

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SUMTER COUNTY

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD AVON GREEN,

APPELLANT

Appellate Case No. 2011-199866

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA))
COUNTY OF SUMTER) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

RICHARD A. GREEN,)

DEFENDANT.)

TRANSCRIPT OF RECORD
10-GS-43-1050
September 12, 2011
Sumter, South Carolina

BEFORE :

THE HONORABLE HOWARD P. KING, JUDGE;
AND JURY

APPEARANCES:

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Assistant Solicitor

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1 THE BAILIFF: Your Honor, we have all the
2 jurors present in the courtroom.

3 THE COURT: All right, thank you very
4 much, ladies and gentlemen, and thank you for your
5 promptness in being back here and we're now ready to
6 proceed in this matter. Mr. Bradley, you may swear
7 the jurors.

8 THE CLERK OF COURT: Yes, sir. Ladies and
9 gentlemen of the jury, please raise your right hand
10 to be sworn. Please respond saying I will.

11 (WHEREUPON, the jury was sworn.)

12 THE CLERK OF COURT: Thank you. You may
13 be seated.

14 THE COURT: All right. Thank you, ladies
15 and gentlemen, and before we begin the actual trial
16 of this case I thought it might be helpful if I
17 explain to you basically how a trial proceeds. I
18 know all of you have seen trials on television but I
19 think you're going to find that there's a great deal
20 of difference in real life. First of all, the State
21 will make an opening statement. Opening statement
22 is not evidence. It is simply an outline to help
23 you understand what the State expects the evidence
24 will show. The defendant may, if he wishes to, make
25 an opening statement but he doesn't have to for

1 reasons that I will explain later. Following the
2 opening statement you will hear the testimony and
3 evidence in this case. This consists of testimony
4 from the State's witnesses as well as any physical
5 exhibits which may be introduced into evidence, and
6 I know already that there will be some physical
7 exhibits introduced into evidence and I will tell
8 you that the lawyers may ask for permission to
9 publish those exhibits while you're sitting there in
10 the jury box. And I will likely grant them that
11 right to publish those exhibits. Publish is simply
12 a legal word meaning show the jury those exhibits,
13 and the lawyer will pass them to you while you're
14 sitting there in the jury box. Do not be concerned
15 if you do not have long to look at any exhibit while
16 you're sitting in the jury box as you might like to.
17 Anything that is introduced into evidence and
18 admitted into evidence will go with you to the jury
19 room when you retire to deliberate your verdict.

20 Following the completion of the testimony
21 the attorneys will again have an opportunity to make
22 what is called a closing statement or summation to
23 you. This is an opportunity for the attorneys to
24 summarize the case from their respective points of
25 view. Again, these arguments are not evidence.

1 Following the closing statements by the attorneys I
2 will instruct you on the law of South Carolina as it
3 pertains to the issues that have arisen in this
4 case, and when I have completed my instructions to
5 you you will be permitted to begin your
6 deliberations in order to reach a verdict.

7 Now ladies and gentlemen, you're the jury
8 in this case and I want to take just a few minutes
9 tell you something about your duties as jurors and
10 give you some preliminary instruction. At the end
11 of this case I will give you more detailed
12 instruction and those instructions will control your
13 deliberations. It will be your duty to decide from
14 the evidence what the facts are. You, and you
15 alone, are the judges of the facts. You will hear
16 the evidence, decide what the facts are, and then
17 apply those facts to the law which the Court will
18 give to you. That is how you'll reach a verdict.
19 In doing so you must follow the law whether you
20 agree with it or not. The evidence will consist of
21 testimony of witnesses, documents, and other things
22 received into evidence as exhibits, and any facts on
23 which the lawyers agree or which I instruct you to
24 accept.

25 Now you should not take anything that I

1 may say or do during this trial as indicating what I
2 think of the evidence or what your verdict should
3 be. The law does not allow me to have an opinion
4 about the facts; that is totally up to you. The
5 same law that makes you the judge of the facts makes
6 me the judge of the law. You must take the law as I
7 give it to you regardless of what you think the law
8 is or what the law ought to be. If I'm wrong on the
9 law there's another time and place for that error to
10 be corrected; but for this case, you must accept the
11 law as I charge it to you.

12 Now this is a criminal case brought by the
13 State of South Carolina. The State charges the
14 defendant Richard Avon Green with the charge or with
15 the crime of burglary in the first degree. The
16 charge against the defendant is contained in the
17 indictment which I hold in my hand. The indictment
18 is not evidence of anything. It is simply the
19 description of the charge made by the State against
20 the defendant. The defendant has pled not guilty to
21 the charge and is presumed innocent unless and until
22 proven guilty beyond a reasonable doubt. A
23 reasonable doubt is the kind of doubt that would
24 cause a reasonable person to hesitate to act. A
25 defendant has the right not to testify and never has

1 to prove innocence or present any evidence. The
2 burden of proof is always on the State of South
3 Carolina.

4 Now there are certain things that are not
5 evidence, and you must not consider them as evidence
6 in deciding the facts of this case. Statements and
7 argument of the attorneys are to the evidence.
8 Questions and objection of the attorneys are to the
9 evidence, and testimony that I instruct you to
10 disregard is not evidence. Evidence may be direct
11 or circumstantial. Direct evidence is testimony by
12 a witness about what that witness personally saw or
13 heard or did. Circumstantial evidence is indirect
14 evidence. The law permits you to give equal weight
15 to both, but it is for you to decide how much weight
16 to give to any of the evidence.

17 There are rules of evidence which control
18 what can be received into court. When a lawyer asks
19 a question or offers an exhibit into evidence and
20 the lawyer on the other side thinks that it is not
21 permitted by the rules, that lawyer may object. If
22 I overrule the objection the question may be
23 answered or the exhibit may be received. If I
24 sustain the objection the question cannot be
25 answered or the exhibit cannot be received.

1 Whenever I sustain an objection to a question or
2 deny a motion to admit an exhibit into evidence, you
3 must not guess what the answer would have been or
4 what the exhibit would have shown. Sometimes it may
5 be necessary for me to request that you leave the
6 courtroom while I discuss with the attorneys legal
7 questions that come up during the trial. If that
8 occurs, you should not speculate about our
9 discussion or reasons that you were asked to leave
10 the courtroom. This is simply a procedure that the
11 law requires when certain legal issues arise. There
12 also may be occasions when I asked the attorneys to
13 approach the Bench so that I can discuss a legal
14 issue with them in private. I will do this as often
15 as possible so that you will not be required to
16 leave the courtroom more than is absolutely
17 necessary.

18 Again, if I ask the attorneys to step up
19 to the Bench or if I ask you to leave the courtroom,
20 please don't think that anybody is trying to hide
21 anything from you or keep any evidence from you.
22 This is simply a procedure used by all lawyers and
23 by all courts to determine and decide the request.
24 Now in deciding the facts of this case you may have
25 to decide which witnesses to believe and which

1 witnesses not to believe. That is called
2 credibility. You may believe everything a witness
3 says or only part of it or none of it. In deciding
4 what to believe you may consider a number of factors
5 including the witness' ability to see or hear or
6 know the things that the witness testified to, the
7 quality of the witness's memory, the witness' manner
8 or demeanor while testifying, whether the witness
9 has an interest in the outcome of the case or any
10 motive, bias, or prejudice, and whether the witness
11 is contradicted by anything the witness said or for
12 trial or by any other evidence, and how reasonable
13 was the witness' testimony when considered in light
14 of other evidence which you do believe.

15 Now just a few words for you about your
16 conduct as jurors some of which I have already
17 mentioned, but they're important enough that they
18 bear repeating. First of all, do not talk to each
19 other about the case until the end of the case when
20 you go to your jury room to decide on your verdict.
21 So if at any time you're in the jury room prior to
22 the time I tell you to begin your deliberations you
23 should not talk about this case. You should talk
24 about anything you want to talk about, weather,
25 sports, grandchildren, anything at all, but don't

1 talk about this case. Secondly, do not talk with
2 anyone else about this case until the trial is ended
3 following your verdict and you have been discharged
4 by jurors. This means do not discuss the case with
5 members of your family or friends or with anyone
6 else. You may tell them that you are a juror, but
7 don't tell them anything about the case until you
8 have been discharged by me. Do not let anyone talk
9 to you about the case. If anyone should try to talk
10 with you, get their name or their description,
11 report it to the bailiff who will report it to me
12 and I will deal with them.

13 Do not read any news stories or articles
14 or listen to the radio or television reports about
15 this case. You're not to consider as evidence
16 anything that you may see or hear when court is not
17 in session. Do not do any research such as
18 consulting dictionaries or other reference materials
19 and do not do anything on the internet or any other
20 electronic research source. And do not make any
21 investigation into the case on your own. And
22 finally and probably most important, do not make up
23 your mind about what your verdict will be until you
24 have heard all the evidence in this case and the
25 arguments of counsel and the instructions on the law

1 of the Court. You will be instructed when to be
2 begin deliberations by either me or the bailiff.

3 Any objection to my opening remarks on
4 behalf of the State, Mr. Meadors?

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

6 THE COURT: On behalf of the Defense,
7 Mr. Hastie?

8 MR. HASTIE: None, Your Honor.

9 THE COURT: All right. The first order of
10 business will be the matter of opening statements
11 and for that purpose the Court will recognize the
12 Assistant Solicitor Mr. Meadors.

13 MR. MEADORS: May it please the Court.

14 THE COURT: Yes, sir.

15 MR. MEADORS: That's Rick Green. That is
16 Rick Green. Those are the words Rita Davis said on
17 the early morning hours of May 4th, 2010 as she saw
18 somebody pulling up, or hear somebody pulling up her
19 garage door after the door bell had rung, after her
20 front door been shook, and after she sees the person
21 come from her garage back toward the front door.
22 Rick Green. Ladies and gentlemen, my name is John
23 Meadors. I'm an assistant solicitor here in the
24 third judicial circuit. I have the honor of working
25 for the honorable solicitor Ernest A. Finney, the

1 III, "Chip" Finney. I'm here today representing the
2 people of South Carolina, the people of Sumter
3 County against the defendant Richard A. Green.
4 Mr. Green sits here with Mr. Hastie, his attorney.
5 Sitting at counsel table is Wesley Gardner, an
6 investigator in this case, Deputy Deberry, Tom
7 Miller, an investigator with our office, and the
8 victim in this case, Mrs. Rita Davis.

9 His Honor has already instructed you, and
10 as he said, this is the opportunity for us to
11 briefly give you an outline of the case. That's
12 what I'm gonna do; I'll be very brief. First and
13 foremost I want to talk to you about the burden that
14 is on the State in this case. It's the same burden
15 that's on every case that's prosecuted around this
16 country. And I want to tell you something right off
17 the bat. This is not going to be a long case. I
18 think we'll be finished tomorrow. As a matter of
19 fact I know we will. But the length of the case
20 does not take away from the import of this case.
21 This case is important. I mean, it really is. It's
22 important of a case that will be tried in this
23 county in this state and this country this week.
24 Important to the defendant Richard A. Green,
25 important to Ms. Davis. It's important to everybody

1 in this courtroom. So don't let the shortness of
2 this case take away from the important that
3 importance case.

4 What is the defendant charged with? His
5 Honor told you, and before I forget, reasonable
6 doubt, the burden, we all heard. We must prove the
7 defendant guilty beyond a reasonable doubt. Not
8 beyond all doubt but beyond a reasonable doubt.
9 It's important. Beyond a doubt that cause
10 reasonable folks to hesitate to act. Now the
11 Defense, the defendant is cloaked with something
12 which I believe and it's a very important part of
13 our law. And the Defendant sits presumed innocent,
14 presumed innocent of these charges unless and until
15 the State proves him guilty and we must do that
16 beyond a reasonable doubt. What's he charged with?
17 Well, the Sumter County grand jury returned an
18 indictment, and this is an extensive charge the
19 grand jury returned an indictment that does say on
20 May 4th, 2010, Richard Avon Green did enter the
21 dwelling of Ms. Rita Davis at [REDACTED]
22 that he entered the residence without consent with
23 the intent to commit a crime.

24 And ladies and gentlemen of the jury, with
25 burglary first there's several ways one be charged

1 with burglary first. Either be armed with a weapon,
2 get weapons from you're in the house. But one way
3 also there can be a burglary first is that it
4 occurred in the nighttime. The judge will tell you
5 that later on in the trial. So the State must prove
6 the elements of this indictment, that that's Richard
7 Green, that he entered Ms. Davis' house on Black
8 Road, that it was a weapon, that he did enter
9 without consent. And I'm gonna ask him did you
10 consent. And that he did it with intent to commit a
11 burglary. Those are the elements we must prove to
12 y'all beyond a reasonable doubt for you to take away
13 that presumption of innocence and find the defendant
14 guilty.

15 His Honor told you and I will very briefly
16 here too, the types of evidence. Circumstantial
17 evidence which the law makes no, gives no greater
18 weight to one or another which prove the fact A and
19 fact B that leads to fact C. If you went to bed
20 last night and there wasn't snow on the ground and
21 you got up this morning and there was snow on the
22 ground, but you know it's snow even though you
23 didn't see it. That's an example of circumstantial
24 evidence. The other evidence -- Your Honor has
25 mentioned documents and pictures and there will be

1 some of those. But the others are direct evidence.
2 It's what you do or acquire. It's evidence you
3 acquire with one of your senses. You see it, you
4 hear it, you smell it, you touch it. And you come
5 in and take the witness stand and you say, this is
6 what I heard, felt, smelled, and touched. She's
7 gonna tell you what she saw, what she heard. Listen
8 to her. What happened? It's May 4th. The trial
9 takes you back to what happened. We will take you
10 back to May 4th, 2011 [sic] to Black River Road, the
11 home of Rita Davis. She worked at the county
12 detention center, still does. She'll tell you where
13 she worked. She worked the day before. This was a
14 Tuesday. She works from six till six. She's gonna
15 tell you what she was watching, what time she went
16 to bed. I think she went to bed about 10 to 11
17 after watching the news. And about 1:30 she hears
18 the door bell ring. She goes and looks out the door
19 there. She sees a man walking away. She'll tell
20 you what she saw in the window. Her husband's truck
21 is usually there, wasn't there. He was working
22 night shift. She had one car inside and one car
23 outside. She looked, she sees the person walk away.
24 And then she'll say, we believe the evidence will
25 show, she hears her garage door going up. She goes

1 to the dining room, looks out the window and sees
2 the man she'll testify, we believe the evidence will
3 show, the same man she saw in the peep hole over at
4 the garage, come back to the garage in front of the
5 dining room window. And that's when she says,
6 that's Rick Green. And she's gonna tell you how
7 long she's known him, where she's known him from.
8 She then goes back and that's when he starts pulling
9 at the door, pulling at the front door. And listen
10 to what Rita Davis said. She went and got her gun.
11 She got her gun and aimed it at the front door.
12 This is an important case. She aimed it. And
13 listen to her. Listen to her, see how she felt,
14 whether she's scared or not, didn't know what to do,
15 whether she should shoot or not. And you know what
16 she did? The evidence will show she tried to make a
17 phone call and the phone wouldn't work. The phone
18 wouldn't work. She goes to the back. She opens the
19 back door, the back door. She fires her gun. And
20 instead of firing at this person at the door she
21 fires towards his house to scare him off. She then
22 sits there for three hours or so with a gun waiting
23 for her neighbor to wake up and drives trucks, and
24 she knows he wakes up about ten to four the evidence
25 will show. And when she hears her neighbor next

1 door she starts flicking the lights so he'll see
2 what's going on. He comes over. He says,
3 everything all right, ma'am? The evidence will show
4 she said no, this fella tried to break in my house,
5 was pulling up the garage, my phone won't work, I
6 left my cell phone out in the car, the evidence will
7 show. He goes around the front and talking waiting
8 to meet with Tyrone, meets her at her car while she
9 gets the cell phone and calls the police. Deberry
10 responds shortly after 4:00 in the morning. This is
11 in the morning, ladies and gentlemen, the evidence
12 will show. And she gives him a statement, tells him
13 happened, and tells him who did it, Rick Green.

14 Later on that day Investigator Gardner
15 comes out, gets a statement from her, and she
16 describes who it was. It was who it was. He takes
17 pictures of her house. And the evidence will show,
18 ladies and gentlemen, the reason she couldn't make a
19 phone call when he took a picture of it was the
20 phone line was cut. Intent to commit a crime?
21 Ladies and gentlemen, that's what this case is
22 about.

23 Now I want to talk to you briefly about
24 your role. His Honor has said, it ought to be
25 crystal clear, he is the law. There's no question

1 about it. This is his courtroom. He's the judge of
2 the law and decides what the law is and that's the
3 way it is and the way it should be. I have a role
4 and Mr. Hastie has our roles. With all deference to
5 His Honor, I think your role is as important,
6 perhaps more important than everyone else, because
7 you come in, everything you gather in your lifetime,
8 experiences and common sense, and you decide what
9 happens. Isn't that a beautiful system? That's our
10 system. We make sure the evidence fits in. We both
11 make sure the rules are followed. His Honor makes
12 sure the rules are followed. But once you decide
13 what the facts are using your common sense, His
14 Honor will tell you this is the law. You apply what
15 you think the facts are to the law His Honor tells
16 you, and that's when you come up with a verdict. It
17 really is good.

18 Now in deciding what the truth is, it
19 comes down in most cases is credibility,
20 believability of what comes out of the mouths of
21 folks that take this witness stand. That's what
22 y'all got to present; that's what it boils down to.
23 What's the truth, what's credible. Ladies and
24 gentlemen of the jury, I respectfully submit that
25 tomorrow when you've heard all the evidence and you

1 go back to reach your verdict, the verdict will
2 speak the truth. We respectfully submit that your
3 verdict will say, that's Rick Green, and he's guilty
4 of burglary first of Ms. Rita Davis' house. Thank
5 you.

6 THE COURT: Mr. Hastie, does Defendant
7 care to make an opening statement?

8 MR. HASTIE: Yes, Your Honor. May it
9 please the Court.

10 THE COURT: Yes, sir.

11 MR. HASTIE: Good afternoon, ladies and
12 gentlemen, my name is Calvin Hastie. I'm a public
13 defender here in Sumter. I'm from Sumter, was born
14 right here. I grew up here on the south side of
15 Sumter, still live on the south side of Sumter.
16 Went to school here in Lake High School. Most of us
17 here, y'all can remember back then (inaudible) went
18 to South Carolina State and went in the military for
19 20 years. Went for 20 years in the military all
20 over the world. And I spent all that time for
21 moments just like these so that we can protect our
22 rights so we can have certain rights that no nobody
23 can take away from us. And that's what we want to
24 talk about today. My client is Mr. Green sitting at
25 the table over there. He has waited 15 months on

1 this day. This is his day. Listen Mr. Hastie, I
2 can't wait till I get my chance in court. This is
3 his chance. If I had to choose a theme for today —
4 and I want y'all to listen very carefully. I want
5 y'all to ask yourself as this information, facts,
6 evidence is introduced, ask yourself, now where is
7 the evidence of all this, what evidence do you have
8 in this? The burden of proof in any trial is not
9 upon you and me. It's upon the State to prove to
10 you beyond a reasonable doubt that anyone may have
11 committed a certain crime beyond a reasonable doubt.
12 So I want you to listen to a theme. Where's the
13 evidence here today? Because in this country our
14 Constitution of the United States and the
15 constitution of this state says that we are all
16 presumed innocent until proven guilty, not talk
17 about him, not look like he may be guilty, you
18 happen to have a bad record. But it says only until
19 proven guilty. And that's what we're going to hang
20 out hat on here today. It's not prove anybody
21 committed a crime, especially my client here today.

22 You have already heard some things that I
23 want you to listen to. Solicitor said that, she
24 said that she saw Rick, Rick, Richard Green at her
25 door. Well, in her statement she said I saw a young

1 man. She told Detective Gardner I saw someone,
2 whether she'll have to (inaudible) him off. Then
3 she says, she said he entered her home because in
4 order to have a burglary there must be an entry.
5 There's absolutely no testimony, you will not hear
6 any testimony today that anyone -- not my client --
7 anyone entered her home. She said she peeped
8 through a peephole in her front door. Her garage is
9 to the left, and it's kind of bent a little bit so I
10 don't know what kind of peephole she got, but there
11 ain't no way in the world you can look through a
12 peephole and see somebody at your garage door on the
13 far left, and it's kind of bent. You'll see the
14 picture of her home. And she says, I saw him at the
15 garage door. Then I saw him walk back toward my
16 door. Then he hold the door bell. Why in the world
17 you gonna ring the door bell. Said I'm coming in.
18 No, he ought to know better. If she knew Rick
19 Green, if what she said is true and she knew Richard
20 Green and she saw Mr. Green, she say I know him,
21 well why didn't she say, well Rick, what in the
22 world are you doing at my door at 1:30 in the
23 morning. Why didn't you do something? And I think
24 she's a correctional officer. She knows how to use
25 a gun. She had a weapon. But she didn't say Rick,

1 if you don't get off my door I will put a bullet
2 hole in you. No, she said none of that. She runs
3 to her rear door now. She goes peeping through this
4 hole. She gets her gun. She runs to the back of
5 the house and fired four shots out the back door.
6 The first one is (inaudible). Who does that? Who
7 does that? She shot out the back door. Then I
8 don't know what kind of neighbors she got, but I
9 live on the south side. And any time I hear rounds,
10 somebody fire a shot, everybody wakes up. You look
11 out, what's going on, who's firing these shots
12 because there's something very distinct about a shot
13 fired at 1:30 in the morning. Ladies and gentlemen,
14 something very distinct. Somebody firing a shot at
15 1:30 in the morning you're gonna hear it if you're
16 the next door neighbor. Did any of the neighbors
17 come? No, nobody came. She said I get back and I
18 sat down in my living room for three hours, three
19 hours waiting on -- could have been less time but
20 let's say two hours -- waiting on my neighbor to
21 wake up. And she fired on up. She says, well, I
22 flashed my lights. Couldn't hear four gun shots but
23 where he could see flashes of lights so now he comes
24 over and he says, are you all right, and she says
25 no.

1 Where is this car she's talking about
2 where she says she left her phone? That's why she
3 fired those shots. She said, well my husband left
4 the car in the -- outside the garage. And I assume
5 then her car was inside the garage. Well then, why
6 you waiting on the neighbor to wake up so he can
7 mess with you to your car. Your car is just out in
8 the garage. Just go to your car and get your cell
9 phone. But she waited two or three hours for him to
10 wake up.

11 Ladies and gentlemen, I'm just asking you
12 today to just look at the evidence. You ask
13 yourself where is the proof of all of this. It
14 sounds pretty good. And the counsel said, oh, this
15 is a simple case, but it's not simple for Mr. Green
16 because it's his life because --

17 MR. MEADORS: Your Honor, I object to
18 that.

19 THE COURT: Yes, sir.

20 MR. HASTIE: I apologize.

21 THE COURT: I sustain it. Also, the
22 opening statements is to what the evidence will show
23 and not argument to this jury, Mr. Hastie.

24 MR. HASTIE: Yes, sir, it was some of the
25 things he brought out. I will not repeat that.

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1 And I just want you all to know justice is good
2 evidence that you're gonna hear today. And you ask
3 yourself are you convinced beyond a reasonable doubt
4 that it was Richard Green that -- there was no
5 entrance so he wasn't burglarizing this young lady's
6 home. Thank you.

7 THE COURT: All right, Mr. Meadors, you
8 may call your first witness.

9 MR MEADORS: If it please the Court.

10 THE COURT: Yes, sir.

11 MR. MEADORS: The State would call Rita
12 Davis.

13 THE COURT: Okay.

14 THE BAILIFF: Place your left hand on the
15 Bible, raise your right hand. State your name
16 please.

17 THE WITNESS: Rita Lee Davis.

18 WHEREUPON,

19 RITA LEE DAVIS,
20 having been duly sworn by the Clerk of Court,
21 testified as follows:

22 THE BAILIFF: Please state your full name,
23 Spell your last name for the record.

24 THE WITNESS: Rita Lee Davis, D-A-V-I-S.

25 **DIRECT EXAMINATION**

SW - R. DAVIS - DIRECT

1 BY MR. MEADORS:

2 Q Good afternoon, Ms. Davis.

3 A Good afternoon..

4 Q All I ask is if you could just speak in there so
5 His Honor and the jurors and the court reporter can
6 hear you please, ma'am.

7 A Okay.

8 Q Ms. Davis, I want to start off just asking you a
9 few questions about you. Where are you from?

10 A Rembert, South Carolina.

11 Q Okay. Were you born and raised there?

12 A Yes.

13 Q And where did you go to high school?

14 A Hillcrest High.

15 Q And after -- after Hillcrest High what did you
16 do?

17 A I went to work for Springs in Lancaster, South
18 Carolina.

19 Q Okay. What did you do for Springs?

20 A I was a spinner?

21 Q How long were you a spinner?

22 A About two years.

23 Q And then do you remember what two years those,
24 when that was?

25 A 1980 through 1982.

SW - R. DAVIS - DIRECT

- 1 Q And when you got through with Springs in
2 Lancaster what did you do then?
- 3 A I went to Hermitage Textile in Camden, South
4 Carolina.
- 5 Q Okay, and what did you do there?
- 6 A I was a spinner.
- 7 Q And how long did you spend at Hermitage?
- 8 A About eight years.
- 9 Q And where did you go after that?
- 10 A After that I ---
- 11 Q Did you work at Thermoid?
- 12 A Thermoid in Elgin, South Carolina.
- 13 Q Okay. And what did you do for Thermoid?
- 14 A I was a belt inspector.
- 15 Q A belt inspector?
- 16 A Yes, sir.
- 17 Q How long did you do that, Ms. Davis?
- 18 A Nine years.
- 19 Q And after you got through with Thermoid -- and
20 that's pretty tough working those jobs; wasn't it?
- 21 A Yes, it is.
- 22 Q Where did you go after that?
- 23 A I decided to go into law enforcement and I went
24 to Kershaw prison and been with that for six months.
- 25 Q And is that in Lancaster?

SW - R. DAVIS - DIRECT

1 A Lancaster, South Carolina.

2 Q Okay. And after that job what did you do?

3 A I went to work for Kershaw County Detention
4 Center about three years.

5 Q And roughly when was that?

6 A 2001 through 2003.

7 Q And then from 2003 you're now into law
8 enforcement. Where did you work after that?

9 A I'm working at Kershaw -- at the Sumter/Lee
10 Regional Detention Center.

11 Q At the Sumter/Lee Regional Detention Center?

12 A Yes, sir.

13 Q And are you doing that through today? You're
14 working there now?

15 A Yes.

16 Q For these purposes Ms. Davis, are you married?

17 A Yes, I am.

18 Q I would ask you to look at these ladies and
19 gentlemen of the jury and to tell them -- I just
20 want to ask you one question. Do you know Richard
21 Green?

22 A Yes, I do.

23 Q And what do you know him as?

24 A Rick.

25 Q Rick Green?

SW - R. DAVIS - DIRECT

- 1 A Rick Green.
- 2 Q And is that what you call him, Rick?
- 3 A Rick.
- 4 Q Can you tell the ladies and gentlemen of this
- 5 jury how do you know Rick Green?
- 6 A I know Rick Green from the community and in
- 7 school.
- 8 Q From the community and school?
- 9 A Yes, sir.
- 10 Q Did y'all grow up in the same community?
- 11 A Yes, sir.
- 12 Q Did you go to the same school?
- 13 A Yes, sir.
- 14 Q Was he older or younger than you?
- 15 A He was a little younger than I am.
- 16 Q Did you have any brothers or sisters?
- 17 A Yes, I do.
- 18 Q Was he the age of any of your brothers or
- 19 sisters?
- 20 A Yes, he's the age of my baby brother Thomas.
- 21 Q He's the age of your baby brother Thomas?
- 22 A Yes.
- 23 Q Is it fair to say that you've seen him for years?
- 24 A Yes.
- 25 Q And do you know him by name and sight?

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1 A Rick.

2 Q Okay. But when you see him you know him as
3 that's Rick?

4 A Yes.

5 Q You know him by name and sight?

6 A Yes. Once I see him that's Rick Green.

7 Q Where do you live?

8 A In the corner of Black (ph) River Road.

9 Q Do you know how far Rick lives from you,
10 Mr. Richard Green?

11 A He lives maybe about a minute from me.

12 Q And do you know what road he lives on, or did
13 live on?

14 A He lives on the Springhill Road.

15 Q Springhill?

16 A At -- yes.

17 Q And do you know who he stayed with?

18 A His mother.

19 Q And you know his mother?

20 A I know of her.

21 Q Would you ever see him walking in the area or
22 community of where you lived?

23 A Yes, I did.

24 Q Now I want you to go back and we'll take this
25 jury back to May 4th of 2010, Ms. Davis. We've

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1 looked -- you've looked at a calendar. Is that a
2 Tuesday?

3 A Yes, it is.

4 Q Now what was your work schedule? Where were you
5 working then?

6 A At the Sumter/Lee Regional Detention Center.

7 Q What was your schedule like? Did you have a
8 certain rotation?

9 A Yes. I was off that weekend, a long weekend. I
10 had to go back to work on Monday, Tuesday. I worked
11 Monday and was sleeping on Tuesday morning.

12 Q And what was your shift on Monday? What did it
13 --

14 A 6 a.m. in the morning to 6 p.m.

15 Q And that was going to be the same shift Tuesday?

16 A Yes.

17 Q 6 to 6?

18 A Yes.

19 Q So did you work Monday?

20 A Yes.

21 Q And you went to bed Monday night?

22 A Yes.

23 Q Can you tell the ladies and gentlemen of this
24 jury what was your habit, if any, and do you
25 remember what you did that night which would have

SW - R. DAVIS - DIRECT

1 been May 3rd night of 2010 leading up to May 4th
2 morning?

3 A That night I watched the 10:00 report on channel
4 57.

5 Q Is that your habit? Is that what you do?

6 A Yes. Every morning when I go to bed I watch the
7 channel 57 news. And I watch my news I go to bed.

8 Q Approximately what time did you go to bed?

9 A About quarter till 11.

10 Q Now I'm not prying and it's not personable, but
11 was is your husband there that night?

12 A No, he wasn't.

13 Q Where was he?

14 A He was at work.

15 Q Does your husband have a -- what car does he
16 drive?

17 A He has a Nissan truck.

18 Q And is it -- is it parked there when he's there?

19 A Yes.

20 Q Is it parked outside the garage when he's there?

21 A Yes.

22 Q If his truck is not there is he there?

23 A No.

24 Q Do you drive a truck?

25 A No.

SW - R. DAVIS - DIRECT

- 1 Q So if you were outside the residence and you
2 would be able see if his truck wasn't there?
3 A Yes.
4 Q And you've had -- what other cars were there?
5 A My Honda Accord was parked on the outside in the
6 front of the garage and my SUV was in the garage.
7 Q And what car were you planning on driving to work
8 on May 4th?
9 A My Honda Accord.
10 Q About quarter till 11?
11 A Quarter till 11.
12 Q Rita Davis goes to sleep, correct?
13 A Yes.
14 Q Tell the jury what do you remember next, what
15 happened next?
16 A After I went to bed about 1:30 my door bell so
17 when I woke up I looked at my clock. And I say it's
18 1:30, who in the devil is that ringing my door bell
19 at this time in the morning. So when I got up I
20 went to my front door. I peep out my peephole. I
21 saw a man walking away from my door at that ---
22 Q Walking away from your door.
23 A Walking away from my door, yes.
24 Q Did you know who that man was at that point?
25 A No, I did not.

SW - R. DAVIS - DIRECT

1 Q Okay. What happened next?

2 A After he walked away from the door he went to try
3 to get my garage door opened. He couldn't get the
4 garage door open. When he walked away from the door
5 I went into my dining room and stood at the window
6 and he was trying to get my garage door open. I
7 heard my garage door going up.

8 Q You heard your garage door going up?

9 A I heard my garage door going up.

10 Q And you heard -- you know it was your garage
11 door?

12 A Yes.

13 Q Tell the jury about this garage door, is it
14 locked?

15 MR. MEADORS: Your Honor, can I approach.
16 There's some -- can we approach.

17 (WHEREUPON, counsel approached the Bench
18 for an off-the-record discussion.)

19 THE WITNESS: This is serious.

20 BY MR. MEADORS:

21 Q When you go to bed at night your garage doors, do
22 you leave them open or are they shut?

23 A They are shut, garage with remote.

24 Q And do you lock them?

25 A It automatically locks.

SW - R. DAVIS - DIRECT

1 Q Automatic lock?

2 A Yes.

3 Q What, if anything, did you hear after you'd seen
4 this person going away from your door?

5 A After I heard him coming from my garage door
6 after he couldn't get it up, open, he proceed back
7 to my front door.

8 Q Okay. But prior to proceeding back to your front
9 door you said you heard your garage door going up?

10 A Yeah, it was going up.

11 Q Is there any doubt in your mind about that?

12 A No.

13 Q Was he able to get the door up?

14 A No, sir, just a little.

15 Q But he got it up a little?

16 A Just a little.

17 Q What were you thinking then? Were you scared?

18 A I was scared to death.

19 Q Look at me. Were you scared?

20 A Scared to death.

21 Q You see the man at the front door, you hear your
22 door trying to, the garage door open, correct?

23 A Yes, sir.

24 Q Where do you go next, what happens next?

25 A I was in my dining room window looking out the

SW - R. DAVIS - DIRECT

1 window and then he walked pass from there trying to
2 get my garage door open. I said, that's Rick Green
3 and he went to try to get my front door open.

4 That's when I went and got my gun and make a call
5 and my phone was dead.

6 Q So you tried to make a phone call?

7 A Yes, I did.

8 Q You couldn't make a phone call?

9 A No, sir.

10 Q Did you know why then?

11 A Because my phone was dead.

12 Q Okay, well, that was a terrible question. Did
13 you know why your phone was dead then?

14 A No, sir, I didn't.

15 MR. MEADORS: Your Honor, can I ask the
16 witness to step down.

17 THE COURT: Yes, you can step down.

18 BY MR. MEADORS:

19 Q Ms. Davis, if you will stand right here.

20 THE COURT: Ms. Davis, you can stand over
21 here if you'd like. Just please talk this way so
22 this young lady can take down everything you say.
23 You're going to be away from the microphone. You
24 have to speak up loud and clear so everybody can
25 hear you.

SW - R. DAVIS - DIRECT

1 MR. MEADORS: Your Honor, can we have her
2 come right here?

3 THE COURT: That will be fine.

4 BY MR. MEADORS:

5 Q Now you recognize these two, do you not?

6 A Yes.

7 MR. MEADORS: Your Honor, this is State's
8 1 and 2 without objection.

9 THE COURT: All right. These exhibits
10 have been admitted into evidence without objection.

11 BY MR. MEADORS:

12 Q Now this is State's Number 2, Ms. Davis. Will
13 you tell these ladies and gentlemen of the jury what
14 is this?

15 A That's my house.

16 Q And it's the address is what?

17 A [REDACTED] Rembert, South Carolina.

18 Q And that's in Sumter County?

19 A Sumter County.

20 Q Now would you show the jury, you said you heard a
21 door bell ring. Can you show the jury on here where
22 you when or your front door.

23 A My front door, this is my front door right here.
24 This is the window I was standing at in my dining
25 room looking out.

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1 Q But the person left your front door, correct?

2 A Yes.

3 Q You didn't know who it was at that point?

4 A At that time I did not.

5 Q The next thing you testified you hear your garage
6 door going up?

7 A Trying to go up.

8 Q Did it go all the way up?

9 A No, sir.

10 Q Did it sound like somebody was trying to get it
11 up?

12 A Yes.

13 Q Where were you then?

14 A Standing at this window right here.

15 Q Okay. What did this person do, if anything,
16 after he tried to get your garage door open and
17 couldn't?

18 A He walked back on to my sidewalk right here and
19 tried to get in my front door open right here.

20 Q What is this up here?

21 A That's my dawn to dusk light.

22 Q Dawn to dusk light?

23 A Yes, sir.

24 Q Was it on?

25 A Yes.

SW - R. DAVIS - DIRECT

1 Q Did it help you see?

2 A Yes, sir.

3 Q When this person left here, came here, tried to
4 get the garage door open and walked back, you were
5 where?

6 A Standing right here in my dining room window.

7 Q Did you look out and see the person's face at
8 that time?

9 A Yes, I did.

10 Q What did you say to yourself?

11 A That's Rick Green.

12 Q Did you immediately recognize it was Rick Green?

13 A Yes, I did.

14 Q Did he have any facial hair?

15 A Yes, he did.

16 Q What did he have?

17 A Goatee.

18 Q Did you know him to have a goatee?

19 A Yes, sir.

20 Q Was that the same fella you grew up with?

21 A Yes, sir.

22 Q Same fella your brother went to school with?

23 A Yes, sir.

24 Q Is that the same fella you walked around the
25 neighborhoods with?

SW - R. DAVIS - DIRECT

1 A Yes, sir.

2 Q Is there any doubt in your mind?

3 A No doubt.

4 Q Well, what happened next? Show the jury what
5 happened next.. Where did you go -- after you saw
6 Rick Green go back where did he go?

7 A He -- he went to my front door. I was standing
8 right here. When I saw him that's when I went -- I
9 said that's Rick Green and then that's when I went
10 and got my phone and my gun.

11 Q You tried to make a phone call?

12 A Yes, sir.

13 Q Couldn't?

14 A No, sir.

15 Q Got your -- I guess your gun is the one you had
16 because of your job, correct?

17 A No, sir, it wasn't the gun I --

18 Q You went and got it?

19 A Yes, sir.

20 Q Where did you go then?

21 A In my den.

22 Q And what, if anything, did you hear from the
23 front door?

24 A Someone jerked on my front door trying to get it
25 open.

SW - R. DAVIS - DIRECT

- 1 Q You could hear it?
- 2 A Yes, sir.
- 3 Q Okay. Were they pulling at it?
- 4 A They was just pulling on it, pulling on it trying
- 5 to get it open.
- 6 Q Did you go open the door then?
- 7 A No, sir.
- 8 Q Have a seat, ma'am.
- 9 MR. MEADORS: That's all at this point,
- 10 Your Honor, for that.
- 11 BY MR. MEADORS:
- 12 Q Are you standing or sitting now, Rita?
- 13 A I'm standing.
- 14 Q And in what room?
- 15 A In my den.
- 16 Q And can hear somebody is trying to open your
- 17 door?
- 18 A Yes, sir.
- 19 Q Where is the gun you had? You had a gun?
- 20 A Yes, sir.
- 21 Q I mean, how were you holding it?
- 22 A Holding it like this.
- 23 Q Did you think about using it?
- 24 A I did.
- 25 Q Where were you going to use it? Where were you

SW - R. DAVIS - DIRECT

- 1 going to shoot it?
- 2 A Through my front door.
- 3 Q You were; weren't you?
- 4 A Yes, I were.
- 5 Q Were you that scared?
- 6 A Yes, I was.
- 7 Q But you didn't?
- 8 A I didn't.
- 9 Q You glad you didn't.
- 10 A (There was no response.)
- 11 Q But you didn't fire it?
- 12 A I didn't fire it. At time I didn't.
- 13 Q And -- look at them or just tell them. I don't
- 14 care if you look at them or not. What was going
- 15 through your mind?
- 16 A At that time I didn't really recall -- if you
- 17 shoot someone --
- 18 Q You can't quote the law, but I mean, you had
- 19 decided whether to shoot or not?
- 20 A I decided not to shoot.
- 21 Q What did you do next?
- 22 A After I decide not to shoot through my front door
- 23 that's when I opened my back door and fired four
- 24 shots.
- 25 Q And why did you do that?

SW - R. DAVIS - DIRECT

1 A It was to get him away from my house.

2 Q Instead of firing through and killing him you
3 were trying to scare him away?

4 A That's true.

5 Q What did you do after that?

6 A After I fired four shots and got him away from my
7 house I just sit in my den knowing that my neighbor
8 gets up at 4:00 to crank his truck. And once I hear
9 his truck cranked up I start doing my back porch
10 light once he got my attention he came and asked me
11 what was wrong. I said Rick Green is trying to
12 break in my house about 1:30, and I said let's walk
13 around to the front and so I can go to my car and
14 get my cell phone.

15 Q So your cell phone was not in the house?

16 A No, sir.

17 Q And you had left it in your car?

18 A Yes, sir.

19 Q And I know you fired four shots but did you know
20 whether Rick Green was out there?

21 A No, I did not.

22 Q And is that why you didn't go out and get your
23 cell phone?

24 A Exactly.

25 Q So you waited on your neighbor. And again, did

SW - R. DAVIS - DIRECT

1 he have a habit of getting up at a certain time or?

2 A Yes, sir.

3 Q He knew he had to ---

4 A Yes, sir.

5 Q He responded, I mean, you really did flick the
6 lights; didn't you?

7 A I did.

8 Q And he came over there, met you at your car?

9 A I -- yeah, he met me at my car. He walked around
10 to the front.

11 Q And why couldn't you go back around?

12 A Because my back is fenced in.

13 Q Did you go through the house and met him out
14 front?

15 A I went to my front door and met him out front.

16 Q And did you call the police at that point?

17 A Yes, I did.

18 Q And did you have an occasion for this young man
19 to show up?

20 A Excuse me?

21 Q This officer show up ---

22 A Yes.

23 Q ---do you remember?

24 A Yes.

25 Q And is it fair to say you told him what happened?

SW - R. DAVIS - DIRECT

1 Did you tell him what happened?

2 A Yes, I did.

3 Q Okay. I'm sorry?

4 A Yes, uh-huh.

5 Q And if you said it, I apologize, and I apologize
6 to the Court, what time did your neighbor get up?

7 A He crank his trucks up between ten to four.

8 Q To four?

9 A Ten to four. Ten minutes to four.

10 Q And that whole time you were just sitting there?

11 A Sitting in my den scared to death.

12 Q Did not move?

13 A No, I did not move.

14 MR. MEADORS: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 BY MR. MEADORS:

17 Q And in addition to that you called some family
18 members, your brother-in-law?

19 A Yes, I did.

20 Q And did your husband come home?

21 A After I called my brother-in-law because he was,
22 he could have got to me and my husband. Then I
23 called my husband.

24 Q Location wise.

25 A Location wise, yes.

SW - R. DAVIS - DIRECT

1 Q Mr. James Davis?

2 A James Davis.

3 Q Brother-in-law?

4 A Yeah.

5 Q Did you have an occasion to see Investigator
6 Wesley Gardner?

7 A Yes, I did.

8 Q And was that later on in the day?

9 A Yes.

10 Q Now you testified to the ladies and gentlemen you
11 heard the garage door, somebody trying to get in,
12 correct?

13 A Yes, sir.

14 Q At some point later that day did you look at your
15 garage?

16 A Yes, sir.

17 MR. MEADORS: And this is State's 1, Your
18 Honor.

19 BY MR. MEADORS:

20 Q And when you -- was your garage door closed like
21 it had been when you get, went to bed, or was it
22 open?

23 A It was closed.

24 Q And when you came out, your husband got there
25 somebody, had it been up a little bit to where it

SW - R. DAVIS - DIRECT

- 1 was closed?
- 2 A Yes, sir.
- 3 Q So it was closed when you went to bed?
- 4 A Yes, sir.
- 5 Q And then after this incident it was up, correct?
- 6 A Just a little.
- 7 Q And was that pointed out to one of the other
- 8 officers?
- 9 A Yes, sir, to Deberry.
- 10 Q Okay. Deberry?
- 11 A Yes, sir.
- 12 Q Okay. And when you went to bed that had been
- 13 closed, correct?
- 14 A Yes, sir.
- 15 Q All the way down?
- 16 A All the way down.
- 17 Q And when you saw it the next morning it was up a
- 18 little bit?
- 19 A Yes, sir.
- 20 Q But you couldn't get it up without 'cause it was
- 21 locked, right?
- 22 A It was locked.
- 23 Q Now State's 1, you recognize this?
- 24 A Yes, sir, those are where my telephone wires are.
- 25 Q And were they in the same condition when you went

SW - R. DAVIS - DIRECT

1 to bed on May 3rd as when this picture was taken the
2 next day? Had they been cut?

3 A Yes, they had been cut the next day.

4 Q And is that why you couldn't use your phone?

5 A Exactly.

6 Q And did these officers take a picture of this?

7 A Yes, the detective did.

8 Q I guess the simple way and I apologize to
9 everybody, was your phone working before you went to
10 bed?

11 A Yes, it was 'cause I talked to my husband and my
12 sister.

13 Q And after you saw Rick Green they were cut,
14 correct?

15 A Yes, sir.

16 Q You don't know when they were cut, do you?

17 A No, sir, but they were working when I went to
18 bed.

19 Q Now Ms. Davis, that's your dwelling house, right?

20 A Yes, sir.

21 Q Black River Road?

22 A Yes, sir.

23 Q Address again is [REDACTED]

24 A [REDACTED], South Carolina.

25 Q And on the early morning hours of May 4th, 2010

SW - R. DAVIS - DIRECT

1 did you give permission for Richard Avon Green who
2 you know as Rick Green, to come into your house?

3 A No, sir.

4 Q Did you give him permission to pull that garage
5 door open?

6 A No, sir.

7 Q Did you want him to come in?

8 A No, sir.

9 MR. MEADORS: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 BY MR. MEADORS:

12 Q Just one other question. The person, could you
13 tell what he was wearing?

14 A He was wearing a white T-shirt and denim jeans.

15 Q And his facial features, did he have any hair on
16 his face?

17 A Just right here.

18 Q Goatee?

19 A Yes.

20 Q And is the person that you saw from your house in
21 the early morning hours of 1:30, May 4th, 2010, who
22 came from your garage standing out in front of your
23 dining room is that person who was standing out in
24 front when you were in your dining room, that person
25 in this courtroom?

SW - R. DAVIS - CROSS

1 A Yes, sir.

2 Q Would you please point him out to the ladies and
3 gentlemen of the jury.

4 A Sitting next to Mr. Hastie. Yes, sir.

5 MR. MEADORS: Your Honor, would the record
6 reflect she has picked out Richard Avon Green.

7 THE COURT: The record will so reflect.

8 MR. MEADORS: Thank you. That's all.

9 THE COURT: Cross-examination, Mr. Hastie.

10 MR. HASTIE: Yes, sir.

11 **CROSS - EXAMINATION**

12 BY MR. HASTIE:

13 Q Good afternoon, Ms. Davis.

14 A Good afternoon.

15 Q I just want to go directly to the night that all
16 of this happened. It was 1:30 in the morning; is
17 that correct?

18 A Yes, sir.

19 Q And you heard your door bell ring?

20 A Yes, sir.

21 Q Where is your bedroom? This is the picture of
22 your house. Would you show us where your bedroom is
23 located?

24 A That is — that's my bedroom.

25 Q So your bedroom is out on the front of the house?

SW - R. DAVIS - CROSS

- 1 A No, sir.
- 2 Q So you were in the back of the house?
- 3 A Yes, sir.
- 4 Q And you heard the door bell?
- 5 A Yes, sir.
- 6 Q Then you got up and went to -- I'm just trying to
- 7 find -- and went to -- is this the den?
- 8 A That's right. That's my house.
- 9 Q That's your dining room. So you went to the
- 10 dining room and peeped out the window.
- 11 A No, sir, I went to my front door and came back.
- 12 Q You did look out the front door?
- 13 A Yes I did.
- 14 Q And was anyone at the front door?
- 15 A He was walking away.
- 16 Q He was walking away toward the garage.
- 17 A Right off the porch, walk back.
- 18 Q Was there a light on on your front door porch
- 19 there?
- 20 A No, I have a yard light over to the right of my
- 21 house and I have a dawn to dusk light on my garage.
- 22 Q Where is the yard light in proximity to this
- 23 picture?
- 24 A It won't be picked up but my yard light would be
- 25 over here somewhere here.

SW - R. DAVIS - CROSS

1 Q Here?

2 A Yes.

3 Q And it's all the time?

4 A At night.

5 Q At night. So it was on that night?

6 A Yes, sir.

7 Q And you saw -- when you peeped out your peephole
8 you saw someone, you saw Richard Green going towards
9 your garage door.

10 A At that moment when he walk off my porch his back
11 was turned. I ain't know who he was at that time.

12 Q So you didn't know who that person was?

13 A At that time.

14 Q At that time. Then this person went to your
15 garage door?

16 A Yes.

17 Q And where were you at this time?

18 A Standing on down the window.

19 Q So you moved from your front door, saw the guy
20 and you went to your dining room, and looked out
21 there?

22 A Yes, sir.

23 Q And you said you heard your garage door going up?

24 A Someone trying to get it up.

25 Q Okay, so you didn't hear it going up. You just

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1 heard someone kind of wrestling with it?

2 A Yes, sir.

3 Q Do you normally leave your garage door open or
4 locked at night?

5 A Locked.

6 Q So it was locked?

7 A Yes, sir.

8 Q Okay. So how far was this person able to get
9 your locked garage door up?

10 A I couldn't see him at the moment.

11 Q You couldn't see him at the moment?

12 A No, sir.

13 Q Okay. Did you tell the police that it was up a
14 certain height?

15 A No, did not.

16 Q Did not? So you don't know whether you just
17 heard him fumble around with the garage door?

18 A Yes, sir.

19 Q Then he came back to?

20 A The front door.

21 Q The front door?

22 A Uh-huh.

23 Q And you were still at the dining room window?

24 A Yes, sir.

25 Q Looking out the window.

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1 A When he left the garage door, after he couldn't
2 get it up.

3 Q Uh-huh.

4 A When he walked from the garage when I walked back
5 that's when I said that's Rick Green.

6 Q Okay. And you know Rick Green?

7 A Yes, I do.

8 Q He's somebody that you know. You've known Rick
9 Green, is it any reason you did, just didn't say,
10 what in the world are you doing at my house this
11 time of night?

12 A I don't talk to anyone at my house that time of
13 day.

14 Q So you went back to your door, this same guy you
15 know, now he's pulling on your door?

16 A Yes.

17 Q How long was he there at your door?

18 A Maybe about a minute.

19 Q And so for a minute?

20 A If that long.

21 Q Long time. Even a minute is a pretty good while.
22 He's yanking on your door. Where are you?

23 A When he was yanking on my door that's when I went
24 and got my phone and my gun.

25 Q The house phone?

SW - R. DAVIS - CROSS

- 1 A Yes.
- 2 Q And you got your gun. Is he still yanking on
- 3 your door?
- 4 A Yes.
- 5 Q Now you got your gun?
- 6 A Yes.
- 7 Q And you got your house phone?
- 8 A Yes. I don't have my house phone. The phone was
- 9 not working.
- 10 Q I thought you said you went and got it.
- 11 A I did.
- 12 Q You put it right back?
- 13 A Yes, after I realized it wasn't working.
- 14 Q Now you just got your gun?
- 15 A Yes.
- 16 Q And is he still yanking on your door?
- 17 A Yes.
- 18 Q He's still pulling on your door, that's a long
- 19 minute. So he's yanking on your door. So what do
- 20 you do? You got a gun. Is the door about -- where
- 21 are you from the door? You was in -- me and the
- 22 door right here, about how far are you from that
- 23 door? Where he is with your gun in your hand?
- 24 A Maybe from that desk right there to right there.
- 25 Q You was me and that door right there?

SW - R. DAVIS - CROSS

- 1 A Not that far.
- 2 Q I'm saying if I was you.
- 3 A Uh-huh.
- 4 Q And that's the door he's at, how far was he?
- 5 A Right there.
- 6 Q Okay.
- 7 A I have a foyer.
- 8 Q You about right here?
- 9 A I have a foyer.
- 10 Q So you in the foyer?
- 11 A Standing in the foyer, yes.
- 12 Q The door was right here?
- 13 A Yes.
- 14 Q Was there a peephole in the door?
- 15 A That's it.
- 16 Q So you can see him right there?
- 17 A Not at that moment because I wasn't looking in
- 18 the peephole.
- 19 Q Okay, but he's right there, you got a gun in your
- 20 hand?
- 21 A Yes.
- 22 Q Any reason why you didn't say, Rick, get way from
- 23 my door?
- 24 A No, sir.
- 25 Q Has Rick been to your house before?

SW - R. DAVIS - CROSS

1 A Not my house.

2 Q Why they say he may have been with your brother
3 or somebody else at your house?

4 A No. If he been, he hung out with my husband at
5 the garage was at.

6 Q You got a gun in your hand. You're right here.
7 Rick is right here. He can hear you talking at the
8 door. Say, look, you don't get away from that door,
9 I'm gonna put a bullet in you. You did say you
10 prepared to shoot him; wasn't you?

11 A Yes, I was.

12 Q So you prepared to shoot tell right there, get
13 away from my house?

14 A I wasn't going to say anything to him at that
15 time of night.

16 MR. HASTIE: May we approach one second?

17 THE COURT: Yes, come on up.

18 (WHEREUPON, counsel approached the Bench
19 for an off-the-record discussion.)

20 BY MR. HASTIE:

21 Q You opened your front door; is that correct?

22 A I opened my back door. I started to shoot.

23 Q Did you go to your back door while he was still
24 yanking on the front door?

25 A Yes, I did.

SW - R. DAVIS - CROSS

1 Q He was still at your front door just one minute.

2 A Yes.

3 Q So you went to your back door. How far is your
4 back door from here to from that direction where you
5 were?

6 A Where I was in my den?

7 Q Yeah, this is where you were in the den. How far
8 did you go to your back door approximately in that
9 direction? You're standing here ---

10 A At that point in a desk at the back door right
11 there. That's ---

12 Q About right there?

13 A Yes, sir.

14 Q So you went to your back door. Was your back
15 door locked?

16 A Yes, it was.

17 Q Your front door was locked.

18 A Yes.

19 Q You opened your back door?

20 A Yes.

21 Q It was your screen door?

22 A Yes.

23 Q A peephole?

24 A No.

25 Q No peephole in the back door? And you had your

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- 1 personal revolver?
- 2 A Yes.
- 3 Q And you fired how many rounds?
- 4 A Four.
- 5 Q Four in the air?
- 6 A Yes.
- 7 Q Is that something you all do normally out there
- 8 in your neighborhood?
- 9 A No, we don't.
- 10 Q Have you ever done that before?
- 11 A No, I didn't never.
- 12 Q You never shot your pistol in the air?
- 13 A No.
- 14 Q And why did you do that?
- 15 A To get him away from my house.
- 16 Q Did you go back to the front door and take a look
- 17 and see whether he was gone?
- 18 A Through the peephole.
- 19 Q So you went back to the peephole?
- 20 A Uh-huh.
- 21 Q And this man you were peeping through the
- 22 peephole, did you saw him leave?
- 23 A No, I did not.
- 24 Q Was he there?
- 25 A No, he wasn't.

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1 Q Did you see him exit at all at the time?

2 A I did not.

3 Q When he was walking from your garage door and you
4 got a good look at him when the light came on; did
5 you not?

6 A The light was already on.

7 Q Pardon me?

8 A The light was already on.

9 Q Did you get a good look at him?

10 A Yes, I did.

11 Q And you know what he was -- what was he wearing
12 then?

13 A White shirt.

14 Q White shirt?

15 A Denim jeans.

16 Q And jeans?

17 A Uh-huh.

18 Q Did he have a wire cutter in his hand, anything
19 like that?

20 A I don't know.

21 Q Could you see?

22 A No.

23 Q Couldn't see?

24 A No.

25 Q But your light was on. It was pretty bright out

SW - R. DAVIS - CROSS

1 there?

2 A Yes.

3 Q But you didn't see him with a wire cutter or
4 anything, did you?

5 A No, I didn't.

6 Q Then you decided to go in your den and wait; is
7 that, correct?

8 A (Inaudible.)

9 Q Pardon me?

10 THE COURT REPORTER: I didn't understand.

11 BY MR. HASTIE:

12 Q Say what?

13 A You said at -- go in my den and wait. I say, at
14 what moment.

15 Q After you shot out the back door --

16 A Uh-huh.

17 Q --what did you do? Tell us about that.

18 A Sitting in my den.

19 Q Okay, that's what I asked you. What were you
20 doing in your den?

21 A Sitting in my -- on my couch with my weapon.

22 Q Did you go back and look through the peephole and
23 see whether he was still there?

24 A Yes, I did.

25 Q So after you shot you didn't go in the den you

SW - R. DAVIS - CROSS

- 1) went back to the peephole first?
- 2 A My back door is in my den.
- 3 Q But he was at the front door trying to come in?
- 4 A Yes.
- 5 Q Where did you go to the front door after you shot
- 6 the weapon and peeked to see whether he was still
- 7 there?
- 8 A After I finished shooting then I went to see if
- 9 he was gone.
- 10 Q Oh, that's what I'm asking?
- 11 A Yes.
- 12 Q So you shot four times in the air?
- 13 A Uh-huh.
- 14 Q Then you went to the front door?
- 15 A Yes.
- 16 Q And peeked?
- 17 A Uh-huh.
- 18 Q Did not see him at all?
- 19 A No.
- 20 Q Then from the front door you went to your den and
- 21 sat down?
- 22 A Yes.
- 23 Q And you sat back for a number of hours; didn't
- 24 you?
- 25 A Yes.

SW - R. DAVIS - CROSS

1 Q And you had a weapon in your hand?

2 A Yes.

3 Q How far is your neighbor's house from where you
4 all live here?

5 A It's the house on the other side of my house, and
6 then it's my neighbor house, the one that I got his
7 attention.

8 Q Give us a idea how far it's — this is between
9 this corridor and some indication the distance
10 between the house is shorter than from this wall to
11 this wall?

12 A It's a little farther because it's a house
13 between my house before my neighbor, the other
14 neighbor came home.

15 Q Does anybody live in that house?

16 A Yes.

17 Q So somebody lives next door to you?

18 A Uh-huh.

19 Q Like right in the middle there?

20 A Yes.

21 Q And the neighbor is right over there?

22 A Yes.

23 Q And you fired four rounds out your back door?

24 A Yes.

25 Q And nobody came or looked out or checked on you?

SW - R. DAVIS - CROSS

1 A Because the house next door is a old lady.

2 Q It's a old lady?

3 A Yes.

4 Q And at any time, at any time, did whoever was at
5 your door enter your premises, enter your home, your
6 house?

7 A No.

8 Q Not through the garage?

9 A No.

10 Q Not through the front door?

11 A No.

12 Q Certainly not through the back door where you
13 were shooting?

14 A No.

15 Q Never entered your home?

16 A No, sir.

17 MR. HASTIE: Court's indulgence, Your
18 Honor..

19 THE COURT: Yes..

20 BY MR. HASTIE:

21 Q And your neighbor that lived in the second house
22 over came over and what did you tell him?

23 A Told him that Rick Green tried to break in my
24 house about 1:30.

25 Q And what did he say?

SW - R. DAVIS - CROSS

1 A Well, when I got his attention from flickering
2 the back porch light he walked, turn his truck
3 off -- excuse me, he walked across the field and
4 asked me what was wrong. I said Rick Green tried to
5 break in my house about 1:30, will you just come
6 walk around to my car until I come to my car because
7 the back of my house is you can't see. Once he got
8 there I went to my car and got the cell phone and
9 called 9-1-1.

10 Q Did he come to your back door or front door?

11 A Side of my house.

12 Q There's an entrance on the side of your house?

13 A He came close in, to the front.

14 Q To the front door?

15 A Yes.

16 Q So he came to the front door?

17 A Uh-huh.

18 Q And you told him Richard Green, said will you
19 walk with me to your car. So your car was outside?

20 A My Honda.

21 Q Your Honda was outside --

22 A Yes.

23 Q ---of the door. So there was a car out there in
24 the driveway. Was there evidence he entered your
25 car?

SW - R. DAVIS - CROSS

1 A No.

2 Q Thank you very much.

3 A You're welcome.

4 THE COURT: Redirect?

5 MR. MEADORS: Very brief.

6 BY MR. MEADORS:

7 Q Your front door, is, is what? Is it just a front
8 door, does it have a glass door?

9 A My front door is a storm door along with the
10 regular wood door.

11 Q And then so he was pulling on the front door?

12 A On the storm door, the front of the house.

13 Q And you could hear it?

14 A Yes.

15 Q Sound like somebody is trying to get in?

16 A Yes.

17 Q And he said -- Mr. Hastie asked you about did you
18 know how high up, he asked you about you heard the
19 garage door and somebody trying to pull it up and
20 down?

21 A Yes.

22 Q Do you remember he asked you how high it was up,
23 but didn't then because you couldn't see it then?

24 A I couldn't see it at the moment.

25 Q But the next day did you see that it was up a

SW - R. DAVIS - RECROSS

1 little bit?

2 A It was up a little bit.

3 Q I mean, tell -- was it up?

4 A Yes, it was up.

5 Q And is that the way it was when you went to bed?

6 A No, sir.

7 Q And you didn't -- you'd never shot out your door
8 before like that?

9 A No.

10 Q And I mean, you remember firing a gun; don't you?

11 A Yes, I do.

12 Q Mr. Hastie was asking a few questions earlier
13 about why didn't you open the door, why didn't you
14 open the door. Let me just ask you this way, you
15 knew Rick Green?

16 A Yes, I do.

17 Q And you decided not to open the door?

18 A Exactly.

19 Q Thank you. That's all I have.

20 THE COURT: Recross.

21 MR. HASTIE: Yes, sir.

22 **RECROSS - EXAMINATION**

23 BY MR. HASTIE:

24 Q This garage door, is it your testimony that you
25 heard him trying to pry the door open because this

SW - R. DAVIS - RECROSS

1 garage door is locked. So one thing you can't get
2 these garage door up, you know, you can't yank them
3 up. You got to have something to get a garage door
4 up. I think the next one you said there were up
5 about 2 feet; is that correct?

6 A Up about 2 feet.

7 Q Okay. But it was up the next morning?

8 A Yes.

9 Q About how high?

10 A About this much.

11 Q Just that much?

12 A Yes.

13 Q Okay, 2 inches?

14 A Yes.

15 Q Okay. But still 2 inches. Did you see Richie
16 with any type of tool --

17 A No.

18 Q --or anything like that?

19 A No.

20 Q No cutting tools?

21 A No, sir.

22 Q Anything like that? But you see -- you did see
23 him?

24 A Yes, I did.

25 Q Clearly you didn't see no crow bar or nothing?

1 A No, I didn't.

2 Q Thank you.

3 THE COURT: All right, thank you, Ma'am.
4 You may step down.

5 All right, ladies and gentlemen, you've
6 been in the courtroom about an hour and a half,
7 hour, 20 minutes. It is appropriate that we take
8 our afternoon break at the same time. I have one
9 matter I need to tend to at the same time so I'm
10 going to ask that you go to your jury room. Please
11 do not discuss the case among yourselves. Talk
12 about anything you want to talk about and I'll send
13 for you very shortly. What I am going to ask that
14 you do while you're there in the jury room is that
15 the twelve of you will select one of the members of
16 the principle jury as the foreperson of this jury
17 and notify the bailiff when you have selected a
18 foreman and then that foreman will sit in the first
19 seat on the front door here when you return to the
20 courtroom. But I'm gonna allow you to select your
21 own foreperson and let me know who that is when you
22 come back in. Other than that, please go to your
23 jury room. Don't discuss the case among yourselves
24 and just relax for a few minutes. Thank you. You
25 may go with the bailiff.

1 (WHEREUPON, the jury was removed from the
2 courtroom and the following proceedings commenced in
3 open court.)

4 THE COURT: All right. The jury is out.
5 We'll be in recess for a few minutes and I
6 understand for this case and take a break from the
7 court just a minute.

8 (WHEREUPON, a recess was taken from the
9 proceedings.)

10 THE BAILIFF: We have all the jurors
11 present and in the courtroom.

12 THE COURT: Thank you very much. Thank
13 you for your patience, ladies and gentlemen. I had
14 to address another matter. It took me a few minutes
15 to do that but we are ready to go forward. Are you
16 Ms. Fulwood?

17 THE FOREPERSON: Yes, sir.

18 THE COURT: I believe you have been
19 selected by fellow jurors as foreman of this jury so
20 if you will always sit where you are seated and the
21 alternate will always sit where he is seated. And
22 you will serve of course throughout the trial of
23 this matter as the foreperson. Thank you very much.

24 All right, Mr. Meadors, if you are ready
25 to you may call your next witness.

SW - T. MACK - DIRECT

1 MR. MEADORS: Thank you, Your Honor. If
2 it please the Court.

3 THE COURT: Yes, sir.

4 MR. MEADORS: The State would call
5 Mr. Tyrone Mack.

6 THE BAILIFF: Place your left hand on the
7 Bible, raise your right hand. State your name
8 please.

9 THE WITNESS: Tyrone Mack.
10 WHEREUPON,

11 TYRONE MACK,
12 having been duly sworn by the Clerk of Court,
13 testified as follows:

14 THE BAILIFF: Have a seat. State your
15 full name and spell your last name for the record.

16 THE WITNESS: Tyrone Mack, M-A-C-K.

17 **DIRECT EXAMINATION**

18 BY MR. MEADORS:

19 Q Good afternoon, Mr. Mack.

20 A Good afternoon. How are you doing?

21 Q Good. Where are you from, sir?

22 A Rembert, South Carolina.

23 Q Born and raised?

24 A No.

25 Q Where -- how long -- how long you been here?

SW - T. MACK - DIRECT

- 1 A Maybe 20, 26 years.
- 2 Q What is your occupation, sir?
- 3 A Truck driver.
- 4 Q And how long have you been doing that?
- 5 A Over 20 years.
- 6 Q Twenty years. And do you own your own rig?
- 7 A No, sir.
- 8 Q Who do you drive for?
- 9 A Wallie Slaton (ph).
- 10 Q I'm sorry?
- 11 A Wallie Slaton.
- 12 Q Are where is your route?
- 13 A From Sumter to (inaudible).
- 14 Q And then how far is your route?
- 15 A Not quite three miles one way.
- 16 Q And you work every day?
- 17 A Yes, sir.
- 18 Q And have you already worked today?
- 19 A Yes, sir.
- 20 Q Tiring driving a truck?
- 21 A Yes.
- 22 Q And but you park the rig at your house when you
- 23 get through?
- 24 A Yes, sir.
- 25 Q Now do you work different — do you work

SW - T. MACK - DIRECT

1 different -- not sort of like first shift, second
2 shift we do. Is there a certain time that you
3 drive? Does that change depending on situation?

4 A It's according to time I get up. If I can get up
5 early and go to Bishopville and get. I get up early
6 about 3:00, maybe 3:30, quarter to 4, something like
7 that.

8 Q Is that pretty much a regular habit of yours?

9 A Right, yes.

10 Q And taking you back in time to May 4th of 2010,
11 were you driving the same rig for the same company?

12 A Yes.

13 Q Riding the same ride?

14 A Yes.

15 Q And do you know Ms. Rita Davis in the courtroom?

16 A Yes, sir.

17 Q And how do you know her?

18 A Neighbor.

19 Q Y'all been neighbors for several years?

20 A Not -- maybe just --

21 Q It doesn't matter but for a good while?

22 A Yes.

23 Q All right. Now I'd like for you if you can
24 remember, on early morning hours of May 4th, 2010,
25 did you have an occasion to see Ms. Davis?

SW - T. MACK - DIRECT

1 A Well, that morning I got up to go to work and I
2 saw the lights blinking off and on. I was wondering
3 what's going on. I went to show. I switched my
4 truck off and started to walk over there and ---

5 Q And had you ever seen that light going off and on
6 before?

7 A Yes -- no.

8 Q Before you went to work?

9 A No, no, sir.

10 Q So as a result of that did you go over?

11 A Yes, I did.

12 Q And what, if anything, happened there? Did you
13 happen to go and see Ms. Davis?

14 A Yes, sir, she came to the door and she told me
15 that someone tried to break, Rick Green tried to
16 break in her house.

17 Q She said Rick Green tried to break in the house?

18 A Yeah, she told me.

19 Q So she told you that as soon as you went over
20 there that morning May 4th, 2010?

21 A Right.

22 Q And tell these folks, Mr. Mack, can you describe
23 her demeanor or how was she -- how did she appear to
24 you?

25 A She was pretty upset. She was scared.

SW - T. MACK - DIRECT

1 Q And what did you do next or what happened next?

2 A Well, she told me that the phone in the car.

3 She -- phone in the car and cell phone was in the
4 car so I walk her to the car and just sitting there
5 waiting and all then her brother-in-law get there.

6 Q So you went with her to her car to get her cell
7 phone?

8 A She got her cell phone.

9 Q You stayed there till her brother-in-law came?

10 A Till her brother-in-law got there.

11 Q Do you know her brother-in-law?

12 A Know something about him.

13 Q Mr. James Davis.

14 A Yeah.

15 Q Are you a pretty heavy sleeper?

16 A Depending if I'm tired or not. If I'm real
17 tired, yes, sir. I'm a pretty heavy sleeper 'cause
18 I get up early every morning so I sleep heavy.

19 Q When you -- well, describe how big land do you
20 have.

21 A I'm on an acre land.

22 Q And are you in relation to Ms. Davis' house where
23 are you?

24 A It's a house between mine and hers.

25 Q And is that an owner female or do you know?

SW - T. MACK - DIRECT

1 A Excuse me?

2 Q Do you know who lives there?

3 A Older lady, older lady live there.

4 Q So it's -- beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 MR. MEADORS: Your Honor, this is State's

7 3 I believe without objection?

8 THE COURT: All right. State's 3 will be
9 entered into evidence and placed into evidence.

10 State's number three without objection.

11 (WHEREUPON, State Exhibit

12 No. 3 was received into

13 evidence.)

14 MR. MEADORS: Your Honor, if I could have
15 this and show it to the jury.

16 THE COURT: All right. That will be fine.

17 You may step down, sir. You're going to have to
18 keep your voice up because you're going to be away
19 from the microphone.

20 BY MR. MEADORS:

21 Q Do you mind coming over here, get you step here
22 so the court reporter can hear you. Do you
23 recognize this an aerial map of where you live,
24 general direction?

25 A Yes, sir.

SW - T. MACK - DIRECT

- 1 Q And it's got in the photo, this is the victim's
2 house, Ms. Davis?
- 3 A Right.
- 4 Q 8490.
- 5 A Uh-huh.
- 6 Q Can you show the jury where your house is on
7 State's 3.
- 8 A This would be mine right, right here.
- 9 Q Okay. And you're 8460?
- 10 A Yeah.
- 11 Q Your house -- your house, correct?
- 12 A Yes.
- 13 Q And this is -- is this the elderly lady?
- 14 A Yeah.
- 15 Q And then Ms. Davis.
- 16 A Right.
- 17 Q So the morning you testified you came down -- you
18 had started your truck?
- 19 A Yeah, getting ready to go.
- 20 Q But you can see some lights flashing?
- 21 A Yeah.
- 22 Q And as a result of that you went down to her
23 house?
- 24 A Yeah.
- 25 Q And that's when she said Richard Green, right,

SW - T. MACK - CROSS

1 mentioned his name?

2 A Right.

3 Q Tried to come in her house. And that's all you
4 know. That's all you know. Thank you.

5 THE COURT: All right. You can come back
6 and get on the stand please, sir. That's all you
7 have for this witness at this time? That's all you
8 have at this time?

9 MR. MEADORS: Yes, sir.

10 THE COURT: Cross-examination.

11 MR. HASTIE: Yes, sir, Your Honor.

12 **CROSS - EXAMINATION**

13 BY MR. HASTIE:

14 Q How are you doing, Mr. Mack?

15 A Fine. How are you?

16 Q Okay. The night in question you saw lights
17 flickering; is that correct?

18 A Yes, sir.

19 Q And they were flickering just on and off?

20 A On and off, yes, sir.

21 Q And by that map that that house is not very real
22 close to yours, is it?

23 A Well, I park -- always park my truck in the back,
24 in the back of house.

25 Q Okay.

SW - T. MACK - CROSS

- 1 A It's not a problem seeing her house.
- 2 Q There's the pointer. Can you see from there?
- 3 A No, sir.
- 4 Q Can you come down here. Stand right there. And
- 5 is this proximate where your house is? This is your
- 6 house. And the elderly lady lives here; is that
- 7 correct?
- 8 A Yes, sir.
- 9 Q And you live here?
- 10 A Yes, sir.
- 11 Q And your house -- your car was parked in the
- 12 back?
- 13 A My truck was parked in the back, yes, sir, on the
- 14 side close to my next door neighbor lot.
- 15 Q On this side?
- 16 A Yes.
- 17 Q Is that a driveway?
- 18 A That is a driveway.
- 19 Q And that's where you were parked at right here?
- 20 A Right.
- 21 Q So you could see the lights flicker?
- 22 A Exactly.
- 23 Q Now do you know, is that a trailer right there, a
- 24 house?
- 25 A It's a trailer behind that.

SW - T. MACK - CROSS

1 Q Does anybody live in that trailer?

2 A Yes, sir.

3 Q Someone lives there?

4 A Yes, sir.

5 Q Do you know the neighbor who lives there?

6 A No, sir.

7 Q Do you know there's another elderly lady lives
8 there?

9 A I know it was, but I never did know their name.

10 Q How many people live in this trailer?

11 A I don't have a clue.

12 Q You have no idea. This is a lot closer to your
13 house and twice close as your house?

14 A Right.

15 Q Okay, all right. Thank you. You may have a
16 seat. So she went over and I notice that your
17 initial statement said her -- she told you that
18 someone had broken into, attempt to break into her
19 home?

20 A No, she told me Ricky Green.

21 Q Okay, well it was Ricky Green. She told you
22 that, okay. Did you check her house out?

23 A No, sir, I didn't.

24 Q Did you see the wires that were cut?

25 A No, sir, I didn't.

SW - T. MACK - CROSS

1 Q You didn't see the wires. Did you see the garage
2 door that was ---

3 A I didn't pay any attention.

4 Q Did you ask her where, how did that happen, what
5 happened?

6 A No, sir.

7 Q So what did she ask you? She just asked you to
8 come go with her to get her --

9 A Her cell phone was in her car.

10 Q Where was the car?

11 A Parked on the side.

12 Q It was parked?

13 A Yeah.

14 Q In the driveway?

15 A I can't remember exactly.

16 Q But she didn't discuss no details with you to
17 your knowledge?

18 A No, sir, not exactly as I can remember. And she
19 actually told me that she shot in the air a couple
20 of few times, three or four times, to go scare him
21 off.

22 Q She shot in the air. She did tell you that. You
23 ever been in the military?

24 A No, sir.

25 Q Did you hear a gunshot at any time that night?

SW - T. MACK - REDIRECT

1 A No, sir.

2 Q So you're a hard sleeper?

3 A Yes, sir.

4 Q I am too sometimes, yes, sir. Now where did you
5 live before you moved down here?

6 A Pisgah (ph) O'Neil Road, just right down the road
7 from here.

8 Q Oh really, okay.

9 MR. HASTIE: Your Honor, I have no further
10 questions for this witness.

11 THE COURT: Redirect.

12 MR. MEADORS: One followup.

13 **REDIRECT EXAMINATION**

14 BY MR. MEADORS:

15 Q Mr. Mack, Mr. Hastie asked you if she gave any
16 details. Did she give you his name as soon as she
17 saw you?

18 A She said Rick Green. She sure did.

19 Q Thank you. That's all.

20 THE COURT: Recross, Mr...

21 MR. HASTIE: None, Your Honor.

22 THE COURT: All right. Thank you, sir.

23 You may step down.

24 You may call your next witness

25 Mr. Meadors.

SW - S. DEBERRY - DIRECT

1 MR. MEADORS: Deputy Deberry.

2 THE COURT: All right, Deputy Deberry, if
3 you will come around.

4 MR. MEADORS: Your Honor, we ask the
5 witness be excused.

6 THE COURT: Any objection?

7 MR. HASTIE: Not at all.

8 THE COURT: All right, you are excused.
9 Thank you for coming.

10 THE BAILIFF: Place your left hand on the
11 Bible, raise your right hand. State your full name
12 please.

13 THE WITNESS: Shawn Deberry.

14 WHEREUPON,

15 SHAWN LAWRENCE DEBERRY,
16 having been duly sworn by the Clerk of Court,
17 testified as follows:

18 THE BAILIFF: Thank you. Have a seat up
19 here please. State your full name. Spell your last
20 name for the record.

21 THE WITNESS: Shawn Lawrence Deberry,
22 D-E-B-E-R-R-Y.

23 **DIRECT EXAMINATION**

24 BY MR. MEADORS:

25 Q Mr. Deberry, where are you from?

SW - S. DEBERRY - DIRECT

1 A My father was in the military so I'm ---

2 Q How long have you been here?

3 A Probably about ten years.

4 Q Ten years. And tell the ladies and gentlemen of
5 this jury a little bit about you, your background,

6 your education. How long you been in law

7 enforcement?

8 A Coming up on two years next month.

9 Q And what are the different positions you've held
10 or what's your job at the Sheriff's Department?

11 A Patrol deputy.

12 Q Are you --

13 A Patrol.

14 Q Excuse me?

15 A I work patrol.

16 Q And does that mean you're assigned to certain
17 areas?

18 A Yes.

19 Q And is this one of the areas that you were
20 assigned to in May of 2010?

21 A Yes, sir, at that time I was working as a deputy
22 in that area.

23 Q And how many deputies in that area?

24 A In Rembert Dezel (ph)? Usually just about one.

25 Q One?

SW - S. DEBERRY - DIRECT

- 1 A Yes, sir.
- 2 Q And what was your shift, do you remember? What
- 3 shift were you on?
- 4 A What time of day?
- 5 Q Right.
- 6 A It was night shift, 6 p.m./6 a.m.
- 7 Q That was my question. 6 p.m./6 a.m. And do you
- 8 remember getting this call and responding to this
- 9 address, [REDACTED]
- 10 A Yes, sir.
- 11 Q I mean, you remember?
- 12 A Yes, sir.
- 13 Q Did you know Ms. Davis from the detention center
- 14 but did you know her before then.
- 15 A No, sir, I don't remember.
- 16 Q And were you the first officer on the scene?
- 17 A Yes.
- 18 Q And when you arrived back was the brother-in-law
- 19 in there or do you remember?
- 20 A There was a male gentleman I believe it was Mack
- 21 I don't recall exactly who it was.
- 22 Q But you knew a neighbor that'd been involved in
- 23 this at some point, correct?
- 24 A Yes.
- 25 Q Tell the ladies and gentlemen, describe

SW - S. DEBERRY - DIRECT

1 Ms. Davis' demeanor when you got there.

2 A When I arrived she was still visibly upset. She
3 actually seemed to be a little bit -- in my presence
4 apprehensive to come out of house at that time
5 still.

6 Q Still what? I'm sorry.

7 A She was still she apprehensive wanting to come
8 outside while I was there. She was still quite
9 upset.

10 Q And did she come out and talk to you?

11 A She walked and talked to me.

12 Q At the door, okay.

13 A Yes, sir.

14 Q And was she able to tell you what happened?

15 A Yes, yes.

16 Q And as part of law enforcement, especially a
17 person who you were a first responder?

18 A Yes, sir.

19 Q Do you like to try to not only find out what
20 happened, but if you know, who the suspect might be?
21 Isn't that something you would try to find out early
22 on?

23 A Yes, of course we ask for descriptions.

24 Q Okay. That was my next question. Do you ask for
25 descriptions?

SW - S. DEBERRY - DIRECT

- 1 A Yes, sir.
- 2 Q And did she give you one?
- 3 A Yes, sir.
- 4 Q And did she describe what kind of shirt he had?
- 5 A She said he had a white shirt.
- 6 Q And did she describe what type pants he was
- 7 wearing?
- 8 A Blue jean pants.
- 9 Q And she told you that that night?
- 10 A Yes, sir.
- 11 Q What, if any, facial hair did she tell you about?
- 12 A She said he had a goatee.
- 13 Q And did she say he was a black male?
- 14 A Yes.
- 15 Q And did she provide you with his name?
- 16 A She said that she recognized him as Rick Green.
- 17 Q And did you make that a part of your report?
- 18 A Yes.
- 19 Q That early morning?
- 20 A Yes.
- 21 Q Did she tell you about firing the shots?
- 22 A Yes.
- 23 Q Did she tell you about the neighbor?
- 24 A Yes, sir.
- 25 Q Now you're a deputy. And does an investigator

SW - S. DEBERRY - DIRECT

1 usually come and involve and followup on what you
2 have found?

3 A Yes.

4 Q And was that deputy the investigator Wesley
5 Gardner?

6 A Yes, sir.

7 Q So is it fair to say you come, you get
8 information from her, and you pass it on to the
9 investigator?

10 A Yes, sir.

11 Q Had you been out in this area before?

12 A I'd been in the area. I have not been to that
13 particular house before.

14 Q And is it fair to say -- and I can't go through
15 every bit of it, but is it fair to say she told you
16 what happened and you put it in this report?

17 A Yes.

18 Q And this is Ms. Davis you talked to?

19 A Yes.

20 Q Beg the Court's indulgence.

21 THE COURT: Yes.

22 MR MEADORS: I think that's all.

23 BY MR. MEADORS:

24 Q What time of day was this when you got there?

25 A Response time is somewhere just after 4:00.

SW - S. DEBERRY - CROSS

1 Q 4:00 in the morning still dark?

2 A Yes.

3 MR. MEADORS: Thank you, Judge.

4 THE COURT: Cross-examination, Mr.

5 Hasties.

6 MR. HASTIE: Yes, sir.

7 **CROSS - EXAMINATION**

8 BY MR. HASTIE:

9 Q Good afternoon.

10 A Good afternoon, sir.

11 Q So your father was in the military?

12 A Yes.

13 Q He was in the army or air force?

14 A Air force.

15 Q Let's go back to this night over a year ago. She

16 told you that she fired her weapon how many times

17 did she say?

18 A I have two to three. I believe I remember her

19 saying somewhere a couple I believe is what she

20 said. I estimated two or three.

21 Q Now when someone doing an investigation, someone

22 tells you something you write exactly down what they

23 say?

24 A Yes.

25 Q You don't summarize it?

SW - S. DEBERRY - CROSS

1 A A general idea of what they said, but as far as
2 descriptions I put specifics.

3 Q But you think she told you two or three times,
4 couple of times. You wrote two or three, warning
5 shots, okay. And you didn't know her before even
6 though she works at the jail. You'd never seen her
7 before?

8 A I don't believe I saw her before.

9 Q Now when you got there she told you about someone
10 named Rick Green had tried to enter her home. She
11 fired a shot. Did you ask to see the weapon that
12 she fired?

13 A Not at that time.

14 Q Did you ask to see the weapon at all?

15 A No.

16 Q Did you check for casings to see whether there
17 was two or four casings on the ground?

18 A No, sir, I didn't.

19 Q She did say that -- at that time did she tell you
20 about the cut wires and the phone? Did you know
21 about that?

22 A No, sir, not at the first response time.

23 Q But she did tell you by your report -- you got
24 your report in your hand; don't you?

25 A Yes, sir.

SW - S. DEBERRY - CROSS

1 Q On that third line, she recognized the subject as
2 Rick Green, attempted to what her door?

3 A Pry open the door.

4 Q Pry open the door. And I guess she's talking
5 about the front door?

6 A Yes, sir.

7 Q Pry open the front door. Did she mention that he
8 had any type of device, crowbar, or anything like
9 that to pry open the door or was it with his hand?
10 Did she mention?

11 A I don't recall.

12 Q You don't recall that. That also try to lift the
13 garage door. She told you about that. He evidently
14 was trying to lift the garage door open. Now in
15 your report that last two lines, could you read that
16 last sentence there, Davis also, into the record.

17 A Davis also reported that she found ---

18 MR. MEADORS: Objection. If he's offering
19 this I will object to it.

20 THE COURT: You reading without offering
21 it?

22 MR. MEADORS: Yes, sir.

23 THE COURT: Objection sustained.

24 Objection is sustained.

25 ///

SW - S. DEBERRY - CROSS

1 MR. HASTIE: Okay.

2 THE COURT: It's not in evidence. You
3 can't read from it.

4 MR. HASTIE: Yes, sir.

5 BY MR. HASTIE:

6 Q By your report, how high, by your report now, did
7 she say that garage door was open?

8 A That last line is not mine. That was added by my
9 investigator.

10 Q Oh, somebody else wrote the last sentence there?

11 A They signed their name.

12 Q All right.

13 MR. MEADORS: Objection.

14 THE COURT: Objection is sustained. The
15 jury is to disregard the question and the answer.
16 Now if you want to offer the report we go from
17 there; but otherwise, the matter cannot be testified
18 to.

19 MR. HASTIE: Yes, sir. Court's
20 indulgence, Your Honor.

21 THE COURT: All right.

22 MR. HASTIE: Your Honor, at this time I
23 would like to offer this report into evidence.

24 THE COURT: Any objection?

25 MR. MEADORS: Without objection.

SW - S. DEBERRY - CROSS

1 THE COURT: Admitted into evidence by the
2 Defense without objection. Hand it to the court
3 reporter and have it marked defense number one
4 without objection. That will be Defense Number 3 in
5 this?

6 THE COURT REPORTER: That's two.

7 THE COURT: Two without objection,
8 admitted as Defense Number 2 without objection.

9 (WHEREUPON, Defendant Exhibit No. 2 was
10 received into evidence.)

11 MR. HASTIE: Thank you, Your Honor.

12 THE COURT: All right.

13 BY MR. HASTIE:

14 Q Let's take a look at this report that's now in
15 evidence. Now that last sentence, even though you
16 said it wasn't written by you, could you read into
17 the report what it says.

18 A Davis also reported that she found the garage
19 door up approximately 2 feet and the telephone line
20 was cut. Signed, investigator -- I can't read the
21 name.

22 Q Gardner I think it is. Do you know Investigator
23 Gardner?

24 A Yes, sir.

25 Q Okay. So her -- she reported in this report and

SW - S. DEBERRY - CROSS

1 the two of y'all signed this report and I apologize
2 for that. Two of y'all initialed your report with
3 Gardner and some language in your report?

4 A Yeah.

5 Q And that language said that she reported that the
6 garage door was open 2 feet is what you just read,
7 right? Is that correct?

8 A Yes, sir.

9 Q Okay. Was there any damage to the garage door
10 that you could see?

11 A Not that I could see.

12 Q Was there any damage to the front door?

13 A I don't recall seeing any.

14 Q You don't recall seeing any damage to the front
15 door, but you see the report does say the front door
16 was being pried open?

17 A Yes, sir.

18 Q Did you take any pictures of the garage door?

19 A No, sir, I did not have a camera.

20 Q You didn't have a camera so someone couldn't take
21 pictures of the front door as well?

22 A No.

23 Q When do you all take fingerprints? Do you call
24 someone else to take fingerprints?

25 A Yes, investigation usually handles that.

SW - S. DEBERRY - CROSS

1 Q Investigation handles that and investigators were
2 called?

3 A I notified my superior whenever I took the
4 report.

5 Q So if any fingerprints were taken, pictures were
6 have been taken, it wouldn't be taken by you, it
7 would be taken by an investigator; is that correct?

8 A Yeah.

9 Q While you were there was it still 4:00 in the
10 morning? Did anyone of the neighbors come and say,
11 well I did hear some shots being fired.

12 A The only person I spoke to about shots being
13 fired was Ms. Davis.

14 Q Mr. Who?

15 A Ms. Davis.

16 Q Ms. Davis.

17 MR. HASTIE: Your Honor, I have no further
18 questions.

19 THE COURT: Redirect.

20 MR. MEADORS: That's fine.

21 THE COURT: All right, thank you. You may
22 step down.

23 MR. MEADORS: May we approach.

24 THE COURT: Yes, come up Mr. Hastie.

25 MR. HASTIE: Yes, sir.

1 (WHEREUPON, counsel approached the Bench
2 for an off-the-record discussion.)

3 THE COURT: It's about ten to five and
4 I've been advised the next witness may take a little
5 time. Plus, we do have some legal matters we will
6 have to take up anyhow so I think the best time for
7 us to do those is now. And so I'm going to excuse
8 you, allow you to go to your home and families for
9 the evening and ask you to be back please in the
10 jury room tomorrow morning at 9:30 and we'll be
11 ready to go forward when you're assembled in your
12 jury room. Do not discuss the case among
13 yourselves. It's still premature for you to begin
14 any discussion in the case. Do not discuss it with
15 your family or anyone else that you might see over
16 the evening recess because you've got to decide the
17 case based on what you've heard in this courtroom
18 and all bases of that anyone else might say. And
19 also do not listen to any news stories or television
20 or radio broadcasts next matter. Simply forget
21 about this matter over the evening recess and return
22 in the morning at 9:30 and we'll be ready to begin
23 at that time. But if you would, be back in the jury
24 room tomorrow morning at 9:30 and I'll see you at
25 that time. Have a pleasant evening.

1 (WHEREUPON, the jury was removed from the
2 courtroom at 4:56 p.m., and the following
3 proceedings commenced in open court.)

4 THE COURT: All right. I realize the
5 State hadn't rested. Mr. Hastie, what I would like
6 to do at this time is to talk with Mr. Green about
7 his Fifth Amendment rights without inquiring give me
8 an answer until tomorrow.

9 So Mr. Green, I would ask that you stand
10 please. Mr. Green, you may be called as a witness
11 to testify on your own behalf. I now advise you
12 that you have the right to invoke the protections
13 given to you by the Fifth Amendment of the
14 Constitution of the United States and similar
15 counterpart provision of the constitution of the
16 State of South Carolina. The United States
17 Constitution provides in part that no person shall
18 be compelled in any criminal case to be a witness
19 against himself. This provision of constitutional
20 law means that you cannot be compelled or required
21 to testify in this case. This is a right and a
22 privilege which the law extends to you. It is a
23 personal privilege and no one can waive this right
24 except you. You have the right not to testify but
25 you also have the right to testify. The Court will

1 grant you the right to consult with your lawyer
2 before you make a decision. If you elect not to
3 testify your failure to testify cannot be used by
4 the State as an inference of guilt and your failure
5 to testify could not be considered by the jury in
6 its deliberations. If you elect to testify and
7 waive the privilege given to you by the constitution
8 I advise you that you will then assume the role of a
9 witness in this case and you will then waive or give
10 up your constitutional privilege against
11 self-incrimination. This means that if you
12 voluntarily take the witness stand and testify that
13 you will then subject yourself to the same rules
14 that govern owe witnesses, and you may be examined
15 and cross-examined on any relevant issue in this
16 case and you may be impeached to the same extent as
17 any other witness, all of which is subject to the
18 rules of law and the rules of evidence.

19 I further advise you that if you elect to
20 take the witness stand and testify that this
21 decision on your part must be made freely,
22 voluntarily, intelligently, and with knowledge of
23 protections given to you by the constitution and the
24 knowledge of the consequences of your election to
25 testify. Do you understand what I have explained to

1 you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions that
4 you wish to ask me regarding your Fifth Amendment
5 rights?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. I'm not going to
8 require to you give me an answer today, but I'm
9 going to let you have the evening recess and talk
10 with this matter, talk about your Fifth Amendment
11 right with your lawyer and be prepared to tell me
12 tomorrow morning whether you do or do not wish to
13 exercise your privilege against self-incrimination
14 or whether you wish to waive that right and testify.
15 But I will ask you that in the morning, but for now
16 I just want to make sure that you knew your rights
17 and that you understood them. All right.

18 One of the things -- you may be seated.
19 One of the things, Mr. Hastie and Mr. Meadors, that
20 impacts upon a decision, a defendant's decision as
21 to whether to testify under rule 608 or 609 is his
22 criminal record. What do you consider to be matters
23 that would be impeachable offenses, Mr. Meadors?

24 MR. MEADORS: Just if I could just go down
25 I don't think it's -- 2001 resisting arrest, it's...

1 THE COURT: All right.

2 MR. MEADORS: I'll have to check on the
3 date to see if that's it.

4 THE COURT: It's close. But even if it
5 was, you know, 2001, it's actually a ten years from
6 the expiration of the sentence so we have to look
7 and see what he got. I don't know what ---

8 MR. MEADORS: It's very close and I'll
9 have that in the morning, Judge.

10 THE COURT: All right.

11 MR. MEADORS: Breaking into a motor
12 vehicle February of 2003, use of vehicle without
13 permission in 2003, and another breaking and
14 entering, Your Honor, in 2003. I'll have the
15 certified indictments tomorrow to clarify.

16 THE COURT: That's B&E auto?

17 MR. MEADORS: Yes, sir.

18 THE COURT: Okay.

19 MR. MEADORS: CDV first, which I --- 2007,
20 that will not be, I'm sorry.

21 THE COURT: All right.

22 MR. MEADORS: Failure to stop for blue
23 light in '90 with a ten year suspended five years
24 confinement, five years probation.

25 THE COURT: What year?

1 MR. MEADORS: June of '90. I don't know
2 how long his probationary -- that probably is but
3 I'd like to check with the probation department.

4 THE COURT: Check on that.

5 MR. MEADORS: Possession of a weapon on
6 ABC premises. That was a year. That was in -- that
7 was 1990 as well as receiving stolen goods. It was
8 in '90, but we argue with Your Honor to consider
9 since it's a larceny that we -- with the exception
10 of the ten year rule. A resisting arrest, that's
11 '94, excuse me.

12 THE COURT: '94?

13 MR. MEADORS: Yes, sir. Three accessory
14 after the facts, that's also '94. Two more also in
15 '94. Your Honor, I apologize, but the failure to
16 stop he had back in '95 was revoked and he got five
17 years in '95. Again, maybe I'll sign -- I'll check
18 with probation. Judge, then we got some house
19 breakings and larcenies and I just respectfully ask
20 the Court to consider the larcenies. That's back in
21 June '94 a YOA for a larceny, attempted house
22 breaking and ---

23 THE COURT: When was that, the same year?

24 MR. MEADORS: Same year. Another house
25 breaking, petit larceny, another house breaking,

1 petit larceny for one disposition of a, I guess it
2 was on YOA, Judge.

3 THE COURT: That was in '84?

4 MR. MEADORS: Yes, sir. But again on
5 those, it was a petit larceny, one, two petit
6 larcenies and a -- they're all, four petit
7 larcenies, Your Honor.

8 THE COURT: All in '84?

9 MR. MEADORS: Yes, sir. Failure to stop
10 for a blue light he was revoked -- excuse me, that
11 was back in '84. Judge, there's another house
12 breaking, that's '84. House breaking and larceny
13 '85. House breaking and larceny four counts '85.
14 He got four years on all those, Judge. Appears to
15 be a couple of more in '85 looks like scribbled
16 together and burglary third, larceny, house
17 breaking, larceny two counts, July '85. Those are
18 all concurrent. Receiving stolen goods in '87.
19 That's it, Judge.

20 THE COURT: All right Ms. I'm not sure
21 exactly what Mr. Meadors is intending to use but it
22 looked like we can clear up some things right now
23 starting back to the 2001 resisting arrest,
24 Mr. Hastie you agree that that would be admissible
25 under rule 609?

1 MR. HASTIE: I do, Your Honor.

2 THE COURT: And 203 breaking and entering
3 auto would be to under 609, 203 use of vehicle
4 without owner's consent is also particular period
5 and you agree that that would be admissible?

6 MR. HASTIE: Yes, sir.

7 THE COURT: And then 203 another breaking
8 auto would be admissible.

9 MR. HASTIE: Yes, sir.

10 THE COURT: All right. Now the other
11 things looks like we're gonna have to look at and
12 see what the situation is. What do you contend,
13 Mr. Meadors, is admissible if it's outside ten years
14 and why is it admissible?

15 MR. MEADORS: Judge, at this point I
16 haven't -- I don't have priors. Some of the --

17 THE COURT: Well, what I want you to do is
18 when we break here, go over here you and Mr. Hastie
19 go over the criminal record. You determine what you
20 are going to want to you're gonna contend is
21 admissible and if he takes the stand and then if
22 Mr. Hastie doesn't agree with that we'll take it
23 up -- I'll take it up with y'all in the morning at
24 9:00 so y'all get together and decide which of the
25 ones other than those that are in the 2000 series,

1 the already might be close, the others '03
2 convictions are. But the ones that go back into the
3 '80s and '90s you need to advise Mr. Hastie of what
4 you want to use and if the defendant takes the stand
5 and if he disagrees that's admissible then I will
6 rule on that in the morning at 9:00.

7 MR. MEADORS: Your Honor, I'm not trying
8 to be -- it looks like he was revoked and did some
9 more time, and I think it's out of that ten year
10 period but I can't know that until I talk to
11 probation office.

12 THE COURT: Y'all look at that and let me
13 know in the morning at 9:00. If it's something I
14 need to rule on then I can rule on that in the
15 morning. All right. Mr. Meadors, what do you
16 anticipate, one other witness or two?

17 MR. MEADORS: The most two. Perhaps just
18 candidly one, but it might be two but I wouldn't --
19 it might just be just one.

20 THE COURT: You got two on the list.

21 MR. MEADORS: It might just be one.

22 THE COURT: Okay. All right, Counsel,
23 then we'll -- anything else that we need to cover
24 before that we can take care of today that we don't
25 need to take care of till in the morning? Anything

1 you can think of Mr. Hastie, Mr. Meadors? All
2 right, we'll be in recess then until 9:00 tomorrow
3 morning and let's take up the matters if y'all can't
4 agree on it. We'll know exactly where we stand with
5 Mr. Green and his desire to testify, and he does
6 have the right to know what he thinks are
7 impeachable offenses before he makes that decision.
8 All right, thank you. We'll be in recess till 9:00
9 in the morning.

10 (WHEREUPON, the proceedings were concluded
11 for the day to be reconvened on September
12 13, 2011.)

13 THE COURT: Mr. Mills, I'm going to ask
14 you, if you would please, sometime when this case
15 over to find out from me what the reason for that
16 problem was. My understanding is that the call in
17 to the Clerk's office about quarter to nine that
18 related to Mr. Scott, Mr. Scott related to somebody
19 about six minutes to nine and at 9:25 the juror
20 called and nobody had been there basically got to
21 the Sheriff's Office to the security for the court
22 at six minutes to nine, and it was about an hour and
23 ten minutes before the juror got here and I'd like
24 to find out the reason for it so thank you. All
25 right. Bring the jury in.

1 (WHEREUPON, the jury was returned to the
2 courtroom, and the following proceedings
3 commenced in open court.)

4 THE BAILIFF: All the jurors are present
5 and in the courtroom.

6 THE COURT: All right. Thank you very
7 much, ladies and gentlemen. I appreciated your
8 promptness in being back here. And I will tell the
9 juror, you did exactly what you were supposed to do.
10 You had a transportation problem and the problem was
11 not with you but with the our system of picking up
12 jurors. We're now ready to go forward and we will
13 go forward at this time.

14 Mr. Meadors, you may call your next
15 witness.

16 MR. MEADORS: If it please the Court, Your
17 Honor, the State would now call Investigator Wesley
18 Gardner.

19 THE COURT: Thank you, Mr. Gardner.

20 THE BAILIFF: Place your left hand on the
21 Bible, raise your right hand. State your name
22 please.

23 THE WITNESS: Wesley Gardner.

24 WHEREUPON,

25 WESLEY GARDNER,

SW - W. GARDNER - DIRECT

1 having been duly sworn by the Clerk of Court,
2 testified as follows:

3 THE BAILIFF: Have a seat up here please.
4 Please state your full name, spell your last name
5 for the record.

6 THE WITNESS: Wesley Gardner,
7 G-A-R-D-N-E-R.

8 **DIRECT EXAMINATION**

9 BY MR. MEADORS:

10 Q Good morning, Investigator Gardner.

11 A Good morning.

12 Q Investigator, will you please tell this jury
13 about you. Generally, you know, where are you from,
14 where are you born and raised, your education, your
15 background and training, and in particular your
16 training and the time you've spent in law
17 enforcement please, sir.

18 A My name is Wesley Gardner. I was born in the
19 Rembert area. I was in law enforcement now almost
20 30, 40 years. I've been with the Sumter County
21 Sheriff's Office 29 years, and I've been an
22 investigator for 23 years.

23 Q And as an investigator are you assigned to a
24 certain regions or the whole county, how does that
25 work?

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1 A Right now I'm assign to the whole county.

2 Q And back in last year, May of 2010, you were an
3 investigator?

4 A That's correct.

5 Q Any particular region then?

6 A I just all over the county.

7 Q And is it fair to say that whoever the first
8 investigator is that goes to a scene that's kind
9 their case?

10 A Mainly what we do, once we get the reports in the
11 morning the supervisor assign cases to the
12 investigators.

13 Q And the case we're discussing or presenting to
14 this jury, Investigator, were you the lead
15 investigator on this case?

16 A Yes, I was.

17 Q Now let's go back in time to May 4th of last
18 year. Do you remember what -- what shift were you
19 working?

20 A We normally work day shift.

21 Q Okay. So that starts when?

22 A 8 to 5 or whenever we get off.

23 Q And did you get assigned to this case and get
24 involved on May 4th, 2010?

25 A Yes, that's correct.

SW - W. GARDNER - DIRECT

1 Q Tell the ladies and gentlemen of the jury what
2 did you do?

3 A I was the lead investigator on this case; and
4 what I did, I met with Ms. Davis that afternoon. I
5 went out to her house and I talked to her a little
6 bit about the case.

7 Q And did you know Ms. Davis?

8 A Yeah, I've known her and her family for years.

9 Q And this -- when you got there were you aware of
10 what's -- it's actually in evidence, Defendant's 2.

11 Can I approach, Your Honor?

12 THE COURT: Yes.

13 BY MR. MEADORS:

14 Q Were you aware that Deputy Deberry had already
15 been out there?

16 A Yes, sir.

17 Q And were you aware when you got to the residence
18 that's where you met her, at the residence, correct?

19 A Yes.

20 Q That there was already a suspect?

21 A Yes.

22 Q And then she also conveyed, said to you who the
23 person was that had --

24 A Yeah.

25 Q --been to her house?

SW - W. GARDNER - DIRECT

1 A Yes. She told me Rick Green at that time broke
2 in.

3 Q Now did you have an opportunity to look at the
4 house?

5 A Yes, I did.

6 Q And what, if any, observations did you make,
7 Investigator?

8 A I took photographs of the phone line wire that
9 was cut and also photographs of the garage door and
10 the front door to the house.

11 MR. MEADORS: Your Honor, if I may get
12 these exhibits from the court reporter.

13 BY MR. MEADORS:

14 Q Investigator, I want to show you what's marked
15 State's 1, what's in State's 1, excuse me. Did you
16 take that picture?

17 A Yes.

18 Q What's that a picture of?

19 A That's a picture of the phone line that was cut.

20 Q And through the investigation, as the chief
21 investigator did you learn she tried to make a phone
22 call and couldn't?

23 A Yes, that's correct. She said she tried to make
24 a phone call and the phone was dead.

25 Q And is that why you were -- is that what led you

SW - W. GARDNER - DIRECT

1 to this or --

2 A Did he show you that, or did you find it. I want
3 they told any the phone had been cut.

4 Q Okay. Your Honor, may I publish this?

5 THE COURT: Yes, sir. You recall, ladies
6 and gentlemen, I told you anything that was admitted
7 in evidence the lawyers could ask and publish that.
8 That means show it to the jury. You can pass it
9 around while you're sitting there. Do not be
10 concerned if you do not have long to look at it as
11 you might like to. It will go with you when you
12 retire to the jury panel in deliberations for the
13 verdict.

14 BY MR. MEADORS:

15 Q Investigator, State's 2, you took this picture
16 also?

17 A Yes, that's correct.

18 Q And did you take this picture after you had
19 talked with Ms. Davis?

20 A Yes.

21 Q And as the chief investigator and investigating
22 this crime, did you learn that this door had been
23 partially opened?

24 A Yes.

25 Q All right. And who told you that?

SW - W. GARDNER - DIRECT

1 A Ms. Davis told me that.

2 Q And in fact, did you add that to what's already
3 in evidence as Defendant's 2?

4 A Yes, that's correct.

5 Q And I'm gonna show you what's Defendant's 2.
6 It's down at the very bottom. Could you read that
7 starting here.

8 A Davis also reported that she found the garage
9 door approximately 2 feet and the telephone lines
10 was cut, the line was cut.

11 Q So this report was produced by Deputy Deberry?

12 A That's correct.

13 Q And after you went out to investigate you added
14 to this report?

15 A Yes, that's correct.

16 Q And did you do that the same day?

17 A Yes.

18 Q Back in May, May 4th, 2010?

19 A That's correct.

20 Q And did you actually see the door open just a
21 little bit, or that's what you were told is --

22 A That's what I was told.

23 Q And you made note of that?

24 A Yes.

25 Q And then you took a picture of this garage door

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1 and obviously it's all the way open at this point,
2 correct?

3 A Yes, all the way. When I got there it's all the
4 way open.

5 THE COURT: Can I mark this as State's...
6 (WHEREUPON, State Exhibit No. 4 was marked
7 for identification only.)

8 MR. MEADORS: May I approach again please,
9 Judge.

10 THE COURT: Yes, sir.

11 BY MR. MEADORS:

12 Q Wesley, looking at State's 4 for ID, who is
13 listed down there as a witness?

14 A I am.

15 Q And did you have an occasion to take that
16 statement from Ms. Davis?

17 A Yes.

18 Q And when was this?

19 A This was the same day I went out there on
20 May 4th.

21 Q And did you take this out?

22 A Yes, and she wrote on the statement.

23 Q And then did she say in here how many times she'd
24 shot?

25 A Yes.

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1 Q And ---

2 A Four times.

3 MR. MEADORS: Now Your Honor, with the
4 Court's permission could we ask Investigator Gardner
5 to come down please and speak loudly.

6 THE COURT: Sure.

7 BY MR. MEADORS:

8 Q Investigator, if you want to stand by the
9 microphone. Have you looked at State's 3?

10 A Yes.

11 Q Yesterday and today?

12 A Yes.

13 Q And it's been pointed out, but can you point out
14 Ms. Davis' house again to the ladies and gentlemen
15 of the jury?

16 A This is Ms. Davis' house right here, [REDACTED]

17 [REDACTED]

18 Q And I think -- I'm not sure. So that's in Sumter
19 County?

20 A That's correct.

21 Q Now did you know where or do you know where the
22 defendant was living at that time?

23 A Yes, I did. He lived at [REDACTED].

24 Q And what road is Pisgah Road off of?

25 A Black River Road runs here. Pisgah runs from

SW - W. GARDNER - DIRECT

1 north south there. And this is corner, corner of
2 the store right here.

3 Q And tell me again where the defendant lives?

4 A He lives at [REDACTED]

5 Q Now you were present when Mr. Mack testified,
6 correct?

7 A Yes.

8 Q Do you know where Mr. Mack ---

9 A Mr. Mack ---

10 Q ---lives?

11 A ---lives right here.

12 Q And I think there's been testimony and I, with
13 all due respect to the lady, the elderly lady lived
14 there, correct?

15 A That's right.

16 Q Do you know who lives back here, anybody, May
17 10th. And I'm referring to the trailer behind the
18 victim's residence, Your Honor.

19 A That's an elderly lady also. I think she's 60.

20 Q Sixty at this point?

21 A Right.

22 Q That's all on this particular thing.

23 THE COURT: All right, you may come back
24 up.

25 THE WITNESS: All right.

SW - W. GARDNER - DIRECT

1 BY MR. MEADORS:

2 Q How long have you known Ms. Davis?

3 A Ms -- I met her over 20 years. I don't -- I'm
4 from Luminary (ph) her family is from Luminary. I
5 been knowing her husband for at least 20 some years.

6 Q And the reason I ask that is when you got there
7 it was 7:00 that same day?

8 A Right, about 7:00 p.m.

9 Q And but could -- was she -- can you describe her
10 demeanor then as she was telling you about this?

11 A She was still upset that Ricky Green tried to
12 break into her house. She was still upset, right.

13 Q And there wasn't any confusion when she heard the
14 name when she -- you understood she said Ricky Green
15 or Rick Green.

16 A Yes, she said Rick Green.

17 Q And is that Mr. Richard Green sitting there with
18 Mr. Hastie who was arrested by department for
19 burglary first degree?

20 A Yeah, that's him.

21 Q At my request did you Google the population of
22 the world?

23 A Yes, I did.

24 Q And what is that?

25 A Approximately 6.9 billion.

SW - W. GARDNER - CROSS

1 Q 6.9 billion?

2 A Yeah.

3 MR. MEADORS: Beg the Court's indulgence,
4 Judge. I think that's all I have. Thank you.

5 THE COURT: Cross-examination, Mr. Hastie.

6 MR. HASTIE: Yes, Your Honor.

7 **CROSS - EXAMINATION**

8 BY MR. HASTIE:

9 Q Good morning, Detective.

10 A Good morning.

11 Q How are you doing?

12 A All right.

13 Q Did you prepare a written statement yourself for
14 this investigation?

15 A No -- as far as the victim's statement?

16 Q Yes.

17 A No, she wrote her own statement.

18 Q Did you prepare an overall statement of --

19 A Yes, I did.

20 Q --the case file?

21 A I did a case summary.

22 Q You did a case summary. So you did do that?

23 A Yes.

24 Q At the investigators or police academy I guess, I
25 assume you are trained on how to prepare written

SW - W. GARDNER - CROSS

1 statements; is that correct?

2 A That's correct.

3 Q And I assume that you all are taught ed to
4 prepare complete and accurate reports; is that
5 correct?

6 A Yes, best we can.

7 Q And I assume that you all are taught to include
8 everything about incident that was important to the
9 situation?

10 A Everything that we're familiar with.

11 Q That you're familiar with?

12 A Right.

13 Q And this is important because that's what the
14 prosecutor or attorney and the county use to put a
15 case together; is that correct?

16 A That's correct, like I said.

17 Q Okay. Are you taught to write down exactly what
18 you are told by the victim in your report.

19 A We try to get as accurate as we can.

20 Q As accurate as you can, okay. Now, and you were
21 just shown by Mr. Meadors Defense Exhibit Number 2 I
22 believe it was, and I think he already asked you
23 about the distance of this garage door; is that
24 correct?

25 A That's correct.

SW - W. GARDNER - CROSS

1 Q Now you were here when she testified that the
2 garage door was open about 2 inches yesterday.

3 A That's correct.

4 Q You heard -- you remember that?

5 A Right.

6 Q But in the report that you wrote down on May
7 the 4th she told you by your statement in the report
8 that it was open how far, how wide?

9 A Approximately 2 feet.

10 Q 2 feet?

11 A Right.

12 Q So there's a big difference between 2 feet and 2
13 inches?

14 A Right, right.

15 Q Did you take any pictures of the garage door?

16 A Not the door itself. I won't pick up the garage.

17 Q Okay. Any reason why because what her statement
18 she said the garage door was pried open; is that
19 correct?

20 A That's correct.

21 Q And you chose not to take a picture of any
22 damage. Was any damage to the garage door?

23 A I didn't see any damage to the garage door. In
24 fact, I think one of the wheels had came off and her
25 husband had already put the wheel back on when I got

SW - W. GARDNER - CROSS

1 there.

2 Q Okay.

3 A One of the wheels where you pull it up.

4 Q Did you see any kind of damage that might reflect
5 someone tried to pry that garage door 2 feet up?

6 A I didn't see any kind of damage.

7 Q You didn't see?

8 A In fact, the bottom of the garage is rough so I
9 didn't see any damage.

10 Q Did you talk to the husband about putting the
11 wheel back on the garage door at all?

12 A He told me that he put it back on.

13 Q He told you he put it back on the door?

14 A Right.

15 Q Did you include that anywhere in your written
16 report?

17 A I don't think I did.

18 Q What about the phone line being cut? You took
19 pictures of the -- is that the phone box I assume?

20 A Yeah, that's the box.

21 Q Phone box?

22 A Yes.

23 Q Is there any way that you could tell how long the
24 lines were cut? Was it cut last night or was it cut
25 two days ago? Could you tell that by your

SW - W. GARDNER - CROSS

- 1 investigation?
- 2 A No, I couldn't tell how long it's been cut.
- 3 Q There's absolutely no way you can tell when it
- 4 was cut.
- 5 A No, I couldn't tell.
- 6 Q No, no. Did you check with the phone company to
- 7 see whether those lines were cut at all that night
- 8 or two days before at all?
- 9 A Well, according to Ms. Davis, I think she
- 10 testified that when she -- she had talked on the
- 11 phone prior to, prior to going to bed, so the phone
- 12 had been working.
- 13 Q According to Ms. Davis?
- 14 A Yeah.
- 15 Q What about fingerprints? She said someone was
- 16 prying on the garage door. She also testified that
- 17 someone was pulling on her front door.
- 18 A Right.
- 19 Q Did you fingerprint her front door at all?
- 20 A No, I didn't. Very seldom are we going to get a
- 21 fingerprint off a doorknob, very seldom.
- 22 Q Well, she said she had a screen door. There
- 23 probably would have been a handle there.
- 24 A Well, a handle, that's even worse, you know.
- 25 Q And this person is pulling on this door, you

SW - W. GARDNER - CROSS

1 heard her testimony, for over a minute. And you
2 chose to decide not to try and get any fingerprints?

3 A Well just what I said, a handle on a door it's
4 really not enough to even lift a fingerprint off of.

5 Q Oh, really.

6 A Because it's real small and it's not -- most
7 handles are not smooth, and it's kind of hard to
8 lift a fingerprint off of a handle.

9 Q Do y'all ever fingerprint handles to doors in
10 your 30 years of investigation?

11 A Not.. Not a handle.

12 Q Never?

13 A No, I haven't.

14 Q Okay. Was there any damage then to the front
15 door because your testimony is that this big fella
16 over here was pulling on her front door for over a
17 minute. Was there any damage that you could see to
18 her front door?

19 A No, I didn't see any damage.

20 Q You didn't see no damage?

21 A No.

22 Q Did you take any pictures in case there wasn't?

23 A I think I took overall picture of the house.

24 Q Of the front door?

25 A Not specifically of the front door I took a

SW - W. GARDNER - CROSS

1 picture of the house.

2 Q Now the front door and garage were where this
3 burglar tried to enter her home, right?

4 A That's correct.

5 Q And you took no pictures of the garage damage.
6 Could have pulled it down -- I know you did took a
7 picture of the garage, but you didn't pull it down
8 just look at it and say, what, look like somebody
9 was here doing something?

10 A Yes, sir, they did. In fact, her husband let it
11 down a little ways, and that's where the rubber was
12 seen under the bottom of the garage door and
13 actually wasn't anything found.

14 Q Wasn't any damage?

15 A I didn't see any damage.

16 Q So you didn't see no damage at all? You don't
17 look at that there? Area product the front door,
18 this guy, somebody was pulling on this door for over
19 a minute -- you heard the testimony -- and there was
20 no damage that you could see; is that correct?

21 A That's correct.

22 Q Okay. Did she tell you anything about because
23 she said that's Rick Green, I know Rick Green, I saw
24 him walking away. Did she tell you anything that he
25 had a wire cutter?

SW - W. GARDNER - CROSS

1 A No.

2 Q On him, person, or any in his hand?

3 A No.

4 Q What about a crowbar prying the garage door up? I
5 did she mention anything about those kinds of items?

6 A No.

7 Q None of them. Now you say that you know that
8 Mr. Green lives at [REDACTED]?

9 A That's correct.

10 Q How do you know that?

11 A According to his identification.

12 Q According to his identification?

13 A Right.

14 Q Have you been by Pisgah Road to see if he still
15 lives there?

16 A That's his address. I think his mother lives
17 there, he lives there with his mother.

18 Q He lives with his mother there. Have you ever
19 been to that address?

20 A Several times.

21 Q Okay. Is it common practice to -- because you
22 made this statement about the 2 feet on the deputy's
23 report; is that correct?

24 A Yes, that's the incident report.

25 Q Incident report. Is it common police practice

SW - W. GARDNER - CROSS

1 that you write on someone else's report?

2 A That's why I initialed it. That's why I got my
3 name beside where I added something to this report.

4 Q Is that common practice?

5 A Yes. Yes, it is.

6 Q And you're sort of the head investigator?

7 A Yes.

8 Q So you read the report and saw that something
9 wasn't quite right, is that ---

10 A I just added the information that Ms. Davis told
11 me when I got there that wasn't on the accident
12 report.

13 Q You saw in the incident report you just described
14 that she evidently told Deputy Deberry that by her
15 own statement or in his report that she fired two or
16 three times; is that correct?

17 A That's correct.

18 Q In that report?

19 A Right.

20 Q But in your summary you said that she fired four
21 times?

22 A That's correct.

23 Q Because that is what she told you?

24 A Right.

25 Q So obviously when she met with -- you can't

SW - W. GARDNER - REDIRECT

1 testify to that. But Deberry's report is that two
2 or three times?

3 A That's correct.

4 MR. HASTIE: Court's indulgence, Your
5 Honor.

6 THE COURT: Yes.

7 MR. HASTIE: Thank you, Your Honor. I
8 have no further questions.

9 THE COURT: Redirect.

10 MR. MEADORS: Briefly please, sir. May I
11 approach please?

12 THE COURT: Yes, sir.

13 MR. MEADORS: Can we approach a second.

14 (WHEREUPON, counsel approached the Bench
15 for an off-the-record discussion.)

16 **REDIRECT EXAMINATION**

17 BY MR. MEADORS:

18 Q The subject, a Rick Green, she recognized the
19 subject Rick Green attempting to pry open the door
20 and also trying to lift the garage door, correct?

21 A That's correct.

22 Q And he asked you about the garage door. You got
23 a picture here of the garage but the door is
24 actually up inside the garage here, correct on,
25 State's 2?

SW - W. GARDNER - REDIRECT

1 A That's correct.

2 Q And you testified that out of your investigation
3 and talking with the husband and the wheel was off
4 and the husband repaired it?

5 A That's correct.

6 Q And you learned that that day?

7 A Yes.

8 Q And on State's 4 for I.D. does Ms. Davis put in
9 here about being in bed asleep and hearing the door
10 bell ringing?

11 A Yes, she did.

12 Q Seeing the man walking from the garage -- seeing
13 the man walking from my door and he tried to open
14 when he was walking from the garage door I said
15 that's Rick Green.

16 A Yes, that's in the statement.

17 Q Pull on the storm door?

18 A Yes.

19 Q And she's sitting in her den with the gun ready?

20 A Yes.

21 Q Weapon ready, I apologize. She put in here about
22 trying to make a phone call and that the line was
23 dead, trying to call 9-1-1?

24 A That's correct.

25 Q Opened back door firing four shots, is that in

SW - W. GARDNER - REDIRECT

1 here?

2 A Yes.

3 Q Waiting for a neighbor to get up around 4?

4 A Yes.

5 Q Is it in here she put flicked her lights?

6 A Yes.

7 Q Then here you came over?

8 A Yes.

9 Q Went with her to her car so she could get her
10 cell phone?

11 A That's correct?

12 Q And then she called 9-1-1?

13 A Yes.

14 Q So she put that in her statement that day?

15 A Yes.

16 Q Mr. Hastie asked you about the address of the
17 defendant. Is that information provided on his
18 arrest warrant, what was the other one, address?

19 A [REDACTED], Rembert.

20 Q That's information you got either from him or
21 about him from the time of his arrest?

22 A Yes, sir.

23 Q That's all I have.

24 THE COURT: Recross, Mr. Hastie.

25 MR. HASTIE: Yes, Your Honor.

SW - W. GARDNER - RECROSS

RECROSS - EXAMINATION1
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BY MR. HASTIE:

Q Did you get this address from Rick, Mr. Green, on the day of his arrest? Did he tell you that?

A No, not the address that's on this particular warrant.

Q That's right. He did not tell you that?

A I already had that information.

Q He did not tell you that?

A No, I already had that information.

Q But you were just asked did you get that from Mr. Green?

A Oh, I didn't understand what ---

Q Well, I want to make sure about that. On this arrest warrant you also have on here that he did enter the residence by prying open the garage door. Do you have proof that he entered this residence?

A According to Ms. Davis he was prying on the garage door. Now the garage door was up, and in order to get the garage door up you got to pull it up to me. I mean, once you pull a garage door up he's considered to be inside the residence.

Q Once you pull the garage up you're considered to be inside the residence?

A Right.

SW - W. GARDNER - RECROSS

1 Q Even though you heard the testimony it only went
2 up 2 inches.

3 A Well, your fingers can get a garage door up it's
4 two inches.

5 Q Were you there? Did you see Rick Green that
6 night?

7 A I didn't.

8 Q No you did not. But she was there, right?

9 A That's correct.

10 Q She was there?

11 A Yeah.

12 Q She described her situation. That garage door
13 was only open two inches. That's her testimony; is
14 that correct?

15 A That's correct.

16 Q Okay. I have nothing else, Your Honor.

17 THE COURT: All right. Thank you, Mr.

18 Gardner. You may step down.

19 MR. MEADORS: Beg the Court's indulgence.

20 THE COURT: Yes, sir.

21 MR. MEADORS: Your Honor, the State of
22 South Carolina rests.

23 THE COURT: All right. Thank you, Mr.
24 Meadors.

25 Ladies and gentlemen of the jury, you

1 heard the State announce they have rested their
2 case. That means that you have heard all of the
3 testimony that you will hear at this time. There
4 are certain matters of law which I now need to take
5 up with the attorneys involved, and so I'm going to
6 ask you to go to your jury room while I do take care
7 of these matters. Again, do not discuss this case
8 among yourselves. It would still be premature for
9 you to give any discussion among yourselves. Let's
10 take care of these matters for you. We'll send for
11 you very shortly.

12 And Mr. Meadors, if you will get that
13 exhibit, we need it back.

14 MR. MEADORS: Yes, sir.

15 THE COURT: Thank you, ladies and
16 gentlemen, if you may go with the bailiff.

17 (WHEREUPON, the jury was removed from the
18 courtroom, and the following proceedings
19 commenced in open court.)

20 THE COURT: All right, Mr. Hastie, motions
21 on behalf of Defendant?

22 MR. HASTIE: Yes, Your Honor. Your Honor,
23 I certainly like to make a motion for a directed
24 verdict. We know that one of the four elements of
25 burglary is there must be an entry. And there's

1 been no testimony whatsoever today that Mr. Green or
2 anyone else actually entered into that house. The
3 second element is without consent. We want to talk
4 about that, Judge. I haven't heard nothing about
5 any —

6 THE COURT: Look at me. I can't
7 understand you. Go ahead.

8 MR. HASTIE: I want to talk more about
9 without consent because I've never heard nothing
10 about anyone in the house. The third element is the
11 place must be a dwelling, and that's not without
12 question. And the fourth, there must be an intent
13 to commit a crime. She testified that someone rung
14 the door bell. She looked out the window and it was
15 Rick Green. So I make a directed verdict. I think
16 it fails on the elements itself because there never
17 was an entry into Ms. Davis' home.

18 THE COURT: All right. So your matter of
19 fact they failed to prove an entry which is one of
20 the requirements of burglary?

21 MR. HASTIE: Yes, sir.

22 THE COURT: All right. Mr. Meadors.

23 MR. MEADORS: Thank you, Your Honor. May
24 it please the Court. I think the State versus
25 Chappell or Chappell addresses this issue. I think

1 that was in ---

2 THE COURT: Well, it says entry however
3 slight.

4 MR. MEADORS: Right, yes, sir, and I think
5 that's what ---

6 THE COURT: I'm familiar with State versus
7 Chappell, I think it is Mr. Meadors, and it says but
8 the word has broad significance in the long form of
9 the record of burglary is not confined to the
10 intrusion of the whole party but may consist of the
11 insertion of any part for the purposes of committing
12 a felony. But I think he's saying that there's no
13 evidence in the record of the insertion of any part
14 of the right.

15 MR. MEADORS: Well, I think that's where
16 we have to rely on circumstantial evidence, Judge,
17 and direct evidence by her here. She says that
18 after she sees the individual at her front door she
19 comes over, she goes to the dining room, and then
20 she hears her garage door trying to get in. She
21 hears it going up. And I think to do that there has
22 to be an intrusion, Your Honor.

23 THE COURT: How do you make that leap? I
24 mean, there could be a handle on the outside of the
25 garage door, and I'm just talking about my garage

1 door from the standpoint now. On the outside of my
2 garage door there's a handle, and you know, if he's
3 grabbing that handle and trying to pull it up,
4 that'll -- let's say, let's take a different
5 example. Let's say it's not the garage door. Let's
6 say it's a screen door, and he walks up there and
7 pulls the screen door, is that a burglary? Pulls
8 the handle of a screen door.

9 MR. MEADORS: If the door was locked and
10 there's testimony the door was locked when she went
11 to bed and then came and it's open, when she sees it
12 open I think yes, sir. In this case the garage door
13 she said is locked when she goes to bed, it's down.
14 She gets up and looks and discovers it is up which
15 circumstantially is consistent with her being pulled
16 up. There's entry there that had to go up. The
17 wheel had to be replaced we found out this morning
18 or today so obviously there was some damage to the
19 door. I respectfully ask Your Honor to consider
20 circumstantially to get that door up that was
21 locked, it clearly was up, and there was clearly
22 some making going up, however you want to do it,
23 Judge, but that was the intention to lift up. And
24 there was a passage of airway that he ---

25 THE COURT: In answer to my question about

1 the screen door, if they grab the handle and pull
2 the door and it gives a little bit but never comes
3 unlocked, and it gives a little bit on the screen
4 door, by grabbing an outside handle that that's an
5 entry?

6 MR. MEADORS: I think circ-- it'd have to
7 depend on their limits, Judge. I guess I don't know
8 if I can answer that hypothetical. If you had
9 somebody who said that door was locked and they
10 heard pulling and then the door was open, I think
11 circumstantially I would respectfully argue to Your
12 Honor that that was an entry. Here I think it's a
13 little bit different because they're here, direct
14 evidence here, hears it's going up and ---

15 THE COURT: Two inches, by her testimony.

16 MR. MEADORS: Two or four. Yes, sir. I
17 understand. 2 or 3 feet, but I accept that. I
18 accept that.

19 THE COURT: Her testimony is 2 inches.

20 MR. MEADORS: Correct. It's enough to get
21 two fingers in.

22 THE COURT: Huh?

23 MR. MEADORS: It's enough to get two
24 fingers in. I think that's all it takes.

25 THE COURT: Well, that's what you're

1 supposing happened.

2 MR. MEADORS: Yes, sir. Well, that's what
3 I think, with her ear and her hands. Judge, also if
4 at the appropriate — depending on what Your Honor's
5 ruling is now, I was going to ask Your Honor to
6 consider the lesser included offense of attempted
7 armed robbery.

8 Well, that is my question. Is that a
9 lesser included?

10 MR. MEADORS: Well, we've been doing
11 research on that most of the night and it's an
12 interesting issue. I don't know if it's been
13 directly —

14 THE COURT: I can't find a case on it as
15 to whether it's a lesser included of attempting, and
16 I wondered if that was going to be your argument
17 that it wasn't indicted for attempted. And under
18 the statute 16-1-80 the offense of attempted is
19 punishable by the principal offense. But the
20 attempted, I guess the way this is indicted, it
21 would have to be lesser included and that may be a
22 different issue all together.

23 MR. MEADORS: And there is a case out
24 there that — and I can find it in just a moment,
25 Your Honor. That talks about it with a — I don't

1 if I have the case here, but it talks about a latest
2 attempted kidnapping. And I think as Your Honor
3 knows better than I do, there must be some same
4 element test obviously which I think is true but
5 there must be some evidence of the lesser. And I
6 guess arguing with Your Honor's hypothetical to me
7 would be the evidence of the lesser perhaps of the
8 attempted.

9 THE COURT: Well, I think the distinction
10 or the way you define what is lesser included and
11 not lesser included is are there additional elements
12 required. If there are additional elements required
13 then it is not lesser included.

14 MR. MEADORS: Correct, Judge.

15 THE COURT: But if there are less elements
16 it could be attempted and here -- not less because
17 the right word is fewer I think. If fewer elements
18 included then it would be. And the one element that
19 would not be necessary for attempted would be the
20 entry, it would be the attempted entry.

21 MR. MEADORS: Yes, sir. Yes, sir.

22 THE COURT: What say you to the attempted
23 armed robbery, I mean the attempted burglary,
24 Mr. Hastie?

25 MR. HASTIE: Your Honor, I just think that

1 the prosecutor is now scrambling trying to get
2 something on this client. I disagree with the
3 attempted burglary. I disagree with this man being
4 accused of with -- the code is very clear on the
5 elements of the burglary. There was no entry and I
6 think that's clear. And I just disagree with that
7 to allow that for him to come back and say maybe
8 there was some type of attempt.

9 THE COURT: What say you as to whether
10 attempted burglary is a lesser included offense of
11 burglary?

12 MR. HASTIE: I say not.

13 THE COURT: Why?

14 MR. HASTIE: Well, I've done some
15 research. I've seen and I think and I told the
16 Court, I asked that this morning about the attempt,
17 attempted burglary should be lesser included.

18 THE COURT: I don't think I was told about
19 it but, there is a statute on attempt so any felony
20 16-1-80 offense of attempted punished as a principal
21 offense, person who commits a common law offense of
22 attempt, upon conviction must be punished for the
23 principal offense. And I guess my question is why
24 is attempted burglary not a lesser included offense
25 of burglary under the definition of what is a lesser

1 included.

2 MR. HASTIE: Your Honor, I guess when I
3 heard in this testimony this last day and this
4 morning I've seen no evidence of any type of attempt
5 at least as my client is concerned. I disagree with
6 attempted burglary and trial burglary first and I
7 just disagree with that issue at this time.

8 THE COURT: Okay, all right. Yeah, Mr.
9 Meadors.

10 MR. MEADORS: And Your Honor, in does not
11 being added on under the law if it's same element
12 test as I call it and I apologize, Your Honor, that
13 same or less.

14 THE COURT: Same fewer.

15 MR. MEADORS: Fewer same or fur
16 anticipation.

17 THE COURT: Less than means small.

18 MR. MEADORS: You're right. Or fewer.
19 And clearly I think circumstantially, is theres to
20 an entry there and if not I think it would be fewer
21 it will be proven entry still have to bring
22 everything else well consent and intent submit crime
23 which to answer that I think cutting the phones
24 using night before but something good that was going
25 to be planned. Clearly I think there was attempt to

1 be inferred from that. Judge, we respectfully ask
2 Your Honor to charge lesser included offense of
3 attempted burglary. We think it meets the defenses.

4 THE COURT: Okay. I'm going to think
5 about it. Let me go back and see if I can find
6 anything on it in a few minutes. I will be very
7 frank with you, Mr. Meadors. I tend to agree with
8 Mr. Hastie that there's not even element of an
9 entry. It's not even enough to insert a finger of
10 it as far as inserting a finger or lifting up on the
11 door or anything of that nature. You know, had they
12 taken fingerprints from under the door and found
13 fingerprints inside the door where he tried to lift
14 it up or there was some evidence he had tried to
15 insert some part of the body into the, into the
16 dwelling, then you would have the entry. But I
17 think simply trying to open a door, it could have
18 been attempt. Could have been to push it up 2
19 inches or 2 feet, whatever it was, could have been
20 done from the outside. And I can't say that I think
21 that's a quantum leap to say that there was an entry
22 based on the proof in this case. The only question
23 that I do have and have had and thought about it
24 last night and of course, I wasn't going to say
25 anything until I saw what y'all's position was,

1 whether or not it would be attempted burglary as a
2 lesser included offense and I want to think about
3 that a little bit more. All right. I'm going to do
4 that in just a minute.

5 In the meantime, let me address Mr. Green
6 in this case of is he prepared to address the issue
7 of whether or not he plans to testify in his case at
8 this point Mr. Hastie?

9 MR. HASTIE: He is, Your Honor.

10 THE COURT: Mr. Green, yesterday I went
11 over with you your right under the Fifth Amendment
12 of the constitution is your privilege against
13 self-incrimination and you indicated to me that you
14 understood what I had told you; is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You -- also I told you that I
17 will give you an opportunity to talk with your
18 lawyer. Have you had chance to talk with your
19 lawyer about your Fifth Amendment right?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you understood your talks
22 with him?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any questions you
25 want to ask either him or me about your Fifth

1 Amendment right?

2 THE DEFENDANT: No, sir.

3 THE COURT: And have you made a decision
4 as to whether you do or do not wish to testify in
5 the case?

6 THE DEFENDANT: No, sir.

7 THE COURT: You have made a decision and
8 that decision is not to testify?

9 THE DEFENSE: Yes, sir. Yes, sir. Yes,
10 sir.

11 THE COURT: Is that correct? That
12 decisioning on your part is freely and voluntarily
13 made?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. The defendant
16 after having been advised by court and by his
17 counsel of his Fifth Amendment protection against
18 self-incrimination. Has made a free and voluntarily
19 knowing and intelligent decision is per his Fifth
20 Amendment right to not to testify in this matter.
21 The court will recognize that decision and will
22 instruct the jury that they're not to make any
23 inferences from his election not to testify. All
24 right. Thank you. You may be seated.

25 Now counsel, assuming and I haven't made

1 this decision yet but assuming that that two go
2 forward and this matter goes to the jury, tell me
3 about your position Mr. Meadors with regard to
4 report to arguments how many arguments whether how
5 much time you need?

6 MR. MEADORS: I don't want to waive my
7 opening. I think under State versus Pittard the
8 last part.

9 THE COURT: All right. You agree
10 Mr. Hastie, he's entitled to last argument?

11 MR. HASTIE: No, sir, I do not agree.

12 THE COURT: Why is that?

13 MR. HASTIE: My client did not testify.

14 THE COURT: Didn't you admit — didn't you
15 offer evidence?

16 MR. HASTIE: Yes, sir, I did offer one
17 piece.

18 THE COURT: All right. And that's doesn't
19 that waive your right to last argument?

20 MR. HASTIE: Yes.

21 THE COURT: All right. All right. He'll
22 waive opening. That means that you would argue
23 first. Mr. Hastie, how much time would you need?

24 MR. HASTIE: I would think about 20
25 minutes, Your Honor.

1 THE COURT: Mr. Meadors?

2 MR. MEADORS: 25.

3 THE COURT: All right. Half an hour give
4 everybody plenty of time. Any special requests to
5 charge other than the principal offense and I'm
6 going look at that in just a minute, but with my
7 general charge would be the presumption of
8 innocence, burden of proof reasonable doubt, direct
9 and circumstantial evidence, the charge itself. It
10 would go with the -- what the situation is and of
11 course, defendant not to testify. I don't know of
12 anything else that would be property do we have
13 anything further?

14 MR. MEADORS: No, sir. Your burglary
15 charge will go through assuming --

16 THE COURT: Assuming we go forward with it
17 it would, yeah. All right, let's take about ten
18 minutes and let me do a little bit of research.

19 (WHEREUPON, a recess was taken from the
20 proceedings.)

21 THE COURT: All right. We're back on the
22 record with regard to the matter of State v. Richard
23 Avon Green 2010-GS-43-1050. Counsel, I have done
24 some research and tried to determine what I thought
25 was appropriate and correct under the law of this

1 case. I am convinced that there is no evidence in
2 the record upon which the jury could convict the
3 defendant of burglary in the first degree because
4 the evidence is simply not there for a showing of
5 entry which is one of the elements of crime of
6 burglary in the first degree. There must be an
7 entry in order for there to be a burglary in the
8 first degree, and my task under rule 19 is to
9 determine not the weight to be given to the evidence
10 but the existence of evidence. And essentially no
11 evidence in existence of an entry into the house
12 even by circumstantial evidence I think would be
13 speculation on the part of the jury. There's just
14 not any circumstantial evidence which would show an
15 entry. That does not end the inquiry because then
16 we have to look and determine whether or not the
17 crime of attempted burglary should go to the jury as
18 a lesser included offense and I have done some
19 research on that and I can't tell you what the case
20 is right now because I can't get this computer to
21 work; but there is a South Carolina case the
22 language for which is first of all, that under the
23 elements test crime will only be considered a lesser
24 offense if the greater crime encompasses all of the
25 elements of lesser. And in this case the greater

1 crime being burglary in the first degree requiring
2 entry whereas the lesser offense does not require an
3 entry but requires all of other elements and
4 furthermore, this particular case goes on to say
5 that when an indictment for greater offense trial
6 court has the requisite jurisdiction to charge and
7 convict a defendant of any lesser included offense
8 inconclusive of instruction is required only whether
9 the evidence warrants such an instruction. To me
10 the evidence in this case is exactly that, that
11 there was -- there's evidence in the record of
12 attempted burglary and attempted opening of front
13 door and attempt to open the garage door but no
14 entry if the jury believes that testimony and that
15 would be a jury determination so the long and short
16 of it is that I am going to submit the case to the
17 jury on the lesser included offense of attempted
18 burglary in the first degree and not on burglary in
19 the first degree and I will charge the elements as
20 an attempt as instead of actually requiring an
21 entry. So it will go to the jury on attempted
22 burglary rather than burglary in the first degree.
23 All right, that will be the Court's ruling.

24 MR. MEADORS: Thank you, Your Honor.

25 THE COURT: Mr. Hastie.

1 MR. HASTIE: Your Honor, I would like to
2 on the record propose —

3 THE COURT: You don't have to do; you're
4 protected. You've already — I understand your
5 position and it's not necessary under our rules to
6 take exception.

7 MR. HASTIE: Thank you, Your Honor.

8 THE COURT: All right. Bring the jury in.
9 I'm gonna call on you, Mr. Hastie, to present any
10 testimony and when you ways it I'll recognize I will
11 advise the jury that you go into argument you've
12 rested, gone into arguments at this time.

13 MR. MEADORS: Your Honor, I not to mention
14 any penalty or mention any penalty of time in his
15 closing.

16 THE COURT: I think Mr. Hastie knows that,
17 yeah.

18 MR. HASTIE: Did you Your Honor.

19 (WHEREUPON, the jury was returned to the
20 courtroom, and the following proceedings
21 commenced in open court.)

22 THE BAILLIFF: Your Honor, we have all the
23 jurors back in the courtroom.

24 THE COURT: All right, ladies and
25 gentlemen, thank you very much for your patience.

1 We are now ready to go forward. You have heard the
2 State announce that they finished and presented
3 their testimony to you, and now I will call on the
4 defendant and give them the right to present any
5 testimony, evidence that they wish to present.

6 Mr. Hastie.

7 MR. HASTIE: Thank you, Your Honor.

8 THE COURT: No, sir, just from evidentiary
9 standpoint is there any evidence that you wish to
10 present?

11 MR. HASTIE: Oh, no, Your Honor.

12 THE COURT: So the defendant rests as
13 well?

14 MR. HASTIE: Yes, sir.

15 THE COURT: All right, ladies and
16 gentlemen, what that means is that you have heard
17 all of the testimony that you'll hear actually in
18 this matter and now the only two elements or only
19 two things that remain to be done are the arguments
20 of counsel and the instructions on the law by the
21 Court. I will tell you now as I did at the first of
22 this case that the statements of attorneys or the
23 summations of attorneys are not evidence in this
24 case. They're simply the lawyer's views of what
25 they think the evidence shows. You will decide this

1 case based on evidence that you have heard from this
2 witness stand and from any exhibits that have been
3 introduced into evidence. But the lawyers do have
4 the right to, not only the right but the duty on
5 behalf of their client, to address you now and to
6 give you their views of what they think the evidence
7 is. You will hear first from Mr. Hastie on behalf
8 of defense and then you will hear from Mr. Meadors
9 on behalf of State. After you have -- after they
10 have concluded their argument to you I will then
11 instruct you on the law of South Carolina as it
12 applies to the elements in this case and to the
13 facts of this case as you may find those facts to be
14 and then you will be allowed to go to your jury room
15 to deliberate your verdict.

16 Before I call on the lawyers for closing
17 arguments I want to tell you that the Court has
18 directed a verdict as far as the crime of burglary
19 is concerned because the State in my view there is
20 no evidence of all the elements of the crime of
21 burglary. However, under the theory that lesser
22 included offense is included in the greater offense
23 the matter will be for your decision as to whether
24 or not there was an attempted burglary in this case.
25 And so that is what the issue that will be before

1 you, whether there is an attempted burglary in the
2 first degree, and that is on the basis of the fact
3 that of legal principle that the lesser included
4 offense of greater offense, lesser intent offense
5 being attempted burglary as opposed to burglary so
6 that is the issue that will be before you and that
7 is what counsel will argue to you at this time.

8 All right, Mr. Hastie.

9 MR. HASTIE: Thank you, Your Honor. Good
10 morning, ladies and gentlemen. First of all, I want
11 to thank y'all for your time because this is one
12 time I noticed everybody is paying a lot of
13 attention to the evidence that was presented here
14 today. I want to go back to the beginning. And the
15 judge spoke to you all yesterday. He talked to you
16 about, he said I want you to follow the law, I want
17 you to be fair. And it is your responsibility to
18 hold the prosecution to its burden of proof, and I
19 am going to remind you that the burden of proof of
20 this offense rests with the Prosecution. He started
21 off by saying, that is Rick Green, that's Rick
22 Green. But suppose it wasn't. That's why you all
23 are here. Just suppose she's mistaken, it wasn't
24 him. I asked you yesterday to, my theme is, ask
25 yourself throughout all the testimony where is the

1 evidence? Now you've heard everything. Now where
2 is the evidence? You've seen a lot conflicts with
3 investigator. The investigator report said the door
4 was 2 feet. She got up and said 2 inches. Did we
5 see any type of entry with any type of tools or
6 anything like that? Is that in there? No. There
7 was none. You got to ask yourself where are the
8 facts? There's so many strange things about her
9 testimony here. Here's a young lady that has a
10 weapon. She says she stood when this man was
11 pulling on her door, she stood here, about here to
12 the door with a weapon in her hand. And she did not
13 yell out to him anything about, get away from my
14 door. Y'all heard she works at the correction
15 facility so she's trained how to handle a weapon and
16 how to deal with rough people. But she says, I
17 don't speak to anybody that time of night, anybody.
18 Oh, when Mr. Mack came over 4:00 in the morning she
19 spoke to him and told him about this supposedly this
20 attempt to enter into her home.

21 She -- I asked the detective about the
22 fingerprints because if he had taken fingerprints,
23 or tried to. He said, well no, no, we don't do
24 that, there are not fingerprints on your doors, we
25 don't need to do that. He's not the expert. I

1 said, let's try, because if he had attempted to take
2 the fingerprints we might have not been here today
3 because we would have found out who really was at
4 that door, but he decided not to do that. Well, did
5 you take any pictures of that door? This guy get to
6 the door, by her testimony, a whole minute. And big
7 as this guy is, the peep hole on that screen door,
8 not to worry about the screen door for a minute he
9 probably would have been in that house and he
10 probably would have been shot. You know, that
11 didn't happen. What about the garage door? Tried
12 to pry the garage door open. I don't know what she
13 saw. She said I heard him prying the garage door
14 open. I don't know how you hear somebody prying the
15 garage door but she did. She heard him. But did he
16 have a piece of wood, was there a crowbar to get up
17 to this 2 inches? No, there wasn't. But she
18 clearly told Detective Gardener the next day it was
19 a whole 2 feet now. And he put that in his report.
20 She got on that stand and said it was just 2 inches.
21 The burden, I tell you, rests with the State.

22 The judge is going to talk with you about,
23 you know, we're all presumed innocent, everybody.
24 And this innocence is like a robe of righteousness
25 that we all wear in this country, and this robe

1 can't be pulled on by the prosecutor and yanked on
2 by the prosecutor. Beyond a reasonable doubt is
3 what we're talking about here today. It must be
4 taken completely off. And I — you listened.
5 You've heard everything, and it's been a lot of I
6 think confusion. The elements of burglary, you
7 heard the judge tell you all about burglary; but
8 it's not burglary now. But the elements of burglary
9 of course is an entering. The other elements are
10 entering someone's home without consent. You heard
11 no testimony that he went into the home without
12 consent. Now the charge is attempt so it's
13 attempted burglary, not burglary second. And there
14 must be an attempt to commit a crime. You've heard
15 no testimony from anyone that Mr. Green talked to
16 anyone. No one has talked about, well, Mr. Green
17 told me that he was going to break into this home.
18 There's been absolutely no evidence to that effect.
19 But I truly think if the officer had taken some type
20 of prints on the door because if someone there been
21 trying to pry open the door, maybe they put their
22 hand on the door to get it up. You don't know; you
23 weren't there. But no fingerprints obtained.
24 What's the damage, if it just attempt to get in this
25 door, what's the damage? Did you see any prints or

1 any damage with the screen door or the garage door?

2 Not a single picture.

3 I just want you to ask yourself; let's
4 keep focused. What are the facts? What are the
5 facts? We heard testimony going through very clear
6 about what she said. That's all well and good, but
7 we've got the facts to prove what she said. She
8 said she recognized Richard Green. Well, if you
9 know Richard Green, if you knew you recognized him,
10 you point at him. Three yards away, why not say,
11 Richard, if you don't get yourself a back door.
12 This is a corrections officer. She's not some
13 housewife that may never used a gun before. She's
14 been trained to use a gun. Then said she go back,
15 she went back into her living room and sat with her
16 weapon for three hours waiting on the neighbor to
17 come out. Three hours she just sat there. Did she
18 go back and peek and see whether Richard was still
19 out there? Now what's even strange enough she goes
20 out and fired four shots out the back door. The
21 police came. None of them where I live -- you fire
22 a weapon anywhere in my neighborhood, if the police
23 come they're gonna come and see your weapon, where'd
24 you shoot the rounds, where are the cartridges, what
25 are you shooting about. No questions about, asked

1 of her, about why you shooting in this neighborhood.
2 You know, it's against the law, why you shooting in
3 this neighborhood, well what weapon did you have.
4 And it was asked of her, was this a weapon issued by
5 the county? No, no, this is my private weapon and
6 the deputy didn't even ask her about this other
7 weapon. Do you have a license on it? I'm thinking
8 a lot of things, ladies and gentlemen, should have
9 been explained that were not. I go back to my theme
10 from the very, very beginning. Where is the
11 evidence in this case? We've been here a
12 day-and-a-half and here we are looking at maybe
13 attempt to burglary, not even burglary anymore,
14 maybe attempted burglary.

15 What does this all have? I truly believe
16 that the prosecution has failed just to prove this
17 case, failed miserably to prove this case. He
18 failed to, other than the statement of the victim,
19 he failed to show anybody else accusing him of being
20 there. Did he tell someone that he was there? Is
21 there any evidence anything that had been taken out
22 of the home? None, none of that. I just ask you to
23 simply to just consider the evidence. You're gonna
24 get the evidence that was produced here today back
25 in the room with you so you'll get a chance to go

1 over it carefully. Look at it carefully. Are you
2 convinced, have you been convinced to convict
3 someone? Now not burglary, but attempted burglary.
4 And I just think that we shouldn't reward the
5 Prosecution on what they failed to do. And the
6 judge talked about very plainly your job is simple;
7 your job is clear. The burden is not to decide on
8 the burden. The burden is up here; it's not down
9 here. He should have presented to you enough
10 evidence beyond a reasonable doubt that this man
11 attempted to break into that home that night. And I
12 don't see where the evidence lies. It's not your
13 job -- as the judge in talking about the law he's
14 going to tell you what the law is. Even if you
15 don't like the law we got to abide by it, and the
16 law says that tells us what the elements are of
17 attempted burglary are and what your duty is as
18 jurors. I ask that you just consider putting her in
19 this incident, and you decide whether or not you've
20 seen what you need to satisfy yourselves in your own
21 mind that this incident didn't happen the way that
22 it was described by them. I ask that you make a
23 decision after you've heard all of the deliberations
24 and look at all the evidence in that room there,
25 that you let him go back to his family and his life

1 simply because that is the right thing to do. Thank
2 you very much.

3 THE COURT: Mr. Meadors.

4 MR. MEADORS: May it please the Court.

5 THE COURT: Yes, sir.

6 MR. MEADORS: Good afternoon. I too on
7 behalf of Sumter County, Sheriff's Department, and
8 Ms. Rita Davis want to thank all of you for being
9 here yesterday and today. Thank you for your
10 attention. This is nothing about rewarding the
11 Prosecution. This is a search for the truth of what
12 happened on May 4th, in the early morning hours at
13 Rita Davis' house. His Honor who is the judge of
14 the law has determined, as he has every right to do
15 and has, that there was not enough evidence to go
16 forward on a burglary. You heard the evidence that
17 went up and you found out the next morning. He has
18 determined, made that decision that this case will
19 go forward only as attempted burglary first which is
20 what the law required. Evidence presented of either
21 the offense or a lesser offense. That's the way the
22 system works. It's nothing unusual. No one more;
23 it has to be that. And so we go forward on an
24 attempted burglary.

25 An attempted burglary first is again

1 intent. It must be some specific intent the State
2 must prove. There's so much intent in this case,
3 specific intent with an overt act that goes beyond
4 mere preparation. That's really the only difference
5 now that's between the burglary first. Where we had
6 to prove an entry we now have to prove specific
7 specific intent. That's an overt act that goes
8 beyond mere preparation. That's intent. I think
9 there's no dispute about that. That it was without
10 consent; there's some dispute about. That it was in
11 the nighttime. I don't think there's any dispute
12 about that. So then now the only element we
13 respectfully submit to you is, that an attempt, had
14 the intent but it was overt act that went beyond
15 mere preparation. And we submit it comes down what
16 if she had shot him, what if she had shot the gun?
17 And why does she shoot in the air? And again,
18 Mr. Hastie during questioning and I think might have
19 some difference maybe in the incident report, two or
20 three shots. Then you'll see in her statement it
21 went over four shots. That's not the reasonable
22 doubt. I just respectfully don't want you to get
23 hung up on something like that. She shot out of her
24 window. Why did she shoot out of her window?
25 Somebody was trying to break in her house. The fact

1 that she might have said three or an officer took it
2 down three here and said four here; that's not a
3 reasonable doubt. If anything we submit to you that
4 shows credibility. Nothing ever is going to be
5 perfect, the same like you wouldn't fit it together.
6 That's when you need it to work. She's at her house
7 at 1:30. And what you judge credibility by, folks,
8 ladies and gentlemen, is watching them take the
9 stand. That's the only evidence you can consider is
10 that evidence from the stand. You watched
11 Ms. Davis; you watched her demeanor. And you know a
12 lot of folks have habits. She has a habit of going
13 to bed after she watched the news. I think WLTX;
14 I'm not sure. She went to bed around 11.00. This
15 is here second day in a two day weekend; she has a
16 long weekend. I believe it's about 11:30. She
17 hears the door bell ring. Now at first she goes,
18 did the door bell ring? Well, at 1:40 in the
19 morning or 1:50 in the morning, 1:30, whatever it
20 was the record will reflect, the door bell rings.
21 An unusual night for the door bell to ring. You
22 think, and I'm allowed to argue, someone trying to
23 see if somebody was there or not. Husband's truck
24 is gone; it's always there. If he's there, if the
25 truck is there or his car is there, he's there.

1 It's not there; he's working. Somebody is coming to
2 see if somebody is home. What does she do? She
3 gets up and looks out the window. She sees somebody
4 going -- you know why credibility is so important?
5 At that point what does she say? I didn't know who
6 it was then. I thought I saw a white shirt and
7 pants. And look at this incident report here.
8 That's what she gives a description of. And what
9 does she do then? It's 1:50, somebody is ringing
10 the door bell. She goes and she goes over to the
11 den. Then she goes and hears -- this is direct
12 evidence. You know, you can see it, smell it, touch
13 it. She hears somebody trying to open the garage
14 door, her garage door right beside her. And she's
15 here. She doesn't see him. And that's what Your
16 Honor says, well, there's no evidence that we can
17 prove of entry. Was he down there underneath with
18 his hands underneath that? I'll tell you that wheel
19 sure is broken that the husband fixed and this side
20 is falling off. But she hears him. But now ladies
21 and gentlemen, the attempted burglary he's either
22 pushing it up, he's not doing that, is that a step
23 that goes beyond mere preparation trying to get in?
24 An overt act? That's what that is. She hears it.
25 Can you hear the garage door trying to get it up?

1 She says it's locked when she goes to bed. She
2 wakes up the next day and it's 2 inches 2 feet it's
3 up. It was down when she went to sleep and it's up.
4 What's he trying to do? He's trying to get in her
5 house. Intent, beyond mere preparation, an overt
6 act.

7 What's that they say? They say dusk to
8 dawn light. Dusk to dawn light. It illuminates
9 when it's dark. No question about it's in the night
10 time here. As the individual after she's seeing him
11 at the front door, walking away, didn't know who it
12 is, hears him trying to get up garage door, comes
13 back. She says -- who does she say this one to
14 first? Who does she say it to first? She says it
15 to herself. That's Rick Green. That is direct
16 evidence. She sees with her eyes. She's known him
17 her whole life time. Her brother is in the same
18 grade with her. She's grown up with him, seen him
19 in the community, seen him walking the streets.
20 That is direct evidence. How many questions were
21 asked about how do you know him, when did you see
22 him, how do you know him? None, none. That's Rick
23 Green. Knows him by his nickname. You know, he
24 says, he's just a few feet away from her why don't
25 you let him in. I think she said, I know Rick

1 Green, he's not coming into my house. She almost
2 killed him. You think it's getting serious?
3 There's a door between the two of them. Why didn't
4 you open the door. Rick Green is there 1:50 in the
5 morning. She's a lady by herself in her house. She
6 has a right to be in her castle, her dwelling. He's
7 outside, ringing her door bell, pulling up her
8 garage door trying to get in. You think she's going
9 to open the door that time of night? She almost
10 pulls the trigger and candidly says, I didn't know
11 the law. You talk about credible testimony. But
12 that's how scared she was. I had the gun, yeah, I
13 was going to shoot. But she didn't. The man who is
14 trying to break into her house while she's alone;
15 and instead of firing to protect herself when she's
16 in danger, she's scared, she goes to the back
17 window, the back door, and puts off a few shots.
18 That's mercy. He could be dead. He could be dead.
19 And instead of doing that she goes to the back
20 twice, and she kind of -- what, you think this
21 didn't happen? You can't make these facts up. She
22 goes and shoots off in the back to scare him off. I
23 mean, that's -- isn't that what you do? I mean, if
24 somebody is there trying to break in, your house,
25 you're by yourself. What did she do? She tried to

1 get the phone. The phone wasn't working.

2 Intent, an act beyond mere preparation.

3 She used the phone the night before. That ain't
4 good. That's not a good intention. She's by
5 herself, she can't get her phone. Attempted
6 burglary. She can't get her phone. She's thinking
7 about shooting. She shoots out the back four times.
8 And then she sits there. Is she going to go
9 outside? She doesn't know where he is. She sits
10 there. She sits there. She knows her neighbor
11 Mr. Mack leaves around three, around four. She sits
12 there. She sits there. It's in the early morning
13 hours. Somebody is trying to break in her house,
14 rang the door bell, pulled at the garage door.
15 She's sitting there with a gun, and she's just
16 sitting there by herself. Is she scared? You
17 dadgum right she's scared. And what does she do?
18 When she sees her neighbor, she flicks the lights.
19 Do you think this isn't real? You think this isn't
20 credible testimony?

21 Then we get the neighbor in. He comes
22 over. I saw her flip the lights. What did he do?
23 I come over there, she said she had a fenced in back
24 yard. She said my phone is not working, will you go
25 to the front where I can get my cell phone. He says

1 he will. He goes to the front to meet her. What
2 does he say right off the bat that she says? Rick
3 Green tried to break in my house. Said it to
4 herself. Says it right off the bat to Mr. Mack who
5 ain't got a dog in this fight. Of all the
6 6.9 billion people in this world she says that's
7 Rick Green, and she tells Mr. Mack. This isn't an
8 I.D. issue. She had him I.D.'d years ago, went to
9 school together. Her brother knows him. She knows
10 him by name and sight. And you see him, that's Rick
11 Green. It's credible, believable testimony. He
12 waits till her brother-in-law comes, Mr. James Davis,
13 from Kershaw coun-- in recreation over in Kershaw
14 County. Deberry comes. And you've got this report.
15 Around 1:30 she heard a shot, attempting to gain
16 entry through her door, front storm door. When she
17 looked out her front window she recognized the
18 subject as Rick Green. The officer even got it
19 checked in here, Rick Green. She knew it herself.
20 She told Mr. Mack. She immediately tells Deberry,
21 attempting to pry open the door and also trying to
22 lift the garage door. And I think inadvertently he
23 was trying to say pry open the garage door. She
24 said he was trying to open the front door, pry the
25 front door and open the garage door. Lift it like

1 this, lift it like this. We don't have to prove
2 entry. Attempt all we have to do. Attempted. 1:30
3 at night somebody is pulling up your garage door, no
4 matter how they do it. We don't have to prove it.
5 If we had proved to His Honor fingers went in,
6 that's enough burden. And that is Your Honor's
7 ruling. We respect that. We're now going forward
8 on attempted burglary. We submit there's no doubt
9 of that, much less a reasonable doubt.

10 Also trying to lift a garage door. She
11 was able to scare the subject away by firing two to
12 three warning shots with her firearm out of the back
13 door. The next day, later on that day Mr. --
14 Investigator Gardener comes over. She tells him the
15 door was down when I went up, went to sleep, up when
16 got up and saw it the next morning. That's an act
17 beyond mere preparation. And he also went and took
18 the picture. Now get on with this. This isn't
19 State versus Investigator Gardner. At one point I
20 thought it was the State versus Rita Davis, putting
21 Rita Davis on trial for sleeping in her home and
22 getting upset what she does or doesn't do when
23 somebody is trying to break in her house. This
24 isn't State versus Rita Davis. She's the victim.
25 She was sleeping in her home. It's not a book on

1 what she has to do to come in here, well you didn't
2 do this, why aren't you trying to talk to a man who
3 is trying to break in your house at 1:30, Rita.
4 Thank God she fired a shot. And then he says,
5 learned that the phone wouldn't work and he goes and
6 takes a picture of this. This is not good intent.
7 Why did he cut the phone lines? Well, I don't think
8 anybody is here, don't know husband's truck isn't
9 here, just in case I'm going to cut phone lines if
10 somebody is there. Act beyond a mere preparation?
11 And Wesley Gardner -- I'm just checking the time,
12 Your Honor.

13 THE COURT: It's all right.

14 MR. MEADORS: He didn't bring it up. I
15 tried to cover everything. The fact that nobody
16 else didn't hear the shots is not a reasonable
17 doubt. When -- and I don't mean to this elderly
18 lady. She just tells she was there. She doesn't
19 get up on behind other lady now deceased might have
20 been up in years a little bit. Mack didn't even
21 hear it. Who is that? That didn't happen, is that
22 a reasonable doubt? No, it goes to smoke screen.
23 That has nothing to with what happened here when it
24 happened or not. Mack comes over when she flashes
25 the lights. There's no doubt about that. The fact

1 that nobody heard the gunshots is just a smoke
2 screen. Sometimes over my 25 years of doing this,
3 sometime questions are just questions. That doesn't
4 mean there's a reasonable doubt.

5 Ladies and gentlemen, I'm about through.
6 But I believe in the presumption of innocence as
7 much as anybody, and it stays with the defendant
8 unless and until you find the State has proven him
9 guilty beyond a reasonable doubt. And as you go
10 back there to start going over this evidence you'll
11 start removing that cloak. That's what you do,
12 you're removing the cloak. I want you to view it
13 decide state's proved this case beyond a reasonable
14 doubt the cloak is off. I suggest to you that it
15 started being removed which Ms. Davis was up here
16 and described her ordeal, her ordeal, held it in her
17 house that night when she'd woken up and she's
18 scared in her house alone, the door bell, the door.
19 And I'm sorry there's not more damage on there. She
20 testified he was pulling at the door; I could hear
21 it. Scared me enough I got a gun and pointed at it
22 and almost shot. The wheel on the garage door was
23 drawn, that's damage. When she says not at first
24 but when she says later, that's Rick Green; that's
25 Rick Green, Mr. Mack; that's Rick Green,

1 Mr. Deberry; that's Rick Green, Investigator
2 Gardener. We grew up in the community together. He
3 showed you where he lived. He showed you where she
4 lived. Is there any doubt? This isn't an I.D.
5 case, ladies and gentlemen. It comes down to
6 whether you believe the State has proved an attempt
7 to enter that house with an act beyond mere
8 preparation, pulling up the door, pulling up the
9 garage. We submit the State has proved it.

10 The word verdict means to speak the truth.
11 And I ask you with that cloak when you get it, come
12 back and later use it as a blanket the next time
13 she's sleeping, watching TV. Let it protect her
14 when she's sleeping in her home at night. We
15 respectfully, respectfully ask you to return a
16 verdict, a verdict that says on May 5th, 2011
17 Richard Green, also known as Rick Green, tried to
18 break into Rita Davis' house, didn't have her
19 permission to do so, her dwelling, and it was the
20 intent to commit a crime. And you can infer that
21 intent upon the cutting of the lines as opening of
22 the door of someone's dwelling. It wasn't good
23 intent. Was it to steal? Was it her? Thank God
24 we'll never know that he was intending to commit a
25 crime going into somebody else's house that wasn't

1 his. An act beyond mere preparation. Ladies and
2 gentlemen, thank you.

3 THE COURT: All right, Madam forelady and
4 ladies and gentlemen. If you would give me your
5 attention. You have followed very patiently and
6 listened attentively to the presentation of evidence
7 in this case and also to be able arguments made by
8 the solicitor Mr. Meadors on behalf of the State and
9 by Mr. Hastie on behalf of defendant and I thank you
10 for that. It now becomes the duty of the trial
11 judge under the constitution of this state to charge
12 and instruct you on the law applicable to this case.
13 And it is your duty as jurors to accept and apply
14 the law as the Court will now state it to you. And
15 as jurors it is your exclusive duty to decide all of
16 the issues of fact in this case and for that purpose
17 to determine the effect, the value, and the weight
18 and the truth of the evidence. Both the State and
19 the Defendant have the right to expect that you will
20 conscientiously consider and evaluate the evidence
21 in this case and apply the law thereto to the end
22 both the State and of South Carolina and the
23 Defendant will receive and obtain a fair and
24 impartial trial.

25 Now when I use the word defendant I refer

1 determining what you consider to be true the law
2 simply requires that you exercise your good
3 judgment, your common sense, your sense of logic and
4 reason, and your experiences with life. You then
5 apply these attributes of ability to the evidence
6 and determine what you consider to be the truthful
7 evidence; and to these true state of facts as
8 determined by you, the jury, you take and apply the
9 law as I now state it to you, and thus, arrive at a
10 true verdict in this case.

11 Now as I told you the defendant in this case
12 was originally charged with the crime of burglary in
13 the first degree. I have already ruled that that
14 matter is not for your consideration and burglary in
15 the first degree, but the lesser included offense of
16 attempted burglary in the first degree will be for
17 your decision. But in order for me to separate the
18 two between burglary in the first degree and
19 attempted burglary and what a attempted burglary is
20 I need to first instruct you on what burglary in the
21 first degree is.

22 Section 16-11-311(a) of the South Carolina
23 Code of Laws provides that a person is guilty of
24 burglary in the first degree if a person enters a
25 dwelling without consent and with intent to commit a

1 crime in the dwelling and the entering or remaining
2 occurs in the nighttime. Now for burglary in the
3 first degree the State must show there was an
4 entering; that is, the defendant actually went
5 inside the dwelling or some part of it. However, it
6 is not confined to the intrusion of the whole body
7 the slightest entry is sufficient and it may consist
8 of the insertion of any part of the body by any or
9 any instrument under the defendant's control. An
10 entry may be accomplished, for example, by the
11 insertion of hand, finger, foot, implement such as a
12 hook or pole. The place entered must be a dwelling.
13 With respect to burglary Section 16-11-10 of the
14 South Carolina Code of Laws defines dwelling house
15 as any house, outhouse, apartment, building,
16 erection, shed, or box in which there sleeps a
17 proprietor, tenant, watchman, clerk, laborer, or
18 person who lodges there with a view to protection of
19 property.

20 Next, without consent. The entry must have
21 been without consent. Enters the dwelling without
22 consent means to enter without the consent of the
23 person in lawful possession, and there must have
24 been an intent to commit a crime, any crime, a
25 felony or misdemeanor whether or not that crime was

1 actually committed. Mere entry into a dwelling
2 without consent is not sufficient to constitute
3 first degree burglary. There must have been intent
4 to commit a crime once inside. Now if you find that
5 the defendant -- and this is all again a part of the
6 burglary statute. If you find the defendant entered
7 the dwelling without consent with the intent to
8 commit a crime you must find the presence of at
9 least one of the aggravating circumstances, one of
10 which is that the entering or remaining occurred in
11 the nighttime.

12 Now that's burglary, and I have already
13 charged to you that not all of the elements of
14 burglary have been met and that the lesser included
15 offense of attempted burglary is the charge that you
16 will actually be considering. So what is an
17 attempt? An attempt is an act done in part,
18 execution of a design to commit a crime. It must be
19 an intent that the act shall be committed and an act
20 done not in full execution but in pursuance of the
21 intent. An attempt is distinguished from
22 preparation to commit it and also from the intent to
23 commit. The law does not punish the mere
24 entertainment of criminal intent. To bring the law
25 into action it is necessary that some act should be

1 done in pursuance of the intent immediately and
2 directly tending to the commission of the crime an
3 act which should the crime be perpetrated would
4 constitute part and parcel of the transaction which
5 does not reach to the accomplishment of the original
6 intent because it is prevented or voluntarily
7 abandoned. In order to constitute an attempt to
8 commit a crime it is essential that coupled with the
9 intent to commit the offense there be some overt act
10 beyond mere preparation in furtherance of the intent
11 and there must be an actual or present ability to
12 complete the crime.

13 Attempt crimes are generally ones of specific
14 intent such that the act constituting the attempt
15 must be done with the intent to commit the crime or
16 to commit that particular crime. In the context of
17 an attempt crime specific intent means that the
18 defendant consciously intended the completion of
19 acts comprising the offense. In other words, the
20 completion of such acts is the defendant's purpose.
21 Additionally, the State must prove the defendant's
22 specific intent was accompanied by some overt act
23 beyond mere preparation in furtherance of the
24 intent, and there must be an actual or present
25 ability to complete the crime. The preparation

1 consists in devising or arranging the means or
2 measures necessary for the commission of the crime.
3 The attempt overt act is the direct movement toward
4 the commission of the crime after the preparations
5 are made.

6 Intent is an essential element of attempt.
7 What is criminal intent in the law? Criminal intent
8 is a state of mind which operates jointly with an
9 act of omission or co-mission of a crime. Criminal
10 intent is a mental state of conscious wrongdoing.
11 Don't think.

12 Now you will take that law as I have
13 instructed it to you and apply it to the facts of
14 this case, but there are a couple of other matters
15 that I need to instruct you on. First of all, there
16 are generally two types of evidence which presented
17 in a case, direct evidence and circumstantial
18 evidence. Direct evidence is the testimony of a
19 person who asserts or claims to have actual
20 knowledge of a fact such as an eyewitness.
21 Circumstantial evidence is proof of a chain of
22 circumstances indicating the existence of a fact.
23 The law makes absolutely no distinction between the
24 weight or value to be given to either direct or
25 circumstantial evidence, nor is a greater degree of

1 certainty required of circumstantial evidence than
2 of direct evidence. You should weigh all of the
3 evidence in this case and after weighing all of the
4 evidence if you're not convicted of guilt of the
5 defendant beyond a reasonable doubt it would be your
6 duty to find the defendant not guilty.

7 Now I will also tell you, ladies and
8 gentlemen, that the defendant in this case has not
9 testified. This is his constitutional right. It is
10 not a circumstance that you can take into
11 consideration or even allow to enter into your
12 discussions in the jury room. Under the
13 constitution of the South Carolina and the United
14 States Constitution it is the defendant's
15 constitutional right not to testify. The burden of
16 proof is on the State of South Carolina to establish
17 the guilt of the defendant by competent evidence
18 beyond a reasonable doubt. The fact that the
19 defendant did not take the witness stand and testify
20 in his own behalf does not create any inference
21 against him, and the jury must not permit that fact
22 to weigh in the slightest degree against him and
23 this fact should not even enter into your
24 discussions or deliberations in the jury room.

25 Now ladies and gentlemen, I have about

1 with the exception of the alternate I'm going to ask
2 you to stay here. I'm going to ask the twelve of
3 you to go to your jury room. Please do not begin
4 your deliberations just yet. We've got some matters
5 to take up and we'll maybe go forward in just a few
6 minutes. Thank you. You may go with the bailiff.

7 (WHEREUPON, the jury was removed from the
8 courtroom, and the following proceedings
9 commenced in open court.)

10 THE COURT: Anything on behalf of the
11 State, Mr. Meadors?

12 MR. MEADORS: Not from the State, Your
13 Honor.

14 THE COURT: Mr. Hastie, other than the
15 fact that you disagree or take exception to the
16 charge of attempted burglary in the first degree
17 going to the jury at all which the record is noted
18 on that and your position is protected, are there
19 any additions or exceptions to the charge?

20 MR. HASTIE: No, sir, Your Honor.

21 THE COURT: All right. Check the exhibits
22 and make sure that -- I think they're how many from
23 the State? Three? And maybe one for the Defense?

24 THE COURT REPORTER: Right.

25 THE COURT: Check those and here's the

1 free to go from any further responsibility on this
2 case.

3 (Alternate was excused.)

4 THE COURT: If you will tell the jury they
5 may begin their deliberations.

6 (Court was in recess and jury began their
7 deliberations at 12:23 p.m.)

8 (Court's Exhibit Number 1, note from jury,
9 was marked and made a part of the record.)

10 THE COURT: All right. We're back on the
11 record with regard to the matter of Richard Avon
12 Green in indictment number 2010-GS-43-1050.

13 Mr. Green is present with his counsel. The State is
14 present represented by Mr. Meadors. Counsel, we do
15 not have any word from the jury and we had — we
16 have reached the lunch hour. I am going to send the
17 jury to lunch and have them come back this afternoon
18 and tell them that we want to give them as much time
19 as they need to deliberate their verdict in this
20 case, and I don't want them not to have, starve them
21 into a verdict, and let them go to lunch and come
22 back. Any objection to that procedure, Mr. Meadors?

23 MR. MEADORS: No, sir.

24 THE COURT: Mr. Hastie?

25 MR. HASTIE: No, Your Honor.

1 THE COURT: All right. Bring the jury in
2 please.

3 (WHEREUPON, the jury was returned to the
4 courtroom, and the following proceedings
5 commenced in open court.)

6 THE BAILIFF: We have all the jurors
7 present in the courtroom.

8 THE COURT: All right. Thank you very
9 much, ladies and gentlemen, and I want to tell you
10 that I do appreciate your hard work on this matter.
11 And I want to tell you that we're not trying to
12 starve you into a verdict, that I want you to feel
13 like that you have as much time as you need to
14 consider all the issues in this case. So we're now
15 going to go to lunch and allow you to go get some
16 lunch and come back and resume your deliberations.
17 And it's about five minutes, three or four minutes
18 after one. And if it suits everybody I would ask
19 you to go -- to please be back in the jury room,
20 say, 2:15. That's about an hour and fifteen
21 minutes. And come back and deliberate, resume your
22 deliberations.

23 Two or three things I will tell you while
24 you're away from the courthouse. Folks, do not
25 discuss the case with anyone. Do not allow anyone

1 to discuss it with you. And when you are resuming
2 there in the jury room do not begin discussion in
3 the case among yourselves until all twelve of you
4 are back in the jury room. It would be
5 inappropriate for you to begin any discussion in
6 this case until all of you have reassembled. So
7 with those instructions I am going to release you
8 now and allow you to go get your lunch, and please
9 be back in the jury room at 2:15. I won't see you
10 at that time unless you get to see me, but please be
11 back at 2:15 but don't begin your deliberations
12 until everyone is back in the jury room. The
13 bailiffs will pick up the exhibits and the verdict
14 form. Are there any notes in the jury room that
15 have been left that nobody should have access to?
16 All right, good. In that case we will allow to go
17 and get your lunch and please be back at 2:15.
18 Thank you, see you then.

19 (WHEREUPON, the jury was removed from the
20 courtroom, and the following proceedings
21 commenced in open court.)

22 THE COURT: Any objection to that
23 procedure or instructions given to the jury, Mr.
24 Meadors?

25 MR. MEADORS: No, sir, Your Honor.

1 THE COURT: Mr. Hastie?

2 MR. HASTIE: No, sir.

3 THE COURT: We'll be in recess until 2:15.

4 All right.

5 (WHEREUPON, a lunch break was taken.)

6 THE COURT: With regard to the matter of
7 the State versus Green, the State is present and
8 represented by Mr. Meadors. The Defendant is
9 present and represented by Mr. Hastie. Counsel, we
10 have another communication from the jury which I
11 will have marked as court exhibit number two and
12 made a part of the record. Very simply, we are
13 split. By Fulwood 9/13/11. That being the case,
14 counsel, I think the appropriate thing is an Allen
15 charge. Any objection to that on behalf of the
16 State, Mr. Meadors?

17 MR. MEADORS: No, sir, Your Honor.

18 THE COURT: On behalf of Defendant?

19 MR. HASTIE: No, sir.

20 THE COURT: All right, bring the jury in
21 please.

22 (Court's Exhibit Number 2 was marked
23 and made a part of the record.)

24 (WHEREUPON, the jury was returned to the
25 courtroom at approximately 2:55 p.m., and

1 the following proceedings commenced in
2 open court.)

3 THE BAILIFF: Your Honor, we have all the
4 jurors present in the courtroom.

5 THE COURT: All right. Thank you, ladies
6 and gentlemen. And I do have your latest
7 communication, and in that connection I'm going to
8 give you an additional charge. It has to do with
9 trying to reach a verdict because hopefully you can
10 make another effort and reach a verdict in this
11 case. And I have some very brief comments I would
12 like to make and by way of further instruction on
13 the matter of your being able to reach a verdict.
14 Before I do go into these instructions I do want to
15 say that at no time do I want to know what the
16 division is. I have the note that we are split, but
17 at no time should you communicate with the Court
18 what that division is. Just keep that within
19 yourselves.

20 But having said that, I want to go ahead
21 and give you some additional instructions. As I
22 have already told you, you are the sole judges of
23 the facts and the evidence in this case. Now as the
24 judge, as I have already told you, I'm not permitted
25 to give you a hint as to how I feel about the

1 factual matters and certainly could give you no hint
2 about what verdict you ought to bring in this case.
3 It is my duty to state the law in this case and I
4 have done so, and it is your duty to bring in a
5 verdict. Now if there is any clarification that I
6 can give you on the law when you go back to your
7 jury room please let me know, and I will try to
8 clarify any questions of law, but I certainly cannot
9 give you any hint with regard to the facts because
10 that is a matter totally up to you. But I can say
11 this, that when a matter is in dispute, is in
12 dispute, it is not always easy for even two men to
13 agree or two persons, two men, or two women and when
14 12 must agree it becomes obviously correspondingly
15 more difficult. But it is important that
16 litigation, and this is litigation, be ended if it
17 may be ended without a single one of you doing
18 violence to your conscience. No juror is expected
19 to give up an opinion based on reasoning
20 satisfactory to himself or herself merely for the
21 purpose of being in agreement and I want that to be
22 understood. You're not called upon often to try
23 cases. There are 46 circuit court judges in this
24 state who's work it is to try these cases from day
25 to day throughout the year. And it is very unusual,

1 almost unheard of, for a jury to go out and return
2 promptly with a verdict. This is what would happen
3 if a juror normally was in agreement to begin with.
4 At the same time we usually get a verdict. What
5 that means is that it is normal for a jury to
6 disagree at first but the fact that we normally get
7 a verdict also means that after reasonable persons
8 lay aside all extraneous matters and determine to
9 decide a case on the basis of the law and the
10 evidence, they do come to a common understanding and
11 write a verdict. It has never been intended that
12 the verdict of a jury should be the verdict of any
13 one person. Conversely, the verdict of jury is the
14 collective reasoning of all the persons put together
15 and that is why we have a jury so that we may have a
16 benefit of collecting thoughts, collecting reason.
17 It becomes your duty to tell each other how you feel
18 about the case and why you think as you do, and I'm
19 sure that you have been doing that. It also becomes
20 the other juror's duty to exchange views with you;
21 and you should listen to each other and give to each
22 other such, each other's thoughts such meaning as
23 you think it should have and to some degree it would
24 be said that jury service is a matter of give and
25 take.

1 Now if you do not agree on a verdict it
2 just means that at some future term of court before
3 some other judge perhaps that some other jury would
4 sit where you are, the same participants will come,
5 and the same lawyers will probably come and they
6 will ask the same questions and presumably they will
7 get pretty much the same answers. And we will go
8 through the whole process all over again. And I
9 have no reason now to think that any other twelve
10 citizens of Sumter County will be more capable of
11 solving this controversy than you, and so I'm going
12 to ask that you at this time to deliberate further
13 and see if you cannot write a verdict in this case.
14 And I want to close this part of the additional
15 charge by reminding you, again, while it is
16 important litigation be ended, it should be ended in
17 the form of a verdict by no juror doing violence to
18 his or her own conscience. No juror is expected to
19 give up an opinion based on reasoning satisfactory
20 to himself merely for the purpose of being in
21 agreement.

22 So what I'm going to do is ask you to go
23 back and deliberate further keeping in mind the
24 instructions that I just gave you and let me know in
25 a reasonable time if you're making progress. If you

1 are not making progress you let me know that too;
2 but let me know if you're making progress in a
3 reasonable time. And you can have as much time as
4 you want, but I would like to kind of where you
5 stand without knowing the exact division among the
6 jury or anything else, just whether you are or are
7 not making progress in this matter. Now with those
8 additional instructions I'm going to ask you to
9 retire and deliberate further, and after a while
10 bring me a report as to what progress you are
11 making. Thank you very much. You may go back to
12 your jury room.

13 (WHEREUPON, the jury was removed from the
14 courtroom at 3:05 p.m., and the following
15 proceedings were had.)

16 THE COURT: Any additions or exceptions,
17 Ms. Meadors?

18 MR. MEADORS: No, sir, thank you.

19 THE COURT: Mr. Hastie?

20 MR. HASTIE: No, sir.

21 THE COURT: None? All right, we'll be at
22 ease until we hear from the jury.

23 (Court was in recess while the jury continued their
24 deliberations.)

25 THE COURT: We've got a verdict, good.

1 All right, back on the record with regard to the
2 matter of State versus Richard Avon Green in case
3 number 2010-GS-43-1050. The defendant is present in
4 court represented with his counsel Mr. Hastie. The
5 State is present and represented by Mr. Meadors.
6 Counsel, I understand that the jury has reached a
7 verdict. Is there anything before we bring the jury
8 in, Mr. Meadors?

9 MR. MEADORS: No, sir, no, sir.

10 THE COURT: Mr. Hastie?

11 MR. HASTIE: Nothing, Your Honor. All
12 right, bring the jury in please.

13 THE BAILIFF: Yes, sir.

14 (WHEREUPON, the jury was returned to the
15 courtroom at approximately 4:08 p.m., and
16 the following proceedings commenced in
17 open court.)

18 THE BAILIFF: We have all jurors present
19 in court.

20 THE COURT: All right, Madam Forelady,
21 I've been advised you have reached a verdict; is
22 that correct?

23 THE FOREPERSON: Yes, sir.

24 THE COURT: Is it unanimous?

25 THE FOREPERSON: Yes, Your Honor.

1 (Forelady complies.)

2 THE COURT: All right. The verdict form
3 has been returned to me. And the thing that was
4 written down on the verdict to start with has been
5 stricken and X'd out by the forelady as has the
6 check mark X'd out by the forelady, and she has
7 initialed that. Was that what the situation was
8 prior earlier time, is that what it was?

9 THE FORELADY: Yes, Your Honor.

10 THE COURT: That's the reason that y'all
11 have now reached a unanimous verdict on either
12 guilty or not guilty, is that correct?

13 THE FORELADY: Yes, Your Honor.

14 THE COURT: All right, that being the case
15 then, I will allow the verdict to stand and I will
16 accept as the form that has been presented.
17 Mr. Bradley, you may publish the verdict. Mr.
18 Hastie, if you would ask your client to stand
19 please.

20 THE BAILIFF: The State of South Carolina,
21 County of Sumter, in the court of General Sessions,
22 docket number 2010-GS-43-1050, the State of South
23 Carolina, plaintiff, versus Richard Avon Green,
24 defendant. We, the jury, by unanimous agreement
25 find the defendant Richard Avon Green on the charge

1 of attempted burglary in the first degree guilty.
2 Signed Opal Fulwood dated 13th day of
3 September 2011. Ladies and gentlemen, if this is
4 your verdict so say you all by raising your right
5 hand.

6 (All jurors complied by raising their hand.)

7 THE COURT: You may be seated.

8 Mr. Hastie, anything before the jury is excused,
9 Mr. Hastie?

10 MR. HASTIE: Yes, Your Honor, I would like
11 to poll the jury. I want to poll the jury.

12 THE COURT: All right. Mr. Bradley.

13 THE BAILIFF: Ladies and gentlemen, when I
14 call your name please stand and answer two questions
15 for me please.

16 Ms. Pat Jones, is that your verdict, is it
17 still your verdict?

18 JUROR JONES: It is.

19 THE COURT: Thank you. You may be seated.

20 THE BAILIFF: Elizabeth Prescott, is that
21 your verdict, is it still your verdict?

22 JUROR PRESCOTT: Yes, sir.

23 THE BAILIFF: Thank you.

24 Ronald Mooney, is that your verdict, is it
25 still your verdict?

1 pretty stiff sentence, but you just don't seem to
2 have much regard for other peoples' property and
3 other peoples' homes.

4 The sentence of the Court is the defendant
5 is committed to the State Department of Corrections
6 for a determinate term of twenty years. I'll be
7 giving credit for time served since June 15th of
8 2010.

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11 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

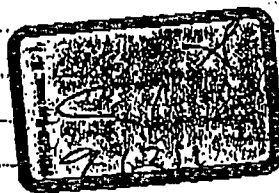
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2010-43-1050

1. Was Mrs. Davis wearing her glasses that morning?
2. What type of door was her outer door? Storm? ~~door~~

Opal Fulwood

9-13-11



we are split.

opad Fulwood
9-13-11



WITNESSES

W: Gardner
Sheriff

Sumter County

DOCKET NO. 2010-GS-43-1050

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

SEPTEMBER

TERM

2010

THE STATE

vs.

RICHARD AVON GREEN

ARREST WARRANT NUMBER

M441204

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

Indictment for

Burglary / Burglary (After June 20, 1985) - First degree

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Burglary / Burglary (After June 20, 1985) - First degree

At a Court of General Sessions, convened on September 2, 2010 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONEBURGLARY, 1ST DEGREE

That Richard Avon Green did in Sumter County on or about May 4, 2010 enter the dwelling of Rita Davis located at [REDACTED] without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight and the entering or remaining occurred in the nighttime, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

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



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Sumter

VS.

Richard Avon Green

AKA:

Race: 2 Sex: M Age: 46

DOB: SS#:

Address:

City, State, Zip: Rembert, SC

DL#: 008587591 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Attempt / Attempt, Common Law, Punish as to principal offense (violent if violent offense)

in violation of § 16-1-80

of the S.C. Code of Laws, bearing CDR Code # 1151

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

John P. Meador 10429
Manning, Glenn B. SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$ - ; provided that upon the service of - days/months/years and/or payment

of \$ - ; plus costs and assessments as applicable*: the balance is suspended with probation for -

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Since 9 am 15, 2010☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/vea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

James C. Campbell

Court Reporter:

Margaret Sullivan

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-43-1050

A/W#: M441204

Date of Offense: 5/4/2010

S.C. Code § 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

Howard P. King
2107
9-14-11

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."

May 6th, 2013



Carmen V. Ganjehsani
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

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Sumter County

Howard P. King, Circuit Court Judge

MAY 06 2013

THE STATE,

RESPONDENT,

V.

RICHARD AVON GREEN,

APPELLANT

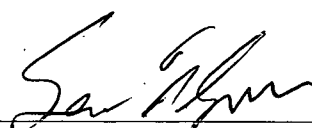
Appellate Case No. 2011-199866

MAY 06 2013

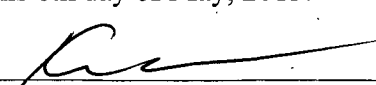
CERTIFICATE OF SERVICE

SC Court of Appeals

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of May, 2013.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 6th day of May, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013