

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

J. Ernest Kinard, Jr., Circuit Court Judge

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SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

CHARLES DAVIS,

APPELLANT

APPELLATE CASE NO. 2013-001408

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF LANCASTER
4 2007-GS-29-00866 and 00867
5

6 State of South Carolina

7 vs.

8 Charles Davis
9
10

11 Lancaster, South Carolina

12 February 13, 2013

13 Before the Honorable Brooks P. Goldsmith
14

15 APPEARANCES

16 For the State: Randy Newman

17 For the Defendant: Mark Grier
18

19 Reported by: Michael C. Watkins

20 Official Court Reporter
21
22
23
24
25

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PRETRIAL MOTIONS

1 THE COURT: Have you heard from your client?

2 MR. GRIER: No, I haven't.

3 THE COURT: Do you want a continuance? Are you ready
4 to go?

5 MR. GRIER: For the record, I do. Judge, I would make
6 a motion for a continuance. We have made efforts to contact
7 him, I have called the numbers that the solicitor has
8 provided me for contacts that are supposed to be used to be
9 able to contact him, we have exhausted all means. I have
10 written him and asked him to contact me since the last
11 trial, or the last one that didn't end up being a trial and
12 have lost contact with him. A bench warrant has been issued
13 and his bonds lady is looking for him and I think the -- we
14 would just ask for a continuance in this case so that I
15 could have my client present. I think it's prejudicial when
16 he's not and it causes difficulties in defending him and he
17 is not able to participate in the defense of his case.

18 THE COURT: Solicitor?

19 MR. NEWMAN: Your Honor, he was noticed about this case
20 last term, he was here, we told him we were going forward,
21 he was very aware of it. We are prepared to go forward
22 today and we are opposed to a continuance.

23 THE COURT: Refresh my memory, the last term of court,
24 or the last term I was here was last month?

25 MR. NEWMAN: Last month.

PRETRIAL MOTIONS

1 THE COURT: This case was called for trial; is that
2 right?

3 MR. NEWMAN: Correct. He was here the day before the
4 case was called if I recall.

5 MR. GRIER: Can I correct? This case actually was not
6 called for trial technically just so the record is clear.

7 MR. NEWMAN: He was here the day before the jury came
8 in and he was informed the case was going to be called,
9 however due to some indictment issues this case was not
10 called but another case of his was called, he didn't show up
11 for that either.

12 THE COURT: All right. What makes you think that he
13 knows that if he doesn't show up for trial this week that he
14 might be tried in his absence?

15 MR. NEWMAN: He signed the bond papers which state "it
16 has been explained to me that if I fail to appear before the
17 court as required a warrant will be (blank) for my arrest.
18 I have a right and obligation to be present at trial and
19 should I fail to attend the court the trial will proceed in
20 my absence, signed Charles Davis, May 26, 2007."

21 THE COURT: During the last term of court when he was
22 here, was he advised -- wasn't he advised then? That's what
23 I'm a little fuzzy on, was he advised when he was here that
24 he had to be here for his trial and if he wasn't here that
25 he would be tried in his absence?

PRETRIAL MOTIONS

1 MR. NEWMAN: I believe he was, Your Honor. In fact I
2 remember myself and Mr. Grier had a conversation about it
3 and I offered to put something on the record and Mr. Grier
4 said, "No, I understand, if he's not here we're going
5 forward."

6 MR. GRIER: I can't specifically remember that but that
7 is not unlikely.

8 THE COURT: I find that the defendant knew or should
9 have known that he had to be here this week for trial, that
10 he has failed to appear and therefore he has waived his
11 right to be present at his trial.

12 (Start of Voir Dire.)

13 THE COURT: And solicitor, do we have a case ready for
14 trial.

15 MR. NEWMAN: Yes, sir, Your Honor. State calls the
16 case of State versus Charles Davis, indictment number
17 2007-GS-29-0886, he is charged with burglary in the first
18 degree. Also State versus Charles Davis, indictment number
19 2007-GS-29-0867, assault and battery of a high and
20 aggravated nature.

21 THE COURT: Ladies and gentlemen, you've heard just a
22 moments ago we are about to begin the case of the State of
23 South Carolina versus Charles Henry Davis charged with two
24 offenses, both occurring on the same dates in Lancaster
25 County. The burglary first degree apparently involves the

VOIR DIRE

1 entering -- unlawful entering of the dwelling of Sharita
2 Colbert, on February 11th of 2007. The other assault and
3 battery of a high and aggravated nature once again on the
4 same date involved one Leon Caskey, Sr. that involved the
5 striking of Leon Caskey, Sr. with a pistol. Once again --
6 I'm sorry, I didn't say once again, these are the
7 allegations that are contained in the indictments and that
8 will be explained to you later. The reason I tell you that
9 is I'm going to ask you a few questions in a moment, I want
10 to make sure that nobody is related to anybody or anybody
11 that has been involved in this case. Before I begin asking
12 you the questions I'm going to ask you, the attorneys that
13 are going to be involved in the case are going to stand and
14 identify themselves to you and identify to you the names of
15 any witnesses who may be called in the case, after that I'm
16 going to ask you about your relationship, if any, with the
17 attorneys, with the witnesses, with the defendant himself.
18 We will begin with the State. Solicitor?

19 MR. NEWMAN: My name is Randy Newman, assistant
20 solicitor. Assistant Solicitor Andy Cook may be in and out
21 of the courtroom with me. As far as witnesses we have from
22 the Lancaster Police Department Phillip Hall. Lancaster
23 Police Department Brian Small. Lancaster County Sheriff's
24 Office Charles Campbell. Chester County EMS Rickey Bell who
25 has not made it in yet. Ms. Sharita Colbert in the back of

VOIR DIRE

1 the room. And Mr. Leon Caskey who is also in the back of
2 the room.

3 THE COURT: Thank you, Mr. Newman. Mr. Grier?

4 MR. GRIER: I'm Mark Grier, I've been practicing law in
5 this area since 1990, I represent Charles Davis in this
6 case.

7 THE COURT: Thank you, sir. Now, ladies and gentlemen,
8 the first question I have is this: Has any member of the
9 jury panel ever been related by blood or related by marriage
10 to any of the attorneys who are involved in this case or to
11 any of the witnesses that have been identified to you or to
12 the defendant himself? If you've ever been related by blood
13 or marriage to any of the those defendants if you will
14 please stand and give us your juror number and then tell me
15 why you stood. And I'm going to let the lady who stood in
16 the front row answer first. Yes, ma'am, your name and
17 number?

18 THE JUROR: My name is Catherine Reeves.

19 THE CLERK: Number 110.

20 THE JUROR: And Randy Newman is my nephew.

21 THE COURT: She's telling the truth? I take it then
22 that you -- not only is he your nephew but that you have
23 occasion to see him on a regular basis?

24 THE JUROR: Not regularly, no, sir.

25 THE COURT: Not enough or too much?

VOIR DIRE

1 THE JUROR: Mostly on the Internet.

2 THE COURT: All right. Thank you, ma'am. Yes, sir,
3 your name?

4 THE JUROR: I'm Jeff Faulkenberry, juror number 44.
5 I'm related To Phillip Hall.

6 THE COURT: How is that?

7 THE JUROR: Cousins.

8 THE COURT: First, second or --

9 THE JUROR: His mother and my father are brother and
10 sister.

11 THE COURT: Let me ask you a similar question, do you
12 ever see your cousin?

13 THE JUROR: Oh yeah.

14 THE COURT: I really do seriously have several cousins
15 that I haven't seen in several years.

16 THE JUROR: Not every week, but yeah, regular.

17 THE COURT: But on a regular basis? You think that
18 might interfere with your ability to sit as a fair and
19 impartial juror in this case?

20 THE JUROR: It might, I don't know. I can try it, it
21 don't matter. I'm just related to him.

22 THE COURT: All right. In other words you think you
23 might be -- nevertheless be able to sit and be a fair and
24 impartial juror in this case despite the fact that he was
25 related to you?

VOIR DIRE

1 THE JUROR: No, probably not.

2 THE COURT: I'm sorry?

3 THE JUROR: No, probably not.

4 THE COURT: Do you think it might interfere with your
5 ability to be fair?

6 THE JUROR: Might.

7 THE COURT: Has any member of the jury panel ever had a
8 close personal or social relationship with any of the
9 attorneys involved in the case, any of the witnesses that
10 have been identified to you or with the defendant himself?
11 Have you ever had a close personal or social relationship
12 with any of those individuals? If so, please stand. We
13 need to get your name, please.

14 THE JUROR: Helen McDowell, number three. Mark Grier
15 and I were neighbors for years and years.

16 MR. GRIER: And she still likes me.

17 THE COURT: How long ago did that cease being the
18 situation?

19 THE JUROR: We have been moved about 12 years.

20 THE COURT: Twelve years ago?

21 THE JUROR: Still, you know, contact.

22 THE COURT: Still have communication with him and see
23 him?

24 THE JUROR: Uh-huh.

25 THE COURT: When you were his neighbor were you a

VOIR DIRE

1 neighbor that lived across the pasture 10 miles away or
2 50 yards from him?

3 THE JUROR: We use the same driveway right beside.

4 THE COURT: That kind of neighborhood. Well, do you
5 think that relationship, Ms. McDowell, might interfere with
6 your ability to sit on this jury and be a fair and impartial
7 juror?

8 THE JUROR: I would think not.

9 THE COURT: You would think not? Well, I need to ask
10 you about it really. Do you think that you would be able to
11 listen to the evidence and be fair to both the State and to
12 the defense?

13 THE JUROR: Yes, sir, I think I could.

14 THE COURT: Has anyone ever been represented by any of
15 the attorneys involved in this case? If so, please stand.
16 Has any member of the jury panel formed or expressed an
17 opinion about any issue or any matter involved in this case?
18 If so, please stand. Is any member of the jury panel or
19 member of your immediate family related by blood or marriage
20 to any member of law enforcement? Are you or any member of
21 your immediate family related by blood or marriage to any
22 member of law enforcement? If so, please stand. Let me ask
23 the lady who is closest to me on the left, stand, give me
24 your name, number and tell me why.

25 THE JUROR: Cheryl Poliquin, juror 107. My son is a

VOIR DIRE

1 border patrol agent.

2 THE COURT: I take it that is not in Lancaster County.

3 THE JUROR: He lives in Arizona.

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

5 MR. GRIER: We couldn't understand her.

6 THE JUROR: My son is a border patrol agent.

7 THE COURT: Son was a border patrol agent. Yes, ma'am,
8 your name and number?

9 THE JUROR: Laura Boone, and I don't remember my
10 number.

11 THE CLERK: Thirteen.

12 THE JUROR: Barry Faile, the Lancaster County Sheriff
13 is my brother-in-law, he's married to my sister.

14 THE COURT: That is probably a little bit too close a
15 relationship for to you sit on this jury.

16 THE JUROR: Jeff Faulkenberry, 44.

17 THE COURT: Yes, sir?

18 THE JUROR: Again, Phillip Hall.

19 THE COURT: Same relationship?

20 THE JUROR: Yes, sir.

21 THE COURT: Yes, ma'am?

22 THE JUROR: Alice Pierce, 106. My brother-in-law is a
23 homicide detective and my sister-in-law is a FBI agent.

24 THE COURT: Now, which locals are they in?

25 THE JUROR: In Arizona and New York.

VOIR DIRE

1 THE COURT: The lady closest to me.

2 THE JUROR: My husband is a retired senior agent for.

3 THE COURT: Got to get your name and number first.

4 THE JUROR: Barbara Sherburne, 117.

5 THE COURT: Yes, ma'am?

6 THE JUROR: My husband is a retired senior agent with
7 the US Customs Service and currently does background
8 investigations for the government.

9 THE COURT: Is he retired?

10 THE JUROR: Well, technically they never retire. He
11 thinks no, I say yes.

12 THE COURT: Let me ask you this, did he have a badge or
13 anything or --

14 THE JUROR: Yes, sir, and he carries a gun.

15 THE COURT: And he carries a weapon?

16 THE JUROR: Yes, sir.

17 THE COURT: All right. Thank you, ma'am.

18 THE JUROR: You are welcome.

19 THE COURT: Yes, ma'am, your name and number?

20 THE JUROR: Denise Jordan, Gloria Jordan. My cousin,
21 Mike Oliver, is the captain of the highway patrol in South
22 Carolina.

23 THE COURT: I'm going to ask you a similar question to
24 the one I asked earlier, first cousin, third cousin?

25 THE JUROR: First cousins.

VOIR DIRE

1 THE COURT: Do you ever see him?

2 THE JUROR: I have not seen him in ages.

3 THE COURT: Anyone else? Has any member of the jury

4 panel or member of your immediate family ever been the

5 victim of a violent crime or house breaking or burglary?

6 Ever been the victim of a violent crime or house breaking or

7 burglary? If so, please stand. Give me your name and

8 number, please, ma'am.

9 THE JUROR: House breaking -- what did you say?

10 THE COURT: A burglary or house breaking, kind of the

11 same thing. Does that apply to you? Your name and number

12 again? Yes, ma'am.

13 THE JUROR: 117, Barbara Sherburne.

14 THE COURT: Yes, ma'am?

15 THE JUROR: I had my home broken into when I lived in

16 Florida.

17 THE COURT: How long ago was that?

18 THE JUROR: Thirty years.

19 THE COURT: Home was broken into.

20 THE JUROR: Items were stolen.

21 THE COURT: And what was stolen?

22 THE JUROR: Items were stolen.

23 THE COURT: Were you or any family member at home when

24 this occurred?

25 THE JUROR: No, sir.

VOIR DIRE

1 THE COURT: Nighttime, daytime or do you know?

2 THE JUROR: Daytime while I was at work.

3 THE COURT: All right. Thank you, ma'am.

4 THE JUROR: 143, Lula Williams. Our home was broken
5 into about ten years ago, I wasn't at home so I don't know
6 the time it was broke in or anything.

7 THE COURT: Ten years ago your home was broken into.
8 Were any items taken?

9 THE JUROR: Yes.

10 THE COURT: Were they recovered?

11 THE JUROR: Yes, but we didn't get them back.

12 THE COURT: Okay. And I've forgotten your name and
13 number.

14 THE JUROR: Alice Pierce, 106. This would involve my
15 sister, does that apply?

16 THE COURT: Say it one more time.

17 THE JUROR: It involves my sister, would that apply?

18 THE COURT: Yes.

19 THE JUROR: Her apartment was broken into and she was
20 there and there was an attempted rape.

21 THE COURT: And how long ago?

22 THE JUROR: Twenty years ago.

23 THE COURT: Apprehension of the suspect?

24 THE JUROR: No.

25 THE COURT: All right. Thank you. Is any member of

VOIR DIRE

1 the jury panel aware of any bias or any prejudice that they
2 may have towards either the State or -- the State or the
3 defendant in this case? If so, please stand. Is there any
4 member of the jury panel who is a member of or contributor
5 to any group which has as its primary concern the promotion
6 or law enforcement or victims rights, such groups would
7 include but not be limited to MADD, SADD, CAVE, such groups
8 similar to that? If so, please stand. Does any member of
9 the jury panel know of any reason whatsoever why he or she
10 should not serve as a juror in this case with particular
11 emphasis on your ability to being fair and impartial to both
12 the State and to the defendant? If so, please stand.

13 Additional questions from the State?

14 MR. NEWMAN: None from the State.

15 THE COURT: Any additional not already requested from
16 the defense?

17 MR. GRIER: No, Your Honor.

18 THE COURT: All right. The clerk will call your name,
19 when he does, please stand. Mr. Clerk?

20 THE CLERK: Juror 113, Raila Roinsalo. What say the
21 State?

22 MR. NEWMAN: Please present the juror.

23 THE CLERK: Defendant?

24 MR. GRIER: Please swear the juror.

25 THE CLERK: Juror 128, Tina Stuber. What say the

VOIR DIRE

1 State?

2 MR. NEWMAN: Please present the juror.

3 THE CLERK: Defendant?

4 MR. GRIER: Please excuse the juror.

5 THE CLERK: Juror 84, Angela McFadden. What say the
6 State?

7 MR. NEWMAN: Please excuse the juror.

8 THE CLERK: Juror 67, Unshenekia Jones. What say the
9 State?

10 MR. NEWMAN: Please present the juror.

11 THE CLERK: Defendant?

12 MR. GRIER: Please swear the juror.

13 THE CLERK: Juror 104, Sandra Perry. What say the
14 State?

15 MR. NEWMAN: Please present the juror.

16 THE CLERK: Defendant?

17 MR. GRIER: Please swear the juror.

18 THE CLERK: Juror 95, Joe Mungo. What say the State?

19 MR. NEWMAN: Please present the juror.

20 THE CLERK: Defendant?

21 MR. GRIER: Please excuse the juror.

22 THE CLERK: Juror 68, Gloria Jordan. What say the
23 State?

24 MR. NEWMAN: Please present the juror.

25 THE CLERK: Defendant?

VOIR DIRE

1 MR. GRIER: Please swear the juror.

2 THE CLERK: Juror 147, Jennifer Wright. What say the
3 State?

4 MR. NEWMAN: Please present the juror.

5 THE CLERK: Defendant?

6 MR. GRIER: Please swear the juror.

7 THE CLERK: Juror 139, Rachel Wallace. What say the
8 State?

9 MR. NEWMAN: Please present the juror.

10 THE CLERK: Defendant.

11 MR. NEWMAN: Please excuse the juror.

12 THE CLERK: Juror 26, Paul Craig. What say the State?

13 MR. NEWMAN: Please present the juror.

14 THE CLERK: Defendant?

15 MR. GRIER: Please swear the juror.

16 THE CLERK: Juror 106, Alice Pierce. What say the
17 State?

18 MR. NEWMAN: Please present the juror.

19 THE CLERK: Defendant?

20 MR. GRIER: Please excuse the juror.

21 THE CLERK: Juror seven, Michael Barrett. What say the
22 State?

23 MR. NEWMAN: Please present the juror.

24 THE CLERK: Defendant?

25 MR. GRIER: Please excuse Mr. Barrett.

VOIR DIRE

- 1 THE CLERK: Juror 96, Cynthia Noyes. What say the
2 State?
- 3 MR. NEWMAN: Please present the juror.
- 4 THE CLERK: Defendant?
- 5 MR. GRIER: Please swear the juror.
- 6 THE CLERK: Juror 108, Mary Price. What say the State?
- 7 MR. NEWMAN: Please present the juror.
- 8 THE CLERK: Defendant?
- 9 MR. GRIER: Please swear the juror.
- 10 THE CLERK: Juror 78, Tianac Massey. What say the
11 State?
- 12 MR. NEWMAN: Please present the juror.
- 13 THE CLERK: Defendant?
- 14 MR. GRIER: Please swear the juror.
- 15 THE CLERK: Juror eight, Gary Belcher. What say the
16 State?
- 17 MR. NEWMAN: Please present the juror.
- 18 THE CLERK: Defendant?
- 19 MR. GRIER: Please excuse the juror.
- 20 THE CLERK: Juror 149, Daniel Ziegler. What say the
21 State?
- 22 MR. NEWMAN: Please present the juror.
- 23 THE CLERK: Defendant?
- 24 MR. GRIER: Please swear the juror.
- 25 THE CLERK: Juror 42, Penny Eubanks. What say the

VOIR DIRE

1 State?

2 MR. NEWMAN: Please present the juror.

3 THE CLERK: Defendant?

4 MR. GRIER: Please excuse the juror.

5 THE CLERK: Juror 144, Riketa Williams. What say the
6 State?

7 MR. NEWMAN: Please present the juror.

8 THE CLERK: Defendant?

9 MR. GRIER: Please swear the juror.

10 THE CLERK: Juror 19, Deborah Chambers. What say the
11 State?

12 MR. NEWMAN: Please excuse the juror.

13 THE CLERK: Juror 110, Catherine Reeves. What say the
14 State?

15 MR. GRIER: Judge, may we approach?

16 (Bench conference was held.)

17 THE COURT: I'm granting the motion, disqualify her for
18 cause.

19 THE CLERK: Juror number 122, Mary Smith. What say the
20 State?

21 MR. NEWMAN: Please present the juror.

22 THE CLERK: Defendant?

23 MR. GRIER: Please present the juror.

24 THE COURT: One alternate.

25 THE CLERK: Juror 101, William Peacock. What say the

VOIR DIRE

1 State?

2 MR. NEWMAN: Please excuse the juror.

3 THE CLERK: Juror five, Janice Ayres. Any challenge
4 for cause?

5 MR. NEWMAN: No challenge for cause.

6 THE CLERK: Defendant?

7 MR. GRIER: Please excuse the juror.

8 THE CLERK: Juror ten, Nina Blackmon. Any challenge
9 for cause by the State?

10 MR. NEWMAN: No challenge.

11 THE CLERK: Defendant?

12 MR. GRIER: Please swear the juror.

13 THE COURT: Any matters of law or challenge to the
14 selection of the jury from the State?

15 MR. NEWMAN: None, Your Honor.

16 THE COURT: From the defendant?

17 MR. GRIER: None from defense.

18 (The remaining panel was excused.)

19 (Back in the courtroom.)

20 THE COURT: And Mr. Grier?

21 MR. GRIER: Judge I would ask you to quash the
22 indictment on the assault and battery of a high and
23 aggravated nature. I was astounded to learn when you were
24 reading the indictment that the allegations are that my
25 client used a gun and that's part of the aggravating

MOTIONS

1 circumstances constituting aggravated assault, because
2 there's nothing in the police report about a gun being used.
3 I have been told -- I have not been told by the solicitor
4 that a gun was being used, I don't know what was presented
5 to the grand jury to obtain an indictment, I don't know how
6 that -- of course I'm not privy to how that's obtained. But
7 if there was information about a gun and that was presented
8 to the grand jury I think I'm entitled to at least as much
9 as the grand jury of an aggravating circumstance which will
10 have a substantial impact on the defense of this case which
11 I have not had a chance to talk to my client about or to a
12 any other witnesses about. It's prejudicial, extremely
13 prejudicial to the defense to be surprised. It's a failure
14 on the part of the State to disclose material information
15 that the defense is entitled to, and I strongly object to
16 proceeding on that indictment because I think it's
17 prejudicial and that it is just outright wrong, it is a
18 failure and the proper sanction is to quash that indictment
19 for failure to disclose information that I am entitled to to
20 prepare my case.

21 THE COURT: Okay. Solicitor?

22 MR. NEWMAN: Your Honor, first of all I apologize to
23 Mr. Grier, this is not something that was done purposefully.
24 As you know, this is a 2007 case, I don't know who started
25 this case, I just know I ended up with it and the first time

MOTIONS

1 I spoke with the victim he told me he got hit with a gun.
2 Of course we didn't have the original indictment, I had to
3 make those and he was reindicted this past term. I think
4 we've got ABHAN even without the gun based on the extent of
5 the injury, that kind of -- you know, I don't see the
6 difference -- if Mr. Caskey gets up on the stand and says,
7 "Well, he hit me with a gun." He is there, he can cross
8 examine him, I don't see the difference as being surprised
9 with that or being surprised with the indictment, the
10 indictment is not evidence. That's all I have got.

11 MR. GRIER: Well, Judge, I think, it's, you know, that
12 some inquiry as to how this was presented to the grand jury
13 is in order, I don't know even know how that works. Does
14 the solicitor go in and testify to the grand jury that the
15 man had a gun? How did they create an indictment that says
16 a gun is an aggravating circumstance? Did the solicitor
17 tell them that? There's nothing in the police reports, you
18 know. Does the solicitor testify to the grand jury? I
19 don't think so. And so it's improper -- whatever got
20 presented to the grand jury got improperly presented to the
21 grand jury and an indictment that says a gun was used and
22 presented to the grand jury, it just should not have been an
23 indictment that says that a gun is the aggravating
24 circumstance, I can't see how that could have or should have
25 been presented to the grand jury and that indictment coming

MOTIONS

1 out of it. And I'm not accusing Mr. Newman of intentionally
2 doing anything of hiding the ball from me, but I think he
3 has the duty to inform me of newly discovered evidence. The
4 fact that this case is six years old it ain't my fault, it
5 ain't my client's fault, and that other solicitors have
6 handled it, it ain't my fault, it ain't an excuse. I'm
7 renewing -- certainly I've got that motion, I am renewing my
8 motion for -- if you deny it I need to make other motions
9 relevant to it.

10 THE COURT: I'm going to deny it. What's the other
11 motion?

12 MR. GRIER: I need a recess to investigate the evidence
13 of these new allegations that I have just learned of and I
14 need some time to investigate it. There is a difference
15 between being surprised by a witness on the stand and the
16 solicitor having knowledge about a case that he doesn't
17 disclose to you, there is a huge difference between those
18 two things. I can be surprised by anything that a witness
19 might say.

20 THE COURT: Solicitor?

21 MR. BARFIELD: Give Mr. Newman and me just a second.

22 THE COURT: All right.

23 (Break in proceedings.)

24 MR. GRIER: Judge, if I may ask you to consider another
25 thing in my prior motion that you have already denied as

MOTIONS

1 something that I should have put on the record, I mentioned
2 it earlier when we had our conversation at the bar. I guess
3 we'll wait and see what they do.

4 MR. NEWMAN: Your Honor, I believe a proper remedy
5 would be to amend the indictment and take out the three
6 words with a pistol, then it would just state hitting the
7 victim causing serious bodily injury, and I can instruct the
8 victim, Mr. Caskey to not mention pistol on the stand.

9 THE COURT: Mr. Grier?

10 MR. GRIER: Well, you know, Judge, you know, that
11 undercuts the argument I might have except for the standing
12 issue of not being told about something I should have had
13 the opportunity to investigate, but I can't argue that
14 there's prejudice if the State is willing to do that.

15 THE COURT: All right. I will grant that motion then,
16 solicitor, under those terms and conditions and order the
17 witness not to refer to a gun, pistol or similar object.

18 MR. BARFIELD: And before the jury comes in here and
19 actually start stuff I am sure Mr. Newman is going to need
20 to talk to the witness, it might be he can do it right now
21 but at some point before he gets on the stand they need to
22 have a conversation.

23 MR. GRIER: But Judge, one other issue is this jury has
24 been told that he has been charged with a gun and that's the
25 first time I heard it as well. But I'm asking the Court, I

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1 assume you're going to have to make some kind of statement
2 to the jury about that it was -- you were improperly told
3 there was a gun.

4 THE COURT: I don't think so. What if the witness in a
5 regular case -- suppose it had not been -- this issue had
6 not come up, the original indictment had always said pistol
7 and the witness did not testify about a pistol, isn't that
8 where we are? Aren't you at the same place? Because we
9 tell the jury that the indictment is not evidence.

10 MR. GRIER: Well, I understand that, but --

11 THE COURT: Well, let's suppose the solicitor argued to
12 the jury in another hypothetical case, "We'll prove to you
13 the following, bla, bla, bla," and you don't prove it.
14 Isn't that what you always tell the jury?

15 MR. GRIER: But they have been told that the State is
16 going to present evidence that this is an aggravated -- that
17 there was a gun used in an assault, they've been told that
18 and so --

19 THE COURT: It was an allegation in an indictment.

20 MR. GRIER: I don't know that they are, you know -- I
21 don't know that it's fair to say that that's comprehended at
22 the time that you're told -- they were not actually told
23 that it was an allegation.

24 THE COURT: Yes, they were, I told them.

25 MR. GRIER: They were told after the fact that you made

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1 the statement that this is an allegation.

2 THE COURT: Yes.

3 MR. GRIER: But not at the time that you made the
4 statement.

5 THE COURT: But immediately following the statement I
6 told them it was an allegation contained in the statement.

7 MR. GRIER: And my issue is that at the time they were
8 told there was a gun they weren't told it was an allegation,
9 it was a statement as though it were fact.

10 THE COURT: I understand and I'm going to deny your
11 motion. All right. My plan would be then bring in the
12 jury, swear them, give them a preliminary charge, make
13 opening statements and go to lunch, that will give
14 Mr. Newman time to talk to his witness.

15 (The jury returned to the courtroom.)

16 THE COURT: Ladies and gentlemen, I know you just sat
17 down but I'm going to ask you to stand back up while the
18 clerk administers to you an oath.

19 (At this time the jury was sworn.)

20 THE COURT: In just a few minutes, ladies and
21 gentlemen, we actually are going to begin the trial of this
22 case, before we do that I want to tell you a few things. As
23 you recall the defendant in this case is charged by way of
24 an indictment with assault and battery of a high and
25 aggravated nature and with burglary in the first degree. I

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1 tell you that these documents do not constitute evidence and
2 should not be considered by you as evidence in this case,
3 this is merely the vehicles that bring the case into court.
4 The defendant has pled not guilty to these indictments and
5 that puts the burden upon the State to prove to you to your
6 satisfaction each and every element of the indictment beyond
7 a reasonable doubt. It would be your duty, ladies and
8 gentlemen, to decide whether at the end of the day the State
9 meets its burden of proof. Your purpose as jurors is to
10 determine the facts of the case. You are the sole judges of
11 the facts of the case, I am the judge of the law. I tell
12 you what the law is, I rule about admissibility of evidence
13 and so on, but you decide what the facts are, and if at any
14 time I ever do anything to cause you to believe I have an
15 opinion about the facts of the case, you may disregard that.
16 I'm not permitted to discuss the facts of the case in your
17 presence. You decide this case based solely on first of all
18 what happens in the courtroom, and secondly the sworn
19 testimony from the witness stand and any documents that
20 might be properly introduced into evidence. The attorneys
21 will make comments to you and statements to, you opening and
22 closing statements, but their comments to you is not
23 evidence, it's just merely what the attorneys are saying
24 they think and what they believe. In the opening statement,
25 which will happen in just a moment, the attorneys will

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1 typically tell you what they think the evidence will prove
2 or will not prove and then we'll begin taking testimony. At
3 the conclusion of all of the testimony then the attorneys
4 will make their closing arguments to you where they try to
5 convince you to see the case the way they see it, then I
6 will tell you about the law that applies in the case. Until
7 the case is completely over, though, you are not permitted
8 to discuss the case with anybody or let anybody discuss the
9 case with you. The only people that can discuss the case
10 with you until the case is over with are we here in the
11 courtroom, but believe it or not even in the jury room even
12 among yourselves until the case is over you can't discuss
13 the case. You can discuss the weather, what you are doing
14 in your family life, discuss anything you want to, politics,
15 probably not a good idea but you can, but just not the facts
16 of this case. From time to time, ladies and gentlemen, you
17 may ask (sic) as you have already seen the attorneys ask if
18 they can approach me and talk privately to me, I may call
19 them over to a side bar, and the reason we do that is not
20 necessarily to keep secrets from you but it's most likely
21 because I need to discuss with the attorneys a matter of law
22 and discussing it may require me to discuss the facts of the
23 case. And so when we do that when we whisper or we say
24 things we think you can't hear, it's really not to try to
25 keep secrets from you, once again it's because it's likely I

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1 am required to discuss a matter with them outside of your
2 presence. Ladies and gentlemen, we will now have opening
3 arguments beginning with the State. Solicitor?

4 MR. GRIER: Your Honor, can we approach for a second?

5 THE COURT: Yeah. I told you it was going to happen,
6 didn't I?

7 (Bench conference was held.)

8 THE COURT: Before the attorneys begin, ladies and
9 gentlemen, I do want to tell you one other thing. You may
10 notice the defense counsel at the table and the defendant is
11 not present. I need to tell you, though, that the defendant
12 is not required to be present, he may be present but a
13 defendant in a criminal trial is not required to be present
14 at the trial. Mr. Newman.

15 MR. NEWMAN: Thank you, Your Honor. May it please the
16 Court? Ladies and gentlemen, I'm Assistant Solicitor Randy
17 Newman, I work here for the Honorable Doug Barfield in the
18 6th Circuit. I want to thank y'all for your service today.
19 I realize even though I'm here doing what I love to do I
20 know there's a million other places that y'all would rather
21 be, but it's very important that y'all are here today. It's
22 up to y'all to make sure that Mr. Davis gets a fair trial
23 and this case is up to y'all to decide. You will hear some
24 testimony and you'll see some evidence. After you see and
25 hear what you're going to see and hear you're going to know

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1 that beyond a reasonable doubt that Mr. Davis is guilty of
2 burglary first and assault and battery of a high and
3 aggravated nature. Burglary first is, definition by the
4 State, entering a dwelling without consent with the intent
5 to commit a crime once you get in, and it has to be in our
6 case in the nighttime. Assault and battery of a high and
7 aggravated nature is an unlawful act of violent injury to
8 another accompanied by an aggravating circumstance, and
9 we'll go through that. I know a lot of that is legal mumbo
10 jumbo and you might not know what it means but you will know
11 what it means by the time we're done. I'm going to ask you
12 to be patient with us. I know a lot of this is not like you
13 see on TV, we're not going to wrap everything up in a one
14 hour slot. And like I said, you're going to hear some
15 testimony and see some evidence and when I'm finished today
16 you're going to know beyond a reasonable doubt that
17 Mr. Davis is guilty of burglary first and assault and
18 battery of high and aggravated nature.

19 THE COURT: Thank you, Mr. Newman. Mr. Grier?

20 MR. GRIER: May it please the Court? Mr. Newman?

21 Ladies and gentlemen, thank you for your participation as a
22 citizen of Lancaster County. And I must make a confession
23 to you, while Mr. Newman might prefer to be here today I
24 probably would prefer to be somewhere else myself quite
25 frankly just like y'all probably would be, I have been doing

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1 it a lot longer than Mr. Newman. But I do like what I do
2 and I enjoy trying cases and criminal defense, because my
3 job is to really represent the constitutional privileges of
4 citizens just like everybody sitting here today. And you
5 know one of your privileges is you're entitled to a trial by
6 a jury of your peers and that's where you fit in. Everybody
7 that's sitting in this courtroom in an official capacity
8 today is the judge, the clerk, the reporter, the solicitors
9 and the defense people, we are all ordained as officers of
10 the courts and that's what we do for a living, and y'all are
11 temporarily officers of court because you are jurors and you
12 are necessary to make the jury system work. And it's really
13 one of the few things that we are called on to do as
14 citizens, we sacrifice our men and woman in uniform and a
15 lot of sacrifices that a lot of people make for your
16 country, this is not quite as burdensome as are the other
17 sacrifices that a lot of other people make. But I represent
18 Charles Davis. And when people say that Charles Davis is on
19 trial there's really two ways to look at it, and certainly
20 not many people get to sit on the perspective of the
21 defense, but what you're really on -- the burden of proof is
22 on the State of South Carolina to prove that Mr. Davis is
23 guilty of these allegations and their burden is to prove it
24 beyond a reasonable doubt. Arrests are made just based on a
25 suspicion so when an officer -- people are astounded that

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1 they can be arrested because somebody said something. But
2 that is the reality is is that if an officer is told
3 something that constitutes a crime and they believe it or
4 have no reason not to believe it they have a right to lock
5 someone up and that's called reasonable suspicion and that's
6 a very low bar. So people get locked up on a very low test
7 and it is the only way that the system will work. You've
8 got to -- when there's an alleged crime you have got to have
9 action and law enforcement has to have authority to act, but
10 they act on a low bar of a suspicion, and that's not a --
11 what jurors are charged with doing. Jurors are charged with
12 determining whether someone committed a crime based on the
13 burden of proof on the State beyond a reasonable doubt. The
14 Judge is going to give you instructions, I'm going to talk
15 to you about that a little bit more in a minute. So when
16 somebody says that the defendant is on trial, I kind of take
17 issue with that. I think it's just as appropriate to say
18 that the State is on trial because they're the ones that
19 have to prove -- they have the burden of proof, the defense
20 has to prove nothing. I could sit at that desk throughout
21 this whole trial and not say anything as a lawyer, the
22 defendant doesn't have to say anything, everything that has
23 to be done in this courtroom in this trial is done by the
24 State. I can choose to do things. I am choosing to argue
25 and you probably wish I wouldn't, but I'm choosing to argue

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1 and I would like to share a few things that I'm asking you
2 to consider strongly from the defense perspective. Again, I
3 told you in -- you know that the State has the burden of
4 proof and they've got to prove the guilt of Charles Davis
5 beyond a reasonable doubt. The Judge is going to tell you,
6 or give you the law, he's going to say -- he's going to tell
7 you that and he's going to explain the burden of proof in
8 all of that, but what he is going to tell is you that at the
9 conclusion of all of the evidence is if you are firmly
10 convinced of the guilt of Charles Davis then you must
11 convict. However, if you find the real possibility, the
12 real possibility that the defendant may not be guilty then
13 you must acquit. And so the test for whether the State has
14 met their burden of proof is really not you believe the
15 defendant might be guilty because if so then you're going to
16 hear people saying stuff today, you're going to see some
17 pictures of some injuries, but mainly what you're going to
18 have to depend on today is the testimony and what people
19 say. Now, if you come to the conclusion that Mr. Davis
20 might be guilty, well, that's not enough evidence to convict
21 someone of a criminal offense. Okay? Okay? You hear the
22 evidence and you say, "You know what, he's probably guilty."
23 That's not enough evidence to convict somebody of a criminal
24 offense. If the State was suing my client for money, that
25 would be the test for a criminal (sic) trial, he probably

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1 did it, he did it more likely than not. This is not a trial
2 about money, this is a trial about somebody's freedom. When
3 you try somebody, you know, to -- when you threaten to take
4 away somebody's freedom it's a higher bar and it should be.
5 Because if you take away my money in theory I can make some
6 more money, but if you take away my liberty I can't do
7 nothing, I can't make more money. I don't have anything if
8 I don't have my freedoms and for that reason the State is
9 required to prove the evidence beyond a reasonable doubt.
10 And so it's not whether Charles Davis might be guilty, it's
11 not whether he is probably guilty, the real test is is there
12 the real possibility that he might be innocent. And when
13 you consider the evidence today I believe you will find that
14 Charles Davis not just might be innocent but he is innocent,
15 not probably is innocent, I think you will find both of
16 those things that he might be, he probably is, but what you
17 will find I believe most certain is that there is the real
18 possibility that he might be innocent. Thank you for your
19 participation. This is not going to be a long trial, we
20 look forward to trying the case. Thank you.

21 THE COURT: And having heard all of that, ladies and
22 gentlemen, we're now going to take a lunch break. The first
23 witness we're afraid may take awhile so rather than run over
24 and run into the lunch hour we will go ahead and take a
25 lunch break. What I would like for you to do some time

OPENING STATEMENTS

1 today after you get to know each other is select a
2 foreperson which can be either 12 of you but not the
3 alternate juror. If y'all have any problems electing a
4 foreperson just let me know and I can do it. So ladies and
5 gentlemen, I remind you during the lunch break though don't
6 let anybody talk to you about the case, you don't talk to
7 anybody about the case. See you back at 1:30.

8 (The jury left the courtroom.)

9 THE COURT: Anything else before we go to lunch?

10 MR. NEWMAN: No, Your Honor.

11 MR. GRIER: Nothing.

12 (A lunch recess was taken.)

13 THE COURT: Bring in the jury.

14 (The jury returned to the courtroom.)

15 THE COURT: Welcome back, ladies and gentlemen. The
16 bailiff handed me a note I believe indicating juror number
17 96, Cynthia Noyes has been selected, is that you? A wise
18 decision your fellow jurors made. Before we begin one thing
19 I did want to say to our alternate juror, pay close
20 attention, you still may have to sit on this jury and make a
21 decision because somebody may not be here if this case keeps
22 carrying over until tomorrow. Solicitor, you may call your
23 next witness.

24 MR. NEWMAN: Thank you, Your Honor. May it please the
25 court? State calls Sharita Colbert.

TESTIMONY OF SHARITA COLBERT

1 The witness, SHARITA COLBERT, was first duly
2 sworn and testified as follows, on:

3 DIRECT EXAMINATION

4 BY MR. NEWMAN:

5 Q. Please state your name for the record.

6 A. Sharita Colbert.

7 Q. What do you do for a living, Ms. Colbert?

8 A. A home mom.

9 Q. How many kids do you have?

10 A. Three.

11 Q. Do you remember the events that occurred on February 11
12 of 2012 -- 2007?

13 A. Some of it.

14 Q. Were you at home that night?

15 A. Uh-huh.

16 Q. At your home?

17 A. Yes, sir.

18 Q. Anybody with you?

19 A. My mama and my kids.

20 Q. Anybody else?

21 A. And Leon.

22 Q. Leon Caskey?

23 A. Uh-huh.

24 Q. What is the relationship with you and Mr. Caskey, or
25 what was the relationship?

TESTIMONY OF SHARITA COLBERT

1 A. He was my friend at the time.

2 Q. Okay. Was he spending the night?

3 A. Yes, sir.

4 Q. Would he sleep over?

5 A. Uh-huh.

6 Q. What time did y'all go to sleep?

7 A. I have no idea.

8 Q. Anything significant happen after y'all went to sleep?

9 How did you get woken up?

10 A. By Charles Davis.

11 Q. And do you have a relationship with Charles Davis?

12 A. He's my babies' daddy.

13 Q. Now how old are your children?

14 A. Five.

15 Q. You've got three children?

16 A. Just two by Charles, I've got twins by Charles.

17 Q. The twins are five years old?

18 A. Uh-huh.

19 Q. So, were they born on --

20 A. Nuh-uh.

21 Q. They weren't around?

22 A. My oldest was, she's eight.

23 Q. That's not Charles Davis'?

24 A. Nuh-uh.

25 Q. How did you know Charles Davis at that time?

TESTIMONY OF SHARITA COLBERT

- 1 A. I was pregnant with his kids.
- 2 Q. You were pregnant at the time?
- 3 A. Uh-huh.
- 4 Q. Did y'all live together?
- 5 A. No, sir.
- 6 Q. He had a key to your apartment?
- 7 A. Yes, sir, to the back door.
- 8 Q. Do you remember when you spoke to law enforcement that
- 9 night, the night that this happened, do you remember talking
- 10 to law enforcement?
- 11 A. Uh-huh.
- 12 Q. Do you remember telling them that he did not have a
- 13 key?
- 14 A. No, sir.
- 15 Q. Did you take any steps to secure that back door?
- 16 A. No. Because when we woke up Charles was in the door,
- 17 he was in.
- 18 Q. I mean before you went to sleep did you do anything to
- 19 secure --
- 20 A. I put a stove to the back door.
- 21 Q. Did you lock the door?
- 22 A. Yes, sir.
- 23 Q. And you put a stove against it?
- 24 A. Uh-huh.
- 25 Q. When you woke up did you hear any banging on the door

TESTIMONY OF SHARITA COLBERT

1 or anything or you just woke up and he was just in the
2 house?

3 A. I heard something and he was in and I jumped up, I woke
4 up Leon and I ran upstairs.

5 Q. Did you see any fight?

6 A. When I came down the stairs Leon was laying on the --
7 he was on the couch and he was like bloody all over because
8 I was pregnant at the time and I was scared.

9 Q. I understand. Let me show you some photographs that's
10 been marked for ID.

11 A. Uh-huh.

12 Q. What has been marked for ID purposes as State's Number
13 1. Do you recognize that person? Who is that person?

14 A. Charles Davis.

15 Q. This is State's 4. Do you recognize what's in that
16 photo? Is that a mattress on the floor at your apartment?

17 A. Uh-huh.

18 Q. Was there blood on there?

19 A. Uh-huh.

20 Q. Were you bleeding that night?

21 A. No, nuh-uh.

22 THE COURT: Ms. Colbert, I need you to respond to the
23 questions with a yes or no.

24 A. No, I wasn't bleeding that night.

25 Q. Was Leon Caskey bleeding that night?

TESTIMONY OF SHARITA COLBERT

- 1 A. Yes, sir.
- 2 Q. Do you recognize that photo?
- 3 A. Uh-huh.
- 4 Q. Is that the back door of your apartment?
- 5 A. Yes, sir.
- 6 Q. Is that your stove?
- 7 MR. GRIER: Your Honor, I would like for him to not ask
- 8 her leading questions. He can ask her to identify what it
- 9 is but he can't ask her if that's the back door to her
- 10 apartment, it's leading.
- 11 THE COURT: Leading question. Sustained.
- 12 Q. Do you know what that is?
- 13 A. My door to my apartment.
- 14 Q. What is this?
- 15 A. A stove.
- 16 Q. Earlier you said you pushed the stove against the door.
- 17 A. It was just -- the stove was like this. Do you see
- 18 where the lock at? You've got to turn the lock to go this
- 19 way so I got the stove over to hold the door.
- 20 Q. So you had it over just a little ways?
- 21 A. Yes. It was pushed to the back door.
- 22 Q. I show you State's 5, that's basically the same picture
- 23 just closer up. Is that -- what does that show?
- 24 A. It show the door has -- he had to do that to get the
- 25 stove off the door.

TESTIMONY OF SHARITA COLBERT

1 Q. Is that any type of damage?

2 A. Uh-huh.

3 Q. Okay.

4 THE COURT: Ms. Colbert, you need to answer yes or no.

5 A. Yes. I'm sorry.

6 Q. Did you call the police that night?

7 A. Leon did.

8 Q. Do you have a phone in your apartment or did he call
9 from his cellphone or --

10 A. He called from a cellphone.

11 Q. His cellphone?

12 A. His cellphone.

13 MR. NEWMAN: Beg the Court's indulgence.

14 THE COURT: All right.

15 (Break in proceedings.)

16 Q. Ms. Colbert, why did you take so many steps to secure
17 your apartment?

18 A. What you mean?

19 Q. Were you afraid of Mr. Davis?

20 A. I was but not no more.

21 Q. But you didn't want him in your apartment that night.

22 A. No, sir.

23 Q. What was the address of your home at that time? You've
24 moved since then; is that right?

25 A. .

TESTIMONY OF SHARITA COLBERT

1 Q. Is that on Pardue Street?

2 A. Yes, sir.

3 MR. NEWMAN: That's all of the questions I have, please
4 answer anything Mr. Grier has.

5 THE COURT: Cross examination, Mr. Grier?

6 MR. GRIER: Thank you.

7 CROSS EXAMINATION

8 BY MR. GRIER:

9 Q. Ms. Colbert, I believe you just testified that
10 Mr. Davis had a key to your apartment, y'all had a -- how
11 long had y'all been seeing each other? How long had your
12 relationship been going on prior to this?

13 A. There was no relationship, it was --

14 Q. Well, okay. You saw him on a regular basis?

15 A. Yes, sir.

16 Q. You gave him a key to your apartment?

17 A. Yes, sir.

18 Q. So he had, you know, a right to use that key, I assume,
19 when you gave him a key to the apartment. You assumed he
20 was going to be using it, correct?

21 A. Anytime Charles Davis comes to my house he is to call
22 my phone and tell me he was coming, he didn't just come
23 unspeaked.

24 Q. Well, he had a key, right?

25 A. Right.

TESTIMONY OF SHARITA COLBERT

1 Q. So if you gave me a key to your apartment would you
2 assume I might use it to come in unannounced?

3 A. Yes, sir.

4 Q. I'm a little bit confused. Now, you didn't -- you have
5 an eight year old that is not Charles' child. So at the
6 time of this incident you had not given birth to any
7 children by Charles Davis.

8 A. No, sir.

9 Q. Did you know these were twins already at this time?

10 A. Uh-huh.

11 Q. How far along were you pregnant?

12 A. About eight months.

13 Q. All right. Well, was your relationship with Leon
14 Caskey romantic at the time? Were y'all seeing each other
15 romantically?

16 A. Uh-huh.

17 Q. Were you still seeing Mr. Davis romantically at that
18 time?

19 A. No, sir.

20 Q. Okay. Well, when this happened I imagine you were mad,
21 weren't you?

22 A. Yes, sir.

23 Q. So when the police came in do you recall, you know,
24 your conversation with the police?

25 A. No, I don't. But I do remember one police being there,

TESTIMONY OF SHARITA COLBERT

- 1 only one.
- 2 Q. There was only policeman that came?
- 3 A. It was about two or three but only one made the -- it
- 4 was him, I remember him.
- 5 Q. Okay. Well, so when you woke up Mr. Davis was already
- 6 in the apartment or the noise of him coming in --
- 7 A. Yes, sir.
- 8 Q. I'm sorry. The noise of him coming in woke you up or
- 9 he was already there?
- 10 A. The noise of him. When I got up he was already in.
- 11 Q. Okay. Well, had there been any bad blood between Mr.
- 12 Caskey and Mr. Davis prior to this that you know of?
- 13 A. Ever been who?
- 14 Q. Any bad blood, any fuss between Mr. Caskey and
- 15 Mr. Davis prior to this date?
- 16 A. Not that I know of.
- 17 Q. All right. So is Mr. Davis mad because you were with
- 18 Mr. Caskey and he came in and you were with Mr. Caskey?
- 19 A. That's what it was.
- 20 Q. Did you see any of the -- of whatever the fight that
- 21 happened or was alleged to have happened, or did you see
- 22 anything? Did you just run upstairs without seeing
- 23 anything?
- 24 A. When Charles came in I woke up Leon, I don't know if
- 25 Leon got up or not because I ran upstairs, woke up my mom,

TESTIMONY OF SHARITA COLBERT

1 when I came back downstairs Leon was laying on the couch and
2 then I helped him up. When Charles had left, when Charles
3 left I came back downstairs, I helped Leon upstairs, I wiped
4 the blood and stuff from his face and his mouth in the
5 bathroom.

6 Q. Okay. Well, you know, did Mr. Caskey suffer any
7 injuries that crippled him in any way after that?

8 A. I don't know of being crippled but I know Charles
9 knocked his teeth out and face -- a lot of swelling in his
10 face, yes, sir.

11 Q. Well, do you know anything about whether there was --
12 both people -- was it just a one way fight, was it a two way
13 fight or --

14 A. If he fought -- no, I didn't.

15 Q. Okay. So you really didn't see anything about the
16 fight? Okay.

17 MR. GRIER: Thank you, Ms. Colbert.

18 THE COURT: Any questions, Solicitor?

19 MR. NEWMAN: Briefly Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. NEWMAN:

22 Q. Ms. Colbert, you said when you saw Mr. Davis you ran
23 upstairs. So you didn't see any of the fight; is that
24 correct?

25 A. Yes, I did say that.

TESTIMONY OF CHARLES GLENN CAMPBELL

1 Q. Did you hear it?

2 A. Yeah, I heard it, I heard a lot of noise.

3 Q. A lot of noise?

4 A. A lot of noise.

5 Q. Like fists?

6 A. Fists.

7 MR. NEWMAN: That's all I have.

8 THE COURT: Thank you, ma'am, you may step down.

9 Solicitor, you may call your next witness.

10 The witness, CHARLES GLENN CAMPBELL, was first
11 duly sworn and testified as follows, on:

12 DIRECT EXAMINATION

13 BY MR. NEWMAN:

14 Q. Please state your name for the record.

15 A. Charles Glenn Campbell.

16 Q. Officer Campbell, where are you employed?

17 A. Right now I work for the Lancaster County Sheriff's
18 Office.

19 Q. How long have you been there?

20 A. Six months.

21 Q. Where were you employed before that?

22 A. I was employed with the Lancaster Police Department
23 from October of 2005 until September of 2012.

24 Q. Were you working on the night of February 11, 2007?

25 A. Yes, sir, I was.

TESTIMONY OF CHARLES GLENN CAMPBELL

1 Q. Did you get called out to Pardue Street?

2 A. Yes, sir, I did at approximately 5:15 in the morning.

3 Q. What was the call for?

4 A. According to my report we responded to 606 Pardue
5 Street in reference to an assault that had already occurred.
6 While we were in route we were also advised that EMS was on
7 the way and we needed to let paramedics know that the scene
8 was secured, that was basically what we were told as we were
9 in route to Pardue.

10 Q. Were you the first officer on the scene?

11 A. Yes, sir, I was.

12 Q. Whose apartment was that?

13 A. Ms. Ryan Colbert, I can give you the full name here.

14 Sharita Ryan Colbert was her name.

15 Q. Was that Ms. Colbert that was up here?

16 A. Yes, sir.

17 Q. Did you see her that night?

18 A. I did.

19 Q. Did you talk to her that night?

20 A. Yes, sir, I did.

21 Q. Did she tell you that Mr. Davis does not have a key?

22 MR. GRIER: Your Honor, we've got leading, the
23 solicitor can't testify.

24 THE COURT: I sustain the objection.

25 MR. GRIER: I would ask him to rephrase it and strike

1 that.

2 THE COURT: Solicitor?

3 Q. Ms. Colbert was up here earlier and she testified that
4 Mr. Davis had a key, did she tell you anything different
5 that night?

6 A. Let me check my report, I'm not sure. I can tell you
7 what she did say.

8 Q. It's on the second page, second full paragraph.

9 A. Okay. Right here it says, "The victim's left eye also
10 appeared to be severely swollen under and victim also had a
11 swollen area over his left eye. Colbert told officer she
12 was sure Davis made entry through the back door but was
13 unsure how he got in."

14 MR. GRIER: Your Honor, that's not responsive and I ask
15 that it be struck.

16 Q. I think you've got a different sheet than I have.

17 THE COURT: I grant the motion. Please strike the last
18 statement of the witness.

19 A. Are you talking about right here?

20 Q. The paragraph starts with, "after further
21 investigation."

22 A. Okay. "After further investigation it was discovered
23 that Colbert placed the oven against the back door before
24 they went to sleep. Officers checked the back door and
25 found a shoe print on the back door where Davis kicked in

TESTIMONY OF CHARLES GLENN CAMPBELL

1 the back door to get entry into the residence. Colbert told
2 officers --"

3 MR. GRIER: Your Honor, this whole litany is not
4 responsive to the question.

5 THE COURT: I sustain the objection.

6 MR. NEWMAN: I believe he's getting there, I think it's
7 the next sentence.

8 A. Yes, sir. "Colbert told officers that Davis does not
9 live at the residence and does not have a key."

10 MR. GRIER: Your Honor, he's continuing to -- he calls
11 them out as they --

12 THE COURT: I sustained the objection.

13 MR. NEWMAN: That was the question.

14 THE COURT: I sustained the objection.

15 Q. Okay. Ms. Colbert was up here earlier, she said
16 Mr. Davis had a key, did she tell you anything different
17 that night?

18 A. According to my report Ms. Colbert told the officer
19 that Davis does not live at the residence and does not have
20 a key.

21 Q. You stated there was some marks on the back door, a
22 footprint?

23 A. Yes, sir.

24 Q. Was it a fresh footprint?

25 A. I will have to look at the picture because I believed

TESTIMONY OF CHARLES GLENN CAMPBELL

1 it to be a fresh footprint and that's why we took pictures
2 of it.

3 Q. Let me show you State's 6 marked for identification.
4 What does that show?

5 A. It shows what appears to be a footprint on the lower
6 portion of the back door.

7 Q. Did you believe the door to be kicked in?

8 A. Other than the footprint I believe there was other
9 pictures that was took of a door frame, it did appear that
10 it was kicked in.

11 MR. NEWMAN: Beg the Court's indulgence.

12 (Break in proceedings.)

13 Q. Through your investigation that night did you receive
14 the name of who might have did this?

15 A. I will have to read from my report. This is a little
16 over six years old, I will have to read from my report.

17 Q. Take your time, refresh your memory.

18 A. When we asked Ms. Colbert who the suspect was she
19 stated, "I know who it was but I" --

20 MR. GRIER: Your Honor, I --

21 THE COURT: I sustain the objection.

22 Q. You can't say what she said, but did you just receive a
23 name?

24 A. We did.

25 Q. What was the name?

TESTIMONY OF CHARLES GLENN CAMPBELL

1 A. Charles Davis.

2 Q. Do you know Charles Davis?

3 A. I do.

4 Q. Let me show you State's 1. Do you recognize that
5 photo?

6 A. That is Charles Davis.

7 MR. NEWMAN: That's all of the questions I have, please
8 answer anything Mr. Grier has.

9 CROSS EXAMINATION

10 BY MR. GRIER:

11 Q. You don't know how Mr. Davis gained entry into the
12 apartment.

13 A. Through our investigation it appeared that Mr. Davis
14 did kick in the back door and gained entry.

15 Q. That's not my question. Do you know how he got access
16 to the apartment?

17 A. Through our investigation it was through the back door
18 and it appeared to be forced entry.

19 Q. There was the appearance that there had been forced
20 entry into that apartment at some point.

21 A. Yes.

22 Q. What evidence is there that it happened that night?

23 A. The shoe print, the partial shoe print on the back door
24 appeared to be dirt still freshly on the door, and the wood
25 from the door frame that was broken, it appeared to be

TESTIMONY OF CHARLES GLENN CAMPBELL

1 fresh. I cannot say if it happened right then or a few
2 hours before but it did appear to be recent damage.

3 Q. Do you have any special training in determining
4 forensically the age of a footprint or --

5 A. Forensically, no.

6 Q. That's just your gut feeling based on what you saw
7 there?

8 A. Based on what we were told and the information we
9 gathered.

10 Q. Okay. Well, and I assume -- is this what you saw that
11 night?

12 A. Yes, sir.

13 Q. Is that what you saw that night too?

14 A. Yes, sir.

15 Q. Okay. All right.

16 MR. GRIER: Thank you.

17 THE COURT: Anything else, Solicitor?

18 MR. NEWMAN: Nothing further from the State.

19 THE COURT: Thank you, you may step down. You may call
20 your next witness.

21 MR. NEWMAN: Judge, may Officer Campbell be released?

22 MR. GRIER: I have no objection.

23 THE COURT: Yes, sir. Officer Campbell, you are
24 released from your subpoena.

25 MR. NEWMAN: I also request that Ms. Colbert be

TESTIMONY OF PHILLIP HALL

1 released.

2 THE COURT: Mr. Grier, any objection?

3 MR. GRIER: No objection.

4 THE COURT: Ms. Colbert, you are released from your
5 subpoena, you may stay or go as you choose. You may call
6 your next witness.

7 MR. NEWMAN: State calls Lieutenant Phillip Hall.

8 The witness, PHILLIP HALL, was first duly sworn
9 and testified as follows, on:

10 DIRECT EXAMINATION

11 BY MR. NEWMAN:

12 Q. State your name for the record.

13 A. Lieutenant Phillip Hall.

14 Q. Lieutenant Hall, where are you employed?

15 A. By the City of Lancaster Police Department.

16 Q. What do you do?

17 A. Currently now I'm the supervisor over the Lancaster
18 Police Department Special Operation Division.

19 Q. In 2000 -- February 11th of 2007 were you employed by
20 the Lancaster City Police Department?

21 A. I was.

22 Q. What were your duties at that time?

23 A. I believe at that time I was a shift supervisor.

24 Q. Did you get called out to Pardue Street that night?

25 A. Yes, sir.

TESTIMONY OF PHILLIP HALL

1 Q. When you arrived on scene who was there?

2 A. Officer Campbell arrived on scene prior to my arrival,
3 I was a few seconds behind him.

4 Q. Now, Pardue street, is that in the City of
5 Lancaster?

6 A. It is.

7 Q. Did you speak with the victim on the scene?

8 A. I did.

9 Q. Did he give you a name of someone who attacked him?

10 A. I did.

11 Q. What was his name?

12 A. He told me Charles Davis assaulted him.

13 Q. This is marked as State's Exhibit 1 for identification
14 purposes. Can you identify that person?

15 A. That is Charles Davis.

16 MR. NEWMAN: Your Honor, I would like to move to
17 introduce State's 1 into evidence.

18 MR. GRIER: No objection.

19 THE COURT: Admitted without objection.

20 (The photo was received as State's 1.)

21 Q. Did you take photos at the scene?

22 A. I did.

23 Q. Did you take photos of the victim?

24 A. I did.

25 Q. I show you State's 2 through 6. Do you recognize those

TESTIMONY OF PHILLIP HALL

1 photos?

2 A. Yes, sir, I do.

3 Q. Is that a clear representation of photos that you took
4 that night?

5 A. Yes, sir.

6 Q. Has it changed in any way?

7 A. It has not.

8 MR. NEWMAN: Your Honor, at this time I would move to
9 enter them into evidence.

10 MR. GRIER: Can we have a side bar?

11 (A bench conference was held.)

12 THE COURT: Any other objection to the photos?

13 MR. GRIER: No, Just that one photo.

14 THE COURT: The Court admits them?

15 (The photos were received as State's 2-6.)

16 MR. NEWMAN: Permission to publish, Your Honor?

17 THE COURT: Yes, sir.

18 Q. Is that on your screen, Officer Hall?

19 A. No, sir.

20 Q. Just touch the screen as you come up. Who is in this
21 picture?

22 A. This here is Leon Caskey.

23 Q. Was he conscious?

24 A. Mr. Caskey was in and out of consciousness, I do
25 remember that.

TESTIMONY OF PHILLIP HALL

1 Q. Did you speak with him on the scene or --

2 A. We got him actually loaded up into the ambulance, we
3 did have to bring him down from upstairs, I assisted EMS
4 with doing that. Because if you're not familiar with Pardue
5 Street Apartments the stairs are pretty steep and it's a
6 small hallway and we had to help him downstairs because he
7 was in the bathroom upstairs when we got there. But this
8 picture was taken in the ambulance, I believe it was, I
9 can't see the whole picture.

10 Q. He had to be taken to the hospital?

11 A. Yes, sir.

12 Q. Was he complaining of anything significant?

13 MR. GRIER: Your Honor, Mr. Caskey has not testified,
14 he is asking for hearsay from Mr. Caskey about his
15 complaints at the time.

16 THE COURT: All right. Sustained.

17 MR. GRIER: Certainly he can impeach him or --

18 THE COURT: I sustain the objection.

19 Q. This is State's 3. What does this picture show?

20 A. This is Mr. Caskey coming out of the apartment on the
21 stretcher with EMS.

22 Q. EMS carrying him out of the apartment?

23 A. Yes, sir.

24 Q. This is State's 4. What does that picture show?

25 A. That is the mattress where the assault took place, or

TESTIMONY OF PHILLIP HALL

1 where they said the assault took place. There was fresh
2 blood on the comforter right there.

3 Q. Now, is this the kitchen area?

4 A. This is.

5 Q. Is this the door where entry was made?

6 A. It was.

7 Q. Can you show me what led you to believe there was
8 forced entry?

9 A. Well, according to what Ms. Colbert stated, she said
10 that she did have the oven partially blocking the doorway
11 and we did see that it was moved, we had to move it so we
12 could open the door the rest of the way to take a picture of
13 the outside of the door. So we did arrange -- we did have
14 to move the oven prior to exiting the house or the
15 apartment. But when we first got back there the door was
16 opened -- the oven was offset, it wasn't flat against the
17 wall like that was and we done that in the process of
18 clearing the house.

19 Q. This is a close-up picture, pretty much the same
20 picture just a little closer, what does that show?

21 A. That shows the frame of the door. And you can see the
22 splintering where force was used to open that door, that was
23 fresh, it still had splintering coming off the door frame
24 itself.

25 Q. This is State's 6. What does this picture show?

TESTIMONY OF PHILLIP HALL

1 A. That's a picture of the back door. We noticed a fresh
2 -- or I noticed fresh footprints on the door. Like I said,
3 back side of the 600 block is like -- and it goes between
4 the 600 and 700 block where all the rain washes out and all
5 of the area back in there stays pretty much nasty, not
6 completely saturated where mud is going up to your ankles
7 but it's nasty. And we noticed that that there was all
8 fresh so I tried to take it with our camera.

9 Q. Now, you stated you know Mr. Davis?

10 A. Yes, sir.

11 Q. What's his stature? Is he a big fellow?

12 A. Charles Davis -- I am 6 foot 3, back in those days I
13 was about 285 pounds, me and Charles were pretty much toe to
14 toe. He was actually a little bit bigger than I was,
15 broader in the shoulders.

16 MR. NEWMAN: Beg the Court's indulgence.

17 THE COURT: All right, sir.

18 (Break in proceedings.)

19 MR. NEWMAN: No further questions, please answer
20 anything Mr. Grier has.

21 THE COURT: Mr. Grier?

22 MR. GRIER: I don't have any questions.

23 THE COURT: All right, you can step down. You may call
24 your next witness.

25 MR. NEWMAN: State calls Sergeant Brian Small.

TESTIMONY OF BRIAN SMALL

1 The witness, BRIAN SMALL, was first duly sworn
2 and testified as follows, on:

3 DIRECT EXAMINATION

4 BY MR. NEWMAN:

5 Q. State your name for the record.

6 A. Sergeant Brian Small.

7 Q. Officer Small, where are you employed?

8 A. Lancaster Police Department.

9 Q. How long have you been there?

10 A. Since May 17th of 2005.

11 Q. Do you know Charles Davis?

12 A. I do, yes, sir.

13 Q. I'll show you State's 1. Do you recognize that?

14 A. Yes, sir, that's Charles Davis.

15 Q. Did you arrest Charles Davis?

16 A. Yes, sir.

17 Q. You served warrants for him in this case?

18 A. Yes, sir.

19 Q. And you took him to jail.

20 A. Yes, sir.

21 MR. NEWMAN: No further questions.

22 MR. GRIER: No questions.

23 THE COURT: Thank you, you may step down. Call your
24 next witness.

25 MR. NEWMAN: Ask that Officer Small be released.

TESTIMONY OF WILLIAM RICHARD BELL

1 MR. GRIER: No objection.

2 THE COURT: Without objection, yes, sir.

3 MR. NEWMAN: State calls Rickey Bell.

4 The witness, WILLIAM RICHARD BELL, was first
5 duly sworn and testified as follows, on:

6 DIRECT EXAMINATION

7 BY MR. NEWMAN:

8 Q. Please state your name for the record.

9 A. My name is William Richard Bell.

10 Q. Where are you employed?

11 A. I'm currently the operation manager at Chester County
12 EMS.

13 Q. Back on February 11th of 2007 where were you employed?

14 A. I was a paramedic for Lancaster County EMS.

15 Q. Okay. Did you get called out to 606 Pardue Street on
16 that night?

17 A. I did.

18 Q. Did you deal with the victim, Mr. Caskey?

19 A. I did.

20 Q. Was he conscious when you arrived?

21 A. He was conscious, yes, sir.

22 Q. I show you State's 3. Is that you in the picture?

23 A. Yes, sir. I'm the balled headed one on the left.

24 Q. And were you carrying him out to go to the hospital?

25 A. We were.

TESTIMONY OF WILLIAM RICHARD BELL

1 Q. To an ambulance?

2 A. Yes, sir.

3 Q. Did you take him to Lancaster?

4 A. Yes, sir.

5 Q. Did he ask to be taken to the hospital?

6 A. I do not recall.

7 Q. Let me show you what has been marked as State's 2. Do
8 you recognize that photo?

9 A. Yes, sir.

10 Q. Can you explain the extent of injuries that you found?

11 A. Yes, sir. We found a hematoma about three
12 centimeters --

13 Q. Wait. What is a hematoma?

14 A. It's swelling under the skin, a knot, a goose egg
15 roughly three centimeters above the left eye, kind of hard
16 to see in that picture.

17 Q. If I blow it up can you touch your screen and circle
18 what we're talking about?

19 A. Well, just looking from here I can see the swelling in
20 this area, but if I remember correctly there was swelling up
21 in here also.

22 Q. I'm going to change the color of that because I can't
23 see that red very well. Let's try green, try that. Okay.
24 So is that you said two knots basically?

25 A. Well, he had swelling from the eye but the knot that I

TESTIMONY OF WILLIAM RICHARD BELL

1 was referring to was up in the hair line.

2 Q. Okay. What else?

3 A. He also complained of teeth missing, blood in the mouth
4 and the surrounding areas and extreme pain to his back.

5 Q. Is that blood on his nose?

6 A. Appears to be.

7 Q. Blood on his mouth?

8 A. Yes, sir.

9 Q. Did you consider this to be a serious injury?

10 A. Yes, sir.

11 Q. Do you know how many teeth were missing?

12 A. I do not remember, no, sir.

13 Q. I'm sorry, I know you answered this, but did you say he
14 was conscious when you arrived?

15 A. He was alert to person, place and time which is what we
16 consider conscious, it's not a true grade of his mental
17 status.

18 Q. Did he ever lose conscience?

19 A. I do not recall...

20 Q. Now, during the transport were you driving?

21 A. No, sir, I was in the back with him.

22 MR. NEWMAN: Please answer anything Mr. Grier has.

23 THE COURT: Cross examination, Mr. Grier?

24 CROSS EXAMINATION

25 BY MR. GRIER:

TESTIMONY OF WILLIAM RICHARD BELL

1 Q. Mr. Bell, you don't know the outcome of his visit to
2 the hospital.

3 A. No, sir.

4 Q. You are not a medical doctor.

5 A. No, sir.

6 Q. Did you just do some -- I know you did this, but you
7 did first aide with what you saw on the scene?

8 A. Yes, sir.

9 Q. To assist him did you do anything to -- can y'all do
10 anything for comfort or pain to assist somebody?

11 A. We can. In his case we did not administer any type of
12 morphine for the pain.

13 Q. But you are licensed and authorized to administer
14 morphine if necessary?

15 A. Yes, sir.

16 Q. Okay. What is the protocol for taking somebody to the
17 hospital for EMS? When do you determine they go to the
18 hospital, they don't go to the hospital, how do you make
19 that decision?

20 A. If they have their mental faculties we leave it up to
21 them, they are in charge of their person at that point,
22 however if they are altered in any way in making a decision
23 that a normal person would decide we would take them.

24 Q. Now, in this case he didn't decide or he did decide?

25 A. It is not documented either way.

TESTIMONY OF WILLIAM RICHARD BELL

1 Q. Okay. So he was oriented towards time, place and what?

2 A. Yes, sir, person. Person, place and time.

3 Q. Meaning they can identify themselves?

4 A. Correct.

5 Q. I have trouble with that myself sometimes. So based on
6 that it would suggest that he has asked to be taken to the
7 hospital since y'all were able to find him to be oriented,
8 correct?

9 A. Yes, sir.

10 MR. GRIER: Thank you.

11 THE COURT: Anything else, Solicitor?

12 MR. NEWMAN: Nothing further, Your Honor.

13 THE COURT: Thank you, you may step down.

14 MR. NEWMAN: Ask that Mr. Bell be released from his
15 subpoena.

16 MR. GRIER: No objection.

17 THE COURT: You may be released from your subpoena,
18 thank you for coming. You may call your next witness.

19 MR. NEWMAN: State calls Mr. Leon Caskey.

20 The witness, LEON CASKEY, was first duly sworn
21 and testified as follows on:

22 DIRECT EXAMINATION

23 BY MR. NEWMAN:

24 Q. Please state your name for the record.

25 A. Leon Caskey, Sr.

TESTIMONY OF LEON CASKEY

1 Q. How old are you, Mr. Caskey?

2 A. Forty-five.

3 Q. Do you remember what was going on on February 11th of
4 2007?

5 A. Yeah, bits and pieces.

6 Q. Who were you with?

7 A. Sharita Colbert.

8 Q. Is that your girlfriend?

9 A. Somewhat it was, it was somewhat, yes, good friends or
10 whatever.

11 Q. Prior to this event did you know Mr. Davis?

12 A. Yes, I know him.

13 Q. Have you ever had any problems with him?

14 A. Had no altercation with him at all, none.

15 Q. How tall are you, Mr. Caskey?

16 A. 5-11.

17 Q. How much do you weigh?

18 A. About 150.

19 Q. On February 11, 2007, you said you were at the home of
20 Sharita Colbert. Do you remember what time y'all went to
21 sleep?

22 A. To be exact I couldn't tell you, probably around 1:00,
23 2:00 in the morning, something like that.

24 Q. How did you get woken up?

25 A. Actually I thought I heard something like a boom, bam

TESTIMONY OF LEON CASKEY

- 1 and I kind of tilted a little bit and I heard her running
2 up -- she said something before she ran up the stairs and
3 before the I could turn around Mr. Davis was -- somebody was
4 on my back, I didn't know who this was at first but I had an
5 idea. I couldn't move because he was on my back and I just
6 had a back surgery prior to that two weeks before,
7 January the 12th or 15th, somewhere around there.
- 8 Q. Were you getting around pretty good?
- 9 A. Yeah. I'm getting around all right.
- 10 Q. I mean then.
- 11 A. Then no, because I was still sore then.
- 12 Q. When was your surgery?
- 13 A. Around January 12th or 15th, somewhere around in there.
- 14 Q. So about a month?
- 15 A. Yeah.
- 16 Q. How many times did he hit you?
- 17 A. Man, I couldn't even tell you.
- 18 Q. Five times, ten times, more?
- 19 A. Probably more, eight or nine, somewhere around in
20 there. It was a lot of times, I know that.
- 21 Q. Did you ask to go to the hospital that night?
- 22 A. I don't know, I can't recall. To be honest with you I
23 can't recall, I probably did, probably didn't, I don't know.
24 But I really needed to go, though.
- 25 Q. Did you lose consciousness that you know of?

TESTIMONY OF LEON CASKEY

1 A. I think I did, I think I did. I don't know when but I
2 think I did because some stuff I can't remember.

3 Q. What happened as a result of your injuries?

4 A. Rephrase it. What you say now?

5 Q. What injury did you sustain?

6 A. My eye was blood shot red and closed --

7 MR. GRIER: I'm having trouble hearing, can we check up
8 -- there you go.

9 THE COURT: Try to speak up. There you go.

10 A. My eye was blood shot red and closed and my jaw was
11 swollen and my nose was swollen and my jaw and my lip.

12 Q. Was your nose bleeding?

13 A. Yeah.

14 Q. Mouth bleeding?

15 A. Yeah.

16 Q. Did you lose any teeth?

17 A. Yeah.

18 Q. How many?

19 A. Four.

20 Q. Mr. Caskey, I'm not trying to embarrass you, do you
21 mind smiling at the jury?

22 A. (Witness complies.)

23 Q. Teeth still missing?

24 A. Yeah.

25 Q. And you had your teeth before you got knocked out?

TESTIMONY OF LEON CASKEY

- 1 A. Yeah.
- 2 Q. How long did you stay in the hospital?
- 3 A. Maybe a few hours, just about four or five hours or
- 4 something like that.
- 5 Q. I show you State's 4. Do you recognize that?
- 6 A. Yes, I do.
- 7 Q. What is that?
- 8 A. That's my blood on the quilt.
- 9 Q. Is that where you were sleeping that night?
- 10 A. Yes.
- 11 Q. When you woke up you said he was on top of you?
- 12 A. Uh-huh.
- 13 Q. About how long?
- 14 A. It seemed like forever because I couldn't get up.
- 15 Q. He's a lot bigger than you.
- 16 A. Yeah.
- 17 Q. Where was Ms. Colbert during this?
- 18 A. I couldn't tell you because I was face down, I couldn't
- 19 tell you.
- 20 Q. Is that the first time you spent the night with her?
- 21 A. No.
- 22 Q. There were other times?
- 23 A. Yeah, probably about four or five times after that.
- 24 Q. No problems?
- 25 A. No problems.

TESTIMONY OF LEON CASKEY

1 Q. Did you know she was pregnant?

2 A. Yeah.

3 MR. NEWMAN: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 (Break in proceedings.)

6 Q. I show you State's 1. Do you recognize that person?

7 A. Yes, I do.

8 Q. Who is that?

9 A. Charles Davis.

10 Q. Is that the man that assaulted you?

11 A. That's correct.

12 MR. NEWMAN: I've got no other questions, please answer
13 anything Mr. Grier has.

14 THE COURT: Mr. Grier?

15 CROSS EXAMINATION

16 BY MR. GRIER:

17 Q. Mr. Caskey, are you married?

18 A. Yes, sir.

19 Q. Were you married at the time this happened?

20 A. No, sir.

21 Q. So you've gotten married since?

22 A. Yes, sir.

23 Q. Congratulations. What kind of work do you do?

24 A. Disabled.

25 Q. You draw disability?

TESTIMONY OF LEON CASKEY

1 A. Yes.

2 Q. Were you disabled at the time this happened?

3 A. Well, at that time I had had my surgery but I wasn't
4 receiving disability benefits yet. But I was -- I
5 considered myself disabled because I've had three or four
6 surgeries -- well, two before then.

7 Q. So you had two prior surgeries prior to the surgery
8 before this?

9 A. Yes.

10 Q. So you have been dealing with it ten or 12 --

11 A. Since December of 2006.

12 Q. Okay. All right. Well, Mr. Caskey, you were out of
13 the hospital within a few hours.

14 A. Uh-huh.

15 Q. Correct?

16 A. Yes, sir.

17 Q. So this was -- whatever it was it wasn't something that
18 changed your life.

19 A. No, sir.

20 Q. You know, you lost a couple of teeth.

21 A. Yes, sir.

22 Q. You know, have you been in fights before?

23 A. Been in plenty of fights before, never lost a tooth.

24 Q. Okay. As you were describing the situation -- and

25 forgive me if I missed it, I'm not just trying to drag you

TESTIMONY OF LEON CASKEY

1 through but I do need to understand clearly what happened.

2 Okay. My understanding was Mr. Davis -- did you stand up

3 when you -- was that the first thing you did? You were on

4 the ground when he was on your back.

5 A. I didn't have a chance to get up.

6 Q. So you were on the blanket.

7 A. Yes, sir.

8 Q. I mean, was your head in the middle of the blanket?

9 A. Yes, sir.

10 Q. How did that happen? Why wasn't it in the middle of
11 the blanket?

12 A. I guess --

13 Q. Why wouldn't your head be at one end of the blanket?

14 A. I guess when he hit me I was kind of scooting back I
15 guess because it was on the floor.

16 Q. Okay. All right. The first thing you remember from
17 what I understand your testimony to be is Ms. Colbert -- do
18 you call her Sharita or is she Ryan?

19 A. Ryan, I call her Ryan.

20 Q. Was her getting you up or her running up the stairs or
21 something?

22 A. No. I just heard her running up -- I kind of heard her
23 running up the stairs and saying something, she was
24 hollering and screaming or something while he was still
25 beating me. So I actually didn't see her run up the stairs

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1 but I heard her screaming at the same time.

2 Q. Okay. Other than -- okay. The first time you had any
3 contact with law enforcement, EMS or anybody you were up in
4 the upstairs in the bathroom?

5 A. Yeah. I can't tell you how I got there.

6 Q. Did Ms. Colbert tell you how you got there?

7 A. She didn't tell me.

8 Q. Well, then I'm not asking you to say what she said.

9 A. Well, this is my first time hearing it today so I don't
10 know how I got there. She said she took me.

11 Q. Okay. Now, so you went to the hospital, you were there
12 for three hours. You weren't being treated the whole time,
13 you probably waited awhile, didn't you?

14 A. Yes, I probably waited awhile. I'm just guessing, I
15 don't know, I'm just guessing. It could have been longer.

16 Q. Was the majority of the time spent waiting for
17 treatment?

18 A. No. Well, I don't know.

19 Q. You don't recall?

20 A. I really couldn't tell you or anything.

21 Q. Once you left that hospital did you have any additional
22 treatment after that for anything that happened here?

23 A. Well, I had to follow-up with the doctor.

24 Q. For your back surgery?

25 A. Well, I had another surgery coming up anyway so after

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1 that happened that caused me to go earlier because they
2 wanted to check it out since I had gotten beaten up or
3 whatever so they wanted to go ahead and do it early, so then
4 I went to a dentist and he checked my jaw and everything.
5 And the eye socket and everything, it was bruised but I
6 still had to take medication for that for awhile. And he
7 had -- one of the teeth he hit was broken off in there so
8 they had to pull that one out. One of them was broken off,
9 they had to pull that one out.

10 MR. GRIER: All right. Well, thank you, Mr. Caskey.

11 THE COURT: Thank you, Mr. Grier.

12 REDIRECT EXAMINATION

13 BY MR. NEWMAN:

14 Q. Just to clarify a few things. You told Mr. Grier that
15 you were face down on the mattress and squirming as you were
16 being hit. Do you know for a fact it was Charles Davis that
17 was hitting you?

18 A. Yes, sir, I do.

19 Q. And I apologize, it was kind of hard to hear over here,
20 did you say that you did not remember going upstairs?

21 A. I really don't to be honest with you.

22 Q. Do you remember coming down stairs?

23 A. In and out. I think I -- the last thing I remember was
24 getting in the ambulance, that was about all I remember,
25 getting in an ambulance, that's about all I remember because

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1 I think I was in and out.

2 MR. NEWMAN: That's all of the questions I have.

3 MR. GRIER: Nothing.

4 THE COURT: Thank you, you may step down. You may call
5 your next witness, Solicitor.

6 MR. NEWMAN: The State rests, Your Honor.

7 THE COURT: The State rests. Mr. Grier?

8 MR. GRIER: Defense is not going to be presenting any
9 evidence today, Your Honor.

10 THE COURT: Do you have any motions?

11 MR. GRIER: Certainly we will be making our motions but
12 we don't have any evidence to present.

13 THE COURT: Ladies and gentlemen, I'm going to need to
14 ask you to step into the jury room, hopefully this won't
15 take very long while I discuss a few matters with the
16 attorneys outside of your presence. And I remind you do not
17 begin discussing the case.

18 (The jury left the courtroom.)

19 THE COURT: Mr. Grier?

20 MR. GRIER: Your Honor, I would move for a directed
21 verdict on all of the evidence, or on both of the charges
22 number one. And certainly the -- Ms. Colbert testified that
23 Mr. Davis had a key to the apartment and it was reasonable
24 to expect him to assume that he could enter without any
25 specific consent on that occasion. I think for a burglary

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1 the State would have to have -- convince a jury that he
2 entered without consent. I understand that she was
3 impeached on that and I know you're going to rule against me
4 based on that, but Your Honor, nonetheless I am making that
5 motion for the record that I think the evidence that was in
6 this courtroom today that as the 13 juror that you have the
7 power to direct a verdict on the burglary. Certainly if he
8 entered with consent -- or with consent there would be no
9 burglary notwithstanding that some alleged crime happened
10 after the fact. Secondly, Your Honor, in good faith I
11 cannot argue with a straight face that there's no evidence
12 sufficient to support an assault, I would submit to you that
13 there's insufficient evidence to establish a serious bodily
14 injury. We don't have expert testimony to that to establish
15 a serious bodily injury, and I understand that the jury
16 will -- that it's likely that you are going to believe
17 that's going to be something that the jury is going to have
18 to decide whether it's serious or not. Certainly Mr. Caskey
19 said there was no --

20 THE COURT: Let me interrupt you a minute and take this
21 opportunity to ask y'all this, which statute?

22 MR. NEWMAN: It's the old ABHAN.

23 MR. GRIER: It's the old ABHAN which has a list of
24 aggravating circumstances.

25 THE COURT: Which doesn't actually deal with serious

TESTIMONY OF LEON CASKEY

1 .bodily injury, does it?

2 MR. NEWMAN: It is one of eight aggravating
3 circumstances.

4 MR. GRIER: Right, you are right. Well, there is use
5 of a deadly weapon, which there's no evidence of, commission
6 of a serious bodily injury actually. So it does have a
7 serious bodily injury actually.

8 MR. NEWMAN: It's one of eight.

9 MR. GRIER: It continues to be in there, it's just that
10 it's one of the eight just as Mr. Newman says.

11 MR. NEWMAN: Your Honor, I have a copy printed out, I
12 can pass it up if you don't have it.

13 THE COURT: No, I've got it. You're right, it does,
14 I'm sorry. But one of the differences is the disparity
15 between the ages and physical conditions of the parties.

16 MR. NEWMAN: Correct, Your Honor.

17 THE COURT: Hadn't there been some testimony on that?

18 MR. GRIER: I don't know about the ages.

19 THE COURT: No, you're right.

20 MR. NEWMAN: It says ages and physical condition.

21 There was plenty of testimony about the physical condition
22 and the fact that one was so much bigger than the other and
23 one already had a hurt back.

24 MR. GRIER: 6-3 versus 5-11, Your Honor, and I guess
25 that's something that the jury is going to have to decide

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1 because -- I understand, I'm making a motion so that's my
2 duty to convince you of that and I'm conceding that, I am
3 not going to get there with that.

4 MR. NEWMAN: And Your Honor, I'm not conceding anything
5 on the serious bodily injury, I believe there was testimony
6 given the man still don't have any teeth permanently.

7 THE COURT: One of his teeth was broken off according
8 to his testimony presumably to his jaw. Mr. Grier, I
9 understand your motions, I think there is sufficient
10 evidence for each of these matters to be submitted to the
11 jury. So you're going to rest. Do y'all want to take five
12 before we do closing?

13 MR. NEWMAN: Five will be great, Your Honor, ten would
14 be better.

15 MR. GRIER: Well, realistically ten.

16 THE COURT: All right. We will be in recess for ten
17 minutes.

18 (A break was taken.)

19 THE COURT: Any special charges?

20 MR. GRIER: Something relating to the defendant not
21 being required to be present cannot be discussed in their
22 deliberations. And Judge, I believe the evidence would
23 support the charge of -- I think we have already crossed the
24 bridge in my directed verdict motion as far as whether you
25 are going to charge ABHAN but I think it would also support

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1 a charge of a simple assault as well. If the jury finds
2 that these circumstances are not aggravating then certainly
3 a charge of simple assault would be some option that I think
4 the jury would be entitled to be defined as well, so I'm
5 asking for that charge.

6 THE COURT: Solicitor?

7 MR. NEWMAN: Your Honor, I've got no problem with the
8 charge and I'm familiar with your charge book.

9 THE COURT: Wait a minute, are you saying you agree to
10 a simple assault charge?

11 MR. NEWMAN: Yes, sir.

12 THE COURT: All right.

13 MR. NEWMAN: But we're still going to charge ABHAN
14 first.

15 THE COURT: All right.

16 MR. GRIER: I'm not as familiar with your charge book
17 as Mr. Newman since I didn't have the luxury of serving as
18 your clerk, Your Honor.

19 THE COURT: Well, he wrote most of it.

20 MR. GRIER: Well, I didn't have the luxury of writing
21 it, but at any rate -- but Judge, I am familiar from having
22 tried a number of cases in front of you and I think your
23 standard charges are appropriate under the circumstances.

24 THE COURT: All right. Well, are y'all ready?

25 MR. GRIER: Ready, Your Honor.

CLOSING ARGUMENTS

1 MR. NEWMAN: State is ready.

2 THE COURT: Bring in the jury.

3 (The jury returned to the courtroom.)

4 THE COURT: I can't remember whether you heard this or
5 not but the defendant in the case has also rested meaning
6 that the defendant has elected not to present or offer any
7 evidence.

8 MR. GRIER: This is true, Your Honor.

9 THE COURT: Which means that you have heard all of the
10 evidence and received all of the evidence which you're going
11 to receive, there's not going to be any additional testimony
12 or documents, you've heard it all. The thing that remains
13 to be done, the attorneys will make their closing arguments
14 to you, I will then tell you about the law, you'll retire to
15 the jury room and begin your deliberations. Solicitor?

16 MR. NEWMAN: Thank you, Your Honor, Mr. Grier. May it
17 please the Court? Ladies and gentlemen, as the Judge told
18 you this was probably a good week to serve and it looks like
19 he was right, that was a pretty fast trial. We weren't
20 trying to be fast, it just happened like that. I know you
21 are probably tired and ready to go home and we're getting
22 close so I promise I'll be brief. You've heard from a
23 number of witnesses up there but I don't think any one
24 witness gave you a full story. You have a piece from one
25 and a piece from another and you have to piece that together

1 like a puzzle to make a complete story. I'm going to walk
2 you back through it. The defendant broke into Ms.
3 Colbert's home, kicked the door in, went in and assaulted
4 Mr. Caskey, knocked him out, knocked his teeth out of his
5 head, and then didn't just knock his teeth out, he broke
6 them off. Ms. Colbert told officers that night, no, he
7 don't live here, he had no business here, he didn't have a
8 key. She told you on the stand that he had a key. She has
9 got children with the defendant and you have to ask yourself
10 who you want to believe, law enforcement or Ms. Colbert.
11 One thing she did say was, "Yeah, I was scared of him. I
12 locked the door, put the stove in front of the door because
13 I didn't want him over there." And if you believe he had a
14 key she also told you that, "Well, he just couldn't come and
15 go as he pleased, he had to call me and I had to allow him
16 to come." So I'm telling you even if you believe he had a
17 key he had no business over there, she told you that. We
18 showed you evidence that the door was kicked which leads me
19 to believe he didn't have a key. And you'll see these
20 pictures, you'll get to take them back with you. You heard
21 from EMS, he told you that the injuries were pretty serious
22 and I know they're not life threatening, but as an adult if
23 you lose a tooth that's pretty permanent. He didn't lose
24 just one tooth he lost I think he said three or four. So
25 that's pretty much the complete story. You've got a

CLOSING ARGUMENTS

1 burglary, a breaking in and an assault and a pretty violent
2 injury. I want to talk to you a little bit about the law.
3 I told you earlier assault and battery of a high and
4 aggravated nature is defined by the State as an unlawful act
5 of violent injury to another accompanied by aggravating
6 circumstances. The unlawful act, that's pretty simple, he
7 assaulted him. Aggravating circumstances, there's a list of
8 eight and the Judge will tell you all eight, I'm not going
9 to tell you all eight, I will tell you two of them that I'm
10 concerned with, I have only got to prove one, one of them is
11 inflicting serious bodily injury and I believe we have that.
12 This man lost four of his teeth, you saw the picture, I
13 won't keep it up because I know it's kind of gruesome.
14 There's blood all over, he lost four of his teeth, and then
15 he is carried out on a gurney and taken to the hospital.
16 Another aggravating circumstance could be great disparity in
17 physical condition of the parties, and although I have only
18 got to prove one of these I think we've got both of them
19 proved. Mr. Hall testified he is 6-foot 3, 285 pounds and
20 he said the defendant is bigger than him, and you saw the
21 size of Mr. Caskey, I think he said he was about 150 pounds.
22 Now on the burglary first. Burglary in the first degree is
23 entering a dwelling, and a dwelling is a home where you
24 sleep, without consent with the intent to commit a crime
25 once you're inside, and while entering or leaving as you

CLOSING ARGUMENTS

1 have to do. Once again, a list of things, I'm only
2 concerned with two, he has to either cause physical injury
3 to a non-participant which we have, Mr. Caskey was injured,
4 or it has to occur during the nighttime. Ladies and
5 gentlemen, we have both of them. They told you that when
6 the police arrived it was around five in the morning. I
7 guess this is one of those cases where there's not a lot of
8 CSI evidence like you see on TV, no DNA, no forensics,
9 you've got basically he said, she said, and you've got some
10 photos. It's up to you to decide, you decide the facts.
11 The Judge is going to tell you the law, you've got to decide
12 the facts, you've got to decide what you believe. The
13 defense is going to get up here when I sit down and he's
14 going to pick apart everything I just told you and he's
15 going to try to -- he's going to probably talk a long time
16 on reasonable doubt. Ladies and gentlemen, I just want to
17 tell you, every defense attorney makes a big deal about
18 reasonable doubt, you don't have to look for reasonable
19 doubt. If reasonable doubt is there you will see it, it's
20 like a flashing sign, it's says, "Look at me." It is a hole
21 in the case and I don't believe you have got reasonable
22 doubt. You've got a man who broke into a house, violently
23 assaulted a man and then left, so I ask that when you go
24 back in that room you talk about it and you come out with a
25 guilty verdict for both charges. Thank you.

CLOSING ARGUMENTS

1 THE COURT: Thank you, Mr. Newman. Mr. Grier?

2 MR. GRIER: May it please the Court? Mr. Newman?

3 Solicitor is right about one thing, I'm going to talk about
4 reasonable doubt because reasonable doubt ain't got nothing
5 to do with a flashing sign. I mean, a reasonable doubt --
6 the Judge is going to tell you what a reasonable doubt is,
7 but reasonable doubt is defined in South Carolina the Judge
8 is going to tell you as the kind of doubt that would cause a
9 reasonable person to hesitate, that's what reasonable doubt
10 is. And I don't know the analogy of that being -- and I
11 appreciate Mr. Newman's analogy but I don't see it as a
12 flashing sign that it just jumps out at you, that's why we
13 deliberate. If it jumped out at you there there wouldn't be
14 much deliberating. But certainly I'm going to talk some
15 more about that but I had to take the opportunity to mention
16 that yes, I'm going to talk about reasonable doubt because
17 when I talk about reasonable doubt it's like I told you, my
18 job as an officer of the court and as an advocate for
19 Charles Davis is to protect the Constitution. I am the wall
20 between the State and the individual who makes sure that the
21 State follows the rules and that they prove their case
22 beyond a reasonable doubt as our Constitution requires. You
23 know, traditionally, you know, our Constitution was kind of
24 novel when it came about. Traditionally folks didn't have
25 the Constitutional rights that we enjoy in our country now

JURY CHARGE

1 so it's how I wake up in the morning and get myself excited
2 about doing my job, and this is the most important thing in
3 the world to me because without it you have summary
4 judgment, you have the King deciding who is going to jail
5 and who doesn't, that's why it is real serious business, it
6 is not something that is just necessarily intuitive. And
7 certainly my job is to make sure that I do everything I can
8 to call attention to what I believe the responsibilities of
9 a juror to be when they're weighing the guilt or innocence
10 of my client. A couple of things I would also like to go
11 ahead and address and take issue with that the solicitor
12 said, I didn't -- I don't believe the evidence -- that
13 Ms. Colbert said she had to allow him to come. She said
14 she -- just going back to this issue on the burglary, did he
15 come with consent or not? She didn't say she had to allow
16 him to, she said he would usually call before he came over
17 and that she gave him a key. And she said in her testimony
18 that if I give somebody a key I'm going to assume that they
19 can walk in, I'm giving them consent to come in by virtue of
20 giving them a key. Of course, the State says well, that's
21 not what she told someone that night. You heard her, she
22 was mad that night and that's -- I kind of feel sorry for
23 the puzzles that the police have to put together because
24 when they get on the scene and there's only one person only
25 one story gets told and people are mad and they say

JURY CHARGE

1 everything to make themselves look good and the person they
2 are grieved with look bad, and, you know, that's something
3 that has to be sorted out in jury trials. And so I don't
4 think there was anything in her testimony that would suggest
5 to you that she's making that up. He had a key and when
6 he's got a key you've got consent and if you've got consent
7 to come in you don't have a burglary. It's real surprising
8 to people to find out -- I mean, we heard several folks and
9 maybe some of you that -- I don't believe it was anybody
10 that's on this jury -- to say that they had been victims of
11 a burglary or somebody in their family had. But generally
12 those are home invasions for property, I think it is common
13 knowledge, and when you tell somebody that's a burglary that
14 if I go into somebody's dwelling with the intent to commit a
15 crime that is a burglary, that's generally a surprise to
16 people I find. Certainly the people that were there that
17 night when whatever happened happened didn't say anything
18 about -- or I didn't hear it and I don't think they said
19 anything about Mr. Davis kicking the door in, and that's
20 merely speculation on the part of law enforcement that the
21 door was kicked in. It's going to make some noise when you
22 come into a house and you push a washing machine or a stove,
23 whatever that is and that's going to make some noise. But,
24 you know, I think that you've got -- that the best evidence
25 most certainly -- the State has to prove the case beyond a

1 reasonable doubt, and if you've got to flip a coin to decide
2 what you're going to believe then you certainly have a
3 reasonable doubt. But, you know, sworn testimony on that
4 Bible today Ms. Colbert said that Mr. Davis had a key. Now,
5 of course when law enforcement takes statements and right
6 after people fall out and have fights and accuse each other
7 of stuff that is not sworn testimony, that is not sworn
8 testimony like you hear in the courtroom. And there's a
9 difference between those things when you sit in that box,
10 and I don't know if any of you have ever done it, but you
11 know, that's sworn testimony and it's subject to perjury if
12 you lie and there are rules about lying in the courtroom.
13 So I think you have every reason to believe that Mr. Davis
14 had a key. For heaven sakes, this woman is eight months
15 pregnant with his baby. I mean, is it unreasonable that a
16 person that's going to kind of stay in touch with the person
17 who was carrying their baby? I don't know if they knew it
18 at the time, they turned out to be twins and that she would
19 give the father of this child a key to her house when she's
20 carrying his baby that close to delivery? Certainly that's
21 going to be a critical issue and y'all are going to have to
22 wrestle with that, or you might not have to wrestle with it,
23 you might have already actually -- I hope you haven't
24 already made a decision because you're not supposed to be
25 deliberating, you haven't deliberated or made up any

JURY CHARGE

1 decisions until you're sent into the courtroom (sic). But
2 at any rate that's the issue with the burglary whether he
3 had a key or not and whether the State has proved beyond a
4 reasonable doubt when you consider whether he had a key or
5 not do you hesitate to say he didn't have a key? If you
6 hesitate to say, well -- if you're feeling about the
7 evidence causes you to hesitate then you've got a reasonable
8 doubt because that's what a reasonable doubt is, the Judge
9 is going to tell you that. And I think it's reasonable that
10 you would hesitate based on the evidence that you've seen in
11 here because I think he had a key. As to the assault and
12 battery of a high and aggravated nature, the Judge is going
13 to give you -- actually the law has changed, this case is
14 six years old for heaven sakes and the law has changed but
15 you -- this case is being tried under the law as it was in
16 2007 when this happened and the Judge is going to give you a
17 jury charge and the solicitor correctly stated a couple of
18 things, whether the assault was aggravated or not is going
19 to be a determination of whether or not you consider this to
20 be a serious crime. When you get in a fight you're going to
21 get contusions or hematomas and you're subject to getting a
22 tooth knocked out, or teeth knocked out. And certainly
23 Mr. Caskey himself told you he's in the hospital for about
24 three hours he believes and that there were no lingering
25 results of whatever happened that night. And I think for

JURY CHARGE

1 something to -- you're going to have to decide what's
2 serious, okay, and you know, that's going to be a debate
3 that is going to have to happen in your deliberations.
4 Personally I think something serious is something that
5 interferes with your life. He said that that -- Mr. Caskey
6 said this did not interfere with his life after that night.
7 He had to go get a checkup, he had a broken off tooth or
8 something and most certainly those -- every injury that he
9 described is something that could happen in a simple assault
10 and you're going to have to consider based on what some of
11 our conversations outside of your presence you're going to
12 be charged, and you are going to have to decide whether
13 Davis committed a burglary, you're going to have to decide
14 whether he committed an assault and battery of a high and
15 aggravated nature or whether he committed assault -- a
16 simple assault, which is an assault that doesn't have those
17 factors that could have the potential for making it
18 aggravated, or aggravated assault. Certainly an assault
19 happened, we don't -- nobody was there, but Mr. Caskey and
20 even Ms. Colbert apparently didn't see any assault. So
21 you're getting -- you've got to take what Mr. Caskey has to
22 say with a bit of scrutiny as well because you're getting
23 one man telling a story in the light most favorable to
24 himself to help his case and so you've got to take that into
25 consideration when you deliberate. Again I mentioned in my

JURY CHARGE

1 opening that we -- that the burden of proof is on the State
2 and I think the State is on trial as well as the defendant,
3 and, you know, the State gets some certain advantages.
4 Actually if I would have presented any evidence today, which
5 we chose not to present, the State would have been able to
6 make what's called the final closing argument. I'm getting
7 to make the final closing argument for what it's worth, I
8 don't know that it's worth anything, but when -- the State
9 gets the first few shots at the defendant in terms of the
10 defendant is arrested, he is drug into court, accusations
11 are made, the jury hears all of these horrible things about
12 him because the State gets to go first. And that's one of
13 the reasons that our constitutional people that devised our
14 constitution say, hey, the State has got all of these tools,
15 they get -- they get all of these advantages in the trial so
16 the burden of proof needs to be beyond a reasonable doubt to
17 make sure that the people that are not guilty of the crimes
18 that the State accuses them of don't go to jail. It's not a
19 get out of jail card, it's a protection from people from
20 being wrongly convicted. Again, the Judge is going to
21 charge you reasonable doubt is the kind of doubt that would
22 cause a reasonable person to hesitate to act, in this case
23 to hesitate to convict based on whether or not you believe
24 the State is going to prove their case beyond a reasonable
25 doubt. He is going to tell you if you are firmly convinced

JURY CHARGE

1 of the guilt of the defendant then you must convict.
2 However if you find the real possibility that he may not be
3 guilty, the real possibility he may not be guilty then you
4 must acquit. Ladies and gentlemen of the jury, we
5 appreciate your service. This is the shortest trial I have
6 ever tried in 22 years of trying cases so I hope that was
7 merciful to you in your experience today and I guess you are
8 going to tour the courthouse when this is all over and find
9 out what the clerk has got up his sleeve if you want one.
10 But first of all you've got to exercise your duty as a
11 citizen to give the State a fair shake, to give Mr. Davis a
12 fair shake when you deliberate and each of you really must
13 come to your own conclusions. You know, it's getting on
14 over there in the afternoon, it's still pretty early and
15 you're thinking about tonight, want to get out of here and I
16 understand that, I'm the same way but I'm asking you to come
17 to your own conclusion. Do not just blanketedly adopt the
18 conclusions of another person, if you're doing that you're
19 not deliberating. You should consider what your fellow
20 jurors have reasonable to contribute to the deliberations
21 but if you say, "I'm going with that simply because I just
22 give up," well, then you have kind of abrogated what you are
23 really supposed to be doing because you have got to come to
24 your own conclusion in this case and that's what the jury
25 process is about as well. I appreciate your attention. I

JURY CHARGE

1 believe that after you've considered all of the evidence you
2 will find that the defendant is not guilty. Thank you.

3 THE COURT: Thank you, Mr. Grier. Ladies and
4 gentlemen, I remind you that the fact that the defendant was
5 arrested, charged and indicted in this case is not evidence
6 and cannot be considered by you as evidence, nor does it
7 create any presumption or any inference of guilt, this is
8 simply the documents bringing the case into the court. As I
9 told you earlier the defendant has pled not guilty to these
10 indictments and this plea puts the burden upon the State to
11 prove the defendant guilty. I tell you that a person
12 charged with committing a criminal offense in South Carolina
13 is never required to prove himself innocent. It is an
14 important rule of law that the defendant in any criminal
15 trial no matter what the seriousness of the charge may be
16 and will always be presumed to be innocent of the crime for
17 which the indictment was issued unless guilt has been proven
18 by evidence that satisfies you of that guilt beyond a
19 reasonable doubt. This presumption of innocence does not
20 end when you begin your deliberations but it accompanies the
21 defendant throughout the trial until you reach a verdict of
22 guilt based on evidence that satisfies you of that guilt
23 beyond a reasonable doubt. The presumption of innocence is
24 like a robe of righteousness placed about the shoulders of
25 the defendant which remains with the defendant until it has

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1 been stripped from the defendant by evidence that satisfies
2 you of that guilt beyond a reasonable doubt. The
3 presumption of innocence is not a mere legal theory, it is
4 not just a legal phrase, it is a substantial right to which
5 every defendant is entitled unless you, the jury, are
6 satisfied from the evidence of the defendant's guilt beyond
7 a reasonable doubt. A reasonable doubt is the kind of doubt
8 that would cause a reasonable person to hesitate to act.
9 Some of you may have served on juries in civil cases and you
10 were told that it was only necessary to prove a fact was
11 more likely true or not such as by the greater weight and
12 the preponderance of the evidence. But in criminal cases
13 the State's proof must be more powerful than that, it must
14 be beyond a reasonable doubt. Proof beyond a reasonable
15 doubt is proof that leaves you firmly convinced of the
16 defendant's guilt. Of course there are very few things in
17 this world that we know of with absolute certainty, and in
18 criminal cases the law does not require proof that overcomes
19 every possible doubt. If based on your consideration of the
20 evidence you are firmly convinced that the defendant is
21 guilty of the crime charged you must find the defendant
22 guilty. If on the other hand you think there is a real
23 possibility that the defendant is not guilty you must give
24 the defendant the benefit of the doubt and find the
25 defendant not guilty. During this trial you and I have had

JURY CHARGE

1 different obligations and responsibilities. It has been my
2 responsibility to preside over the trial, to rule on the
3 admissibility of the evidence and now it is my duty to
4 charge you or tell you about the law that applies in this
5 case. As the presiding judge I am the sole judge of the law
6 of this case and it is your duty as jurors, ladies and
7 gentlemen, to accept the law and apply the law as I now
8 state it to you. If you already have any idea of what the
9 law is or what the law should be and it does not agree with
10 what I tell you, you must abandon that idea because you're
11 sworn to accept the law and apply the law exactly as I state
12 it to you. In every case tried before a jury the jury
13 becomes the sole and exclusive judge of the facts of the
14 case. A trial judge such as myself cannot intimate, state,
15 comment on or make any statement to a trial jury about the
16 facts of the case. You are not to infer from anything I've
17 done or said that I have an opinion about the facts of the
18 case, that is a matter solely for you to determine. It is
19 your duty, ladies and gentlemen, to determine the effect,
20 the value, the weight and the truth of the evidence
21 presented during this trial. Generally speaking there are
22 two types of evidence presented during a trial, direct
23 evidence and circumstantial evidence. Direct evidence, of
24 course, is the testimony of a person who claims to have
25 actual knowledge of a fact such as an eye witness, it is

JURY CHARGE

1 evidence which immediately establishes the main fact to be
2 proved. Circumstantial evidence is proof of a chain of
3 facts and circumstances indicating the existence of a fact.
4 It is evidence which immediately establishes collateral
5 facts in which a main fact may be inferred. Circumstantial
6 evidence is based on inference and not on personal knowledge
7 or observations. The law makes no distinction between the
8 weight or the value to be given to direct or circumstantial
9 evidence, nor is a greater degree of certainty required of
10 circumstantial evidence than of direct evidence. You should
11 weigh all of the evidence. After weighing all of the
12 evidence if you are not convinced of the guilt of the
13 defendant beyond a reasonable doubt you must find the
14 defendant not guilty. You must determine the credibility of
15 the witnesses who testified in this case, ladies and
16 gentlemen, this simply means the believability of the
17 witnesses. It becomes your duty as jurors to analyze and to
18 evaluate the evidence and determine which evidence convinces
19 you of its truth. In determining the believability of
20 witnesses you may believe one witness over several or
21 several witnesses over one. You may believe everything that
22 a witness says or you may believe nothing that a witness
23 says. You may believe part of what a witness says and
24 reject the remaining testimony of the very same witness.
25 And, of course, you may decide -- you may consider whether

JURY CHARGE

1 the witness has shown any bias or any prejudice in the case.
2 I instruct you and emphasize to you that the fact that the
3 defendant did not appear and did not testify in this case is
4 not a factor to be considered by you for your deliberation
5 and your consideration in questioning the guilt or innocence
6 of the defendant. It must not be considered by you
7 whatsoever. I repeat, under your oath you are to draw no
8 conclusions whatsoever from the fact that the defendant did
9 not appear and testify. This should not even be discussed
10 in the jury room. The burden of proof as I have stated to
11 you is on the State, the defendant is not required to prove
12 his or her innocence. The burden remains upon the State to
13 prove guilt beyond a reasonable doubt. As you've heard the
14 defendant has been charged with first degree burglary. The
15 State must first prove beyond a reasonable doubt that the
16 defendant entered the dwelling without consent, and of
17 course a dwelling is any building or portion of a building
18 in which a person ordinarily sleeps. Next the State must
19 prove beyond a reasonable doubt that the defendant intended
20 to commit a crime, either a felony or a misdemeanor at the
21 time of the entry. The mere entering into a dwelling
22 without consent is not burglary, if the intent to commit a
23 crime is formed after entry it is not burglary. On the
24 other hand if the defendant intended to commit a crime at
25 the time of the entry it is a burglary even if the intent

JURY CHARGE

1 was abandoned after the entry. Intent may be shown by acts
2 and conduct of the defendant or the circumstances which you
3 may naturally and reasonably infer intent. Finally the
4 State must prove beyond a reasonable doubt either one or
5 more of the following circumstances: That when entering or
6 while in the dwelling or when fleeing the defendant caused
7 physical injury to someone who was not participating in the
8 crime, or while entering the dwelling or fleeing the
9 defendant used or threatened to use a dangerous object, or
10 the defendant entered or remained in the dwelling in the
11 nighttime, and I tell you nighttime is the period between
12 sunset and sunrise. The defendant is also charged with
13 assault and battery of a high and aggravated nature. I tell
14 you that that is an unlawful act of violent injury to the
15 person of another accompanied by circumstances of
16 aggravation. I'll explain the assault and battery to you
17 just for a second. The assault occurs when a person
18 unlawfully attempts or offers to commit a violent injury
19 upon another person having the present ability to complete
20 the injury. It is the intentional creation of a reasonable
21 fear of immediate bodily harm. For an assault to occur it's
22 not necessary that the attempted injury or harm actually
23 take place. For example if I were to walk up to one of you
24 and we were within arms reach and I draw back to strike you,
25 that actually constitutes an assault. The battery though is

JURY CHARGE

1 the unlawful touching of another person by a person who is
2 committing the assault and this can be caused by any object
3 or any part of another's body. The battery is the
4 completion of the assault. And the other example I gave
5 you, if I followed through and struck you that would
6 constitute a battery, thus assault and battery. The State
7 must also prove, though, a circumstance of aggravation.
8 Circumstances of aggravation include using a deadly weapon,
9 the intent to commit a felony and infliction of serious
10 bodily injury, or a great disparity between the ages or
11 physical conditions of the parties. If you find that the
12 State has failed to prove that the defendant is guilty of
13 assault and battery of a high and aggravated nature you may
14 then consider whether the State has proved the defendant was
15 guilty of simple assault and battery. Simple assault and
16 battery contains all of the elements of assault and battery
17 of a high and aggravated nature except those -- none of
18 those circumstances of aggravation that I mentioned to you
19 earlier. Ladies and gentlemen, in just a few moments I am
20 going to ask you to retire to the jury room but I ask you
21 not to begin your deliberations until I send to the jury
22 room the exhibits that have been introduced and this verdict
23 form, when these are sent to the jury room that would be the
24 cue for the alternate juror to step back into the jury room
25 and for you to begin your deliberations. I would ask the

JURY CHARGE

1 foreperson if she would on behalf of the jury to complete
2 the verdict form. For there to be any verdict the verdict
3 must be unanimous meaning all 12 of you must agree before
4 there can be any kind of verdict. As to each of these
5 charges the verdict of guilty or not guilty, on the charge
6 of burglary in the first degree you have no other choices
7 except guilty or not guilty. On the other charge, though,
8 on assault and battery of a high and aggravated nature you
9 will again have that same choice of guilty or not guilty.
10 As I instructed you a moment ago if you decide that the
11 defendant -- the State has failed to prove beyond a
12 reasonable doubt that the defendant is guilty of assault and
13 battery of a high and aggravated nature, you then consider
14 whether the State has proved the lesser included charge of
15 simple assault and battery. The defendant cannot be guilty
16 of both assault and battery of a high and aggravated nature
17 and simple assault and battery, he may be guilty or not
18 guilty of either but he cannot be guilty of both. When the
19 jury reaches a unanimous verdict, Ms. Noyes, would you
20 please circle whether the verdict was guilty or not guilty
21 in the appropriate place, sign the verdict form, knock on
22 the door and let the bailiff know that you are ready and we
23 will then receive you back into the courtroom. So ladies
24 and gentlemen, if you would now please step in the jury
25 room, don't yet begin deliberations, I will send word when

JURY CHARGE

1 it's time to begin deliberations.

2 (The jury left the courtroom.)

3 THE COURT: Exceptions?

4 MR. GRIER: None from the defendant.

5 MR. NEWMAN: No, sir.

6 THE COURT: Exhibits?

7 MR. NEWMAN: We need to be sure we strike the words on
8 the indictment if it is going back.

9 THE COURT: It's not going back.

10 (The jury began deliberations.)

11 THE COURT: I have a note from the jury, "We would like
12 to know the difference between assault and battery of a high
13 and aggravated nature and assault and battery?" Any
14 thoughts besides bring them back in and recharge them?

15 MR. GRIER: I don't see anything else that can be done.

16 MR. NEWMAN: I'm fine with recharging.

17 (The jury returned to the courtroom.)

18 THE COURT: Welcome back, ladies and gentlemen. I have
19 a note from the jury. As I understand it the jury seeks a
20 clearer definition between assault and battery of a high and
21 aggravated nature and simple assault and battery. As I told
22 you earlier assault and battery of a high and aggravated
23 nature is an unlawful act of violent injury to the person of
24 another accompanied by circumstances of aggravation. I'm
25 assuming y'all understand what constitutes assault and

JURY CHARGE

1 battery. The difference between assault and battery of a
2 high and aggravated nature and simple assault and battery is
3 that in simple assault and battery there are no aggravating
4 circumstances. The aggravating circumstances that the State
5 must prove to prove assault and battery of a high and
6 aggravated nature constitute use of a deadly weapon, the
7 intent to commit a felony or the infliction of serious
8 bodily injury, or there was a great disparity between the
9 ages or physical conditions of the parties. I hope that
10 does it, if it doesn't send me another note. Retire to the
11 jury room and resume your deliberations, ladies and
12 gentlemen.

13 (The jury left the courtroom and resumed
14 deliberations and returned with a verdict.)

15 THE COURT: I'm informed the jury has reached a
16 verdict. Is the State ready?

17 MR. NEWMAN: State is ready.

18 THE COURT: Defense?

19 MR. GRIER: Yes, sir.

20 (The jury returned to the courtroom.)

21 THE COURT: Madam Forelady, I understand the jury has
22 reached a verdict?

23 THE JUROR: Yes, sir.

24 THE COURT: Couple of questions. Was it a unanimous
25 verdict?

JURY VERDICT

1 THE JUROR: Yes, sir.

2 THE COURT: And did you circle the appropriate verdicts
3 on the verdict form?

4 THE JUROR: Yes, sir.

5 THE COURT: If you would, hand it up to the clerk. Mr.
6 Clerk, if you would publish the verdict.

7 THE CLERK: Case of State vs. Charles Davis. We the
8 jury as to indictment number 2007-GS-29-0866, burglary first
9 degree, unanimously find the defendant, Charles Henry Davis,
10 guilty. We, the jury, as to indictment number
11 2007-GS-29-0867, assault and battery of a high and
12 aggravated nature unanimously find the defendant, Charles
13 Henry Davis, guilty. Signed by the foreperson, Cynthia
14 Noyes with today's date. Ladies and gentlemen, if this be
15 your verdict so say you all by the raising of your right
16 hands. Let the record reflect all jurors raised their
17 hands.

18 THE COURT: Thank you. Anything from the State?

19 MR. NEWMAN: No, Your Honor.

20 MR. GRIER: Polling the jury.

21 THE COURT: All right, Mr. Clerk?

22 THE CLERK: Raila Roinsalo, was this your verdict and
23 is this still your verdict?

24 THE JUROR: Yes.

25 THE CLERK: Unshenekia Jones, was this your verdict and

JURY VERDICT

1 is this still your verdict?

2 THE JUROR: Yes, sir.

3 THE CLERK: Sandra Perry, was this your verdict and is
4 this still your verdict?

5 THE JUROR: Yes, sir.

6 THE CLERK: Gloria Jordan, was this your verdict and is
7 this still your verdict?

8 THE JUROR: Yes, sir.

9 THE CLERK: Jennifer Wright, was this your verdict and
10 is this still your verdict?

11 THE JUROR: Yes, sir.

12 THE CLERK: Paul Craig, was this your verdict and is
13 this still your verdict?

14 THE JUROR: Yes, sir.

15 THE CLERK: Foreperson, Cynthia Noyes, was this your
16 verdict and is this still your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Mary Price, was this your verdict and is
19 this still your verdict?

20 THE JUROR: Yes, sir.

21 THE CLERK: Tianac Massey, was this your verdict and is
22 this still your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Daniel Ziegler, was this your verdict and
25 is this still your verdict?

SENTENCING HEARING

1 THE JUROR: Yes, sir.

2 THE CLERK: Riketa Williams, was this your verdict and
3 is this still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Mary Smith, was this your verdict and is
6 this still your verdict?

7 THE JUROR: Yes.

8 THE COURT: Anything else before the jury is released,
9 Mr. Grier?

10 MR. GRIER: No, sir.

11 (The jury was released.)

12 THE COURT: Motions?

13 MR. GRIER: Just renew my motions that were made on the
14 directed verdict, I would ask that the judge consider them
15 as the 13 juror and grant a new trial. Those would be my
16 motions.

17 THE COURT: And I understand the motions and I
18 understand the reasons for the motions but I believe the
19 decision of the jury was in its province and I will deny the
20 motion. And I suppose that the solicitor is preparing
21 sentence sheets?

22 MR. NEWMAN: I am, Your Honor.

23 MR. GRIER: Are we going to do any presentation prior
24 to sentencing?

25 THE COURT: I'm sorry?

SENTENCING HEARING

1 MR. GRIER: Do we argue?

2 THE COURT: Would you like to?

3 MR. GRIER: Well, are you going to sentence him without
4 knowing anything about his history or --

5 THE COURT: Solicitor, do you want to present something
6 on sentencing?

7 MR. NEWMAN: Your Honor, the victim is here and I think
8 he would probably like to speak.

9 THE COURT: Okay.

10 MR. NEWMAN: And he also has some medical bills that
11 could be an issue for restitution.

12 THE COURT: Okay.

13 MR. NEWMAN: I understand it's a prison sentence,
14 but --

15 THE COURT: All right. Are you prepared to go forward?

16 MR. NEWMAN: Give me just a moment.

17 (Break in proceedings.)

18 THE COURT: Solicitor?

19 MR. NEWMAN: Your Honor, I was looking for an updated
20 rap sheet, of course this is from 2007 in this case file. I
21 have texted Mr. Nowiki because he had a newer case on him.
22 He does have some stuff pending with our office, Mr. Nowiki
23 is in the process of looking for. I will give you what I
24 have got. Again, Mr. Grier and I discussed, I think the
25 only new thing is that he failed to stop for a blue light

SENTENCING HEARING

1 just a few months ago, he was sentenced to eight and a half
2 months and he pled guilty to that. His record goes back.

3 THE COURT: He's not on --

4 MR. GRIER: No, he has been back out, it was
5 approximately September, you know.

6 THE COURT: Judge Burch?

7 MR. GRIER: Close enough, he has been out for several
8 months at least.

9 MR. NEWMAN: His record, Your Honor, goes back to 1986,
10 malicious injury to personal property, 1988 assault and
11 battery, 1991 simple possession of cocaine, 1992 criminal
12 domestic violence, 1992 driving under suspension, 1994
13 simple possession of marijuana, 1996 driving under
14 suspension, 1998 resisting arrest and simple assault and
15 battery. 2000 unlawful use of credit cards, 2001 unlawful
16 carrying of a weapon, possession of cocaine second offense.
17 2001 attempted armed robbery, 2003 possession of cocaine
18 second, 2003 -- I'm sorry, 2004 possession of cocaine second
19 two counts, pointing and presenting a firearm and unlawful
20 carrying. 2005 trespassing and entering premises after
21 warning. And as we said the failure to stop for a blue
22 light is the most recent. Your Honor, I hate that Mr. Hall
23 left before we did this, law enforcement is the reason that
24 we pushed this case. We had a case last term with him and
25 this term, he has just been a thorn in the side of law

SENTENCING HEARING

1 enforcement, every time they see him he runs from them.
2 Check this newer record. 2006 entering premises without
3 warning and a 2007 entering another's land after notice,
4 2009 entering premises after warning and then 2011 failure
5 to stop for a blue light. Your Honor, I don't think I have
6 to say a whole lot, a minimum of 15 years. I'm certain this
7 doesn't warrant any life sentence so but I would ask you to
8 hear from the victim.

9 THE COURT: I will be glad to. Yes, sir, Mr. Caskey?

10 THE WITNESS: Yes, sir. You know, I'm just glad this
11 thing is over with, Your Honor, and I can put it behind me.
12 Only thing I really want is to get this behind me and
13 this -- it shouldn't have happened and it's bad enough when
14 you are jumping on a man but when a man is asleep that's
15 just cowardly, you get what you deserve from that and I am
16 glad this is over.

17 THE COURT: Thank you, sir.

18 MR. NEWMAN: Your Honor, he doesn't have the bills with
19 him but he says the hospital bill was a little over \$3,000,
20 ambulance bill was 1,000. I will send up a restitution
21 order and let you decide the amount.

22 THE COURT: I take it Mr. Davis is currently 44, the
23 sentence sheet says 44.

24 MR. NEWMAN: That is printed off our system.

25 MR. GRIER: He was 38 six years ago so that would be

SENTENCING HEARING

1 consistent with the police report.

2 THE COURT: All right. And Mr. Grier?

3 MR. GRIER: He would have turned 39 in 2007, so he will
4 be 45 at the end of this month. Judge, I understand law
5 enforcement is aggravated with him because he runs and
6 running is not one of the worst crimes with all of these
7 murders and serious cases that we've got in this town. The
8 running aspect of this being the reason he is a thorn in
9 their side is not the biggest thing, it's annoying but it --
10 as far as a threat to the community it's not really that big
11 of a deal. But Judge, you heard his record. Certainly he
12 was on a major tear as a younger man, after 2004 the only
13 general sessions crime that he has been convicted of is the
14 failure to stop for a blue light. This happened in 2007, so
15 it's a six year old case and, you know, while any crime is
16 one crime too many his -- the frequency and his contact with
17 law enforcement and his criminal behavior has substantially
18 subsided which we think was evidenced by the criminal record
19 is the only reason I thought it was important for you. And
20 I understand what the minimum sentence is, I don't think
21 there's any prohibition against being able to suspend part
22 of that and I'm certainly asking you to suspend all of it
23 which I know you're not going to do. But Your Honor, we had
24 negotiations that were quite frankly in retrospect for Mr.
25 Davis when we should have been able to resolve this case and

SENTENCING HEARING

1 I think had he appeared we would have been able to resolve
2 it through a plea. But my last note on a negotiation is
3 that seven years suspended -- but they were moving this
4 downward and getting this out of the burglary and those were
5 the offers that were on the table for to get him, in fact,
6 out of 85 percent time. But the offer was seven suspended
7 to four was the last offer that I received and that would
8 have involved restitution for Mr. Caskey as well. I'm
9 asking you not to trial tax him too much over what the
10 solicitor saw was an appropriate resolution and actually
11 that was an offer when he had a pending --

12 MR. NEWMAN: Your Honor, I will say that was the offer,
13 however we never got any indication he was willing to plead
14 on any of his charges and he didn't. He pled straight up to
15 his failure to stop for a blue light on the day that we were
16 going to pick a jury.

17 MR. GRIER: Notwithstanding I think it's my duty to
18 point out at some point that the solicitor thought that was
19 a resolution of the case for a possession with intent to
20 distribute these -- all of these charges and so now we are
21 faced with sentencing on these charges alone. Your Honor,
22 you heard, he's got at least twins, I don't have any other
23 indication that he has got any other children, that
24 apparently there's a relationship with Ms. Colbert. While I
25 don't think they're together, you know, it's apparently

SENTENCING HEARING

1 amicable at the time this happened. While I'm not
2 justifying an attack on Mr. Caskey, he seems like a nice man
3 and I hate that for him to suffer at all, certainly, you
4 know, I don't know what the jury based their aggravated
5 assault verdict on but, you know, if it was serious bodily
6 injury, if Mr. Davis had intended to very seriously
7 injure -- if they did -- well, if that was considered
8 serious, knocking teeth out -- the only thing I think if the
9 jury decided was a serious bodily injury was knocking the
10 teeth out, I'm not trying to justify it but certainly
11 Mr. Davis was capable of harming Mr. Caskey much more than
12 happened in this case when he apparently came in while
13 another man is with the woman carrying his babies, eight
14 months pregnant. So that's, you know, the -- what would go
15 through a man's mind under those circumstances I think has
16 some mitigation value in this case and might cause him to
17 suspend the judgment of just walking away and saying that's
18 fine. But at any rate, Judge, Mr. Davis is -- when I talked
19 to him, you have seen me in front of this Court with many
20 clients who you could probably recognize we were in
21 difficult relationships with, it was never that way with me
22 and Mr. Davis. He was always reasonable to talk to, and as
23 Mr. Caskey said they never had any problems. This was a one
24 time deal, a burglary that, you know, is quite frankly, you
25 know, very surprised that the State won it, but I commend it

SENTENCING HEARING

1 for their victory not withstanding that and they should be
2 proud of that. But at any rate, Your Honor, it was one
3 event, technically a burglary but nobody was stealing,
4 somebody was just mad, probably an assault just got out of
5 hand. I'm asking you to suspend a substantial part of that
6 15 years, the message is going to be out there for him, it's
7 six years old, Your Honor, and really no substantial -- a
8 failure to stop for a blue light is the only general
9 sessions charge since 2004, almost ten years.

10 THE COURT: All right. Thank you, Mr. Grier. Anything
11 else, Solicitor?

12 MR. NEWMAN: No, Your Honor.

13 THE COURT: All right. I completed the sentence sheets
14 and put them in a sealed envelope provided by the clerk of
15 court.

16 (End of trial proceedings.)

17

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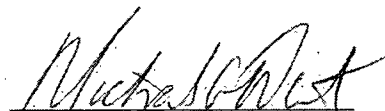
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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings had and
5 evidence introduced in the trial of the captioned case,
6 relative to appeal, in the Court of General Sessions for
7 Lancaster County, South Carolina, on the 13th day of
8 February, 2013.

9 I do further certify that I am neither of kin, counsel,
10 nor interest to any party hereto.

11
12 September 17, 2013

13
14 
15 Michael C. Watkins
16 Court Reporter
17
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SATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTH JUDICIAL CIRCUIT
CASE NO.: 2007-GS-29-00866
-00867
STATE OF SOUTH CAROLINA)
vs.) TRANSCRIPT OF RECORD
CHARLES DAVIS)

BEFORE THE HONORABLE J. ERNEST KINDARD, JR.

APPEARANCES:

RANDY NEWMAN, ASSISTANT SOLICITOR
LANCASTER, SOUTH CAROLINA

ATTORNEY FOR THE STATE

MARK GRIER, ASSISTANT PUBLIC DEFENDER
LANCASTER, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

NO TESTIMONY TAKEN

E-X-H-I-B-I-T-S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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NO EXHIBITS

1 THE COURT - Okay, we've got Charles Davis out
2 here. What's he been up to?

3 MR. NEWMAN - Your Honor, this is a sealed
4 sentence. Mr. Davis was tried February 13th, 2013, tried
5 for assault and battery of a high and aggravated nature and
6 burglary first, was found guilty. Mr. Davis did not show
7 up for trial. Judge Goldsmith sentenced him and sealed the
8 sentence, and we request that you open the sentence at this
9 time.

10 THE COURT - All right. Okay. It looks like
11 Judge Goldsmith sentenced him to 20 years and 10 years;
12 they were concurrent and ordered him to pay \$4,000 dollars
13 restitution. So what about it, Mr. Grier?

14 MR. GRIER - Judge, I -- you know, I'd like to
15 make motions; I'd like for you to -- but I assume I'd have
16 to make those in front of Judge Goldsmith. Would you --
17 Judge, I'd ask that you reconsider, that you -- I mean it's
18 a -- he got a 20 year sentence on the burglary and a 10
19 year on the assault and battery with a -- of a high and
20 aggravated nature?

21 THE COURT - Yes.

22 MR. GRIER - Your Honor, I think that that's
23 excessive in light of, you know, what -- you know, was
24 presented to the Court. He had a offer of a cap of five
25 years on it. It was a -- he was obviously tried in his

1 absence, Your Honor, and we just were not able to get Mr.
2 Davis into the courtroom and the sentencing is grossly
3 excessive for, you know, what's alleged, that he -- I will
4 tell you that in the trial the -- the owner of the home was
5 the mother of his baby. She was pregnant with his child at
6 the time and he was -- she was having a -- had a man in
7 there and, you know, Mr. Davis entered the home; she
8 testified he had a key to the home, and notwithstanding
9 that, the jury found him guilty on the burglary first which
10 I believe is unconstitutional. I mean I don't believe
11 burglary first applies under the circumstance. I know
12 we've got some law on it in South Carolina, would love to
13 see it challenged on the federal level, you know, but,
14 Judge, it's -- you know, certainly I could understand a
15 charge of assault and battery of a high and aggravated
16 nature under the circumstances and hearing the testimony of
17 the victim in that case, but this was a entry into a home
18 where the owner the owner of that home said that he had a
19 right to be there and access to it during the trial, and
20 I'd ask that you vacate the sentence and -- or in the
21 absence and re-sentence him to something, you know, where -
22 - he certainly wants to return home to his family, and that
23 would be our objective today, but I think it's grossly
24 disproportionate to the facts of the case.

1 THE COURT - Well, here's how these things
2 operate. He should've taken the deal which he didn't take.
3 I think burglary first because the jury could've found him
4 guilty of burglary second, so burglary first is 15 to life.
5 I think that's what it is, so all I could cut it to would
6 be 15. I'm not retrying it. I'm just -- could re-
7 sentence.

8 MR. GRIER - Well, Judge I'd ask you to do -
9 certainly, I'd ask that you reduce it the 15 if that's all
10 the Court feels like it can do. Of course, you know, I
11 think that'd be an appropriate ---

12 THE COURT - Well, burglary first I believe is 15
13 to life, and I don't think I can play with it.

14 MR. GRIER - Well, I -- regrettably I think that's
15 what our Supreme Court said. I think, you know, if it's
16 going to be challenged, that have to go to -- to -- you
17 know, be reviewed on a constitutional basis, and I don't
18 know if there's anything there or not, but probably
19 somebody needs to challenge it.

20 THE COURT - Well, anyway, that's ---

21 MR. GRIER - And we can't do that here, and I
22 understand that, Your Honor. I think Mr. Davis would like
23 to address you.

24 THE COURT - I'm listening.

1 MR. DAVIS - How you doing, sir? I just want to
2 say, I didn't not come to Court intentionally. I had came
3 when he told me to come. I came up here the day before and
4 he said uh -- he told me to come back the next day to pick
5 a jury and which me and fiancé and my daughter, we came and
6 he told us to go upstairs and I waited, but I just want to
7 say this, I'm not a burglar and that assault and battery,
8 it was just a -- it was just a fight, you know, and, sir, -
9 - and I wasn't trying to hide because I just ---

10 THE COURT - Here's the problem. I was not the
11 Trial Judge of that Court.

12 MR. DAVIS - Yes, sir, I know.

13 THE COURT - I didn't hear it. I'll do this for
14 you, the best I can do, since Judge Goldsmith is here and
15 since this is his first opportunity, maybe he can
16 reconsider, but he would be locked in the same thing
17 though. The jury found him guilty of burglary first. I
18 don't think I can help you. I -- I'll reduce it to 15
19 years, which is the minimal I can do as I understand the
20 law.

21 MR. DAVIS - Yes, sir, but -- sir, I was just
22 saying I wasn't hiding. I -- I ---

23 THE COURT - I understand, but that's not --
24 that's not something I can deal with. The jury's already
25 found you guilty. They've found you weren't there and so

1 forth. You may have other recourse on that but nothing I
2 can do for you.

3 MR. DAVIS - Yes. I just -- I mean I wasn't ---

4 MR. GRIER - I told him he needs to file his PCR.

5 THE COURT - Yes.

6 MR. GRIER - And that's the best he can do. Go
7 ahead and file your PCR. We'll file motions in front of
8 Judge Goldsmith as well, Your Honor. I think we can still
9 probably do that.

10 THE COURT - I'm going to write off on this one
11 sealed sentence opened ---

12 MR. GRIER - Well, while, Your Honor, I don't --
13 you know, I agree with your analysis of our predicament, I
14 think in an abundance of caution I probably need to go
15 ahead and file some Motion to Reconsider on his behalf and
16 would be appropriate thing to do notwithstanding the
17 potential futility of it.

18 THE COURT - I said sealed sentence opened 6-18-
19 13, reduced to 15 year sentence.

20 (END OF TRANSCRIPT)

21

22

23

24

25

STATE OF SOUTH CAROLINA

)

)

C-E-R-T-I-F-I-C-A-T-E

)

)

COUNTY OF YORK

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the State of South Carolina v. Charles Davis, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 20th day of September, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter
SIXTEENTH JUDICIAL CIRCUIT

WITNESSES

Campbell - LPD #07-02223

DOCKET NO. 2007-GS-29-0866

The State of South Carolina

County of Lancaster

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OF COURT

2013 FEB -7 PM 12:31

CLERK OF COURT
LANCASTER, SC

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2013

ARREST WARRANT NUMBER/DOA

K055264 (DOA 5-25-2007)

THE STATE

vs.

ACTION OF GRAND JURY

Charles Henry Davis *Bla-Bla*

Brenda L. Lajack
Foreperson of Grand Jury

Date: FEB 07 2013

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

Indictment for

Burglary, First Degree

SC Code: §16-11-311(A)(3)

CDR Code: 0079

Class: Felony, EXM

STATE OF SOUTH CAROLINA)

INDICTMENT

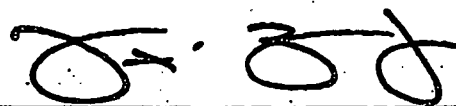
COUNTY OF LANCASTER)

At a Court of General Sessions, convened on February 7, 2013, the Grand Jurors of Lancaster County present upon their oath:

BURGLARY, FIRST DEGREE

That Charles Henry Davis did in Lancaster County on or about February 11, 2007, enter the dwelling of Sharita Ryan Colbert without consent and with intent to commit a crime in the dwelling and the entering or remaining occurred in the nighttime in violation of §16-11-311(A)(3), *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.



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Campbell - LPD #07-02223

[Signature]

ARREST WARRANT NUMBER/DOA

K055265 (DOA 5-25-2007)

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury
Date: FEB 07 2013

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-29-0867

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

February TERM 2013

THE STATE
VS.

Charles Henry Davis 306-807

Indictment for

Assault and Battery of a High and
Aggravated Nature

SC Code: §17-25-0030
CDR Code: 0013
Class: Misdemeanor, UNC

FILED
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OF COURT

2013 FEB -7 PM 12:32

CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

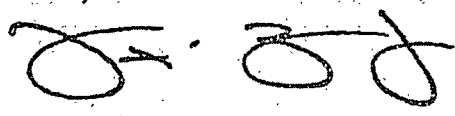
INDICTMENT

At a Court of General Sessions, convened on February 7, 2013, the Grand Jurors of Lancaster County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That Charles Henry Davis did in Lancaster County on or about February 11, 2007, commit an assault and battery upon the victim, Leon Caskey, Sr., constituting an unlawful act of violent injury to the person of the victim accompanied by circumstances of aggravation, to wit: Hitting victim [REDACTED], causing serious bodily injury, in violation of the common law of the State of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

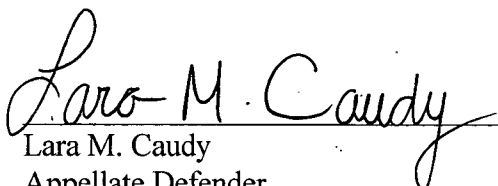


Douglas A. Barfield, Jr., SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 22, 2013


Lara M. Caudy
Appellate Defender

RECEIVED
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SC Court of Appeals

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 Lancaster County

J. Ernest Kinard, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

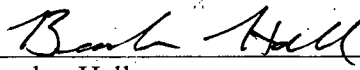
CHARLES DAVIS,

APPELLANT

APPELLATE CASE NO. 2013-001408

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of November, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 22nd day of November, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.