

ORIGINAL

RECEIVED
JUL 05 2012
SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM ANDERSON COUNTY

R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL EUGENE REESE,

APPELLANT

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

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

CHRISTINA T. ADAMS
Solicitor, Tenth Judicial Circuit
PO Box 8002
100 S. Main Street
Anderson, SC 29622-8002
(864) 260-4046

Attorneys for Respondent

INDEX

INDEXi
TRIAL TRANSCRIPT1
INDICTMENT141
CERTIFICATE OF COUNSEL.....143

STATE OF SOUTH CAROLINA)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON)	OF THE TENTH JUDICIAL CIRCUIT
)	2010-GS-04-02611
STATE OF SOUTH CAROLINA,)	
)	
PLAINTIFF,)	
)	TRIAL TRANSCRIPT
vs)	
)	
MICHAEL EUGENE REESE,)	
)	DECEMBER 15, 2011
<u>DEFENDANT.</u>)	ANDERSON, SOUTH CAROLINA

BEFORE: THE HONORABLE R. LAWTON MCINTOSH

FOR THE STATE:

JENNIFER BYFORD
ATTORNEY AT LAW
TENTH CIRCUIT SOLICITOR'S OFFICE

FOR THE DEFENSE:

JENNIFER JOHNSON
ATTORNEY AT LAW
ANDERSON COUNTY PUBLIC DEFENDER'S OFFICE

JO RICE
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE-CROSS</u>
JURY SELECTION				4-22
INTRODUCTORY INSTRUCTIONS TO THE JURY				23-30
OPENING STATEMENT - MS. BYFORD				31-33
OPENING STATEMENT - MS. JOHNSON				34-36
<u>MARGARET NELSON</u>				
MS. BYFORD	36-39		43-44	
MS. JOHNSON		40-43		
<u>DOUGLAS NELSON</u>				
MS. BYFORD	44-46			
MS. JOHNSON		47-49		
<u>JOHN WILLIAMS</u>				
MS. BYFORD	50-53		57-58	
MS. JOHNSON		53-57		58-59
<u>RUSTY ABLES</u>				
MS. BYFORD	62-72		87-90	
MS. JOHNSON		72-87		
<u>CATHARINE LEISY</u>				
MS. BYFORD	90-94			
MS. JOHNSON		94		
FIFTH AMENDMENT RIGHTS				96-98
CHARGE CONFERENCE				99-106
CHARGE ON THE LAW				106-122
CLOSING ARGUMENT - MS. BYFORD				123-127
CLOSING ARGUMENT - MS. JOHNSON				127-132

VERDICT 134-135

SENTENCING 135-139

CERTIFICATE 140

EXHIBITS

STATE'S EXHIBITS

NO STATE EXHIBITS

DEFENSE EXHIBITS

(Marked for I.D. only)

D) 1 I.D. ONLY - 8 x 10 PHOTO - AERIAL VIEW N/A

D) 2 I.D. ONLY - 8 x 10 PHOTO - AERIAL VIEW N/A

D) 3 I.D. ONLY - 8 x 10 PHOTO - AERIAL VIEW N/A

D) 4 I.D. ONLY - 8 x 10 PHOTO - AERIAL VIEW N/A

COURT EXHIBIT'S

C) 1 FOREPERSON SELECTION 23

C) 2 AFFIDAVIT 60

C) 3 AFFIDAVIT 60

C) 4 NOTE FROM JURY - SMOKE 60

C) 5 NOTE FROM JURY - ASPIRIN Off The Record

C) 6 REQUEST TO CHARGE - JOHNSON 105

JURY SELECTION

1 THE COURT: Good morning Ladies and Gentlemen. Thank
2 you for being here. We are about to begin the case of the
3 State versus Michael Eugene Reese, who has been indicted for
4 burglary in the first degree. I told you the same thing
5 Monday, and I will do it again today. This is simply a
6 charging document. The fact that the Defendant has been
7 indicted is not an inference, nor does it raise a
8 presumption of his guilt. Good morning, Counselors. Are
9 you ready to proceed?

10 MS. BYFORD: Yes, Your Honor.

11 Ms. JOHNSON: Yes, Your Honor.

12 THE COURT: Very good. All right, do you want to call
13 the roll Mr. Clerk?

14 CLERK OF COURT: Yes, sir.

15 (Clerk of Court conducts roll call of the jurors)

16 THE COURT: May I see the attorneys up here, please.

17 (Brief bench conference off the record)

18 JURY SELECTION

19 THE COURT: All right. Thank you, Ladies and Gentlemen.
20 I have a few questions that I am going to ask. Remember,
21 each of you are still under oath from earlier this week. If
22 the question applies to you, would you stand up and give us
23 your juror number and then your name.

24 The first question is: Has anyone ever been related by
25 blood or marriage to Michael Eugene Reese or Margaret and

JURY SELECTION

5

1 Douglas Nelson? If so, would you please stand? Okay, sir.
2 What is your juror number?

3 MR. BURDETTE: Number 20. I just want to say I have two
4 half-brothers and a half-sister who are Reeses.

5 THE COURT: Do you know, particularly, Mr. Michael
6 Eugene Reese?

7 MR. BURDETTE: No.

8 THE COURT: Okay, sir. That will be fine. Thank you.
9 Anyone else? Has anyone ever had a close personal or social
10 relationship with either Margaret or Douglas Nelson or
11 Michael Eugene Reese? If so, would you please stand? (No
12 one stands)

13 All right, Ladies and Gentlemen, the following is a
14 list of possible witnesses who may testify in this case. I
15 am going to go through the entire list. If you know anyone
16 or have a relationship with them, I am going to ask you to
17 stand. I will ask specific questions in just a minute. The
18 list of potential witnesses are: Stan Ashley, Anderson
19 County Sheriff's Department. J. G. Williams, Anderson
20 County Sheriff's Department. Rusty Ables, Anderson County
21 Sheriff's Department. Tommy Clamp, Anderson County
22 Sheriff's Department. Selena Kinard, SLED. Doris
23 Yarborough, SLED. Catherine Leisy, SLED. Has anyone ever
24 been related by blood or marriage to any of the witnesses
25 that I just read to you? If so, would you please stand?

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

JURY SELECTION

1 (No one stands)

2 Does anyone have a close personal or social
3 relationship with any of the potential witnesses I just read
4 to you, would you please stand? (No one stands)

5 All right, Ms. Johnson would you stand up and
6 introduce yourself and your client, please ma'am?

7 MS. JOHNSON: Yes, sir. My name is Jennifer Johnson. I
8 am an attorney here in Anderson and this is my client,
9 Michael Reese.

10 THE COURT: Very good. Ms. Byford?

11 MS. Byford: Yes, sir. Good morning, Ladies and
12 Gentlemen. My name is Jen Byford. Sitting next to me is
13 Assistant Solicitor Lauren Hogan and Deputy John Williams of
14 the Anderson County Sheriff's Department.

15 THE COURT: Has any member of the jury panel ever been
16 represented by any of these attorneys or any members of
17 their firms? If so, would you please stand? (No one stands)

18 Has any member of the jury panel ever been related by
19 blood or marriage to either of these attorneys or any
20 members of their firm? If so, would you please stand? (No
21 one stands)

22 Does any member of the jury panel have a close personal
23 or social relationship with any of the members or any of
24 these attorneys who just stood up or any members of their
25 firm? If so, would you please stand? (No one stands)

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

JURY SELECTION

7

1 Has any member of the jury panel formed or expressed an
2 opinion in the case of the State versus Michael Eugene
3 Reese? If so, would you please stand? (No one stands)

4 Is there any member of the jury panel that is aware of
5 any bias or prejudice that you may have against the State or
6 the Defendant in this matter or any of the attorneys in this
7 matter? If so, would you please stand? (No one stands)

8 Is there any member of the jury panel that is a member
9 of the Anderson County Grand Jury that issued the indictment
10 in the case of the State versus Michael Eugene Reese? If
11 so, would you please stand? (No one stands)

12 Is there any member of the jury panel who is a member
13 of or a contributor to any group which has as it's primary
14 purpose the promotion of law enforcement or victim's rights,
15 groups such as: MADD, SADD, or CAVE? Those aren't an
16 exclusive list, but if you are a member of or contributor to
17 any group which has it's primary purpose as being the
18 promotion of law enforcement or victim's rights, would you
19 please stand? (No one stands)

20 Is there any member of the jury panel that knows any
21 reason, whatsoever, why you should not be selected to serve
22 on the case of The State versus Michael Eugene Reese for the
23 purpose of you not being able to be impartial or unbiased in
24 this case? If so, would you please stand? (No one stands)

25 Is there any member of the jury panel that is related

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

JURY SELECTION

1 by blood, marriage, or have a close personal or social
2 relationship with any member of law enforcement? If so,
3 would you please stand? (No one stands)

4 Has any member of the jury panel or any member of their
5 families been the victim of a burglary, home invasion,
6 robbery, or assault? If so, would you please stand? Okay,
7 Mr. Campbell, what is your juror number?

8 MR. CAMPBELL: Twenty-six.

9 THE COURT: Twenty-six? Okay. What -- would you tell
10 us the facts about that, if you don't mind?

11 MR. CAMPBELL: This year I got a piece of property, a
12 piece of rental property, broken into twice. Two-and-a-half
13 years ago, I had a car broken into, in my driveway.

14 THE COURT: Would the fact that you were of a victim of
15 that crime prevent you from listening to the evidence in
16 this matter and being fair and impartial to both this
17 Defendant and to the State of South Carolina?

18 MR. CAMPBELL: No, sir.

19 THE COURT: Any additional voir dire from the Defense?

20 MS. JOHNSON: No, sir.

21 THE COURT: From the State?

22 MS. BYFORD: No, sir.

23 THE COURT: Thank you, Mr. Campbell. Okay, ma'am, what
24 is your juror number?

25 MS. WATTS: One sixty.

JURY SELECTION

9

1 THE COURT: One sixty? What is your name, please?

2 MS. WATTS: Stephanie Watts.

3 THE COURT: Okay, do you mind telling us what the ---

4 MS. WATTS: My garage was broken into and a four-
5 wheeler and stuff like that was stolen.

6 THE COURT: How long ago has that been?

7 MS. WATTS: Five or six years ago.

8 THE COURT: Okay, would the fact that you had your
9 garage broken into, and had that theft, prevent you from
10 being fair and impartial to both parties in this matter,
11 meaning the Defendant and the State?

12 MS. WATTS: No, sir.

13 THE COURT: Any additional voir dire from either
14 attorney?

15 MS. BYFORD: No, sir.

16 MS. JOHNSON: No, sir.

17 THE COURT: What I am going to do, if y'all want any
18 additional questions, just let me know. All right? Thank
19 you, ma'am. Yes, sir? What is your juror number?

20 MR. COOK: Number 36.

21 THE COURT: Okay, what is your name, please?

22 MR. COOK: Robert Cook.

23 THE COURT: Okay.

24 MR. COOK: On November 13th of this year, my truck was
25 stolen on Highway 86 and 85. I was a victim of an Anderson

JURY SELECTION

1 County car theft ring.

2 THE COURT: Is that presently pending? Have they found
3 the person?

4 MR. COOK: Excuse me?

5 THE COURT: Have they found the person or persons who
6 took the vehicle?

7 MR. COOK: Yes, sir. Someone is supposed to be
8 arraigned in this courthouse tomorrow.

9 THE COURT: Okay. Well, because you have been a victim
10 of this alleged crime, would that prevent you, in this case,
11 from being fair and impartial to both the Defendant and The
12 State in this matter?

13 MR. COOK: No.

14 THE COURT: Are you sure?

15 MR. COOK: I can't swear to it. No.

16 THE COURT: Well, I am going to tell you what. These
17 trials involve people's liberties and it is very, very
18 important that you are able to be fair and impartial. I am
19 going to excuse you from being a part of this panel this
20 week. I understand why, but I'm going to let you go. Okay?
21 Thank you, sir, and thank you for being honest with me. All
22 right, Yes, sir?

23 MR. COCHRAN: Number 32, Kenneth Cochran. About 10
24 years ago I had a vehicle broken into, a lot of things were
25 stolen.

JURY SELECTION

11

1 THE COURT: Mr. Cochran, would that experience prevent
2 you from fair and impartial to both parties in this matter?

3 MR. COCHRAN: No, sir.

4 THE COURT: Are you sure?

5 MR. COCHRAN: Yes, sir.

6 THE COURT: All right. Thank you, sir. All right,
7 Ladies and Gentlemen, what we are about to do, if you will
8 recall what we did on Monday, if your name is called, I am
9 going to ask you to come up and stand between our clerk and
10 our court reporter, face the Defense, face the State and the
11 decision will be made whether or not you will be selected on
12 this jury. If your name is called, bring your personal
13 belongings with you so you won't have to run back and get
14 them in case you are selected. That being said, Mr. Clerk,
15 are you ready to pick them out?

16 JURY SELECTION

17 CLERK OF COURT: Juror No. 99, Lisa D. McCombs.

18 (Whereupon Lisa D. McCombs, a white female, comes forward.)

19 CLERK OF COURT: What say you for the Defense?

20 THE COURT: Let's go to the State first.

21 CLERK OF COURT: I'm sorry, Your Honor. What say you
22 for the State?

23 MS. BYFORD: Please present this juror.

24 CLERK OF COURT: What say you for the Defense?

25 MS. JOHNSON: Please swear the juror.

JURY SELECTION

1 CLERK OF COURT: Next is 157, Carla L. Turner.

2 (Whereupon, Carla L. Turner, a white female, comes forward.)

3 CLERK OF COURT: What say you for the State?

4 MS. BYFORD: Please present this juror.

5 CLERK OF COURT: What say you for the Defense?

6 MS. JOHNSON: Please swear the juror.

7 CLERK OF COURT: Juror No. 65, Kenneth L. Hall, Jr.

8 (Whereupon Kenneth L. Hall, Jr., a white male, comes

9 forward.)

10 CLERK OF COURT: What say you for the State?

11 MS. BYFORD: Please present this juror.

12 CLERK OF COURT: What say you for the Defense?

13 MS. JOHNSON: Please excuse this juror from service in
14 this case.

15 CLERK OF COURT: Juror No. 40, Ruth E. Daughenbaugh.

16 (Whereupon Ruth E. Daughenbaugh, a white female, comes
17 forward.)

18 CLERK OF COURT: What say you for the State?

19 MS. BYFORD: Please present this juror.

20 CLERK OF COURT: What say you for the Defense?

21 MS. JOHNSON: Please swear the juror.

22 CLERK OF COURT: Juror 132, Roger L. Rousey.

23 (Whereupon Roger L. Rousey, a white male, comes forward.)

24 CLERK OF COURT: What say you for the State?

25 MS. BYFORD: Please present this juror.

JURY SELECTION

13

1 CLERK OF COURT: What say you for the Defense?

2 MS. JOHNSON: Please excuse Mr. Rousey from this case.

3 CLERK OF COURT: Have a seat. Juror No. 32, Kenneth M.
4 Cochran.

5 (Whereupon Kenneth M. Cochran, a white male, comes forward.)

6 CLERK OF COURT: What say you for the State?

7 MS. BYFORD: Please present the juror.

8 CLERK OF COURT: What say you for the Defense?

9 MS. JOHNSON: Please swear the juror.

10 CLERK OF COURT: Juror No. 4, Anthony D. Bailey.

11 (Whereupon Anthony D. Bailey, a white male, comes forward.)

12 CLERK OF COURT: What say you for the State?

13 MS. BYFORD: Please present this juror.

14 CLERK OF COURT: What say you for the Defense?

15 MS. JOHNSON: Please swear the juror.

16 CLERK OF COURT: Juror 141, Timothy C. Smith.

17 (Whereupon Timothy C. Smith, a white male, comes forward.)

18 CLERK OF COURT: What say you for the State?

19 MS. BYFORD: Please excuse this juror.

20 CLERK OF COURT: Have a seat, please. Juror 178, Ricky
21 L. Hatcher.

22 (Whereupon Ricky L. Hatcher, a white male, comes forward.)

23 CLERK OF COURT: What say you for the State?

24 MS. BYFORD: Please present this juror.

25 CLERK OF COURT: What say you for the Defense?

JURY SELECTION

1 MS. JOHNSON: Please swear the juror.

2 CLERK OF COURT: Have a seat, Mr. Hatcher. Juror 106,
3 Jams M. Moore.

4 (Whereupon James M. Moore, a black male, comes forward.)

5 CLERK OF COURT: What say you for the State?

6 MS. BYFORD: Please present this juror.

7 CLERK OF COURT: What say you for the Defense?

8 MS. JOHNSON: Please swear the juror.

9 CLERK OF COURT: Have a seat, Mr. Moore. Juror 87,
10 Debbie A. Keasler.

11 (Whereupon Debbie A. Keasler, a white female, comes
12 forward.)

13 CLERK OF COURT: What say you for the State?

14 MS. BYFORD: Please present this juror.

15 CLERK OF COURT: What say you for the Defense?

16 MS. JOHNSON: Please swear the juror.

17 CLERK OF COURT: Thank you, ma'am. Juror 64, Dennis M.
18 Greer.

19 (Whereupon Dennis M. Greer, a white male, comes forward.)

20 THE COURT: Yes, sir?

21 CLERK OF COURT: If we go back ---

22 THE COURT: That's okay. I am going to excuse Mr. Greer
23 for cause. Okay, thank you, Mr. Greer.

24 CLERK OF COURT: Juror No. 79, Latoya R. Johnson.

25 (Whereupon Latoya R. Johnson, a black female, comes

JURY SELECTION

15

1 forward.)

2 CLERK OF COURT: What say you for the State?

3 MS. BYFORD: Please excuse Ms. Johnson.

4 CLERK OF COURT: Have a seat, Ms. Johnson. Juror 13,
5 Jennifer J. Brissey.

6 (Whereupon Jennifer J. Brissey, a white female, comes
7 forward.)

8 CLERK OF COURT: What say you for the State?

9 MS. BYFORD: Please present this juror.

10 CLERK OF COURT: What say you for the Defense?

11 MS. JOHNSON: Please swear the juror.

12 CLERK OF COURT: Juror No. 20, Christopher L. Burdette.
13 (Whereupon Christopher L. Burdette, a white male, comes
14 forward.)

15 CLERK OF COURT: What say you for the State?

16 MS. BYFORD: Please excuse Mr. Burdette.

17 CLERK OF COURT: Have a seat, Mr. Burdette. Juror No.
18 90, Benjamin L. Landreth, Jr.

19 (Whereupon Benjamin L. Landreth, Jr., a white male, comes
20 forward.)

21 CLERK OF COURT: What say you for the State?

22 MS. BYFORD: Please present this juror.

23 CLERK OF COURT: What say you for the Defense?

24 MS. JOHNSON: Please excuse the juror from service in
25 this case.

JURY SELECTION

1 CLERK OF COURT: Thank you. Juror 61, Pamela D.
2 Gilliard.

3 (Whereupon Pamela D. Gilliard, a black female, comes
4 forward.)

5 CLERK OF COURT: What say you for the State?

6 MS. BYFORD: Please present this juror.

7 CLERK OF COURT: What say you for the Defense?

8 MS. JOHNSON: Please swear the juror.

9 CLERK OF COURT: Juror 160, Stephanie A. Watts.
10 (Whereupon Stephanie A. Watts, a white female, comes
11 forward.)

12 CLERK OF COURT: What say you for the State?

13 MS. BYFORD: Please present this juror.

14 CLERK OF COURT: What say you for the Defense?

15 MS. JOHNSON: Please excuse the juror from service on
16 this case.

17 CLERK OF COURT: Ms. Johnson, I have 4 strikes to you.

18 MS. JOHNSON: Correct.

19 CLERK OF COURT: Thank you.

20 THE COURT: She gets 10.

21 CLERK OF COURT: Sir?

22 THE COURT: She gets 10.

23 CLERK OF COURT: Yes. Juror 176, Matthew D. Brown.

24 (Whereupon Matthew D. Brown, a white male, comes forward.)

25 CLERK OF COURT: What say you for the State?

JURY SELECTION

17

1 MS. BYFORD: Please present the juror.

2 CLERK OF COURT: What say you for the Defense?

3 MS. JOHNSON: Please swear the juror.

4 CLERK OF COURT: Thank you. Juror No. 19, Walter H.
5 Bryant.

6 (Whereupon Walter H. Bryant, a white male, comes forward.)

7 CLERK OF COURT: What say you for the State?

8 MS. BYFORD: Please present this juror.

9 MS. JOHNSON: Please excuse this juror from service in
10 this case.

11 CLERK OF COURT: Juror No. 91, David T. Ligon.

12 (Whereupon David T. Ligon, a white male, comes forward.)

13 CLERK OF COURT: What say you for the State?

14 MS. BYFORD: Please present this juror.

15 MS. JOHNSON: Please excuse the juror from service in
16 this case.

17 CLERK OF COURT: Juror 138, Denise A. Slater.

18 (Whereupon Denise A. Slater, a white female, comes forward.)

19 CLERK OF COURT: What say you for the State?

20 MS. BYFORD: Please present the juror.

21 MS. JOHNSON: Please excuse this juror from service in
22 this case.

23 CLERK OF COURT: Thank you. Juror 121, Margaret A.
24 Plumer.

25 (Whereupon Margaret A. Plumer, a black female, comes

JURY SELECTION

1 forward.)

2 CLERK OF COURT: What say you for the State?

3 MS. BYFORD: Please excuse this juror.

4 CLERK OF COURT: That is 4 strikes for the State.

5 MS. BYFORD: Yes, sir.

6 CLERK OF COURT: Juror 131, Gerald T. Robinson.

7 (Whereupon Gerald T. Robinson, a white male, comes forward
8 and speaks to the judge off the record.)

9 THE COURT: Excuse Mr. Robinson for cause. (Judge
10 McIntosh instructs Mr. Robinson to sit in the front row.)
11 Mr. Robinson, over there.

12 CLERK OF COURT: Juror 33, Christina M. Coker.
13 (Whereupon Christina M. Coker, a white female, comes
14 forward.)

15 CLERK OF COURT: What say you for the State?

16 MS. BYFORD: Please present this juror.

17 CLERK OF COURT: What say you for the Defense?

18 MS JOHNSON: Please excuse this juror from service in
19 this case.

20 CLERK OF COURT: Juror 120, Anthony Pliaconis.

21 (Whereupon Anthony Pliaconis, a white male, comes forward.)

22 CLERK OF COURT: What say you for the State?

23 MS. BYFORD: Please present this juror.

24 CLERK OF COURT: What say you for the Defense?

25 MS. JOHNSON: Please excuse this juror from service on
THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

JURY SELECTION

19

1 this case.

2 CLERK OF COURT: That is 9 strikes?

3 MS. JOHNSON: Yes, sir.

4 CLERK OF COURT: Juror 146, Leah S. Sustar.

5 (Whereupon Leah S. Sustar, a white female, comes forward.)

6 CLERK OF COURT: What say you for the State?

7 MS. BYFORD: Please present this juror.

8 MS. JOHNSON: Please excuse this juror from service in
9 this case.

10 CLERK OF COURT: And that is 10 strikes, Your Honor, for
11 the Defense.

12 THE COURT: Go ahead and call your next one.

13 CLERK OF COURT: Juror 52, Chase A. Ford.

14 (Whereupon Chase A. Ford, a white male, comes forward.)

15 CLERK OF COURT: What say you for the State?

16 MS. BYFORD: Please swear the juror.

17 CLERK OF COURT: Have a seat, please.

18 THE COURT: All right, one alternate.

19 CLERK OF COURT: We'll pick an alternate. First juror
20 on the alternate, No. 45, Glenda M. Dixon.

21 (Whereupon Glenda M. Dixon, a white female, comes forward.)

22 CLERK OF COURT: What say you for the State?

23 MS. BYFORD: Please present this juror.

24 CLERK OF COURT: What say you for the Defense?

25 MS. JOHNSON: Please excuse this juror from service on

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

JURY SELECTION

1 this case.

2 CLERK OF COURT: Juror 166, Robert J. Whisnant, Jr.

3 (Whereupon Robert J. Whisnant, Jr., a white male, comes
4 forward.)

5 CLERK OF COURT: What say you for the State?

6 MS. BYFORD: Please present this juror.

7 MS. JOHNSON: Please excuse this juror from service in
8 this case.

9 CLERK OF COURT: Juror 155, Tracy N. Trapka.

10 (Whereupon Tracy N. Trapka, a white male, comes forward.)

11 CLERK OF COURT: What say you for the State?

12 MS. BYFORD: Please swear the juror.

13 CLERK OF COURT: All right, Your Honor.

14 THE COURT: Thank you, sir. Any motions from the State
15 or the Defense with regard to jury selection?

16 MS. BYFORD: None from the State, Your Honor.

17 MS. JOHNSON: None from the Defense, Your Honor.

18 THE COURT: Very good. Thank you. All right, Ladies
19 and Gentlemen, those of you who were not selected, I can see
20 the sadness in your eyes out there, but I'm going to excuse
21 you today and for the remainder of the week. We appreciate
22 you coming and being a part of the system. Without you, it
23 does not work. This is a fundamental part of our democracy
24 and we appreciate your participation. With that being said,
25 you are free to go and you do not have to serve for another

JURY SELECTION

21

1 three years. Have a good day and Merry Christmas.

2 (Jury Panel out at 9:51 a.m.)

3 THE COURT: Okay, Mr. Trapka, you are our alternate.
4 Buck, you would like him to sit on the back seat? That will
5 be fine. If you would, that is okay for right now, but if
6 you would, each time you come in and out of the courtroom,
7 if you would stay right there on the back seat, right behind
8 you. It helps me perform a service I need to do. What I am
9 going to do now is ask that the jury go back to the jury
10 room. I want you to select a foreperson who will do several
11 things: Number one, the foreperson will preside at the end
12 of the case over deliberations. Also, if there is ever any
13 need for communication with the court, the foreperson will
14 make sure this communication is made. So, I want you to
15 select whoever you want to represent you as a jury. Once
16 you come to a decision who it is, write their name down, and
17 sign -- and have the foreperson sign that. Then, the
18 foreperson, I'm going to ask to poll the jury to determine
19 whether or not the jury members want to have pads and paper.
20 You don't have to have them, but you may have pads and
21 paper. Okay? And the selection process is not to be
22 unanimous, it is just by a simple majority. You go back to
23 your jury room right now and the only prohibition is that
24 Mr. Trapka, you may not serve as the foreperson, but you
25 have a right to vote for the foreperson. Okay? That being

JURY SELECTION

1 said, would you go back to your jury room now, please?

2 (Jury out at 9:53 a.m.)

3 THE COURT: All right. Mr. Robinson, would you stand
4 up? When we were doing jury selection, Mr. Robinson
5 announced to me that he had been the victim of several
6 robberies, but he chose not to relay that information to us
7 until after he was selected. As a result, I am going to let
8 you stay here today and tomorrow and watch these proceedings
9 right there on the front row and I think it will be a good
10 civics lesson for you. Okay? So, you stay there and
11 anytime we are in session you need to be in that seat.
12 Okay?

13 MR. ROBINSON: Yes, sir.

14 THE COURT: Thank you, sir. That being said, any
15 matters from the State that we need to deal with? You had
16 some issue about judicial notice?

17 MS. BYFORD: Yes, sir. The State requests that you take
18 judicial notice of the sunset on October 09, of 2010. I
19 don't believe there is any objection.

20 THE COURT: Is that correct?

21 MS. JOHNSON: That is correct.

22 THE COURT: All right, if you would, at the proper time,
23 bring me that document.

24 LAW CLERK: It's right here.

25 THE COURT: Oh, you have got it? Okay, now, 7:04 p.m.?

INTRODUCTORY INSTRUCTIONS BY THE COURT

23

1 MS. BYFORD: Yes, sir.

2 THE COURT: Okay. All right. Any matters from the
3 Defense we need to deal with?

4 MS. JOHNSON: Your Honor, I have no pretrial matters.

5 THE COURT: Okay. I want to see the attorneys in the
6 back for just a second and then we can get started.

7 (Brief recess)

8 THE COURT: Are we going to sequester the witnesses in
9 this case or not? It doesn't matter to me.

10 MS. JOHNSON: Your Honor, I don't know that there is a
11 need to do that.

12 THE COURT: Do you agree with that?

13 MS. BYFORD: Yes, sir.

14 THE COURT: Would you bring the jury in, please?

15 (Jury in at 10:15 a.m.)

16 CLERK OF COURT: Your Honor, I am going to pass out
17 their pads.

18 THE COURT: That will be good. Mr. Moore, how are you
19 doing this morning?

20 MR. MOORE: Fine, sir.

21 THE COURT: You have been selected the foreperson?

22 MR. MOORE: Yes, sir.

23 THE COURT: All right. Now, it will be your
24 responsibility, Mr. Moore, to preside at the end of this
25 case during the deliberations. Also, should it ever become

INTRODUCTORY INSTRUCTIONS BY THE COURT

1 necessary to communicate with the Court for any reason, just
2 do the same thing that you have done with your note, write
3 the question or request or any information that you have
4 down, give it to our bailiff and we will receive it in the
5 courtroom. Okay?

6 MR. MOORE: Yes, sir.

7 THE COURT: And if you would, would you remain
8 throughout this trial in that seat and Mr. Trapka if you
9 would remain in that seat. It helps me to administer
10 administrative functions. Okay?

11 MR. TRAPKA: Yes, sir.

12 THE COURT: That being said, would you swear the jury?
13 (The Clerk of Court duly administers the oath to the jury)

14 THE COURT: Thank you and let the record reflect all
15 jurors positively responded to the oath.

16 INTRODUCTORY INSTRUCTIONS BY THE COURT

17 All right, Ladies and Gentlemen, we are about to start
18 the trial of The State of South Carolina versus Michael E.
19 Reese. I don't know if any of you have ever been involved
20 in the judicial system before as a litigant, as a witness,
21 or a party, or in any fashion, but I would suspect that each
22 and every one of you have, at some point or another, watched
23 a T.V. show or movie which purports to reflect what the
24 judicial system is about. Let me dispel you right now of
25 any notions you may have. This is not entertainment.

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

INTRODUCTORY INSTRUCTIONS BY THE COURT

25

1 Trials are slow. They are methodical. They are also very
2 time consuming. It is not entertainment, but a search for
3 the truth. It is a fundamental part of our democracy that
4 we have where people have their differences settled here, in
5 a civilized manner, and not in the streets. So, without
6 juries such as yourselves, our system does not work.

7 Now, these attorneys who are here today, they are
8 advocates for their clients. They have an ethical duty to
9 represent their clients in a zealous manner, but they are
10 also officers of this court, which means that you can expect
11 that these attorneys will be professional, they will be
12 competent, and they will be ethical in their dealings in
13 this matter.

14 At the same time, you have just taken an oath, all of
15 which you have agreed to, to be fair and impartial to both
16 parties in this matter, both for the State and the
17 Defendant. You agreed that you will listen to the evidence
18 and you would not deliberate and make a decision until all
19 the evidence has been given to you and you have been told to
20 deliberate this case. What that means is, that these
21 attorneys and these parties and this court have a right to
22 expect you to be fair, that you will be impartial and that
23 you will be unbiased in the way that you deal with this
24 case.

25 Now, what I am about to say to you is not the law that

INTRODUCTORY INSTRUCTIONS BY THE COURT

1 you will be applying. I will charge the law that is
2 applicable to this case in just one moment, or at the end of
3 this case, excuse me.

4 Now, you are allowed to take notes. I think that nine
5 of you selected that you will take notes. Remember this,
6 notes are not any better than somebody's memory. Some people
7 are better note takers than others. So, a note may say one
8 thing and somebody's memory may say something else. That
9 doesn't mean the notes trump what their memory is. Also,
10 while you are taking notes, you may be looking down at your
11 pad and overlook somebody's reaction or their demeanor while
12 they are on the stand, and so be careful not to get away
13 from yourselves while you are taking notes. Watch the
14 people, their faces, and their demeanor while they are on
15 the jury stand, because that is very important.

16 Now, as I told you in this case, the Defendant, Michael
17 Eugene Reese, has been indicted for the crime of burglary,
18 first degree. He has pled not guilty to that charge. Now,
19 this indictment, as I told you, is not any evidence of his
20 guilt. The fact that he was arrested and he was charged and
21 indicted does not raise an inference nor an assumption of
22 his guilt. He says, "I am not guilty." That means The
23 State of South Carolina has the burden of proving each and
24 every element of burglary, first, beyond a reasonable doubt.
25 It will be your decision at the end of this case whether or

INTRODUCTORY INSTRUCTIONS BY THE COURT

27

1 not the State of South Carolina has met that burden of
2 proof.

3 Now, you are the finders of fact. It will be your
4 decision to find facts, as you find them to be, based on the
5 testimony and the evidence presented to you from here in
6 this courtroom and from no other place. I'm not allowed by
7 law to invade your finding of fact function, neither are
8 these attorneys, neither are any witnesses. That is solely
9 your province. So, if I do anything throughout the course
10 of this trial that seems to suggest to you how you are
11 supposed to find facts, I am going to ask you, and I am also
12 going to instruct you, to disregard that. I can assure you
13 that I have no feeling about which way this case should go
14 one way or the other. My job is to, essentially, be a
15 referee, to make sure that the process is followed and to
16 instruct you on the law in this case and tell you the law
17 you must apply to the facts.

18 With that being said, you are not allowed to invade my
19 province on the law in this matter. Whenever I give you the
20 law, you must follow the law as I give it to you. You
21 should not be, and you shall not be, concerned with what you
22 think it should be. You have to accept it as I give it to
23 you.

24 Now, in every case, and in this one I am sure as well,
25 there will times when I am going to send you out, either to

INTRODUCTORY INSTRUCTIONS BY THE COURT

28

1 take a morning break, lunch break, or an evening break, or
2 there will be objections, and sometimes you may feel like
3 cattle being herded in and out of here, but during breaks in
4 this case, you are not allowed to speak with each other
5 about this case. You can't begin your deliberations until I
6 tell you it is proper and the reason being, we don't want
7 you to go back and start making early decisions about what
8 the facts are in this case until you've had the opportunity
9 to listen to all the evidence. Okay? And until such time
10 that I tell you, in no uncertain terms, you are to begin
11 your deliberations, you may not speak about this case
12 amongst yourselves. Also, you are not allowed to speak
13 about this case with anyone else; spouses, friends,
14 neighbors, whether it is direct communication, emails,
15 twitters, or anything else. The idea simply is, we want you
16 to make your decision unspoiled by any outside influences.

17 Therefore, our Chief Justice has told us, the trial
18 judges, to tell all jurors that they may not engage in what
19 is called independent jury research and that means that you
20 are not allowed to go home during the break or during any
21 break in this case and look up any information about any
22 participants in this case; meaning myself, these attorneys,
23 the witnesses, or the parties. You may not look up any
24 issues that are raised. You may not look up any issues that
25 you think may be helpful. At the end of this case, you are

INTRODUCTORY INSTRUCTIONS BY THE COURT

29

1 more than free to do so, but the clear idea is, we do not
2 want you to form any preconceived notions about what the
3 facts are until you hear all the facts. It is simply just
4 that.

5 Now, Ladies and Gentlemen, there are five phases of
6 every case. Okay? In just a minute, there will be an
7 opening statement by the State. The Defendant may, but is
8 not required, to give an opening statement. In the opening
9 statements, these attorneys are going to tell you what the
10 facts are in this case, what their contentions are in this
11 case, what the issues are. I am going to remind you that
12 these attorneys are professionals. However, they are not
13 witnesses, they are not sworn, and they are advocates for
14 their side of the case. What they tell you is helpful and I
15 want you to listen to it, but they are not witnesses. The
16 testimony and evidence will come from right here and no
17 other place.

18 Now, the standard of proof that the State must meet in
19 order to find the Defendant guilty is guilt beyond a
20 reasonable doubt. Briefly, and I will explain this further
21 to you later, but this is what a reasonable doubt is: A
22 reasonable doubt is the kind of doubt that would cause a
23 reasonable, sincere, honest, and conscientious person to
24 hesitate to act in an important matter in their own affairs.
25 Okay? And I will explain that in more detail later.

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

OPENING STATEMENT - MS. BYFORD

1 THE COURT: Okay. Absolutely. Have y'all marked
2 exhibits?

3 MS. JOHNSON: Your Honor, I'm sorry, but Mr. Reese needs
4 to use the restroom before we get started.

5 THE COURT: All right, would you escort him, please sir?

6 (Mr. Reese is escorted out of the courtroom)

7 (Brief Break)

8 THE COURT: Mr. Reese, are you okay?

9 MR. REESE: Yes, sir.

10 THE COURT: All right. Are we ready to proceed?

11 MS. BYFORD: Yes, sir.

12 MS. JOHNSON: Yes, sir.

13 THE COURT: Bring the jury in, please, sir.

14 (Jury in at 10:34 a.m.)

15 THE COURT: All right. Ms. Byford, are you ready for
16 opening statements?

17 MS. BYFORD: Yes, sir.

18 THE COURT: Go ahead, please.

19 MS. BYFORD: Thank you, Your Honor. May it please the
20 Court.

21 THE COURT: Yes, ma'am.

22 OPENING STATEMENT - MS. BYFORD

23 Good morning, Ladies and Gentlemen. I want to give you
24 just a little bit of good news. This is not going to be a
25 very long case. I really hope to have you out of here

OPENING STATEMENT - MS. BYFORD

32

1 today, but I don't want you to think because it's not a long
2 case and we're not going to take a long time, that it is not
3 an important case or a serious case. This case is a very
4 important case. It is important to the Defendant and it is
5 very important to the victims, Margaret and Douglas Nelson.

6 I want to take just a few minutes of your time right
7 now to kind of lay out the elements of burglary, first
8 degree, so, as you listen to the evidence I am about to
9 present, you will know what to look for and so at the end,
10 you can be confident in your decision.

11 (Ms. Byford projects document onto large screen)

12 Burglary, first degree, in South Carolina is made up of
13 several elements. The first thing I have to prove to you
14 today, beyond a reasonable doubt, is that the Defendant,
15 Michael Reese, committed these crimes. I have to prove to
16 you that he entered a dwelling, which simply means a
17 residence where somebody stays, sleeps and lives, without
18 the consent of that owner and when he did so, he intended to
19 commit a crime inside that residence. That is the basic
20 offense of burglary.

21 What makes it a first degree burglary, is that it has
22 to meet one of the following aggravating factors: That
23 during the course of this crime, that he armed himself with
24 a deadly weapon or he caused a physical injury to a person
25 who was not a participant in the crime, a person who did not

OPENING STATEMENT - MS. BYFORD

33

1 go in with him or that this crime occurred during night
2 time, in which you might hear later in the Judge's
3 instructions, is during the hours of darkness.

4 That's what I have to prove to you today and I am going
5 to do so through five witnesses. You are going to hear from
6 the Nelson's, Margaret and Douglas Nelson. Now, what makes
7 this case a little bit unusual is that Margaret Nelson is
8 Michael Reese's mother. Now, I don't want you to think that
9 because this is a family member that is the victim, that
10 this is not a serious event. It doesn't matter if she is
11 his mother or a stranger, the crime is the same. You are
12 going to hear from the Nelsons and you are going to hear
13 from the first responder, Deputy John Williams, who
14 responded to the 911 call that night. You are going to hear
15 from Rusty Ables, who is with the Sheriff's Office
16 forensic's team. He is going to tell you about the evidence
17 he collected at the scene, especially the DNA that he pulled
18 off a broken window, and finally, you are going to hear from
19 the DNA analyst at SLED who is going to tell you that this
20 was, in fact, Michael Reese's DNA.

21 As the Judge just charged you, Ladies and Gentlemen, in
22 order to find a party guilty, you have to find them guilty
23 beyond a reasonable doubt. At the end of this trial, you
24 will have no reason to hesitate. Thank you.

25 THE COURT: Ms. Johnson, does the Defendant wish to make
THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

OPENING STATEMENT - MS. JOHNSON

1 an opening statement?

2 MS. JOHNSON: Yes, sir. May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. JOHNSON: Thank you.

5 OPENING STATEMENT- MS. JOHNSON

6 Good morning, Ladies and Gentlemen. I am here today
7 with Mike Reese, my client, who has been charged with the
8 offense of burglary, first degree. Now, you have heard the
9 Judge instruct you earlier that a trial is the search for
10 the truth. Okay? And in searching for the truth, because
11 none of you were there and we weren't there, we have to rely
12 on certain things. We have to rely on testimony and we have
13 to rely on investigation and here is where the problem in
14 this case is. Deputy Williams arrived as the first
15 responder in this case. He heard from two people, Margaret
16 Nelson and Douglas Nelson, saying, "Oh, this terrible thing
17 has happened to me and this happened at our home and it
18 involves my son." They had no immediate reason to think
19 that there was any problem with that statement and they did
20 call out forensics and they did take a few things or a few
21 drops of blood that they found on the window, but you are
22 also going to hear that they lifted some prints from a
23 weapon, allegedly involved, and that these prints have been
24 misplaced by the Sheriff's Department. You are going to
25 have pieces of evidence that are missing.

OPENING STATEMENT - MS. JOHNSON

35

1 And so, law enforcement, when they come out to the
2 crime scene, obviously, they don't know what's happened.
3 They can only rely on what they are told when they get
4 there, but the problem becomes, when you assume that the
5 only two people you've talked to are telling you the truth
6 about the matter and then you don't properly investigate to
7 corroborate whether or not they are telling you the truth.

8 We have no tools to search for the truth and that is
9 what you are here to do today, to search for the truth and
10 to try to figure out what happened on October 09, 2011. Did
11 anything happen at all? Did something happen, but maybe not
12 what they said? You need tools to do that, and
13 unfortunately, in this case, when law enforcement made an
14 assumption, they went with the first thing they heard: "This
15 is what happened to us. Mr. Reese did this terrible thing,"
16 and when they heard that, that was really it. They didn't
17 talk to any witnesses, any neighbors, or anybody that might
18 have been able to shed some light on the situation. That
19 was it. That really was sort of the end of the
20 investigation, if you will.

21 So, for those reasons I ask you to listen critically,
22 because when law enforcement arrives, they don't know who is
23 telling the truth and who may have some reason to not tell
24 the truth. They don't know these things and the only way to
25 know these things is through proper investigation, which has

DIRECT EXAMINATION OF MARGARET NELSON BY MS. BYFORD

36

1 not been done in this case. I thank you for your time.

2 THE COURT: Will you call your first witness, please
3 ma'am?

4 MS. BYFORD: Yes, sir. Your Honor, the State calls
5 Margaret Nelson.

6 (After being duly sworn by the Clerk of Court, Margaret
7 Nelson testified as follows:)

8 CLERK OF COURT: Please have a seat. If you would,
9 please, state your full name for the record and spell your
10 last name.

11 MS. NELSON: Margaret A. Nelson.

12 DIRECT EXAMINATION OF MARGARET NELSON BY MS. BYFORD

13 Q Ms. Nelson, could you tell the jury where you live?

14 A At 209 Briar Ridge East, Williamston, South Carolina.

15 Q And is that in Anderson County?

16 A Yes.

17 Q And how long have you lived there?

18 A About 20 years.

19 Q Ms. Nelson, I want to take you --- I want you to think
20 back to the night of October 09, 2010. Can you tell us
21 what happened that night or what you and Mr. Nelson did
22 that evening?

23 A Yes. We went out to eat and when we came home about
24 quarter to nine and we got out of the car, went up to
25 the door. My husband was in front of me and I was

DIRECT EXAMINATION OF MARGARET NELSON BY MS. BYFORD

37

1 standing right behind him. He unlocked the door and
2 when he did, my son jerked the door open and "Haaaah"
3 (descriptive sound) at us and then he started cursing.
4 I started screaming and I ran off the porch and ran
5 into the yard and I thought, and I said, "I'm going to
6 call 911." I got my cell phone out and called 911 and
7 told the woman to send someone.

8 Q Ms. Nelson, did your son, Michael Reese, have
9 permission to be in your house?

10 A No.

11 Q In fact, had you done anything to inform him that he
12 did not have permission to be in your house?

13 A I sent him a registered letter for no trespassing on
14 our property or in our residence.

15 Q You placed him on "No Trespass" notice?

16 A Yes.

17 Q That was prior to October 9th?

18 A Yes. That was September 21st of 2010.

19 Q I want to ask you a few more questions about that
20 evening. When y'all returned home from dinner, was it
21 dark outside?

22 A Yes.

23 Q Was that your usual practice to go out to dinner and
24 then come home?

25 A Well, you know when you say, "eat out a lot", we eat

1 out a lot, but on that particular night, we had been
2 gone. We went out to play bingo and we had the night
3 before went to the Bingo Parlor and we don't usually
4 get home until, like, 12:30 or 1:00 in the morning.
5 But that particular day, I had went to my friend's
6 birthday party and when I got home, I said I was tired
7 and I said, "Why don't we just go out and grab a bite
8 to eat and then come home and watch T.V. and that's
9 what we did.

10 Q But it was usual for you to be gone a lot later?

11 A Yes.

12 Q Was your son, Mr. Reese, aware of that pattern?

13 A Yes.

14 Q When you were standing on the porch and your son opened
15 the door, what did you notice about him, if anything?

16 A He looked like he was holding something in his hand and
17 it looked like a pipe to me, because I had seen him a
18 few days earlier walking on the road and he was
19 carrying a pipe, about, I guess, about two feet long.

20 Q And does he live close to you?

21 A Next door in a trailer.

22 Q After you called the police, and they arrived, did you
23 go back into your residence?

24 A Not until the investigator and the deputy finished. One
25 of the gentlemen that came out, he told me that I could

DIRECT EXAMINATION OF MARGARET NELSON BY MS. BYFORD

39

1 could go back in there, and so then, he finally took me
2 in there.

3 Q Was that after they went inside and looked through the
4 house?

5 A Oh, yeah. Yeah.

6 Q What did you find when you were allowed to go back into
7 the residence? What did you observe, if anything?

8 A Well, I had a bag of medication that sits beside my
9 chair and he had taken those and strung the bottles all
10 over the floor and onto my husband's recliner, too.

11 Q Anything else?

12 A I didn't notice anything else then, other than that.

13 Q Did it look like he had been through your personal ---

14 A Yes. He had emptied all the -- Oh, yes. The
15 detective, he asked me, he said, "Can you tell by
16 looking at it, if anything's missing?" And I told him
17 that I couldn't tell just by looking at it, how it was
18 strung on the floor, if anything was missing.

19 Q And Mrs. Nelson, is your son in the courtroom today?

20 A Yes.

21 Q Would you point him out to the jury, please?

22 A That's him sitting right there. (Indicating)

23 Q Mrs. Nelson, that's all the questions I have for you.
24 Please answer any questions Ms. Johnson has.

25 A Okay.

CROSS EXAMINATION OF MARGARET NELSON BY MS. JOHNSON

40

1 THE COURT: Cross examination?

2 MS. JOHNSON: Thank you, Your Honor.

3 CROSS EXAMINATION OF MARGARET NELSON BY MS. JOHNSON

4 Q Good morning, Ms. Nelson.

5 A Yes.

6 Q I understand, Ms. Nelson, that you had a -- that Mr.
7 Nelson is not Michael's father. Is that right?

8 A No, he's not. He's his step-father.

9 Q Okay. And how long have you been married?

10 A Eighteen years.

11 Q And is it fair to characterize the relationship between
12 Mr. Reese and your husband as contentious at times? Is
13 that right?

14 A Yes. Sometimes they got along okay and sometimes they
15 didn't.

16 Q Okay, and I believe shortly before this incident, do
17 you recall having a conversation with Mike about an
18 insurance policy that he has?

19 A Yes. He's asked me several times about a insurance
20 policy that I have on him that I pay for.

21 Q Okay. And didn't he, in fact, ask you to cash that
22 policy in for him?

23 A Yes. He did.

24 Q Okay. And you refused to do that?

25 A Yes.

CROSS EXAMINATION OF MARGARET NELSON BY MS. JOHNSON

41

- 1 Q All right. He wanted that policy cashed, because he
2 wanted to move. Is that right?
- 3 Q Well, he said that that is what he wanted.
- 4 Q Okay. But you wanted him to stay?
- 5 A I didn't care if he stayed. I mean, that's up to him.
6 He left one other time and then come back.
- 7 Q And, in fact ---
- 8 A But he's lived in other places that I had provided for
9 him and paid for and he tore them up and then he came
10 back.
- 11 Q And I understand that at the time this incident
12 happened, he actually lived on a parcel of property
13 where your home is. Is that correct?
- 14 A He lived next door to us. Yes.
- 15 Q Okay. And you actually had a rental agreement with him
16 for this property. Is that right?
- 17 A Yes.
- 18 Q Okay. So, he lived right next door to you. How long
19 had he lived in that particular...
- 20 A I am not sure. About seven years.
- 21 Q About seven years, next door.
- 22 A (Nods Head)
- 23 Q Okay. But you feel like you have done a lot for your
24 son. Correct?
- 25 A I know I have.

1 Q Okay. And it seemed like the more you gave, the more
2 he wanted. Is that right?

3 A That's right.

4 Q Is it fair to say you are sort of done with him?

5 A No. I would have still been helping him if he had not
6 done this to us.

7 Q Okay. But your life would be easier with your marriage
8 if Mr. Reese was out of the picture?

9 A I don't know what you mean by that.

10 Q Well ---

11 A Why would my life be easier? I mean this is my son and
12 I love my son.

13 Q Okay.

14 A But my son has crossed the line between love and hate.
15 He did that, that night, when he broke into my home and
16 he drew a shotgun on my husband and he -- if we hadn't
17 have returned home and caught him in the act, it's no
18 telling what he would have taken from us.

19 Q Okay. But you say you love your son?

20 A Yes. I love him.

21 Q But you do want him to go to jail?

22 A Yes. I think he needs to be punished.

23 Q Okay.

24 A And he needs to be sorry for what he did.

25 Q Okay. Can you tell me, the property that you live on,

REDIRECT EXAMINATION OF MARGARET NELSON BY MS. BYFORD

43

1 Mrs. Nelson, I understand that property is titled to
2 you alone. Is that right?

3 A Yes.

4 Q That your husband's name is not actually on that
5 property?

6 A No.

7 Q Okay. All right.

8 MS. JOHNSON: If you will give me one minute, please.

9 (Speaks to the Defendant)

10 Q Mrs. Nelson, you say you love your son.

11 A Yes.

12 Q Even though he did this to you, you still love him.

13 A Yes.

14 Q But he's been locked up since this happened. Correct?

15 A Yes.

16 Q Have you been to see him?

17 A No.

18 Q That's all the questions I have.

19 A The judge ordered -- the judge ordered that he wasn't
20 supposed to have any contact with us and us with him.

21 Q Thank you.

22 THE COURT: Redirect?

23 MS. BYFORD: Just one question, Your Honor.

24 REDIRECT EXAMINATION OF MARGARET NELSON BY MS. BYFORD

25 Q Mrs. Nelson, are you afraid of your son?

DIRECT EXAMINATION OF DOUGLAS NELSON BY MS. BYFORD

44

1 A Yes.

2 MS. BYFORD: No further questions.

3 THE COURT: May this witness step down?

4 MS. JOHNSON: No objection.

5 THE COURT: Thank you, ma'am. Would you call your next
6 witness, please, ma'am?

7 MS. BYFORD: Your Honor, the State calls Douglas Nelson.

8 (After being duly sworn by the Clerk of Court, Douglas
9 Nelson testified as follows:)

10 CLERK OF COURT: Please have a seat. If you would,
11 please state your full name for the record and spell your
12 last name.

13 MR. NELSON: Douglas Eugene Nelson. N-E-L-S-O-N.

14 DIRECT EXAMINATION OF DOUGLAS NELSON BY MS. BYFORD

15 Q Thank you. Mr. Nelson, just so the record is clear,
16 would you tell us where you live?

17 A 209 Briar Ridge East, Williamston, South Carolina.

18 Q And you reside with Margaret Nelson?

19 A Yes, that's true.

20 Q And is she your wife?

21 A Yes.

22 Q And is the Defendant, Michael Reese, your step-son?

23 A Step-son, yes.

24 Q Mr. Nelson, would you please tell us about the events,
25 what you recall about the events, of October 09, 2010?

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

DIRECT EXAMINATION OF DOUGLAS NELSON BY MS. BYFORD

45

1 A Like my wife said, we had went out to eat and wasn't
2 gone very long. We came back. It was dark. I got the
3 key and went up to open the door. It was a dead bolt
4 and when I unlocked it, Mike jerked the door open and
5 screamed at her, cursing and screaming. He put a
6 shotgun in my face and he said, "You are going to die,
7 mother." I grabbed the gun and tried to hold on. We
8 wrestled. We hit walls, we hit doors, we hit pictures
9 and I still held onto the gun somehow. He tried to
10 kick me and I tried to kick him. He finally said, "Let
11 me go, Doug." I said, "You let go of this gun and I
12 will let you go." So, he turned loose of the gun and
13 ran and I threwed the gun on the bed. The forearm part
14 of it broke off, I guess during the wrestling and I
15 waited outside for the police to come. He ran. I
16 don't know where he went to.

17 Q Do you know about what time y'all returned home from
18 dinner?

19 A It was like 8:00 or sometime. I don't know exactly.

20 Q Okay. You said it was dark when you returned home?

21 A Oh, yeah, it was dark.

22 Q Whose gun was that, that Mike had at the door?

23 A It was my wife's gun. She had bought it for me years
24 and years ago.

25 Q Where did y'all keep it in the house?

- 1 A In the bedroom.
- 2 Q What did you -- I believe you just testified that you
3 waited outside for the police to come.
- 4 A Yes.
- 5 Q When the police arrived, after you were allowed back
6 into the residence, what did you observe?
- 7 A Medicine were thrown on the floor, scattered. There
8 was a pillowcase laying there where he tore it off the
9 bed, the pillow off the bed. He'd stuffed some change
10 in that we had laying there, not much. Just stuff
11 scattered around.
- 12 Q It looked like somebody had been going through your
13 things?
- 14 A Yeah. There was change that was on the bed that was on
15 the dresser and it was missing some. I think it was in
16 the pillowcase.
- 17 Q You said y'all were scuffling over the gun. Did you
18 sustain any injuries?
- 19 A I was bleeding a little bit on the head from bouncing
20 off the walls. He's a pretty good sized guy.
- 21 Q Yes, sir. Could you point out to the jury your
22 step-son?
- 23 A Yes. That's him. (Indicates the Defendant).
- 24 MS. BYFORD: Your Honor, I think that's all the
25 questions I have.

CROSS EXAMINATION OF DOUGLAS NELSON BY MS. JOHNSON

47

1 Q Mr. Nelson, please answer any questions Ms. Johnson may
2 have.

3 THE COURT: Cross examination?

4 MS. JOHNSON: Thank you, Your Honor.

5 CROSS EXAMINATION OF DOUGLAS NELSON BY MS. JOHNSON

6 Q Good morning, Mr. Nelson.

7 A Good morning.

8 Q Would it be fair to say that you don't like Mr. Reese
9 very much, do you?

10 A Not after what he done to me.

11 Q You have been with his mother for close to 20 years
12 now. Is that right?

13 A Eighteen years.

14 Q Okay. So, when you met his mother, he was already out
15 of her house?

16 A Yes. When I dated his mother, he was in prison doing
17 time for something else. I don't know what. He wasn't
18 there, though.

19 MS. JOHNSON: Your Honor, I would ask for an
20 instruction to the jury to disregard that comment. It is
21 not responsive.

22 THE COURT: I agree. Ladies and Gentlemen of the jury,
23 the Defendant is on trial for the acts involving this case.
24 Whether or not he has a prison record is not relevant to
25 this case, whatsoever. I am going to order that testimony

1 be stricken from the record. I am also going to order you
2 to disregard that and not to consider that, whatsoever. I
3 am also going to order the witness to make your responses,
4 your answers, responsive to the questions being asked and do
5 not editorialize. Okay, sir?

6 MR. NELSON: Yes, sir.

7 THE COURT: Do you understand?

8 MR. NELSON: Yes, sir.

9 THE COURT: Thank you. Go ahead.

10 MS. JOHNSON: Thank you, Your Honor.

11 Q Is it fair to say, during these 18 years, that you've
12 had a troubled relationship with Mr. Reese?

13 A Not all the time. Off and on.

14 Q Off and on. Okay.

15 A We've had some good relations.

16 Q I'm sorry. I didn't hear you.

17 A We've had some good relations and some bad relations.

18 Q Okay. But it would be easier for you, if Mr. Reese was
19 not in the picture anymore?

20 A Doesn't matter to me one way or the other.

21 Q It doesn't matter to you one way or the other?

22 A No. I mean, I still have my relationship with my wife.
23 I don't have to have one with him.

24 Q Well, does her relationship with her son cause problems
25 for you?

CROSS EXAMINATION OF DOUGLAS NELSON BY MS. JOHNSON

49

1 A Sometimes, yes.

2 Q Okay. And when you married her, you didn't sign up to
3 take on a grown man, in essence?

4 A No.

5 Q Okay. If you will give me one moment, please sir.

6 (Ms. Johnson speaks to the Defendant)

7 Q I have no further questions. Thank you.

8 THE COURT: Redirect?

9 MS. BYFORD: No, sir.

10 THE COURT: May this witness step down?

11 MS. BYFORD: Yes, sir.

12 (Witness leaves the witness stand)

13 THE COURT: Call your next witness, please ma'am.

14 MS. BYFORD: Your Honor, the State calls Deputy John
15 Williams.

16 THE COURT: Is this going to be a long witness?

17 MS. BYFORD: Not -- Probably about the same length as
18 the Nelsons.

19 THE COURT: All right. Let's go ahead.

20 (After being duly sworn by the Clerk of Court, Deputy
21 John Williams testified as follows:)

22 CLERK OF COURT: Please have a seat. If you would
23 please, state your full name for the record and spell your
24 last name.

25 MR. WILLIAMS: Johnson Daltrey Williams.

DIRECT EXAMINATION OF JOHN WILLIAMS BY MS. BYFORD

50

1 W-I-L-L-I-A-M-S.

2 DIRECT EXAMINATION OF DEPUTY JOHN WILLIAMS BY MS. BYFORD

3 Q Deputy Williams, do you work for the Anderson County
4 Sheriff's Office?

5 A Yes, ma'am. I do.

6 Q And how long have you worked for them?

7 A Three years, nine months.

8 Q And what sort of training do you have to be a police
9 officer?

10 A Well, in my three-and-a-half years experience, I have
11 completed the Criminal Justice Academy and numerous
12 other trainings offered by the Anderson County
13 Sheriff's office.

14 Q I want to turn your attention to the night of
15 October 09, 2010. Were you working that night?

16 A Yes, ma'am.

17 Q Okay. And were you called to the victim's residence
18 that night?

19 A Yes, ma'am.

20 Q And could you give the jury sort of an idea of how that
21 happens, how you get dispatched.

22 A Well, while I was on routine patrol, I was alerted by
23 dispatch that there had been a burglary and an assault
24 had taken place at 209 Briar Ridge East in Williamston.
25 It took me approximately six to seven minutes to

DIRECT EXAMINATION OF JOHN WILLIAMS BY MS. BYFORD

51

1 respond, and I responded to that call.

2 Q Okay. And what time did you arrive?

3 A I arrived there, it would be 8:58 p.m.

4 Q And was it dark when you arrived?

5 A Yes, ma'am.

6 Q Had it been dark for some time?

7 A I'm assuming -- this was in October, I'm assuming it
8 was.

9 Q What did you observe when you first got there?

10 A When I pulled up on scene, I met Mr. and Mrs. Nelson.
11 They were in the driveway. They were waiting on me to
12 get there. When I got out of the car, they began to
13 tell me what had happened to them and that the suspect
14 had left the scene and I did observe that the front
15 door of the house was open at that time.

16 Q And what was their demeanor?

17 A They were very shaken up. You could tell that they
18 were, that they had been through, what appeared to be a
19 somewhat, a traumatic experience.

20 Q Did you go into the house?

21 A Yes. I did.

22 Q Okay. What did you observe?

23 A When I entered the house, myself and another officer
24 that was there that was riding with me that night, we
25 went in to do a protective sweep through the house just

1 to make sure that he was no longer in there. I did
2 observe that in the den area of the house, there were
3 several items scattered on the floor: a bag, a basket,
4 some medication, some papers. That's about all I can
5 remember of that, and I did observe a 12-gauge shotgun
6 lying on the bed.

7 Q Were you able to figure out how someone made entry into
8 the home?

9 A Yes, ma'am. While doing the protective sweep, I
10 noticed that there was a window at the back of the
11 house, I believe it was in a bedroom, that had been
12 broken out and someone had crawled through that window,
13 is the way it appeared.

14 Q Did you notice anything on the window?

15 A Yes, ma'am. While outside of the house, as we were
16 walking around the perimeter of the house, when I
17 looked at the window from the outside, there was some
18 splatter of blood on the window.

19 Q Okay. Could you describe the position of the blood on
20 the window for the jury, as best you can?

21 A The best that I can remember, where the window was
22 broken, I believe it was on, I want to say, on the
23 bottom portion of the jagged glass.

24 Q At that time, did you call forensics out?

25 A Not at that particular time. It was later on, after I

CROSS EXAMINATION OF JOHN WILLIAMS BY MS. JOHNSON

53

1 had contacted my Sergeant and my Sergeant actually had
2 forensics to come out.

3 Q Is that the normal procedure?

4 A Yes, ma'am.

5 Q Did you observe anything about Mr. Nelson?

6 A While I was speaking with him, he was wiping his head
7 and he had a scratch on his head. I can't remember
8 which side of his head it was, but I do remember him
9 wiping blood from his head.

10 Q So, it appeared to be a fresh wound?

11 A Yes, ma'am.

12 Q That's all the questions I have. Please answer any
13 questions Ms. Johnson has for you.

14 THE COURT: Cross examination?

15 MS. JOHNSON: Thank you, Your Honor.

16 CROSS EXAMINATION OF DEPUTY JOHN WILLIAMS BY MS. JOHNSON

17 Q Good morning, Deputy Williams.

18 A Good morning.

19 Q So, your procedure when you arrive on a scene from a
20 911 call, is to meet with them and speak to parties
21 that may be on scene. Is that right?

22 A Yes, ma'am.

23 Q Okay. And that's, really, your first source of
24 information regarding the case.

25 A Yes, ma'am.

1 Q All right. But sometimes, the first source of
2 information you hear regarding a case doesn't turn out
3 to be the full story. Is that right?

4 A Sometimes.

5 Q Sometimes. And so that's why it's important to do the
6 things that you did, you went through the house and
7 looked to see what happened. Is that right?

8 A Yes, ma'am.

9 Q All right. You made certain observations. Did you
10 record those observations in a photographic way?

11 A No, ma'am. I did not.

12 Q Okay. But as I understand, that's not necessarily your
13 role. Is that right?

14 A Yes, ma'am.

15 Q But inside the -- When you arrived, I believe you
16 testified, it was close to 9:00 p.m. in the evening.
17 Is that right?

18 A Yes, ma'am.

19 Q All right. Did you, at that time or any point
20 afterwards, attempt to make any contact with any
21 neighbors or other witnesses who were in that area?

22 A As I recollect, I don't remember a whole lot of people
23 being out there that night.

24 Q Okay. Do you recall whether you attempted to knock on
25 anybody's door to ask if they had heard or seen

CROSS EXAMINATION OF JOHN WILLIAMS BY MS. JOHNSON

55

1 anything?

2 A I can't recollect.

3 Q Okay. If you had done that, would that be reflected in
4 your report?

5 A Most likely. Yes, ma'am.

6 Q Okay. And is it reflected in your report, that you did
7 those things?

8 A I don't believe so.

9 Q Okay. All right. And I believe that you testified
10 that you saw, that you observed, small drops of blood.
11 Correct?

12 A Yes, ma'am.

13 Q And that you believed this to be the point of entry.
14 Is that right?

15 A Yes, ma'am.

16 Q But you don't actually have actual knowledge that that
17 was proof of entry.

18 A No, ma'am. I didn't see anyone crawl through there.

19 Q Okay. All right. And your testimony is, that blood
20 that you observed was on the outside of the windowpane?

21 A I cannot recollect. I remember seeing the blood, but
22 being a clear window, I don't, I can't tell you whether
23 it was on the inside or the outside.

24 Q Okay. But in your experience as an officer and as
25 someone who is often charged with investigating crimes,

1 has it been your experience that sometimes people don't
2 tell you the truth?

3 A Sometimes.

4 Q Sometimes. And sometimes, maybe, they just don't tell
5 you the full story?

6 A Yes, ma'am. Sometimes.

7 Q All right. And this is why we need investigators.

8 A I agree.

9 Q All right. And you are a trained law enforcement
10 officer and, in fact, your duty is to investigate
11 matters that you are called out on at a crime scene.

12 A Correct.

13 Q All right. So, your job is to not only speak to the
14 people who are there, but make attempts to verify if
15 something that you are being told is true.

16 A To the best of my ability, yes, ma'am.

17 Q Okay. Because sometimes people aren't truthful.

18 A Yes, ma'am.

19 Q Okay. And if all people were truthful, I guess we
20 wouldn't really need investigations.

21 A You are exactly right.

22 Q Thank you, sir. Just give me one second. (Ms. Johnson
23 talks with the Defendant) When you arrived did you --
24 Did you see Mr. Reese when you arrived on the scene?

25 A No, ma'am.

REDIRECT EXAMINATION OF JOHN WILLIAMS BY MS. BYFORD

57

1 Q Okay. Did you make any attempt to locate him that
2 evening?

3 A Yes, ma'am. I did.

4 Q Okay. And I understand that you actually went to his
5 residence. Is that right?

6 A Yes, ma'am. Next door.

7 Q Okay. But there was no sign that he was there at that
8 time?

9 A No, ma'am.

10 Q Okay, thank you.

11 THE COURT: Redirect?

12 MS. BYFORD: Very briefly.

13 REDIRECT EXAMINATION OF DEPUTY JOHN WILLIAMS BY MS. BYFORD

14 Q When you went to Mr. Reese's house to look for him,
15 what did you observe? What did you find when you were
16 there?

17 A We went and noticed that there weren't any lights on
18 inside the residence. We attempted to knock on the
19 door and make contact with him. He did not come to the
20 door and as we were walking around checking the
21 perimeter of the house, because we were still looking
22 at that time for him, we noticed that his back door was
23 standing wide open on his residence.

24 Q Ms. Johnson touched a little bit on your training. As
25 a trained law enforcement officer, in your experience,

1 do you form judgments about whether or not people are
2 telling you the truth?

3 A There's no way for us to always know, but sometimes you
4 can tell by people's demeanor when they talk to you if
5 they have possibly experienced something, like what
6 they say happened.

7 Q Are you able to observe a scene and compare it to a
8 statement that you have received and sort of form an
9 opinion about whether or not it all matches together?
10 MS. JOHNSON: Objection, Your Honor. She is trying to
11 bolster earlier testimony.

12 THE COURT: Overruled.

13 A We do look, when we take statements and hear statements
14 from people, we do try to look at the scene and to see
15 that it coincides with what they are telling us. Yes.

16 Q Did you see anything that night that raised a red flag
17 to you that you were being led astray?

18 A No, ma'am.

19 Q That's all I have, Your Honor.

20 THE COURT: Re-cross?

21 RE-CROSS EXAMINATION OF DEPUTY JOHN WILLIAMS BY MS. JOHNSON

22 Q You mentioned that one of the things that you do is
23 take statements from witnesses. Is that correct?

24 A Yes, ma'am.

25 Q And you took two statements in this case. Is that

RE-CROSS EXAMINATION OF JOHN WILLIAMS BY MS. JOHNSON

59

1 right?

2 A Yes, ma'am.

3 Q One from Mrs. Nelson and one from Mr. Nelson.

4 A Yes, ma'am.

5 Q All right. And in terms of the scene, if the crime
6 scene was staged, you would anticipate that that scene
7 would match what the parties are telling you about it.

8 Is that right?

9 A Yeah, I guess you could.

10 Q Okay. Thank you, sir.

11 THE COURT: May this officer step down?

12 MS. BYFORD: Yes.

13 THE COURT: Ms. Johnson, do you have any objection?

14 MS. JOHNSON: No objection, Your Honor.

15 THE COURT: Thank you, sir. All right, Mr. Moore,
16 Ladies and Gentlemen of the jury, we have been going for a
17 little bit. Let's go ahead and take the morning break. We
18 are going to have about a fifteen minute break and then we
19 will resume with the testimony. At this time, you go back
20 to the jury room. If you need anything that you don't have,
21 let the bailiff know and we will get it for you. Okay, sir.

22 (Jury out at 11:14 a.m.)

23 THE COURT: All right, we will be in recess until 11:30.

24 (Brief Recess)

25 THE COURT: Let's put this on the record. Two things:

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

1 One, that the parties stipulated that I would take judicial
2 notice that official sunset on the date of the alleged
3 incident on October 09, 2010 was 7:04 p.m. Is that correct,
4 Ms. Johnson?

5 MS. JOHNSON: Your Honor, that is the information that I
6 have. I would judge that to be accurate.

7 THE COURT: All right, I take judicial notice of that.
8 Also, I think there are some stipulations on the chain of
9 custody. Is that correct?

10 MS. JOHNSON: Yes, sir. There are witnesses for the
11 chain regarding blood evidence that was collected. I have
12 discussed this with Mr. Reese and we have no objection to
13 the chain of custody.

14 THE COURT: All right. Very good.

15 MS. BYFORD: Your Honor, on that note, we have, out of
16 an abundance of caution, so that they can be a part of the
17 record, I do have two original affidavits from SLED.

18 THE COURT: Have you seen those?

19 MS. JOHNSON: Yes, sir. I have seen them. They have
20 been provided to us.

21 THE COURT: I will make this a Court's Exhibits. And
22 do you have that jury question? We had jurors who wanted to
23 smoke, so they made a request to go out. Now, let me make
24 sure with Counsel, do you want me to tell the jury that I am
25 taking judicial notice of 7:04 p.m. and that they cannot

1 consider, that they have to consider that as an established
2 fact?

3 MS. BYFORD: Yes, sir.

4 MS. JOHNSON: No objection.

5 THE COURT: Okay. Very good. Ms. Byford, are you
6 ready to proceed?

7 MS. BYFORD: I am.

8 THE COURT: Ms. Johnson?

9 MS. JOHNSON: Yes, sir.

10 THE COURT: Good.

11 MS. BYFORD: Your Honor, are you going to do that first?

12 THE COURT: I think when they come in, I am going to go
13 ahead and just do this judicial notice, and that way, we are
14 good to go.

15 MS. BYFORD: Yes, sir.

16 (Jury in at 11:49 a.m.)

17 THE COURT: Mr. Moore, Ladies and Gentlemen of the jury,
18 before we get started, I am going to take judicial notice of
19 a fact. Judicial notice simply means that it is a fact that
20 you must accept as absolutely true and you may not debate it
21 and the fact that I am taking judicial notice of is: That
22 on October 09, 2010, official sunset occurred at 7:04 p.m.
23 So, therefore, when you begin your deliberations at the end
24 of this case, you must accept that as a fact. Okay? Are
25 you ready to proceed, Ms. Byford?

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

DIRECT EXAMINATION OF RUSTY ABLES BY MS. BYFORD

62

1 MS. BYFORD: Yes, sir, Your Honor. Your Honor,
2 the State calls Rusty Ables.

3 (After being duly sworn by the Clerk of Court, Rusty
4 Ables testified as follows:)

5 CLERK OF COURT: Please have a seat. If you would,
6 please state your full name for the record and spell your
7 last name.

8 MR. ABLES: Robert Russell Ables. A-B-L-E-S.

9 DIRECT EXAMINATION OF RUSTY ABLES BY MS. BYFORD

10 Q Mr. Ables, would you tell the jury where you work.

11 A Anderson County Sheriff's office.

12 Q How long have you worked for the Sheriff's office?

13 A Approximately 22 years.

14 Q And in October, 2010, in what capacity did you work for
15 the Sheriff's office?

16 A I was a forensic investigator. I worked in the
17 forensic unit as a crime scene technician.

18 Q And how long were you a crime scene technician?

19 A At that time or ---

20 Q Just....

21 A Approximately, 5 years.

22 Q And you are still with the Sheriff's office. Is that
23 correct?

24 A Yes, ma'am.

25 Q And now what are you doing?

DIRECT EXAMINATION OF RUSTY ABLES BY MS. BYFORD

63

1 A I am over a newly formed marine division, which is
2 boats on the water.

3 Q Okay. When you were a part of the forensic unit, could
4 you tell the jury a little bit about what your general
5 duties were.

6 A Typically, I always say my job is technical. Contrary
7 to what you see on TV, we don't interview witnesses,
8 we don't interview suspects or serve warrants, in most
9 cases. Our job is to go to the scene where some kind
10 of incident has taken place and look for forensic
11 evidence or latent evidence. "Latent" just simply
12 means hidden or not readily seen with the naked eye.
13 There are a number of types of processes, some
14 chemical, some not, but, looking for any kind of
15 evidence in that crime scene that would assist in
16 determining who done it.

17 Q And did you respond to 209 Briar Ridge Road on
18 October 9th?

19 A I did.

20 Q Did you do that as part of your official duties?

21 A Yes, ma'am.

22 Q And what did you do once you arrived on scene?

23 A Once I arrived on the scene, the first thing that I did
24 -- the responding officers had already cleared and were
25 doing other things. So, I contacted the victims who

DIRECT EXAMINATION OF RUSTY ABLES BY MS. BYFORD

64

1 were waiting for me on the front porch and tried to get
2 an idea, because from dispatch, all I had gotten was
3 that we needed to go to this address in reference to a
4 burglary. That's all I knew, so, once I got there, I
5 talked with the residents because I wanted to find out,
6 specifically, where in the house things were affected.
7 And what I mean by that is, you know, if you come home
8 and you find your house has been burglarized and
9 nothing is out of place in the kitchen and it's kind of
10 obvious that whoever did this never went there, then
11 there's no need for me to waste time and making a mess
12 in the kitchen when it's obvious that whoever did this
13 didn't go in there. So, I wanted to find out a little
14 bit about what happened, just kind of briefly, overall,
15 what happened, you know, and what looks like, what
16 areas look like, they are out of place or moved and
17 whatnot and that kind of thing.

18 Q Is that normal procedure?

19 A Yes, ma'am.

20 Q And how did you -- I want to make sure we are really
21 clear on this. What does "clear" mean when you talk
22 about the residence had been cleared?

23 A In terms of what I said, meaning they, the officers,
24 had cleared the scene or had left the scene.
25 Officially, when you pick up a microphone and a radio

DIRECT EXAMINATION OF RUSTY ABLES BY MS. BYFORD

65

1 and say that I am back in service or I am changing
2 locations, you are clearing from one scene going to
3 another. So, when I got there, the officers had
4 already left. That's what I meant.

5 Q What did you observe when you entered the residence?

6 A The first thing that I observed when I entered the
7 residence, there were a few things that were kind of
8 topsy turvy in the way where it looked like some kind
9 of struggle had taken place. As I walked in through
10 the front door to the living room area, that was
11 actually kind of across towards the backside of this
12 room, and as I went in, I noticed some things scattered
13 about the floor, between the recliner and the couch and
14 the T.V. I asked about that and the victims told me
15 some stuff had been gone through there. And I had the
16 victims with me at that time, which is normal, to kind
17 of show me where things happened, out of the ordinary.
18 And the officer that had contacted me earlier had made
19 mention, I think, or I don't recall exactly if he
20 called me on the phone or if he told the victims to
21 tell me, but they called my attention to the broken
22 window in one of the rooms and I had asked the victims
23 where this broken window was and they carried, showed
24 it to me. Also there was mention of, you know, a
25 weapon, a shotgun. The victims told me the shotgun was

1 laying in the bedroom, laying on the bed. Which,
2 that's where I found it. Once they kind of showed me
3 those things, usually I have them go outside and kind
4 of let me do my thing. So.

5 Q Let's talk about the shotgun first. Did you look at
6 the shotgun?

7 A I did.

8 Q Okay. What did you do, if anything, to the shotgun?

9 A The first thing I did is -- let me kind of describe
10 this: On a single-shot shotgun, there is a piece of
11 wood underneath the barrel and then a piece of wood in
12 the back. The butt stock's in the back and the forearm
13 is in the front and on a single-shot shotgun, if you
14 take the gun apart to clean it, most of the time, you
15 will have a metal spring you have in front of the
16 forearm, you pull it down and it will disengage and
17 detach from the barrel, push the little lever to the
18 side and the barrel will break down from the butt stock
19 and then just come right off. Well, I wanted -- the
20 first thing I wanted to do when I saw the shotgun is to
21 secure it, make it safe, to make sure it wasn't
22 loaded. If it was loaded, to unloaded it. So -- and I
23 didn't want the gun to kind of come apart, so I took
24 the forearm, because I'm wearing gloves, I took the
25 forearm and reattached it to the shotgun, pushed the

DIRECT EXAMINATION OF RUSTY ABLES BY MS. BYFORD

67

1 lever so the barrel would break down and when I did, a
2 live 12-gauge shell ejected from the barrel and landed
3 on the bed.

4 Q So, the gun was loaded?

5 A The gun was loaded.

6 Q Did you do anything else?

7 A To the gun? Yes, ma'am. My -- From there I took my
8 fingerprint kit with all my stuff in it and began to
9 process the shotgun for latent fingerprints.

10 Q Were you able to pull any fingerprints off the gun?

11 A I did. I pulled one lift, which is three prints, in
12 this case. And to kind of explain that, if you have
13 two fingerprints that are close together, once you put
14 powder on them, the powder adheres to skin oil,
15 basically. So, when you put powder on an object, you
16 can see the fingerprint and then you take clear
17 fingerprint tape and spread it over it. And then what
18 happens, the powder then sticks to the sticky of the
19 tape and you lift the tape so the powder is on the
20 sticky side and take a little white, similar to an
21 index card, and place it on it and then there's your
22 fingerprint. Well, one lift of the tape, what we refer
23 to as one lift, but one lift may have multiple
24 fingerprints on it. I have taken one lift off of an
25 item and had 20 fingerprints on it from something

1 that's been touched a lot. But in this case, as far as
2 the shotgun is concerned, I took one lift that had
3 three fingerprints from the butt stock area of the
4 shotgun. The pistol-grip part of the front of the butt
5 stock is consistent with somebody holding a shotgun in
6 this manner, (demonstrating) with these three fingers
7 like a normal person would.

8 Q Where is that fingerprint now? Or where are those
9 fingerprints now?

10 A The last time that I saw the fingerprints -- Typically,
11 what I do is, when I get back to the office, I take an
12 emery glass, which is like a jeweler's piece on a
13 stand, and look at each of those prints to determine
14 how much ridge detail is in those prints, because
15 sometimes on the scene with your naked eye, it might
16 look like there is something there, but it may not be
17 that good or vice versa. So, I checked the prints that
18 I had to make sure there was good ridge detail on them.
19 At that time, on the back of these cards there are
20 little blocks that you fill in with the date and the
21 case number, the address, the specific location and/or
22 item the fingerprint came from, my name, and my
23 computer number and those go into an envelope and then
24 I enter those into our evidence computer to officially
25 log them into evidence. Once I do that, the little

DIRECT EXAMINATION OF RUSTY ABLES BY MS. BYFORD

69

1 printer on the computer spits out a bar code label that
2 has the case number, bar code, and a little bit of
3 information about what that evidence is and I seal the
4 bag and stick it on the envelope. At that time, I
5 submit that to what is called the latent section of the
6 forensic unit. We have a guy who is a Latent Examiner
7 and that's all he does, is fingerprints, and he has a,
8 basically, like a receiving box so that at all hours of
9 the night, when we enter this stuff, we can put it in
10 the box and when he comes in, in the morning he takes
11 everything out of the box. The last time that I saw
12 the fingerprint card, I was putting it in the envelope,
13 I affixed the bar code label to it, entered it into the
14 evidence computer with the other evidence, and then
15 transferred it to the latent section.

16 Q The latent fingerprints, were they misplaced once they
17 got to latents?

18 A That is my understanding.

19 Q Okay. Thank you. Let's turn your attention to the
20 broken window, now. Did you process the broken window?

21 A I did.

22 Q And what did you observe about the window?

23 A The window was broken and the significant portion, the
24 significant part to me, was that the window was broken
25 and on one of the shards of the broken edge was a kind

1 of long triangle. Right on the tip was consistent with
2 someone cutting their arm or hand or something like
3 that as they go through the window and there was blood
4 from that point kind of draped over, a little bit over
5 both sides of the glass, but there was not a lot of
6 blood. It was just, basically, a couple of drops.
7 Really, just a small smear.

8 Q Could you kind of describe what portion of the window
9 was broken out so the jury can have a visual of that?

10 A Exactly. As I recall, the window, to the best of my
11 memory, I believe, the window seemed to be partially
12 open, but it appeared to me that someone had broken
13 through the window from the outside, broken a hole in
14 the window, so that they could reach their arm through
15 the hole, reach up and flip the latch on the window,
16 and that enabled them to raise the window to make an
17 entry. When I got there, as I recall, the window had
18 been -- had come back down but was not all the way
19 down. I think at the bottom, it seems like it was
20 open about yay far. (Demonstrating)

21 Q Was there glass on the inside of the residence?

22 A Yes, ma'am.

23 Q On the floor?

24 A Yes, ma'am. It was both inside and out.

25 Q Did the blood on the window, was it bright red?

DIRECT EXAMINATION OF RUSTY ABLES BY MS. BYFORD

71

- 1 A The blood was, in a sense, it was bright red, but then
2 the thicker parts will begin the bacterial action and
3 will begin to darken just like if you bite into an
4 apple and set it down and the white part of the apple
5 will sort of start to turn brown. So, the heavier
6 parts of it, the outside, had started to darken. The
7 thinner areas were still fairly bright.
- 8 Q And what did you do with the blood once you had
9 collected it?
- 10 A Once I collected it, which is, I take really long
11 Q-tips and basically, and just rub it around in the
12 blood and transfer the blood onto the Q-tip. We have a
13 specific box that we use that we secure those in. I
14 wrote the case number on it and I kept that with any
15 other evidence that I -- the blood, actually, I did
16 first, so that was the first thing that I put in my
17 little bag and then upon getting back to the office,
18 just like with fingerprints, I entered that into the
19 evidence computer, it spit out the bar code label, I
20 put that on the box, sealed it with red evidence tape
21 that you put on to show that it can't -- if the tape is
22 cut, someone has been in it, you know, so we put the
23 red tape over the edges and I submitted that to the
24 location we call the temporary locker, which is, we
25 place things into evidence and it goes into the

CROSS EXAMINATION OF RUSTY ABLES BY MS. JOHNSON

72

1 temporary locker and the evidence technician then takes
2 it from there and transfers it to the permanent storage
3 area until it's needed for court.

4 Q That's all the questions I have for you. Please answer
5 any questions Ms. Johnson has for you.

6 MS. JOHNSON: Thank you. May it please the Court.

7 THE COURT: Yes, ma'am.

8 CROSS EXAMINATION OF RUSTY ABLES BY MS. JOHNSON

9 Q Good morning.

10 A Good morning.

11 Q Okay, did you take any photographs of the crime scene?

12 A I did not.

13 Q Okay. But you are actually provided certain equipment
14 by the Sheriff's office as part of your crime scene
15 investigator role. Is that right?

16 A Yes, ma'am.

17 Q And a camera is something that you have ready access
18 to?

19 A Yes, ma'am. Absolutely. A nice one.

20 Q All right. So, and you would agree that part of your
21 job as an evidence collector is to help us learn the
22 truth of things. Is that right?

23 A Yes, ma'am.

24 Q And so, any facts and details that you can report is
25 something that helps us to learn the truth.

CROSS EXAMINATION OF RUSTY ABLES BY MS. JOHNSON

73

- 1 A That's correct.
- 2 Q All right. And so, it's important to do this job and
3 to do it throughly.
- 4 A Yes, ma'am.
- 5 Q And to do it correctly.
- 6 A Yes, ma'am.
- 7 Q All right. And some of the kinds of things that you
8 would do, as a crime scene investigator, would be
9 taking pictures. Is that not ---
- 10 A Sometimes. Yes, ma'am. It depends on the crime and
11 the situation.
- 12 Q Okay. Of course, sometimes, maybe you make a sketch.
13 That might be helpful to show certain distances or
14 those kinds of things. Correct?
- 15 A Yes, ma'am.
- 16 Q All right.
- 17 A Typically, when we do a crime scene sketch, most of the
18 time, it's a homicide kind of situation that we
19 actually do those, in my own experience.
- 20 Q Okay. And I believe you testified that you dusted for
21 fingerprints.
- 22 A Yes, ma'am.
- 23 Q And in certain cases, you've collected fibers or hair
24 or other trace evidence.
- 25 A Yes, ma'am.

1 Q All right. Did you actually respond to the scene that
2 evening?

3 A Yes, ma'am.

4 Q Okay. So, you were out there in the hours of darkness.

5 A Yes, ma'am. It was much -- It was after the other
6 officers had been there. I'm not sure what time it
7 was. It was most likely 10:30 or 11:00. Somewhere in
8 there.

9 Q Okay. But it's fair to say that it was dark outside.

10 A Yes, ma'am.

11 Q Okay. And when you went out, I believe you testified
12 that you spoke with the Nelsons ---

13 A Yes, ma'am.

14 Q --- to find out what had happened.

15 A Yes, ma'am.

16 Q Okay. But, and I realize you testified that it's not
17 your job to interview witnesses, but those were the
18 only individuals you spoke with regarding this case?

19 A Yes, ma'am.

20 Q Okay. And the investigating officer or the arriving or
21 responding officers had already left by the time you
22 arrived?

23 A That is correct.

24 Q All right. So, the Nelsons were the only two people
25 who were there?

CROSS EXAMINATION OF RUSTY ABLES BY MS. JOHNSON

75

1 A They were the only individuals who were there.

2 Q Okay. Who were present. Okay. All right, the broken
3 window. Can you describe -- First of all, where was
4 this window?

5 A On the backside of the house -- with reference to the
6 front door, in the far left corner of the residence,
7 there's a spare bedroom and there were some things
8 stored in there. It appeared to be unused as far as
9 someone sleeping in there. There, the window is facing
10 the back yard on that side. From the outside to get to
11 it, you go around the house and when you go around the
12 back corner, the window would be immediately right
13 there on your right.

14 Q Okay. And do you recall whether you were inside or
15 outside at the time you did the collection of the blood
16 from that window?

17 A Both.

18 Q Both? All right.

19 A Because I, typically, will process the outside of the
20 window because I'm also, in addition to blood, I'm
21 dusting for fingerprints out there and on anything
22 that, you know, that I might find that looks like it's
23 pertinent or related or might contain, you know, some
24 latent fingerprints. I'm going to process that. I
25 swabbed blood. Actually, I swabbed the blood from the

1 inside, because the blood was actually on both sides,
2 the inside and out, but the shard was kind of a long
3 jagged point and so from the tip of the point, the
4 blood was only down half an inch from the actual point.
5 So again, it was not a lot of blood, but I did process
6 the exterior of the window for fingerprints. I did not
7 collect anything with significant ridge detail, some
8 smudges and that kind of thing. And then I went around
9 to the inside and I actually collected the blood from
10 the inside, primarily, because the lighting was better.

11 Q Okay. And speaking of lighting, when you dusted for
12 fingerprints on the exterior of the residence, what
13 kind of lighting did you have to assist you at that
14 time?

15 A I had, actually, two flashlights. Typically, I wear --
16 at night time I would wear a little light that you can
17 get at Wal-Mart in the hunting section that has a
18 little band on it and it kind of goes around your head.
19 It looks kind of like a coal miner's flashlight. I
20 would use one of those for just watching my steps and
21 then I would use a flashlight, you know, to help
22 illuminate an area that I was focusing in on and I
23 often times use a flashlight and a magnifying glass in
24 some fashion. Typically, when I see fingerprint powder
25 that has stuck to something, what I will do is take a

CROSS EXAMINATION OF RUSTY ABLES BY MS. JOHNSON

77

1 light, we call it oblique lighting, and you shine the
2 light across the potential fingerprint and what happens
3 is, the raised part of the powder will actually catch
4 just a little bit of shadow which makes a fingerprint
5 more clear and you can tell if it's just a black smudge
6 or if it actually has ridge detail.

7 Q It was my understanding that, in this case, that you
8 did not find any fingerprints of sufficient quality at
9 what you believe to be the point of entry.

10 A That is correct.

11 Q Okay. And as to the point of entry, in fact, you are
12 sort of assuming that was the point of entry?

13 A That is correct. It's consistent with someone who does
14 not have a key getting in, with the window broken and
15 partially up and with all the other doors and windows
16 locked and secure. And so I ---

17 Q Did you check the other windows?

18 A No. I did not. I took the victim's word on that.

19 Q Okay.

20 A Now, as far as -- I could see they were not broken. I
21 will put it that way. I cannot swear that they were
22 locked.

23 Q Thank you. All right. And so, you dusted both outside
24 and inside of the window that you assumed to be the
25 point of entry into the residence.

CROSS EXAMINATION OF RUSTY ABLES BY MS. JOHNSON

- 1 A That is correct.
- 2 Q And you dusted, specifically, around this latch that
3 you believed ---
- 4 A I did.
- 5 Q --- was unlocked according, to your theory.
- 6 A I did.
- 7 Q And there was nothing of sufficient quality at that
8 point?
- 9 A Nothing of sufficient quality.
- 10 Q Okay. But you testified that you did take fingerprints
11 off of the shotgun that is alleged to have been
12 involved in this crime?
- 13 A That is correct.
- 14 Q Okay. And I believe that you testified, or that I
15 read, that there appeared to be a pinky, a forefinger
16 and middle finger ---
- 17 A From a right hand.
- 18 Q --- from a right hand.
- 19 A Yes, ma'am.
- 20 Q As if someone were holding that weapon in ---
- 21 A In the standard manner of firing.
- 22 Q Okay. And so, those fingerprints, from looking at them
23 both at the scene, appeared to be of sufficient quality
24 for comparison purposes?
- 25 A They did.

CROSS EXAMINATION OF RUSTY ABLES BY MS. JOHNSON

79

1 Q All right, and when ---

2 A At least one of them was.

3 Q Okay. And then when you took them back, I believe the
4 procedure was, you took them back to your lab, your
5 office, and you looked further to make sure there was
6 something to submit for further examination.

7 A That is correct.

8 Q All right. And you did believe, after you had a chance
9 to examine those back in your office, that those prints
10 were of sufficient quality to make some kind of
11 identification.

12 A That is correct.

13 Q All right. But we don't, we still don't know where
14 those prints are, that were ---

15 A That is correct.

16 Q All right. You are not exactly sure when they were
17 displaced or how they were?

18 A That is correct. Those prints would have been entered
19 in the commuter, either before I went home that night
20 or the very first thing that I did the next morning.
21 Typically, before I go home. And it depends on a lot
22 of factors as to which one it is. Most of the time
23 it's before I go home that they are entered into the
24 computer. So, they should have been entered, if it was
25 after midnight, of course, they would reflect the next

1 day's date. But it would have been, it was either the
2 ninth or the tenth, I believe it was, that they would
3 have been entered. So -- and the computer records can
4 tell. But from there, that would have been the last
5 time that I actually handled them.

6 Q Okay, so basically once they are out of your hands, you
7 wouldn't have any reason for further examination
8 because that is not your job.

9 A That is correct.

10 Q Okay. All right, is it -- In your practice of
11 collecting evidence, you mentioned this shard of glass
12 that had blood on it. Is it ever your practice to
13 actually remove that item?

14 A Typically, not. Because what I am looking for, the
15 actual shard of glass doesn't necessarily have any
16 evidentiary value. It's the blood on it that has the
17 evidentiary value. So, once I collect the blood, and
18 that's kind of what I am after, and so to take the
19 glass shard which is pointed and has, obviously,
20 already cut one person, kind of becomes a little bit of
21 a hazard, too, so, typically, I would not take that
22 unless there was specific reason to and one example
23 would be, and I've actually had this happen, where the
24 blood on the shard was actually a fingerprint with
25 great ridge detail. In that case I actually took the

CROSS EXAMINATION OF RUSTY ABLES BY MS. JOHNSON

81

1 whole thing with me, because that is not something that
2 you can swab. I would photograph that, but I would
3 additionally bring the actual fingerprint with me,
4 because we would want that.

5 Q And again, photographs. It might have been instructive
6 in this case for the jury to understand what's going on
7 to have a photograph of this shard.

8 A It would. Had it -- typically, we were only -- again,
9 just like that example of the glass, we take
10 photographs when there is an evidentiary reason for it.
11 On most burglaries, if you say someone busted the
12 window and came in, most people can imagine what a
13 busted window looks like. It's not anything unusual or
14 out of the ordinary. So, typically, that's why on
15 burglaries we don't make -- and I'm not saying we don't
16 take pictures on burglaries, ---

17 Q Right.

18 A --- because sometimes we do. It just depends on the
19 totality of the circumstances as to whether there, you
20 know, is a point to it. I ---

21 Q But the circumstance was here, that you believed that
22 we already knew who did it.

23 A That was kind of the assumption.

24 Q Right. So, once you assumed you knew who the
25 perpetrator was and that this had happened, once you

1 assume those two facts, there was not really any need
2 to collect this other evidence.

3 A I disagree, because if you assume you know who did it,
4 you still may have a co-conspirator that we want to
5 identify. Or sometimes there are cases where, you
6 know, it appeared one thing and may be another. I
7 actually go through -- I would go, and in this
8 instance, the same as if they had called me out there
9 and said, "While we were gone eating, someone broke in
10 the house and left and we don't have a clue who it
11 was." I would do everything exactly the same, because
12 my job, as I mentioned earlier, is technical and so I
13 am to secure any evidence. Even if I absolutely know
14 who did it, I still want to get the physical evidence,
15 the technical evidence, that corroborates that fact.
16 So, I would do it the same, either way.

17 Q Okay. Were there other, I believe you mentioned that
18 there were other affected areas in the house. Is that
19 right?

20 A Yes, ma'am. That's correct.

21 Q And the living room was one of those affected areas, I
22 think.

23 A Yes, ma'am.

24 Q And I believe there was testimony that there was a
25 plastic bag containing some medications?

CROSS EXAMINATION OF RUSTY ABLES BY MS. JOHNSON

83

1 A Yes, ma'am.

2 Q And that that bag, those medications, appeared to have
3 been something that had been disturbed.

4 A Yes, ma'am.

5 Q Did you do any analysis relative to those items?

6 A I did. I processed all of that for latent
7 fingerprints.

8 Q Okay.

9 A I did not secure any ---

10 Q Okay, so ---

11 A --- with sufficient ridge detail.

12 Q You did not get any usable prints in that?

13 A That is correct.

14 Q All right. And I believe you might remember, Mr.

15 Nelson testified that there was some change that looked
16 like it had been gathered up. Do you know if you did
17 anything relevant to that item, or those items?

18 A The change itself is not, is not anything that I
19 usually -- that's -- between the material, the size,
20 the stuff that's stamped on it, change, itself, is
21 extremely difficult unless it is at least a quarter,
22 and you have to get it just right. Typically, you
23 might would take the bigger items and hit them with the
24 brush to see if anything would come up, kind of put the
25 flashlight on it and if they were in a jar or something

CROSS EXAMINATION OF RUSTY ABLES BY MS. JOHNSON

84

1 like that, they would, you know -- if you've got
2 change, you know, gathered up and dropped it in a Mason
3 jar, then you would obviously process the Mason jar. I
4 don't, specifically, recall exactly what I did with the
5 change, but I do know that I did not collect anything
6 from it.

7 Q Do you know if you have -- if it was alleged that this
8 change had been kept in some kind of container?

9 A I would have processed that if it had.

10 Q Okay. But to your knowledge, there was not any type of
11 container, at issue, that was relevant to this case?

12 A I can't say. I don't recall.

13 Q Okay. Was there -- I believe there was testimony
14 regarding the 911 call. Are you someone who is
15 responsible for collecting that evidence?

16 A No, ma'am.

17 Q Okay. That is maintained by someone else?

18 A Yes, ma'am. Central dispatch.

19 Q Okay. This window that was in the rear of the
20 residence, how far off the ground would you estimate
21 that was?

22 A I was able to, I was able to reach it without standing
23 on a ladder.

24 Q Okay, you processed it without standing on anything
25 else?

CROSS EXAMINATION OF RUSTY ABLES BY MS. JOHNSON

85

1 A Yes, ma'am.

2 Q That is a fair statement? All right. Did there appear
3 to be anything, such as glass, outside ---

4 A Yes, ma'am.

5 Q --- of the window?

6 A Typically, when a window is broken, you will have glass
7 on the inside and the outside because, depending on the
8 type of glass it is and exactly how it is broken and
9 that kind of thing, usually pieces will go to both
10 sides. Obviously, if you are throwing a rock through a
11 window, 90% of the glass would be on the direction that
12 the rock was going. It may be a little bit on the
13 other side. Often times with regard to -- I have seen
14 many times where a broken window was indeed the point
15 of entry where little shards were still kind of in the
16 little groove on the edges of the window where the
17 window sill is. People will pick them out and drop
18 them on the ground. And so, obviously I take note of
19 those, because I want to process those pieces for
20 fingerprints.

21 Q And in this case, did you process pieces that were on
22 the ground on the outside or the inside of the
23 residence?

24 A I processed -- I believe I processed a piece or two on
25 the inside, but not on the outside, because everything

1 on the outside was so small.

2 Q Okay. Did you collect any sort of trace or fiber
3 evidence in this case? Something from a piece of
4 clothing or hair or anything like that?

5 A No, ma'am.

6 Q No. I understand that you actually discovered that
7 evening, or some time afterward, that you actually knew
8 Douglas Nelson?

9 A That is correct.

10 Q That is correct? Could you tell the jury how it is
11 that you knew him?

12 A Prior to his current marriage, he was married to my
13 mother-in-law.

14 Q Okay. Did you recognize him?

15 A I did.

16 Q Okay.

17 A I didn't recognize the name, initially, until I
18 actually saw his face and then it kind of all came
19 together.

20 Q All right. So, you recognized him that night when you
21 were out at the scene.

22 A That is correct.

23 Q If you could give me just one second, please. (Ms.
24 Johnson speaks to the Defendant) I have nothing
25 further. Thank you.

REDIRECT EXAMINATION OF RUSTY ABLES BY MS. BYFORD

87

1 THE COURT: Any redirect?

2 MS. BYFORD: Just a few quick questions, Judge.

3 REDIRECT EXAMINATION OF RUSTY ABLES BY MS. BYFORD

4 Q Do you and Douglas Nelson hang out, socially?

5 A No.

6 Q Before this night, when was the last time you had seen
7 him?

8 A I couldn't tell you the exact date. The only times
9 that I have met him prior to that were at some kind of,
10 you know, like a large family function kind of thing,
11 as I recall. So.

12 Q Was it months or years?

13 A It had been a while.

14 Q And when did this marriage, that connects the two of
15 you, what time frame was that in?

16 A It was long before I even met my current wife. My wife
17 was actually a little girl then.

18 Q You don't have to tell us the exact date you married
19 your wife, but how old is your wife now?

20 A My wife now? I will have to count. Forty-three.

21 Q Okay. So, this occurred 25 to 30 years ago? This
22 marriage?

23 A At least. Yes, ma'am. And, too, she is my second wife
24 and we have actually only been married 12 years.

25 Q Okay. Thank you. To go back to the subject of

1 fingerprints for just a minute. Do I leave a
2 fingerprint on everything that I touch?

3 A You do not.

4 Q Okay. Could you explain that to the jury a little bit?

5 A There are a number of things that determine a
6 fingerprint left on an item. Unless you are talking
7 about something like blood or clay or something that
8 your finger can be pressed into, your standard
9 fingerprint is residual skin oil from your hands that
10 are left on an item that you have touched. And again,
11 you don't always leave fingerprints because you have
12 varying amounts of oil on your skin and on your fingers
13 at various times of the day, at various times of the
14 year, those sorts of things. Typically speaking, we
15 get, even though it does happen, we get surprisingly
16 few victim's prints off things, because we -- on a
17 burglary, for example, because when that person is at
18 home, they are home, they are relaxed and everything
19 and their metabolism is lower, everything is as it
20 should be. Whereas typically, when someone breaks into
21 a house and is stealing things or what have you, their
22 metabolism is up, their heart rate is up, and you are
23 tense from looking over your shoulder, that sort of
24 thing. They tend to sweat, perspire. So, they, not
25 only are they a little more apt to leave fingerprints

REDIRECT EXAMINATION OF RUSTY ABLES BY MS. BYFORD

89

1 on certain things, they also leave a little bit more,
2 so to speak, which, of course, shows up better. Also,
3 the item that we are talking about, for example, this
4 styrofoam cup would be very difficult to retrieve a
5 print off of even though I just touched it, because
6 it's porous. It's designed that way to have little
7 pockets for insulation. It's not a nice smooth
8 substance. The ideal surface for fingerprints is, if
9 anybody has ever cleaned a bathroom mirror, you know, a
10 mirror or glass is, you know, it holds that moisture a
11 lot better. Rough cut wood, for example, is extremely
12 porous and extremely -- if you could examine it under a
13 microscope, you know, it's full of things, so when the
14 finger actually touches that wood, they are not
15 touching every little valley and places. They are only
16 touching the raised part. So, there are so many
17 things. To truly answer your question, it would take
18 me a couple of hours. It depends on the surface, the
19 situation. You don't always leave a fingerprint when
20 you touch something and even when you do, if I, say for
21 example, touch the counter like so (demonstrating) and
22 lift my hand straight up, then I'm able to get a print.
23 But if I do this, or twisting motion, or slide my hand,
24 then when I hit it with the powder, you will see a
25 black streak or a twist or, we just call them, smudges.

DIRECT EXAMINATION OF CATHERINE LEISY BY MS. BYFORD

90

1 But you can see where it was touched, but there is no
2 ridge detail that is significant enough to actually
3 compare to a person's fingerprint.

4 Q So, is it unusual that you didn't find more prints than
5 you did?

6 A No, it's not unusual.

7 MS. BYFORD: That's all I have.

8 THE COURT: Re-cross?

9 MS. JOHNSON: No re-cross.

10 THE COURT: Thank you, sir. You may step down. Ms.
11 Byford, Ms. Johnson, would y'all come here for a second,
12 please?

13 (Brief Bench Conference Off the Record)

14 THE COURT: Call your next witness.

15 MS. BYFORD: Thank you, sir. Your Honor, the State
16 calls Catherine Leisy.

17 (After being duly sworn by the Clerk of Court,
18 Catherine Leisy testified as follows:)

19 CLERK OF COURT: Please have a seat. If you would,
20 please, state your full name and spell your last name.

21 MS. LEISY: Catherine Leisy. L-E-I-S-Y.

22 DIRECT EXAMINATION OF CATHERINE LEISY BY MS. BYFORD

23 Q Could you tell us where you work, please, ma'am?

24 A I work for The South Carolina Law Enforcement Division,
25 also known as SLED.

DIRECT EXAMINATION OF CATHERINE LEISY BY MS. BYFORD

91

1 Q And how long have you been employed by SLED?

2 A For approximately five-and-a-half years.

3 Q And what are your duties for SLED?

4 A I am a forensic scientist assigned to the DNA Serology
5 Unit. My responsibilities include: processing forensic
6 cases, generating reports based on the resulting
7 conclusions, and testifying on those reports as
8 necessary.

9 Q And could you tell the jury a little bit about your
10 educational background in forensics.

11 A I have a Bachelor of Science degree in Genetic
12 Engineering from Cedar Crest College in Allentown,
13 Pennsylvania. I have received in-house training at
14 SLED by other qualified analysts regarding all the
15 different phases of testing and analyses that we run.
16 I also spent, approximately, four years prior to my
17 time at SLED, as a forensic DNA analyst for a private
18 testing facility. I conducted the same types of
19 testing and analyses there as I do now. I am also
20 required to perform annual continuing education which
21 may be in the form of a seminar or a training session
22 regarding general forensic topics or those specific to
23 the tests that we run.

24 Q And have you ever been qualified as an expert in court?

25 A Yes. I have.

DIRECT EXAMINATION OF CATHERINE LEISY BY MS. BYFORD

92

1 Q Approximately, how many times?

2 A Between thirty and forty at this point.

3 MS. BYFORD: Your Honor, at this time I would move to
4 qualify Catherine Leisy as an expert in the field of
5 Forensic Serology and DNA Analysis.

6 MS. JOHNSON: No objection, Your Honor.

7 THE COURT: That is Forensic Serology and DNA Analysis?

8 MS. BYFORD: Yes, sir.

9 THE COURT: All right, Ladies and Gentlemen of the jury,
10 typically, witnesses are not allowed to testify, but only to
11 things that they know about. In other words, they are
12 generally limited to things they see, they hear, they taste,
13 and feel. However, because of their education or
14 experiences, witnesses are sometimes qualified as experts.
15 In that event, they will be allowed to give their opinion
16 and the basis of their opinion, in evidence and expert
17 testimony in this case will be given in the fields of
18 Forensic Serology and DNA Analysis. It's like any other
19 evidence that you may receive in this case. You can accept
20 it, you may reject it or do with it what you like. Thank
21 you, ma'am.

22 MS. BYFORD: Thank you, Your Honor.

23 Q Could you tell the jury a little bit about what DNA is.

24 A DNA stands for Deoxyribonucleic Acid. It's the genetic
25 material found in all of our body cells with the

DIRECT EXAMINATION OF CATHERINE LEISY BY MS. BYFORD

93

1 exception of our red blood cells. DNA is packaged into
2 structures called chromosomes, which contain our genes
3 and genes are simply strands of DNA from which we get
4 our physical characteristics such as our height or our
5 eye color. We receive half of our DNA from our mother
6 and half from our father, and therefore, have two
7 copies of every gene. Approximately 99.9% of an
8 individual's DNA is identical to that of everyone
9 else's and it's the variation in that remaining .01%
10 that allows us to tell different people apart.

11 Q Did you receive samples from this case to compare?

12 A Yes. I did.

13 Q Okay. What did you receive?

14 A I received two items in this case. The first was a set
15 of swabs identified as being from a broken window and
16 the second was a set of buccal swabs from a Michael
17 Reese.

18 Q And were you able to compare those items?

19 A I was able to develop DNA profiles from both items to
20 compare them.

21 Q And what did you find?

22 A I found that the DNA profile developed from the swabs
23 from the broken window matches the DNA profile of
24 Michael Reese.

25 Q Okay. And do you give a statistic with your analysis?

CROSS EXAMINATION OF CATHERINE LEISY BY MS. JOHNSON

1 A Yes. We do.

2 Q Do you know what the statistic was in this case?

3 A In this case, the probability of randomly selecting an
4 unrelated individual having a DNA profile matching the
5 swabs from the window is approximately one in 29
6 quadrillion.

7 Q Okay. So, in your opinion, to a reasonable degree of
8 medical certainty, was the blood submitted from the
9 broken window actually that of Michael Reese?

10 A I can say, within a reasonable amount of scientific
11 certainty, that Mr. Reese is the contributor of the DNA
12 that I obtained from that sample. Yes.

13 MS. BYFORD: I have nothing further.

14 THE COURT: Cross examination?

15 MS. JOHNSON: Thank you.

16 CROSS EXAMINATION OF CATHERINE LEISY BY MS. JOHNSON

17 Q Can you tell us anything, from your analysis, about how
18 that blood might have gotten to where it was collected?

19 A No. Our testing doesn't enable us to tell how or even
20 when a sample was collected.

21 Q Okay. That was my next question. So, you can't tell
22 when that sample might have been deposited at that
23 particular location?

24 A No. I can't.

25 Q Okay. Thank you.

1 THE COURT: Redirect?

2 MS. BYFORD: No, sir.

3 THE COURT: May this witness be excused?

4 MS. BYFORD: Yes, sir.

5 THE COURT: Thank you, ma'am.

6 MS. LEISY: Thank you, sir.

7 THE COURT: Would you call your next witness, please?

8 MS. BYFORD: Your Honor, at this time, the State rests.

9 THE COURT: Okay. Mr. Moore, Ladies and Gentlemen of
10 the jury, this is a good time for us to go ahead and take a
11 lunch break. I have to take up a few administrative
12 matters. So, I'm going to ask that you go to lunch now on
13 your own and that you be back in the jury room at 1:45. It
14 will give you an hour and 15 minutes for lunch and then we
15 will resume testimony at that point.

16 MR. MOORE: Yes, sir.

17 THE COURT: Thank you. Do not speak about this case
18 amongst yourselves or with anyone else.

19 (Jury out at 12:33 p.m.)

20 THE COURT: We're in recess until 1:45. Excuse me.
21 Let's go ahead and make some motions.

22 MS. BYFORD: Your Honor, Deputy Williams has some
23 training this afternoon to get to. Can he be released from
24 his subpoena?

25 THE COURT: Sure.

FIFTH AMENDMENT RIGHTS

1 MS. JOHNSON: No, objection, Your Honor.

2 DEPUTY WILLIAMS: Thank you, sir.

3 THE COURT: Very good. Thank you, sir. Take care.
4 All right, I was about to cut you off on your motion. Go
5 right ahead. I apologize.

6 MS. JOHNSON: That's okay. Your Honor, at this time,
7 the Defense would move for a Directed Verdict in this case
8 in that the State has not provided sufficient evidence to
9 give this case to the jury and has not submitted a
10 reasonable question of fact to them.

11 THE COURT: All right. Thank you, ma'am. That motion
12 is denied. I want to commend both of the attorneys, though.
13 I was telling them at the bench that they gave some of the
14 best opening statements that I've heard in a long time.
15 Very good. Anyway, we are in recess until 1:45. The
16 Defendant will be bound over until that time. Thank you.

17 MS. JOHNSON: Thank you, Your Honor.

18 (Lunch Break)

19 FIFTH AMENDMENT RIGHTS

20 THE COURT: Mr. Reese, would you please stand? Would
21 you raise your right hand?

22 (Mr. Reese is administered the oath by Judge McIntosh)

23 THE COURT: Okay. Mr. Reese, it is that time of the
24 trial where you have a right to put up a defense. Before we
25 go into that, though, I want to explain to you your Fifth

FIFTH AMENDMENT RIGHTS

97

1 Amendment rights under the United States Constitution,
2 which reads in part as this: That no person shall be
3 compelled in any criminal case to be a witness against
4 himself. Are you familiar with these protections?

5 MR. REESE: Yes, sir.

6 THE COURT: Okay, sir. Now, that means that no one can
7 compel you to testify in this case against your wishes.
8 Now, you do have a right to testify if you so choose to. If
9 you do choose to testify, then you will be treated like any
10 other witness in this case and you will be subject to direct
11 and cross examination in all matters deemed relevant. Also,
12 if you have any prior convictions or pleas of guilt
13 involving cases involving dishonesty or for which
14 imprisonment can be more than a year, you may be cross
15 examined on that matter by the Solicitor if I deem that the
16 probative value outweighs the prejudicial impact on you.
17 Obviously, that would be done by the State to impeach or to
18 impugn your credibility as a witness. Do you understand
19 that?

20 MR. REESE: Yes, sir.

21 THE COURT: Now, on the other hand, if you choose not to
22 testify, then I will instruct the jury in my final
23 instructions that they shall not even discuss the fact that
24 you did not testify, whatsoever. Do you understand?

25 MR. REESE: Yes, sir.

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

FIFTH AMENDMENT RIGHTS

1 THE COURT: Okay. Now, if you decide that you do want
2 to testify or if you decide you don't, whatever decision you
3 make in this matter, your decision must be made freely,
4 voluntarily, and knowingly of your Constitution rights. You
5 have a right to confer with Ms. Johnson as your attorney or
6 anyone else concerning your decision as to whether or not
7 you want to testify. However, ultimately, the decision must
8 be made, personally, by you. Do you understand?

9 MR. REESE: Yes, sir.

10 THE COURT: Have you had sufficient time to speak with
11 your attorney or anyone else you want to about whether or
12 not you want to testify?

13 MR. REESE: Yes, sir.

14 THE COURT: Okay. And what is your decision?

15 MR. REESE: I will not testify.

16 THE COURT: You will exercise your Fifth Amendment
17 protections?

18 MR. REESE: Yes, sir.

19 THE COURT: Very well. Thank you, sir. Are you going
20 to put up any evidence?

21 MS. JOHNSON: Your Honor, no. We have decided we are
22 not going to present a defense. We will rest our case. I
23 do have a proposed jury instruction for you to consider.

24 THE COURT: Okay. Let me look at that. I will go over
25 my charge with you in just a second, too. Did you put up

1 any evidence at all in this case? I don't remember that you
2 did.

3 MS. JOHNSON: No, sir.

4 THE COURT: So, that means that you go first and she
5 goes last. Right?

6 MS. BYFORD: Yes, sir.

7 THE COURT: Okay. Have you shown your proposed charge
8 to Ms. Byford?

9 MS. JOHNSON: I have.

10 THE COURT: Let me give you guys my proposed charge and
11 let y'all look at it.

12 (Judge hands documents to attorneys)

13 THE COURT: You chose to stay? (Speaking to Mr.
14 Robinson, the juror that neglected to mention burglaries at
15 his place of business until he was selected as a possible
16 juror and directed by Judge McIntosh to observe court
17 proceedings. Judge McIntosh gave him the option to stay or
18 go)

19 MR. ROBINSON: I can go if you would like.

20 THE COURT: No, no, no. I want you to, I would rather
21 you stay. I just wanted to give you that option, if you
22 did. I'm glad that you did stick around.

23 MR. ROBINSON: I think I will go, then.

24 THE COURT: Sir?

25 MR. ROBINSON: I think I will go, then.

CHARGE CONFERENCE

100

1 THE COURT: Okay. All right. Very well. Thank you for
2 staying. All right. Take care.

3 CHARGE CONFERENCE

4 MS. BYFORD: Your Honor, I just have one small request.
5 If, under the, "One of the following circumstances existed,"
6 "when entering, while in the dwelling, or when fleeing, the
7 Defendant, or an accomplice, was armed with a deadly
8 weapon," I would request the that Court add, from the
9 request to charge book, "If the defendant or co-participants
10 are not armed with a deadly weapon upon entering the
11 dwelling, but takes from the dwelling a firearm or other
12 deadly weapon, that Defendant is, at that point, armed with
13 a deadly weapon, for the purposes of first degree burglary."

14 THE COURT: Let me see it, please.

15 (Ms. Byford hands document to Judge McIntosh)

16 MS. BYFORD: And that would be my only request. Thank
17 you.

18 THE COURT: What is your position on that?

19 MS. JOHNSON: Your Honor, I think the charge that you
20 presented, and I read, covers any of the three ways to be
21 armed: when you enter, while you're there, or in flight,
22 therefrom. I think it is already covered in the charge that
23 the Court has presented.

24 THE COURT: Let me ask you this, Ms. Byford: In this
25 case, is there any evidence that any firearms were taken

CHARGE CONFERENCE

101

1 from the house? I know that there is evidence that he had a
2 firearm, the Defendant allegedly had a firearm while in the
3 house, but that he left it at the premises on the bed, is
4 what I understood.

5 MS. BYFORD: He did, sir. But I don't think it is
6 required that you take it. What I want to be clear is that
7 you can arm yourself once inside, but there is no evidence
8 that he came in with one and Mr. Nelson testified that that
9 was the shotgun from inside the residence. I just want it
10 clarified that that still constitutes a burglary first, I
11 guess.

12 THE COURT: Well, ---

13 MS. BYFORD: That you don't have to bring your own gun
14 to the crime, I guess.

15 THE COURT: I think that -- Let me just say this: If
16 you look at the definition, number one, it says when
17 entering, while in the dwelling, or when fleeing. So, I
18 think that pretty much covers that on that and if I go
19 further, then we run the risk of me commenting on the facts
20 which -- Let me ask you this: It says if the Defendant is
21 not armed with a deadly weapon upon entering the dwelling
22 but takes from the dwelling a firearm. I mean that would
23 not fit what we have here. I know what you are trying to
24 say that a person can go into the house unarmed and arm
25 themselves while in the dwelling and that would constitute

CHARGE CONFERENCE

102

1 an aggravating factor. Right?

2 MS. BYFORD: Right.

3 THE COURT: All right. I'll tell you what. I'm going
4 to decline this particular charge that you asked for. I
5 note your objection on the record and the request to charge
6 is this, just so that you are on the record with it: If the
7 Defendant or co-participant is not armed with a deadly
8 weapon upon entering the dwelling, but takes from the
9 dwelling a firearm or other deadly weapon, that Defendant or
10 co-participant is, at that point, armed with a deadly weapon
11 for purposes of first degree burglary." I think under the
12 facts, that's not necessarily apropos in this case and I
13 also think that it's covered in the standard charge.

14 Now, what is your position as to the request from Ms.
15 Johnson that I read that, "when a party loses or destroys
16 evidence an inference may be drawn that the destroyed or
17 lost evidence would have been adverse to the party."

18 MS. BYFORD: Your Honor, if I could just read from that
19 case that she cites there, it says, and for the record, that
20 is State versus Cheeseboro, 346 S.C. 526.

21 THE COURT: Yes, ma'am.

22 MS. BYFORD: "To establish a due process violation where
23 the State fails to preserve evidence, a defendant must
24 demonstrate either 1) the State destroyed the evidence in
25 bad faith. We do not --- we do not have any evidence of

CHARGE CONFERENCE

103

1 that in this case. Or 2) that the evidence possessed an
2 exculpatory value apparent before the State destroyed the
3 evidence and the defendant cannot obtain evidence of
4 comparable value by other means." And there is no evidence
5 that that evidence possessed an exculpatory value that was
6 apparent before it was destroyed. And just to go a little
7 bit further with that, Judge, let's say that that
8 fingerprint had been tested, fingerprints can't be dated.
9 That gun was in a place where -- these people have known
10 each other for 18 years. If we had gotten back the
11 fingerprint, she could just argue that there is no way we
12 could know that it got on it that night. I mean, I don't
13 think even if we had a print, I don't know that that would
14 be make or break evidence in this case anyway, because of
15 the relationship of the parties and the fact that we can't
16 date fingerprints. So, I would say she hasn't met either of
17 the requirements under the case which she cites and from
18 which I just read.

19 THE COURT: Is that an either/or standard?

20 MS. BYFORD: It says, "or".

21 THE COURT: It does?

22 MS. BYFORD: Yes.

23 THE COURT: Okay.

24 MS. BYFORD: Would you like to ---

25 THE COURT: I like that. What is that? Is that an

CHARGE CONFERENCE

1 iPod, or not an iPod ---

2 MS. BYFORD: It's an iPad.

3 THE COURT: An iPad.

4 MS. BYFORD: That's the paragraph right there. I should
5 have printed it out this morning. (Judge is looking at the
6 iPad)

7 THE COURT: All right.

8 MS. BYFORD: Thank you.

9 THE COURT: Ms. Johnson?

10 MS. JOHNSON: Your Honor, under number one, the question
11 of bad faith, there was no bad faith shown here, so,
12 obviously, that's not what we were talking about, but as to
13 the exculpatory value of this information, the testimony
14 from Mr. Nelson was that Mr. Reese pointed this gun at him
15 during this home invasion. The way that the forensics
16 officer testified that these prints were found, one, two,
17 three, as if somebody was holding a gun, suggests to me that
18 that would be very important information and obviously, if
19 they had come back and matched my client that would have
20 been something, but if it matched Mr. Nelson, it would be
21 inconsistent with the theory that the State has put forward,
22 and consistent with the defense that we are alleging. And
23 so, in essence, certainly not on Mr. Reese, the evidence was
24 destroyed or misplaced or whatever happened to it and we
25 would ask the Court to charge that an inference can be drawn

CHARGE CONFERENCE

105

1 from that.

2 THE COURT: I'll tell you what. I am going to let you
3 argue what you want to, to the jury. I'm going to give you
4 a lot of latitude on that, but I agree with Ms. Byford that
5 under the facts of this case, there's nothing showing an
6 exculpatory nature. I don't know how you could ever do
7 that, actually, but certainly there is no evidence of bad
8 faith in the destruction of this evidence and so, I'm going
9 to decline your charge request, but I'm going to make it a
10 Court's Exhibit so that it can be reviewed, in case I'm in
11 error.

12 (Whereupon, a request to charge by the defense is
13 entered into evidence as Court's Exhibit No. 6)

14 Now, the last question of the day is, I generally give
15 the attorneys the option to have me charge first, before you
16 close, or you can close first, and then I will charge.
17 Whatever you want to do. Do you have a preference?

18 MS. BYFORD: It doesn't matter to me, Your Honor.
19 Whatever you prefer.

20 MS. JOHNSON: It doesn't matter to me, either.

21 THE COURT: What's your pleasure? What would you like?
22 It doesn't matter? If you want to do it the standard way
23 that you are used to doing it...

24 MS. BYFORD: It really doesn't matter to me. I'm fine
25 doing the charge first and then we close.

CHARGE ON THE LAW

106

1 THE COURT: Okay. I'll tell you what. I've found that
2 once I charge them before you argue, you can turn around and
3 say, "You just heard him say this, that or the other," and
4 sometimes it goes better.

5 THE COURT: Any objection to the proposed verdict form?
6 I think it's pretty straightforward.

7 MS. BYFORD: No, sir.

8 MS. JOHNSON: No, sir.

9 THE COURT: Are y'all ready for me to charge the jury,
10 then?

11 MS. BYFORD: Yes, sir.

12 MS. JOHNSON: Yes, sir.

13 THE COURT: Bring the jury in, please.

14 (Jury in at 2:09 p.m.)

15 THE COURT: All right. Ms. Johnson?

16 MS. JOHNSON: The Defense rests, Your Honor.

17 THE COURT: Very good. Thank you.

18 CHARGE ON THE LAW

19 Mr. Moore, Ladies and Gentlemen of the jury, we have
20 ended the second phase of this case and that is the
21 presentation of the evidence. The next phase, normally, is
22 the attorney's closing arguments. However, I'm going to
23 charge you on the law first, and then they are going to come
24 back and give you their closing statements, and then after
25 that, we will send the evidence and word back that you are

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

CHARGE ON THE LAW

107

1 able to begin your deliberations. Okay? Y'all bear with
2 me. I'm starting to get a little bit of a cold. If you
3 don't understand anything I say, raise your hand and I will
4 phrase it such that you do.

5 But now, Ladies and Gentlemen, that you have heard all
6 the evidence in this case, it is my duty to instruct you on
7 the law that you must apply to the facts as you find them to
8 be. My instructions are going to be in three parts. First,
9 it will be rules that define and control your duties as
10 jurors. Secondly, I will give you the substantive law that
11 must be applied in this case, i.e., the law that the State
12 must make out in order to prove its case. And third, I will
13 give you some comments about your deliberations and some
14 thoughts about that.

15 Now, as I told you at the beginning of this case, it is
16 your duty to find facts from all the evidence that has been
17 presented here in this courtroom, from the witness stand or
18 admitted into evidence, and from no other place. You must
19 follow the law as I instruct you on it. You shall not be
20 concerned with what you think the law should be. You must
21 apply it as I give it to you. You also should not be
22 influenced by any personal likes or dislikes, opinions,
23 prejudice or undue sympathy that you may have for one side
24 of this case or the other. That means that you will decide
25 this case solely on the evidence presented and according to

1 the law as I give it to you. In fact, you took an oath
2 where all of you agreed to do just that.

3 Now, in following my instructions, it is a requirement
4 that you follow all of my instructions. You can't pick out
5 the things you like about it and follow those and disregard
6 the ones that you do not like. All my instructions are
7 equally important to you, and as I told you during the
8 beginning of this case, if I have done anything throughout
9 this case that somehow seems to indicate how you are to find
10 facts in this case, I'm going to ask and instruct you to
11 disregard it. I can assure you I have no such feeling and
12 my concern is only that the process is followed and you get
13 a proper instruction on the law. You, and you alone, are
14 the judges of what the facts are in this case.

15 Now, you decide what the facts are by evaluating and
16 weighing the evidence that you heard. There is no literal
17 way I can give you a set of scales for you to weigh the
18 evidence. It is entirely a mental process where you use
19 your good sense of judgment and logic in making your
20 conclusions and findings of fact.

21 Now, in this case, there are going to be three types of
22 evidence. First, we are going to have the sworn testimony
23 of the witnesses, whether it be on direct examination or
24 cross examination or some other combination of that. There
25 are exhibits that have been admitted into evidence. The

CHARGE ON THE LAW

109

1 third type of evidence, as you recall I gave you, is
2 judicial notice and that is simply this: That on October 09,
3 2010, official sunset occurred at 7:04 p.m. You may not
4 debate that. That's what you must take as fact. Now, that
5 is the only evidence that you may consider.

6 Let me tell you, then, what is not evidence. First,
7 the arguments that the attorneys have made or are about to
8 make, although helpful, is not evidence. They are not
9 witnesses. They are not sworn. They are advocates for
10 their clients. It is designed to help you interpret the
11 evidence. However, if what they tell you differs from what
12 your memory of the facts are, then your memory will control.
13 Also, any questions or objections by the lawyers are not
14 evidence. Lawyers are required to object anytime they feel
15 like there is improper questioning or a process being
16 followed in the court and you are not to consider or even
17 discuss the fact that an objection may have been raised nor
18 my ruling on that objection. Also, any evidence that I may
19 have stricken from the record is not evidence you may
20 consider. Also, anything that you may have heard or seen
21 while you are not here in the courtroom is not evidence.

22 Now, South Carolina allows two types of evidence in
23 trials. There is direct evidence and there is
24 circumstantial evidence and direct evidence is pretty
25 straightforward. It is evidence of testimony who asserts or

1 claims to have actual knowledge and direct knowledge of a
2 fact such as an eye witness. Circumstantial evidence is
3 defined as indirect evidence, or put another way, it is a
4 proof of a chain of facts and circumstances from which you
5 may infer that another fact exists even though that fact has
6 not been proven directly. To give you an example of
7 circumstantial evidence, if you were to go to bed at night
8 and you had snow on the ground and you wake up in the
9 morning and there would be tracks in that snow, you may
10 infer that someone or some thing walked through your yard
11 during the night time although you did not see it. That is
12 the type of indirect proof that you come up to establish a
13 fact.

14 Now, I will tell you that the law makes absolutely no
15 distinction between the weight or value you give to direct
16 or circumstantial evidence. There is not a greater degree
17 of proof required for circumstantial evidence to be
18 considered by you, but I will tell you that after
19 considering all the evidence in this matter, whether direct
20 or circumstantial, if you find that the Defendant's guilt
21 has not been proven beyond a reasonable doubt then it will
22 be your duty as jurors to find him not guilty.

23 Now, in deciding what the facts are in this case, it will
24 be necessary for you to consider the credibility of
25 witnesses. In doing this, you must decide which testimony

CHARGE ON THE LAW

111

1 to believe and you may consider which testimony you do not
2 want to believe. You have a right to disbelieve all or part
3 of any witness' testimony. You may believe all of any
4 witness' testimony. In making this decision of witness
5 credibility, you may take into account a number of factors
6 including the following, but you are not required to. This
7 is just thoughts for your consideration. You may ask
8 yourselves was the witness able to see, or hear, or know the
9 things about which that witness testified. How well was the
10 witness able to recall and describe those things. What was
11 the witness' manner while they were testifying. In other
12 words, what was their demeanor. Was there some reason a
13 witness would want to give testimony that would help or hurt
14 one side or the other. Did that witness have an interest in
15 the outcome of this case or any bias or prejudice towards
16 any party or matter involved in this case. You may also
17 consider how reasonable that witness' testimony was in light
18 of all the evidence that has been presented and also what
19 whether that witness' testimony was contradicted by what
20 that witness had said or done at another time or by other
21 testimony in this case or by other evidence that's been
22 admitted.

23 Now, Ladies and Gentlemen, these are some, but
24 certainly not all of the factors that you may consider in
25 determining witness credibility, and, of course, when you

CHARGE ON THE LAW

1 become jurors you don't check your common sense at the door
2 and you shouldn't in this case and you should use those
3 things in your day to day lives that you find indicative of
4 truthfulness, or lack of truthfulness, when you make this
5 consideration of witness credibility.

6 Again, you may believe as much or as little of any
7 witness' testimony as you think proper. You may believe all
8 or part or none of any witness's testimony or you may
9 consider one, you may believe one witness over several or
10 several over one but one thing you don't do is add up the
11 number of witnesses that testify on the behalf of one side
12 or the other, because your sole objective in this matter is
13 to find the truth. It doesn't matter whether the truth
14 comes from a witness for the State, or otherwise.

15 Now, as I told you earlier, most witnesses are limited
16 to testifying about what they hear, they see, they saw, they
17 smell, what their senses are. However, there was expert
18 testimony in this case and they were allowed to give their
19 opinion. Expert testimony should be judged just like any
20 other testimony in this case. You may accept it, you may
21 reject it, or you may give it as much weight as you think it
22 deserves considering that witness' education, that witness'
23 experience, the reason given for the opinion, as well as all
24 the other evidence in this case.

25 Again, Ladies and Gentlemen, the fact that Mr. Reese

CHARGE ON THE LAW

113

1 has been arrested, charged, and indicted is not evidence of
2 his guilt. He steadfastly denies his guilt and the burden
3 remains on the State to prove his guilt beyond a reasonable
4 doubt. This indictment is simply a charging mechanism by
5 which the State of South Carolina brings defendants before
6 juries such as yourselves for determination of guilt or
7 innocence.

8 Now, each and every criminal in a general sessions case
9 is presumed innocent and a person charged in this state is
10 never required to prove that they are innocent and I charge
11 you that it is an important rule of law that the defendant
12 in a criminal trial, no matter how serious the charges are,
13 will always be presumed to be innocent of the crime for
14 which the indictment was issued unless guilt has been proven
15 by evidence satisfying you, the jury, of guilt beyond a
16 reasonable doubt. This presumption of innocence does not
17 end when you begin your deliberations, but it accompanies
18 the Defendant throughout this trial until you the jury reach
19 a verdict of guilt based on proof of evidence satisfying you
20 of guilt beyond a reasonable doubt.

21 Now, it has been said that the presumption of innocence
22 is like a robe of righteousness that has been placed about
23 the shoulders of a defendant which remains there until it
24 has been stripped by evidence satisfying you, the jury, of
25 guilt beyond a reasonable doubt. The presumption of

CHARGE ON THE LAW

1 innocence, Ladies and Gentlemen, is not mere legal theory,
2 it is not just a legal phrase. It is a substantial right
3 which every defendant is entitled to unless you, the jury,
4 are satisfied by evidence of the defendant's guilt beyond a
5 reasonable doubt.

6 I gave you a brief definition of reasonable doubt at
7 the beginning of this case. Let me go into it a little bit
8 further. A reasonable doubt is this: A reasonable doubt is
9 the kind of doubt that would cause a reasonable, sincere,
10 honest, and conscientious person to hesitate to act in an
11 important matter in their own affairs. Now, proof beyond a
12 reasonable doubt is proof that leaves you firmly convinced
13 of the Defendant's guilt. Now, there are very few things in
14 this life that we know with absolute certainty and in
15 criminal cases, the law does not require proof that
16 overcomes every possible doubt. If, based on your
17 consideration of the evidence, you are firmly convinced that
18 the Defendant is guilty of the crime for which he is
19 charged, it will be your duty to find him guilty. On the
20 other hand, if you think there is a real possibility that
21 the defendant is not guilty, you must give the Defendant the
22 benefit of the doubt and find him not guilty. Now, a
23 reasonable doubt may arise from the evidence or it may arise
24 from the lack of the evidence.

25 I further instruct you that a defendant is entitled to
THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

CHARGE ON THE LAW

115

1 every reasonable doubt that may arise in a case and what
2 that simply means is this: That, if upon any issue of fact
3 essential to a conviction and a verdict of guilt of the
4 offense for which the indictment has been issued, if you
5 have any reasonable doubt as to how that issue should be
6 resolved, it is your duty to resolve that issue in favor of
7 the Defendant.

8 Now, in order to establish criminal liability, the
9 element of criminal intent is required. For example, the
10 mental state required to be proven by the State for a
11 particular crime might be purpose, intent, knowledge,
12 recklessness, or criminal negligence. Criminal intent must
13 be proven by the State beyond a reasonable doubt. Criminal
14 intent is always a matter that must be determined by you,
15 the jury, from the circumstances shown at trial surrounding
16 the situation.

17 Now, there is no way to prove intent to a mathematical
18 certainty. There is no way that medical science can dissect
19 a person's brain to determine what they had in mind at the
20 time they did it or alleged to have done it. So, the law
21 says that criminal intent may be inferred from the
22 circumstances shown to have existed and that is how you make
23 a determination of whether or not the element requiring
24 intent was present. It is not necessary to establish intent
25 by direct and positive evidence, but intent may be

CHARGE ON THE LAW

1 established by inference in the same way as any other fact
2 by taking into consideration the acts of the parties and all
3 of the circumstances surrounding the case. Criminal intent
4 is a mental state. It is a conscious wrongdoing and it is
5 up to you, Ladies and Gentlemen, to make a determination
6 what the Defendant intended to do at the time in question
7 based on the circumstances shown to have existed.

8 Now, finally, as far as the general rules that define
9 and control your duties as jurors, I will instruct you that
10 the fact that the Defendant did not testify shall not be
11 considered by you, whatsoever. It would be improper for you
12 to even discuss or raise the issue about the Defendant's
13 failure to testify in your deliberations. Every citizen of
14 the United States is protected by the Fifth Amendment to the
15 United States Constitution that says that no person shall
16 ever be required to testify against himself.

17 That being said, Ladies and Gentlemen, that ends the
18 first part of my Charge. I'm going to charge you now on the
19 law of first degree burglary. Would anybody want to stand
20 up first before they hear this or do you want to keep going?
21 Do you want to tally your jury, Mr. Moore?

22 MR. MOORE: Keep going.

23 THE COURT: Good Anderson County Jurors. There you go.
24 All right, this is the law of First Degree Burglary as
25 defined in S.C. Code Section 16-11-311. The Defendant is

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

CHARGE ON THE LAW

117

1 charged with first degree burglary. The State must first
2 prove, beyond a reasonable doubt, that the Defendant entered
3 a dwelling without consent. A dwelling is any building, or
4 portion of a building, in which a person ordinarily sleeps.
5 The State does not have to prove that force was used to gain
6 entry.

7 Next, the State must prove beyond a reasonable doubt
8 that the Defendant intended to commit a crime, ether a
9 felony or a misdemeanor, at the time of the entry. The mere
10 entry into a dwelling, without consent, is not a burglary.
11 If the intent to commit a crime is formed after the entry,
12 it is not a burglary. On the other hand, if the Defendant
13 intended to commit a crime at the time of the entry, it is a
14 burglary, even if the intent was abandoned after the entry.
15 It does not matter that the intended crime was not
16 completed. Intent may be shown by acts and conduct of the
17 Defendant and other circumstances from which you may
18 naturally and reasonably infer intent.

19 Now, finally, the State must prove, beyond a reasonable
20 doubt, that at least one of the following circumstances
21 existed. First, when entering or while in the dwelling or
22 when fleeing, the Defendant or an accomplice, was armed with
23 a deadly weapon. A deadly weapon is any article, instrument
24 or substance, which is likely to cause death or great bodily
25 harm. Whether an instrument has been used as a deadly

CHARGE ON THE LAW

1 weapon depends on the facts and circumstances of each case.
2 The following are examples of instruments which may be
3 deadly weapons: A pistol, a shotgun, and a rifle and a gun
4 may be a deadly weapon even if it is not operating at the
5 time.

6 Next, the State must prove, beyond a reasonable doubt,
7 that when entering or while in the dwelling or when fleeing,
8 the Defendant, or an accomplice, caused physical injury to
9 anyone not participating in the crime or when entering or
10 while in the dwelling or when fleeing, the Defendant or the
11 accomplice used or threatened to use a dangerous object or
12 when entering a dwelling, while in the dwelling, or when
13 fleeing, the Defendant or accomplice displayed what was, or
14 appeared to be; a knife, pistol, revolver, rifle, shotgun,
15 machine gun, or other firearm or the Defendant entered or
16 remained in the dwelling at night time. Night time is the
17 period between sunset and sunrise during which there is not
18 enough daylight to recognize a person's face except by
19 artificial light or moonlight. That is the law of first
20 degree burglary.

21 Now, Ladies and Gentlemen, finally, I want to speak
22 with you about your deliberations. Number one, you don't
23 become jurors to be partisans or advocates for one side of
24 this case or the other. Both sides picked you because they
25 felt you could be fair and impartial to both their sides of

CHARGE ON THE LAW

119

1 the case, to listen to the evidence, to consider the
2 evidence and to make your decision based solely on that and
3 from no other, without outside influence or bias, and in
4 doing so, you would be using your good common sense and
5 logic that you brought with you here to the courtroom.

6 Now, deliberations has been defined as this: It is a
7 careful consideration weighing up with a view to a decision.
8 Now, regardless of what you may think one of it, one of the
9 geniuses about our judicial system is, it allows 12 people,
10 such as yourselves, from different perspectives, from
11 different walks of life, from different backgrounds, to come
12 together to listen to the evidence, to go back in your jury
13 room to courteously and thoroughly discuss all of the
14 evidence and, hopefully, to come to a unanimous decision. We
15 call them deliberations for a reason. You are to consider
16 all of the evidence in this matter. You will discuss it
17 fully amongst yourselves. You listen to everybody's points
18 of view and you are to, hopefully, come to a decision in
19 this matter. Again, you are not partisans. You are not
20 advocates for one side of the other. You are judges of the
21 facts. Your sole interest in this matter is to find the
22 truth based on the evidence that has been presented to you
23 here in this courtroom. I am going to ask you and I am
24 going to instruct you to listen to everyone's sides,
25 everyone's points of view, discuss all the evidence. Don't

CHARGE ON THE LAW

1 be in a big hurry. This is both sides only day in court
2 and this is an important matter for them.

3 Now, in order for your verdict to stand, it must be
4 unanimous, meaning all 12 jurors must agree to that
5 decision. With that being said, however, each of you must
6 decide this case on your own or you should only do so after
7 you have impartially considered all the evidence, listened
8 to everybody's points of view, and discussed all sides
9 thoroughly. Don't be afraid to change your opinion about the
10 weight of the evidence if the discussion persuades you that
11 is the right thing to do. However, with that being said, do
12 not change your decision of what the weight of the evidence
13 is, solely to reach a unanimous verdict. You must make your
14 own decision and listen to everybody else's discussion
15 before you make your mind up. That being said, Mr. Moore, I
16 am going to ask you, as the foreperson, to preside over all
17 of the deliberations. You are to guide people's thoughts
18 and discussions. You are not to dominate, but you will act
19 somewhat as a chairman. If, at any time, the jury needs
20 anything or you have any questions, if you would follow that
21 same procedure that you followed throughout this case.
22 Write a note, sign it, give it to our bailiffs, and they
23 will bring it to my attention and we will receive it here in
24 open courtroom. Let me just remind you this. If, at
25 anytime, you want to communicate with me, you are not to

CHARGE ON THE LAW

121

1 tell me or anyone else where the jury is numerically, i.e.,
2 six and six or eight and four or whatever it is. That is
3 solely y'all's province. Okay?

4 Now, lastly, this is the verdict form. In just a few
5 minutes, after these attorneys give you their closing
6 statements, we are going to send this verdict form and the
7 exhibits back to the jury room.

8 COURT REPORTER: There aren't any exhibits.

9 THE COURT: Ma'am?

10 COURT REPORTER: No exhibits. There are no exhibits.

11 THE COURT: Okay. There are no exhibits? Okay. For
12 some reason I did not realize there were no exhibits. My
13 court reporter, she follows me everywhere and corrects me
14 every time I make a mistake, which is quite often. But, we
15 will send this verdict form back to you. The order in which
16 your options appear is of no consequence, because they have
17 to be in one form or the other. In this case, your options
18 will be this, Mr. Moore. The first option is not guilty of
19 burglary in the first degree or guilty of burglary in the
20 first degree. Whenever your jury is able to reach a
21 unanimous decision which option applies, you will either
22 check or initial the line next to that option, then you will
23 go down and sign your name as foreperson, and you will knock
24 on the door and we will receive your verdict back here in
25 open court. Okay, sir? All right, that being said, I'm

CHARGE ON THE LAW

122

1 going to send you back to your jury room for just one minute
2 to make sure I haven't misstated or omitted to tell you
3 something I should have. Go back to your jury room for one
4 minute, please. It won't be long.

5 (Jury out at 2:35 p.m.)

6 THE COURT: I didn't realize there were no exhibits in
7 here. I'm sorry. All right. Any objections or additions
8 from the State to the charge, other than as previously
9 stated by Ms. Johnson?

10 MS. JOHNSON: Other than the previous objection, no,
11 Your Honor.

12 THE COURT: All right. You are protected on the record.
13 That being said, do you need a minute before you go into
14 your closings? Are you ready to go?

15 MS. JOHNSON: I would like to go to the Ladies Room
16 before we start, if that's okay.

17 THE COURT: Okay, we will do that. Let me say this
18 before we come back. I appreciate both attorneys. They
19 have been very prepared. As I told you earlier, that I
20 think your opening statements were some of the best that I
21 have seen in a long time. Thank you. For whatever happens
22 in this case, you've done a good job. We will be back in
23 about 5 minutes. Is that long enough?

24 MS. JOHNSON: Yes, sir.

25 (Brief Break)

CLOSING ARGUMENT - MS. BYFORD

123

1 THE COURT: Ms. Byford, are you ready?

2 MS. BYFORD: Yes, sir

3 THE COURT: Ms. Johnson, are you ready?

4 MS. JOHNSON: Yes, sir.

5 MS. BYFORD: Yes, sir. May it please the Court.

6 THE COURT: Yes, ma'am.

7 CLOSING ARGUMENT - MS. BYFORD

8 Good afternoon, Ladies and Gentlemen. I want to start
9 by taking you through each of the elements, much like I did
10 in my opening, and sort of pointing out to you the evidence
11 that was presented on each point. As I stated before, the
12 first thing I had to prove to you today is that the
13 Defendant, Michael Reese, the person who is on trial, is the
14 one that committed this crime. The evidence on this point
15 is pretty straightforward and simple. He left his DNA on
16 the point of entry on both sides of the window that he broke
17 to enter his Mother's house and he was identified by both
18 his Mother and his Step-Father, both of whom have extensive
19 knowledge of him.

20 As the Judge charged you on each of these points, you
21 are going to use the tools you brought into the courtroom
22 with you today, your life experience and your common sense.
23 Use those to evaluate the strength of that evidence, that
24 scientific evidence, the DNA. There is a one in 29 quadrillion
25 chance that if we pulled someone else off the street you would be

1 able to match that blood on that window. That's Michael Reese's
2 blood. He is the one who went through that window that night.

3 I also have to prove to you that he entered a dwelling. So,
4 what evidence do you have on that? You have testimony from both
5 of the Nelsons that he was standing on the other side of the door
6 when it was jerked open. You have testimony that it looked like
7 he had been going through the house. There was a basket of
8 medication that was thrown on the floor and there were items in
9 the bedroom that were also been disturbed and there was the
10 broken window that it appeared someone had entered the house
11 through.

12 Let's move on to the issue of consent. There is a broken
13 window. Usually, people who have permission to enter places
14 don't need to break in. And additionally, his mother testified
15 that just 18 days before this happened, she had placed him on
16 trespass notice on September 21st. So, he had been informed that
17 he no longer had legal consent to enter her home.

18 I have to prove that when he entered the house he had the
19 intent to commit a crime. Now, I can't take a snapshot of what's
20 in his head, so I have to infer it from the evidence we have. We
21 know that he went through stuff in the house. He went through
22 the prescription medication. He went through the change in the
23 bedroom. I think you can infer from that, he was looking for
24 things to steal. Additionally, when the Nelsons got home, he
25 pointed a shotgun in his step-father's face and threatened to
26 kill him. I can't tell you which one of these things was in his
27 mind when he entered the house. You can pick from those

CLOSING ARGUMENT - MS. BYFORD

125

1 yourself, Ladies and Gentlemen. Look at the evidence and use
2 your life experiences. What makes sense to you? And I will talk
3 about that a little more later.

4 Ladies and Gentlemen, that's the crime of burglary. In
5 order to make it a burglary, first I have to prove at least one
6 of the following: (Projects document onto large screen) That he
7 either armed himself with a deadly weapon, which is a shotgun.
8 You have testimony from the Nelsons on that point. Mrs. Nelson,
9 who ran off the porch pretty quickly, said she thought he was
10 holding something that looked like a lead pipe. While in a
11 hurry, the barrel of a shotgun could look like a lead pipe. But
12 Douglas Nelson, who actually struggled with him over the gun,
13 told you that it was, in fact, a shotgun.

14 I suspect that you are going to hear some arguments about
15 the fingerprints that were found on that gun and lost. I am
16 going to say two things to you on that point. First, don't let
17 yourself be distracted from what is there by what isn't. And
18 two, this is a gun that belonged to the Defendant's mother. It
19 had been in her house for several years. If there had been a
20 fingerprint on that gun, what would the argument have been? It
21 can't be dated. We don't know when it got there. This is a gun
22 that he had access to for years. I don't think that print would
23 have told us anything either way. Don't let yourselves get
24 distracted by what isn't there from what is.

25 That he caused physical injury to a person who is not a
26 participant in the crime. You have Deputy Williams' testimony
27 that when he spoke with Douglas Nelson he was wiping blood from a

1 scratch on his head and you have Douglas Nelson's testimony that
2 he got scratched up during the struggle over the gun.

3 And finally, again, just one of these has to apply. That
4 the crime occurred during the night time. The Judge has taken
5 judicial notice that sunset on that night was at 7:04 p.m. and
6 you have testimony from the Nelsons that they got home from
7 dinner at a quarter of nine and from Deputy Williams that he was
8 dispatched at approximately ten to nine and that he arrived at
9 8:58 and that it had been dark for a while when he got there.
10 Only one of those three things have to apply for you to return a
11 verdict of guilt. You only have to be convinced of one of them,
12 beyond a reasonable doubt. I submit to you the State has proven
13 all three.

14 Ladies and Gentlemen, when you go back there and evaluate
15 this evidence, use your common sense. And what makes sense in
16 this case? That there is some vast conspiracy between the
17 Nelsons and the State that includes, mind you, somehow obtaining
18 the Defendant's blood and draping it over a broken piece of
19 glass? Or does it make sense that Michael Reese, who, as Ms.
20 Johnson brought up during her questioning, had gotten into a
21 fight with his mother over an insurance policy, wanting money
22 from her, and had been placed on trespass notice. He then broke
23 into her house looking through her things, potentially, for money
24 or drugs and that he did so at a time that the Nelsons testified
25 they were usually out playing Bingo. They usually did not get
26 home until midnight or one o'clock.

27 Ladies and Gentlemen, what happened is that Michael Reese

CLOSING ARGUMENT - MS. JOHNSON

127

1 broke into that house because he was mad at his mother who was
2 not going to give him any more money. He was mad because she had
3 put him on trespass notice. He went through her stuff and when
4 they got home early, he grabbed a shotgun that he knew that was
5 there and he pointed it at his step-father and he threatened to
6 kill him. That makes sense. That's what happened. That's
7 burglary, first degree. Mr. Reese is guilty. Thank you.

8 THE COURT: Ms. Johnson?

9 MS. JOHNSON: Thank you, Your Honor. May it please the Court.

10 THE COURT: Yes, ma'am.

11 CLOSING ARGUMENT - MS. JOHNSON

12 Ladies and Gentlemen, as you heard me say earlier, and the
13 Judge tell you, this is a search for the truth. And again, if we
14 take the testimony of Mr. And Mrs. Nelson to be the facts of the
15 case, then I should just go sit down, because I don't have any
16 argument against what she said regarding the elements. They have
17 dotted their I's and crossed their T's. However, the way we know
18 if they are telling us the truth, is through investigation. And
19 again, this investigation simply hasn't been done.

20 (Portrays document on large screen)

21 All right. So, a few points. There was testimony that
22 there were fingerprints on a shotgun. Rusty Ables testified that
23 these were these fingers here, that you might see from someone's
24 right hand as if they are holding a weapon. But you also heard
25 testimony from Mr. Nelson that there was a struggle and one of
26 the things that Rusty Ables told you was that these things, you
27 know, if you do like this, (demonstrating) if there was a

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

1 struggle, as this thing's moving, it's going to smear them. But
2 he said what? That these were clear prints that were on this
3 weapon. Okay? We don't know who they belonged to, because The
4 State of South Carolina, the Sheriff's office, lost them. They
5 still don't know where they are. They took them into evidence,
6 but they don't know where they are now.

7 Fingerprints at the point of entry. I know there is
8 testimony that he looked for something, but didn't find it. This
9 is a window where he wants you to believe somebody busted it out
10 and got tiny drops of blood on it, reaches in, grabs the glass
11 through a broken window, raises the window, goes in through the
12 broken window. We're not sure, because we didn't have any
13 pictures, but doesn't leave anything else behind. There are no
14 fingerprints there on a latch, on the outside of the window, on
15 the inside where somebody raised it to go through. There is no
16 clothing, no other blood. I mean, you see what size this guy is.
17 Mr. Reese going through a window, is going to leave more than a
18 couple of specks of blood behind. There is going to be something
19 else.

20 Photographs of the crime scene. None of you have been to
21 where this has happened. You don't know what we're talking about
22 and that is part of the investigative process, is to be able to
23 show to a jury, this is the evidence we have, this is what
24 happened that day, to be able to tell you how far this window is
25 off the ground, if a person of reasonable size could actually get
26 through that without having a ladder or some other tool that
27 could lead possibly to some other investigation, you know. We

CLOSING ARGUMENT - MS. JOHNSON

129

1 have not one print. We don't have even one photograph. We don't
2 have photographs. They allege that Mr. Nelson was injured as a
3 result of this and was bleeding. "We didn't bother to take a
4 picture of him." And, as Mr. Ables told you, "I have a really
5 good camera that the Sheriff's office provided me for this very
6 purpose." It's with him.

7 There is no reason why we couldn't have a simple
8 understanding of where this evidence was and what it looked like.
9 Officer Williams testified that when he arrived there were a few
10 small drops of blood on the outside of the window. He didn't say
11 anything about that blood being on the shard of glass, being
12 wrapped around the shard. He said there were a few small drops
13 on the outside of the window. And once again, a photograph
14 probably would have told us everything that we needed to know. A
15 simple piece of evidence that the State neglected to bring in.
16 Photographs of Mr. Reese. They allege that this large man
17 crawled through this broken window where there was glass on the
18 outside and glass on the inside. Do we have anything showing him
19 being cut up, having any sort of injuries that are consistent
20 with this theory of the crime? No.

21 You heard testimony that this was reportedly a 911 call.
22 But you didn't hear the 911 call. They didn't bring that in to
23 you. So, we don't know. We can't tell what Mrs. Nelson's frame
24 of mind was or how she was behaving at the time that this call
25 was made and she says that a terrible thing happened to her.

26 Witnesses interviewed? No. Deputy Williams went out, at
27 night, to a scene. He took two statements. One from Mr. Nelson

1 and one from Mrs. Nelson and he had everything he needed to know.
2 Now, if you believe her testimony, she ran outside in this panic.
3 She went to the front porch and she went to the front yard where
4 she placed this call. Is it reasonable to say, can we go and
5 talk to a neighbor and see if anybody else heard this
6 disturbance? Did they hear this window break? Did they hear the
7 skirmish when it went on? Did they see someone leave from the
8 scene? Were they able to describe that person? No. We didn't
9 need to do that, because the State already had their man. The
10 government made up their mind who was the responsible party and
11 that is all we have.

12 There were no shoe prints or footwear impressions or
13 anything taken, again, that might help us identify whether a
14 crime had occurred and who that person was. Same thing. No tire
15 tracks, no trace evidence, hair, fibers. Again, a man of Mike
16 Reese's size going through a broken window and leaving behind
17 nothing but a couple of small drops of blood. No sketch of the
18 crime scene.

19 And as to this blood on the window. There was testimony
20 from Mr. Ables that seemed to say it was fresh. But this
21 happened at 8:45, if you were to believe the time line the State
22 presented to you. The entry happened before 8:45, when the 911
23 call was placed saying a terrible thing had happened. And so he
24 testified that he got out there after Williams had already
25 cleared the scene, but it was several hours after this had
26 happened. Now, we have a couple of small drops of blood on the
27 window, and I'm not sure whether it was interior or exterior, but

CLOSING ARGUMENT - MS. JOHNSON

131

1 in any event, it's an October evening and there are small drops
2 of blood and there have been two-and-a-half or three hours that
3 have passed since they are alleging that this blood was placed
4 there. Well, it doesn't make sense that it would still be liquid
5 blood at that point.

6 And so, The State of South Carolina wants you to remove this
7 person's liberty, and in order to do that, you have to be
8 convinced beyond a reasonable doubt. You have to think that the
9 State of South Carolina has done it's job, that they have brought
10 you competent evidence to prove Mr. Reese committed this crime
11 beyond a reasonable doubt, and there was nothing about this
12 investigation that was competent. "We haven't talked to anyone
13 else. We haven't done anything else. We heard from these two
14 people when we arrived. (Snaps fingers) This is what happened."
15 But there has been no attempt to corroborate or prove that
16 evidence and like the testimony of Deputy Williams when he
17 came up, and I asked, "Well, sometimes people aren't always
18 truthful with you. You know, you come out and somebody is
19 reporting that a crime has happened or how a crime has
20 happened or they witnessed something, but sometimes they are
21 not always truthful about that." He told you that that has
22 been his experience as a police officer. Sometimes people
23 aren't always truthful about those things and that's why we
24 have investigations to find out who was telling the truth
25 and who's not telling the truth.

26 There had been a problem between my client, Mr. Reese,
THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

1 and his mother and Mr. Nelson, on and off for nearly two
2 decades. And you heard his Mom say she's had enough, she's
3 done. She wants him to go to jail. So, stage a crime scene
4 and it gets him out of the picture. Nice little neat package.
5 I know it's hard to think, gosh, a Mom would ever do that, but,
6 Ladies and Gentlemen, you would know for sure whether she told
7 you the truth if The State of South Carolina, with all of their
8 resources: Sheriff's office, Solicitor's office, Victim's
9 Advocate, they've got everybody in the world at their disposal.
10 SLED. If they had simply done a competent job of just verifying
11 what it is they had been told. It doesn't take much to talk to a
12 few people and say, "Hey, did you hear something? Did you see
13 something?" It's not hard to take evidence and make sure it gets
14 where it's supposed to go and doesn't get lost along the way.
15 That's not a difficult thing and that is their responsibility.
16 So, I ask you, when you go back to consider the facts of this
17 case, it is the State's job to prove this beyond a reasonable
18 doubt. It is their burden to do this. There is no burden,
19 whatsoever, for Mr. Reese to prove that he did not do something
20 and the way that the State does it, is to bring you competent
21 investigation. They didn't do it. Hold them to their standard
22 of proof. Hold them to that burden and find Mr. Reese not
23 guilty.

24 THE COURT: All right, Mr. Moore, we are entering into the
25 fifth phase of this case and that is when you and your jury can
26 begin your deliberations. Mr. Trapka, it is kind of like my

1 coach at school used to say when we would have a tie, it's like
2 kissing your sister, but I am going to ask you to stay here in
3 the courtroom with us and Mr. Moore, would you take your jury
4 back down into the jury room. We will give you the verdict form
5 and you may begin your deliberations at this point.

6 (Jury out at 3:03 P.M.)

7 THE COURT: All right, Mr. Trapka, I want to thank you for
8 your service in this case. It's always tough to sit as an
9 alternate knowing that you may or may not be able to participate
10 in deliberations, but you are free to go. You are free to stay
11 and watch the results of the jury's verdict if you would like to.
12 If you need a statement for your employer -- I think you have it
13 down there, don't you Reena?

14 CLERK OF COURT: Yes, sir, Your Honor. I am preparing it
15 now.

16 THE COURT: Okay, and will they just mail him a check?

17 CLERK OF COURT: Yes, sir, Your Honor.

18 MR. TRAPKA: I just need a statement.

19 THE COURT: Okay, and you whatever --- How much do you pay a
20 day over here in Anderson County now?

21 CLERK OF COURT: It is a good \$12.00.

22 THE COURT: Oh, right.

23 MR. TRAPKA: Might cover a pizza.

24 THE COURT: That's right. Good. Buy you a hamburger. If
25 you would just provide him with a statement, that will be great.
26 Thank you, sir.

27 MR. TRAPKA: Thank you.

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

VERDICT

1 THE COURT: If y'all will stay close by or leave us a number.

2 MS. BYFORD: Yes, sir.

3 THE COURT: Okay.

4 (BREAK)

5 THE COURT: We have a verdict, apparently, in the Reese
6 case. Whoever is here in the courtroom at the time the verdict
7 is read out, I understand that this may be an emotional case, but
8 I'm going to instruct everybody, including Mr. Reese, that they
9 are not to have any outbursts in the courtroom and that decorum
10 should be adhered to at all times. That being said, would you
11 bring the jury in, please sir.

12 (Jury in at 3:44 p.m.)

13 VERDICT

14 THE COURT: All right, Mr. Moore, my understanding is that
15 the jury has reached a verdict. Is that correct?

16 MR. MOORE: Yes, sir.

17 THE COURT: Is it unanimous?

18 MR. MOORE: Yes, sir.

19 THE COURT: Would you pass it to the Bailiff, please sir?

20 (Passes it to the Bailiff who hands it to the Clerk. Clerk hands
21 it to the Judge) Would you publish the verdict, please?

22 CLERK OF COURT: Yes, sir, Your Honor. The State of South
23 Carolina, County of Anderson, in the Court of General Sessions.
24 The State of South Carolina v. Michael Eugene Reese. Verdict.
25 Indictment No. 2010-GS-04-2611. We, the jury, unanimously find
26 the Defendant, Michael Eugene Reese, guilty of burglary in the
27 first degree. Signed James M. Moore, Foreperson.

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

SENTENCING

135

1 THE COURT: Mr. Moore, Ladies and Gentlemen of the jury, was
2 that your verdict in the jury room and is that your verdict now?

3 MR. MOORE: Yes, sir.

4 THE COURT: Would you all raise your right hand if it is.
5 Let the record reflect that all 12 jurors raised their right
6 hand. Ladies and Gentlemen, the Court is never interested in
7 what your verdict is and I'm not in this case. I am interested
8 in that the process was followed and that you do your part by
9 being engaged and paying attention and you did. We want to thank
10 you for your service this week and in this case to Anderson
11 County and to the State of South Carolina. We are going to
12 release you from any further service this week. And the good
13 thing is, you don't have to come back again for 3 years unless
14 you just want to. Okay? We have employment statements here for
15 you. Checks will be mailed to you for a grand whopping sum of
16 \$12.00 a day that you served and before you leave I am going to
17 ask that you go back to your jury room. I would like to come
18 back and speak to you for a second and then you are welcome to
19 come back around if you like. You don't have to and I will
20 sentence the Defendant at that point. If you will go back to
21 your jury room for just a second. Thank you.

22 (Brief Break)

23 SENTENCE

24 THE COURT: Let's wait a minute. Some of the jurors said
25 they wanted to come around. Do you have any post-trial motions
26 you want to make, Ms. Johnson?

27 MS. JOHNSON: Your Honor, at this time, I would simply renew
THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

SENTENCING

1 all prior motions and move for a new trial on the basis that the
2 State did not supply sufficient evidence. Thank you.

3 THE COURT: Thank you, ma'am. Those motions are denied. You
4 have 10 days to repeal the verdict and the sentence.

5 MS. JOHNSON: Yes, sir.

6 THE COURT: All right. Would y'all come around please?
7 (Ms. Johnson and Mr. Reese stand in front of the Judge. Ms.
8 Byford hands a document to the Judge.) Ms. Byford, this is
9 fifteen to life?

10 MS. BYFORD: Yes, sir. And a minimum and "not suspendable"
11 fifteen.

12 THE COURT: All right. Tell me what Mr. Reese's record is,
13 please.

14 MS. BYFORD: Yes, sir, Your Honor. Mr. Reese has an
15 extensive prior record beginning in 1979 with a public
16 disorderly conduct. In 1980, public drunkenness, another public
17 disorderly conduct, grand larceny, open container, resisting
18 arrest, public drunk. 1983, breach of peace, public drunk.
19 1984, public drunk, grand larceny. 1985, shop lifting, failure
20 to stop. Escape, Your Honor ---

21 THE COURT: Escape?

22 MS. BYFORD: Yes, sir. He was on a, I believe, a chain gang
23 in Georgia and he escaped while he was working. He has a
24 burglary, second from that year, also, malicious injury to
25 personal property. In 1993, simple possession of marijuana, a
26 hit and run and a DUI from Georgia. 1994, disorderly conduct,
27 failure to accompany police. 1995, shop lifting.

SENTENCING

137

1 1997, disorderly conduct. Your Honor, He also has an assault and
2 battery of a high and aggravated nature where he sexually
3 assaulted a woman. He did 7 years for that. Simple possession
4 of marijuana, trespassing. 2001, possession of a controlled
5 substance, DUI, DUS. 2002, public disorderly conduct. He has 12
6 counts of fraud check from 2002. About 15, I think, from 2003
7 and another one from 2004.

8 THE COURT: May I look at your hand-written notes, please?

9 MS. BYFORD: Absolutely. It's all abbreviations. I hope
10 that ---

11 THE COURT: That's okay.

12 MS. BYFORD: Your Honor, here is the cert of conviction on
13 the ABHAN.

14 THE COURT: All right.

15 MS. BYFORD: Your Honor, I also have a letter from the victim
16 to be read at the appropriate time.

17 THE COURT: Okay. Now, Ms. Nelson, would either you or your
18 husband like to say anything more than what you said earlier in
19 your testimony?

20 MS. BYFORD: Yes, she -- Mrs. Nelson was concerned she would
21 have a hard time getting through it so she gave me a letter.

22 THE COURT: Okay. Mr. Nelson, how about you?

23 MR. NELSON: No, sir.

24 THE COURT: Okay, thank you. I will be glad to take that
25 letter.

26 MR. BYFORD: Are you just going to read that or...

27 THE COURT: I'll just read it. Have you seen this?

THE STATE OF SOUTH CAROLINA VERSUS MICHAEL EUGENE REESE

SENTENCING

1 MS. JOHNSON: Yes, sir. I have.

2 THE COURT: (Looks at the letter.) All right. Ms. Johnson,
3 do you have anything that you would like to state?

4 MS. JOHNSON: Your Honor, the only thing about Mr. Reese that
5 I would ask the Court to know, he -- his father committed suicide
6 when he was about eight years old following an argument with his
7 Mother. He and his Mother had left the house and it happened
8 shortly after that time. Obviously, it has been difficult for
9 him and I think that created some sort of substantial issues. He
10 has had a pretty significant alcohol abuse problem, which is
11 borne out in his record that the Court has heard. When he went
12 to the Department of Corrections, he hadn't completed the
13 Addictions Treatment Unit and he told me that the parole board
14 actually found that he is chemically dependant to alcohol. It
15 has been a part of his history for a while and as a fact of the
16 case. Obviously, the Court has heard those matters. He is aware
17 of the sentence he is facing. I would, as to sentencing, the
18 only thing I would say, I do believe the fifteen is a suspendable
19 fifteen. The statute does not contain the language that it is
20 not suspendable. Your Honor, he is almost 50 years old. He will
21 be 50 years old next summer and any sentence you give him is
22 going to be at 85% and, obviously, it is going to be long time
23 coming even if it's on the minimum side of things. So, we would
24 ask the Court to at least give him light at the end of the
25 tunnel.

26 THE COURT: Mr. Reese, do you have anything you wish to
27 state?

SENTENCING

139

1 MR. REESE: Nothing.

2 THE COURT: Sir?

3 MR. REESE: Nothing. No more than, I do love my Mama.

4 THE COURT: All right. You know, it's sad when you start
5 seeing a case like this where your Mother writes letters and
6 saying we can't live in peace at our house with you around and we
7 are scared of you and if your own Mother thinks you are a threat
8 to society, irregardless of whatever problems you may have, so,
9 it bears that out and it is just, just a shame. With all that
10 being said and done, I am going to sentence you to a period of
11 25 years in the State Department of Corrections. That's it.

12 MS. BYFORD: Thank you, Your Honor.

13 THE COURT: Good luck to you.

CERTIFICATE

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE TRIAL IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA ON DECEMBER 15, 2011, AT THE ANDERSON COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

MAY 2, 2012

Jo Rice

JO RICE

P. 4/6

TO: 123456789

8642604715

DEC-16-2011 09:12 FROM: AND CLERK OF COURT

WITNESSES

S Ashley, Anderson County Sheriff's Dept.

ARREST WARRANT NUMBER

J899195

**ACTION OF GRAND JURY
TRUE BILL**

DEC 14 2010

R. Thompson

Foreperson of Grand Jury

Date:

VERDICT

Guilty

X *James Meme*

X *James Meme*

Foreperson of Petit Jury

Date: X *12/14/11*

DOCKET NO. 2010GS04 02611

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

DEC 14 2010

Term

THE STATE

vs.

Michael Eugene Reese

EJB

Indictment for

Burglary / Burglary (After June 20, 1985) - First degree

SC Code: 16-11-0311

CDR Code: 0079

A TRUE COPY

DEC 16 2011

Clara Via
CLERK OF COURT

142

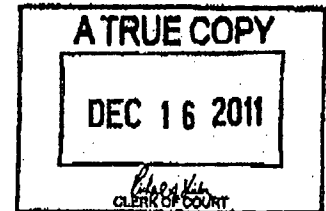
STATE OF SOUTH CAROLINA)
)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on DEC 14 2010, the Grand Jurors of Anderson County present upon their oath:

Burglary / Burglary (After June 20, 1985) - First degree

That Michael Eugene Reese did in Anderson County, on or about October 9, 2010, willfully and unlawfully enter the dwelling of Douglas Nelson, located at 209 Briar Ridge East in Anderson County, without consent and with the intent to commit a crime therein and/or when, in effecting entry or while in the dwelling or in immediate flight he was armed with a deadly weapon and/or causes physical injury to a person who is not a participant in the crime and defendant committed said offense in the nighttime. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.



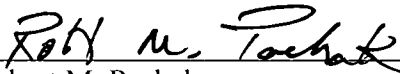
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT 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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 5, 2012


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