. I didn't put [REDACTED] down. The county jail put
13 [REDACTED] down. They asked my address. I told them
14 [REDACTED]. The woman that write that, the officer gave it to
15 me, can't put this down because it's the victim address.

16 Q. If someone had asked you what address to put
17 down --

18 A. Yes, sir.

19 Q. -- and your testimony is you didn't intend to go
20 back, what address would you put down?

21 A. What address would I put down? I would put 419
22 down because that was my address.

23 Q. The State's perplexed by the letter compared to
24 what you've testified about being mad and not wanting to
25 have anything to do with her.

1 A. Yes, sir.

2 Q. You don't deny writing that letter?

3 A. No, sir.

4 Q. Was that how you felt when you wrote that letter?

5 A. When I wrote that letter we had, we were having ups
6 and downs, you know what I'm saying, during that time. We
7 had been arguing and stuff like that. I was apologizing
8 for things in the past that we been through, things I had
9 done to her, you know. That was it.

10 Q. Was that unusual in this long-term relationship?

11 A. No, sir.

12 MR. ROUTZONG: I don't have any other questions,
13 Your Honor.

14 THE COURT: Anything on recross?

15 MR. MOLONY: No, sir, Your Honor.

16 THE COURT: Thank you for your testimony, sir. You
17 can step down.

18 Anything further from the defense?

19 MR. ROUTZONG: Your Honor, can we approach?

20 THE COURT: Sure.

21 (Off-the-record discussion.)

22 THE COURT: Madam Forelady, ladies and gentlemen of
23 the jury, the defense needs to figure out something about
24 maybe a potential witness or not. And I'm allowing them a
25 few minutes to kind of decide what they're going to do.

KIERRA MARTIN - DIRECT BY ROUTZONG

1 So take a very short break. So if you'll go to
2 your jury room. I remind you not to start discussing this
3 case, please.

4 (Jury exits courtroom at 3:45 p.m.)

5 THE COURT: Okay. We'll be in recess a few
6 minutes. Take some time to try to track that person down.

7 MR. ROUTZONG: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 (Break taken. At 4:08 p.m., the trial resumed:)

10 THE COURT: Mr. Routzong, I understand you have one
11 more witness that you're going to put up in your case?

12 MR. ROUTZONG: Yes, sir.

13 THE COURT: Okay. Let's bring the jury out.

14 (Jury enters courtroom at 4:09 p.m.)

15 THE COURT: Let the record reflect the jury's back
16 in. Madam Forelady, ladies and gentlemen of the jury, I
17 have been informed that the defense has one remaining
18 witness that will now be called.

19 Mr. Routzong, turn it over to you, sir.

20 MR. ROUTZONG: The defense calls Kierra Martin.

21 KIERRA MARTIN, having been duly sworn, was examined
22 and testified as follows:.

23 THE CLERK: Please have a seat in the witness box.
24 State your full name for the Court and spell your last.

25 THE WITNESS: Good afternoon. My name is Kierra

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1 Martin and it's M-A-R-T-I-N.
2 THE COURT: You can have a seat, ma'am.
3 THE WITNESS: Okay.
4 DIRECT EXAMINATION
5 BY MR. ROUTZONG:
6 Q. Good afternoon, Ms. Martin.
7 A. Good afternoon.
8 Q. Can you tell me what your relationship is with
9 Mr. Frazier?
10 A. That's my brother-in-law.
11 Q. About how long have you known him?
12 A. A little over two years now.
13 Q. Okay. Where do you work at?
14 A. I am currently a manager at Chick Fil-A where I've
15 been for eight years now.
16 Q. Do you go to school?
17 A. I do. I'm currently enrolled at Miller-Motte
18 Technical College where I will be graduating in the end of
19 September with my associate's in medical assisting and soon
20 after I'm signed up to attend Phoenix University to get my
21 bachelor's in small business entrepreneurship.
22 Q. I just have a couple questions for you,
23 Ms. Martin.
24 A. Okay.
25 Q. Did Mr. Frazier ever ask your assistance with any

KIERRA MARTIN - DIRECT BY ROUTZONG

1 kind of financial issues?

2 A. Yes, sir. He has.

3 Q. What did he ask you?

4 A. One day I got a call and he asked if I was busy.

5 At the moment I wasn't.

6 MR. MOLONY: Objection, Your Honor. This is
7 hearsay.

8 THE WITNESS: I was asked --

9 THE COURT: Wait a minute, ma'am. Okay?

10 Mr. Routzong, do you want to respond to that objection?

11 MR. ROUTZONG: Well, she's merely telling the jury
12 what the Defendant told her and he's --

13 THE COURT: Right. Well, the objection is based
14 upon hearsay. Of course I don't know exactly what she's
15 going to say. Let's maybe --

16 MR. ROUTZONG: I can rephrase the question, Your
17 Honor.

18 THE COURT: Try to rephrase it. And, Solicitor,
19 certainly if you need to object you can.

20 MR. MOLONY: Yes, Your Honor.

21 BY MR. ROUTZONG:

22 Q. What did you help him with?

23 A. I went out and purchased a Green Dot money-back
24 card. And a Green Dot money-back card is a prepaid debit
25 card which you load money onto to get transferred so that

KIERRA MARTIN - DIRECT BY ROUTZONG

- 1 he could pay bills for her.
- 2 Q. Did you become aware of why he wanted it?
- 3 A. So that he can pay her rent.
- 4 Q. Whose rent -- whose rent -- whose rent -- is it
- 5 your understanding whose rent it was that he wanted to
- 6 pay?
- 7 A. Ms. Key.
- 8 Q. Ms. Key?
- 9 A. Uh-huh.
- 10 Q. Did you become aware that Mr. Frazier stayed with
- 11 Ms. Key?
- 12 A. Yes, sir.
- 13 Q. About how long have you been aware of that? In
- 14 other words, as far as you can remember, how long had he
- 15 been staying with her?
- 16 A. From my knowledge I would say two years.
- 17 Q. So practically the whole time you've known him --
- 18 A. Uh-huh.
- 19 Q. -- he's been staying with Ms. Key, to your
- 20 knowledge?
- 21 A. Yes, sir.
- 22 Q. Have you ever become aware of how Mr. Frazier
- 23 referred to the house he shared with Ms. Key?
- 24 A. Home.
- 25 Q. Did you become aware of anything that he kept at

KIERRA MARTIN - CROSS BY MOLONY

- 1 her house?
- 2 A. Clothes, shoes.
- 3 Q. Let me take you back to the 17th of December.
- 4 A. Uh-huh.
- 5 Q. Did you see Mr. Frazier on the 17th of December?
- 6 A. Yes, sir; I did.
- 7 Q. And did you see Ms. Key?
- 8 A. Yes, sir; I did.
- 9 Q. What was your impression of what was going on?
- 10 A. I assume they were talking but at the time I
- 11 arrived he was kind of distant. Like, he was standing
- 12 back from where she was actually sitting on her car.
- 13 Q. She -- Ms. Key was on her car?
- 14 A. Yes, sir.
- 15 Q. Did she have anything in her hand?
- 16 A. Yes, sir.
- 17 Q. Do you know what she had in her hand?
- 18 A. It was a bottle. I know that much.
- 19 Q. But you can't say what it was?
- 20 A. I can't say what it was, but I know it was a bottle
- 21 and she had been drinking it. So I really can't state
- 22 exactly what it was.
- 23 Q. Was anybody keeping her there as far as you could
- 24 tell?
- 25 A. No, because he was distant. So as I arrived, he's

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1 standing back by the gate. She's on her car. So as I
2 pulled up, we began to talk. He informed me everything
3 was okay. I left.

4 MR. ROUTZONG: Just a moment, Your Honor.

5 THE COURT: Sure.

6 MR. ROUTZONG: Please answer any questions that
7 Mr. Molony would have for you.

8 THE WITNESS: Okay.

9 CROSS-EXAMINATION

10 BY MR. MOLONY:

11 Q. Good afternoon, Ms. Martin. How are you?

12 A. I'm good. How are you?

13 Q. Good. I'm just curious. You stated that the
14 Defendant's, all of his stuff was at Jackie's house; is
15 that right?

16 A. Yes, sir.

17 Q. But you don't know Jackie, do you?

18 A. Not personally, no, but I've seen her several
19 times.

20 Q. Okay. But you've never seen her house?

21 A. I have.

22 Q. But you don't know her?

23 A. I never went inside her house.

24 Q. Okay. So you don't know for sure -- you told the
25 jury that his stuff was in the house but you didn't know

KIERRA MARTIN - CROSS BY MOLONY

1 for sure that his stuff was in the house; right?

2 A. I know for sure his stuff was in the house.

3 Q. Okay. So you can see through the house?

4 A. I can't see through the house, but he was driven to
5 the house with me in car. He went inside the house,
6 changed clothes, came back out and we left. That's -- I'm
7 under the impression that he's living there. He has
8 clothes there. He went in, changed from what he was
9 wearing to a new outfit and came back out. So he's living
10 there.

11 Q. Okay. So you helped him out a lot; didn't you?

12 A. Yeah, when I could. If I wasn't at work and if I
13 wasn't at school, of course.

14 Q. You love him?

15 A. Like a brother, yeah, of course.

16 Q. As a matter of fact, when he's been locked up he's
17 been calling you a bunch; hasn't he?

18 A. Yeah.

19 Q. And you've actually at his request called her;
20 haven't you?

21 A. Once, to my knowledge.

22 Q. So you're the middle man?

23 A. No, I'm no one's middle man.

24 Q. But you do what you can to help him?

25 A. Yeah, of course.

KIERRA MARTIN - CROSS BY MOLONY

- 1 Q. Now, the Defendant's brother, Darrell, is your
2 husband?
- 3 A. Yes. Not my husband, my boyfriend.
- 4 Q. Your boyfriend. I'm sorry.
- 5 A. Uh-huh.
- 6 Q. And where does he live?
- 7 A. We live together.
- 8 Q. Where do y'all live?
- 9 A. Crossroads Market in North Augusta.
- 10 Q. You say you bought a Green Dot prepaid card so that
11 the Defendant could pay the bills for Ms. Key?
- 12 A. Yes, sir; I did.
- 13 Q. Where was his mechanic job at?
- 14 A. I'm sorry?
- 15 Q. Where was he a mechanic at?
- 16 A. Where was he a mechanic? I've never been to a job.
- 17 Q. Just a couple more questions, Ms. Martin. You
18 weren't at Ms. Key's residence on December 16th, that
19 night, were you?
- 20 A. No, sir. I was not.
- 21 Q. So you didn't see the Defendant enter the house?
- 22 A. No, sir.
- 23 Q. You didn't see him bust in the side door?
- 24 A. No, sir.
- 25 Q. You didn't see the Defendant go and attack Stacey

1 Gantt?

2 A. No, sir.

3 Q. Jackie's guest?

4 A. No, sir.

5 Q. So, really you don't know anything about this
6 particular case, what happened the night of December 16th,
7 do you?

8 A. I was told only small details because I don't get
9 into people's personal lives.

10 Q. Yes, ma'am.

11 A. So I'm -- there's always two sides to every story.
12 So what I heard, you know, he went in and then it's pretty
13 much none of my business. But I've been there for him.

14 MR. MOLONY: Okay. Thank you. I don't have any
15 further questions.

16 THE COURT: Anything on redirect?

17 MR. ROUTZONG: No, sir.

18 THE COURT: Thank you for your testimony, ma'am.
19 You can step down.

20 THE WITNESS: Thank you.

21 THE COURT: You're free to leave or you're welcome
22 to remain with us.

23 THE WITNESS: Okay.

24 THE COURT: Anything further from the defense?

25 MR. ROUTZONG: Defense rests, Your Honor.

1 THE COURT: Any rebuttal case on behalf of the
2 State?

3 MR. MOLONY: No, sir, Your Honor.

4 THE COURT: Okay. All right. The evidentiary
5 record in this case is now closed.

6 Madam Forelady and ladies and gentlemen of the
7 jury, we're going to go ahead and take a recess for today.
8 And, I think if you can promptly be back here at, let's
9 say ten o'clock in the morning. And at that time we will,
10 the lawyers will make their closing arguments to you. The
11 Court will give you the final charge on the law. And then
12 when you are properly instructed, I will allow you to
13 begin your deliberations.

14 But you still can't start. Don't talk about this
15 case among yourselves. Don't talk about it with any of
16 your friends or family members that you come into contact
17 with this evening.

18 And we'll see you back at ten in the morning.
19 Okay? Have a good evening, everybody.

20 (Jury exits courtroom at 4:20 p.m.)

21 THE COURT: Any motions for the record from the
22 defense?

23 MR. ROUTZONG: Your Honor, the defense renews its
24 directed verdict motion, Your Honor.

25 THE COURT: Thank you very much. Denied.

1 Okay. We will work on the final charges. We do
2 have a request or a couple requests to charge from the
3 State. I think maybe the defense has an issue with part
4 of that charge that's underlined. I think maybe at least
5 you told my law clerk that.

6 MR. ROUTZONG: Yes, Your Honor. I haven't really
7 had a chance to digest it yet.

8 THE COURT: Okay. And we're not going to discuss
9 it -- we'll wait until in the morning. Let's regroup at
10 nine in the morning, give us ample time.

11 We'll have you a draft of a charge to look at and
12 we can get all of that put together and try to hopefully
13 get started back at ten in the morning. Okay?

14 We'll be in recess until ten in the morning.

15 MR. MOLONY: Thank you, Your Honor.

16 MR. ROUTZONG: Thank you, Judge.

17 END OF DAY'S PROCEEDINGS: 4:22 P.M.
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1 ON THURSDAY, MAY 21, 2014 AT 10:04 A.M.:

2 THE COURT: Okay. Let's go on the record in the
3 Frazier -- oh. We need to get Mr. Frazier out here.

4 (Defendant enters courtroom.)

5 THE COURT: Mr. Routzong, do you need a few minutes
6 with Mr. Frazier?

7 MR. ROUTZONG: I don't think so, Your Honor.

8 THE COURT: Okay.

9 MR. ROUTZONG: Are we good?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. We're on the record in the State
12 versus Frazier case. We're at the stage of the trial now
13 where closing arguments, final charge will be made.

14 I have provided to both sides a copy of the
15 proposed charge. Has the State had an opportunity to
16 review that?

17 MR. MOLONY: I have, Your Honor.

18 THE COURT: And do you have any objections or
19 additions or deletions?

20 MR. MOLONY: I do not, Judge.

21 THE COURT: And how about the defense, have you had
22 an opportunity to review the charge?

23 MR. ROUTZONG: Yes, sir.

24 THE COURT: And do you have any objections or
25 additions or deletions?

1 MR. ROUTZONG: No, sir.

2 THE COURT: All right. And the verdict form,
3 you've looked at the verdict form as well?

4 MR. MOLONY: Yes, sir, Your Honor.

5 THE COURT: Is that satisfactory?

6 MR. MOLONY: It is.

7 MR. ROUTZONG: Yes, sir.

8 THE COURT: Okay. Well, let's bring the -- are you
9 ready to make closing arguments? Got your thoughts
10 together and --

11 MR. MOLONY: As good as I can, Judge.

12 THE COURT: All right. Is the State going to close
13 in full or are you going to open on the law?

14 MR. MOLONY: We'll waive opening on the law, Your
15 Honor.

16 THE COURT: All right. Well, let's bring the jury
17 out, Mr. Whittle.

18 THE BAILIFF: Okay.

19 (Jury enters courtroom At 10:06 a.m.)

20 THE COURT: Let the record reflect the jury's back
21 in. Good morning, everybody.

22 THE JURY (COLLECTIVELY): Good morning.

23 THE COURT: We're at the stage of the trial where
24 the lawyers will make their closing arguments to you, and
25 then I will charge you on the law. After that then

1 you'll be specifically instructed by me to start your
2 deliberations.

3 So please give these fine attorneys your undivided
4 attention. Pay very close attention to what they have to
5 say.

6 Mr. Routzong?

7 MR. ROUTZONG: Thank you, Your Honor. Kevin.

8 Good morning.

9 THE JURY (COLLECTIVELY): Good morning.

10 MR. ROUTZONG: I'd like to draw your attention back
11 to what I mentioned to you the other day about the
12 presumption of innocence. You're going to hear more about
13 that from the Judge, but I want to just remind you what
14 that means again.

15 The State's case is wrong and the witnesses on
16 behalf of the State that are testifying against
17 Mr. Frazier are not being truthful, or maybe not
18 completely truthful.

19 And as you sit here right now that's what you have
20 to believe, because you took an oath to do that. That's
21 his right and you have to do that. As you're considering
22 all the evidence in the back, as you think about
23 Mr. Molony's closing argument and my closing argument,
24 that's your standpoint.

25 Let's go back to the relationship. We had

1 testimony about that. The testimony is that this was an
2 18-year off-and-on relationship. I think what we can
3 conclude from that is there were times when they would
4 fight, they'd get back together, they'd fight again, get
5 back together. And this is over an 18-year period of
6 time.

7 Now the stories kind of diverged a little bit, at
8 least the testimony diverges a little bit. Mr. Frazier
9 says he spent the night there on the 15th of December.
10 And Ms. Key said, no, he hadn't. She had put him out of
11 the house maybe more than a month before that.

12 But she also said a couple other things. And this
13 is the context of their relationship. She said he never
14 had his clothes there, he never lived there. He never
15 paid any bills. He never bought any food, he didn't live
16 there. He spent the night once in a while over this
17 18-year period of time that everybody agrees they had this
18 relationship.

19 Now, remember, the State's case is wrong. That's
20 your standpoint. So let's look at it from that
21 standpoint. And you're presuming that.

22 You heard from Ms. Kierra Martin. And she
23 testified to just a couple things. She said she became
24 aware that Mr. Frazier wanted her to help him get a Green
25 Dot card, put money on it so he could give it to Jackie so

1 she could pay some of her bills, or that some of her bills
2 could some way get paid. Did she say that actually
3 happened? I don't think she actually testified to that.

4 But if you presume that Mr. Frazier's innocent,
5 then maybe they're not quite telling the truth from that
6 standpoint. And considering her credibility as a witness,
7 the way she presented herself, what do you believe about
8 that?

9 And even more importantly, like I said, Ms. Key
10 said they never lived together. And yet Kierra said she
11 went with him to the house. And you remember Mr. Molony
12 said, he asked her, how do you know he lived there? Could
13 you see into the house with x-ray vision -- I don't think
14 think he said x-ray vision but I presume he meant x-ray
15 vision. She said no. I took him there. He had on one
16 set of clothes, he went in and came back out with a
17 different set of clothes. And she said, I can infer from
18 that that he lived there.

19 That's their relationship. If you look at that,
20 all the evidence right there concerning their
21 relationship, you have to ask yourself: Right now, is
22 Ms. Key being truthful about what she said was their
23 relationship? Eighteen years, no bills, no money, just
24 once in a while a sleep over. Does that sound truthful
25 when you look at all the things?

1 Mr. Frazier said he paid bills, you know, he lived
2 there up until the day before. So you got to bear in
3 mind that if that's not truthful, what does that say about
4 the rest of the story?

5 And let's go to the 16th. Let's be there on the
6 16th in this house. You got a couple different
7 perspectives. One perspective is Ms. Key's perspective.
8 She's in her house. They're listening to Christmas
9 music. I can -- I don't know if she has a fireplace but I
10 can see a fireplace in my mind's eye. They're all sitting
11 there drinking coffee spiked with eggnog or something
12 listening to Christmas music with this man she says she
13 doesn't know his last name that she met in a pub a couple
14 weeks before, whatever it was, three or four weeks. She's
15 known him a couple weeks. She's met him and
16 Ms. Washington is in there with her. And they're sitting
17 there contemplating Christmas music and they hear this
18 (makes knocking sound). And what happens then? What was
19 the testimony? Apparently nothing.

20 Nobody testified that they got up and looked to see
21 who was at the door. They just sat there apparently.
22 And they testified they heard (makes knocking sound). And
23 still nobody testified they went to the door. Who is
24 there? That's what I would do. I don't know about
25 anybody else but if I get a knock on the door, I go look

1 and see who it is. I might be cautious if it's a certain
2 time of night but at least I get up and go look and see
3 who it is. That's what I think normal people do in the
4 normal course of events. But there's no testimony that
5 any of them did that.

6 So let's stop right there and let's go for
7 Mr. Frazier's perspective. Mr. Frazier testified that he
8 considers this to be his home. That he lives there.

9 And he comes there and here's a truck that he
10 doesn't know who it belongs to. First thing he sees,
11 that's what he testified to. And he comes up to the house
12 and knocks on the door and there's no, no stirring in the
13 house. Nobody comes and sees who's there.

14 And he testified that, you know, in his experience
15 people will sometimes -- how did he put it? He says he
16 stays at his brother's house because people burglarize the
17 house. He stays there in the daytime. So that's the
18 neighborhood that he lives in in North Augusta. And so he
19 walks up there. Nobody's answering the door. And what
20 did he testify to? I don't know what's going on in here.

21 That's Jackie in there and he referred to her son
22 as her stepson -- as his stepson rather. And he knocks
23 again and still no answer.

24 What's going on? He says as he's at the threshold
25 of this door, he's wondering what's going on. Nobody's

1 coming to the door. Strange people in the house. What's
2 going on?

3 And what happens next? There's some divergence in
4 the story. So we need to stop right there at the door for
5 a minute and go back to Ms. Key's perspective and what she
6 testified to. In fact, all the witnesses testified to; a
7 door was kicked in violently. That's what they said
8 happened.

9 And Mr. Frazier said he pushed the door open.

10 Now jumping ahead a little bit, you know, the
11 police were called and they came. And, I know the police
12 investigated this case, apparently. I mean, they're
13 supposed to. And this violent crashing into the door,
14 wood splintering everywhere, I would expect damage the
15 wall. Maybe the doorknob hits the wall. I don't know,
16 I'd expect something. I'd expect particles of dust on the
17 floor. A lot of times as you can imagine when somebody
18 kicks in the door your common experience will tell you
19 that sometimes they leave a footprint or maybe there's a
20 dent on the door.

21 Well, I can look through all of these pictures that
22 have been entered into evidence, and there's nothing. You
23 mean to tell me this violent burglary first occurred and
24 the police didn't take pictures of all the wood chips and
25 the broken door and the broken deadlock? They didn't do

1 that? They didn't. So you can sit there and say, yeah,
2 this was a violent pushing in of the door. They didn't do
3 any of that?

4 That's breathtaking. If what they said is true,
5 that's breathtaking.

6 And remaining at the door for just a minute. We
7 heard from the landlord. And he said, well, he doesn't go
8 there. He said that the property's pretty well kept up so
9 he doesn't go there very often. He knew nothing about the
10 events of this night. He knew that the door was reported
11 to be broken. And he said, you know, I believe his
12 testimony was this is what it looks like after it's been
13 fixed. It makes me wonder what it looked like before.

14 Maybe there's no wood chips and violent destruction
15 of the door because this is what it looked like. And
16 they're just taking an opportunity to try to blame
17 Mr. Frazier to help bolster their case.

18 We'll leave the door. We'll go back to Ms. Key's
19 perspective from the door.

20 And here comes Mr. Frazier into the house. And
21 Ms. Washington testified, he's coming this way and (makes
22 noise) out the front door I go. I asked her, I said,
23 doesn't sound like you wasted any time. And you remember
24 what she said. She indicated she didn't waste any time
25 getting out the door, getting to her car. I think she

1 said she drove around the block.

2 No 9-1-1 call from her, by the way, with this
3 violent, gun-toting maniac that bursts through the back
4 door. No 9-1-1 call from Ms. Washington.

5 She did say she thought it was a nine millimeter.
6 And I asked, do you have a lot of firearms? And, how
7 would you know it was a nine millimeter? Well, she
8 doesn't have any firearms. I think she indicated some
9 familiarity but you got to put that into context, ladies
10 and gentlemen, of what her total testimony was. Here he
11 comes, out the door I go. And she's going to sit there
12 and tell me and you and everyone else it was a nine
13 millimeter. Wow.

14 Mr. Gantt. Mr. Gantt's testified that at some
15 point in time he got in a tussle or a wrestling match with
16 Mr. Frazier. And he got away. He was able to extricate
17 himself from this situation. He's going out to his car.
18 I'm going to get out of here. He couldn't get into his
19 car. He says he was pursued by Mr. Frazier. So he goes
20 down to another house.

21 This horrible potential slaughter that's getting
22 ready to happen in that house and he goes down and he
23 testified he met with these people and did nothing. Does
24 that sound credible? If you presume that they're not
25 being truthful if the State's case is wrong, does that

1 push you towards believing it or does that make you step
2 back and say, what? This thing is going on down here and
3 you don't even call 9-1-1. You don't ask them, can I --
4 everybody's got a cell phone practically. I bet there's a
5 house phone. Wouldn't you try?

6 Wouldn't that be the reasonable thing? Don't you
7 sit back now, ladies and gentlemen, after hearing his
8 testimony and just kind of wonder, is that truthful?
9 Because that's not how people would act if they're seeing
10 this horrible burglary first with a gun-toting maniac.
11 That doesn't make sense.

12 And you heard the 9-1-1 call. It was Ms. Key's
13 son. You know the thing that's bad about that? I only
14 wish that he had been here so I could ask him some
15 questions. I wish he was here as a witness, but he
16 wasn't. He wasn't subjected to cross-examination so I
17 could truly dig into what he actually saw. I can't say,
18 and neither you can nor the State say he was telling
19 things that he actually saw. You heard that he sounded a
20 little bit slow.

21 I could have asked him, if he was subject to cross-
22 examination, did somebody tell that you some of these
23 things were going on?

24 We do know that somebody was throwing a fit in the
25 background. That somebody was Mr. Frazier. You can hear

1 his voice. Somebody back there yelling.

2 But ask yourself, ladies and gentlemen, in your
3 experience, does that sound like something that's
4 happening during a burglary? Is that your picture in your
5 mind of what happens during a burglary? Or would that
6 more correspond to your picture of what would be going on
7 if a man comes home and finds his girlfriend or spouse
8 with somebody else? And you actually care about that
9 person, you actually love that person.

10 Does that sound more like that or does it sound
11 like your burglary where someone's kicking in the door or
12 somebody's running in the house? What does it sound
13 like? Maybe it sounds like both, but it also sounds like
14 somebody who's throwing a fit because they found somebody
15 that they care about with another man.

16 And if you can't sit here and come to a decision
17 about which of those it is, that's reasonable doubt.
18 There's no guessing here. You have to be firmly
19 convinced which one of those circumstances it is. You
20 have to.

21 Let's see what Mr. Frazier testified to. He said
22 he came to the door and he immediately walked up to
23 Ms. Key. And he said, I believe he testified that
24 gentleman was seated.

25 Now if the State wants to come to you and allege

1 that his intent to commit a crime when he entered the
2 dwelling was to beat him up, wouldn't that have been the
3 first thing he did? Wouldn't that be the reasonable
4 assumption? Remember, they're wrong. That's what you
5 have to presume, that they're wrong.

6 Now, what did Mr. Frazier testify to? I asked him
7 specifically, did you have consent to be in the house? He
8 felt he did. That was his testimony. What was your
9 intent when you walked in and entered that dwelling? He
10 said, my intent was to find out what was going on.

11 Ladies and gentlemen, if you believe that, you must
12 find him not guilty of burglary because he has to enter
13 into that dwelling with that intent. It can't be formed
14 afterwards. If you go back there and say to yourself
15 well, geez, something happened here. And there was a
16 fight. Although Mr. Frazier did testify that Mr. Gantt
17 swung at him first, I believe is how he put it, or made
18 the first move or however you want to frame that. That's
19 what Mr. Frazier's testimony is. Even if that's not true,
20 even if Mr. Gantt didn't start the fight, if Mr. Frazier
21 did not have any intent when he entered that dwelling he's
22 not guilty and you have to find him not guilty.

23 You can't go back there and just say, well,
24 something happened, he must be guilty of something. No.
25 These are very specific elements that you have to find and

1 consider. If you don't do that you've broken your oath
2 and his rights have been infringed.

3 At some point Mr. Frazier leaves. Police come.
4 Mr. Frazier testified, I believe, that he wasn't aware
5 that the police had actually been called.

6 We do know that this happened on the 16th. There's
7 no pictures from the police investigation. There wasn't a
8 police officer here for me to ask anything. You know, I
9 could have said, did you find any crumbs on the floor or
10 something? We didn't have a police officer either, by the
11 way.

12 But anyway, the next day on the 17th, everybody
13 agrees that would know, Ms. Key brought herself to that
14 gun-toting maniac's brother's house and talked to him.

15 Ladies and gentlemen, that also is breathtaking.
16 She testified how scared she was. This is horrible. The
17 State elicited that testimony.. You could picture it in
18 your mind, the horror. I mean, it's -- a slaughter is
19 almost getting ready to commence.. It's so terrible and
20 the next day without anybody, no police escort or nothing,
21 she testified that she goes and sees him.

22 Does that sound more like this 20- or this 18-year
23 relationship where they're, one day they're like this and
24 one day they're like that? Does that sound more like
25 that? Does that sound like what somebody would do who is

1 that frightened? And maybe even most unbelievable is she
2 testified that she called the police. Now, there was
3 testimony from Mr. Frazier that his brother's house is
4 about three minutes away from North Augusta Police
5 Department.

6 Burglary first. Gun. Scared. And she's calling
7 the police. And as luck would have it that day, the
8 police just didn't come. If you believe that, ladies and
9 gentlemen, I don't know what to say because I don't
10 believe it. I don't think any of you should believe
11 that. And if she's not telling the truth about that, what
12 else isn't she telling the truth about? Issues of
13 consent, whether he lived there; can you believe her about
14 anything?

15 Remember you have to presume that you can't believe
16 it.

17 Ms. Martin testified, I saw Ms. Key there. She
18 had -- she was drinking something and I remember when I
19 talked to her, I said, please tell me she was drinking a
20 beer. And she wouldn't do it. She couldn't do it. She
21 said, I don't know what she was drinking. I just know
22 that Mr. Frazier was sitting far away. And the word she
23 used was 'distant'. He wasn't really talking to her. He
24 wasn't ready to reconcile with her, apparently.

25 And by his testimony he said that. He said she

1 came there to try to be reconciled. Does that sound like
2 this 18-year relationship that's off and on?

3 She said she didn't have a beer. I can't say that
4 she had a beer or not. I can only say that Kierra Martin
5 said and Mr. Frazier said she was drinking something.
6 Kierra said she was drinking something. Mr. Frazier said
7 it was a beer that one of his relatives got for her and
8 there she sits.

9 Ladies and gentlemen, is that what you would do if
10 you were the victim of first degree burglary with guns
11 being waved, everybody scared to death? Standing outside
12 the car, the testimony was, leaned up against the car
13 drinking something with no police being called? I don't
14 believe that for a minute. There's no evidence the police
15 were called other than her saying it. And that's not
16 believable because they would have been there if they were
17 called. You know that.

18 Just to sum up this case, ladies and gentlemen.
19 And maybe by way of example, just focusing on these two
20 elements of burglary that the State has to prove beyond a
21 reasonable doubt. I don't have to prove anything. They
22 do. Just focus on two elements: Did he have consent to
23 enter the dwelling; did he have any intent when he entered
24 the dwelling to commit a crime.

25 Focusing on those two elements. By way of example,

1 I was thinking about this on the way to work this morning.

2 Let's suppose, and I do I have two elderly people that
3 are neighbors in the house next door. If I see or
4 suspect something's wrong in there, let's say smoke's
5 coming out of a window. I don't see them standing outside
6 the house. Something could be wrong.

7 If I bust down the front door and go in to try to
8 see if they're injured, passed out or something because
9 there's something going on, something's wrong, I don't
10 know what, do I have -- have I committed a burglary? I
11 didn't have specific consent to come in their house.
12 Nobody said, come in my house, extricate me from the fire.
13 Do I need that? Or as a human being do I act?

14 That's a question you need to ask yourselves when
15 you go back there because that's basically what he said he
16 did. Whether you believe he got put out of the house or
17 not, that's what he said, he testified to. He wanted to
18 know what was going on. He suspected something was wrong.
19 And you should consider that.

20 And focusing in on the intent to commit a crime, if
21 you believe him and he's only going in the house to find
22 out if something's wrong, even if something wrong happened
23 later, let's suppose he's guilty of assault and battery.
24 Let's suppose Mr. Gantt didn't attack him first. That's
25 not burglary because it's not an intent to commit a crime

1 when he entered.

2 Ladies and gentlemen, I guess that pretty much
3 concludes my remarks. I just want to leave you with this
4 final thought.

5 Mr. Molony mentioned a Missouri game and the
6 Carolina game and how he attended. And a couple things
7 strike me about that. When you listen to the evidence,
8 if you really wanted to analogize that game and his
9 actions, what he said that -- what he did at that game,
10 you'd have to say that it was more like Carolina won and
11 then he's up in the nosebleed section, he jumped out of
12 the stadium, he fell 200 feet he was so happy. Because
13 that's a little bit like being accused on the 16th and
14 going to see Mr. Frazier on the 17th because they don't go
15 together. If he's happy he stays in the stadium and
16 celebrates. He doesn't jump out.

17 And the other thing is, this isn't a game. This
18 is a man's life and you have an important duty to do.

19 And I appreciate you listening.

20 THE COURT: Thank you, Mr. Routzong.

21 Solicitor, are you ready?

22 MR. MOLONY: Yes, Your Honor. Thank you. May it
23 please the Court. Mr. Routzong. Mr. Hayes. Ladies and
24 gentlemen of the jury. Good morning.

25 THE JURY (COLLECTIVELY): Good morning.

1 MR. MOLONY: I promise I won't be up here all
2 morning. I do have to address a couple things you just
3 heard.

4 I'm not getting into the football thing anymore. I
5 think what it comes down to is what did the Defendant
6 say. Mr. Routzong is doing his job as a defense attorney
7 which is to come up here and try to get you to look
8 everywhere but what the testimony showed and the evidence
9 proves, which is your job as the finders of the fact to
10 use these, weigh the credibility of the individuals, the
11 believability of these witnesses, to determine what
12 happened.

13 The Judge ain't going to tell you that you must
14 presume the State's witnesses are lying. That is, you're
15 supposed to come in with an open mind, which you've all
16 done, and use your common sense and weigh the testimony
17 with the evidence.

18 Now the Defendant got up and testified. The
19 Defendant's story is that he lived in that house. He had
20 been there for two years, he says. That during the
21 daytime he has to babysit his brother's house in North
22 Augusta because of the crime there is so bad.

23 So he's playing detective there but then at night
24 he goes to Jackie's house. He's also got this mechanic
25 job during the day. I guess he works out with his

1 babysitting the brother's house in North Augusta that his
2 sister-in-law who got up here and testified for him said
3 she had never heard of him working a mechanic job, but so
4 he's watching his house. He also says that on the 16th
5 he's riding by the house and sees a car he doesn't
6 recognize and decides, I'm going to protect my family. So
7 he's protecting them now.

8 So he pulls in, and he knocks on the door. Nobody
9 comes to the door. So he goes and looks in the window and
10 he sees a man he never recognized before, Stacey Gantt,
11 and he then knocks on the window. Stacey Gantt, nobody
12 gets up, nobody comes and lets him in. We all agree with
13 that.

14 So then he goes to the side door and he knocks on
15 the side door. And the side door miraculously opens and
16 he walks in and has a pleasant conversation with Jackie
17 asking her, "What are you doing, baby? Said he doesn't
18 call her Jackie, he calls her baby. "What are you doing,
19 baby?" She doesn't say a word to him, he said. She just
20 looks at him. And at that time Stacey Gantt jumps up and
21 tries to fight with him.

22 So he does what anybody would do. He fights back,
23 And he says -- and that time is when he's angry and upset
24 the word he used was 'pissed off'. You saw Stacey walk up
25 here. You saw the Defendant walk up here. But he's not

1 mad or upset until Stacey tries to fight him.

2 And then the next day on the 17th and she comes to
3 try to see him. He wants to go live in the woods and on
4 the streets because he hates her. Then he writes her the
5 love letter from the jail because then he loves her.
6 That's a lot to take in. That's over here.

7 Your job -- and this why it's the best system in
8 the world is because you get to use your common sense to
9 come in here and determine what happened.

10 What's the evidence show? The evidence shows -- it
11 all comes back to these couple of minutes on that night.
12 Burglary first degree. He agrees he entered the residence
13 that night. The only discrepancy he says is that it's
14 his residence too. All right.

15 The lease agreement is Jackie's -- it's not
16 Jackie's, it's Ricky Brown's house. Ricky rents it to
17 Jackie. I don't doubt that the Defendant had been there
18 before. She told you they had had a prior relationship.

19 For some reason some men think that you have a
20 prior relationship with a woman you own her forever.
21 She's your property. You won't hear that charge from the
22 Judge. She said it had been a month or so since he last
23 been there. She said, yeah, we've been together. I've
24 known him for 18 years. We used to talk. But at the
25 time, there was nothing going on.

1 The landlord, Ricky Brown, said, I've never heard
2 of the man. I'd never seen him. I've never seen that guy
3 in my life. I've been the landlord for her for two years
4 and the man that's there every night, he's never seen or
5 heard of in his life.

6 Again he admits though he goes in the house.
7 Now -- without consent. Now, when you get to go back and
8 discuss this consent, Mr. Routzong told you in the
9 beginning this case is about consent. Knocking on the
10 door, nobody comes to the door. That's what he says.
11 Knocking on window, nobody comes to the door. Goes to the
12 side door, and -- in this picture -- this was fixed the
13 next day. From the testimony, Ricky Brown said, I went
14 and fixed this the next day. I was there that night
15 though. This door was shattered to pieces. The lock on
16 the door was actually dead bolted. When he kicks the door
17 open and shatters it. You can see where he tries to fix
18 the frame where it rips the drywall off the wall. He told
19 you the door just slides open.

20 You get to use your common sense, ladies and
21 gentlemen.

22 That's not what happened. This isn't a consensual
23 entry into this house. I got -- if Jackie wanted him in,
24 get up and open the door.

25 Listen to the 9-1-1 call. Listen. That's when --

1 that's what was happening at that time. You hear the
2 Defendant's voice. Mr. Routzong says, listen to his
3 voice. Is that the pleasant conversation with Jackie that
4 he says he's having, or is it exactly like everybody else
5 says?

6 They're all scared to death. Nobody opens the
7 door. The boy's hiding in the bathroom. He's having a
8 hard time trying to get out what he's wanting to tell
9 them, where he's at. He says in there -- he's dyslexic --
10 he's sorry, but come help us, the guy's going crazy, he's
11 got a gun, he's threatening to kill everybody.

12 There's no consent.

13 With the intent to commit a crime. The Judge is
14 going to tell you, with the intent to commit a crime, the
15 Defendant must have the intent to commit a crime when he
16 enters the house. But he'll also tell you the State
17 doesn't have to prove to you exactly what's in a guy's
18 mind. There's no way for us to do that. It's not
19 possible. You're able to infer by the actions and the
20 conduct of the Defendant what his intent was when he
21 kicked in this door. That's -- y'all get to do that. You
22 get to infer things by looking at the actions and the
23 conduct of the Defendant.

24 Now, the Defendant admits that he sees a car he
25 doesn't like in the driveway. He pulls in. He bangs on

1 the door. Nobody's coming to the door. He kicks open
2 the door with a pistol in his hand.

3 Now, there are -- these phones, I know they got a
4 ton of different apps, all kind of things you can do on
5 them. I've never seen one where you can hit a button and
6 it turned into a pistol. Everybody in the house says he's
7 got a pistol. Please come help us. Jackie too, that day
8 and on this witness stand. Lashanda, Stacey, the boy in
9 the bathroom; he's got a pistol, come help us.

10 You are the deciders of the facts. You get to
11 decide exactly what happened based on this. Based on the
12 evidence, not based on something that -- you know, we've
13 all come in to trial, to court with things that have
14 happened in the past. And your job is to use what we've
15 got here, and what you've heard, and your common sense.

16 Now, the Defendant is presumed to be innocent until
17 the State proves him guilty beyond a reasonable doubt.

18 Breaking and entering. The entering of a residence
19 of another without consent with the intent to commit a
20 crime.

21 If the Defendant went to her house that night with
22 no intent to commit a crime and it was consensual, he had
23 been there two years, (gesturing with a key), he'd have
24 opened the door like everybody else does. He bangs on
25 every door in the house and he kicks it off the hinges.

1 That's the evidence in the case, ladies and
2 gentlemen.

3 Credibility of witnesses. Who has something to
4 lose, who doesn't? Who has something to gain, who
5 doesn't?

6 That's, the Judge will tell you, your job. The
7 believability of witnesses. You decide who sat right
8 here and told you what happened, and who sat right here
9 and told you things that defy the law of physics. The
10 door doesn't slide open and look like this. Either Ricky
11 Brown's a liar along with everybody else in that house or
12 the Defendant's guilty of breaking into that house without
13 consent with a pistol and assaulting Stacey Gantt. The
14 first thing he does when he breaks in the house is he
15 finds that man he doesn't know who he is.

16 Jackie's not his. She's not his. If he's upset
17 that's one thing. Be upset. That would be
18 understandable. I don't know, really. You can't do
19 this.

20 The law of burglary is here for this reason, ladies
21 and gentlemen. We have this law so that people can feel
22 safe in their home, so kids can feel safe in their homes,
23 so families can feel safe in their home from actions like
24 this guy.

25 This isn't the wild, wild west. This is Aiken

1 County and you can't do that.

2 Now the Judge is going to tell you the law. He'll
3 charge you. If anything I've said with these elements and
4 with the intent, listen to what the Judge says. But at
5 the end of this thing you're about to be able to take all
6 these exhibits and pictures, listen to these 9-1-1 calls
7 that happened that day. You 12 get to come together as
8 one and make a decision based on the evidence and based
9 using your common sense.

10 And at the end of this thing, the State's convinced
11 you'll come back with the only verdict that this evidence
12 and the testimony shows, and that justice in this case
13 require, and that is that the Defendant's guilty of
14 burglary first, possessing that pistol during the burglary
15 first, and assaulting Stacey Gantt.

16 Thank you all.

17 THE COURT: Thank you, solicitor.

18 We're going to take about a 10-minute break before
19 the Court gives you the final charge. So, Madam Forelady,
20 and ladies and gentlemen of the jury, if you'll take a
21 short break to the jury room.

22 I caution you and remind you still, don't start
23 your deliberations yet. We'll get you back out shortly.

24 (Jury exits courtroom at 10:49 a.m.)

25 THE COURT: We'll be in recess for about 10

1 minutes.

2 (Break taken. At 11:02 a.m., the trial resumed:)

3 THE COURT: Let's bring the jury out, please.

4 THE BAILIFF: Okay.

5 (Jury enters courtroom at 11:02 a.m.)

6 THE COURT: Let the record reflect the jury's back
7 in.

8 JUDGE'S CHARGE TO THE JURY

9 Madam Forelady and ladies and gentlemen of the
10 jury, I now will charge you the law applicable to this
11 case. You must consider the charge as a whole and not
12 focus on some portions to the exclusion of other portions.

13 These three indictments charge the Defendant with
14 three criminal offenses; one, burglary in first degree;
15 secondly, possession of a weapon during the commission of
16 a violent crime; and, third, assault and battery third
17 degree.

18 I remind you, once again, the fact that the
19 Defendant was arrested, charged, and indicted in this case
20 is not evidence in this case and not -- and cannot be
21 considered by you as evidence of guilt in this case, nor
22 does it create any presumption or inference of guilt.

23 These documents are simply the formal written
24 instruments which contains the charges made against the
25 Defendant. These are the formal documents by which this

1 case is brought into court.

2 The indictments in this case allege several
3 different offenses against the Defendant. The charges
4 are, in Indictment 2014-GS-02-358, possession of a weapon
5 during the commission of a violent crime; Indictment 359,
6 burglary in the first degree; and Indictment 360, assault
7 and battery in the third degree.

8 Each indictment charges a separate and distinct
9 offense. You must decide each indictment separately on
10 the evidence and the law applicable to it, uninfluenced by
11 your decision as to any other indictment. And there's
12 one little caveat with that which I'll explain to you in
13 just a little bit.

14 The Defendant may be convicted or acquitted on any
15 or all of the offenses charged. You'll be asked to write
16 a separate verdict of guilty or not guilty for each
17 indictment. And again, there's one little explanation
18 there and I'll get to that in just a little bit and
19 explain that to you.

20 I remind, Madam Forelady and ladies and gentlemen
21 of the jury, that during this trial you and I have had
22 certain duties and responsibilities to perform. As the
23 Trial Judge it is my responsibility to preside over the
24 trial of this case. I've also had the duty to rule on the
25 admissibility of the evidence offered during the trial.

1 You are to consider only the competent evidence before
2 you. If there was any testimony ordered stricken from the
3 record in this case during this trial, I don't believe
4 that there was but if there was, you must disregard that
5 testimony.

6 You are to consider only the testimony which has
7 been presented from the witness stand, any exhibits which
8 have been made a part of the record in this case, and any
9 stipulations of counsel.

10 I have the additional duty to charge you the law
11 applicable to this case. As the Presiding Judge, I'm the
12 sole judge of the law of this case. And it's your duty
13 as jurors to accept and apply the law as I now state it to
14 you.

15 As I told you at the beginning of this case
16 yesterday, if you already had any idea as to what the law
17 is or what the law ought to be and it does not agree with
18 what I tell you during this final charge, you must abandon
19 your idea because you are sworn to accept the law and
20 apply the law exactly as I state it to you.

21 In every case tried in this court before a jury,
22 the jury becomes the sole and exclusive judge of the facts
23 in a case.

24 A trial judge cannot state, cannot intimate, cannot
25 comment on, or make any statement to a trial jury about

1 the facts in a case. Since you, the jury, are the sole
2 judge of the facts in this case, you're not to infer from
3 what I have said during the progress of this trial, in
4 ruling upon the admissibility of evidence or otherwise, or
5 anything that I say now during the course of this
6 instruction to you that I have any opinion about the facts
7 in this case. I do not have an opinion about the facts in
8 this case. The law doesn't allow me to have an opinion
9 about the facts in this case.

10 This is a matter solely for you, the jury, to
11 determine. As jurors it is your duty to determine the
12 effect, value, weight, and truth of the evidence presented
13 during this trial.

14 Madam Forelady and ladies and gentlemen of the
15 jury, as you're aware, the Defendant has pled not guilty
16 to the three indictments. Consequently that plea of not
17 guilty puts the burden on the State to prove the Defendant
18 guilty. A person charged with committing a criminal
19 offense in South Carolina is never required to prove
20 himself or herself innocent.

21 I charge you that it is an important rule of law
22 that the defendant in a criminal trial, no matter how
23 serious the charge or charges may be, will always be
24 presumed to be innocent of the crime for which the
25 indictment was issued unless guilt has been proven by

1 evidence satisfying you of that guilt beyond a reasonable
2 doubt.

3 This presumption of innocence does not end when you
4 begin your deliberations but it accompanies the Defendant
5 throughout the trial, throughout your deliberations,
6 unless you reach a verdict of guilt based upon evidence
7 satisfying you of that guilt beyond a reasonable doubt.

8 This presumption of innocence is like a robe of
9 righteousness placed about the shoulders of the Defendant
10 which remains with the Defendant unless it has been
11 stripped from the Defendant by evidence satisfying you of
12 the Defendant's guilt beyond a reasonable doubt.

13 Now this presumption of innocence is not mere legal
14 theory. It's not just a legal phrase that we use. It is
15 a substantial right to which every defendant is entitled
16 unless you, the jury, are satisfied from the evidence of
17 the Defendant's guilt beyond a reasonable doubt.

18 Once again, the State has the burden of proving the
19 Defendant guilty beyond a reasonable doubt.

20 Some of you may have served as jurors in civil
21 cases where you were told that it is only necessary to
22 prove that a fact is more likely true than not true, such
23 as by the greater weight or the preponderance of the
24 evidence. However, in criminal cases, the State's proof
25 must be more powerful than that. It must be beyond a

1 reasonable doubt.

2 Proof beyond a reasonable doubt is proof that
3 leaves you firmly convinced of the Defendant's guilt.
4 Now, there are very few things in this world that we know
5 with absolute certainty. And in criminal cases, the law
6 does not require proof that overcomes every possible
7 doubt. If, based on your consideration of the evidence,
8 you are firmly convinced that the Defendant is guilty of
9 each of the crimes charged, then you must find the
10 Defendant guilty.

11 However, on the other hand, if you think there's a
12 real possibility that the Defendant is not guilty, you
13 must give the Defendant the benefit of the doubt and find
14 him not guilty.

15 Now, Madam Forelady and ladies and gentlemen of the
16 jury, there are two types of evidence which are generally
17 presented during a trial; that being direct evidence, and
18 that being circumstantial evidence.

19 Direct evidence directly proves the existence of a
20 fact and does not require a deduction. However,
21 circumstantial evidence is proof of a chain of facts and
22 circumstances indicating the existence of a fact. Crimes
23 may be proven by circumstantial evidence.

24 The law makes no distinction between the weight or
25 value to be given to either direct or circumstantial

1 evidence. However, to the extent the State relies on
2 circumstantial evidence, all of the circumstances must be
3 consistent with each other. And, when taken together,
4 point conclusively to the guilt of the accused beyond a
5 reasonable doubt. If these circumstances merely portray
6 the Defendant's behavior as suspicious, the proof has
7 failed.

8 The State has the burden of proving the Defendant
9 guilty beyond a reasonable doubt. This burden rests with
10 the State regardless of whether the State relies on direct
11 evidence, circumstantial evidence or some combination of
12 the two.

13 Necessarily you must determine the credibility of
14 witnesses who have testified in this case. Credibility
15 simply means believability.

16 It becomes your duty as jurors to analyze and to
17 evaluate the evidence and determine which evidence
18 convinces you of its truth. In determining the
19 believability of witnesses who have testified in this
20 case, you may believe one witness over several witnesses,
21 or several witnesses over one witness. You may believe a
22 part of the testimony of a witness and reject the
23 remaining part of the testimony of that very same
24 witness. You may believe the testimony of a witness in
25 its entirety or reject the testimony of a witness in its

1 entirety.

2 You may consider whether any witness has exhibited
3 to you any interest, bias, prejudice or other motive in
4 this case. You may also consider, if you choose to, the
5 appearance and manner of a witness while on the witness
6 stand.

7 Now the Defendant has been charged with first
8 degree burglary. That's found in Section 16-11-311 of
9 our Code of Laws. The State must first prove beyond a
10 reasonable doubt that the Defendant entered a dwelling
11 without consent.

12 A dwelling is defined as any building or portion of
13 a building in which a person ordinarily sleeps. A
14 building constructed as a dwelling that has never been
15 occupied cannot be considered a dwelling for purposes of
16 burglary, but a building is a dwelling even if the
17 residents are temporarily absent from that building.

18 In order to prove that the Defendant entered the
19 dwelling, the State does not have to show that the
20 Defendant's entire body entered the dwelling. The
21 smallest entry is sufficient. It may be any part of the
22 body such as a hand or foot, or even an instrument such as
23 a hook or other instrument. In addition, the State does
24 not have to prove that force was used to gain entry.

25 If a person enters a building by using deception,

1 artifice, trick or misrepresentation to get consent to
2 enter, this is an entry without consent.

3 Next, the State must prove beyond a reasonable
4 doubt that the Defendant entered the dwelling without the
5 right to lawfully possess the dwelling himself. The
6 proper test for determining whether a Defendant's interest
7 in a dwelling precludes a burglary conviction is whether,
8 under the totality of the circumstances, a burglary
9 defendant had custody and control of and the right and
10 expectation to be safe and secure in the dwelling
11 burglarized. If so, he is a person in lawful possession
12 and cannot be convicted of burglary. But if not, then you
13 must then determine beyond a reasonable doubt whether the
14 alleged victim had this interest and whether the Defendant
15 invaded it.

16 Next, the State must prove beyond a reasonable
17 doubt that the Defendant intended to commit a crime,
18 either a felony or a misdemeanor, at the time of entry.
19 The mere entry into a dwelling without consent is not
20 burglary. If the intent to commit a crime is formed after
21 the entry, it is not burglary. On the other hand, if the
22 Defendant intended to commit a crime at the time of the
23 entry, it is a burglary even if the intent was abandoned
24 after the entry. It does not matter that the intended
25 crime was not completed.

1 Intent may be shown by acts and conduct of the
2 Defendant and other circumstances from which you may
3 naturally and reasonably infer intent.

4 Finally, the State must prove beyond a reasonable
5 doubt that the Defendant entered or remained in the
6 dwelling in the nighttime. Nighttime is the period
7 between sunset and sunrise during which there is not
8 enough daylight to recognize a person's face except by
9 artificial light or moonlight.

10 Let me explain to you intent. In order to
11 establish criminal liability, criminal intent is
12 required. For example, the mental state required to be
13 proven by the State for a particular crime might be
14 purpose, intent, knowledge, recklessness or criminal
15 negligence.

16 Criminal intent must be proven by the State beyond
17 a reasonable doubt. Criminal intent is always a matter
18 that must be determined by the jury from the circumstances
19 surrounding the situation. There's no way to prove
20 intent to a mathematical certainty. There's no way
21 medical science can dissect a person's brain and determine
22 what the person had in mind. So the law says that
23 criminal intent may be inferred from the circumstances
24 shown to have existed.

25 This is how you make a determination of whether or

1 not the element requiring intent was present. It is not
2 necessary to establish intent by direct and positive
3 evidence, but intent may be established by inference in
4 the same way as any other act, by taking into
5 consideration the acts of the parties and all the facts
6 and circumstances of the case.

7 Criminal intent is a mental state, a conscious
8 wrongdoing. It is up to you to determine what the
9 Defendant intended to do based on the circumstances shown
10 to have existed.

11 Criminal intent can arise from action or a failure
12 to act. It may arise from negligence, recklessness, or
13 an indifference to duty, or to consequences that is
14 considered by the law to be the equivalent of criminal
15 intent.

16 Now, the second indicted offense is possession of a
17 weapon during the commission of or attempt to commit a
18 violent crime. That's found in Section 16-23-490 of our
19 Code of Laws.

20 The Defendant is charged with possession of a
21 weapon during the commission of or attempt to commit a
22 violent crime. The State must prove beyond a reasonable
23 doubt that the Defendant was in possession of a firearm or
24 visibly displayed what appeared to be a firearm during the
25 commission of a violent crime.

1 Now a firearm has been defined and means any
2 machine gun, automatic rifle, revolver, pistol, or any
3 weapon which will and is designed to, or may be readily
4 converted to expel a projectile.

5 In order to find the Defendant guilty of possession
6 of a weapon during the commission of a violent crime, you
7 must first -- and this is my explanation that I mentioned
8 to you at the outset of my final charge -- you must first
9 find the Defendant guilty of either committing a violent
10 crime or attempting to commit a violent crime such as the
11 burglary first degree. That is considered a violent
12 crime.

13 If you were to find the Defendant not guilty of the
14 burglary first degree, then there's no violent crime to
15 have been committed for the possession of a weapon to come
16 into play. And I'm going to touch on that one more time
17 at the end when I explain to you the verdict form.

18 The State must prove beyond a reasonable doubt that
19 the weapon further advanced or helped in the commission of
20 a crime. If you find that the State failed to prove to
21 you beyond a reasonable doubt that the Defendant committed
22 the crime of burglary first degree, then the Defendant
23 cannot be found guilty of possession of a weapon during
24 the commission of a violent crime.

25 The third indicted offense is assault and battery

1 third degree. And that's found in Section 16-3-600
2 Subsection E in our Code of Laws. A person commits the
3 offense of assault and battery in the third degree if the
4 person unlawfully injures another person, or offers or
5 attempts to injure another person with the present ability
6 to do so.

7 Now you have heard evidence from the witness stand
8 that the Defendant had been convicted of a crime or crimes
9 other than the one for which the Defendant is now on
10 trial. This evidence may be considered by you, if you
11 conclude it is true, only in deciding whether the
12 Defendant's testimony is believable and for no other
13 purpose. You cannot consider his prior convictions and
14 his prior record as any evidence concerning the
15 Defendant's guilt of the charges that we are here for
16 today.

17 Now, Madam Forelady and ladies and gentlemen of the
18 jury, your verdict must be unanimous on each of the
19 charges. And when you reach a verdict you are to notify
20 the bailiffs, they'll explain to you exactly how that is
21 done, so we can bring you back in to receive your verdict.

22 Now, I'm going to come down and explain to you the
23 verdict form. The top part is just the identifying
24 information; the name of the case, the name of the
25 Defendant, the indictment numbers, and it says 'verdict

1 form'.

2 The first question, Madam Forelady, that you will
3 need to have answered unanimously by the entire jury as to
4 the indictment concerning burglary first degree. We, the
5 Jury, find the Defendant guilty or not guilty.

6 Now the order that we place guilty and not guilty
7 is of no significance. We just have to place one before
8 the other. Okay?

9 Now your instruction is if the verdict is guilty as
10 a burglary first degree, then you go to number two.
11 Okay? But if you were to find the Defendant not guilty as
12 to burglary first degree as I explained to you, then
13 there's no violent crime that was committed in order to
14 look at number two, then you'd directly go to number
15 three, assault and battery in the third degree. Okay?

16 So once again, you determine burglary first degree,
17 guilty or not guilty. If you unanimously find him guilty
18 then you can go to number two to determine whether he's
19 guilty or not guilty as to the possession of a weapon
20 during the commission of a violent crime.

21 Again, if you were to find him not guilty, then you
22 go to number three. Okay? You will mark those questions,
23 there's a place for you to sign and it has already been
24 dated for you.

25 Now, I'm going to send you back to your jury room.

1 And, again, you cannot start your deliberations. I need
2 to talk with the lawyers to make sure that my final charge
3 has been correct.

4 Once the -- and if it has been, then the bailiffs
5 will bring to you all of the exhibits, the verdict form,
6 and the indictments. Two things will happen when that is
7 done. One, Mr. Williams, you're the alternate. You will
8 need to come back out here because you would not be a part
9 of the deliberations. And then the second thing to
10 happen, you will start your deliberations. Okay?

11 So go back to your jury room. Don't start
12 deliberations yet and if you're not brought back out for
13 any further instructions, then when the exhibits,
14 paperwork, verdict form are brought to you, Mr. Williams
15 you come back out with us and you start your
16 deliberations. Okay?

17 Back to your jury room.

18 FORELADY OF THE JURY: Does everybody sign that
19 paper?

20 THE COURT: No. Just you.

21 (Jury exits courtroom at 11:23 a.m.)

22 THE COURT: Any objections or exceptions from the
23 State as to the Court's final charge?

24 MR. MOLONY: None from the State, Your Honor.

25 THE COURT: And from the defense?

1 MR. ROUTZONG: No, sir.

2 THE COURT: Thank you very much.

3 (Off-the-record discussion. Attorneys review
4 exhibits.)

5 THE COURT: Good?

6 MR. MOLONY: Yes, sir. Thank you.

7 MR. ROUTZONG: Yes, sir.

8 THE COURT: Mr. Whittle, you can tell them they can
9 start.

10 (Deliberations commence at 11:24 a.m. At
11 11:29 a.m., the trial continued:)

12 THE COURT: We're back on the record.

13 The jury indicated that they want to listen to the
14 9-1-1 CDs. The Court gave them two options. One, the
15 solicitor's office has a laptop available for their use.
16 It can go back in the jury room. Or, they can come back
17 out in the courtroom and have it played as it was during
18 the course of the case.

19 The jury has elected the first option, to utilize
20 the solicitor's laptop to play it.

21 Does the defense have any objection for the
22 solicitor's laptop to be used in order to accomplish
23 that?

24 MR. ROUTZONG: No, sir.

25 THE COURT: All right. So, they'll take the

1 laptop. And are you going to get it powered up for them?

2 MR. GRIMES: Your Honor, just for the record, this
3 laptop has a secure format for juries that they won't be
4 able to access the Internet or anything of that nature.

5 THE COURT: I figured something in place to
6 prohibit that. Okay, good.

7 (Thereafter, other matters were heard by the
8 Court.)

9 (At 11:41 a.m., the trial continued:)

10 (Court's Exhibit No. 1, note from jury, received
11 into evidence.)

12 THE COURT: Gentlemen, we're back on the record.
13 The jury has submitted a question. And the question
14 which has been marked as Court's Exhibit One: Could we
15 have the lawyer's flip chart?

16 So, Solicitor Molony, apparently they were pretty
17 impressed with your chart. Of course, I'm going to have
18 to bring them out and tell them that the only evidence
19 they can have back there is what has been put into
20 evidence, properly marked. But to just make you aware,
21 they liked your flip chart.

22 MR. MOLONY: They wouldn't be able to read it
23 anyway.

24 THE COURT: Would you bring the jury out and let me
25 just give them an explanation, please?

1 MR. WEEKS: Judge, we need the Defendant in court.

2 THE COURT: Oh. Wait just a minute. Yeah, bring
3 him out.

4 (Defendant enters the courtroom.)

5 THE COURT: We're back on the record. Since I made
6 this announcement I forgot that Mr. Frazier was not in the
7 courtroom.

8 Mr. Frazier, the jury has submitted a question.
9 And the question which is marked as Court's Exhibit One:
10 Could we have the lawyer's flip chart?

11 And they evidently are referring to Solicitor
12 Molony's' flip chart that he used for demonstration.
13 That's not into evidence. I'm going to bring the jury
14 back out and explain to them that the only matters that
15 they can consider is what's in evidence. And his flip
16 chart was not.

17 So, just so you're aware of what's going on.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay? All right.
20 If you'll bring the jury out, please.

21 (Jury enters courtroom at 11:43 a.m.)

22 THE COURT: Let the record reflect the jury's back
23 in.

24 Madam Forelady, and ladies and gentlemen of the
25 jury, looking at your question which reads: Could we have

1 the lawyer's flip chart, the only matters that you can
2 consider along with the law as given by the Court is the
3 testimony from the witness stand and any of the exhibits
4 that have been put into evidence.

5 The lawyer's flip chart was used for demonstration
6 purposes. It's not into evidence. Therefore that cannot
7 be taken back to the jury room for you to use.

8 So if you'll go back to your jury room and continue
9 with your deliberations. Okay?

10 (Jury exits courtroom at 11:45 a.m.)

11 THE COURT: We'll be at ease for whatever amount of
12 time.

13 (Thereafter, other matters here heard by the
14 Court.)

15 (At 1:35 p.m., the trial resumed:)

16 THE COURT: We're back on the record. And the next
17 question that the jury has presented: Could you tell us
18 again what assault and battery third degree consists of?

19 And my plan is to recharge them on assault and
20 battery as I charged which is about four lines.

21 Okay? Satisfactory with both sides?

22 MR. MOLONY: Yes, sir, Your Honor.

23 MR. ROUTZONG: Yes, sir.

24 THE COURT: Thank you very much. Bring the jury
25 out, please.

1 (Jury enters courtroom at 1:36 p.m.)

2 THE COURT: Let the record reflect the jury's back
3 in. And I hope you had a good lunch compliments of Aiken
4 County.

5 Madam Forelady, I have been presented another
6 question, and the question states: Could you tell us
7 again what assault and battery third degree consists of?

8 And I will recharge you assault and battery third
9 degree which is found in Section 16-3-600 Subsection E of
10 our Code of Laws. States the following: A person commits
11 the offense of assault and battery in the third degree if
12 the person unlawfully injures another person, or offers or
13 attempts to injure another person with the present ability
14 to do so.

15 So if you will take that and for whatever use you
16 need to make of it, and go back to your jury room and
17 continue deliberations. Thank you very much.

18 (Jury exits courtroom at 1:37 p.m.)

19 (Court's Exhibit No. 2, note from jury, received
20 into evidence.)

21 (The trial resumed at 1:46 p.m.)

22 THE COURT: Okay. Let's bring the jury out. Got
23 everybody here? Yeah.

24 MR. MOLONY: Yes, sir, Your Honor.

25 (Jury enters courtroom at 1:47 p.m.)

1 THE COURT: Let the record reflect that the entire
2 jury is back in.

3 Madam Forelady, I've been informed that you have
4 reached a verdict; is that correct?

5 FORELADY OF THE JURY: Yes, sir.

6 THE COURT: And is your verdict unanimous among the
7 12 of you?

8 FORELADY OF THE JURY: Yes, sir.

9 THE COURT: Would you hand the verdict form to the
10 bailiff, please?

11 FORELADY OF THE JURY: (Complying.)

12 THE COURT: Madam Clerk, would you publish the
13 verdict, please?

14 THE CLERK: Your Honor, in the State of South
15 Carolina versus Daggart Bernard Frazier, as to Indictment
16 2014-GS-02-3590, the charge of burglary first degree, we,
17 the jury, find the Defendant guilty.

18 As to Indictment 2014-GS-02-358, the charge of
19 possession of a weapon during the commission of a violent
20 crime, we, the jury, find the Defendant not guilty.

-21 As to Indictment 2014-GS-02-360, the charge of
22 assault and battery third degree, we, the jury, find the
23 Defendant guilty.

24 I certify this decision was the unanimous decision
25 of the jury, signed by Karen D. West, Foreperson.

1 'Ladies and gentlemen of the jury, if this is your
2 verdict, please indicate so by raising of your right
3 hands.

4 THE JURY (COLLECTIVELY): (Complying.)

5 THE CLERK: All hands are raised, Your Honor.

6 THE COURT: Thank you very much, Madam Clerk.

7 Madam Forelady and ladies and gentlemen of the
8 jury -- let me first ask either side. Any individual
9 polling of the jury?

10 MR. MOLONY: Not by the State, Your Honor.

11 MR. ROUTZONG: No, sir.

12 THE COURT: Madam Forelady and ladies and gentlemen
13 of the jury, let me once again thank you for your jury
14 service. As I mentioned to you before, it's a very high
15 civic responsibility that we all have.

16 I hope your time on the jury has been educational
17 for you, that you've learned some things that maybe you
18 didn't know before you got here on Monday. And it's a
19 difficult job to serve on a jury, but I'm sure that you
20 performed your duties and your responsibilities
21 admirably. And, again, we appreciate your service.

22 Now you will be -- will they be mailed their
23 checks?

24 You'll be mailed a check to compensate you -- well,
25 I shouldn't say 'compensate you' because you may not

1 consider it just compensation for the time you've been
2 here these last three days, but you will be receiving a
3 check and you are free for the rest of the week. And best
4 of luck to you, and hopefully we might see again one day.
5 Good luck.

6 THE BAILIFF: Does anyone need a work excuse? Just
7 go back to the jury room.

8 THE COURT: And, Madam Forelady, you'll need to
9 hang around for just a second. Get with these two ladies
10 right here because the actual indictment has to be signed
11 by you as well on all three indictments. So if you'll
12 just hang around for just a second and get with those
13 ladies there, please.

14 Thank you. You're free to leave.

15 (Jury exits courtroom at 1:50 p.m.)

16 THE COURT: We'll take a few minutes' break, let
17 both sides kind of digest what's happened and then we'll
18 proceed into sentencing.

19 MR. MOLONY: Yes, sir, Your Honor.

20 (Break taken from 1:51 p.m., until 2:13 p.m., when
21 the trial resumed:)

22 THE COURT: We're on the record in the sentencing
23 phase of this proceeding, State of South Carolina versus
24 Daggart Bernard Frazier, the jury having returned a guilty
25 verdict on two of the three indictments; the burglary

1 first, and also the assault and battery in the third
2 degree.

3 With respect to sentencing, I'll first hear
4 whatever the State wants to tell me. Then I'll turn
5 matters over to the defense.

6 MR. MOLONY: Thank you, Judge.

7 I believe Your Honor's heard the facts. I just
8 wanted to give you the Defendant's prior record.

9 He has a 1995 grand larceny.

10 '96, false information.

11 '97, strong-arm robbery and kidnapping.

12 2002, failure to stop for a blue light and some
13 traffic charges.

14 2005, simple assault and battery.

15 2006, possession of crack.

16 2007, resisting arrest.

17 And 2008, possession of crack second offense, Your
18 Honor.

19 THE COURT: Okay.

20 MR. MOLONY: The victim, she is present but does
21 not wish to address the Court.

22 THE COURT: All right. Thank you very much,
23 Solicitor.

24 MR. MOLONY: Yes, sir.

25 THE COURT: Counselor, I'll be glad to hear from

1 you, whatever you want to tell me. And if Mr. Frazier
2 wants to address the Court, I'll be glad to hear from
3 him.

4 I do remind you, Mr. Frazier, you're still under
5 oath from your testimony from yesterday.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Routzong?

8 MR. ROUTZONG: Your Honor, I agree with the State;
9 you've already heard the facts. We, of course, disagree
10 with the verdict, but we'd ask the Court to consider a
11 minimum sentence, Your Honor.

12 THE COURT: Mr. Frazier, is there anything you'd
13 like to tell me, sir?

14 THE DEFENDANT: No, sir.

15 THE COURT: Well, this is certainly a little
16 different in some respects, a little different burglary
17 first case. I'll certainly consider the fact that the
18 burglary took place at someone that you knew. I know that
19 there was a difference of opinion as far as to the extent
20 of your relationship with Ms. Key, but nonetheless it was
21 somebody that you had some relationship with, somebody
22 that you knew. It was not a situation where the burglary
23 took place in a stranger's home. So I think that is
24 important.

25 The fact that the statute requires a mandatory

1 minimum, this being a violent crime that it invokes an
2 85-percent service of your sentence. So that's important
3 too.

4 Certainly I'm taking into account the fact that
5 even though you've got a pretty extensive prior record,
6 Mr. Frazier --

7 THE DEFENDANT: Yes, sir.

8 THE COURT: -- at least there's been no involvement
9 with the criminal system for at least six years.

10 TAKING EVERYTHING INTO CONSIDERATION, I'M GOING TO
11 IMPOSE THE MANDATORY MINIMUM OF 15 YEARS ON THE BURGLARY
12 FIRST. ON THE ASSAULT AND BATTERY, TIME SERVED, 30
13 DAYS.

14 Good luck to you, sir.

15 THE DEFENDANT: Yes, sir.

16 MR. ROUTZONG: Thank you, Your Honor.

17 MR. MOLONY: Thank you, Your Honor.

18 MR. ROUTZONG: Your Honor, I neglected to tell you,
19 he has 155 days on this charge.

20 THE COURT: How much?

21 MR. ROUTZONG: Sir, I believe it was 155 days.

22 THE COURT: Okay. Any dispute with with that,
23 Solicitor?

24 MR. MOLONY: No, sir, Your Honor.

25 THE COURT: I need to go on the record to note

1 that -- step back sir, step back.

2 THE DEFENDANT: (Returns to bar.)

3 THE COURT: Under section -- I need to note on the
4 record under Section 16-23-500 that burglary first being
5 deemed a violent offense, classified as a felony thereof,
6 and make a finding that it is. That's all related to
7 firearms. That's under 16-23-500. It's quite frankly
8 something I just learned about that it needs to be put on
9 the record, that finding. And it all relates to the
10 possession of a firearm.

11 So, so noted on the record.

12 MR. MOLONY: Thank you, Judge.

13 MR. ROUTZONG: Thank you, Your Honor.

14 END OF CASE: 2:18 P.M.

15 ***

16 CERTIFICATE OF REPORTER

17 STATE OF SOUTH CAROLINA)

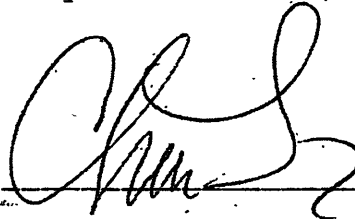
18 COUNTY OF AIKEN)

19
20 I, Cheri L. Young, Registered Professional Reporter
21 and Official Court Reporter for the State of South
22 Carolina, Second Circuit-At Large, do hereby certify that
23 the foregoing proceedings were written stenographically by
24 me using computer-aided translation; further, that the
25 foregoing is a true, accurate and complete record, to the

1 best of my skill and ability, of all the proceedings had
2 and evidence introduced in the hearing of the captioned
3 case, relative to appeal, in the Court of General Sessions
4 for Aiken County, on the 19th, 20th and 21st days day of
5 May, 2014.

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

8 I have hereunder set my hand this 11th day of
9 September, 2014.



Cheri L. Young, RPR
Official Court Reporter

WITNESSES

Aiken County Sheriff

J Gantt

Law Enforcement Case #: 13-073173

KNM

ARREST WARRANT NUMBER

2013A0210700638

FILED

March 6 2014

Liz Godard

C.C.P. & G.S.

Sherry Langley

Deputy Clerk

ACTION OF GRAND JURY

true bill

[Signature]

Robert Wade

Foreperson of Grand Jury

Date: March 6, 2014

VERDICT*Guilty**Spencer D. West**May 21, 2014*

Foreperson of Petit Jury

Date:

DOCKET NO. 2014GS0200359**The State of South Carolina**

County of Aiken

COURT OF GENERAL SESSIONS**MARCH TERM 2014**

THE STATE

vs.

DAGGART BERNARD FRAZIER

CDR #: 0079

Indictment for

BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
 COUNTY OF AIKEN
 I, Liz Godard, Clerk of Court of Common Pleas and General
 Sessions for Aiken County, South Carolina do hereby certify
 that the foregoing constitutes a true and correct copy of the
 original documents which have been filed in my office this
 22 day of May 2014
Liz Godard
 C.C.P. & G.S. Aiken County, S.C.
Sherry Langley
 Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT FOR
BURGLARY IN THE FIRST DEGREE

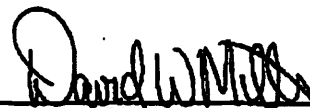
§ 16-11-0311

At a Court of General Sessions, convened on March 10, 2014, the Grand Jurors of Aiken County present upon their oath:

That DAGGART BERNARD FRAZIER did in Aiken County on or about December 16, 2013, wilfully and unlawfully enter the dwelling of Jacqueline Key located at [REDACTED] Beech Island, South Carolina, without consent and with the intent to commit a crime therein and the defendant entered or remained during the nighttime and/or was armed with a deadly weapon, all in violation of §16-11-311, Code of Laws of South Carolina (1976), as amended.

RECEIVED
MAY 30 2014
SC Court of Appeals

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


J. STROM THURMOND, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 14, 2014,

Robert M. Pachak
Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

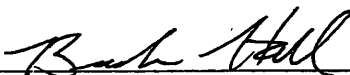
BERNARD DAGGART FRAZIER,

APPELLANT

APPELLATE CASE NO. 2014-001178

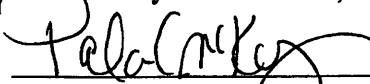
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 14th day of November, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 14th day of November, 2014.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022

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NOV 14 2014

SC Court of Appeals

**NOTICE OF INTENT TO APPEAL
THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
FROM AIKEN COUNTY**

THE HONORABLE DONALD B. HOCKER

May 22, 2014

Indictment # 2014GS0200359

 **THE STATE OF SOUTH CAROLINA -- Respondent**

VS.

Bernard Daggart Frazier - Appellant

NOTICE OF INTENT TO APPEAL

Bernard Daggart Frazier had a trial and was convicted of Burglary 1st on May 21, 2014 before the Honorable Donald B. Hocker in Aiken, South Carolina. He appeals his conviction and sentence.


Michael Routzong
Attorney for Defendant

Other Counsel of record is:

**Kevin Molony
Assistant Solicitor
Second Judicial Circuit
P.O. Drawer 3368
Aiken, SC 29802**

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MAY 30 2014

SC Court of Appeals

NOTICE OF INTENT TO APPEAL
State of South Carolina
Vs:
Daggart Bernard Frazier - Appellant
2013A0210700638

CERTIFICATE OF SERVICE

I, Lekehia Curry, do hereby certify that I have this day served the original of Appellate's Notice to Appeal upon the South Carolina Court of Appeals, and copies of Appellate's Notice of Intent to Appeal to the Clerk of Court of Aiken County, and to J. Strom Thurmond, Solicitor, Second Judicial Circuit, by placing same in the United States Mail properly addressed and with correct postage affixed thereto:

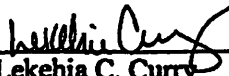
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

South Carolina Commission
Of Appellate Defense
P. O. Box 11589
Columbia, SC 29211

Clerk of Court
Aiken County Judicial Circuit
Post Office Box 583
Aiken, SC 29802

The State of South Carolina Office of the Solicitor
Second Judicial Circuit
Post Office Box 3368
Aiken, SC 29802

Dated this 22nd day of May, 2014



Lekehia C. Curry
Secretary to Appellant's Attorney
Post Office Drawer 2247
Aiken, SC 29802
803-642-1732

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MAY 30 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BERNARD DAGGART FRAZIER,

APPELLANT

APPELLATE CASE NO. 2014-001178

ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES

Cases

<u>State v. Brockmeyer</u> , 406 S.C. 324, 751 S.E.2d 645 (2013)	6
<u>State v. Gulledge</u> , 277 S.C. 368, 287 S.E.2d 488 (1982)	6
<u>State v. Sims</u> , 348 S.C. 16, 558 S.E.2d 518 (2002).....	5

Constitutional Provisions

S.C. Const. Art. 1, Section 14	3, 5
U.S. Const. amend. VI	6

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in allowing State's Exhibit #9, a 9-1-1 CD, into evidence and being played to the jury when it was done without the 9-1-1 caller being in court to be cross-examined in violation of Article 1, Section 14 of the South Carolina Constitution?

STATEMENT OF THE CASE

Appellant was convicted of burglary in the first degree after a jury trial held before the Honorable Donald B. Hocker on May 19 – 21, 2014, in Aiken County. A fifteen (15) year sentence was imposed. Michael Routzong, Esquire, was trial counsel. Kevin Malony, Esquire, and Samuel Grimes, Esquire, were the solicitors.

This appeal follows.

ARGUMENT

The trial court erred in allowing State's Exhibit #9, a 9-1-1 CD, into evidence and being played to the jury when it was done without the 9-1-1 caller being in court to be cross-examined in violation of Article 1, Section 14 of the South Carolina Constitution.

At pre-trial, one of the assistant solicitors announced that there was a CD of a 9-1-1 call that there may be a question about. The call was from the victim's son of the burglary in this case. The son was dyslexic and the assistant solicitor was not going to put the son on the stand, but he did not want to play the 9-1-1 CD to the jury without him being cross-examined. He acknowledged that the son did not know how to describe where his own location where he lived was and he could not give the name of the defendant even though he was supposed to be known to the family. This consumed about five to six minutes of the call. The assistant solicitor said his position was that this was an excited utterance to the hearsay rule, it was non-testimonial in nature, and it was not a Crawford confrontation clause issue. (R. p. 44, line 12 – p. 45, line 12).

Defense counsel argued that an excited utterance exception did not apply in this case to allow the 9-1-1 CD into evidence without the 9-1-1 caller being subject to cross-examination because it did not meet the criteria of the three elements set forth in State v. Sims, 348 S.C. 16, 558 S.E.2d 518 (2002). He also argued that allowing the 9-1-1 CD into evidence without cross-examining the caller would violate Article I, Section 14 of the South Carolina Constitution which specifically guarantees confrontation. (R. p. 47, lines 1 – 25).

That section states:

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process

for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.)

Contrary to the above constitutional provision, the trial court found that the 9-1-1 call fell into the excited utterance exception and would be allowed into evidence. He also relied on State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645 (2013) which held that the Sixth Amendment to the United States Constitution does not grant to a criminal defendant the right to secure the attendance and testimony of any and all witnesses. (R. p. 53, lines 5 – 23).

The ruling by the trial judge was in error. A hearsay exception and State v. Brockmeyer should not trump a provision of the South Carolina Constitution. Allowing the 9-1-1 call into evidence without allowing cross-examination of the caller was prejudicial. It became even more so when the jury was again allowed to listen to the 9-1-1 CD in the jury room during deliberations because that unduly emphasized that evidence. State v. Gullledge, 277 S.C. 368, 287 S.E.2d 488 (1982).

CONCLUSION

Appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BERNARD DAGGART FRAZIER,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Bernard Daggart Frazier states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Donald B. Hocker, which was held on May 21, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Bernard Daggart Frazier.

Respectfully submitted,


Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of November, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BERNARD DAGGART FRAZIER,

APPELLANT

APPELLATE CASE NO. 2014-001178

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Entire Trial Transcript (May 19 – 21, 2014)

I certify that this designation contains no matter which is irrelevant to this appeal.

November 14th, 2014

Robert M. Pachak

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 14, 2014



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

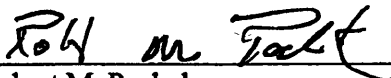
V.

BERNARD DAGGART FRAZIER,

APPELLANT

CERTIFICATE OF SERVICE

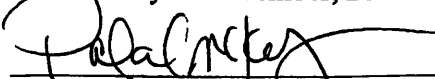
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Bernard Daggart Frazier, #237617 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 14th day of November, 2014.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of November, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.

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

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

The State, Respondent,

v.

Daggart Bernard Frazier, Appellant.

Appellate Case No. 2014-001178

Appeal From Aiken County
Donald B. Hocker, Circuit Court Judge

Unpublished Opinion No. 2015-UP-319
Submitted March 1, 2015 – Filed July 1, 2015

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia; and
Daggart Bernard Frazier, pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, LOCKEMY, and McDONALD, JJ., concur.

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



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JUL 23 2015

close

ATTORNEY GENERALS
The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 22, 2015

The Honorable Liz Godard
PO Box 583
Aiken SC 29802-0583

REMITTITUR

Re: The State v. Daggart B. Frazier
Lower Court Case No. 2014GS0200359
Appellate Case No. 2014-001178

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Daggart Bernard Frazier, 237617
Salley W. Elliott, Esquire
Alan McCrory Wilson, Esquire
Robert M. Pachak, Esquire
The Honorable Donald B. Hocker

2013A0210700637
2013A0210700638
2014GS0200360-DI
FORM 5

FILED 8-3 m/s
J. L. Leland
Clerk
Anita K. K... 830
Deputy Clerk

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

Bernard Daggart Frazier #239617)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015CP0201842

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Corr. Inst. 386 Redemption Way McCormick SC 29899
2. Name and location of Court which imposed sentence Gen. Sessions Aiken Co.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-02-3590 / Burglary first degree
 - (b) 2014-GS-02-360 / Assault and battery 3rd degree
 - (c) 2014-GS-02-858
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 21, 2014 / 15 years
 - (b) May 21, 2014 / 30 days - time served

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 1, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2015-UP-319
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N
- (b) _____
- (c) A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
(b) _____
(c) _____

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

- (a) _____
(b) SEE ATTACHED SHEETS 1-4
(c) _____

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

- (a) any petition in a State Court under South Carolina Law? YES
(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? None

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

(a) the specific nature thereof:

- i. Appeal
ii. _____
iii. _____
iv. _____

(b) the name and location of the Court in which each was filed:

- i. S.C. Court of Appeals
ii. _____
iii. _____
iv. _____

(c) the disposition thereof:

- i. Dismissed
ii. _____
iii. _____

Revised 3/2003

- iv. _____
- (d) the date of each such disposition:
- i. July 1, 2015
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. 2015-4P-319
- ii. _____
- iii. _____
- iv. _____

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

NO

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

- (a) which grounds have been presented:

- i. N
- ii. _____
- iii. A

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

- i. N
- ii. _____
- iii. 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) See 10 (a) Applicant first time presenting ground
- (b) _____
- (c) _____

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

Revised 3/2003

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

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

(a) the name and address of each attorney who represented you:

- i. Michael D. Rouzong P.D. Officer
- ii. Robert M. Pachek Div. of App. Defense
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial & Sentencing
- ii. Appeal
- iii. _____

19. State clearly the relief you seek in filing this application: New trial and or any other relief that I may be entitled to

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

McCormick
Daggar B. Frazier

I, *Daggar B. Frazier*, 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.

Daggar B. Frazier

SWORN to and subscribed before me this 31
day of July, 2015.

31 July 2015 *Franklin* (L.S.)
Notary Public

My Commission Expires: 12-16-2019

Revised 3/2003

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

Daggart B. Frazier

I, Daggart B. Frazier 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.

Daggart B. Frazier
Applicant

SWORN or affirmed to and subscribed before me this

31 day of July, 2015

31 July 2015 J. C. Franklin
Notary Public

My Commission Expires: 12-16-2019

Revised 3/2003

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Per the Bill of Rights to the Federal Constitution I were denied the right to effective assistance of counsel.

thereby, my conviction and sentence violates the Constitutions and laws of the United States, as guaranteed by the 6th and 14th Amend. Also see S.C. Const. Article 1 Sec 3 and sec 14 and Strickland v Washington 104 S Ct. 2052

Counsel Michael D. Routzong acts

1 of 4

and or omissions including but not limited to — failed to properly research and investigate my facts and the laws surrounding my case, prejudiced me SEE: Ard v Catoe 642 SE2d 590; Pelzer v State 672 SE2d 790 Where Counsel had a DUTY to conduct a reasonable investigation SEE: State v Williams 485 SE2d 99; Faretta v California 422 U.S. 806; Pauling v State 503 SE2d 468; Thomas v State 417 SE2d 531; Ingle v State 560 SE2d 401; Martinez v State 403 SE 113 and Grier v State 384 SE2d 772.

Which I can and will prove the second point of Strickland by the

294

preponderance of the evidence. With
the aid of P.C.R. Counsel SEE: S.C.
R. Civil P. Rule 71.1 (d) and Rule
407 of the Rules of Professional conduct
Also see Fraser v State 590 SE2d 172

I further argue that any grounds
set out in this original application for
PCR - expressly argued or not, is
subject to amendments per S.C. Code
Ann § 17-27-90 Also see S.C.R. Civil
P. - Rule 71.1 (d)

thereby, I am entitled to a FULL and
FAIR PCR evidentiary hearing SEE:
Sharper v State 305 SE2d 247; Odom v
State 523 SE2d 753. And, a ruling

394

on all issues SEE: S.C. Code Ann §
17-27-80; Marler v State 653 SE2d 266
and Bostick v Stevenson 589 F3d 164

Date 7-21-2015

Respectfully Submitted
sp Daggart B. Frasier

4 of 4

AFFIDAVIT OF SERVICE

I Daggart B. Frazier hereby certify that
I have served my form 5 - PCR and
grounds upon the below Hon. Clerk of Ct.
By placing the above said into the ME
C-I. mail room with postage prepaid

The Hon. Clerk of Ct.
Liz Godard
P.O. BOX 583
Aiken, SC 29802

SUBSCRIBED to before me s/ Daggart B. Frazier
this 31 day of July 2015
Franklin

Notary Public
my Commission Expires 12.16.2019

cc: Personal file

The Hon. Aiken Clerk of Ct.
Ms. Liz Goddard
PO-Box 583
Aiken, SC 29802

Date 7-31-2015

Dear Hon. Clerk

Please find enclosed my form 5-PCR and grounds.

Would you be so kind as to send the Atty Gen's office a filed copy and me one back please

Thanking you in advance, I am

cc: personal file

Sincerely
Daggar B. Frazier

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
Bernard D. Frazier, #237617,	)	2015-CP-02-01842
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 3, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the March 2014 term of the Aiken County Grand Jury for burglary – first degree (2014-GS-02-00359), assault and battery – third degree (2014-GS-02-00360), and possession of a weapon during a violent crime (2014-GS-02-00358); . Michael Routzong, Esquire represented Applicant. Applicant proceeded to a jury before the Honorable Donald B. Hocker. Applicant was found guilty as indicted for burglary – first degree and assault and battery – third degree. Applicant was found not guilty for possession of a weapon during a violent crime. Judge Hocker sentenced Applicant to fifteen year term of imprisonment for burglary-first degree and thirty days for assault and battery – third degree.

A timely Notice of Appeal was filed on Applicant's behalf and an Anders brief was submitted. The South Carolina Court of Appeals dismissed the appeal via unpublished opinion

State v. Frazier, 2015-UP-319 (Ct. App. filed July 1, 2015). The Remittitur was issued on July 23, 2015.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Failure to research and investigate case.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

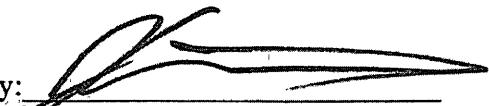
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

November 17, 2015.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2015-CP-02-01842

BERNARD D. FRAZIER, #237617,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

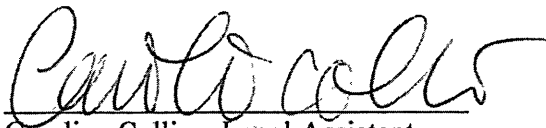
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Aimee Jendrzewski Zmroczek, Esquire
A.J.Z. Law Firm, LLC.
PO Box 11961
Columbia, SC 29211

DATED this the 17th day of November, 2015.



Caroline Collins, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
IN THE SECOND JUDICIAL CIRCUIT

2015-CP-02-01842

Bernard Daggart Frazier, #237617)

Applicant,

AMENDED APPLICATION
FOR
POST-CONVICTION RELIEF

-v-

State of South Carolina,

Respondent.

COMES NOW, Applicant Bernard Daggart Frazier,, by and through his undersigned attorney, pursuant to S.C. Code Ann. § 17-27-70(a), and amends the application originally and timely filed May 21, 2014.

1. Place of Detention: McCormick Correctional Institution.
2. Name and location of Court which imposed sentence: Aiken County General Sessions
3. Name(s) of co-defendant(s) (if any): N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014-GS-02-03590-Burglary-1st degree
 - (b) 2014-GS-02-0360-Assault and Battery 3rd degree
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 21, 2014-15 years
 - (b) May 21, 2014-time served
6. Check whether a finding of guilty was made:

(a) After a trial

7. Did you appeal from the judgment or the imposition of sentence? yes

8. If you answered "yes" to (7) list:

(a) The name of each court to which you appealed: SC Court of Appeals

(b) Result: dismissed/remittitur

(c) Order filed 7/1/2015

9. If you answered "no" to (7) state your reasons for not so appealing: N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: (these are in addition to the previous grounds filed)

(a) Ineffective assistance of appellate counsel for failure to brief issues

regarding procedure and Langford, as well as brief the substantial

breakdown in communication with trial counsel issue;

(b) Ineffective assistance of counsel for failing to investigate the issue of an inner

office conflict;

(c) Ineffective assistance of counsel for failing to investigate and prepare for trial

including issuing subpoenas for telephone records and public safety records;

(d) Ineffective assistance of counsel for failing to join in Appellant's motion to be

relieved due to the complete and substantial breakdown in communication;

(e) Ineffective assistance of counsel for failing to make proper objections and

preserve appellate issues;

(f) Ineffective assistance of counsel for failing to object to improper

impeachment

(g) Ineffective assistance of counsel for failing to prepare adequate jury charges and object to improper jury charges;

(h) Ineffective assistance of counsel for failure to move for a new trial under the theory of inconsistent verdicts and fail to preserve for appeal;

(i) Ineffective assistance of counsel for failure to properly investigate and prepare for cross-examination and impeachment of the alleged victim;

(j) Ineffective assistance of counsel for failing to properly research and present a stand your ground defense;

(k) Ineffective assistance of counsel for failing to interview and present witnesses.

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Proof of failure to be properly proved through introduction of trial transcripts, trial evidence, and case law.

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

(a) Any petition in a State Court under South Carolina No

(b) Any petition in State or Federal Courts for habeas corpus or post-conviction relief
No

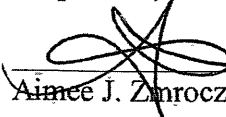
(c) Any petition in the United States Supreme Court for certiorari other than petitions, in any, already specified in (8) No

13. If you answers "yes" to any part of (12), list with respect to each petition, motion or application 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 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: N/A
17. Were you represented by an attorney at any time during the course of:
- (a) Your arraignment and plea? No
 - (b) your trial (if any) N/A
 - (c) your sentencing Yes
 - (d) your appeal, if any from the judgment of conviction or the imposition of sentence? No
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. Michael Routzoug- Aiken County Public Defender's office
 - ii. Robert Pachek-SCCID-Appellate Defense
 - (b) The proceedings at which each such attorney represented you:
 - i. Michael Routzoug-Trial
 - ii. Robert Pachek-Appeal
19. State clearly the relief you seek in filing this application: Grant a new trial and remand to Circuit Court.
20. Are you now under sentence from any other court that you have not challenged: No

Respectfully Submitted,


Aimee J. Zimroczek, Esq. #77193

P.O. Box 11961
Columbia, South Carolina 29211
(803) 403.1918 (telephone)
(803) 400.8005 (fax)
Attorney for Applicant

Columbia, South Carolina
May 11, 2016.

CERTIFICATE OF SERVICE

I did hereby serve a filed copy of the Amended Application for PCR on Julie Campbell
via E-Mail on May 11, 2016.


Aimee J. Zimroczek, Esq. #77193

1	State of South Carolina	)	In the Court
2	County of Aiken	)	Of Common Pleas
3			
4	Docket No. 2015CP0201842		
5			
6	Daggart Bernard Frazier,	)	
7	Petitioner,	)	
8	vs.	)	TRANSCRIPT OF RECORD
9		)	
10	State of South Carolina,	)	
	Respondent.	)	
11			
12	September 18, 2017		
13	Aiken, South Carolina		
14			
15	<u>B E F O R E:</u>		
16	The Honorable J. Mark Hayes II, Judge.		
17			
18	<u>A P P E A R A N C E S:</u>		
19	Aimee Zmroczek, Esquire		
20	Attorney for the Petitioner		
21	Julie A. Coleman, Assistant Attorney General		
22	Attorney for the Respondent		
23			
24	Brenda J. Sigwald, Circuit Court Reporter		
25	To The Honorable Doyet A. Early III		
	P.O. Box 206, Jackson, South Carolina 29831		

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1 THE COURT: Yes, ma'am.

2 MS. COLEMAN: May it please the Court. This is
3 Bernard D. Frazier versus the State of South Carolina,
4 2015CP021842. Applicant is presently confined in the South
5 Carolina Department of Corrections pursuant to orders of
6 commitment of the Aiken County Clerk of Court. Applicant
7 was true-bill indicted at the March 2014 term of the Aiken
8 County Grand Jury for first degree burglary, assault and
9 battery third degree, and possession of a weapon during a
10 violent crime.

11 Michael Routzong, Esquire represented the
12 applicant. Applicant proceeded to a jury trial before the
13 Honorable Donald B. Hocker. Applicant was found guilty as
14 indicted for burglary first degree and assault and battery
15 third degree. Applicant was found not guilty of possession
16 of a weapon during a violent crime.

17 Judge Hocker sentenced applicant to a 15 year term
18 of imprisonment for first degree burglary and a 30 year
19 term of imprisonment for third degree assault and battery.

20 A timely notice of appeal was filed on applicant's
21 behalf and an Anders Brief was submitted. The South
22 Carolina Court of Appeals dismissed the appeal with an
23 unpublished opinion. The remittitur was issued on July
24 23rd, 2015.

25 Applicant filed a timely application for post

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 conviction relief on August 3rd, 2015, alleging that he was
2 being held in custody unlawfully based on the following
3 allegations: Ineffective assistance of counsel for failure
4 to research or investigate this case.

5 The State filed a return on November 17th, 2015.
6 Applicant filed an amended application on May 11th, 2016
7 and he's present today and represented by Ms. Aimee
8 Zmroczek.

9 MS. ZMROCZEK: Thank you, Your Honor. Our first
10 witness will be Mr. Frazier.

11 BERNARD FRAZIER,
12 having been duly sworn, testified as follows:

13 THE CLERK: Have a seat in the witness box and
14 state your full name for the Court.

15 THE COURT: Be careful with the steps there.

16 **DIRECT EXAMINATION**

17 BY MS. ZMROCZEK:

18 Q Mr. Frazier, how old are you?

19 A 40.

20 Q 40?

21 A Yes, ma'am.

22 Q And you go by, is it Daggart Bernard Frazier?

23 A Yes, ma'am.

24 Q And what's the name that you most commonly use?

25 A Bernard.

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

- 1 Q Bernard?
- 2 A Yes, ma'am.
- 3 Q Okay. And you're currently residing where?
- 4 A At MacDougall Correction Institution.
- 5 Q Okay. And you filed this PCR, correct?
- 6 A Yes, ma'am.
- 7 Q Okay. And you and I have had a lot of discussions
- 8 about your case, right?
- 9 A Yes, ma'am.
- 10 Q And we discussed what the possible outcomes could
- 11 be, correct?
- 12 A Yes, ma'am.
- 13 Q And kind of the risks and benefits to each of
- 14 those, right?
- 15 A Yes, ma'am.
- 16 Q And what you're -- what is it that you're asking
- 17 the judge to do here today?
- 18 A Reverse my conviction and remand for a new trial.
- 19 Q Remand it for a new trial. And you and I have
- 20 discussed all of the pros and cons of that, correct?
- 21 A Yes, ma'am.
- 22 Q Okay. And when were you arrested?
- 23 A December 18, 2013.
- 24 Q All right. When -- what were you originally
- 25 charged with when you were arrested?

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 A Burglary first, possessing a firearm during the
2 commission of a violent crime.

3 Q So you were handed two arrest warrants?

4 A Yes, ma'am.

5 Q Burglary first and possession of a weapon during
6 the commission of a violent crime?

7 A Yes, ma'am.

8 Q When did you learn about the assault and battery
9 third degree charge?

10 A May 19, 2004, the day I was forced to go to trial.

11 Q Right before you were supposed to go to trial?

12 A Yes, ma'am.

13 Q Okay. In 2014?

14 A Yes, ma'am.

15 Q All right. I want to talk about -- so you had an
16 attorney, correct?

17 A Yes, ma'am.

18 Q Who was that?

19 A Michael Routzong.

20 Q Mr. Routzong. Was he with the public defender's
21 office at the time?

22 A Yes, ma'am.

23 Q Okay. I want to talk about some of your pretrial
24 interactions with your attorney first, okay?

25 A Yes, ma'am.

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

- 1 Q How many times did you meet with Mr. Routzong
2 either in person on or the phone?
- 3 A Like during -- like before trial?
- 4 Q Correct.
- 5 A I'd say the three days that the trial was going on,
6 Monday through Wednesday.
- 7 Q Okay. When you were arrested in December, did you
8 see him?
- 9 A No, ma'am.
- 10 Q In January?
- 11 A No, ma'am.
- 12 Q And in February?
- 13 A No, ma'am.
- 14 Q Okay. And then your case was originally slated to
15 go to trial in March of 2014; is that correct?
- 16 A Yes, ma'am.
- 17 Q Now, did you call his office?
- 18 A Yes, ma'am.
- 19 Q Did you speak to anyone in his office?
- 20 A Yes, ma'am.
- 21 Q And were there occasions where you spoke to him?
- 22 A It was like a few times.
- 23 Q A few times?
- 24 A Yes, ma'am.
- 25 Q Okay. Did you talk about your charges?

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 A Yes, ma'am.

2 Q And did you talk about your defenses?

3 A Yes, ma'am.

4 Q What were your defenses?

5 A Self defense of others.

6 Q Okay. So you were self-defense and then you said
7 defense of others. Who was the alleged victim in this?

8 A Ms. Key.

9 Q Ms. Key. And how -- what -- what sort of
10 relationship did y'all have?

11 A We was girlfriend and boyfriend.

12 Q Okay.

13 A We were living together.

14 Q And you had an on and off again relationship?

15 A Yes, ma'am.

16 Q But y'all were living together at this time?

17 A Yes, ma'am.

18 Q Okay. Did you have trouble communicating with your
19 attorney?

20 A Yes, ma'am.

21 Q Okay. What were some of the problems that you had?

22 A Well, he just sent me a letter February 24th, 2014,
23 let me know that I was on the trial roster to go to trial.

24 Q And had you ever met with him before?

25 A No, ma'am.

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 Q So you just get a letter saying that your case is
2 being called to trial?

3 A Yes, ma'am.

4 Q What did you do in response to that?

5 A Response to that?

6 Q When you were -- when you -- well, I'll come back
7 to that in a second.

8 All right. So he sent you a letter February 24th.
9 He asked you -- or he tells you you're going to trial. Is
10 there anything that you specifically asked him to do?

11 A Yes, ma'am.

12 Q Okay. What was that?

13 A Subpoena some work phone records that -- Department
14 of Public Safety records.

15 Q Okay. And why did you want him to subpoena those
16 phone records?

17 A Because he was -- the phone records, the phone
18 records showing that I was staying there -- we was living
19 together at that time.

20 Q Okay.

21 A Text messages, phone calls stuff like that.

22 Q Okay. Text messages?

23 A Yes, ma'am.

24 Q Okay. And you said Department of Public Safety
25 records. Why were those important?

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 A Because she would call the police many times
2 before.

3 Q All right. So she -- so you were trying to
4 establish that this is kind of what she did when she got
5 mad?

6 A Yeah. Normal thing, yes, ma'am.

7 Q Okay. And then did you ask him to interview
8 anybody?

9 A Yes, ma'am.

10 Q Who --

11 A My family members.

12 Q Your family members?

13 A Yeah.

14 Q Why did you want Mr. Routzong to interview your
15 family members?

16 A To testify where I lived at and the relationship
17 that me and the alleged victim had.

18 Q Okay. What did you do when you felt like your
19 attorney wasn't acting in your best interest?

20 A I put in to -- for a motion to substitute counsel.

21 Q Okay. So you filed your own motion for a
22 substitution of counsel?

23 A Yes, ma'am.

24 Q I'm going to show you what's going to be marked --
25 (Petitioner's Exhibit Number 1 was marked for

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 identification.)

2 BY MS. ZMROCZEK:

3 Q I'm going to show you what's been marked as
4 Petitioner's Exhibit 1. Do you recognize this document?

5 A Yes, ma'am. March 27th, 2014.

6 Q March 27, 2014?

7 A Yes, ma'am.

8 Q And is that the motion for substitution of attorney
9 that you filed?

10 A Yes, ma'am.

11 MS. ZMROCZEK: Your Honor, I know it's probably
12 part of the record, but just for clarity purposes, we would
13 move Petitioner's Exhibit 1 into evidence.

14 MS. COLEMAN: No objection.

15 THE COURT: Without objection.

16 (Petitioner's Exhibit Number 1 was entered into
17 evidence.)

18 BY MS. ZMROCZEK:

19 Q I want to talk about that motion that you filed.
20 What -- did you ever have a specific hearing on that
21 motion?

22 A Well, the Court never really, specifically went
23 into the motion.

24 Q All right. So you filed that motion. You were
25 supposed to go to trial in March, right?

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 A Yes, ma'am.

2 Q And did you go to trial in March? Or did you go
3 later?

4 A I went later in May.

5 Q In May. Okay. And so you raised this issue with
6 your -- concerns with the attorney at the trial -- right
7 before you went to trial; is that correct?

8 A Yes, ma'am.

9 MS. ZMROCZEK: And, Your Honor, I'm referring to
10 pages -- beginning around page 31.

11 BY MS. ZMROCZEK:

12 Q So you told the judge -- and that was Judge Hocker,
13 you told the judge that -- well, kind of came across as a
14 continuance motion, right?

15 A Yes, ma'am.

16 Q And what were you telling the judge?

17 A What I told --

18 Q When -- go ahead?

19 A The continuance? Well, basically, you know what
20 I'm saying, I mean Routzong wasn't even communicating. We
21 haven't went over nothing, discussing the trial, none of
22 that at this time.

23 Q And did you tell the judge that you felt that there
24 had been such a break down in communication that you
25 weren't comfortable going forward with him as your

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 attorney?

2 A Yes, ma'am, I told him that.

3 Q You told the judge that?

4 A Yes, ma'am.

5 Q Okay. And when the judge and you and Mr. Routzong
6 were discussing this issue, was the courtroom sealed or
7 were there -- was it just a normal -- were there normal
8 people in the courtroom?

9 A Normal people.

10 Q Okay. So the solicitor was here?

11 A Yes, ma'am.

12 Q That was prosecuting your case?

13 A Yes, ma'am.

14 Q Okay. You told the judge --

15 MS. ZMROCZEK: And, Your Honor, I'm turning to page
16 35.

17 BY MS. ZMROCZEK:

18 Q On line 18. Now, you told the judge that you felt
19 like your attorneys were trying to force you to take a
20 plea?

21 A Yes, ma'am.

22 Q What made you think that? Why did you feel that
23 way?

24 A Because at first they came to me with -- being that
25 you have a record already, so they're going to LWOP you if

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 you go to trial.

2 Q Okay. So they said that they would LWOP you if you
3 went to trial?

4 A Yes, ma'am.

5 Q Okay. So they were threatening to increase your
6 penalty to life without possibility of parole?

7 A Yes, ma'am.

8 Q Okay.

9 A With just one -- and they come with the 9-1-1 call.
10 But I never heard the 9-1-1 call.

11 Q All right. I want to talk about the evidence in
12 this case. You -- so you said you'd never heard the 9-1-1
13 call?

14 A No, ma'am.

15 Q Okay. Did you -- what evidence did you see in this
16 case?

17 A I didn't see no evidence.

18 Q Did you ever see any photographs?

19 A None of that.

20 Q If you had -- there were photographs introduced at
21 trial, correct?

22 A Yes, ma'am.

23 Q You saw them when they were introduced at trial?

24 A I didn't see them then.

25 Q Okay.

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 A If I would have seen them, I'd told them that they
2 weren't right. Because by my transcript saying I stole
3 from the house and it was wrong.

4 Q Okay. So -- and you've got to speak a little more
5 clearly. I know that you and I talk a lot, so I'm used to
6 hearing what you're saying.

7 So there were seven photographs introduced at the
8 trial?

9 A Yes, ma'am.

10 Q Right?

11 A (Witness nodded head.)

12 Q And those photographs were supposedly of -- of
13 where you were living, correct?

14 A Yes, ma'am.

15 Q And were those pictures taken -- the ones that were
16 presented, were those taken --

17 A At the time --

18 Q -- the same time that this happened?

19 A No, ma'am.

20 Q Okay. So they were taken at a different time?

21 A Yes, ma'am.

22 Q And what was different about them?

23 A Everything --

24 Q Was the furniture in the same place?

25 A No, ma'am. Totally rearranged. Everything.

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 Q Everything was rearranged?

2 A Yes, ma'am.

3 Q And you had never seen those photos before?

4 A No.

5 Q And had you seen them what would you have told Mr.
6 Routzong?

7 A It ain't represent what happened at that time.

8 Q Okay. And did you ever listen to any jail calls
9 prior to testifying?

10 A No, ma'am.

11 Q Did Mr. Routzong ever come and play some jail phone
12 calls for you?

13 A No, ma'am.

14 Q Some of your jail phone calls?

15 A No, ma'am.

16 Q How did you prepare with Mr. Routzong for trial?
17 What did y'all discuss?

18 A I discussed why he didn't go out and talk to my
19 family members besides me standing there. But he didn't do
20 that. And I thought he was supposed to pick them up and
21 bring them to court the day of trial, but he didn't do none
22 of that.

23 Q Okay. So were you ever provided any -- so you
24 wrote letters to Ms. Key while you were in jail, right?

25 A Yes, ma'am.

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 Q When did you ever see those? Did you ever see a
2 copy of those letters?

3 A No, ma'am.

4 Q Okay. And you testified at this trial, right?

5 A Yes, ma'am.

6 Q You testified that you were living at the
7 residence?

8 A Yes, ma'am.

9 Q Paying bills?

10 A Yes, ma'am.

11 Q Did you ask Mr. Routzong to ever help find any
12 evidence to substantiate that?

13 A Yes, ma'am.

14 Q Was any able to be provided?

15 A No, ma'am.

16 Q Okay. Did you have an investigator come and -- not
17 during the PCR but while you were getting ready for trial,
18 did the public defender's office ever send an investigator
19 to talk to you?

20 A No, ma'am.

21 Q Okay. I want to talk about your dealings with
22 appellate counsel. So after you were convicted, an appeal
23 was filed, right?

24 A Yes, ma'am.

25 Q And did you ever speak with anyone at Appellate

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 Defense?

2 A No, ma'am. They just did an Anders Brief.

3 Q They did an Anders Brief?

4 A Yes, ma'am.

5 Q They never asked you about what -- what you wanted
6 to raise or what -- did they ever ask you about the motion
7 that you made to relieve the public defender's office?

8 A No, ma'am. So I filed my own brief.

9 Q Okay. So you received a letter from the Court
10 saying that you -- that they were filing an Anders Brief?

11 A Yes, ma'am.

12 Q And then you filed your own brief?

13 A Yes, ma'am.

14 Q Okay. I want to talk a little bit about -- just
15 briefly -- so when you testified, did you know that they
16 were going to be able to use some of your prior convictions
17 against you?

18 A It was like about four of them.

19 Q Okay. And one of those was actually in 2005; is
20 that correct?

21 A Yes, ma'am.

22 Q Okay. So you had a couple of drug convictions?

23 A Yes, ma'am.

24 Q And maybe a grand larceny?

25 A Yes, ma'am, '95.

Bernard D. Frazier - Direct Examination by Ms. Zmroczek

1 Q Okay. And then a filing false police report or
2 something?

3 A Yes, ma'am.

4 Q And so did you discuss any of those with your
5 attorney prior to testifying?

6 A No, ma'am.

7 Q Okay. Did y'all -- did he help prepare you on how
8 to answer cross-examination?

9 A No, ma'am.

10 Q Okay. So when you were -- did you know what they
11 had, what the elements the State had to prove you guilty of
12 burglary in the first degree?

13 A No, ma'am.

14 Q Okay. When did you learn about those?

15 A On this PCR.

16 Q When you were -- when you were doing your PCR?

17 A Yes, ma'am.

18 Q And I know that -- that one of the things that you
19 talked about, that you raised I think on your original PCR
20 application was that there was, you felt like inconsistent
21 verdicts?

22 A Yes, ma'am.

23 Q So you were found guilty of the burglary, first
24 degree, right?

25 A Yes, ma'am.

Bernard D. Frazier - Cross-Examination by Ms. Coleman

1 Q But you were not -- you were found not guilty and
2 you were acquitted of the weapons charge?

3 A Yes, ma'am.

4 Q And did you have any discussions with Mr. Routzong
5 or anyone at Appellate Defense as to how you felt those
6 were inconsistent verdicts?

7 A No, ma'am.

8 Q Okay. And did you ever -- did you have any
9 knowledge or input about jury charges or anything like
10 that?

11 A No, ma'am.

12 Q Okay. And when was the first time that you saw all
13 of your discovery in this case?

14 A Well, I really got the rest -- the last of it in
15 2016.

16 Q Okay. Did the -- was that provided to you through
17 your PCR documents?

18 A Yes, ma'am.

19 Q Please answer any questions the State may have.

20 **CROSS-EXAMINATION**

21 **BY MS. COLEMAN:**

22 Q Hi, Mr. Frazier. Just briefly. You testified at
23 trial and you told the jury your side of the story, right?

24 A Yes, ma'am.

25 Q And you told them that you lived at that house with

Bernard D. Frazier - Cross-Examination by Ms. Coleman

1 your girlfriend?

2 A Yes, ma'am.

3 Q Okay. And you were found not guilty of the weapons
4 charge, right?

5 A Yes, ma'am.

6 Q But you -- this event happened at night, right?

7 A Yes, ma'am.

8 Q And you admitted at the trial that you went into
9 the house at nighttime and you hit the man that you got in
10 a fight with; is that right?

11 A I admit that I went in the house; yes, ma'am.

12 MS. COLEMAN: And that's on page 160, for Your
13 Honor's reference.

14 BY MS. COLEMAN:

15 Q So you -- this was on your cross-examination, the
16 solicitor asked you, he said: And we agree that you went
17 into that house at nighttime and you hit the man that you
18 got in a fight with. I can't remember his name, I'm sorry.
19 Is that right?

20 A Yes, ma'am.

21 Q Nothing further, thank you.

22 THE COURT: Any redirect limited to what she went
23 into?

24 MS. ZMROCZEK: Just briefly.

25 ///

REDIRECT EXAMINATION

BY MS. ZMROCZEK:

Q So --

MS. ZMROCZEK: On page 159, Your Honor.

BY MS. ZMROCZEK:

Q So she was asking you about you admitted on cross-examination that you hit him, but earlier in that, when the solicitor was cross-examining you, you say that -- that he had to have struck you first, right?

A Yes, ma'am.

Q And that that's -- when I asked you what your defenses were and you said self-defense or defense of others, right?

A Yes, ma'am.

Q Who were the others that you were mentioning?

A Stacy Gant, Lashonda Washington, and DeAndre Scruggs.

Q Okay. But who were you trying to protect when you went to the house that night?

A I was trying to protect her and my son.

Q Ms. Key and --

A Trey -- Deantre.

Q -- and your son?

A Yes, ma'am.

Q And so when you say that -- and when you told the

Bernard D. Frazier - Redirect Examination by Ms. Zmroczek

1 jury that you wouldn't have hit him for no reason that it
2 was in response to something he would have done; is that
3 correct?

4 A Yes, ma'am. He jumped up at me.

5 Q And did you ever have any discussions about
6 immunity hearings or self-defense or any affirmative
7 defenses?

8 A None of that.

9 Q Okay. And did you tell Mr. Routzong what you were
10 going to testify to?

11 A Yes, ma'am.

12 Q Okay. Thank you.

13 MS. COLEMAN: Nothing further.

14 THE COURT: Thank you, sir, you may step down.
15 Watch your step while you're stepping down, please.

16 MS. ZMROCZEK: Your Honor, we call Christopher
17 Watkins.

18 THE COURT: Christopher what?

19 MS. ZMROCZEK: Watkins.

20 CHRISTOPHER WATKINS,

21 having been duly sworn, testified as follows:

22 THE CLERK: Please have a seat in the witness box
23 and state your full name for the Court.

24 THE WITNESS: Christopher Watkins, W-A-T-K-I-N-S.

25 ///

Christopher Watkins - Direct Examination by Ms. Zmroczek

DIRECT EXAMINATION

BY MS. ZMROCZEK:

Q Mr. Watkins, where are you employed?

A Watkins Digital Forensics and Investigations.

Q Okay. What are your -- what do you do at Watkins Digital Forensic Investigations?

A I'm a SLED licensed private investigator.

Q Okay. Have you done a lot of work in criminal defense?

A Yes, that's the majority of what my company does.

Q Okay. And you said that you are SLED licensed?

A Yes.

Q Were you consulted on this case to do any investigation?

A I was.

Q Let me ask you this, what -- you said digital forensics and investigations. What -- what do digital forensics include?

A Digital forensics is the area of forensic science that deals with authenticating, securing, discovering information that would be found on electronic devices, anything that can store electronically stored information.

Q Does this include cell phones?

A That would be an area, yes.

Q Okay. What kind of information can you gather from

Christopher Watkins - Direct Examination by Ms. Zmroczek

1 cell phones records?

2 A So, when we want to subpoena records from the cell
3 phone provider, we're looking for cell tower location
4 information that will give the theoretic location of where
5 the caller is located during each call. It will also
6 contain details about incoming, outgoing calls related to
7 the time and duration, as well as the numbers that are
8 being contacted. And depending on -- on the service
9 provider, and how soon after a certain period you're trying
10 to get text messages for, some companies do retain text
11 message content. Most --

12 Q So the actual, you say content, you mean the actual
13 text message?

14 A Yes.

15 Q Okay.

16 A But a lot of companies do not retain that. So it
17 really depends on the service provider.

18 Q Okay. And did you -- were you able to -- did you
19 attempt to get any phone records in the case?

20 A Yes.

21 Q Were you able to?

22 A No, because it was past the retention period.

23 Q Okay. And what is the typical retention period for
24 these -- does it vary by carrier?

25 A It does. Generally 18 months.

Christopher Watkins - Direct Examination by Ms. Zmroczek

1 Q Okay.

2 A For most of them.

3 Q And -- and I'm kind of skipping around. Were you
4 -- in preparing for assisting in the defense, were you able
5 to locate any incident reports that were made by Ms. Key
6 after this -- after this date of December 16th, 2013?

7 A No, there were none.

8 Q Okay. What did you do to try to locate those?

9 A I believe FOIA's and possibly a subpoena.

10 Q Okay. And they all came back with negative
11 results?

12 A Their response was that none existed or none were
13 found.

14 Q Okay. And then lastly, you -- hold that thought --
15 I believe that's all I have, actually?

16 MS. COLEMAN: No cross-examination.

17 THE COURT: Sir, you may step down.

18 MS. ZMROCZEK: Thank you. May he be excused Your
19 Honor?

20 THE COURT: Any objection?

21 MS. COLEMAN: No objection.

22 THE COURT: Sir, you may be excused. Thank you for
23 coming.

24 THE WITNESS: Thank you.

25 MS. ZMROCZEK: Next witness, Your Honor, is Kiera

Kiera Martin - Direct Examination by Ms. Zmroczek

1 Martin.

2 KIERA MARTIN,

3 having been duly sworn, testified as follows:

4 THE CLERK: Please have a seat in the witness box.

5 State your full name for the Court.

6 THE WITNESS: My name is Kiera Martin, M-A-R-T-I-N.

7 **DIRECT EXAMINATION**

8 BY MS. ZMROCZEK:

9 Q Ms. Martin, how do you know Mr. Frazier?

10 A I am the spouse of his brother.

11 Q You are the spouse of his brother, so you are his
12 sister-in-law?

13 A Sister-in-law, yes.

14 Q Okay. And how long have you been married to his
15 brother?

16 A Three years.

17 Q All right. Let me rephrase that. How long have
18 y'all been --

19 A Been together?

20 Q Yeah.

21 A About five years.

22 Q About five years?

23 A Uh-huh.

24 Q And have you had an opportunity to -- have you had
25 an opportunity to know Mr. Frazier during that period?

Kiera Martin - Direct Examination by Ms. Zmroczek

1 A Yes.

2 Q And this alleged incident occurred around December
3 of 2013, did you know Mr. Frazier then?

4 A Yes, I did.

5 Q How well did you know Mr. Frazier?

6 A I know him a year prior to.

7 Q Okay. And what kind of things did you -- how were
8 you involved in his life?

9 A We would go over to the house, me and his brother.
10 His brother worked on the road, so I would go over, he
11 would work on his truck, so it was just back and forth, me
12 going back and forth.

13 Q And do you know where he lived?

14 A Yes.

15 Q And with whom he lived?

16 A Ms. Jackie Key.

17 Q Ms. Jackie Key?

18 A Uh-huh.

19 Q And was she the alleged victim in this case?

20 A That is correct.

21 Q Did you ever have an occasion to -- to see Ms. Key,
22 after this alleged incident?

23 A Correct.

24 Q And tell the Court a little bit about that
25 interaction. What happened?

Kiera Martin - Direct Examination by Ms. Zmroczek

1 A After the alleged accident, he was at his
2 brother's. I went over there for him --

3 Q He, Mr. Frazier?

4 A Mr. Frazier.

5 Q Uh-huh.

6 A -- was at his brother's home. I went over there
7 for him to look at his brother's truck for me because there
8 was some burning rubber. She was there.

9 Q She, Ms. Key was there?

10 A She was there. She was actually trying to get him
11 to go home with her. She was actually also asking him to
12 check the oil in her car. She was out there drinking, so
13 for, you know, for something to have happened, you would
14 not be around an alleged perpetrator trying to take him
15 home with you.

16 Q All right. Let me ask you this: When Mr. Frazier
17 was arrested, did you ever reach out to his attorney?

18 A I did.

19 Q Okay. And how was that -- did he ever sit down or
20 send an investigator to talk to you?

21 A He did not.

22 Q Now, you did testify at trial, right?

23 A That is correct.

24 Q How -- tell the Court how that kind of came about?

25 A Well, I got the call from his brother. He said,

Kiera Martin - Direct Examination by Ms. Zmroczek

1 you know, go check and see if he has court. I actually
2 showed up. Court was going on. I introduced myself to
3 Mr. Routzong because I talked to him like the day prior
4 when he told me court was going to be going on, but he
5 didn't give me a time so I just happened to come up here.
6 Court was going on and he looked at me and said we're going
7 to put you on the stand. No prior preparation. I didn't
8 know anything coming in. He just said we're going to put
9 you on the stand and that's what it -- that's what it was.

10 Q And did you have an opportunity to testify to
11 everything that you knew about this case?

12 A No.

13 Q What could you have testified to and what would you
14 have testified to regarding Mr. Frazier's financial
15 contributions to the alleged victim?

16 A I would have -- he would call me and ask for me to
17 go get a Green-Dot card. A Green Dot card is a reloadable
18 money card where I go to like Walmart and load money on a
19 card and I would call and assist him in paying the light
20 bill, water bill, so this was, you know, I --

21 Q You're familiar with --

22 A -- I'm familiar with --

23 Q And all of this was to the address of the alleged
24 incident?

25 A Of him and Ms. Jackie Key; that is correct.

Kiera Martin - Cross-Examination by Ms. Coleman

1 Q Okay.

2 A I've taken him there on many occasions when he
3 wasn't driving to get -- changing clothes when he was
4 working. He had his own key to enter the house, so -- he
5 was living there.

6 Q Were there other relatives that would have
7 testified had they been contacted?

8 A That is correct. His other brother James Frazier,
9 he was told by Mr. Routzong that he was coming to pick him
10 up for trial that never happened.

11 Q Okay. Please answer any questions that the State
12 may have.

13 A Okay.

CROSS-EXAMINATION

14
15 BY MS. COLEMAN:

16 Q So it sounds like you paid the bills at this house;
17 is that correct?

18 A No.

19 Q Okay. I thought you said you assisted -- you
20 helped him pay them by reloading money on his card?

21 A Yeah. I would take -- yeah he would give me the
22 money and I would take it on the card and come back and he
23 would pay it over the phone.

24 Q Oh, it was his money?

25 A Oh, yeah, yeah, yeah.

Kiera Martin - Cross-Examination by Ms. Coleman

1 Q Okay.

2 A Yes, ma'am.

3 Q And you did testify at trial, right?

4 A That is correct.

5 Q And you talked about this incident that night when
6 you were over at your brother's -- or day when you were
7 over at your brother's house and the victim was there as
8 well?

9 A That is correct.

10 Q You told that story at the trial?

11 A That is correct.

12 Q Thank you. Nothing further.

13 THE COURT: Any redirect limited to what she went
14 into?

15 MS. ZMROCZEK: None.

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

17 THE WITNESS: Okay. Thank you.

18 MS. ZMROCZEK: And our last witness, Your Honor,
19 we'd call Daryl Frazier.

20 DARYL FRAZIER,

21 having been duly sworn, testified as follows:

22 THE CLERK: Please have a seat in the witness box.
23 State your full name for the Court.

24 THE WITNESS: Daryl Frazier.

25 ///

Daryl Frazier - Direct Examination by Ms. Zmroczek

DIRECT EXAMINATION

BY MS. ZMROCZEK:

Q Is it D-A-R-Y-L?

A Yes, ma'am.

Q Okay. Mr. Frazier, how old are you?

A 36.

Q And how do you know Bernard Frazier?

A He's my brother.

Q All right. How long has -- how long have you known him?

A All my life.

Q You've known him your whole life?

A Yes, ma'am.

Q Do you know Jackie Key?

A Yes, ma'am.

Q How do you know her?

A Well, she used to come around my dad's house maybe 20 years ago.

Q Okay. So she's been someone that's been involved with your family for --

A Quite a while.

Q Quite a while?

A Yes, ma'am.

Q And were you aware where your brother was living in December of 2013?

Daryl Frazier - Direct Examination by Ms. Zmroczek

1 A Yes.

2 Q Where was he living?

3 A Beech Island.

4 Q In that --

5 A In Jackie's house.

6 Q -- the alleged incident location?

7 A Right.

8 Q What did you know about the nature of their
9 relationship, if anything?

10 A It was back and forth, up and down. You know,
11 break up, get back together, several occasions. So just
12 one of them incidents.

13 Q Did you ever see Ms. Key after December 16th 2013?

14 A No, I was working out of town I believe.

15 Q You were working out of town, so you didn't see her
16 afterwards?

17 A No.

18 Q Have you spoken to her since?

19 A No.

20 Q Okay. Did anybody -- prior to our investigator
21 contacting you, did anybody from the public defender's
22 office or from the police department, did anybody try the
23 call you or reach out to you?

24 A No.

25 Q Had they done so, would you have spoken with them?

Daryl Frazier - Cross-Examination by Ms. Coleman

1 A Yes.

2 Q Would you have come and testified at trial?

3 A Yes.

4 Q You said that you work. If given a subpoena like
5 you were today, you would show up, correct?

6 A Right, right, right.

7 Q Okay. Please answer any questions the State may
8 have?

9 A All right.

10 **CROSS-EXAMINATION**

11 BY MS. COLEMAN:

12 Q Hello. You testified that Ms. Key and your brother
13 dated on and off for a long time; is that right?

14 A Yes, ma'am.

15 Q Were they broken up at the time this happened?

16 A Not that I know of.

17 Q Not that you know of?

18 A I was out of town when the incident happened.

19 Q And was he living with her while this happened?

20 A Yes.

21 Q Okay. Thank you. Nothing further.

22 THE COURT: Any redirect limited to what she went
23 into?

24 MS. ZMROCZEK: None, no, thank you.

25 THE COURT: Thank you, sir. You may step down.

Michael Routzong - Direct Examination by Ms. Coleman

1 MS. ZMROCZEK: That's all we would have at this
2 time, Your Honor.

3 MS. COLEMAN: The State calls Michael Routzong.

4 MICHAEL ROUTZONG,

5 having been duly sworn, testified as follows:

6 THE CLERK: Please have a seat in the witness box.
7 State your full name for the court.

8 THE WITNESS: Yes, ma'am. Michael David Routzong,
9 R-O-U-T-Z-O-N-G.

10 **DIRECT EXAMINATION**

11 BY MR. ROUTZONG:

12 Q Hi, Mr. Routzong, how are you?

13 A I'm fine. How are you?

14 Q Fine, thank you.

15 How long have you been practicing law?

16 A Since 2004 -- actually 2005, excuse me.

17 Q Okay. Were you appointed or retained in the case?

18 A Appointed.

19 Q Okay. Do you recall how long you represented the
20 applicant before his trial?

21 A I don't. I actually printed out the wrong
22 defendant data sheet, but my recollection is this came to
23 trial relatively quickly for this circuit. It happened
24 pretty quickly.

25 Q How many times did you meet with the applicant

Michael Routzong - Direct Examination by Ms. Coleman

1 before the trial?

2 A In my notes I've got -- these are handwritten notes
3 I found in the file. It looks like four or five times I'd
4 spoken to him in person.

5 Q And were there phone calls as well?

6 A There were phone calls. I don't know what the
7 notes are on those. I -- he testified that there were a
8 few times. That would probably be normal because I always
9 -- I had a rule not to turn any phone calls down and
10 sometimes I was downstairs when I was made aware that
11 somebody called, therefore, I wouldn't have any computer
12 notes because I would just forget to put it in.

13 Q Did you file any Brady or Rule 5 motions in the
14 case?

15 A Our office did, yes, ma'am.

16 Q Do you have any kind of office, or did you at the
17 time have any kind of office policy about meeting with
18 clients before you have the discovery?

19 A Normally I would -- I would probably meet with the
20 clients when I had a chance to go out. Sometimes I would
21 have discovery, sometimes not. I would say initial
22 meeting, most of the time not.

23 Q Okay. Did you review the discovery material with
24 the applicant in this case?

25 A Yes, ma'am.

Michael Routzong - Direct Examination by Ms. Coleman

1 Q At least once?

2 A Yes, ma'am.

3 Q More times -- more than once?

4 A I'm sure several times.

5 Q Okay.

6 A Yes, ma'am.

7 Q And what kind of discovery did this include? What
8 kind of materials were in the discovery?

9 A Investigative reports. I recall pictures. I don't
10 recall that -- I do recall, actually, there was a 9-1-1
11 call. I do not recall if I ever -- at least it's not
12 written down. I would find it unusual if I didn't go over
13 a 9-1-1 call or at least the pictures, but I don't have any
14 notes saying that I did. I have notes saying I gave
15 discovery to him when he was in the detention center.

16 Q Did he express any concerns to you about the 9-1-1
17 call or the pictures that were used -- that were in the
18 discovery?

19 A I don't recall anything. I don't have any notes on
20 it.

21 Q Okay. Did you discuss with the applicant the
22 elements of the crime and what the State was required to
23 prove?

24 A I don't have any notes, but I always do that.
25 That's required.

Michael Routzong - Direct Examination by Ms. Coleman

1 Q That's common practice?

2 A Yes, ma'am.

3 Q Okay. Did the applicant cooperate with you during
4 the course of your representation?

5 A I think for the most part, but Mr. Frazier was not
6 very happy with some of the things I had to say in my
7 opinion of the evidence.

8 Q And --

9 A So it probably kind of fluctuated.

10 Q What was your opinion of the case based on what he
11 told you about it?

12 A My opinion of the case, it would be very difficult
13 to win because there are certain things in the case that
14 were not in dispute. It wasn't in dispute that he kicked
15 the door in. It wasn't in dispute that -- by kicking the
16 door in, he didn't have a key. His name wasn't on the
17 lease. The folks inside the residence -- I don't know that
18 anyone ever -- I don't know that anybody but Ms. Key said
19 that he didn't live there, but I don't know that anybody
20 asked anybody else that was in there. There were two or
21 three people in the residence. Clearly it's not in dispute
22 that a battery occurred.

23 So the answer to your question, there was a lot to
24 overcome. I felt that we were in a favorable position with
25 the State. I don't feel like they -- matter of fact, I

Michael Routzong - Direct Examination by Ms. Coleman

1 think we had an offer of burglary second degree violent up
2 until the day of the trial, but I told Mr. Frazier that
3 based on his prior record he was probably, with a guilty
4 plea he would probably get some time. I dare say it would
5 not have been anywhere near the maximum under these facts.
6 I think I could have explained to the judge that this was
7 probably closer to a domestic violence than a burglary.
8 But the point is, the elements of burglary are there based
9 on the evidence.

10 Q What was the applicant's version of the facts?

11 A He's going there, he sees a truck that's not -- I
12 think it's a truck that's not familiar to him. He goes and
13 knocks on the door. Nobody answers the door. That's the
14 peculiarity I think. And I think we tried to bring that
15 out at trial.

16 He -- he's trying to get into the house he tells
17 me, to find out what's going on, who is this person. And I
18 -- and his -- the gravamen of his defense on this when we
19 went to trial is that he is trying to go in there to find
20 out. He does think something's going on. And based on the
21 testimony, there was a reason -- I think for the jury to
22 conclude maybe there was something odd going on because
23 nobody came to the door. I believe we had testimony on
24 that.

25 Q And did he eventually kick in the door?

Michael Routzong - Direct Examination by Ms. Coleman

- 1 A He did.
- 2 Q And what happened when he entered the home?
- 3 A A dispute between the gentleman who's -- that was
4 in there. His name escapes me right now. It might be --
5 I'm not sure who it was, what his name was. But it's not
6 in dispute a fight broke out. I think the other gentleman
7 got the worst of it. There was some blood spatter on the
8 wall, that kind of stuff. That man left and Mr. Frazier
9 left.
- 10 Q When was 9-1-1 called?
- 11 A I'm not exactly sure. I think it's during the
12 incident.
- 13 Q And do you recall who made that phone call?
- 14 A I do not. It might have been her son. I'm not
15 sure.
- 16 Q And was that call played -- was it put into
17 evidence and published to the jury at trial?
- 18 A That's my recollection, yes, ma'am.
- 19 Q Okay. Did you discuss possible defenses with the
20 applicant? Like self-defense or defense of others?
- 21 A I did not. But self-defense probably would not
22 have been applicable because the question would be did he
23 do something to bring it about on himself. Well kicking in
24 the door of somebody's residence and starting a fight --
25 that's not really the problem in the case. The problem in

Michael Routzong - Direct Examination by Ms. Coleman

1 the case, she says that she kicked him out. I think her
2 testimony was a couple of weeks before, so he didn't live
3 there. He didn't have a key, obviously, or he would have
4 used it and not kicked his front door in if he lived there.
5 Instead he kicked the door in.

6 But still, having said that, it's entirely
7 plausible a jury might believe him when they say, Hey, you
8 know, this is my friend, this is somebody I've known for --
9 I want to say 18 years is the -- the accepted fact of that
10 relationship and maybe he didn't have an intent to commit a
11 crime when he entered and that would have been the best
12 defense. But I frankly told him in my opinion he should
13 take the State's offer, plead guilty to burglary second
14 violent. Let me try to entice the judge into something
15 more palatable than a minimum of 15 years, which I was
16 pretty confident based on the facts, or at least if not
17 confident, let's say I don't like to risk when the evidence
18 tends to substantiate the State's case.

19 Q Did the applicant testify at trial?

20 A Yes, ma'am.

21 Q And what was his testimony regarding his side of
22 the story?

23 A I think it's pretty much the same as what I just
24 recounted.

25 Q Did he testify at trial how he was struck first and

Michael Routzong - Direct Examination by Ms. Coleman

1 he might have done that in self-defense?

2 A I don't remember, but frankly the assault and
3 battery was -- that issue is not really the biggest problem
4 here. The biggest problem is, do you have an intent -- you
5 have consent, do you have an intent to commit a crime when
6 you enter the dwelling without consent.

7 Q And this -- was there any question that this event
8 occurred during the nighttime?

9 A I don't think there's any question about that.

10 Q Okay.

11 A That's one of the facts not in dispute.

12 Q Okay. Did the applicant give you any potential
13 witnesses to investigate?

14 A Yes, ma'am. I went to go see his brother at the
15 store in North Augusta. I want to say it's -- it's right
16 down the street from the police station, not too far. I
17 think it's on Buena Vista in -- in North Augusta. And the
18 reason I went to go see his brother, and I actually met his
19 brother there, the question I was trying -- or the issue
20 that we were kind of grappling with is another undisputed
21 fact, which is if she's coming to see him after these
22 events happened -- and I cross-examined her on that issue
23 during the trial -- I think what I would argue is that the
24 jury should have probably found that to be odd. Except I
25 believe what she -- I don't recall the -- I don't remember

Michael Routzong - Direct Examination by Ms. Coleman

1 if she testified to this or not, I didn't read the
2 transcript, but I think she testified that she was going to
3 help the police find him, which really, if that's the case,
4 that really -- if she had denied trying to go find him and
5 hang around where he was at, that would have been a
6 different story, but, you know, she testifies that she had
7 no problem going down there and the reason. Then that kind
8 of took away the need to call his brother. I don't recall
9 any other reason for calling his brother.

10 Q Now, is this the brother who testified today?

11 A I don't remember. It's a young man who worked at
12 the -- he doesn't appear -- that man there seems to be a
13 lot taller. I think the person I spoke to at the store, I
14 feel like, was much shorter than that.

15 Q Did you do any other investigation with other
16 witnesses or other -- any other leads for investigation
17 purposes?

18 A We subpoenaed Comcast. I think we got a rejection
19 notice from them. But I have in my notes somewhere in here
20 I noticed this morning that I had Mr. Frazier sign a
21 release, which he did. We submitted that to them and then
22 I have a note somewhere in my file that said they didn't
23 have any such subscriber, so that was one of the things.
24 But really, like I said, the essence of this case is, you
25 know, not whether he lived there. I think his testimony

Michael Routzong - Direct Examination by Ms. Coleman

1 was that he lived at his brother's house some time because
2 his brother was frequently gone and they live in a
3 neighborhood that's susceptible to break-ins so he was kind
4 of the person that was kind of the caretaker or a watchman
5 of his brother's house, as well as living there himself.
6 So that's not really -- the problem in the case is there's
7 a broken front door and there was a battery committed
8 inside and she says he didn't -- or she didn't consent, he
9 doesn't live there. There's the problem.

10 Q Did you have enough time to prepare for trial?

11 A I think so.

12 Q Was there any reason to request a continuance?

13 A I'm not aware of any reason.

14 Q And what was your trial strategy?

15 A Try to convince the jury that he did not have an
16 intent to commit a crime. Maybe he entered without
17 consent. Clearly he kicks the door in, so that's pretty
18 strong evidence he doesn't have consent or permission. But
19 on the other hand, did he have an intent to commit a crime?
20 Was he actually concerned about this person and that -- I
21 think was the defense on this.

22 Q Did you discuss with the applicant before he chose
23 to testify at trial his prior record and the risk that that
24 might come out?

25 A Every -- I don't have any notes on that, but every

Michael Routzong - Direct Examination by Ms. Coleman

1 time -- that's just required, you have to tell people their
2 prior record in certain circumstances can be used to
3 impeach their testimony.

4 Q And what was his prior record in the case? Or
5 before this case, I mean? If you recall off the top of
6 your head?

7 A The one thing that I remember that's pretty
8 substantial was a kidnapping. I have it written down here
9 somewhere. There was -- I can't -- I represented him on a
10 crack charge I remember. And I did not represent him on
11 the kidnapping, but I had occasion to help him out with
12 getting off of the sex offender registry. That was in
13 2007. That wasn't something he should have been required
14 to do. So -- I don't recall. I have it written down here
15 somewhere, but I don't know. There was -- there were four
16 or five, six things, something like that.

17 Q And he chose to testify regardless of his criminal
18 history?

19 A Yes, ma'am.

20 Q Okay. Did you present the applicant's motion to
21 have you relieved as counsel before the trial?

22 A I looked at my notes and it -- I have notes in
23 there that we discussed and he didn't -- at least the week
24 prior to that he had made a motion, I think it's -- or he
25 wanted to make a motion. Then he said he wanted to

Michael Routzong - Direct Examination by Ms. Coleman

1 continue with me and then I think during the trial -- I
2 didn't recall this until testimony this morning, but
3 apparently he made a motion during the trial.

4 Q Okay.

5 A Or prior to the trial.

6 Q Okay. And would you agree that it's in the
7 transcript if it occurred before the trial?

8 A Yes, ma'am.

9 Q Okay. And obviously, the outcome of that motion
10 would have been denied because you stayed on as counsel,
11 right?

12 A Yes, ma'am.

13 Q Okay. In your opinion would presenting a
14 stand-your-ground defense have changed the outcome of the
15 trial?

16 A No, not really, but, you know -- now, I should say
17 with it -- would it have been something like that, I guess
18 in a sense that's what -- it probably is not so much in
19 line with a stand your ground, but it may be in a defense
20 of others type situation. I probably, had I looked at it
21 like that, I probably would not have -- probably wouldn't
22 have done that because the question really is, Do you have
23 a right to be there. And that's really the question, if
24 you have a right to be there, then you're not guilty of
25 burglary.

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 Q Nothing further, thank you.

2 **CROSS-EXAMINATION**

3 BY MS. ZMROCZEK:

4 Q If you can hear me, I'm just going to stay here.

5 A Yes, ma'am, I hear you fine.

6 Q Mr. Routzong, so I wanted to try to just pick a few
7 things that you've talked about already. You said that you
8 were practicing in 2004, right?

9 A I think it's actually 2005. I don't think I did
10 much between graduation and -- for about a year I didn't do
11 anything.

12 Q Okay. And you would agree with me that the client
13 was arrested on December 18th, 2013, right?

14 A That sounds about right, yes, ma'am.

15 Q And that you -- that the solicitor actually stamps
16 their discovery when they receive it from the police
17 officer, right?

18 A I think so, yes, ma'am.

19 Q And do you have a copy of that in front of you?

20 A I do have a copy, yes, ma'am.

21 Q You do have a copy. And what was the stamp date on
22 that?

23 A I see January 30th, 2014.

24 Q All right. So you would agree with me that between
25 January -- December 18th, 2013 and January 30th, 2014, is

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 43 days, right?

2 A Sounds about right, yes, ma'am.

3 Q And now, that's when the solicitor received it. Do
4 you recall when you actually received the discovery?

5 A I don't know, normally it's our practice to stamp
6 the last page. I may have -- I may not have all this
7 together. I separated everything out. Normally I -- the
8 answer to your question is no.

9 Q But it would have been after at least on or before
10 January 30th -- you wouldn't have received it prior to the
11 solicitor's office, correct?

12 A That's correct.

13 Q Okay. And that on February 24th, 2015, '14, excuse
14 me, that you sent a letter to Mr. Frazier in the jail
15 telling him that his case was going to trial?

16 A Yes, ma'am. I don't disagree with that.

17 Q Okay. And that's -- so that's 68 days?

18 A Yes, ma'am.

19 Q And that's less than 30 days that someone had the
20 discovery, correct?

21 A This came -- that's correct. This came to trial in
22 my experience in this circuit, relatively quickly.

23 Q And burglary first degree carries a mandatory
24 minimum 15 upwards to life?

25 A That's correct.

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 Q What plea negotiations did you have with -- is it
2 Mr. Maloney?

3 A That's correct.

4 Q Ha plea negotiations did you have with Mr. Maloney?

5 A He offered burglary second degree violent. I
6 thought that was a reasonable plea offer.

7 Q And when did he offer that?

8 A I know it was at least -- it was a considerable
9 time. I would say maybe even a month. I know I -- I
10 discussed it -- according to my notes, I discussed it with
11 Mr. Frazier at least a week before, even up to the day --
12 to the week of the trial. So the week before I discussed
13 it with him. The week of the trial, my recollection is it
14 was a longer period of time than that.

15 Q Okay. And then nevertheless -- so it went to trial
16 on -- beginning on May 19th of 2014, right?

17 A That sounds about right, yes, ma'am.

18 Q Okay. So 109 days after -- after at least the
19 solicitor received the discovery, right?

20 A I don't disagree.

21 Q Okay. I want to talk to you about this motion.
22 Did you receive a copy of Petitioner's Exhibit 1?

23 A I am -- I am very sure I probably did. I don't
24 specifically remember, but --

25 Q You remember it coming up for, at least discussion,

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 prior to the case being called to trial, correct?

2 A Yes, ma'am, I do.

3 Q And you remember it being some on the record
4 discussions with the judge regarding that?

5 A I don't remember that. My notes -- my notes -- I
6 won't disagree, but my notes say that I spoke to him. We
7 had -- he was brought over here the week before and that
8 was for -- to relieve his attorney and then he -- in my
9 notes he says that he was okay with staying with me and
10 then this morning, I guess my recollection from the
11 testimony was reminded that he did a motion that -- on the
12 day the trial was supposed to start.

13 MS. ZMROCZEK: And Your Honor, may I approach?

14 THE COURT: Yes, ma'am.

15 BY MS. ZMROCZEK:

16 Q I'm showing you beginning what's page 31 of the
17 transcript. And if you would just read those couple of
18 pages to see if that...

19 A (Reading.) You want me to just read the first
20 page?

21 Q Well -- so does that help refresh your recollection
22 that y'all actually had a discussion about it?

23 A Yes, ma'am. I don't disagree.

24 Q Okay. And -- and in fact on page 33, it seems that
25 -- beginning on line 14, you say, it seems the more that he

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 talks the more that it refreshes your recollection that you
2 probably actually talked to him on the phone as opposed to
3 going down and seeing him in person?

4 A I would say -- I would say probably between the
5 initial time that I spoke with him, when I got basically
6 his, the gist of the story, there was probably a time that
7 I wasn't seeing him down at the jail personally, but we
8 spoke on the phone.

9 Q Okay.

10 A I think I definitely saw him more often when it
11 became apparent -- when the State was making the plea
12 offer. And I frankly was hoping that he would take that
13 offer.

14 Q Okay.

15 A I was doing everything I could to try to convince
16 him that that was in his best interest.

17 Q Were -- did you, in fact, tell him that they could
18 LWOP him?

19 A Yes, ma'am.

20 Q Okay.

21 A I don't doubt that. I don't -- I didn't
22 specifically see that in my notes, but he was convicted of
23 kidnapping and this would be another most serious. With
24 two, he could LWOP, get LWOP.

25 Q Okay. And actually I want to come back to this,

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 but you're saying he was convicted of kidnapping and so I
2 want to --

3 MS. ZMROCZEK: And, Your Honor, this is referring
4 to page 155.

5 BY MS. ZMROCZEK:

6 Q I want to clear up his record, so I'm going to hand
7 you page 155 and ask that you read the convictions that he
8 actually had.

9 A Yes, ma'am.

10 Q Okay. So he had grand larceny, false information,
11 and then two drug charges, right?

12 A I believe if -- I believe if you -- I think what
13 you're -- perhaps the mistake we're making is, the
14 kidnapping, he was probably through with that prior to 10
15 years before --

16 Q Right. So that wouldn't --

17 A -- so it wasn't impeachable.

18 Q -- so that was not a crime for which he could have
19 been impeached with?

20 A I'm sorry. I thought you were asking me about
21 LWOP.

22 Q No, no. So you -- I want to go back to this
23 inquiry as to -- as to the breakdown in communication. And
24 I'm going to hand you page 30, so -- starting on page 37,
25 beginning at line six, the defendant had specifically asked

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 you to gather some information, correct?

2 A Yes, ma'am.

3 Q Phone records, which you said you attempted to,
4 right?

5 A Comcast was the cable company. I don't think -- I
6 don't recall giving any subpoenas for public safety records
7 or phone records. I don't recall doing that for either one
8 of those.

9 Q Okay. But you would agree that he told the Court
10 that he asked you to do that, right?

11 A Yes, ma'am.

12 Q And then flipping over to page 38, beginning online
13 12, in fact, did you at that point agree with the client's
14 position that there had been a complete break down in
15 communication?

16 A I'm just going to take the time --

17 Q Certainly. Take your time.

18 A (Reading.) Yes, ma'am.

19 Q Okay. So at that -- at this point, prior to going
20 to trial on -- in open court, in front of the solicitor,
21 you told the judge that you felt that there was a breakdown
22 in communication?

23 A Yes, ma'am, I did.

24 Q And you're familiar with the rules of ethics,
25 right? And when -- specifically Rule 1.16 when we're

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 required to remove ourselves as attorneys? Are you
2 familiar with that rule?

3 A Not right offhand.

4 Q Okay. But you at least said on the record to the
5 judge that there is -- The greater issue right now has been
6 a kind of a complete breakdown in communication that could
7 affect his cooperation, the outcome of his trial. And
8 that's what you told the judge, right? And that was the
9 morning of trial?

10 A Yes, ma'am.

11 Q And then, so the judge then goes into -- going on,
12 into page 39, kind of goes into a an -- well, he's supposed
13 to go into an inquiry as to how prepared you are for this
14 case, right? But the judge never asked you how long you'd
15 been practicing, did he?

16 A I don't recall any -- I really don't recall any of
17 the --

18 Q Of that --

19 A -- conversation I had with the Court.

20 Q Okay. But you would agree with me that if it were
21 in the record --

22 A I agree.

23 Q -- it would have been there.

24 In fact -- and he didn't know how many days you had
25 had the case?

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 A I -- I really don't recall any of that, but if it's
2 -- I don't disagree with the transcript.

3 Q Okay. But he just decided on page 39 that you were
4 an excellent attorney even though he didn't know how long
5 you'd been practicing and you had already told him that --
6 that -- you had already told him there's been a break --
7 him, the judge -- there was a breakdown, right?

8 A Yes, ma'am.

9 Q And you had wanted Mr. Frazier to plea, right?

10 A I did.

11 Q Okay. And during this whole conversation --
12 MS. ZMROCZEK: At the bottom of page 39, Your
13 Honor.

14 BY MS. ZMROCZEK:

15 Q Do you recall Mr. Frazier shaking his head and
16 disagreeing with the judge? It's indicated on the bottom
17 of page 39.

18 A That's what it says, yes, ma'am. I don't disagree
19 with that.

20 Q Okay. I want to move onto -- and, in fact, again
21 on page 48, after some discussion, on page --

22 A I have a copy of this --

23 Q Oh, thank goodness.

24 A -- I didn't mean to make you keep walking back and
25 forth. I do have a copy of the transcript.

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 Q Oh, thank you. I'm referring to page 48, lines --
2 beginning at line 11?

3 A Yes, ma'am.

4 Q So the judge again addresses this issue of him
5 wanting to have the public defender's office, or you
6 specifically, relieved, correct?

7 A Yes, ma'am.

8 Q Okay. You would agree that that was well preserved
9 throughout the beginning of the record?

10 A Yes, ma'am.

11 Q Okay. Did anyone from appellate defense ever
12 contact you about this issue?

13 A I do not recall ever speaking to anyone from
14 appellate defense.

15 Q Okay. All right. I want to talk about a few
16 things. You said that you had subpoenaed the Comcast,
17 right?

18 A That's correct.

19 Q And the Comcast, you said, was actually cable and
20 not telephone?

21 A That's my recollection, yes, ma'am.

22 Q Okay. Why didn't you subpoena the telephone
23 records?

24 A I cannot give you any good reason except -- I think
25 maybe the best reason I can give you is to me that's not

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 really what was essential. The testimony from Ms. Martin
2 that was -- and of course, I wouldn't have known this -- I
3 wouldn't have known this at the time, but to me I was
4 always focused on what was not in dispute.

5 Q All right. Well, let me ask you this: You're
6 familiar with impeachment?

7 A Yes, ma'am.

8 Q And you're familiar with the way to impeach
9 persons?

10 A Yes, ma'am.

11 Q And so had -- you had Ms. -- in fact, Ms. Key
12 testified that -- that she had called the police numerous
13 times after the 16th and before the 19th of December when
14 Mr. Frazier was arrested. Do you remember that?

15 A I don't disagree with it.

16 Q Okay.

17 MS. ZMROCZEK: And, Your Honor, just for the
18 Court's -- beg the Court's indulgence.

19 (There was a pause in the proceedings.)

20 BY MS. ZMROCZEK:

21 Q Okay. I'm sorry, if you'll turn to page 93.

22 A Yes, ma'am.

23 Q Okay. So on 93, that's the cross-examination of
24 Ms. Key. And she indicated that she -- she called the
25 police and she's talking about the 17th, which would be the

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 next day, correct?

2 A Yes, ma'am.

3 Q And you said, You called the police?

4 A And she agreed.

5 Q And then you asked, Well, did the police come. And

6 she responded, They didn't come that day.

7 Now, had you had an investigator -- did you have an

8 investigator on this case?

9 A Yes, ma'am.

10 Q Okay. Did the investigator do any subpoenas or any

11 information seeking regarding what calls or incident

12 reports were made to the police?

13 A No, ma'am.

14 Q Okay. So the first time that you learned -- were

15 you in the court for Mr. Watkin's testimony?

16 A Yes, ma'am.

17 Q Is that the first time that you learned that there

18 had been no calls made by Ms. Key?

19 A Yes, ma'am.

20 Q Okay. And you would agree if you had that, that

21 could have been used to impeach her?

22 A Yes, ma'am.

23 Q Additionally, she talks -- if you would have had

24 the phone records, you could have used those to impeach her

25 because certainly calls to the police would show up on her

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 phone records, right?

2 A Yes, ma'am.

3 Q As well as any calls that he she made to
4 Mr. Frazier or received from Mr. Frazier?

5 A Yes, ma'am.

6 Q And any text messages?

7 A That's correct.

8 Q And the like.

9 Okay. But you didn't have any of that to -- to
10 impeach her with, right?

11 A No, ma'am.

12 Q Okay. So what is it that your investigator did do
13 in this case?

14 A In this particular case I think he and I just
15 discussed the case and he actually took me out to where his
16 brother was at that convenience store that I mentioned.
17 Other than that, I don't think there was anything else he
18 did.

19 Q And did you ever send him to speak with
20 Mr. Frazier?

21 A I don't recall ever doing that.

22 Q Okay. I want to talk about -- beginning on page
23 75, I want to talk about the photographs for a minute. You
24 indicated that there was blood spattered on the walls,
25 right?

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 A Yes, ma'am.

2 Q Do we have any photographs of that?

3 A My recollection is there is.

4 Q Okay. But they weren't put into evidence?

5 A I don't remember that.

6 Q And you provided me a copy of everything that you

7 had received right?

8 A Everything I have -- I'm not aware of anything in

9 this file -- anything else being not in this file, so if

10 you got this file, this is what I had.

11 Q Okay. And you're familiar with how to authenticate

12 photographs, right?

13 A Yes, ma'am.

14 Q Do you know who took the photographs that are

15 referenced on page 75, 1 through 7?

16 A I do not know.

17 Q Do you know when they were taken?

18 A I don't know.

19 Q In fact, I think if we go onto read the next couple

20 of pages, they were -- there's testimony that that's not

21 what it looked like that day. And I'll direct you to page

22 -- okay. On page 77, an example would be at line 16.

23 A Yes, ma'am.

24 Q Where she -- describing the door and she said, This

25 is the door he bust through and, well, this is after it was

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 fixed.

2 A Okay. Yes, ma'am.

3 Q So that does not fairly and accurately represent
4 what it looked like that evening, correct? Because the
5 picture was after it was fixed?

6 A I agree with that.

7 Q So you -- is there a reason that you didn't argue
8 the proper foundation?

9 A I don't think it would have occurred to me because
10 I don't think that the photograph actually hurts his case.
11 If it's a -- if it's a photograph of the door that's
12 repaired, then I'm not sure what's objectionable about it.

13 Q All right. Well, it didn't reflect the way that it
14 -- it didn't fairly and accurately represent the way the
15 door looked that evening, correct?

16 A That's correct.

17 Q But that's what -- that was part of the foundation
18 to get these photographs in?

19 A Yes, ma'am.

20 Q Okay. And we had no pictures of anyone's injuries;
21 is that correct?

22 A I don't recall that. I don't recall any --

23 Q Mr. Dan, who was the assault and battery third
24 alleged victim, we have no pictures of his injuries?

25 A I don't recall any --

Michael Routzong - Cross-Examination by Ms. Zmroczek

- 1 Q No evidence of medical treatment?
- 2 A I don't recall any of that.
- 3 Q And in fact, Mr. Frazier wasn't even arrested for
- 4 that. Would you agree -- originally. Would you agree with
- 5 me?
- 6 A I don't recall that he was arrested for that.
- 7 Q And then you get an e-mail on March 7th of 2014
- 8 from the assistant solicitor and it looks like they do a
- 9 direct indictment. Do you have that e-mail or would it --
- 10 well just --
- 11 A I read this earlier today. I'm familiar with this
- 12 one.
- 13 Q Okay. So you're familiar with that?
- 14 A Yes, ma'am.
- 15 Q And it -- so this is the statement that was given
- 16 to you in e-mail form from assistant solicitor, right?
- 17 A That's correct.
- 18 Q And he, in fact, in that statement says that he,
- 19 the alleged assault third victim found out later who that
- 20 was; is that correct?
- 21 A That's correct.
- 22 Q And -- and on page 121, if you can turn to that
- 23 real quick.
- 24 A Yes, ma'am.
- 25 Q At the end of his direct, Mr. -- the assistant

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 solicitor actually has him identify Mr. Frazier in the
2 courtroom, right?

3 A Yes, ma'am.

4 Q And there was no Jackson v. Denno hearing, right?

5 A No, ma'am.

6 Q And you never asked him about -- you never
7 cross-examined him about -- that he didn't even know who it
8 was?

9 A I did not, apparently. I don't recall, but I don't
10 disagree.

11 Q Okay. And in fact, he goes onto say how he was
12 pistol whipped by Mr. Frazier, right? I'm sorry, page 119.

13 A 119, yes, ma'am.

14 I do recall that -- I do recall that being in
15 there. I don't see it quite yet, but I do remember --

16 Q Okay. Well, at least it was in a statement that
17 was provided to you too, right?

18 A Yes, ma'am.

19 Q But the jury found Mr. Frazier not guilty of
20 possession of a weapon during the commission of the violent
21 crime, correct?

22 A That's correct.

23 Q Okay. I want to talk about -- well, I'll come back
24 to that in a minute.

25 Mr. Routzong, when did you receive jail phone calls

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 in this case?

2 A I don't remember ever getting a jail phone call.

3 Q You never received them, did you?

4 A No, ma'am.

5 Q Okay. And if you had, you would have provided them
6 to me with your complete file, right?

7 A Yes, ma'am.

8 Q Okay. I want you to turn to page 159 or 158,
9 sorry. And I'm looking at line 15, or at least -- yeah,
10 around line 11. Mr. Maloney starts cross-examining about a
11 jail phone call, right?

12 A That's -- yes, ma'am.

13 Q And you've never heard that jail phone call?

14 A I don't recall ever hearing a jail phone call.

15 Q And the client's never heard that jail phone call?

16 A I'm --

17 Q Right?

18 A I don't disagree.

19 Q Okay. So Mr. Routzong, at that point, why didn't
20 you object to this testimony?

21 A It's one of those things that's not in dispute.

22 Q It's not in dispute?

23 A That he went in there and he broke down the door
24 and got in a fight. Whoever's fault it is, that's probably
25 a little bit in dispute, but the fact is the door was

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 broken and the testimony was he didn't have consent. The
2 defense is not that he didn't go in there and do that.

3 Q Okay.

4 A But I wouldn't have objected for that reason.

5 Q Well, let's get back to the rules of evidence?

6 A Yes, ma'am.

7 Q So you're familiar with how to impeach someone,
8 right?

9 A Yes, ma'am.

10 Q And the proper rules and discovery that are
11 required of the State, right?

12 A That's correct.

13 Q And any statement that they intend to use against
14 Mr. Frazier, he has to have an opportunity to be able to
15 hear and explain, correct?

16 A I would not disagree with that.

17 Q And that didn't happen in this case, right?

18 A I don't -- I'm not aware that he ever got to hear a
19 jail phone call.

20 Q And did you ever give him or provide him or receive
21 copies of letters that he allegedly sent to Ms. Key?

22 A I don't remember. That's something I don't
23 remember at all. And it's not in the file.

24 Q Never -- not in your file at all, right?

25 A No, ma'am.

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 Q But, in fact, if you look at page 165, beginning at
2 line 8, Mr. Maloney begins crossing Mr. Frazier about
3 letters that he's never seen, right? Or that you haven't
4 seen at least, right?

5 A I was -- I have to agree with that, yes, ma'am.

6 Q Okay. Is there a reason that you didn't object at
7 that point?

8 A I think technically I might be able to object and
9 I'm not really sure -- I guess -- I guess my point is if
10 it's not really furthering what I'm trying to argue to the
11 jury, I can object to all kinds of things. But unless it's
12 something that actually furthers the case along, I'm not
13 going to object.

14 Q Okay. But you would agree that allowing your
15 client to be cross-examined and impeached by evidence that
16 he has not had an opportunity to review would be
17 prejudicial to the client?

18 A Well, yes, ma'am, but I think -- you want me to
19 explain my point of view on that?

20 Q Sure.

21 A This particular case, he is the person that's
22 alleged to have written the letter, so he would know what
23 was in it. Is that what you're --

24 Q Right. But a proper impeachment would be, on this
25 date, did you write this and then there would be some sort

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 of authentication of handwriting, et cetera, that typically
2 we have to go through to get evidence in, correct? For
3 both sides.

4 A I don't disagree with that.

5 Q And that -- you would agree that that was not done
6 in this case?

7 A I don't disagree with that.

8 Q Okay. You recall the landlord testifying because
9 Mr. Frazier wasn't on the leash -- lease, correct?

10 A That's correct.

11 Q All right. And I'm referring to page 127.

12 A Yes, ma'am.

13 Q And on direct examination Mr. Grimes actually did
14 his direct examination and he said to Mr. Brown, Now, did
15 you go there, meaning to the house where this alleged
16 incident took place -- did you go there that evening. And
17 he responds that he did not, correct?

18 A Yes, ma'am, he says, I didn't go that night.

19 Q Okay. And then if you will flip to page 202?

20 A Yes, ma'am.

21 Q Lines 14, Mr. Maloney in his closing argument
22 states, from the testimony, Ricky Brown said, I went and
23 fixed -- he said I was there that night the -- line 14.
24 This door was shattered to pieces. So you would agree that
25 that's an incorrect statement of the facts?

Michael Routzong - Cross-Examination by Ms. Zmroczek

- 1 A I agree.
- 2 Q Okay. But you did not object?
- 3 A I did not object.
- 4 Q Okay. Going back to Mr. Maloney's closing argument
5 on the next page at 203, so that you did have one pretrial
6 motion and that dealt with the confrontation issue of the
7 9-1-1 call, correct?
- 8 A I don't -- I don't remember. If you can point
9 me --
- 10 Q So it was in the beginning of the -- it was around
11 page 38. But you recall that the 9-1-1 call was actually
12 made by the son of the alleged victim?
- 13 A Yes, ma'am.
- 14 Q Okay. And you actually argued that he should be
15 here for me to cross-examine him?
- 16 A Yes, ma'am.
- 17 Q And the judge overruled you and that was actually
18 the issue that was the Anders Brief, right?
- 19 A Yes, ma'am.
- 20 Q Okay. So -- but in his closing on page 203,
21 Mr. Maloney is characterizing not only the testimony, but
22 he's talking about how he's dyslexic, he's sorry he can't
23 help us, the guys going crazy. So he is characterizing the
24 testimony of someone who you have not had the opportunity
25 to cross-examine, correct?

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 A That's correct.

2 Q But you didn't object to that, right?

3 A No, ma'am.

4 Q And then at the bottom of page 205, beginning at
5 line 20, Mr. Maloney starts talking about the law on
6 burglary is here for a reason, ladies and gentlemen. We
7 have this law so that people can feel safe in their homes,
8 so kids can feel safe in their homes, so families can feel
9 safe in their homes from actions like this guy.

10 Is there a reason you did not object to making a
11 golden rule argument?

12 A There is no reason. That is very objectionable.

13 Q Okay. Do you agree that it's prejudicial?

14 A I think that there's a potential for that. But
15 it's hard for me to say what impact it had on the jury.
16 It certainly has that potential.

17 Q I want to talk lastly about the jury charges. So
18 you said that it didn't matter whether or not he lived
19 there, right? So the indictment for burglary -- let me
20 rephrase that. That's a poorly asked question.

21 The indictment for the burglary first read that it
22 was -- it fell under the category burglary first because it
23 was a dwelling that occurred at night and/or with the
24 possession of a weapon.

25 A I have a copy of the indictment in front of me.

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 Q Okay. And what does it say for the burglary first?

2 A That Daggert Bernard Frazier did in Aiken County on
3 or about December 16th, 2013, willfully and unlawfully
4 enter the dwelling of Jacqueline Key, located at, redacted,
5 Beech Island, South Carolina without consent and with
6 intent to commit a crime therein. And the defendant
7 entered or remained during the nighttime and/or was armed
8 with a deadly weapon all in violation of Section 16-11-311,
9 Code of Laws, South Carolina, 1976 as amended.

10 Q Okay. And so the jury charges specifically with
11 the elements to burglary begin on page 214, around line 7?

12 A Yes, ma'am.

13 Q And it talks about the definition of a dwelling and
14 then it talks about -- it talks about the proper test for
15 determining a defendant's interest in a dwelling precludes
16 a burglary conviction. So you said that that didn't
17 matter, right? That it didn't matter whether or not he
18 lived there?

19 A I'm not sure.

20 Q Why was there a whole group of charges regarding
21 whether or not he lived there?

22 A I'm really having difficulty understanding that
23 question. I think it does matter if he lives there, he
24 would have consent.

25 Q Okay. So if he did live there, he would have

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 consent, right?

2 A That's correct.

3 Q Okay. So like you said before, the issue with the
4 burg first hinged on whether or not -- what was his intent
5 once he entered the premises, correct?

6 A Yes, ma'am. Well, did he have an intent the commit
7 a crime.

8 Q Right.

9 A Was he there with or without consent.

10 Q And in fact, when he testified and when he spoke to
11 you he told you that he had concerns for his family that
12 was inside, correct?

13 A I'm trying to --

14 Q That there was a truck that he didn't recognize.

15 A I don't know that he used the word family. He made
16 it clear to me that his side or his version of the facts is
17 that he was there because he didn't know what was going on.
18 Nobody answered the door and he was concerned for the
19 welfare of Ms. Key. I don't recall that he mentioned --
20 although I do recall from my notes earlier today that he
21 said her son -- he had raised that person like it was his
22 own son.

23 Q Like it was his own son, right?

24 A That's correct.

25 Q And -- all right. And if you look at page 143,

Michael Routzong - Cross-Examination by Ms. Zmroczek

- 1 beginning at line 19.
- 2 A Yes, ma'am.
- 3 Q And how does Mr. Frazier testify and characterize
- 4 his intent for going into the house that evening?
- 5 A I was wondering what was going on. I'm -- family,
- 6 my wife and stepson in the house. So I'm wondering what
- 7 was going on, why nobody done answered the door.
- 8 Q Okay. So he actually does refer to them --
- 9 A Yes, ma'am.
- 10 Q -- as his family, right?
- 11 A Yes, ma'am.
- 12 Q And did you ever discuss any affirmative defenses,
- 13 defense of others, did that ever come up in any of your
- 14 discussions?
- 15 A I don't believe it ever came up in any discussions.
- 16 Q Is there a reason why it didn't?
- 17 A I don't think self-defense was applicable. I think
- 18 the -- I think the whole question is why is he going
- 19 through the door, what was his intent.
- 20 Q Right.
- 21 A I don't think --
- 22 Q And he told you why he was going through the door,
- 23 right?
- 24 A That's correct.
- 25 Q His concern for his family?

Michael Routzong - Cross-Examination by Ms. Zmroczek

1 A That's correct.

2 Q Okay. And then when the verdict came back and
3 there was a conviction of the burglary first but then the
4 acquittal of the possession of a weapon during the
5 commission of a violent crime, was there a reason that you
6 didn't file any post-trial motions regarding the
7 inconsistencies in that verdict?

8 A I don't think they're really inconsistent.

9 Q Okay.

10 MS. ZMROCZEK: And, Your Honor, I handed up my
11 amended application and I just want to make sure I've
12 covered everything.

13 (There was a pause in the proceedings.)

14 MS. ZMROCZEK: And, Your Honor, we had listed
15 10(b), ineffective assistance of counsel for failing to
16 investigate and issue interoffice conflict, we're
17 abandoning that issue.

18 (There was a pause in the proceedings.)

19 MS. ZMROCZEK: Your Honor, those are all the
20 questions I have, thank you.

21 THE COURT: Any redirect limited to what she went
22 into?

23 MS. COLEMAN: Yes, Your Honor. Briefly.

24 ///

25 ///

Michael Routzong - Redirect Examination by Ms. Coleman

REDIRECT EXAMINATION

BY MS. COLEMAN:

Q Mr. Routzong, we -- Ms. Zmroczek raised the issue of the pretrial motion to have you relieved as counsel and you told the judge you thought there was a breakdown in communication that could affect the outcome of the trial. This was before the trial, of course, in retrospect, looking back on the trial, do you believe that that breakdown in communication did affect the outcome of the trial?

A No, ma'am.

Q Do you believe that the applicant got a fair trial and you represented him to the best of your ability?

A Yes, ma'am.

Q Okay. And, of course, all those objections that you could have made that Ms. Zmroczek said you should have made, in hindsight, of course, they make sense. At the time, did you see a reason to object to those things?

A I still don't really see any reason to object as to the prosecution's statement. I agree with Ms. Zmroczek, that's very objectionable. I should have objected. The rest of it, a lot of times you can let things slide by to keep things moving along to keep kind of a flow to it. There's not really always a good reason to object.

Q But you don't think with certainty that it

Michael Routzong - Redirect Examination by Ms. Coleman

1 definitely affected the outcome of the trial?

2 A I don't see how it would with the exception of the
3 -- with the lack of objection to Mr. Maloney's basically
4 asking the jury to -- to worry that if they let him go they
5 could be releasing someone or folks like him into the
6 society and there could be very bad consequences for this.
7 It would be impossible for me to know if it actually
8 impacted the jury. I don't know. I do know that it's
9 objectionable.

10 Q Thank you, nothing further.

11 THE COURT: Thank you, sir, you may step down.

12 THE WITNESS: Thank you, Your Honor.

13 MS. COLEMAN: Your Honor, at this time -- I know
14 it's late, I would ask now to maybe hold the record open at
15 least to obtain affidavits of a couple of more witnesses
16 for the State, if Your Honor will allow it.

17 THE COURT: I generally do not allow that unless
18 there's some compelling reason that I -- this has been
19 scheduled, everybody's here, and the fact -- as a fact
20 finder, I try to act expeditious when I take things under
21 advisement. And my mind's fresher at the hearing, closer
22 to the hearing, than if I have to wait to get these
23 affidavits from somebody. But if there is a -- you feel
24 like you must, you can do that.

25 MS. COLEMAN: Okay.

Michael Routzong - Redirect Examination by Ms. Coleman

1 MS. ZMROCZEK: And, Your Honor, we would just
2 object. This has been scheduled for some time.

3 THE COURT: Any reply?

4 MS. ZMROCZEK: We have no reply at this point.

5 THE COURT: Okay. I'll let you know.

6 MS. COLEMAN: Thank you, Your Honor.

7

8 * * * * * END OF TRANSCRIPT * * * * *

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Michael Routzong - Redirect Examination by Ms. Coleman

1 State of South Carolina)
2 County of Aiken) Certificate of Reporter

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I, Brenda J. Sigwald, Official Court Reporter for
the Second Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate,
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas in and for
the State of South Carolina on 18th day of September 2017.

I FURTHER CERTIFY that I am neither kin, counsel,
nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal at Aiken County, this 31st day of March 2018.

Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

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THE STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

THE STATE OF SOUTH CAROLINA

VS

Daggart B. Frazier

IN THE COURT OF GENERAL SESSIONS

SECOND JUDICIAL CIRCUIT

WARRANT NUMBER(S):

2013A0210700637 - 2014-65-02-00358

2013A0210700638 - 2014-65-02-00359

MOTION FOR SUBSTITUTION OF ATTORNEY

COMES NOW Defendant, Daggart B. Frazier in the above-styled mentioned case, and respectfully requests the courts to terminate defendant's presently existing court-appointed legal representation because of ineffectiveness in representing. Defendant believes that attorney J.E. does not see eye to eye with the strategy as defendant presents to the courts for representation. The court-appointed attorney has been advised and defendant has motioned on so defendant respectfully request for a change.

Respectfully Submitted,

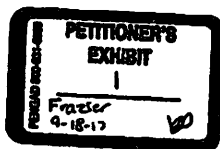
Daggart B. Frazier

3/25/2014

March 27, 2014

Mr. Frazier,

I will forward a copy of your motion To The Solicitor's office, Judge Early and your Attorney, Michael Rutzong. *RS*



FILED March 27 2014
Lisa Anderson
 C.C.P. S.G.S.
Donna [unclear]

Case No. 2015 - CP -02- 1842
- -02-

Plaintiff: Daggert, Bernard Frazer
vs
Defendant: State of South Carolina

Def's Ally, Annex Zmorizek

Received of Brenda S. Swald, Court Reporter for the above case, these exhibits:

This 19 day of Sept 2017.

By: Amale

copy court reporter 9.19.17

10/01/07 csw

Daggart B. Frazier
435 Wire Rd.
Aiken, S.C. 29801



Liz Godard
Clerk of Court
P.O. Box 583
Aiken, S.C.

FILED March 27 2014
Liz Godard
Clerk of Court
Ann Sanders

29802-0583

29802-0583

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Daggart Bernard Frazier, #237617)
Applicant,)
-v-)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
IN THE SECOND JUDICIAL CIRCUIT

C/A No.: 2015-CP-02-01842

ORDER GRANTING
POST-CONVICTION RELIEF

This matter came before the Court pursuant to an application for post-conviction relief filed August 3, 2015 by Bernard D. Frazier. The State filed a return dated November 17, 2015. An Amended Application was filed by Applicant's counsel on May 16, 2016, no amended return was filed. An evidentiary hearing was convened at the Aiken County Judicial Center on September 18, 2017. The Applicant was present and represented by Aimee J. Zmroczek, Esquire. The State was represented by Julie Coleman, Assistant Attorney General.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to a conviction in Aiken County. The Applicant was true billed indicted March 2014 for burglary - first degree (2014-GS-02-00359), assault and battery – third degree (2014-GS-02-00360), and possession of a weapon during the commission of a violent crime (2014-GS-02-00358). He was represented at trial by Michael Routzoug, Esq. On May 19-21, 2014, the Applicant was tried and convicted of burglary - first degree and assault and battery – third degree; and acquitted of possession of a weapon during the commission of a violent crime following a jury trial before the Honorable Donald B. Hocker. Judge Hocker sentenced Applicant to a fifteen year

term of imprisonment for burglary - first degree and thirty days for assault and battery – third degree.

A timely notice of appeal was filed on Applicant's behalf and an Anders brief was submitted. Applicant filed a pro-se brief as well. The South Carolina Court of Appeals dismissed the appeal via an unpublished opinion. State v. Frazier, 2015-UP-319 (Ct. App. Filed July 1, 2015). The Remittitur was issued on July 23, 2015.

STANDARD OF REVIEW

In a post-conviction relief proceeding, the Applicant bears the burden of proving his allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 525 S.E.2d 514, 517 (2000); Rule 71.1(e). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Cronic v. United States, 446 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, supra. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, supra. At 109, 525 S.E.2d at 517 (citations omitted). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional

norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625, (citing Strickland). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. When an Applicant challenges his conviction after a trial, the proper consideration is whether there is a reasonable probability that, absent the errors, the fact-finder would have had a reasonable doubt respecting guilt. Smith v. State, 375 S.C. 507, 515, 654 S.E.2d 523, 527-28 (2007) (citations omitted). A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In order to receive relief, an applicant must prove both ineffective assistance and resulting prejudice. See, e.g., Suber v. State, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

A defendant is also constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985) (to be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair); Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999); Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990) (appellate counsel must provide effective assistance, but need not raise every non-frivolous issue presented by the record).

The burden of proof is upon petitioner to show counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms. The petitioner must then prove that because of appellate counsel's deficient performance there is a reasonable probability that, but for appellate counsel's unprofessional errors, the result of the proceeding (appeal not trial) would have been different. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). When a claim of ineffective assistance of counsel is based upon failure to raise viable

issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986).

ALLEGATIONS

Mr. Frazier alleged in his applications and at the hearing that he is entitled to post-conviction relief for the following reasons:¹

1. Trial counsel did not join in Appellant's motion to be relieved due to the complete breakdown in communication and Appellate counsel did not raise the issue on appeal.
2. Trial counsel did not investigate and prepare for trial including issuing subpoenas for telephone records and prepare for cross-examination of alleged victim.
3. Trial counsel did not make proper objections which allowed in improper testimony and could not be reviewed on appeal.
4. Trial counsel did not move for a new trial under the theory of inconsistent verdicts and could not be reviewed on appeal.
5. Trial counsel did not request a continuance or challenge the Solicitor's control of the trial docket in calling the case pursuant to Langford, and Appellate counsel did not raise the issue on appeal.

SUMMARY OF RELEVANT FACTS

On December 18, 2013, the applicant was arrested for burglary - first degree, assault and battery – third degree, and possession of a weapon during the commission of a violent crime following his longtime on again-off again girlfriend (Jacqueline Key) reported to police that Applicant broke into her home on the evening of December 16, 2013. Ms. Key claimed that

¹ Relief is denied on all other allegations raised by Applicant in his application and amended application filings.

Applicant did not live there and that he broke in the door and assaulted a male guest with a gun. The day after the alleged break in and assault with a weapon, Ms. Key met with the Applicant at least once or twice subsequent to the alleged incident had several telephone conversations and claims that she called Aiken County Sheriff's Department but they never responded until two days later when Applicant was arrested. The solicitor received discovery and provided the same to trial counsel on January 30, 2014. Applicant was noticed for trial February 24, 2014 and filed a motion to relieve counsel on March 27, 2014.

PCR HEARING

The Applicant, his sister-in law, Kierra Martin, his brother, Daryl Frazier, Christopher Watkins of Watkins Digital Forensics and Investigations, and trial counsel testified at the hearing. The Applicant testified on direct examination that trial counsel met with him one time and a few times with the office of the public defender on the phone. He testified that he asked his attorney to gather records that would help show that he lived at the residence and that Ms. Key had been in contact with him after this alleged incident. Applicant testified that he received a letter from trial counsel advising him that his case was on the trial roster. He testified that nothing he requested was done and he filed a motion for substitution of attorney² laying out the reasons he was seeking a different attorney. Applicant claimed that specific defenses were never discussed nor did he have an opportunity to review all the discovery including listening to calls. Applicant not only filed a pro se motion, but argued his position on the record with the trial judge regarding his request for a new attorney and for a continuance. These issues will be discussed fully below.

The applicant repeated his trial testimony that he had told the trial judge there was such a breakdown in communication and he asked for a continuance which he was denied. He told the

² Applicant's Exhibit 1

trial judge that he had asked trial counsel to request evidence to support his defense which trial counsel had not done. The applicant testified trial counsel never explained to him how the case would be defended. He testified he wanted trial counsel to call witnesses to testify as to the Applicants living situation and post incident interactions with Ms. Key.³ Applicant testified that he never once spoke with anyone from appellate defense and after he received the Anders brief he tried to file one of his own briefs.

Ms. Martin and Mr. Daryl Frazier both testified at the hearing as to the nature of the relationship between the parties as well as knowing Applicant lived with Ms. Key and they saw her the next day consuming alcohol and attempting to get money and alcohol from the Applicant. Neither witness were ever interviewed by trial counsel prior to trial and only one, Ms. Martin, was called as a witness in front of the jury.

Mr. Chris Watkins testified that he has been a licensed SLED investigator since 2005. He frequently is hired by criminal defense attorneys to assist in investigating cases. Mr. Watkins testified that he contacted Aiken County Sheriff's Department and could find no record of any calls Ms. Key claims she made to law enforcement after the incident⁴. Additionally, Mr. Watkins testified that he attempted to get telephone records from both the Applicant's and Ms. Key's telephones but since so much time had passed, the companies no longer retained the records.

Trial counsel seemingly agreed during cross-examination that he may have only met face to face with the Applicant one time but he does recall speaking with him "several times" over the telephone. Trial counsel testified that his strategy was to try the case as a "he said she said" defense. He testified that he thought he had attempted to subpoena the telephone and had no

³ Trial counsel did call one of these witnesses but did not interview or prepare her before trial and did not ask the questions pertinent to Applicant's defense. This witness did testify at the hearing along with another witness who corroborated the Applicant's position.

⁴ This could have been used for impeachment.

explanation as to why he never followed up. Trial counsel agreed the timeline was accurate that 43 days had passed from the time Applicant was arrested until the assistant solicitor received discovery. It was 68 days from the day the Applicant was arrested until the solicitor issued the trial notice. Trial counsel admitted that 25 days had passed from when he received the discovery until the trial notice and that there was a total of 109 days from receiving the discovery and starting the trial date. Trial counsel was aware that burglary – first degree is a most serious violent strike for which the Applicant could have been sentenced to life.

When cross-examined about the objections, trial counsel admitted he “missed” some and “should have” made some objections but was focused on the he-said/she-said defense. He indicated that he did not discuss self-defense with the Applicant. With regard to Applicant’s pro se motion, it was heard in open court and after the trial judge took a break for counsel and applicant to discuss the issue of his representation, counsel informed the judge that “the great issue right now has been kind of a complete breakdown in communication. I think could affect his cooperation and his, outcome of this trial.” He testified he was not familiar with the rules of ethics associated with representation and in hindsight, he should have explored that. Lastly, trial counsel said he did not ever consider filing a post-trial motion

Set forth below are the relevant findings of fact and conclusions of law, as required by S.C. Code Ann. § 17-27-80 (2003):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In considering the Applicant’s case, this court had before it the Applicant’s PCR file, including all pleadings filed, the records of the Aiken County Clerk of Court regarding the conviction, the Applicant’s submissions at the hearing, the trial transcript, and the testimony at the evidentiary hearing. The court’s findings are as follows.

1. Trial counsel did not join in Appellant's motion to be relieved due to the complete breakdown in communication and Appellate counsel did not raise the issue on appeal.

Applicant filed a motion for substitution of attorney⁵ with the Aiken County Clerk of Court dated March 25, 2014, and filed March 27, 2014. There is a handwritten note from the clerk indicating that a copy of the motion would be forwarded to the solicitor's office, Judge Early, the resident Judge, and Michael Routzoug, Appellant's attorney. Prior to the trial, but after jury selection, Appellant was sworn in and the motion was heard. (Trial Tr. p.31 lines 3-11). While under oath Appellant described to the trial judge how trial counsel had only been to the "jailhouse" to see him one time which was consistent with what Applicant asserted at trial. Appellant stated "[s]o conversation have been broken down, you know what I'm saying. So I just hoping y'all appoint me another attorney." emphasis added (Trial Tr. p.31 lines 22-25). Applicant went on to state, as he did at the hearing, that trial counsel had not devoted enough time to his case. (Trial Tr. p.32 lines 21-24). Trial counsel confirmed on the record that he had only been to see Applicant one time but spoke with him several times over the phone. (Trial Tr. p.33 lines 14-18). After further inquiry, Applicant tells the trial judge that he has asked trial counsel to subpoena phone records and public safety records. (Trial Tr. p.37 lines 6-8).

After the judge took a break for counsel and applicant to discuss the issue of his representation, counsel informed the judge that "the great issue right now has been kind of a complete breakdown in communication. I think could affect his cooperation and his, outcome of this trial." emphasis added (Trial Tr. p.38 lines 12-17). Trial counsel goes even further to state, "I would characterize it as a substantial breakdown in communication." emphasis added (Trial Tr. p.38 lines 22-23). Even with that assertion from trial counsel, the trial judge goes on to state that there is no reason to continue or excuse trial counsel. There could also be concerns addressed

⁵ Applicant's Exhibit 1

under Rule 407, SCACR, Rules of Prof. Conduct, Rule 1.4 RULE 407 as well as Rule 8.5. The trial judge goes on to address the ethical responsibilities of trial counsel to clients while the record reflects that Applicant is shaking his head in opposition. (Trial Tr. p.39). The trial judge then continues without addressing the issue further that day but does the following day clarifying again Applicant's position on the record. (Trial Tr. p.48-50). The manner in which this matter was handled created significant Sixth Amendment right to counsel issues in refusing to allow him to substitute counsel and continue his case.

Whether discharge during trial of ineffective assistance of counsel due to alleged lack of attorney-client communication warrants immediate evidentiary hearing is matter concerning course and conduct of trial left largely to discretion of trial judge, and Supreme Court will not interfere unless it clearly appears rights of complaining party were prejudiced. State v. Allen (S.C. 1977) 269 S.C. 233, 237 S.E.2d 64. "A defendant's right to have a lawyer of his or her own choosing is an essential element of the Sixth Amendment right to assistance of counsel." United States v. Mullen, 32 F.3d 891, 895 (4th Cir. 1994). The individual's right to have counsel of his choosing, however, is not an absolute right. See *id.* Rather, the right is circumscribed by the need for the orderly administration of justice. The exercise of the right to counsel of choice may neither "obstruct orderly judicial procedure" nor "deprive courts of the exercise of their inherent power to control the administration of justice." United States v. Gallop, 838 F.2d 105, 108 (4th Cir. 1988). The denial of a motion to substitute counsel is reviewed under an abuse of discretion standard. See *id.* To determine whether the trial court abused its discretion three factors are considered: (1) the timeliness of the motion, (2) the adequacy of the court's inquiry into the defendant's complaint, and (3) whether a total breakdown in attorney/client communication had developed such that it prevented the attorney from putting forth an adequate defense. See Mullen, 32 F.3d at 895.

Based upon our review of the record, consideration of these factors demonstrates that trial counsel fell below professional standards and failing to join in the motion to be relieved. See S.C. Code Ann. § 17-23-60. The question of whether court appointed counsel should be discharged is a matter addressed to the discretion of the trial judge. Only in a case of abuse of discretion will this Court interfere. State v. Marshall, 273 S.C. 552, 257 S.E.2d 740 (1979); State v. Hyman, 276 S.C. 559, 281 S.E.2d 209 (1981). In evaluating whether the trial judge abused his discretion in denying Sims' motion for substitution of counsel, the Court may consider several factors: timeliness of the motion, adequacy of the trial judge's inquiry into the defendant's complaint, and whether the attorney-client conflict was so great that it resulted in a total lack of communication, thereby preventing an adequate defense. State v. Sims, 304 S.C. 409, 414, 405 S.E.2d 377, 380 (1991) (citing U.S. v. Gallop, 838 F.2d 105 (4th Cir. 1988)).

Applicant met the burden to show satisfactory cause for removal. The trial court conducted a thorough investigation into the basis of Applicant's complaints against his trial counsel. Applicant certainly specifically expressed disagreement with his trial counsel's strategies and prospective defenses to the crime, and his objections prevented him from communicating with his attorney or precluded trial counsel from preparing a zealous defense for him. In considering the several factors set out in Sims. First, Applicant's motion was clearly timely. the motion was filed in March and although not heard until the morning of trial, it was clearly not a delay tactic. The case was only 109 days old. The Applicant was facing a possible life sentence and had only met with counsel one time face to face and did not have the documents he alerted trial counsel could assist in his defense. This information also goes to showing the adequacy of the circuit court's inquiry into the defendant's complaint. Secondly, the judge adequately inquired into Applicant's complaints regarding his trial counsel. At the beginning of the hearing, the judge permitted

Applicant to explain the rationale behind his motion and confirmed those reasons the following day. Even trial counsel agreed with the facts and stated he did not have the information Applicant was requesting and that he had only met with him face to face one time but had spoken with him on the telephone. Finally, the record does reveal that there existed any conflict between Applicant and his trial counsel so great that it resulted in a total lack of communication thereby preventing an adequate defense, was confirmed by both the Applicant and trial counsel. An appellate review of this would have found the trial judge abused his discretion in not substituting counsel and granting the continuance.

Appellate counsel was ineffective for raising meritorious issue of removal of trial counsel in a conclusory fashion in appellate brief and for failing to state the issue with particularity in the petition for rehearing. Patrick v. State, 349 S.C. 203, 562 S.E.2d 609 (2002) (finding PCR applicant was prejudiced by appellate counsel's failure to adequately argue issue to the Court of Appeals because the Court of Appeals would have ruled in applicant's favor). In Frazer v. South Carolina, the court discusses when confronted with a claim that counsel rendered ineffective assistance in failing to consult with the defendant regarding an appeal, a court must conduct a three-step inquiry. 430 F.3d 696 (4th Cir. 2005). The threshold consideration is whether the defendant had independently decided whether to appeal and communicated that decision to counsel. If the defendant has affirmatively requested an appeal, counsel's assistance to the defendant in making that decision is obviously unnecessary. Indeed, long before Strickland, the Supreme Court held that the "fundamental decision" of whether to appeal rests with the defendant. Where, as here, the defendant has not specifically requested an appeal, counsel is under a professional obligation to "consult" with the defendant regarding that fundamental decision, and unless the circumstances demonstrate that consultation is unnecessary. See Roe v. Flores-Ortega,

528 U.S. 470, 479 (2000). If counsel fails to consult, the defendant may demonstrate prejudice by showing that a rational defendant would want to appeal. Defendant may do this by demonstrating either that a) there were non-frivolous issues for appeal, or b) he had adequately indicated his interest in appealing. The mere presence of non-frivolous issues to appeal is generally sufficient to satisfy the defendant's burden to show prejudice. Attempting to demonstrate prejudice based on a reasonably obvious interest in pursuing an appeal, necessitates an additional showing that, had the defendant received reasonable advice from counsel about the appeal, he would have instructed his counsel to file an appeal which was established during the PCR evidentiary hearing.

For the foregoing reasons, I conclude trial counsel's failure to join in Applicant's motion for substitution of counsel and a continuance fell below accepted professional norms. Had this motion been granted, the outcome would have resulted in different counsel properly preparing and gathering the documents needed to defend the case which prejudiced the client as described further below. As for the second prong of the test, trial counsel's deficient performance prejudiced Applicant such that there is a reasonable certainty that, but for this error, the result of the proceeding would have been different. Had defense counsel joined in the motion, then that issue would have been more clearly preserved for appeal. Appellate counsel did not raise the issue. Had the issue been presented for review during appeal, a review of the record, consideration of the factors would have demonstrated that the trial court did abuse its discretion when it denied Applicant's motion to for substitution of counsel and a continuance and the case would have been overturned on appeal. These failures clearly prejudiced the Applicant.

2. Trial counsel did not investigate and prepare for trial including issuing subpoenas for telephone records and prepare for cross-examination of alleged victim.

Applicant testified about the specific records and investigation he requested of trial counsel not only during his aforementioned motion to substitute⁶ but also during the evidentiary hearing. Upon inquiry by the trial judge, trial counsel asserts "...I think this case comes down to his testimony versus her testimony. It's not a lot of other collateral witnesses or testimony - - that are going to be particularly helpful. The jury believes him, that's fine. We can bring all of this out on cross-examination and direct." (Trial Tr. p. 33-34 lines 21-24, 1-3) After the court broke to allow Applicant and trial counsel to confer specifically about the failure to subpoena records, trial counsel stated "I really don't see his point. Maybe there is a point..." (Trial Tr. p. 38 lines 7-14) Trial counsel's belief that the case was going to be a swearing match was his strategy and given that the ex-girlfriend/wife went to visit him the day after the incident (maybe while she was intoxicated), the cell phone records may have shown other communications between them and should have been subpoenaed. There was evidence presented that trial counsel may have even attempted to subpoena some records from Comcast but for no reason stated, did not follow up on that request.⁷ The testimony of investigator Watkins hired by PCR counsel suggests that these records were not available for the PCR hearing because of the retention policies of the cell phone companies. If these records had been obtained they could have substantiated the long relationship between the applicant and his ex-girlfriend/wife to support the defense of defense of others.

Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. Walker v. State, 407 S.C. 400, 756 S.E.2d 144 (2014); Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). One component of that duty is to investigate records and witnesses identified by a defendant, and the

⁶ See specific transcript references above.

⁷ Applicant believes this was an exhibit entered at the evidentiary hearing, or at least presented to trial counsel who identified the documents.

failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable. Id. In Stalk v. State, the court stated that for PCR applicant to show he was prejudiced by counsel's failure to investigate, he must present favorable evidence that counsel could have found upon investigation. 383 S.C. 559, 681 S.E.2d 592 (2009). To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Trial counsel was also ineffective for failing to interview and call all alleged corroboration witnesses and these witnesses did testify at PCR hearing. The two witnesses who testified did establish supporting testimony for Applicant's defense. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) (a PCR applicant cannot show prejudice from counsel's failure to call a favorable witness to testify at trial if the witness does not testify at the PCR hearing or otherwise offer testimony within the rules of evidence). Counsel ineffective for failing to obtain records showing that alleged victim's testimony was false on the stand (regarding calling the police) and for failing to request/preserve telephone records that could have been used not only in the

affirmative defense but for cross-examination as well. Dove v. State, 337 S.C. 298, 523 S.E.2d 459 (1999).

For the foregoing reasons, I conclude trial counsel's failure to realize, explore, present documentary evidence, direct testimony, and argue to the jury the Applicant's version of events fell below accepted professional norms. I find Applicant establishes the prejudiced prong because of trial counsel's failure, that evidence is no longer available to Applicant. There is a reasonable certainty that, but for this error, the result of the proceeding would have been different given trial counsel's trial strategy.

3. Trial counsel did not make proper objections which allowed in improper testimony and could not be reviewed on appeal.

Several objections were not made during the trial that clearly should have been made by trial counsel. When the State was cross examining witnesses about jail phone calls and letters written by the applicant that have been produced through discovery an objection should have been made by counsel. (jail calls-Trial Tr. p. 158-159 lines 11-4, letters-Trial Tr.165-166 lines 8-16) Arguments made by the solicitor as to the character of the young 911 caller (Trial Tr. p. 203 lines 6-11); the statements attributable to the landlord (Trial Tr. p. 202 lines 1-19); and about golden rule (Trial Tr. p 205 lines 20-24) should have been objected to by counsel. Also the in court identification of the defendant by the assault victim was objectionable (Trial Tr. p. 121 lines 14-25) but not as prejudicial as the others aforementioned.

In Ingle v. State, trial counsel was ineffective for permitting two instances of hearsay testimony that identified petitioner as CSC victim's assailant. Counsel's explanation that he elicited one witness's testimony because the victim only offered an allegation was not a valid strategy since all hearsay testimony identifying an assailant could be characterized as an allegation. 348 S.C. 467, 560 S.E.2d 401 (2002). Improper corroboration testimony, such as Brown's, that is cumulative to

the victim's testimony is prejudicial since "it is precisely this cumulative effect which enhances the devastating impact of improper corroboration. Especially since the solicitor's closing arguments did not reflect what was testified to during trial. Id. Trial counsel was ineffective for failing to object to solicitor's closing argument that Applicant had damaged the house where there was no evidence of his presence at the scene the night in question presented at trial. Mincey v. State, 314 S.C. 355, 444 S.E.2d 510 (1994). A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury. State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. Id. "A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). However, "[s]olicitors are bound to rules of fairness in their closing arguments," as the Supreme Court has explained:

While the solicitor should prosecute vigorously, his duty is not to convict a defendant but to see justice done. The solicitor's closing argument must, of course, be based on this principle. The argument therefore must be carefully tailored so as not to appeal to the personal bias of the juror nor be calculated to arouse his passion or prejudice. State v. Northcutt, 372 S.C. 207, 222, 641 S.E.2d 873, 881 (2007) (quoting State v. Linder, 276 S.C. 304, 312, 278 S.E.2d 335, 339 (1981)).

"On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record, including whether the trial judge's instructions adequately cured the improper argument and whether there is overwhelming evidence of the defendant's guilt." Simmons, 331 S.C. at 338, 503 S.E.2d at 166. "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's

comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id.; see State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997)("A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice."). None of these issues were raised by appellate counsel likely because they were not objected to. For the foregoing reasons, Applicant has met both prongs of the Strickland test. Vasquez v. State, 388 S.C. 447, 698 S.C. 561 (2010).

4. Trial counsel did not move for a new trial under the theory of inconsistent verdicts and could not be reviewed on appeal.

The lack of a post-trial motion due to an inconsistent verdict (not guilty if the weapons charge) should have been made by counsel. But the prejudice of this error is speculative since the jury was not asked and the nighttime element of burglary first is not contested. However, given the Applicant's and witnesses testimony that Applicant did live at the residence and therefore could not have committed burglary by entering his residence during the nighttime would render the fact that the jury found him not guilty of possession of a weapon during the commission of a violent crime inconsistent. This is addressed somewhat in the jury charges. (Trial Tr. pgs. 217-219) Assault and battery third degree is not statutorily considered a violent crime.

Trial counsel did not object and move immediately for the inconsistent verdicts to be resubmitted to the jury to be reconciled. The other is to allow the jury to be dismissed and ask the court to order a new trial on the basis of the inconsistency, usually through a post-trial motion.

Failing to object to an inconsistent jury verdict (and moving simultaneously for the case to be resubmitted to jury) results in a waiver of the ability to challenge the verdict. See, e.g., Kosmyinka v. Polaris Indus., Inc., 462 F.3d 74, 83 (2d Cir. 2006); Pearson v. Welborn, 471 F.3d 732, 739 (7th Cir. 2006) ("[I]t does not appear from the record that Kwasniewski made a contemporaneous objection to the alleged inconsistency of the verdict at the time it was rendered. In many circuits,

such a failure amounts to waiver of the argument.”). Thus, even if there was an actual inconsistency in the jury verdict—and one that would otherwise justify a new trial—a party that waits until post-trial briefing to raise the issue risks waiver.

Even if a party does not waive the objection, there are advantages to having the jury, and not the court, resolve the discrepancy. If the verdict is colorably inconsistent, then a court can easily send the case back to the jury. Scott-Harris v. City of Fall River, 134 F.3d 427, 435 (1st Cir. 1997) (“When a verdict appears to be internally inconsistent, the safest courses . . . is to defer its acceptance, consult with counsel, give the jury supplemental instructions, and recommit the matter for further consideration.”), rev’d sub nom. on other grounds, Bogan v. Scott-Harris, 523 U.S. 44 (1998). Waiting to challenge the verdict until after the jury is dismissed eliminates the Court’s ability to do so, and the verdict is given a presumption of correctness that is difficult to overcome. See, e.g., Julien J. Studley, Inc. v. Gulf Oil Corp., 407 F.2d 521, 527 (2d Cir. 1969) (“The record may reveal a plausible, or even highly probable, ground for reasoning that the jury’s findings on specific issues leave no logical basis for the general verdict. Even so, if it is discoverable that the jury ‘might’ nevertheless have found consistent grounds for its ultimate decision—if the findings, therefore, are not necessarily in conflict the general verdict must be sustained.”).

5. Trial counsel did not request a continuance or challenge the Solicitor’s control of the trial docket in calling the case pursuant to Langford, and Appellate counsel did not raise the issue on appeal.

Langford abolished solicitor docket control. As of the date of this order, Langford has not been implemented, and Solicitors retain control of General Sessions Court dockets. As our Supreme Court recognized, dockets controlled by the State “leaves room for abuses which can deny a defendant due process.” Id., 400 S.C. at 439, 735 S.E.2d at 480. In the case at bar, the State appears to have received an advantage by limiting time to gather evidence needed to prepare

a defense when the motion to substitute counsel and to continue the case was not granted. As noted previously, Applicant was arrested on December 18, 2013. The solicitor received discovery and provided the same to trial counsel on January 30, 2014, merely 43 days had passed from the time Applicant was arrested until the assistant solicitor received discovery. Applicant was noticed for trial February 24, 2014, 68 days from the day the Applicant was arrested until the solicitor issued the trial notice. Trial counsel admitted that 25 days had passed from when he received the discovery until the trial notice and that there was a total of 109 days from receiving the discovery and starting the trial date. Trial counsel agreed on the record during the pre-trial hearing (Trial Tr. pg. 33 lines 11-20) during cross-examination that he may have only met face to face with the Applicant one time but he does recall speaking with him "several times" over the telephone. Trial counsel stated on the record that "[w]e've discussed the basic issues about the case. There are things that tend to come out the more he (talks)." (Trial Tr. p.33 lines 14-20) Applicant clearly did not feel trial counsel was adequately prepared to go forward and trial counsel should have at least asked for the case to be continued to address the evidentiary concerns raised in the motion to substitute counsel and request a continuance addressed above. See Stalk v. State, supra.

To establish counsel failed to adequately prepare for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (relief denied where applicant failed to present witnesses or specific testimony establishing applicant would have had a defense with additional time to prepare for trial); Skeen v. State, 325 S.C. 210, 481 S.E.2d

129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Therefore, failure to raise an objection regarding State v. Langford by both trial and appellate counsel was error.

Trial counsel's performance fell below professional norms in not requesting a continuance. Most of the issues alleged above could have been resolved had trial counsel spent time preparing the case for trial. Applicant was prejudiced because of the aforementioned conclusions.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

In conclusion, based upon the entire record, this court finds that the applicant has met his burden of proof under ." Strickland v. Washington, 466 U.S. 668 (1984); Cronic v. United States, 446 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984); and Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The Court finds and concludes that the Applicant has established constitutional violations or deprivations that would require this Court to grant his application for the reasons enumerated above. All other allegations are denied and dismissed with prejudice.

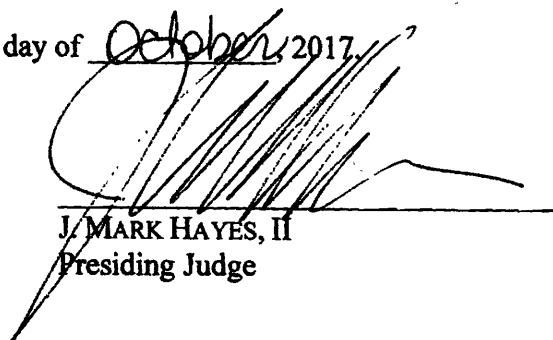
Counsel's attention is directed to Marlar v. State , 375 S.C. 407, 653 S.E.2d 266 (2007), and Rule 59(e), SCRPC, regarding the filing of a Motion to Alter or Amend should counsel believe this Order fails to adequately address all issues raised as required by S.C. Code Ann. § 17-17-80 (2003). This Court further advises that if either party desires to secure appellate review of this

order, a notice of appeal must be filed **within thirty (30) days** of the service of this order. See Rule 203, 206, and 243 SCACR. Pursuant to Austin v. State, 305 S.C. 452 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf.

IT IS THEREFORE ORDERED, that the application for Post-Conviction Relief is GRANTED and Applicant's conviction be vacated.

IT IS FURTHER ORDERED, that the matter is remanded to the Aiken County Court of General Sessions for a new trial.

AND IT IS SO ORDERED this 25 day of October, 2017.


J. MARK HAYES, II
Presiding Judge

Aiken, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

Bernard Daggart Frazier, #237617,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2015-CP-02-01842

**MOTION TO RECONSIDER
PURSUANT TO RULE 59(e) SCRPC**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on August 3, 2015. Respondent moves for this Court to alter or amend its prior Order granting post-conviction relief filed on November 6, 2017. Respondent submits the following in support of its motion:

Finding 1. Trial counsel did not join in Appellant's motion to be relieved due to the complete breakdown in communication and Appellate counsel did not raise the issue on appeal.

Respondent respectfully submits the Order granting this allegation should be amended, as its findings are improper. First, the allegation presented to the court and the explanation of the Court's reasoning for granting this allegation are unclear and combine two unrelated issues. The Order does not distinguish whether the allegation is one of ineffective assistance of Trial Counsel for failing to join in the motion or rather ineffective assistance of Appellate Counsel for failing to "raise" the issue on appeal. The Order seems to combine both allegations together, which is not proper. To win on either of these issues, Applicant must either prove that (1) Trial Counsel was deficient in failing to join in the motion, and if he had joined in the motion, the trial court would have granted the motion, relieved him as counsel, appointed a different attorney, gone to trial with the new attorney, and the jury would have returned a not-guilty verdict; or (2) Appellate

Counsel should have fully raised this issue on appeal in a meritorious brief, and if they had done so, the Court of Appeals would have reversed the conviction based on this issue alone. Respondent contends neither of these has been proven, and addresses both below.

Trial Counsel's actions

First, the trial transcript shows Trial Counsel was not **deficient** for failing to "join in" Applicant's motion to have Trial Counsel relieved. When Applicant presented the motion to the trial court, Trial Counsel explained the situation to the judge, including going so far as to say that there was a substantial breakdown in communication. There is nothing more that Trial Counsel could have done or said differently. The only difference between what he did and what Applicant not alleges he should have done is to formally say "I am joining in the motion." The failure to say these specific words is of no importance in the outcome of the case, either at trial or on appeal.

Second, Applicant has not proven **prejudice**, because "joining in" the motion would not have made a difference in the trial judge's ruling. The trial court heard all the facts from both Applicant and Trial Counsel, evaluated the situation, and denied the motion. No further information could have been presented to change the trial court's ruling. Furthermore, even if the trial court *had* granted the motion to relieve Trial Counsel, Applicant cannot prove that Applicant would have won the trial if he had been represented by a different attorney. The evidence against Applicant was the same, and he surely would have faced a similar jury that is just as likely to convict Applicant regardless of who represented him.

Additionally, the Court's ruling that the results of the proceeding would have been different because "[h]ad defense counsel joined in the motion, then that issue would have been more clearly preserved for appeal" is improper. An issue is either preserved or unpreserved for

appellate review. It cannot be made "more clearly preserved." It either is or it is not. Applicant was not making the motion to preserve the issue for appeal; rather he made it to try to get his attorney relieved. The motion was presented to the trial court, fully argued, and ruled upon. It is therefore preserved for appeal. Trial Counsel was not deficient in any way for failing to preserve the issue for appellate review, because it was preserved. Regardless, the standard for finding prejudice in this allegation is not whether it was preserved for appeal, but rather whether the trial court would have granted the motion, and if it had granted the motion if the jury's verdict would have been different.

Finally, Applicant cannot prove prejudice because Trial Counsel's testimony at the evidentiary hearing clearly showed that there was no prejudice. Trial Counsel stated on the record before the trial began that he believed there was a substantial breakdown in communication that would affect his representation at trial. However, he was told to stay on the case and represent Applicant through the trial. At the PCR hearing, Trial Counsel was asked if, looking back now in retrospect, that breakdown in communication *actually did* affect the outcome of the trial, or his ability to try the case. Trial Counsel testified that it *did not*, and the trial was not affected by this potential breakdown in communication. That testimony alone is enough to show there was no prejudice to Applicant on these grounds.

Appellate Counsel's actions

The Court's Order granting this allegation rules that Appellate Counsel was ineffective for failing to raise this issue on appeal because the trial court had abused its discretion in denying the motion and the trial court ruling would have been overturned on appeal. Respondent submits this is incorrect.

South Carolina case law is not favorable to Applicant on this issue. See State v. Gregory, 364 S.C. 150, 152, 612 S.E.2d 449, 450 (2005) (holding a motion to relieve counsel is addressed to the discretion of the trial court and will not be disturbed absent an abuse of discretion); State v. Graddick, 345 S.C. 383, 386, 548 S.E.2d 210, 211 (2001) (noting the defendant bears the burden of showing satisfactory cause for removal); id. (finding the trial court did not err in denying the defendant's motion to relieve counsel when defendant alleged counsel was not representing his interests, counsel was not fully prepared for the case, and defendant did not feel comfortable going to court with counsel as his lawyer); State v. McMillian, 349 S.C. 17, 21, 561 S.E.2d 602, 604 (2002) (providing a trial court's denial of a motion for continuance will not be disturbed absent a clear abuse of discretion); id. ("Reversals of refusal of a continuance are about as rare as the proverbial hens' teeth.").

Respondent submits that, based on South Carolina case law, the results of the direct appeal would not have been different if Appellate Counsel had raised this issue. Therefore, there can be no prejudice to Applicant, and Appellate Counsel cannot be found ineffective.

Finding 2. Trial counsel did not investigate and prepare for trial including issuing subpoenas for telephone records and prepare for cross-examination of alleged victim.

This Court granted the second allegation of ineffective assistance of counsel based on its ruling that Trial Counsel failed to subpoena cell phone records and interview and call two witnesses at trial to corroborate Applicant's trial testimony. Respondent submits these rulings are improper.

Witnesses

Respondent notes the testimony of the two witnesses presented at the evidentiary hearing were cumulative to the testimony presented at trial by Applicant about how he lived at the house.

These witnesses were not necessary to present this defense, as the defense was adequately presented by Trial Counsel at trial. A criminal defense attorney could always do something more in furtherance of his strategy; it is easy for a critiquing party to look back in retrospect and think of several more actions the attorney could have taken. However, Trial Counsel did everything here he needed to present his strategy of showing Applicant could not have burglarized his own home. Adding these two corroborating witnesses would not be enough to change the outcome of the trial. Therefore, there is no deficiency, as it was reasonable for Trial Counsel not to call these witnesses, and there is no prejudice, because their testimony alone would not have changed the outcome of the trial.

Cell Phone Records

Applicant simply cannot meet his burden of proving that he was prejudiced by Trial Counsel's failure to subpoena the cell phone records *because the records were not produced at the hearing*. The Order granting PCR actually notes all of the South Carolina case law which requires an applicant to actually produce the evidence that he contends should have been used at trial to meet his burden of proof, and then completely disregards the case law and rules that Applicant has proven he was prejudiced because the evidence is no longer available. There is no case law in South Carolina that supports this finding, and it is completely contrary to established law.

South Carolina courts have repeatedly held that a PCR applicant must produce the favorable evidence or otherwise offer the evidence in accordance with the rules of evidence at the PCR hearing in order to establish prejudice for the failure to present that evidence at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). The applicant's mere speculation what the evidence or witnesses' testimony would have been cannot, by itself, satisfy

the applicant's burden of showing prejudice. Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

Regardless of whether this information is no longer available, this Court cannot speculate as to what the cell phone records may have said. Applicant's assertion alone that the cell phone records would have supported a certain defense is not enough to meet the burden of proving that the outcome of the trial would have been different. Accordingly, this allegation must be denied.

Finding 3. Trial counsel did not make proper objections which allowed in improper testimony and could not be reviewed on appeal.

Failure to object to "Brady" Violation material

Applicant alleged, and this Court found in its order, that Trial Counsel was deficient for failing to object to hearsay testimony about Brady¹ materials that should have been, and were not, turned over by the State. This is incorrect. Trial Counsel cannot be deficient for failing to object to this testimony because the testimony was not improper. Furthermore, the materials that were not turned over in discovery were not Brady materials, and thus there is no Brady violation, because they were written and produced by Applicant himself. The materials in question consisted of letters written by Applicant to the victim from prison and jail phone calls made by Applicant. Brady v. Maryland holds that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87 (1963). This material cannot be withheld from the defendant if the defendant is aware of the statement because he made it.

Trial Counsel even testified at the evidentiary hearing that he did not object to the testimony regarding these materials because he assumed his client knew what he had said in the

¹ Brady v. Maryland, 83 S.Ct. 1194 (1963).

letters he wrote and the phone calls he made. There was simply no reason to object to this testimony on the basis of a Brady violation, so Trial Counsel cannot be deficient. The Court did not make a specific finding of prejudice on this allegation, so it is clear there is no resulting prejudice, as well, and Applicant has failed to meet either prong of the Strickland test.

Failure to make Golden Rule objection

Applicant alleges and this Court ruled that Trial Counsel was ineffective for failing to object to the Solicitor's improper "Golden Rule" comments in closing argument. This is incorrect because the Solicitor's comments were not improper. South Carolina law states that an improper golden rule argument asks jurors to consider the case from a biased, subjective state of the victims rather than objectively as fair and impartial jurors. Von Dohlen v. State, 360 S.C. 598, 611, 602 S.E.2d 738, 745 (2004). In this case, the Solicitor made the following comment: "The law of burglary is here for this reason, ladies and gentlemen. We have this law so that people can feel safe in their home, so kids can feel safe in their homes, so families can feel safe in their home from actions like this guy." ROA 205, line 20-24.

This statement is clearly not improper or a violation of the golden rule. The Solicitor did not ask the jury to imagine they were in the shoes of the victim. He did not incite emotional responses by describing the terror the victim felt or was faced with when Applicant broke into her home. He simply explained to the jury that the reason we have laws against burglary is to allow people to feel safe in their homes. These statements were not improper, and accordingly were not objectionable. Trial Counsel cannot be deficient for failing to make this objection, and the result of the trial would not have been different if Trial Counsel had made the objection. Therefore, the Strickland test simply is not met and the allegation should be denied.

Prejudice

Finally, the Order failed to address the prejudice prong of the Strickland test for any of Applicant's allegations of failure to object. There is not finding of prejudice whatsoever in this section of the order. Furthermore, it seems from reading the findings that an improper cumulative error analysis was applied to combine each of the alleged failure to object into one prejudicial mistake. This is improper. In order to find prejudice, this Court must find that any *one* of these failure to object singlehandedly changed the outcome of the trial. There is no such finding here.

Furthermore, the standard applied in the Order is incorrect. The Order states, "None of these issues were raised by appellate counsel likely because they were not objected to. For the foregoing reasons, Applicant has met both prongs of the Strickland test." Essentially, this Court is holding that there is prejudice here because Trial Counsel did not object, so the issues were not raised on appeal. This is improper. The proper standard is to find prejudice if the outcome of the trial would have been different if Trial Counsel had made the objection. Accordingly, because there is no prejudice finding, and because this Court seems to be applying the wrong standard, this allegation should be denied.

Finding 4. Trial counsel did not move for a new trial under the theory of inconsistent verdicts and could not be reviewed on appeal.

This Court's finding that Trial Counsel was ineffective for failing to move for a new trial under the theory of inconsistent verdicts is improper under South Carolina law because South Carolina no longer prohibits inconsistent verdicts. In 1991, the South Carolina Supreme Court abolished the rule prohibiting inconsistent verdicts. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). Trial Counsel could not have made a successful motion on this basis because it is not a valid argument under the law. Therefore, he cannot be deficient for failing to raise this motion and there is clearly no resulting prejudice.

Even if South Carolina did prohibit inconsistent verdicts, there is no inconsistent verdict in this case. It was an undisputed fact that this burglary occurred during the nighttime, which is an essential element to burglary in the first degree. Even though the jury found Applicant was not carrying a deadly weapon, Applicant still meets all the elements of burglary first. Therefore, the verdicts are not inconsistent.

Finally, the Order specifically says that, because of the undisputed fact that the crime occurred at night, the prejudice of this error is speculative. If prejudice is speculative, and there is no concrete finding of prejudice to Applicant, this Court cannot grant post-conviction relief on this ground. Accordingly, this allegation should be denied and dismissed.

Finding 5. Trial counsel did not request a continuance or challenge the Solicitor's control of the trial docket in calling the case pursuant to Langford, and Appellate counsel did not raise the issue on appeal.

Trial Counsel should not be found ineffective for failing to make a Langford objection and request a continuance.

Deficiency

The Order explains that State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012), abolished control of the docket by the Solicitors. The Order then immediately states, correctly, "As of the date of this order, Langford has not been implemented, and Solicitors retain control of General Sessions Court dockets." Trial Counsel cannot be deficient for failing to make an objection based on a policy that has not yet been implemented. Strickland holds that in examining deficiency, the court must look to see if Trial Counsel's actions were reasonable under professional norms. "In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances."

Strickland, 466 U.S.at 688, 104 S. Ct.at 2065. It was reasonable under South Carolina professional norms not to make an objection based on Langford, which is not even our current practice in General Sessions courts. It would be absurd to require Trial Counsel to raise this objection in this circumstance, and to do so would hold all defense attorneys to an unreasonable standard that does not conform with local practice.

Furthermore, Trial Counsel credibly testified at the evidentiary hearing that he had enough time to prepare for trial, he was completely prepared, and there was no reason to request a continuance. Therefore, he cannot be deficient for failing to make this request, as there was no reason to do so.

Prejudice

As stated above, Trial Counsel testified he was prepared for trial and there was no reason to request a continuance for more time to prepare. Accordingly, there is no prejudice based on his failure to request a continuance, because even if he had been given more time, he would have been just as prepared. Applicant has failed to prove that the outcome of the trial would have been different if this continuance request had been granted. Therefore, there is no prejudice, and this allegation should be denied.

CONCLUSION

Based on the arguments above, Respondent submits that Applicant has failed to meet his burden of proving either prong of the Strickland test, and his application for post-conviction relief should be denied and dismissed. Respondent respectfully requests this Court to reconsider its rulings and issue a new Order denying post-conviction relief and dismissing the action with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

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

By: /s/ Julie A. Coleman
ATTORNEYS FOR RESPONDENT

November 16, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
Daggart Bernard Frazier, #237617)
Applicant,)
-v-)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
IN THE SECOND JUDICIAL CIRCUIT

C/A No.: 2015-CP-02-01842

RETURN TO RESPONDENT'S
MOTION TO RECONSIDER

In response to Respondent's motion to reconsider dated November 16, 2017, Applicant would show this Court:

I.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed August 3, 2015 by Bernard D. Frazier. The State filed a return dated November 17, 2015. An Amended Application was filed by Applicant's counsel on May 16, 2016, no amended return was filed. An evidentiary hearing was convened at the Aiken County Judicial Center on September 18, 2017. The Applicant was present and represented by Aimee J. Zmroczek, Esquire. The State was represented by Julie Coleman, Assistant Attorney General. The Court denied relief by a filed order dated November 6, 2017. Respondent e-mailed a response November 16, 2017, and filed November 20, 2017.

II.

Applicant submits the Order of Dismissal signed by Judge J. Mark Hayes contains the required findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

Applicant submits that this Court properly ruled on all issues and Respondent's motion should be denied.

Applicant will address specific issues raised in the motion to reconsider below in section III. However, Applicant further submits this motion should be dismissed as untimely, Rules 59(b), and (e), SCRCP, require that any post-trial motions be filed and served within ten (10) days of notice of entry of judgment. The Court's Order of Dismissal was filed and served on November 6, 2017. (See Attachment #1). Respondent's current motion was filed on November 20, 2017.¹ (See Attachment #2). Accordingly, Applicant submits Respondent's motion was not timely served.

III.

Finding 1. Trial counsel did not join in Appellant's motion to be relieved due to the complete breakdown in communication and Appellate counsel did not raise the issue on appeal.

The Order is very clear on this issue. The Order acknowledges and grants the allegation of one of ineffective assistance of Trial Counsel for failing to join in the motion and further goes on to acknowledge and grant it was ineffective assistance of Appellate Counsel for failing to raise the issue on appeal. The Order finds trial counsel was ineffective for not joining in the motion beginning on page 8 of the Order and specifically addresses Appellate Counsel's failures on page 11 of the Order. This Court cited not only rules of professional conduct but also case law addressing the validity of this ground.

Trial Counsel stated clearly on the record as cited to in the Order that there was a "substantial breakdown in communication." Emphasis added (Trial Tr. p.38 lines 22-23). Trial counsel stated on the record at that point that he could not communicate with his client. If trial counsel cannot communicate with his client during a trial, there are not only professional

¹ But email notification was sent on the November 16, 2017.

responsibility concerns, but also Constitutional claims. The prejudice lies in not being able to present a defense during the trial.

The core of Appellant's ineffective assistance claims is that he was denied constitutionally effective counsel due to the complete and total breakdown in communication between him and his trial counsel. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts have recognized that "[a] complete breakdown in communication between an attorney and client may give rise to [a presumption of ineffectiveness]." United States v. Soto Hernandez, 849 F.2d 1325, 1328 (10th Cir.1988). In deciding whether a complete breakdown in communication rendered Appellant's representation constitutionally ineffective, this Court and its Order properly addressed the four factors. A breakdown in communication warranting relief under the Sixth Amendment cannot be the result of a defendant's unjustifiable reaction to the circumstances of his situation which was not the scenario in the present case, there is significant evidence in the record that Applicant's difficulties were a justifiable reaction to the inactions and lack of substantial communication with his trial counsel. The trial court erred by denying his motion to substitute counsel "in view of the serious breakdown" in his relationship with his court-appointed attorney. This should have been properly argued and granted as an abuse of discretion. See United States v. Perez, 661 F.3d 189, 191 (4th Cir.2011). "In determining whether a district court abused its discretion in denying a motion for new counsel," we consider the "timeliness of the motion; the adequacy of the court's inquiry into the defendant's complaint; and whether the attorney/client conflict was so great that it resulted in a total lack of communication preventing an adequate defense." Id. (internal quotation marks omitted). Viewed as a whole, these circumstances reveal that Applicant and his counsel did not share meaningful communication

such that Applicant was able to mount a defense. See United States v. Hanley, 974 F.2d 14, 17 (4th Cir.1992) (holding that counsel's vigorous defense at trial indicated a lack of complete communication breakdown). Respondent seems to argue that the South Carolina law relied upon in the Order is somehow not applicable in this case. Not only is it applicable, it is directly on point.

Finding 2. Trial counsel did not investigate and prepare for trial including issuing subpoenas for telephone records and prepare for cross-examination of alleged victim.

Witnesses

Based on the testimony presented at the evidentiary hearing, this finding is proper. Failure of Trial Counsel to interview and present potential witnesses is an established ground for ineffective assistance of counsel. Grier v. State, 299 S.C. 321, 323-24, 384 S.E.2d 722, 724 (1989) (upholding a PCR judge's ruling that "counsel's failure to call these witnesses constituted deficient performance"), overruled by Glover v. State, 318 S.C. 496, 458 S.E.2d 538(1995).

Cell Phone Records

Respondent argues Applicant cannot meet his burden of proving that he was prejudiced by Trial Counsel's failure to subpoena the cell phone records "*because the records were not produced at the hearing.*" (Page 5 of Respondent's brief). The reason the cell phone records could not be produced is as a direct result of Trial Counsel's failure to preserve the same. The expert witness testified that the retention period of the cell phone companies prohibited Applicant from being able to produce those records. Has Trial Counsel diligently investigated and quite basically done as the Applicant had reasonably requested and secured the phone records, they could have been presented at least at the PCR stage of the case. Because Trial Counsel failed to do so, Applicant was unable to present the same to the PCR Court. Trial Counsel cannot simply manufacture a reason for the loss of records or be the cause of the

inability of the same to be used at a PCR hearing and thereby argue Applicant cannot prove prejudice.

Finding 3. Trial counsel did not make proper objections which allowed in improper testimony and could not be reviewed on appeal.

Direct appeal is an important step to consider prior to pursuing PCR. In contrast to PCR, claims raised on direct appeal usually revolve around the assertion that the trial court erred in ruling upon a prior motion or objection. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). For example, issues often raised in a direct appeal are allegations that the trial judge erred in refusing to grant a motion for a mistrial or claims that a defendant's motion to suppress evidence was erroneously decided. See, e.g., State v. Spears, 393 S.C. 466, 472-73, 713 S.E.2d 324, 327 (Ct. App. 2011) (noting that defendant claimed the trial court erred in denying motions to suppress evidence and a motion for a mistrial). Applicant did show that his attorney erred in a manner that a reasonably proficient attorney would not, and that the error prejudiced his case.

Finding 4. Trial counsel did not move for a new trial under the theory of inconsistent verdicts and could not be reviewed on appeal.

Our Supreme Court has abolished the rule prohibiting inconsistent verdicts in criminal cases. State v. Alexander, 303 S.C. 377, 383, 401 S.E.2d 146, 150 (1991). The finding perhaps should be presented instead as failing to object to an inconsistent legal theory. The logic applied in Alexander contemplates inconsistent verdicts when multiple offenses are submitted to the jury. This distinction is discussed in State v. Garrett, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002). Trial Counsel should have moved for a new trial because of a lack of evidence to support the State's legal theory. Trial Counsel should have argued the trial judge should have considered the grant of a new trial not on a theory of inconsistent verdicts, but on a lack of evidence to support the verdicts. If there is no evidence to support a conviction, we should

uphold an order granting a new trial. State v. Smith, 316 S.C. at 55, 447 S.E.2d at 176. However, if competent evidence supports the jury's verdict, the trial judge may not substitute his own judgment for that of the jury and overturn that verdict. State v. Miller, 287 S.C. 280, 283, 337 S.E.2d 883, 885 (1985).

Finding 5. Trial counsel did not request a continuance or challenge the Solicitor's control of the trial docket in calling the case pursuant to Langford, and Appellate counsel did not raise the issue on appeal.

This finding and issue relates back to the first finding argued above. Given the substantial breakdown in communication and the two rapid trial dates Trial Counsel should have requested a continuance and asked the Court to issue a scheduling order and supervise the disposition of this case, including setting the trial date. This motion would be based on Article I, Section 8 of the South Carolina Constitution and State v. Langford, 400 S.C. 421, 735 S.E.2d 471 (2012). This motion would also be based on the due process clauses of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 1 and 8 of the South Carolina Constitution. Langford abolished solicitor docket control. Over a year after the decision, Langford has not been implemented, and Solicitors retain control of General Sessions Court dockets in violation of the South Carolina Constitution. As our Supreme Court recognized, solicitor docket control "leaves room for abuses which can deny a defendant due process." Id., 400 S.C. at 439, 735 S.E.2d at 480. On Thursday, August 22, 2013, then South Carolina Supreme Court Chief Justice Jean Toal made her annual presentation at the 2013 Judicial Conference. In her presentation, the Chief Justice announced, "The (Supreme) Court is examining a system for differentiated case management which will set all cases on tracks or scheduling orders. According to the power point presentation at slide number 15: For cases less than 545 days old [or 18 months], Judges, Solicitors, and defense attorneys in counties which

have in place a differentiated case management order tailored to that county will collaborate to set deadlines to process cases from bond hearings, the scheduling of first appearances, and the scheduling of pleas and trials. Cases over 545 days old [or eighteen months] will be exclusively managed by the Chief Judge for Administrative Purposes and will either be set for trial or dismissed.

The case at bar has had an unusual posture since the Applicant's case was very new and Applicant had filed a previously unheard motion to relieve his counsel. In the case at bar, the Solicitor's Office sought a strategic advantage by limiting evidence needed to prepare a defense, including Brady material as be discussed in the evidentiary hearing and addressed in this Court's Order.

IV.

WHEREFORE, having made its Return to the Motion, Applicant requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully Submitted,



Aimee J. Zimroczek, Esq. (#77193)
A.J.Z. Law Firm, LLC
P.O. Box 11961
Columbia, South Carolina 29211
t-803.400.1918, f-803.403.7005
aimee@ajzlawfirm.com
Appointed Attorney for Applicant

November 21, 2017.
Columbia, South Carolina

Bernard Frazier Motion to Reconsider

1 message

Julie Coleman <JColeman@scag.gov>To: "Hayes, J. Mark" <mhayesj@sccourts.org>, "aimee@ajzlawfirm.com" <aimee@ajzlawfirm.com>, Aimee Zmroczek <ajzlawfirm@gmail.com>
Cc: "Hayes, J. Mark Law Clerk (Lemuel C. Zeigler)" <mhayeslc@sccourts.org>

Judge Hayes,

Please see attached the State's motion to reconsider your Honor's order granting PCR to Bernard Frazier pursuant to Rule 59(e), SCRPC.

I apologize for sending this so late—I just got out of court in Sumter County a few minutes ago.

The motion is due today. I was served with the order ten days ago, so please accept this as service.

I will also place a hard copy in the mail.

Thank you very much!

**Julie A. Coleman**
Assistant Attorney GeneralS.C. Attorney General's Office
Rembert C. Dennis Building
Post Office Box 11549
Columbia, South Carolina 29211

Office: (803) 734-3737

jcoleman@scag.gov

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Daggart Bernard Frazier, #237617,

C/A No.: 2015-CP-02-01842

Applicant,

v.

State of South Carolina,

**ORDER DENYING MOTION TO
RECONSIDER**

Respondent.

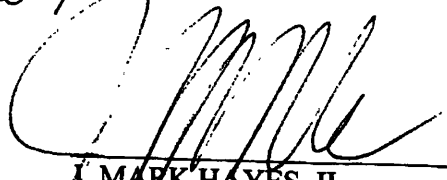
This matter came before this Court by way of Respondent's Motion to Reconsider and Order from this Court granting Applicant's application in part for post-conviction relief (PCR). The application for PCR was filed on August 3, 2015, and an Order Granting the application in part was filed and served November 6, 2017. Respondent emailed a Motion to Reconsider on November 16, 2017, which was filed with the clerk on November 20, 2017. Applicant filed a response on November 21, 2017. The motion to reconsider, the petitioner's reply, prior order, notes and transcript were reviewed. The Court does not believe additional arguments are needed. The prior order will not be amended, except to the extent that the section dealing with inconsistent verdicts should be altered to reflect inconsistent legal theories. Other than the previous modification, the remainder of this motion is denied for the reasons stated herein:

Respondent's Motion to Reconsider failed to raise any new issues or reasons supporting alteration or amendment of the Order Granting Petitioner's Application other than the section addressing the inconsistent verdicts is altered to reflect inconsistent legal theories. Respondent has not presented any valid reasons for the Court to alter its Order Granting PCR Application.

Therefore, the Respondent's Motion to Reconsider is Denied.

IT IS SO ORDERED.

This the 19th day of December, 2017



J. MARK HAYES, II
Presiding Judge

Aiken, South Carolina.