

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

Kristi Lea Harrington, Circuit Court Judge

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JUL 17 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DERRICK LADON CLARK,

APPELLANT

APPELLATE CASE NO. 2013-002643

RECORD ON APPEAL

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1 State of South Carolina }
2 County of Berkeley } Case No. 2013GS080035-37
3 State of South Carolina, }
4 Plaintiff, }
5 vs. } Transcript of Record
6 Derrick Ladon Clark, }
7 Defendant. }

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9 TRIAL TRANSCRIPT

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December 4, 2013

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Berkeley County, South Carolina

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20 BEFORE:

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The Honorable Kristi Lea Harrington

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Ninth Circuit Solicitor's Office

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Berkeley County Public Defender's Office

REPORTED BY:

Mona L. Manley, Court Reporter

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JURY QUALIFICATION

1 THE COURT: Are you ready?

2 MR. SCHWACKE: Yes, ma'am.

3 THE COURT: Is the State ready?

4 MS. TAYLOR: We are, Your Honor.

5 THE COURT: I believe that the jury is missing
6 too, but we still have enough to go forward. Which
7 indictments are you going forward on?

8 MS. TAYLOR: All three that we presented to the
9 Court on --

10 THE COURT: 2013-GS-0800035, 36, and 37; is that
11 your --

12 MS. TAYLOR: Yes, Your Honor.

13 THE COURT: Is that correct?

14 MR. SCHWACKE: Yes, Your Honor.

15 THE COURT: Does your client waive formal
16 arraignment?

17 MR. SCHWACKE: He does, Your Honor.

18 THE COURT: Ms. Taylor, I understand that there
19 had been an offer and it was placed on the record from
20 Judge McDonald, you believe?

21 MS. TAYLOR: That's correct, Your Honor. It was
22 an offer with a negotiated cap of 20 years. That was
23 rejected in front of Judge McDonald in the October
24 term.

25 THE COURT: Mr. Schwacke, you conveyed that offer?

JURY QUALIFICATION

1 I am assuming that when it was placed on the record it
2 was conveyed, but for purposes of this record, you
3 conveyed that 20-year offer?

4 MR. SCHWACKE: I did, Your Honor.

5 THE COURT: Okay. Mr. Clark, if you could please
6 stand. Mr. Clark, I just want to make sure that we are
7 going to go forward on these three indictments, that
8 you had previously rejected the 20-year negotiated cap.
9 Was it a cap?

10 MS. TAYLOR: Yes, Your Honor.

11 THE COURT: Twenty-year cap; is that correct?

12 MR. CLARK: Yes, ma'am.

13 THE COURT: And you wish to go forward on the
14 three indictments here today?

15 MR. CLARK: Yes, ma'am.

16 THE COURT: All right. Thank you. Is there
17 anything before we bring in the jury from the State?

18 MS. TAYLOR: No, Your Honor.

19 THE COURT: From the Defendant?

20 MR. SCHWACKE: No, Your Honor.

21 THE COURT: I have four witnesses. Are there any
22 additional witnesses from the Defendant?

23 MR. SCHWACKE: Your Honor, it's fluid at this
24 time. There's been discussions about whether he will
25 testify or not. We won't know that until the

JURY QUALIFICATION

1 appropriate time.

2 THE COURT: And any additional voir dire other
3 than the standard voir dire?

4 MS. TAYLOR: None from the State, Your Honor.

5 MR. SCHWACKE: Just your standard.

6 THE COURT: Okay. Great. Thank you. Let's go
7 ahead and bring in the jury. Thank you. Do we need to
8 invoke the rule of sequestration?

9 MS. TAYLOR: We have agreed, Your Honor, that only
10 the first victim will stay in. He is first and then
11 the second victim will come in. The officers will
12 remain outside.

13 THE COURT: Is that your understanding?

14 MR. SCHWACKE: Yes, Your Honor.

15 THE COURT: I don't know who the victims are, but
16 Ms. Brown, I'm tasking you with making sure that the
17 rule is complied with. Thank you.

18 (The jury panel enters at 10:12.)

19 THE COURT: Good morning, I'm Judge Kristi
20 Harrington. Can y'all hear back there? I have got
21 room on the front if y'all need to move forward. All
22 right.

23 Good morning. We are preparing to start another
24 case. The case that we are beginning this morning is
25 the case of the State versus Derrick Ladon Clark.

JURY QUALIFICATION

1 Mr. Schwacke, if you would please stand and introduce
2 Mr. Clark, yourself, and any persons who will be
3 assisting you throughout the trial.

4 MR. SCHWACKE: David Schwacke. I am an attorney
5 in the Public Defender's Office and I will be
6 representing Mr. Clark. Assisting me is Keisha White
7 also from the Public Defender's office.

8 THE COURT: Is there any member of the jury panel
9 related by blood, marriage, close personal friend, ever
10 have any business or personal or professional dealings
11 with Mr. Clark? If so, please stand. Thank you.
12 There are none.

13 Is there any member of the jury panel related by
14 blood, marriage, close personal friend ever been
15 represented by Ms. Schwacke or Ms. White? If so,
16 please stand.

17 Please stand.

18 JUROR: (Juror 158) I used to work at the Public
19 Defender's Office.

20 THE COURT: That's right. And that was several
21 years ago; is that correct?

22 JUROR: (Juror 158) That was in 2000.

23 THE COURT: Is there anything about your previous
24 employment with Mr. Schwacke, working with Mr.
25 Schwacke, that would affect your ability to be fair and

JURY QUALIFICATION

1 impartial in the this case?

2 JUROR: (Juror 158) No.

3 THE COURT: And your juror number and name.

4 JUROR: Tonya Vanek-Pope, Juror Number 158.

5 THE COURT: Thank you. Is there anyone else?

6 Thank you. There are none.

7 Ms. Taylor, if you would please stand and
8 introduce yourself and any persons who may be assisting
9 you throughout this trial.

10 MS. TAYLOR: Thank you, Your Honor, I'm Colleen
11 Taylor. I'm working in the Ninth Circuit for the
12 Solicitor Scarlett Wilson, assisting me, Kendra Wilson
13 also in the Berkeley office. And a paralegal, Denita
14 Brown. Also our office's investigator, David Osbourne.

15 THE COURT: Is there any member of the jury panel
16 related by blood, marriage or close personal friend,
17 ever have any business, personal or professional
18 dealings, or ever been represented by Ms. Taylor or Ms.
19 Wilson? If so, please stand. Thank you. There are
20 none.

21 Is there any member of the jury panel that has
22 ever been employed by or had any matters handled by the
23 Ninth Circuit Solicitor's Office, which is Berkeley and
24 Charleston County, or the Ninth Circuit Public
25 Defender's Office, which is Charleston and Berkeley

JURY QUALIFICATION

1 County? If so, please stand. Thank you. There are
2 none.

3 Ladies and gentlemen, as I indicated to you on
4 Monday, we are brought to court by the document, it is
5 called an indictment. It simply contains the formal
6 charge. Mr. Clark has been indicted for assault and
7 battery in the first degree. Mr. -- the State alleges
8 that Mr. Clark did, in Berkeley County, on or about
9 August or -- excuse me, October 20th, 2012, commit an
10 assault and battery in the first degree, constituting
11 an unlawful act injuring the victim, Marion Whetsell,
12 and the act occurred during the commission of a
13 robbery, burglary, kidnaping or theft, all in violation
14 of Section 16-3-600 (C)(1) in the South Carolina Code
15 of Laws, 1976, as amended.

16 The State further alleges that Mr. Clark did, on
17 or about October 20th, 2012, have in his possession a
18 5/8th wrench, a green-handled sharpened screwdriver
19 which is commonly used for burglary, larceny or other
20 such crimes, and that he did possess such tools under
21 such circumstances eventing an intent to use them or
22 allow them to be used in the commission of a crime, or
23 knowing that they are intended to be so used in
24 violation of 16-11-20 of the South Carolina Code of
25 Laws, 1976 as amended.

JURY QUALIFICATION

1 The State further alleges that Mr. Clark did, in
2 Berkeley County, on or about October 20th, 2012, during
3 nighttime hours enter the dwelling of Marion Whetsell
4 located at [REDACTED] without consent and with
5 the intent to commit a crime therein, larceny. That in
6 addition the Defendant injured a nonparticipant in this
7 crime in violation of 16-11-311 of the South Carolina
8 Code of Laws, 1976 as amended.

9 Mr. Clark has pled not guilty to each of these
10 indictments.

11 Is there any member of the jury panel that knows
12 anything about this case other than what I have just
13 read to you? If so, please stand. Thank you. There
14 are none.

15 Is there any member of the jury panel that lives
16 or works near the incident location, which is 114
17 [REDACTED] in Berkeley County? If so, please
18 stand. Thank you. There are none.

19 Any member of the jury panel that has ever been in
20 or near [REDACTED] in Berkeley County? If so,
21 please stand. Thank you. There are none.

22 I'm now going to call a list of potential
23 witnesses who may be called to testify in this case.
24 If you are related by blood, marriage, close personal
25 friend to any of these individuals, please stand when I

JURY QUALIFICATION

1 call their name.

2 Marion David Whetsell, Laurel Pocorobba, Deputy
3 Corey Arrington with the Berkeley County Sheriff's
4 Office, Deputy Teel Antwine with the Berkeley County
5 Sheriff's Office? Any member related by blood,
6 marriage, or close personal friends to any of these
7 individuals please stand. Thank you. There are none.

8 Any member of the jury panel ever been employed
9 by, or family member or friend of yours been employed
10 with the Berkeley County Sheriff's Office? If so,
11 please stand.

12 All right. Yes, ma'am. We will start with you on
13 the front.

14 JUROR: Angienet McFadden, Juror 103 and I have a
15 son employed by Berkeley County Sheriff's Department.

16 THE COURT: All right. And I know that you told
17 me on Monday; what is your son's name?

18 JUROR: (Juror 103) David McFadden, Jr.

19 THE COURT: Is there anything about that that
20 would affect your ability to be fair and impartial in
21 this case?

22 JUROR: (Juror 103) No, ma'am.

23 THE COURT: Do you know Deputy Arrington or Deputy
24 Antwine?

25 JUROR: (Juror 103) No, I don't.

JURY QUALIFICATION

1 THE COURT: And your juror number?

2 JUROR: 103.

3 JUROR: Shawn Collins, Juror 33. My mother used
4 to work with Hill-Finklea Correctional Facility.

5 THE COURT: When was she last time she was
6 employed with Hill-Finklea?

7 JUROR: (Juror 33) Two years ago.

8 THE COURT: Do you know Deputy Arrington or Deputy
9 Antwine?

10 JUROR: (Juror 33) No, ma'am.

11 THE COURT: Is there anything about your mom's
12 employment with the Hill-Finklea Correctional Facility
13 that would affect your ability to be fair and impartial
14 in this case?

15 JUROR: (Juror 33) No, ma'am.

16 THE COURT: Your juror number?

17 JUROR: 33.

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

19 JUROR: Joellen Gibson, Juror number 61. My son
20 is a deputy, Lee Hollbrook.

21 THE COURT: All right. With Berkeley County?

22 JUROR: (Juror 61) Yes.

23 THE COURT: Do you know Deputy Arrington or Deputy
24 Antwine?

25 JUROR: (Juror 61) No, I don't.

JURY QUALIFICATION

1 THE COURT: Is there anything about your son's
2 employment with Berkeley County that would affect your
3 ability to be fair and impartial in this case?

4 JUROR: (Juror 61) No, it would not.

5 THE COURT: Did you know anything about this case
6 other than what I have just read to you?

7 JUROR: (Juror 61) No.

8 THE COURT: All right. And your juror number?

9 JUROR: 61.

10 THE COURT: Thank you. Yes, ma'am.

11 JUROR: I used to work with the Solicitor's
12 Office.

13 THE COURT: All right. And do you know any -- you
14 used to be employed with the Solicitor's Office. Do
15 you know Ms. Taylor or Ms. Wilson? I think you have --
16 they have been employed there since you left. Is there
17 anything about that employment that would affect your
18 ability to be fair and impartial in this case?

19 JUROR: (Juror 173) No, ma'am.

20 THE COURT: And your juror number?

21 JUROR: 173.

22 THE COURT: Thank you. Yes, ma'am.

23 JUROR: Tonya Pope, Juror 158, and I have a close
24 personal friend that works for Berkeley County
25 Sheriff's Department. The Chief.

JURY QUALIFICATION

1 THE COURT: Do you know Deputy Arrington or Deputy
2 Antwine?

3 JUROR: (Juror 158) No, ma'am.

4 THE COURT: Is there anything about your
5 friendship with someone who is employed with Berkeley
6 County that would affect your ability to be fair and
7 impartial in this case?

8 JUROR: (Juror 158) No, ma'am.

9 THE COURT: And your juror number?

10 JUROR: Juror 158.

11 THE COURT: Thank you.

12 Ladies and gentlemen, is there any -- this is a
13 question that I'll ask you, a few more questions, I'll
14 determine if you need to come forward and speak with me
15 to answer these questions. And as I remember some of
16 your responses from Monday, but it is important that
17 even if you told me the same thing on Monday you are
18 going to need to come and tell me again because this is
19 a completely different case and it is a different
20 record.

21 I actually have a new court reporter this morning.
22 And so she is, again, writing down everything that I
23 say as well as everything that you say. Ladies and
24 gentlemen, the series of questions will begin now. Is
25 there any member of the jury panel that has ever been

JURY QUALIFICATION

1 the victim of a violent crime?

2 Is there any member of the jury panel that has
3 ever been the victim of a burglary, specifically, or a
4 family member or close friend that has been the victim
5 of a burglary?

6 Ladies and gentlemen, y'all have been, some of
7 you, on a shorter break than others, but I just want to
8 ask -- as you know, your service is for the week. I
9 anticipate that we will be done before Friday.. But
10 perhaps something -- if you made arrangements or your
11 best friend called you last night and said, We are
12 going to be leaving on an all-expense-paid trip to
13 Aruba but I need you to leave Friday morning to come
14 with me. If something happened in this, for now,
15 because I have talked to y'all on Monday and everybody
16 assured me that they could be here, but I need a
17 guarantee that you are going to be with me if you are
18 selected to this jury panel for the remainder of the
19 week, potentially.

20 So, if something happened over the evening hours
21 for some of you that you feel, for whatever reason,
22 that you could not be a fair and impartial juror based
23 either upon something that has happened to you in your
24 personal life while you were on your break or based on
25 anything that you have seen or heard in the courtroom

JURY QUALIFICATION

1 this morning that you would be unable to listen to the
2 facts from the witness stand, apply the law as the
3 Court gives it, and render a verdict based upon those
4 things, free from any political, personal, moral or
5 religious beliefs that you may hold. If, for whatever
6 reason, you feel that you cannot be a fair and
7 impartial juror in this case I will need to see you, as
8 well as if you need to answer any of those previous
9 questions.

10 Again, if you will move to the center aisle the
11 bailiffs will assist you in coming forward. Is there
12 anyone? All right. Thank you.

13 (Pause.)

14 THE COURT: Any additional questions? Any
15 additional questions?

16 MR. SCHWACKE: No. No.

17 MS. TAYLOR: No, ma'am.

18 THE COURT: Okay.

19 THE BAILIFF: David Brophy, Juror 26.

20 JUROR: (Juror 26) I was just a victim of a home
21 burglary, [REDACTED] in Summerville.

22 THE COURT: Remind me. I know that I asked you
23 all of these same questions on Monday, but I have
24 different questions from attorneys as well. That was
25 here in Berkeley County?

JURY QUALIFICATION

1 JUROR: (Juror 26) Uh-huh.

2 THE COURT: And were the individuals prosecuted?

3 JUROR: They were. I think it was like a few
4 minors and one adult, something like that.

5 THE COURT: All right. Is there anything about
6 what you shared with us that would affect your ability
7 to be fair and impartial in this case?

8 JUROR: (Juror 26) No.

9 THE COURT: Do you remember the names of the
10 individuals that were prosecuted?

11 JUROR: (Juror 26) I remember Jimmy King, but I'm
12 not completely sure.

13 THE COURT: All right. And do you -- was there a
14 trial?

15 JUROR: (Juror 26) There was, but my attorney
16 represented that and I wasn't there.

17 THE COURT: Okay. Who was your attorney?

18 JUROR: Pam Holtson (phonetic)

19 THE COURT: Okay. And so you didn't come to court
20 like this?

21 JUROR: No.

22 THE COURT: Okay. Is there anything about what
23 you have shared with us that would affect your ability
24 to be fair and impartial in this case, based upon what
25 you know the charges are?

JURY QUALIFICATION

1 JUROR: No, ma'am.

2 THE COURT: All right. Thank you. Juror 26 will
3 remain.

4 THE BAILIFF: Juror number 127, James Putney.

5 JUROR: (Juror 127) I have an appointment on
6 Friday.

7 THE COURT: At what time?

8 JUROR: (Juror 127) Nine.

9 THE COURT: We will work around that. Juror 127
10 will remain. Thank you. Just remind me Mr. Putney.

11 THE BAILIFF: Amber Rivers, Juror 131.

12 JUROR: (Juror 131) I talked to you Monday. I
13 was the victim in a murder case.

14 THE COURT: Okay. You were the victim or you were
15 being investigated?

16 JUROR: Investigated.

17 THE COURT: You were kind of involved or knew
18 something going on?

19 JUROR: (Juror 131) Yes.

20 THE COURT: That was in Dorchester County?

21 JUROR: Uh-huh.

22 THE COURT: Is there anything about that that
23 would affect your ability to be fair and impartial in
24 this case?

25 JUROR: (Juror 131) No.

JURY QUALIFICATION

1 THE COURT: All right. Juror 131 will remain.

2 THE BAILIFF: Starla Davis. Juror Number 40.

3 JUROR: (Juror 40) Good morning, I was held by a
4 knife in like 1980.

5 THE COURT: I think that you shared this here with
6 me on Monday?

7 JUROR: (Juror 40) Yes.

8 THE COURT: Was that here?

9 JUROR: (Juror 40) Berkeley County -- Charleston.
10 County.

11 THE COURT: Was that individual prosecuted?

12 JUROR: (Juror 40) Yes.

13 THE COURT: Were you at work?

14 JUROR: (Juror 40) No, home with my mother.

15 THE COURT: Is there anything about what you
16 shared that would affect your ability to be fair and
17 impartial in this case?

18 JUROR: (Juror 40) No, ma'am.

19 THE COURT: Thank you. Juror Number 40 will
20 remain.

21 THE BAILIFF: Juror Number 173, Imelda Wishart.

22 THE COURT: Good morning.

23 JUROR: (Juror 173) I forgot to mention Monday
24 that my house got (inaudible) last year.

25 THE COURT: In Berkeley County or somewhere else?

JURY QUALIFICATION

1 JUROR: (Juror 173) Berkeley County.

2 THE COURT: Were those individuals prosecuted or
3 go to trial?

4 JUROR: (Juror 173) I don't know anything about
5 this case, but I know that they are still in jail.
6 That is all I know.

7 THE COURT: Is there anything about what you
8 shared with us that would affect your ability to be
9 fair and impartial in this case?

10 JUROR: (Juror 173) No, ma'am.

11 THE COURT: All right. Juror 173 will remain.

12 THE BAILIFF: Juror 81, Vanessa Idone.

13 THE COURT: Good morning.

14 JUROR: (Juror 81) Good morning. I was a victim
15 of a burglary crime in North Charleston in August.

16 THE COURT: This past August?

17 JUROR: (Juror 81) Yes.

18 THE COURT: Okay. And tell me was it in -- where
19 were you?

20 JUROR: (Juror 81) I was in North Charleston,
21 tanning salon.

22 THE COURT: Okay. That is --

23 JUROR: (Juror 81) Yes.

24 THE COURT: So, you were working at the time?

25 JUROR: (Juror 81) Yes.

JURY QUALIFICATION

1 THE COURT: Were those individuals prosecuted?
2 Did they go to court? Were they caught?

3 JUROR: (Juror 81) He had a bond hearing and then
4 he was in jail for like two months. I never went to
5 court. I didn't want him to see me or know who I was.

6 THE COURT: Is there anything that you shared with
7 us based on the charges that would affect your ability
8 to be fair and impartial in this case?

9 JUROR: (Juror 81) No, ma'am.

10 THE COURT: Okay. Juror 81 will remain. Thank
11 you.

12 THE BAILIFF: Juror Number 22, Mary Boyd.

13 THE COURT: Good morning.

14 JUROR: (Juror 22) Good morning. I just like -- I
15 had a charge of shoplifting.

16 THE COURT: And that was a misdemeanor offense,
17 correct?

18 JUROR: (Juror 22) Yes, ma'am.

19 THE COURT: Remind me; it was here in Berkeley
20 County?

21 JUROR: (Juror 22) Yes, ma'am.

22 THE COURT: About how long ago?

23 JUROR: (Juror 22) '09.

24 THE COURT: All right. Did you have
25 representation, an attorney with you?

JURY QUALIFICATION

1 JUROR: (Juror 22) No.

2 THE COURT: You went in front of a magistrate?

3 JUROR: (Juror 22) Yes.

4 THE COURT: Did you plead guilty?

5 JUROR: (Juror 22) Yes.

6 THE COURT: Where were you shoplifting from?

7 JUROR: (Juror 22) It was Lowe's.

8 THE COURT: Okay. All right. Is there anything
9 about what you shared with us that would affect your
10 ability to be fair and impartial in this case?

11 JUROR: (Juror 22) No, ma'am.

12 THE COURT: All right. Juror 22 will remain.
13 Thank you.

14 (The following was held as a side bar:)

15 THE COURT: Any additional questions, Ms. Taylor?

16 MS. TAYLOR: No.

17 THE COURT: Any additional questions?

18 MR. SCHWACKE: On Monday, when you were calling
19 the jury about relationships to law enforcement three
20 people stood up and gave information that did not stand
21 up today...

22 THE COURT: Did they give -- because I only asked
23 about Berkeley County. We had more on the list.

24 MR. SCHWACKE: She said that she knew Officers
25 Hannah and Judy on the Berkeley County Sheriff's

JURY QUALIFICATION

1 Office. And she didn't stand up today. Twenty-one
2 said they knew Officer Shroeder I believe before he
3 went to work in the Berkeley County Sheriff's Office.
4 And then 131 said that she had a close family friend
5 who worked for Berkeley County Sheriff's Office,
6 Officer Thomas.

7 THE COURT: Wasn't she the one in the back?
8 Wasn't that what she said?

9 MR. SCHWACKE: I can't tell you where they were.

10 THE COURT: No, I mean today isn't that the one?

11 MR. SCHWACKE: No, she did not stand up.

12 THE COURT: All right. So, what would you like
13 for me to do? Have them come forward ask it again?
14 Because I asked it differently on Monday.

15 MR. SCHWACKE: Do you remember how you asked it
16 different because it sounded the same to me?

17 THE COURT: Well, because there was more than one
18 agency involved.

19 MR. SCHWACKE: You went through and asked, SLED
20 and any agency.

21 THE COURT: Yes, there were SLED and --

22 MR. SCHWACKE: But all of these are Berkeley
23 County Sheriff's Office.

24 THE COURT: Okay. Because Judy is not with
25 Berkeley County. I know that she stood up. But she

JURY QUALIFICATION

1 may not have thought that that was wrong. That is the
2 only thing. I can ask it again. Do you want me to ask
3 any law enforcement, Mr. Schwacke? I just --

4 MR. SCHWACKE: I mean, I don't know if you will
5 ask them to come and ask if they didn't understand your
6 question.

7 THE COURT: Let me do it this way, I'll just ask
8 if there's anyone that has any affiliation with law
9 enforcement whatsoever. Y'all stay here.

10 (End of side bar.)

11 THE COURT: Ladies and gentlemen, I had asked on
12 Monday a different -- we had a different case so we had
13 more law enforcement agencies involved in the
14 particular case, but don't be concerned about that.
15 But in this case we have two deputies from Berkeley
16 County Sheriff's Office. Is there any member of the
17 jury panel that has any affiliation with law
18 enforcement with any other agency, maybe in Monck's
19 Corner Police Department, Charleston County Sheriff's
20 Department, SLED, which is the State Law Enforcement
21 Division that you did not share with us today?
22 Remember, it's important. I have different attorneys
23 involved in this case, different Defendant, as well as
24 specifically a different case.

25 So, is there any member of the jury panel that has

JURY QUALIFICATION

1 any relationship, you used to work at any other law
2 enforcement agency, you know, friends with any law
3 enforcement agency, friends with law enforcement
4 agencies other than Berkeley County Sheriff's Office?
5 If so, please stand. All right. If you will say your
6 juror number and name.

7 JUROR: Juror 26, David Brophy. I know a guy that
8 works with Mt. Pleasant Police Department.

9 THE COURT: All right. And do you know his name?

10 JUROR: (Juror 26) Chip, Chip Coopers.

11 THE COURT: Is there anything about your
12 relationship with the Mt. Pleasant police officer that
13 would affect your ability to be fair and impartial in
14 this case?

15 JUROR: (Juror 26) No, ma'am.

16 THE COURT: All right. And your juror number?

17 JUROR: 26.

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

19 JUROR: My name is Megan Danner, Juror 39. I know
20 Officer Hanner of Monck's Corner and Officer Judy. I
21 think that he's now switched to Berkeley County. And
22 I'm Juror 39.

23 THE COURT: All right. Is there anything about
24 what you have shared with us about your relationship
25 with two officers that would affect your ability to be

JURY QUALIFICATION

1 fair and impartial in this case?

2 JUROR: (Juror 39) No, ma'am.

3 THE COURT: Juror number and name?

4 JUROR: 39, Megan Danner.

5 THE COURT: Thank you. Yes, sir.

6 JUROR: Bryan Dehn, Juror 42. I attend church
7 with David Jones Young.

8 THE COURT: Anything about attending church with
9 Mr. Young that would affect your ability to be fair and
10 impartial in this case?

11 JUROR: (Juror 42) No, ma'am.

12 THE COURT: And your juror number and name?

13 JUROR: Bryan Dehn, Juror Number 42.

14 THE COURT: Thank you. Yes, sir.

15 JUROR: Burgess Atkins, Juror Number 6. My
16 son-in-law Adam Galloway is a public safety officer
17 with MUSC public service department. And I am also
18 close friends and associates with Lee Watford, St.
19 Stephen's Police. And because of my job with the fire
20 department we work closely with law enforcement
21 agencies quite frequently.

22 THE COURT: Anything that you have told us, would
23 that affect your ability to be fair and impartial in
24 this case?

25 JUROR: No, ma'am.

JURY QUALIFICATION

1 THE COURT: Thank you. And your name and juror
2 number and name?

3 JUROR: Burgess Atkins, Juror Number 6.

4 THE COURT: Yes, ma'am.

5 JUROR: Juror 173. I used to work for the North
6 Charleston Police Department in the '90s.

7 THE COURT: All right. Tell me what you did with
8 the North Charleston Police Department.

9 JUROR: (Juror 173) Clerk for the detectives.

10 THE COURT: All right. Anything about that
11 occupation that would affect your ability to be fair
12 and impartial in this case?

13 JUROR: (Juror 173) No, ma'am.

14 THE COURT: All right. And your juror number?

15 JUROR: 173.

16 THE COURT: Thank you. Yes, ma'am.

17 JUROR: Juror 158. I know someone who works for
18 SLED.

19 THE COURT: Anything about that that would affect
20 your ability to be fair and impartial in this case?

21 JUROR: (Juror 158) No, ma'am.

22 THE COURT: And your juror number and name?

23 JUROR: Tonya Pope, Juror 158.

24 MR. SCHWACKE: Thank you, Your Honor.

25 THE COURT: Any additional questions based upon

JURY SELECTION

1 that?

2 MS. TAYLOR: No.

3 THE COURT: Additional questions?

4 MR. SCHWACKE: No, ma'am.

5 THE COURT: Okay. We'll pick the jury, five and
6 ten? All right, thank you.

7 (Pause.)

8 THE COURT: I have one final question while we are
9 preparing the jury list. Did any member of the jury
10 panel leave a pair of reading glasses? All right.
11 They are very nice. Thank you for letting me use them.

12 (Pause.)

13 THE COURT: Okay. Is the State ready?

14 MS. TAYLOR: Your Honor, we don't have a list yet.

15 THE COURT: I don't typically give lists. Is the
16 Defense ready?

17 MR. SCHWACKE: Yes, Your Honor.

18 THE COURT: Thank you.

19 THE CLERK: Ladies and gentlemen of the jury, as I
20 call your name come forth and bring your personal
21 belongings with you. If I say have a seat, have a seat
22 in the jury box. If I say excuse the juror, please
23 return to your original seat. And please follow the
24 instructions of the bailiff standing here.

25 Juror 107 Daryl Mooney.

JURY SELECTION

1 THE CLERK: What say you for the State?

2 MS. TAYLOR: Please present the juror.

3 THE CLERK: What say you for the Defense?

4 MR. SCHWACKE: Please present the juror.

5 THE COURT: Please seat the juror.

6 THE CLERK: Juror 82, Kadra Ingrassia.

7 What say you for the State?

8 MS. TAYLOR: Please present the juror.

9 THE CLERK: What say you for the Defense?

10 MR. SCHWACKE: Please seat the juror.

11 THE CLERK: Seat the juror.

12 Juror 36, Donita Craven.

13 What say you for the State?

14 MS. TAYLOR: Please present the juror.

15 THE CLERK: What say you for the Defense?

16 MR. SCHWACKE: Please seat the juror.

17 THE COURT: Seat the juror. Juror 100, Jerri

18 Marshall.

19 THE CLERK: What say you for the State?

20 MS. TAYLOR: Please present the juror.

21 THE CLERK: What say you for the Defense?

22 MR. SCHWACKE: Please excuse the juror in the

23 trial of this case.

24 THE CLERK: Excuse the juror.

25 Juror 86, Darrell Jones.

JURY SELECTION

1 What say you for the State?

2 MS. TAYLOR: Please present the juror.

3 THE CLERK: What say you for the Defense?

4 MR. SCHWACKE: Please excuse the juror in the
5 trial of this case.

6 THE COURT: Excuse the juror.

7 Juror number 127 James Putney, Junior.

8 What say you for the State?

9 MS. TAYLOR: Please present the juror.

10 THE CLERK: What say you for the Defense?

11 MR. SCHWACKE: Please seat the juror.

12 THE CLERK: Seat the juror.

13 Juror 27, Jennifer Bryant.

14 What say you for the State?

15 MS. TAYLOR: Please present the juror.

16 THE CLERK: What say you for the Defendant?

17 MR. SCHWACKE: Please seat the juror.

18 THE CLERK: Seat the juror.

19 Juror 53, Joydelyn Espiritu.

20 What say you for the State?

21 MS. TAYLOR: Please present the juror.

22 THE CLERK: What say you for the Defendant?

23 MR. SCHWACKE: Please excuse the juror in the
24 trial of this case.

25 THE CLERK: Excuse the juror.

JURY SELECTION

1 Juror 40, Starla Davis.

2 What say you for the State?

3 MS. TAYLOR: Please present the juror.

4 THE CLERK: What say you for the Defendant?

5 MR. SCHWACKE: Please excuse the juror in the
6 trial of this case.

7 THE COURT: Excuse the juror.

8 Juror 110, Patricia Nall.

9 What say you for the State?

10 MS. TAYLOR: Please present the juror.

11 THE CLERK: What say you for the Defendant?

12 MR. SCHWACKE: Please excuse the juror in the
13 trial of this case.

14 THE CLERK: Excuse the juror.

15 Juror Number 39, Megan Danner.

16 What say you for the State?

17 MS. TAYLOR: Please present the juror.

18 THE CLERK: What say you for the Defendant?

19 MR. SCHWACKE: Please excuse the juror in the
20 trial of this case.

21 THE COURT: Excuse the juror.

22 Juror 14, Terri Bendler.

23 What say you for the State?

24 MS. TAYLOR: Please present the juror.

25 THE CLERK: What say you for the Defendant?

JURY SELECTION

1 MR. SCHWACKE: Please seat the juror.

2 THE CLERK: Seat the juror.

3 Juror 26, David Brophy.

4 What say you for the State?

5 MS. TAYLOR: Please present the juror.

6 THE CLERK: What say you for the Defendant?

7 MR. SCHWACKE: Please excuse the juror in the
8 trial of this case.

9 THE CLERK: Excuse the juror.

10 Juror 32, Josephine Clucas.

11 What say you for the State?

12 MS. TAYLOR: Please present the juror.

13 THE CLERK: What say you for the Defendant?

14 MR. SCHWACKE: Please seat the juror.

15 THE CLERK: Seat the juror.

16 Juror 152, Ernest Stout. What say you for the
17 State?

18 MS. TAYLOR: Please present the juror.

19 THE CLERK: What say you for the Defendant?

20 MR. SCHWACKE: Please seat the juror.

21 THE CLERK: Seat the juror.

22 Juror 20, Dorothy Blatchford. What say you for
23 the State?

24 MS. TAYLOR: Please present the juror.

25 THE CLERK: What say you for the Defendant?

JURY SELECTION

1 MR. SCHWACKE: Please seat the juror.
2 THE CLERK: Seat the juror.
3 Juror 103, Angienet McFadden.
4 What say you for the State?
5 MS. TAYLOR: Please present the juror.
6 THE CLERK: What say you for the Defendant?
7 MR. SCHWACKE: Please excuse the juror in the
8 trial of this case.
9 THE COURT: Excuse the juror.
10 Juror 135, Heather Rumbough.
11 What say you for the State?
12 MS. TAYLOR: Please present the juror.
13 THE CLERK: What say you for the Defendant?
14 MR. SCHWACKE: Please seat the juror.
15 THE CLERK: Seat the juror.
16 Juror 81, Vanessa Idone.
17 What say you for the State?
18 MS. TAYLOR: Please present the juror.
19 THE CLERK: What say you for the Defendant?
20 MR. SCHWACKE: Please seat the juror.
21 THE CLERK: Seat the juror.
22 Juror 29, Jessica Carpenter.
23 What say you for the State?
24 MS. TAYLOR: Please present the juror.
25 THE CLERK: What say you for the Defendant?

JURY SELECTION

1 MR. SCHWACKE: Please seat the juror.

2 THE CLERK: Seat the juror.

3 For alternate, Juror 158, Tonya Vanek-Pope.

4 What say you for the State?

5 MS. TAYLOR: Please present the juror.

6 THE CLERK: What say you for the Defendant?

7 MR. SCHWACKE: Please excuse the juror in the
8 trial of this case.

9 THE CLERK: Excuse the juror.

10 Juror 120, Janea Philliph.

11 What say you for the State?

12 MS. TAYLOR: Please present the juror.

13 THE CLERK: What say you for the Defendant?

14 MR. SCHWACKE: Please seat the juror.

15 THE CLERK: Seat the juror.

16 Second alternate, Juror 173 Imelda Wishart.

17 What say you for the State?

18 MS. TAYLOR: Please present the juror.

19 THE CLERK: What say you for the Defendant?

20 MR. SCHWACKE: Please excuse the juror in the
21 trial of this case.

22 THE CLERK: Excuse the juror.

23 Juror 61, Joellen Gibson.

24 What say you for the State?

25 MS. TAYLOR: Please present the juror.

JURY SELECTION

1 THE CLERK: What say you for the Defendant?

2 MR. SCHWACKE: Please excuse the juror in the
3 trial of this case.

4 THE COURT: Excuse the juror.

5 THE CLERK: Juror 72, James Hazeres.

6 What say you for the State?

7 MS. TAYLOR: Please present the juror.

8 THE CLERK: What say you for the Defendant?

9 MR. SCHWACKE: Please seat the juror.

10 THE CLERK: Seat the juror.

11 THE COURT: Ladies and gentlemen, you have been
12 selected as the jury to try this case. You will be
13 escorted to the jury deliberation room and we will
14 receive you back in just a few moments.

15 (The jury exits the courtroom at 10:50 a.m.)

16 THE COURT: Thank you. Please be seated. Outside
17 of the presence of the jury, any motions or matters?

18 MS. TAYLOR: None from the State.

19 MR. SCHWACKE: None from the Defense.

20 THE COURT: All right. Ladies and gentlemen, that
21 completes our matters for the day. Please remember,
22 you are still on call for the rest of the week. So,
23 please call back tonight after 6 p.m. to receive your
24 instructions for the remainder of the week.

25 Ladies and gentlemen, again, I do not know what

JURY SELECTION

1 that message is going to say, but again, if I don't see
2 you again, thank you for your service to Berkeley
3 County and know that your services are definitely
4 needed to make our justice system work as effectively
5 as it is. Have a wonderful afternoon. Thank you again
6 for your contributions. And if I don't see you later
7 in the week I'll see you in three years. Have a great
8 day. Y'all are excused.

9 (Jury panel excused at 10:51.)

10 MS. TAYLOR: We are ready, Your Honor.

11 THE COURT: You may take Mr. Clark to the restroom
12 for a comfort break.

13 (Brief recess.)

14 THE COURT: Anything before we bring in the jury?

15 MS. TAYLOR: Nothing from the State, Your Honor.

16 MR. SCHWACKE: Nothing from the Defense.

17 THE COURT: All right. Let's bring in the jury.

18 (Jury enters the courtroom at 11:05 a.m.)

19 THE COURT: Thank you. Please be seated. Ladies
20 and gentlemen, you have been, again, selected as the
21 jurors to try this case. You have been given note pads
22 which indicates to you that you may take notes
23 throughout the progress of this trial. Please
24 remember, some of us were much better note takers in
25 school. Those notes are your own notes. One juror's

JURY SELECTION

1 notes are no more accurate than another's notes.

2 Please remember, I do the same thing, when I'm
3 writing I look down, and you may miss what's happening
4 before you. With all of those cautionary tales, you
5 are allowed to take notes. You are able to take those
6 with you in deliberation. We will take the notes at
7 lunch and at the end of the day and lock them up.
8 Nobody will be able to see them. And then we will give
9 them back to you in the morning.

10 Ms. Blatchford is selected as the foreperson in
11 this case. She is the spokesperson. If at any time
12 you need additional breaks, let her know. If there's
13 any concerns, let her know. She will alert the bailiff
14 and we will handle the matter immediately. You are
15 responsible for writing the verdict, but I'll give you
16 that information as we progress throughout the trial.
17 The two alternates, those are your two assigned seats.
18 You can rotate between the two. But the two of you
19 need to remain in those two end seats. And again, as
20 foreperson that is your assigned seat.

21 Ladies and gentlemen, I need you to stand so we
22 may administer the oath.

23 THE CLERK: Please raise your right-hands.

24 (Whereupon, the oath was administered by the
25 Clerk. All jurors respond by stating, I do.)

JURY CHARGE

1 THE CLRK: Please be seated.

2 THE COURT: Was there any juror unable to take the
3 oath? If so, please stand.

4 (No juror stands.)

5 THE COURT: Thank you. All 14 jurors were able to
6 take the oath. Ladies and gentlemen, as indicated
7 before, the case that we are about to try is the case
8 of the State of South Carolina versus Derrick Ladon
9 Clark, Defendant. Before we begin this trial I always
10 like to take the opportunity to tell you what we are
11 going to be doing here today and possibly tomorrow as
12 it may be different than what you may expect.

13 Most people don't have the opportunity to come to
14 court unless you are chosen for jury service. Most
15 people get their information about what court is from
16 books and television and movies. Well, some of those
17 things may be true that you see on television. Please
18 remember that this trial is not for your entertainment,
19 it is a fundamental part of our democracy, making sure
20 that justice is done. Please remember it is often
21 slow, deliberate and repetitive, which is the opposite
22 of what you may have seen on television, read in books
23 or seen in the movies.

24 This courtroom is a place of honor. It is
25 dedicated to the protection and preservation of

JURY CHARGE

1 citizens' rights through what many have called the
2 greatest justice system ever created. The attorneys
3 that appear before you are advocates for the parties
4 they represent. But first and foremost they are
5 officers of this court. They are sworn to uphold the
6 integrity and the fairness of our judicial system.

7 You should expect them to be professional,
8 competent and ethical in the representation of their
9 clients' interests. Remember, you have just taken an
10 oath and you are also expected to be professional,
11 reasonable and ethical. Thank you again for accepting
12 this most important responsibility of jury service.

13 What I'll say now will serve as an introduction to
14 the trial of the case. These remarks are not a charge
15 on the law. I'll instruct you on the law applicable to
16 this case throughout the trial and at the close of the
17 trial before you retire to consider your verdict. This
18 is merely an explanation of the procedure that we will
19 follow so that you may better understand what's
20 happening. The Defendant is charged by an indictment
21 filed in this court. He is charged with assault and
22 battery first degree, unlawful possession of burglary
23 tools and burglary in the first degree. I will explain
24 the elements of those three indictments to you later.

25 The indictment is simply the charge by which this

JURY CHARGE

1 case is brought into court, it is not in any sense
2 evidence of the allegations it contains. The Defendant
3 has pled not guilty to each indictment. The State has
4 the burden of proving each of the elements of each
5 indictment beyond a reasonable doubt. It is your duty,
6 ladies and gentlemen, to decide whether the State has
7 met that burden.

8 Your purpose as jurors is to decide and determine
9 the facts. You are the sole judges of the facts in
10 this case. You may notice when you exited and when you
11 returned this time people were standing before you.
12 This is out of respect for the judges of the facts.
13 Please come in and take your seat because everyone will
14 remain standing until all 14 of you are seated.

15 If at any time I make any comment regarding the
16 facts in this case you must disregard it. You must
17 determine the facts from the testimony that you hear as
18 well as any other evidence introduced in court. It's
19 up to you to determine the inferences which you feel
20 may properly be drawn from the evidence. It is
21 especially important that you perform your duty of
22 determining the facts diligently and conscientiously
23 because ordinarily there's no way to correct an
24 erroneous determination of the facts by a jury.

25 On the other hand, and with the full emphasis, the

JURY CHARGE

1 same law that makes you the judges of the facts makes
2 me the judge of the law. The law given by this Court
3 is the only law that you may consider. You must accept
4 it and follow it even though you may disagree with it.
5 I cannot tell you what the facts are and you cannot
6 disagree with me about what the law is or what the law
7 ought to be.

8 Your job is to take the facts as you find them,
9 apply it to the law as I give it to you, and render a
10 verdict based solely upon the solemn oath that you just
11 took as jurors. Until I advise you to begin your
12 deliberations you may not discuss this case with
13 anyone. That includes your fellow jurors, your
14 friends, your family members, or anyone else.

15 And please do not read, watch, listen to any news
16 accounts regarding this case should there be any. You
17 may not do any independent investigation regarding this
18 case. That means that you cannot go to the scene where
19 the alleged events are said to have taken place, use
20 any Internet maps or anything of that nature. You may
21 not do any independent investigation. You may not
22 discuss this case in any manner. That includes
23 texting, face-to-face discussions, blogging, entries on
24 Facebook or that type of thing.

25 Please understand I'm doing this as part of my

JURY CHARGE

1 responsibility to ensure that justice is done between
2 the parties before you. If any juror is aware of
3 another juror's violation, please report that to me
4 immediately. It is important that you keep an open
5 mind and not decide any issue in this case until all of
6 the evidence has been presented, the parties have made
7 their closing arguments, and I have instructed you on
8 the law that is applicable to this case.

9 It is your solemn responsibility to determine the
10 guilt or innocence of the Defendant and your verdict
11 must be based solely on the evidence as it is presented
12 to you.

13 In just a moment the Solicitor will make what is
14 called an opening statement where the Solicitor will
15 explain to you the issues in this case, or at least
16 what the Solicitor thinks the issues will be. The
17 attorney for the Defendant may also make an opening
18 statement, although the Defendant is not required to do
19 so. The evidence in this case will be presented to you
20 by the testimony of sworn witnesses from the witness
21 stand as well as any exhibits that may be introduced
22 into evidence.

23 From time to time you may hear one of the
24 attorneys ask to approach the bench, I might request
25 the attorneys to approach the bench or I might excuse

JURY CHARGE

1 you for a short while. If I have the attorneys
2 approach the bench, please do not try to overhear us or
3 read our lips. Do not think that we are trying to hide
4 anything. The reason for this is sometimes it is
5 necessary for me to make a comment regarding the facts
6 in order for me to issue a ruling on the law, and as I
7 indicated to you the law doesn't allow me to have an
8 opinion about the facts in this case so I'll excuse you
9 for a short while so that in no way anything I say or
10 do will influence you regarding the facts in this case.

11 In determining what the true facts are you must
12 decide whether or not the testimony is believable.
13 It's my responsibility to rule, as a matter of law,
14 whether certain testimony is admissible at all. Once
15 the testimony is admitted whether or not you believe it
16 is solely for you to determine. In deciding whether to
17 believe a witness you have the right to consider the
18 interest of a witness, the bias of a witness, the
19 prejudice of a witness, the opportunity for the witness
20 to see the matters and things about which the witness
21 testifies as well as the way the witness acts on the
22 witness stand.

23 You have a right to consider anything in the
24 record that will help you evaluate the testimony of the
25 witnesses. That means it is your duty to pay close

OPENING STATEMENT BY THE STATE

1 attention. Do not let your thoughts wander. Please
2 observe the witnesses, listen to the witnesses and pay
3 close attention to the attorneys and to the Court. At
4 the end of the testimony, after the arguments of
5 counsel and I have instructed you on the law applicable
6 in this case you will be in a position to determine
7 what the true facts are and apply the law as I give it
8 to you to the facts rendering a verdict.

9 Ladies and gentlemen, please give your strict
10 attention to Ms. Taylor. Thank you.

11 MS. TAYLOR: Your Honor, may it please the Court.

12 THE COURT: Yes, ma'am.

13 MS. TAYLOR: Home. It is the one place where a
14 family should feel safe and secure. We are here today,
15 ladies and gentlemen, because Mr. Whetsell and his
16 family lost that feeling of security on the night that
17 this Defendant, Derrick Clark, broke into their home.
18 On October 20th, 2012 Mr. Whetsell got out of bed to
19 get something from the kitchen. The rest of his family
20 was still asleep, in the middle of the night. You will
21 hear the testimony, he was startled when he saw the
22 Defendant in the hallway. You will also hear that
23 neither Mr. Whetsell or his fiance Laurel knew the
24 Defendant. There was no reason for him to be in their
25 home that night, especially at that hour.

OPENING STATEMENT BY THE STATE

1 There was a struggle between the two men and
2 Mr. Whetsell was injured. He continued to fight to
3 protect his wife and the safety of his family. The
4 Defendant is charged with burglary in the first degree,
5 assault and battery in the first degree, and unlawful
6 possession of the tools used for burglary. The State
7 must prove beyond a reasonable doubt that the Defendant
8 broke into their home that night with the intent to
9 commit a crime. He did not have permission to do so.

10 And while he was there Mr. Whetsell was injured,
11 and that he also had possession of the burglary tools
12 with him at that time. You will hear from
13 Mr. Whetsell. He will explain to you what he saw and
14 tell you the facts of what happened that night. He
15 will also explain to you the pain that he endured and
16 how he tried to follow the Defendant until the police
17 arrived and restrained him and made the arrest.

18 You will hear from Laurel, his fiance. She will
19 explain to you the events of that night. And she will
20 also explain to you how she tried to grab the Defendant
21 as he was fleeing. Next you will hear from the two
22 deputies from the Sheriff's Office. Deputy Arrington
23 was the first to arrive on the scene. He was the one
24 who apprehended and arrested the Defendants. Next you
25 will hear from Deputy Antwine. He was next to arrive

OPENING STATEMENT BY THE STATE

1 on scene. He was the one who collected the evidence.
2 You will also be shown some of that evidence today.
3 Photographs that were taken from the scene, which will
4 include the photograph of the window where the
5 Defendant entered the home and the burglary tools which
6 were found in items of his possession.

7 Ladies and gentlemen, we are asking you to please
8 use your common sense. Listen carefully to the
9 testimony that you are about to hear. Choose to find
10 the truth because that is your job today.

11 The State will show through the evidence that we
12 will present and through the testimony that you will
13 hear that Derrick Clark is guilty, that he did commit
14 the crime of burglary in the first degree, that he was
15 in possession of tools used for that purpose, and that
16 he did assault Mr. Whetsell on the night that he broke
17 into his home.

18 THE COURT: Mr. Schwacke.

19 MR. SCHWACKE: Thank you, Your Honor.

20 Good morning, my name is David Schwacke. It'll be
21 my honor today to represent Mr. Derrick Clark in the
22 trial that you have been selected to serve as the
23 judges of the facts in this case. I too invite you to
24 use your common sense. That is the one thing that we
25 let you bring into this room with you. All of your

OPENING STATEMENT BY THE DEFENDANT

1 prior biases, anything that you might have known about
2 this case, that was the reason that we had the
3 questioning and some of you had to come up here and
4 talk to the Judge, all of that has to be left out
5 there. But you do get to bring your common sense.

6 So I ask you to apply that to the evidence that
7 the State is going to be presenting to you because it
8 is their burden to prove guilt of anyone who is
9 convicted of a charge, with proof of guilt beyond a
10 reasonable doubt. And that is a very high standard.

11 I'll ask you to be looking for that throughout the
12 testimony for each and every element of the offenses
13 that they charged my client with.

14 I'm convinced that upon your hearing that evidence
15 that you will have some doubts that may not be
16 addressed by the evidence and that will result in your
17 verdict in favor of my client. This is going to be
18 apparently a very short trial but it is a very serious
19 one, nonetheless, because of the nature of these
20 charges.

21 So I thank you for your service and your being
22 here today. I too ask for your attention to the
23 evidence. And thank you again for being here.

24 THE COURT: Call your first witness.

25 MS. TAYLOR: Thank you, Your Honor. The State

TESTIMONY OF MARION WHETSELL

1 calls Marion Whetsell.

2 THE COURT: Sir, please come forward and be sworn.

3 Thereupon,

4 MARION WHETSELL

5 was called as a witness, having been first duly sworn,

6 was examined and testified as follows:

7 THE CLERK: Please state your full name, spelling
8 your last name for the record.

9 THE WITNESS: Marion David Whetsell, II.

10 DIRECT EXAMINATION

11 BY MS. TAYLOR:

12 Q Spell your last name, Mr. Whetsell.

13 A W-H-E-T-S-E-L-L.

14 Q Thank you. Mr. Whetsell, do you go by Marion or
15 David?

16 A I go by Marion.

17 Q Where do you live?

18 A I live at [REDACTED] Summerville.

19 Q What county is that?

20 A Berkeley County.

21 Q How long have you lived there?

22 A Approximately four and a half years.

23 Q And who lives there with you?

24 A My fiance, Laurel and then my -- our two

25 daughters, Madeline W. [REDACTED] who is six, and Allison W. [REDACTED]

TESTIMONY OF MARION WHETSELL

1 who is four.

2 Q Is that who was living in your home in October of
3 last year?

4 A Yes, ma'am.

5 Q And can you describe for the jury your home
6 briefly?

7 A Well, it is a double-wide and it's fairly small.
8 It is an open floor plan, so to speak. The only rooms that
9 are closed off are the bedrooms. The kitchen, the den, and
10 all of that is open, basically one big great room so you can
11 see throughout the entire house.

12 Q And how many bedrooms does your home have?

13 A It has three.

14 Q And how many bathrooms?

15 A It has two bathrooms.

16 Q Can you tell the jury briefly the layout of the
17 house?

18 A Whenever you walk in the front room, if you are
19 facing there. You can see inside the kitchen, which a
20 little bar is right there where the kitchen sink is. The
21 den is right there. There is a hallway to the left and the
22 master bedroom sits to the right.

23 Q Down that hallway, how many bedrooms are down that
24 hallway?

25 A There is two bedrooms.

TESTIMONY OF MARION WHETSELL

1 Q And back in October 2012, were your daughters
2 staying in the bedrooms?

3 A They were in one bedroom together.

4 Q What was the other room being used for?

5 A Just had it for storage, things stored in it.

6 Q At the end of that hallway is there any other
7 room?

8 A The bathroom is straight ahead.

9 Q Now let's go to the night of October 20th. Can
10 you tell the jury, before you went to bed that night did
11 anything unusual happen?

12 A No, absolutely not.

13 Q And at some point during the evening were you
14 awoken?

15 A I was awoken. I had a headache.

16 Q And once you were awoken, what happened?

17 A I woke up, like I said, the master bedroom is to
18 the right. Once you walk out the master bedroom the kitchen
19 and den is right there. And I reached across the sink to
20 grab a Tylenol to take the Tylenol. And I caught something
21 move out of the corner of my eye. I just look down the
22 hallway and I see a white shirt and I see him moving around
23 back and forth. And I started screaming, Hey, who are you
24 and what are you doing in my house. About that time the
25 person, Derrick over there, started approaching me and then

TESTIMONY OF MARION WHETSELL

1 I went after him. That is when he started backing back up,
2 I guess, trying to get out of the house.

3 Q Okay.

4 MS. TAYLOR: Permission to approach, Your Honor?

5 THE COURT: Okay.

6 BY MS. TAYLOR:

7 Q Mr. Whetsell, I'm going to show you two pictures.

8 And Mr. Schwacke.

9 MR. SCHWACKE: No objection.

10 BY MS. TAYLOR:

11 Q They have been previously marked for
12 identification as State's Exhibits 1 and 2. If you could,
13 take a look at those pictures and tell me if you recognize
14 what they are pictures of?

15 A They are pictures of my house.

16 Q And is that the way that your home looked that
17 evening?

18 A Correct. This first picture, the State 1, if you
19 come out of the master bedroom this is exactly what you see.

20 Q And State's 2?

21 A State's 2, that is what you would see if you were
22 standing in the den, kitchen, anywhere in my house you would
23 see that, other than the bedrooms.

24 Q That fairly depicts your home?

25 A Correct.

TESTIMONY OF MARION WHETSELL

1 MS. TAYLOR: At this time we move to admit State's
2 1 and 2 into evidence.

3 THE COURT: Any objection?

4 MR. SCHWACKE: No, Your Honor.

5 THE COURT: State's 1 and 2 admitted into evidence
6 without objection.

7 *(Whereupon, State's Exhibit No. 1 and 2 was marked*
8 *for identification and received in evidence.)*

9 MS. TAYLOR: May we publish?

10 THE COURT: You may.

11 BY MS. TAYLOR:

12 Q I know it is kind of hard to turn around and see,
13 but if you could explain to the jury what we are looking at
14 in this picture.

15 A What we are looking at in this picture is if you
16 walked straight out of my master bedroom this is exactly
17 what you would see looking straightforward.

18 Q And what is to the right?

19 A To the right you can see the little counter-way
20 right there, that is the kitchen sink and we keep the
21 medicine and all of that right there.

22 Q And can you tell the jury, based on this picture,
23 where were you standing when you first saw the Defendant?

24 A I was standing -- this is the end of the cabinet.
25 The cabinet is approximately 4 feet long. I was standing on

TESTIMONY OF MARION WHETSELL

1 this side of it. I was about three and a half feet back
2 this way.

3 Q And where was the Defendant when you first saw
4 him?

5 A The Defendant, if you can see where that wall
6 starts and the bathroom starts, I could see his white jersey
7 that he had on right in there. And he was kind of dancing
8 and bouncing back and forth trying to figure his way out
9 back there.

10 Q And at some point he approached you?

11 A Yes. Once he figured out I wasn't going to be
12 able to get out of that bathroom window I guess he ran in my
13 daughter's room and once he saw my daughters were in there
14 he figured there's only one way out, through me, but he
15 wasn't coming through me.

16 Q One entrance?

17 A Yes.

18 Q You said that there was a physical confrontation,
19 Mr. Whetsell?

20 A Yes, there was.

21 Q Does this depict the hallway in your home?

22 A Yes, it does.

23 Q Can you tell us where the physical altercation
24 began?

25 A The physical altercation started in the hall by

TESTIMONY OF MARION WHETSELL

1 the bathroom. And once he figured out I was not going to
2 let him out of my house, we started tussling. And we went
3 back to the other bedroom that is to the right there.

4 Q And that is the bedroom --

5 A That is the bedroom that had stuff stored in it.

6 Q Tell the jury, if you would, about the altercation
7 that happened.

8 A Well, the altercation, like I said, it was dark.
9 We really couldn't see one another. Because once we went
10 into the bedroom I couldn't see him. I keep a stove light
11 on that lights the whole area up at night, so I could see
12 him until he went into the bedroom. I couldn't see him no
13 more so I started screaming for Laurel. And I just kind of
14 started feeling my way out and he pushes me a couple of
15 times and pushes me. And then she cuts the light on and
16 once she cuts the light on I could see him. That's when I
17 went for him and he continued to struggle with me in an
18 attempt to get away.

19 Q I believe you said already, but did the Defendant
20 strike you?

21 A Oh yeah, he struck me.

22 Q Did you receive any injuries from this
23 altercation?

24 A I had many scratches and bruises and all over my
25 body.

TESTIMONY OF MARION WHETSELL

1 MS. TAYLOR: Permission to approach, Your Honor?

2 THE COURT: You may.

3 BY MS. TAYLOR:

4 Q I'm going to show you, Mr. Whetsell, what has
5 previously been marked as State's 3 and 4. If you could
6 take a look at those for me, please. Can you tell the Court
7 what those pictures are of?

8 A The one is of my right shoulder where, as we were
9 tussling around the thing and he was trying to pin me down
10 and stuff, it was like a rug burn. And then the second
11 picture is of my back where he was clawing at me.

12 Q Do those pictures accurately reflect the injuries,
13 some of the injuries that you received?

14 A Some of the injuries, yes.

15 MS. TAYLOR: At this point we ask for State's 3
16 and 4 to be admitted?

17 MR. SCHWACKE: No objection.

18 THE COURT: State's 3 and 4 into evidence without
19 objection.

20 *(Whereupon, State's Exhibit Nos. 3 and 4 were*
21 *marked for identification and received in evidence.)*

22 BY MS. TAYLOR:

23 Q All right. Mr. Whetsell, you say you are in the
24 storage room?

25 A Yes.

TESTIMONY OF MARION WHETSELL

1 Q And there was a struggle happening?

2 A Yes.

3 Q What happens next?

4 A Whenever the light come on, Laurel realizes that
5 someone is in our house. She starts screaming. The dog
6 awoke at this point I think and come in there to find out
7 what is happening. She sicced the dog on him immediately.
8 The dog responded and started attacking him. Once I had the
9 help of the dog and all I was able to grab him around the
10 neck, drug him into the floor and detained him on the floor
11 while she went to get the phone to call 911.

12 Q And at some point did the struggle continue?

13 A Yes, he kept trying to get out of the room, so we
14 went into the hallway. At which my daughters had awoke at
15 the same time. She was trying to get them out of the room.
16 With him trying to get away and all he knocked my daughter
17 down into the wall. And once he did that I lost it and I
18 just tried to squeeze as hard as I could around his neck
19 until he didn't move no more.

20 Q At some point was he able to get free from your
21 grip?

22 A Yes, he did. For some reason he completely
23 blacked out, and I have no clue how, but he come back alive.

24 Q And what happened then?

25 A He come back alive and he dug his fingers into the

TESTIMONY OF MARION WHETSELL

1 side of my throat until he made me let him go.

2 Q And then where did he go?

3 A That's when he headed toward the front door.

4 Whenever he headed to the front door she grabbed him by his
5 pants and held him as long as she could while she is on the
6 phone with 911 until I could get back to my feet.

7 Q And when you say "she," who do you mean?

8 A My fiancée, Laurel.

9 Q Once you got back to your feet, where was the
10 Defendant?

11 A The Defendant was headed toward the front door and
12 she was detaining him by the back of his pants.

13 Q At some point did he get out of the front door?

14 A Yes, he did get out of the front door.

15 Q What did you do then?

16 A After, while she was holding him and all, I went
17 to the kitchen and we have a knife block and I grabbed the
18 biggest knife out of the block. And I went around the
19 corner, and at that time he realized how to get the door
20 open.

21 Q Did you follow him outside?

22 A Yes, I stayed behind him the whole time. I never
23 let him out of my sight.

24 Q Can you briefly tell the jury what happened once
25 you got outside?

TESTIMONY OF MARION WHETSELL

1 A Once we got outside he started fumbling, you know,
2 he really couldn't walk very well after the altercation that
3 we had. So, he starts trying to lose me, running around
4 houses and stuff and I went behind him, yelling at the top
5 of my lungs that he ain't going nowhere.

6 Q At some point did you see the police officers?

7 A Yes. I guess he was trying to get on the other
8 street, back to where he come from, he was trying to get
9 back to. I could see the deputy's car coming down the
10 street. I flagged at the deputy. Me and the deputy were
11 still behind him. He fell in the grass and the deputy
12 detained him after that.

13 Q Once he was detained, did you at some point go
14 back to your home?

15 A Yes, because I was actually in my underwear and
16 they had already torn off and it was kind of cold out that
17 night.

18 Q Did you notice anything unusual outside of your
19 home?

20 A Other than the trash can and clothes and all of
21 that, no. I mean, he -- I could tell where he had pulled
22 the trash can up to the house and all.

23 MS. TAYLOR: May I approach?

24 THE COURT: You may.

25 MS. TAYLOR: I'm showing Mr. Schwacke what was

TESTIMONY OF MARION WHETSELL

1 previously marked as State's Exhibits 5, 6, and 7.

2 BY MS. TAYLOR:

3 Q Mr. Whetsell, if you could take a look at State's
4 5 for me first.

5 A Okay.

6 Q And tell me what that is a picture of.

7 A That is a picture of the end of my house showing
8 the bathroom window.

9 Q And is there a trash can located in that picture?

10 A There is off to the left sitting in the corner
11 where the mobile home park request that we keep our trash
12 can.

13 Q Is that an accurate picture of what your -- the
14 outside of your house looked like the day of the incident?

15 A Yes.

16 Q Is that where you kept your trash can?

17 A Yes.

18 MS. TAYLOR: Your Honor, at this time we ask that
19 State 5 be admitted.

20 MR. SCHWACKE: No objection.

21 THE COURT: State's 5 into evidence without
22 objection.

23 *(Whereupon, State Exhibit No. 5 was marked for*
24 *identification and received in evidence.)*

25

TESTIMONY OF MARION WHETSELL

1 BY MS. TAYLOR:

2 Q It's kind of hard to see on the screen,
3 Mr. Whetsell, but what are we looking at here?

4 A You are looking at the end of my house. Like I
5 say, the bathroom window there and you can see the suburban
6 trash can sitting there.

7 Q And is that where you keep your trash can?

8 A Yes, that is where the mobile home place request
9 that all people keep their trash cans.

10 Q If you could look at State 6, 7, and 8 for me and
11 tell the jury what those are pictures of.

12 A State's 6 is a picture of the trash can with the
13 top crushed in with a backyard chair with a screen under it
14 from my window, bathroom window.

15 Q And State's 7?

16 A State's 7 is the bathroom window completely open
17 minus the screen.

18 Q Is that an accurate depiction of how it looked
19 after the Defendant had come into your home that evening?

20 A Yes, after he come into the home.

21 MS. TAYLOR: Your Honor, we ask that State's
22 Exhibit 6 and 7 be entered into evidence.

23 THE COURT: Any objection?

24 MR. SCHWACKE: No objection.

25 THE COURT: State's 6 and 7 entered into evidence

TESTIMONY OF MARION WHETSELL

1 without objection.

2 *(Whereupon, State's Exhibit No. 6 and 7 was marked*
3 *for identification and received in evidence.)*

4 MS. TAYLOR: Permission to publish?

5 THE COURT: You may.

6 BY MS. TAYLOR:

7 Q I know you have just described it, but if you
8 could tell the jury what they are seeing in this picture.

9 A If you look at the trash can, I don't know if you
10 can quite see it in the picture here, but the top of it is
11 completely caved in along with the chair used as a step, an
12 advance step to the trash can to get to the bathroom. And
13 that is the screen to the bathroom window.

14 Q And that chair, Mr. Whetsell, where is that chair
15 usually kept?

16 A There are actually 8 of those chairs. Four of
17 them stay in the backyard, four of them stay in the front
18 yard.

19 Q Do any of them stay on the side of the house?

20 A No, they do not.

21 Q And that screen that you see in the picture, was
22 that screen on your window that day?

23 A Yes. All screens in my house are on all of my
24 windows.

25 MS. TAYLOR: And then if you could put the next

TESTIMONY OF MARION WHETSELL

1 one up, please.

2 BY MS. TAYLOR:

3 Q And then if you could tell us what we are looking
4 at in this picture.

5 A You are looking at the bathroom window, minus the
6 screen, opened.

7 Q And what is that under the window?

8 A That is a crushed trash can.

9 Q Can you tell us, because it's kind of hard to tell
10 in the picture, but about how big is your bathroom window?

11 A Bathroom window, I guess roughly 3½ foot long, two
12 and a half foot wide, something of that nature.

13 Q Just a few more questions, Mr. Whetsell. Do you
14 know the Defendant?

15 A No, never seen him in my life other than that
16 night.

17 Q Did he have permission to be in your home that
18 evening?

19 A Absolutely not.

20 MS. TAYLOR: That is all of the questions that I
21 have. Thank you.

22 THE COURT: Mr. Schwacke.

23 CROSS EXAMINATION

24 BY MR. SCHWACKE:

25 Q Mr. Whetsell, that night your wife wrote a

TESTIMONY OF MARION WHETSELL

1 statement out for you?

2 A Yes.

3 Q You weren't able to do it?

4 A No, because my hands were hurting then. I was
5 hurting pretty good all over.

6 Q And that is the -- we are talking about Carnes
7 Crossing Mobile Home Park; is that where we are?

8 A That is what it used to be called.

9 Q Now it's called?.

10 A It is called Wind Gate.

11 Q Wind Gate, yes. Are you familiar with the layout
12 of that?

13 A Am I familiar with -- I am familiar with my home
14 only.

15 Q Are you familiar with the other street names?

16 A No, I'm not. I don't go browsing through the
17 neighborhood. I keep to myself.

18 Q Wilson Creek is one of the streets when you first
19 come into the subdivision?

20 A It could be, I don't know.

21 Q You indicated that you were wearing --

22 A Underwear.

23 Q -- underwear?

24 A Yes.

25 Q Is that all that you --

TESTIMONY OF MARION WHETSELL

1 A That is all that I had on, underwear, yep.

2 Q What was the person that you saw inside the house
3 wearing?

4 A He had on a white jersey.

5 Q A white jersey?

6 A Yep.

7 Q Any other clothing?

8 A Black pants.

9 Q Sorry?

10 A Black pants.

11 Q Black pants?

12 A Yes.

13 Q And --

14 A You couldn't see the pants until the bedroom light
15 come on.

16 Q Okay. Anything else?

17 A Nope.

18 Q No footwear?

19 A I mean, I'm sure that he had shoes on. I didn't
20 physically look down to see if the guy had shoes on.

21 Q Did he ever say anything?

22 A Say anything, oh, yeah, whenever he seen the dog,
23 when he seen the dog he started screaming like a little
24 girl.

25 Q Okay. But other than screams, did he --

TESTIMONY OF MARION WHETSELL

1 A Whenever he come back the second time he demanded
2 that I let him go. And then whenever the police officer
3 done told him, Let him see your hands, he said, That man was
4 trying to kill me. Those were the only words out of his
5 mouth that night.

6 Q How -- I mean, y'all actually came into --

7 A Oh, yeah, we were physical.

8 Q -- contact?

9 A Yes, I was on top of him with my arm around his
10 neck.

11 Q Did you notice anything about his appearance or
12 demeanor?

13 A He had dreadlocks. They were a highlight peroxide
14 orange. He had arms about this size. He had on a
15 basketball jersey. Yes, I seen many things.

16 Q Did you notice any odors about him?

17 A An odor?

18 Q Yes.

19 A I can't say that I remember any odor of any type
20 that night. I mean, it wasn't like he smelled like flowers
21 or he smelled like, you know, manure or nothing, no.

22 Q And you indicated he -- you first saw him when he
23 is in the -- is he in the bathroom or in the hallway out of
24 the bathroom?

25 A He is in the hallway out of the bathroom fixing to

TESTIMONY OF MARION WHETSELL

1 go through my house is what it appeared.

2 Q And as you come out of your -- as you come out of
3 your bathroom, the room that is the storage room at the time
4 was the one that was immediately to the left?

5 A Yes, sir.

6 Q And you called that your daughter's room; but
7 that's what it is now, correct?

8 A It is my daughter's room now, yes.

9 Q At the time it was a storage room?

10 A Right.

11 Q And then you indicated that he kind of was
12 stumbling around or dancing around?

13 A Yes.

14 Q Could you explain that to me a little bit?

15 A Well, like a football player trying to run with
16 the football, back and forth, back and forth, back and
17 forth. That.

18 Q Did you smell any odor of alcohol on him?

19 A No, absolutely not.

20 Q Did he appear drunk to you?

21 A No.

22 Q And that is -- that would be your opinion, that he
23 wasn't --

24 A That is my opinion, no, he was not.

25 Q And at the point the dog comes in -- what kind of

TESTIMONY OF MARION WHETSELL

1 dog do you have?

2 A I have an American bulldog.

3 Q How big?

4 A About 70 pounds.

5 Q And your wife is the one that gets on the
6 telephone?

7 A Correct.

8 Q Is she on a cell phone or a corded --

9 A Cell phone.

10 Q -- corded house phone?

11 A Cell phone.

12 Q And when do you first see a police officer?

13 A Whenever me and him are running down the road.

14 Q Okay. And the -- your trailer, your home is on, I
15 guess, a cul-de-sac, a little end cut?

16 A Correct.

17 Q And if you are looking into the cul-de-sac, yours
18 is the first one to the left?

19 A Yes, I guess, yeah. Yeah.

20 Q And you suffered scrapes and --

21 A And scratches and bruises.

22 Q -- and scratches and bruises. You didn't require
23 any medical attention?

24 A I went to the doctor on Monday. They examined me
25 and made sure that there was no stitching, or no broken

TESTIMONY OF MARION WHETSELL

1 bones, no nothing of that nature, correct.

2 Q So other than this person that you didn't know
3 before in your house wearing a light -- you said that it was
4 a white --

5 A It was a white -- there was either a 1 or 11 on
6 that jersey. It had a gold outline. My wife described him
7 down to the T, everything that he was wearing to the 911
8 operator.

9 Q Are we talking about like a basketball or
10 football?

11 A Basketball jersey.

12 Q Basketball jersey.

13 A It appeared to be the color of the Lakers.

14 Q Did he have anything in his hands?

15 A At that time, no.

16 Q Did you see any weapons on him?

17 A Weapons on him?

18 Q Yes, sir.

19 A Other than his hands and his body and his physical
20 altercation, no.

21 Q Yes.

22 A Which can be considered to be a weapon.

23 Q I'm not --

24 A Okay.

25 Q I'm totally with you being totally surprised in

TESTIMONY OF MARION WHETSELL

1 your house this night and not wanting to have somebody there
2 and everything that you did to take care of that. I want
3 you to understand that, I don't want that problem. I'm just
4 trying to get to the bottom of exactly what we are saying
5 that Mr. Clark did while he was in your house. So I
6 apologize if that's upsetting you, but this whole situation
7 had to upset you.

8 And I guess I want to get the pants situation
9 straight because you said you weren't able to see pants
10 until the light came on when your wife turned the light on,
11 then you were able to see him clearly and know you didn't
12 know who he was?

13 A Right. Correct.

14 Q And at one point you said that your wife had him
15 by the pants?

16 A Correct. That is whenever I was getting up off of
17 the floor.

18 Q And the pants that we are talking about are the
19 same black pants?

20 A Yes, they are.

21 Q You told the Solicitor that there were clothes
22 outside.

23 A The reason why there were clothes outside is
24 because he stripped himself to get away from my wife. He
25 come out of his clothes.

TESTIMONY OF MARION WHETSELL

1 Q When did that happen?

2 A As I was coming for him again with the butcher
3 knife. When he seen that he come out of his clothes to get
4 away.

5 Q That happened inside your house?

6 A It happened on the way out. Inside and on the way
7 out at the same time. In other words, if you are running
8 towards the front door and I had you by the back of the
9 pants, you were stepping out of the pants as you were
10 exiting the door at the same time.

11 Q And those pants end up in the yard somewhere; how
12 did that happen?

13 A Probably because I guess they got thrown or
14 something.

15 Q And shoes?

16 A Shoes he must have come out of in the yard.

17 Q Did you see the shoes?

18 A Once I got back to the house I seen the shoes.

19 Q But inside you didn't see the shoes?

20 A No.

21 MR. SCHWACKE: One moment.

22 (Pause.)

23 MR. SCHWACKE: Thank you. I don't have any
24 further questions.

25 MS. TAYLOR: No redirect, Your Honor.

TESTIMONY OF LAUREL POCOROBBA

1 THE COURT: You may step down, thank you. Call
2 your next witness.

3 MS. TAYLOR: Thank you, Your Honor. The State
4 calls Laurel Pocorobba.

5 Thereupon,

6 LAUREL POCOROBBA

7 was called as a witness, having been first duly sworn,
8 was examined and testified as follows:

9 THE CLERK: Please have a seat and state your full
10 name, spelling your last.

11 THE WITNESS: Laurel Keiser Pocorobba,
12 P-O-C-O-R-O-B-B-A.

13 DIRECT EXAMINATION

14 BY MS. TAYLOR:

15 Q Is it okay if I call you Laurel?

16 A Yes.

17 Q Laurel, where do you live?

18 A [REDACTED]

19 Q How long have you lived there?

20 A Five years.

21 Q Who do you live there with?

22 A My two daughters and David Whetsell.

23 Q Were you living there in October 2005?

24 A Yes.

25 Q And do you remember some events that occurred on

TESTIMONY OF LAUREL POCOROBBA

1 the night of October 20th, 2012?

2 A Yes.

3 Q And can you tell the jury, what is the first thing
4 you remember happening that evening?

5 A I remember being awakened by David screaming. And
6 at first I thought that he might have had a leg cramp. And
7 getting up to go check on him, when I walked down the
8 hallway and flipped the light on I saw a man standing right
9 there in front of us and sicced the dog on him.

10 Q Do you know about what time it was?

11 A It was probably about one -- between 1:30 and
12 2:30.

13 Q That is in the morning?

14 A In the morning.

15 Q Was it dark outside?

16 A Very dark.

17 Q Can you describe for us just briefly when you
18 flipped the light on, what did you see exactly?

19 A I saw a black male standing in front of me. And I
20 was like, Oh my God. And I just said, Get him Blue. My
21 dog's name is Blue. And I, Sic him Blue. I went toward him
22 because David charged him and I helped David get ahold of
23 him. And he's screaming for me to get the knife and get the
24 children and call 911.

25 Q This black male that you saw inside your home?

TESTIMONY OF LAUREL POCOROBBA

1 A Yes.

2 Q Did you know him?

3 A No.

4 Q Had you invited him into your home?

5 A No.

6 Q Where were your children at the time?

7 A They were in the opposite bedroom.

8 Q And when Mr. Whetsell began the physical
9 altercation, what did you do?

10 A I was steadily trying to get the dog to attack
11 him. But I was afraid that the dog was going to bite David
12 as well. And I actually helped David to get ahold of him as
13 best as he could and then I went to get the children out of
14 there.

15 Q After David had a hold of him what did you do?

16 A I went to get the children. They had wrestled
17 into the hallway. We actually had to step over them to get
18 out. They knocked my youngest down. I ran towards our
19 bedroom on the opposite side of the house and grabbed my
20 cell phone and called 911 trying to keep the kids back. And
21 I was steadily watching down the hallway to make sure that
22 he was okay. I didn't want to leave him at first, you know,
23 I was afraid for him.

24 Q While you were on the phone with 911 were you able
25 to observe the altercation happening?

TESTIMONY OF LAUREL POCOROBBA

1 A He had him pinned down in the hallway towards the
2 door frame.

3 Q And at some point --

4 A At some point he did yell at me, I can't hold him
5 no longer, I can't hold him no longer.

6 Q And then what happened?

7 A When he started running toward the front door.

8 Q I am sorry, when you say "he"?

9 A The Defendant.

10 Q Okay.

11 A He was at the front door trying to get the door
12 unlocked. I'm on the phone with 911. I was trying to keep
13 the children back in our bedroom. They didn't want to leave
14 me. And as I saw him running to the door I grabbed the back
15 of his pants and I'm trying to describe to the 911 caller
16 what he had on and what he looked like.

17 Q You said trying to get out of the front door, is
18 there multiple doors?

19 A Our doors the locks are in different directions,
20 so if you turn it one way you will automatically try to --
21 you know, as you lock one or unlock one you are locking the
22 other.

23 Q Okay. And you said that you grabbed ahold of the
24 back of his pants?

25 A And he pushed me back, of course, trying to get me

TESTIMONY OF LAUREL POCOROBBA

1 off so he could get out.

2 Q At some point did he get it open?

3 A He got the door open and the 911 lady was telling
4 me, Just let go. I don't mean to laugh, because I was
5 scared to death. And David said, Let him go, I am right --
6 and David come. And as he ran out I sicked the dog on him.
7 And he went to go one way. And I was telling her which way
8 he was running. Because she was saying, Let go, the police
9 are in the neighborhood.

10 Q Did you see anything happen to the Defendant's
11 pants?

12 A As he was going I was pulling them. And it wasn't
13 until the officers realized that the dog and me had
14 de-panted him and he had lost one of his shoes.

15 Q Laurel, I'm going to back up a minute. Was there
16 anything unusual about that day?

17 A No, I know that it was cold. It was very cold
18 that day. And I had bleached that bathroom and left the
19 window cracked.

20 Q And when you say "that bathroom", do you mean the
21 bathroom at the end of the hall?

22 A Yes.

23 MS. TAYLOR: I'm going to show Mr. Schwacke
24 exhibit -- what has previously marked as State's
25 Exhibit 8.

TESTIMONY OF LAUREL POCOROBBA

1 Permission to approach, Your Honor?

2 THE COURT: You may.

3 BY MS. TAYLOR:

4 Q Laurel, I'm going to show you this picture and
5 ask, Do you recognize what this is a picture of?

6 A Yes, a picture of our bathroom.

7 Q Is that the way that your bathroom looked that
8 day?

9 A Yes.

10 MS. TAYLOR: We ask that State's 8 be admitted.

11 THE COURT: Any objection to State's 8?

12 MR. SCHWACKE: No objection.

13 THE COURT: State's 8 admitted into evidence
14 without objection.

15 *(Whereupon, State's Exhibit No. 8 was marked for*
16 *identification and received in evidence.)*

17 MS. TAYLOR: Permission to publish, Your Honor?

18 THE COURT: You may.

19 BY MS. TAYLOR:

20 Q Laurel, if you can turn around and look at that.
21 Can you tell the jury what they are looking at, please?

22 A Our back bathroom.

23 Q Where is this bathroom located?

24 A Well, it's actually -- the way that it's sitting
25 our house is on the corner lot and it is -- actually by the

TESTIMONY OF LAUREL POCOROBBA

1 road where the driveway is where the two cars are parked.

2 Q Is that how the bathroom looked that evening?

3 A Yes.

4 Q Did it have a covering over the window?

5 A Yes.

6 Q And is this the bathroom that you cleaned that
7 day?

8 A Yes.

9 Q You said something about leaving the window open?

10 A I had bleached the bathroom, you know, really
11 strong and I left it slightly cracked so it wouldn't fill
12 the house and I had that door shut.

13 Q Okay. After the Defendant -- thank you. After
14 the Defendant got out of the front door did you see him
15 again?

16 A Just as he was running.

17 Q And did you see --

18 A Oh, yes, I did see him again because I had
19 actually hung up with the 911 officer and I was there by
20 myself at that point, David had gone after him, and she had
21 told me that they were in the neighborhood. Well, I called
22 911 back and wondered why an officer hadn't made it to the
23 house yet and she said they had him detained, could you walk
24 over there and just, you know, see what is going on. And I
25 walked over there and she said that they would be with us in

TESTIMONY OF LAUREL POCOROBBA

1 a minute. They were sending an officer back to the house.

2 Q Again, Laurel, you don't know the Defendant?

3 A No, I do not.

4 MS. TAYLOR: No further questions, Your Honor.

5 THE COURT: Mr. Schwacke.

6 CROSS EXAMINATION

7 BY MR. SCHWACKE:

8 Q I'm sure that had to be a horrifying experience.

9 A I'm horrified just thinking about it again because
10 I don't know what else could have happened.

11 Q Your children were at the other end of the house
12 from where this began?

13 A No, it was the same -- there's the bathroom.
14 There's the room that my -- they fought in. And then their
15 room. Their rooms were directly across.

16 Q I see. But the fighting occurred --

17 A In the opposite room.

18 Q In the storage room?

19 A Right, we had been using it as storage.

20 Q So the window was opened?

21 A It was cracked probably about that much. I left
22 it cracked because I had bleached it that day. I had it
23 opened all day just to keep the fumes from building up in
24 the house. And at night I closed it to about right there.

25 Q And the first that you are aware of this going on

TESTIMONY OF LAUREL POCOROBBA

1 is when your husband was yelling and screaming?

2 A Yes, he was yelling and screaming my name and I
3 come out from a dead sleep.

4 Q Y'all's room would have been where?

5 A On the opposite end of the house.

6 Q So, he had to come through the children?

7 A Yes.

8 Q So, when is it that you first observed this person
9 in your house?

10 A When I came down the hallway and I opened -- went
11 in the room. They were in the room but the light wasn't on.
12 When I flipped the light on, I guess that they had already
13 struggled and he was standing right in front of me. And I
14 told the dog, Get him.

15 Q And what kind of dog is it?

16 A He is a rare breed. It is called an Alabama Blue
17 bulldog.

18 Q So, when you first see the person in your house,
19 what is he wearing?

20 A He had on like a white jersey type shirt with
21 purple letters on it, baggy jeans and black tennis shoes.

22 Q And at some point he loses that clothing?

23 A At the front door when he is trying to get out I'm
24 pulling. He lost them in the yard. I don't know if he
25 tried to run out of them. But I was pulling the whole time

TESTIMONY OF LAUREL POCOROBBA

1 he was trying to get out of the door.

2 Q Are you standing up just trying to hold on to him?

3 A Yes.

4 Q Is that at the front door?

5 A Yes.

6 Q And you said that you called 911 twice?

7 A Yes.

8 Q In those calls do you make any other description
9 of the person that is in your house? Did you tell them --

10 A I was trying to describe what he had on. I told
11 him that he had -- because at the time he had dreadlocks, he
12 was a black male. I couldn't -- I mean, I was going -- I
13 was so scared and I kept saying purple with white letters,
14 purple with white letters, you know, pretty much trying to
15 say what I could as he was trying to get out of the door.

16 Q Did you and Mr. Whetsell move together into this
17 house or was it yours previously and he moved in?

18 A Together.

19 Q Are you familiar with other streets in the mobile
20 home park?

21 A Yes.

22 Q Are you familiar with Wilson Creek Drive?

23 A Yes, I am.

24 Q That is near the front?

25 A The front of the neighborhood, yes. It is like

TESTIMONY OF LAUREL POCOROBBA

1 the frontage road.

2 Q How -- what was the closest that you were to the
3 person in your house?

4 A At the front door. Well, in -- the altercation in
5 the room, I kind of stood there and let David get a good
6 grip on him and then got my children to the front of the
7 house. And then at the front door while he's trying to get
8 out.

9 Q And after the event did y'all find if anything was
10 missing from the house?

11 A No, there was nothing missing.

12 Q Did you go and look at the window?

13 A I -- yes, I actually looked around the house
14 because I couldn't figure out how he got in to begin with.
15 I mean, I was checking doors and all of the windows and then
16 I -- the only other window was the bathroom.

17 Q Did you look at it from outside, inside?

18 A I didn't go outside to look until the officer came
19 to me.

20 Q Okay. Did you notice any marks or tears or
21 scratches or anything on the window?

22 A Just when we went outside. The screen was popped
23 off and the window was up. There was a chair and the
24 garbage can sitting right in front of the window.

25 Q Yes, ma'am.

TESTIMONY OF LAUREL POCOROBBA

1 MR. SCHWACKE: One moment.

2 (Pause.)

3 BY MR. SCHWACKE:

4 Q There are no fences between any of the trailers?

5 A No.

6 Q And it used to be called Carnes Crossing mobile
7 home park?

8 A Yes.

9 Q And it's called?

10 A Wind Gate now.

11 Q Wind Gate. How -- you say that you are familiar
12 with the streets in there?

13 A Yes.

14 Q So, Wilson Creek Drive is about how far from --

15 A It is about -- well, I walk the neighborhood, so I
16 would say that it's about a half of a mile.

17 Q By walking the streets?

18 A Well, see, I walk every morning 2 miles. And if I
19 was to walk from my house down the street it is about a half
20 of a mile to that.

21 Q If you were walking on the streets. But you could
22 cut straight through?

23 A You could, yeah.

24 Q Thank you.

25 MR. SCHWACKE: That is all of the questions.

TESTIMONY OF LAUREL POCOROBBA

1 THE WITNESS: Okay.

2 MS. TAYLOR: Briefly, Your Honor.

3 CROSS EXAMINATION

4 BY MS. TAYLOR:

5 Q There's been conversation about Wilson Creek
6 Drive; you are familiar with that street?

7 A Yes.

8 Q The mobile homes on that street and your street
9 are about half of a mile apart?

10 A Not half mile apart. Oh, from my house to there,
11 to that street?

12 Q Yeah.

13 A About a half of a mile.

14 Q And where is that street located in relationship
15 to the front of the neighborhood?

16 A Okay. Wilson Creek, there's two entrances and
17 Wilson Street is the frontage road. Mine is on the second
18 side. So, when you come in the second part of the
19 neighborhood you would turn left to get to my home.

20 Q And where is Wilson Creek Drive?

21 A Wilson Creek is the stretch between the two
22 entrances of the neighborhood.

23 Q Once you turn to get to your home do you have to
24 turn again to get onto another street?

25 A Yes.

TESTIMONY OF LAUREL POCOROBBA

1 Q Okay. How many turns do you have to take from the
2 entrance?

3 A When you turn in the second entrance you would
4 take a left, go to a stop sign, a stop sign, take another
5 left.

6 Q So, it is a couple of turns?

7 A Yes.

8 Q I also wanted to ask you about what the Defendant
9 was wearing. Can you describe -- I know that you had
10 trouble with the shirt, but describe what you saw the
11 Defendant wearing.

12 A It was like a basketball jersey. I believe that
13 it was white with purple lettering and a number. I don't
14 remember what the number was. And some jeans and black
15 sneakers.

16 Q Sneakers. Were they dark jeans?

17 A Dark, yes.

18 Q Okay. Just a couple more questions, Laurel. How
19 many doors are there to your trailer?

20 A There is a front door and a back door.

21 Q And how many windows are there?

22 A Hold on. There's about seven big actual regular
23 windows and then this small window in the bathroom.

24 Q Before you were awoken by David yelling for you
25 that night did you hear anyone knock at any of the doors?

TESTIMONY OF COREY ARRINGTON

1 A No.

2 Q Did you hear anyone knock at any of the windows?

3 A No.

4 Q Did you hear anyone say anything before he yelled?

5 A No.

6 MS. TAYLOR: No further questions, Your Honor.

7 THE COURT: Mr. Schwacke?

8 MR. SCHWACKE: No, Your Honor.

9 THE COURT: You may step down. Thank you. Call
10 your next witness.

11 MS. WILSON: Thank you, Your Honor. The State
12 calls Deputy Corey Arrington.

13 Thereupon,

14 COREY ARRINGTON

15 was called as a witness, having been first duly sworn,

16 was examined and testified as follows:

17 THE CLERK: Please be seated. State your full
18 name, spelling your last name for the record.

19 THE WITNESS: Corey Arrington. Last name is
20 A-R-R-I-N-G-T-O-N.

21 DIRECT EXAMINATION

22 BY MS. TAYLOR:

23 Q Deputy Arrington, where do you currently work?

24 A Berkeley County Sheriff's Office.

25 Q How long have you been employed with the Sheriff's

TESTIMONY OF COREY ARRINGTON

1 Office?

2 A Almost eight years.

3 Q What training and education have you received to
4 qualify you for that position?

5 A Initially attended the nine weeks training at the
6 South Carolina Criminal Justice Academy. And I have had
7 various courses since then.

8 Q And what are your current duties?

9 A I work on the patrol division. We primarily do
10 service calls and traffic enforcement.

11 Q And how long have you worked in that division?

12 A All of the years.

13 Q Can you please explain what duties you typically
14 would perform while on patrol in addition to the ones that
15 you have previously stated?

16 A Answering calls for 911 of that nature, whether it
17 be burglaries, assaults, missing persons, various calls that
18 people call into dispatch.

19 Q Where were you working -- were you working on
20 patrol the night of October 20th, 2012?

21 A Yes, ma'am.

22 Q And did you respond to a call at 114 Shenandoah
23 Lane on that date?

24 A Yes, ma'am.

25 Q And where is that located?

TESTIMONY OF COREY ARRINGTON

1 A Summerville, right outside -- between Summerville
2 and Goose Creek in Berkeley County.

3 Q In Berkeley County. What time do you recall
4 arriving at that location?

5 A Right around 2:00, shortly after.

6 Q What type of call were you responding to?

7 A Burglary in progress.

8 Q Was there anyone there when you arrived?

9 A I didn't arrive at the residence. I arrived on a
10 street right down from the complainant's residence where
11 they were fighting at.

12 Q Were there any officers on scene?

13 A Not when I got there. They were in route. I was
14 the closest unit.

15 Q Who else arrived on the scene?

16 A Corporal Antwine. She arrived shortly after I
17 did.

18 Q What did you do after you arrived on scene?

19 A Initially when I arrived I was flagged down by the
20 victim. He flagged down and pointed in the direction that
21 the Defendant was running. He pointed behind a trailer so I
22 ran in that direction.

23 Q Is that on the same street as the residence or a
24 different street?

25 A I believe that it was two streets over.

TESTIMONY OF COREY ARRINGTON

1 Q How did you locate the Defendant?

2 A I ran the direction that the victim pointed and I
3 located him running behind some trailers. He was the only
4 one behind there, so that is who I went after.

5 Q Did you arrest him at this point?

6 A Yes, ma'am.

7 Q Did you make any observations about the Defendant
8 in regards to what he was wearing?

9 A He didn't have any pants on. No pants. And I
10 don't believe that he had any shoes either.

11 Q Are you aware of any physical evidence recovered
12 from the scene?

13 A There were tools at the trailer.

14 Q Was there any other evidence taken?

15 A I believe some pants and I believe his shoes.

16 Q Based on your training and experience, is there
17 any significance to tools being found on such scenes?

18 A Yes, ma'am. Quite a bit of few times -- quite
19 often we see screwdrivers, or hammers or crow bars,
20 something to be able to pry up a screen, or pry a door,
21 windows, to be able to get inside houses. And quite a few
22 times in 8 years I have seen we have recovered tools of that
23 nature.

24 Q And what tools were recovered?

25 A A screwdriver and a wrench, a monkey wrench of

TESTIMONY OF COREY ARRINGTON

1 that sort.

2 Q The significance of those tools found as it
3 relates to this charge?

4 A The bathroom window, that is where the tools were
5 found, so I believe that those were the tools that assisted
6 the Defendant to get in.

7 Q Have you worked on other burglary cases where
8 similar tools were found?

9 A Yes, ma'am.

10 Q Once arrested did you transport the Defendant?

11 A Yes, ma'am, to the Hill-Finklea Detention Center
12 after he was checked out by EMS.

13 MS. WILSON: No further questions from the State.

14 THE COURT: Mr. Schwacke.

15 CROSS EXAMINATION

16 BY MR. SCHWACKE:

17 Q Would you be the officer in charge of this
18 investigation?

19 A I guess you could say that. I mean, I was the
20 most senior one. We didn't need to call out detectives or
21 anything.

22 Q No detectives ever got involved?

23 A No. No, sir.

24 Q So, it would be you and Officer Antwine?

25 A Yes, sir.

TESTIMONY OF COREY ARRINGTON

1 Q So, was it the responsibility of you to obtain the
2 911 tapes?

3 A For general sessions, no. Usually, if needed, the
4 Solicitor's Office could get them if needed, or you could
5 after filing a Freedom of Information Act.

6 Q You realize that those get erased?

7 A No, as the prosecuting officer there's no reason
8 for me to get them.

9 Q So, as part of your investigation you didn't think
10 that that was necessary?

11 A No.

12 Q Did you go to the trailer itself where this
13 happened?

14 A No, sir. I had to transport the Defendant to the
15 detention center for further decontamination.

16 Q And when we are talking "decontamination", you
17 actually had to use pepper spray on him?

18 A Yes, pepper spray issued by the Department.

19 Q And that was because of his demeanor at the time?

20 A Yes, sir, he was resisting and not putting his
21 hands behind his back. And honestly I'm not trying to get
22 hurt out there so I use whatever tools to effect the arrest.

23 Q So you didn't go to the trailer; you wouldn't be
24 aware that the female owner of the house has testified that
25 the windows were open?

TESTIMONY OF COREY ARRINGTON

1 A No, sir.

2 Q Have you viewed the photographs that were taken by
3 Officer Antwine?

4 A Not recently.

5 Q And you prepared an incident report about this?

6 A Yes, sir.

7 Q And part of that information in there indicates a
8 residence of, in this case, Mr. Derrick Clark?

9 A Yes, sir.

10 Q That is correct. And the address that you have
11 for him; do you have that information with you?

12 A I don't know. No, sir.

13 Q Do you have any recollection of what his address
14 was?

15 A I believe that it was on the other side of the
16 park somewhere.

17 Q So, inside the Wilson Creek Drive; does that sound
18 familiar?

19 A Yes. That is on the other side. It is a rather
20 large park though.

21 Q Correct. That used to be called Carnes Crossing
22 Park?

23 A Yes, sir, now it is Wind Gate.

24 Q Okay. Now, so the items that we are talking about
25 as burglary tools included a wrench and a screwdriver?

TESTIMONY OF COREY ARRINGTON

1 A Yes, sir.

2 Q So, pretty much any item that is in anybody's tool
3 box has potential, I guess, to be a burglary tool?

4 A You can say that. The one thing that stood out is
5 that the screwdriver was -- the tip was like shaven down or
6 something. I mean, it was nothing that you would use for a
7 screwdriver. I don't know if it was shaven to a point if --
8 I mean, it's not a screwdriver anymore, it's used for --

9 Q Do you do construction work?

10 A Personally, yes.

11 Q You have heard of an awl?

12 A Yes, it's cheaper to go buy one than to make one
13 though sometimes.

14 Q Sometimes. Okay. Now, when you first came upon
15 Mr. Clark, how was he dressed?

16 A In a shirt, boxers, no jeans, no shoes.

17 Q That is how he got transported to the detention
18 center?

19 A Yes, sir.

20 Q And you transported him there; is that correct?

21 A Yes, sir.

22 Q And you are responsible as the arresting officer
23 to fill out the booking report?

24 A Yes, sir.

25 Q So the information that would be on that, except

TESTIMONY OF COREY ARRINGTON

1 for where it's accepted by the jailer, would be your
2 handwriting?

3 A Yes, sir, I believe so.

4 Q What was Mr. Clark's demeanor when you were
5 involved with him?

6 A Totally uncooperative. We actually had to carry
7 him to the car. He wouldn't get up and walk.

8 Q Was he intoxicated?

9 A Intoxicated. Under the influence of something. I
10 couldn't smell alcohol, per se, because of the pepper spray.
11 The pepper spray is overwhelming. I mean, there was
12 definitely something but I don't know what.

13 Q He was definitely under the influence of
14 something?

15 A In my opinion, yeah.

16 Q And that is why you put that on the booking
17 report?

18 A Yes.

19 MR. SCHWACKE: One moment, Your Honor.

20 (Pause.)

21 BY MR. SCHWACKE:

22 Q Were you told whether anything was missing from
23 that residence, the victim's residence?

24 A I don't think that there was. I don't think that
25 there was a chance for anything to be taken.

TESTIMONY OF COREY ARRINGTON

1 Q Were there any other items on Mr. Clark at the
2 time that you booked him in?

3 A Just what he had on his person. He didn't have
4 the jeans or the pants.

5 Q You listed a necklace.

6 A I don't recall. It would be on the booking sheet.

7 Q And the booking sheet also has an address for
8 Mr. Clark?

9 A Yes, sir.

10 Q And again, that is in the same trailer park?

11 A Yes, sir.

12 MR. SCHWACKE: Thank you. That is all of the
13 questions that I have.

14 MS. WILSON: No, redirect, Your Honor.

15 THE COURT: You may step down. Thank you. Call
16 your next witness.

17 MS. WILSON: The State calls Deputy Teel Antwine.

18 THE CLERK: Sworn.

19 Thereupon,

20 TEEL ANTWINE

21 was called as a witness, having been first duly sworn,
22 was examined and testified as follows:

23 THE CLERK: Please be seated. State your full
24 name, spelling your last name for the record.

25 THE WITNESS: Teel Antwine. Last name is spelled

TESTIMONY OF TEEL ANTWINE

1 A-N-T-W-I-N-E.

2 DIRECT EXAMINATION

3 BY MS. WILSON:

4 Q Deputy Antwine, where do you work?

5 A Berkeley County Sheriff's Office.

6 Q And how long have you been employed with the
7 Sheriff's Office?

8 A The Sheriff's Office since 2009, but with the
9 County since 2006.

10 Q And what were you doing with the County since
11 2006?

12 A I was a 911 dispatcher.

13 Q What training and education have you received to
14 qualify you for your employment?

15 A The South Carolina Criminal Justice Academy.

16 Q And what are your current duties?

17 A I work for the patrol division, which entails
18 responding to the 911 calls and enforcing the law.

19 Q At this time are you on patrol duty in full
20 capacity?

21 A No, ma'am, I'm actually on light duty, maternity.

22 Q Were you employed on patrol on the date of
23 October 20th, 2012?

24 A Yes.

25 Q And did you respond to a 911 call at 114

TESTIMONY OF TEEL ANTWINE

1 Shenandoah Lane on that date?

2 A Yes, I did.

3 Q What kind of call was it?

4 A Burglary in progress.

5 Q Who was there when you arrived?

6 A When I arrived on scene, Deputy Arrington was
7 present.

8 Q Did you see the victim?

9 A The victim, yes. Mr. Whetsell flagged me down.
10 He didn't have a shirt on.

11 Q Was the lighting adequate to make observations at
12 the scene?

13 A There were street lights in the neighborhood and
14 also we had our duty flashlights.

15 Q And who else did you see when you arrived there?

16 A I saw the Defendant, Mr. Derrick Clark.

17 Q Where was he?

18 A He was on the ground and Deputy Arrington had him
19 in custody.

20 Q Did you go back to the location of the residence?

21 A Yes, I did. I responded to [REDACTED] in
22 regards to meeting with the victim.

23 Q And when you returned to the residence, what did
24 you do at the scene?

25 A I photographed the scene and also bagged evidence

TESTIMONY OF TEEL ANTWINE

1 located on the scene.

2 Q What photographs did you take?

3 A I took photographs of the victim's injuries, also
4 photographed point of entry, the inside of the residence
5 which is the bathroom area, and also the evidence, the
6 physical evidence I photographed.

7 Q And what physical evidence did you recover that
8 day?

9 A I located a pair of blue jean shorts with a black
10 belt. And also a pair of white and black tennis shoes.

11 Q Did you locate any additional evidence during
12 that?

13 A Excuse me. While going through the pockets of the
14 shorts prior to bagging the evidence I did locate a black
15 cell phone and also a screwdriver with a green handle and a
16 5/8ths wrench in the pockets.

17 MS. TAYLOR: Permission to approach, Your Honor?

18 THE COURT: You may.

19 MS. WILSON: I'm going to show Mr. Schwacke what's
20 been marked as State's Exhibit 9 and 10.

21 BY MS. WILSON:

22 Q If you could please tell me what these are
23 pictures of?

24 A First picture is where I photographed the shoe
25 which is a black and white shoe left on scene. This one is

TESTIMONY OF TEEL ANTWINE

1 going to be of the shoe that I just showed you and also the
2 blue jean shorts with the black belt that was recovered on
3 scene.

4 Q Are those accurate and fair depictions of what you
5 saw that night?

6 A Yes, ma'am.

7 MS. TAYLOR: At this time, the State would ask to
8 the enter these exhibits into evidence.

9 MR. SCHWACKE: No objection.

10 THE COURT: Without objection, State's 9 and 10
11 entered into evidence. You may publish.

12 *(Whereupon, State's Exhibit No. 9 and 10 was*
13 *marked for identification and received in evidence.)*

14 MS. TAYLOR: Thanks you, Your Honor.

15 BY MS. WILSON:

16 Q If you could look behind you and further explain
17 to the jury what we are seeing?

18 A This is the front of the residence. You see a
19 chair, it was somewhat parallel to the front porch. You
20 come down, this is a cement padding and there's grass in the
21 front yard. That was located as you were exiting the front
22 of the house in the front part.

23 Q Okay.

24 A This is going to be in the somewhat same area
25 where the shoe was located but off to the grass part where

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1 the cement patio was, fairly close.

2 Q And you stated that you recovered that physical
3 evidence. What did you do with it?

4 A Yes, ma'am. The -- all of the evidence that was
5 located, also the evidence located in the pockets, were
6 bagged in a brown paper bag and placed in the rear trunk of
7 my patrol vehicle for security reasons.

8 Q Did you keep -- maintain custody of those items at
9 all times?

10 A Yes, I did. I was the only one to maintain
11 custody and a chain of custody was completed.

12 Q Do you have those tools with you today?

13 A I do.

14 MS. TAYLOR: Your Honor, permission to approach?

15 THE COURT: You may.

16 (Evidence reviewed by counsel.)

17 BY MS. WILSON:

18 Q I'll give you the bag of evidence, and if you
19 would please take out what's been marked as State's Exhibit
20 11 and 12.

21 Deputy Antwine, do you recognize those items?

22 A Yes, I do.

23 Q How do you recognize them?

24 A This Exhibit 11 is going to be the green-handled
25 screwdriver that I located in the pants pocket along with

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1 the other evidence that I located. And Exhibit 12 is going
2 to be the 5/8ths wrench that I located in the pocket as
3 well.

4 Q Where exactly did you find them?

5 A In the pants pocket of the blue jean shorts
6 located on the scene.

7 Q How do you know these are the tools that you took
8 from the scene that night?

9 A Because I physically removed them from the pockets
10 of the evidence that I found on scene.

11 MS. TAYLOR: We would like to introduce State's 11
12 and 12 into evidence.

13 MR. SCHWACKE: No objection.

14 THE COURT: No objection. Without objection,
15 State's 11 and 12 entered into evidence.

16 *(Whereupon, State's Exhibit No. 11 and 12 was*
17 *marked for identification and received in evidence.)*

18 BY MS. WILSON:

19 Q In addition to collecting the evidence at the
20 scene, did you make any observation about the victim when
21 you spoke with him and --

22 A Yes, I did. Mr. Whetsell seemed to be in
23 distress and very startled and upset. He also had no shirt
24 on so I did see physical marks on him. He had lacerations
25 around his neck area, his back area, and his sides, and also

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1 redness and swelling around his neck and back area and
2 sides.

3 Q Was there anyone else in the home who was a
4 witness to the incident that night?

5 A His wife. I did speak to her. Sorry, Ms. Laurel,
6 I can't pronounce her last name. She was present on scene.
7 And I believe that they had two children. I did not speak
8 with the children.

9 MS. TAYLOR: No further questions from the State.

10 THE COURT: Mr. Schwacke.

11 CROSS EXAMINATION

12 BY MR. SCHWACKE:

13 Q Did you have any discussions with the woman whose
14 name we can't pronounce that night about the window?

15 A Can you further explain "discussions"?

16 Q Well, were you aware that she has now testified;
17 were you aware that the windows were actually open at the
18 time?

19 A Yes, I was aware that they were open.

20 Q Did you do a physical examination of the window to
21 see if there were any tool marks, et cetera left by the
22 burglary tools?

23 A I looked at the outside when I took the pictures
24 and also the inside when I took the pictures. I didn't see
25 any -- the window was up. I did not see any other physical

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1 altercations to the window at all.

2 Q So, there's no evidence that you observed to
3 indicate the use of the burglary tools in this incident?

4 A I didn't see -- can you repeat the question? I'm
5 sorry.

6 Q You didn't observe in your -- it's your job as a
7 technician to obtain evidence to make sure that you can tell
8 the full story of the event?

9 A Uh-huh.

10 Q And so you would have observed the areas that
11 were -- you were directed to by any of the witnesses to take
12 evidence or to take photographs or whatever it is to assist
13 the presentation of this case, correct?

14 A Correct.

15 Q And in that you didn't observe any indications of
16 tool marks or scrapes or anything to indicate that burglary
17 tools were actually used in this incidence?

18 A Yes, I didn't see any evidence.

19 MR. SCHWACKE: Thank you. No further questions.

20 MS. WILSON: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. WILSON:

23 Q Did you observe where the screen was for the
24 window?

25 A I cannot recall where the screen was.

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1 Q Would you put up the picture of Exhibit 6? Do you
2 recognize -- does that refresh your memory?

3 A Yes. Yes, it does.

4 Q And is the screen on the window?

5 A No, the screen is under the chair that was located
6 underneath the window.

7 Q Is that how -- was that photograph taken by you?

8 A Yes, it was.

9 Q And that was how it appeared when you arrived on
10 the scene that night?

11 A Yes, it was.

12 MS. TAYLOR: No further questions.

13 THE COURT: Mr. Schwacke.

14 MR. SCHWACKE: No, Your Honor.

15 THE COURT: All right. Thank you. You may step
16 down.

17 Thank you. Call your next witness.

18 MS. TAYLOR: Your Honor, the State rests.

19 THE COURT: Ladies and gentlemen, this is an
20 appropriate time for us to take our lunch break. Do
21 not begin your deliberations. DO not discuss this case
22 amongst yourselves. Please be back and the bailiff
23 will instruct you not to report after lunch. We will
24 begin at 1:45. Remember all of my admonitions, do not
25 discuss this case in any fashion, do not do any

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1 independent research. Please rise.

2 (The jury exits the courtroom.)

3 THE COURT: Thank you. Be seated. Any motions of
4 matters at this time, Mr. Schwacke?

5 MR. SCHWACKE: No, Your Honor. I make the motion
6 for a direct verdict of acquittal based on the lack of
7 evidence of guilty beyond a reasonable doubt.

8 MS. TAYLOR: Your Honor, I believe that based on
9 the testimony and evidence entered, in the light most
10 favorable to the State, we have made questions of fact
11 as to the charges that have been brought against the
12 Defendant. And we would ask that you deny the directed
13 verdict.

14 THE COURT: Anything else, Mr. Schwacke?

15 MR. SCHWACKE: No, Your Honor.

16 THE COURT: Based on Rule 19 of the Rules of
17 Criminal Procedure, the Court is concerned only with
18 the existence or non-existence of the evidence. We
19 have had four witnesses that have testified both the
20 victims, the individuals in the home, have testified
21 that they did not know the Defendant, they did not
22 invite him in. And there was testimony that it was
23 nighttime. The victim, Mr. Whetsell, testified that
24 the Defendant struck him causing bruising and scratches
25 when he found the Defendant in his home. And the

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1 deputy, one deputy testified that when she arrived upon
2 the scene there were lacerations to his neck.

3 With testimony that there was a screwdriver and a
4 wrench in the shorts' pocket. Deputy Arrington
5 testified that screwdrivers were -- are commonly used
6 as a tool in burglary. Based upon the testimony that
7 was presented due to the light most favorable to the
8 State I deny your motion for a directed verdict as to
9 all three indictments.

10 MR. SCHWACKE: Thank you, Your Honor.

11 THE COURT: Any further motions or matters,
12 Mr. Schwacke?

13 MR. SCHWACKE: Not at this time, Your Honor.

14 THE COURT: Mr. Clark, at this time I'll advise
15 you of your rights. Please stand and be placed under
16 oath.

17 Thereupon,

18 DERRICK CLARK

19 was called as a witness, having been first duly sworn,
20 was examined and testified as follows:

21 THE WITNESS: I do.

22 THE COURT: Mr. Clark, at this time I am going to
23 explain to you certain of your rights. If you do not
24 understand certain things that I say, let me know. If
25 you need me to explain in further detail, let me know.

TESTIMONY OF DERRICK CLARK

1 Do you understand?

2 MR. CLARK: Yes.

3 THE COURT: We have reached the stage of the trial
4 where you may present your defense. You have the right
5 to claim the protections given to you by the fifth
6 amendment of the Constitution of the United States.
7 This amendment states in part that no person shall be
8 compelled in a criminal case to be a witness against
9 himself. This means that you cannot be required to
10 testify in this case. You have the right to testify on
11 your own behalf. No one can make you testify. This is
12 a personal right and no one can waive this right except
13 for you. If you decide to testify you will be subject
14 to the same rules that are given other witnesses and
15 you may be examined and cross-examined on any relevant
16 issue in this case.

17 If you have any convictions involving dishonestly
18 or false statements or for crimes punishable by
19 imprisonment for more than one year and I determine
20 that the probative value of admitting this evidence
21 outweighs the prejudicial effect to you the Solicitor
22 will be able to introduce your records to attack your
23 credibility. Ms. Taylor, does he have prior
24 convictions?

25 MS. TAYLOR: Your Honor, the only one that the

TESTIMONY OF DERRICK CLARK

1 State would seek to admit is the 2011 conviction of
2 breach of trust with fraudulent intent.

3 THE COURT: Mr. Schwacke, have you been provided
4 that information?

5 MR. SCHWACKE: That is the only charge that
6 appears to involve dishonesty or deceit.

7 THE COURT: All right. Mr. Clark, you understand
8 that should you testify that that prior conviction
9 could come in because it's considered a crime of
10 dishonesty; do you understand?

11 MR. CLARK: Yes.

12 THE COURT: If you decide to testify, this
13 decision on your part must be freely, voluntarily and
14 intelligently made with knowledge of the protections
15 given to you by the 5th Amendment and the consequences
16 of your decision to testify. If you decide not to
17 testify I'll instruct the jurors that they cannot give
18 the fact that you didn't testify any consideration
19 whatsoever and that there is to be absolutely no
20 prejudice to you because you didn't testify. It is
21 left entirely up to you.

22 You may talk to your attorney, both of them,
23 separately. You may talk to your friends, your family
24 members or anyone else, but the final decision is left
25 entirely up to you. Do you understand what I have

TESTIMONY OF DERRICK CLARK

1 explained to you?

2 MR. CLARK: Yes, ma'am.

3 THE COURT: Do you have any questions about what I
4 have explained to you?

5 MR. CLARK: No, ma'am.

6 THE COURT: Have you discussed with your lawyer
7 whether you should testify?

8 MR. CLARK: I did.

9 THE COURT: Okay. Do you need to talk to your
10 lawyer any more at this time?

11 MR. CLARK: No, Judge, Your Honor.

12 THE COURT: Do you wish to testify?

13 MR. CLARK: Yes, ma'am.

14 THE COURT: So, you will be testifying after
15 lunch.

16 MR. CLARK: Okay.

17 THE COURT: Mr. Schwacke, you have heard, he's
18 indicated that he has talked to you and you have gone
19 over the consequences of his decision to testify?

20 MR. CLARK: We have, Your Honor.

21 THE COURT: Okay. And so you may have a seat,
22 Mr. Clark.

23 Mr. Schwacke, do you have any additional
24 witnesses?

25 MR. CLARK: That is, obviously, we went into this

TESTIMONY OF DERRICK CLARK

1 with the intent of not calling witnesses with his
2 decision to do that. There's the possibility of two
3 witnesses that may be offered, offered as character
4 witnesses, but beyond that I'm not aware of any other
5 witnesses that we would call.

6 THE COURT: All right. So, we will take -- I
7 knows it's still fairly early because I haven't heard
8 your case, Mr. Schwacke, but we will be working over
9 the lunch hour to get the verdict form and charge. Are
10 you going to be requesting any lesser included?

11 MR. SCHWACKE: Your Honor, we would be asking for
12 the lesser included of assault and battery in the third
13 degree. In the event that the jury determines that the
14 burglary was not committed, then that aggravating
15 element would be the only thing making this a
16 burglary -- I mean, an assault and battery in the first
17 degree. It would then fall to the next -- actually you
18 would have to drop two levels based on the testimony
19 concerning what the nature of the injuries were since
20 there's not anything that involves -- he didn't have
21 any tearing of muscles or some intrusion into the skin.
22 So, it would make it assault and battery the third.
23 So, I would ask that as a lesser included. And beyond
24 that I'm not sure.

25 THE COURT: Okay. What is the State's position?

TESTIMONY OF DERRICK CLARK

1 MS. TAYLOR: As much as I would like to disagree,
2 Your Honor, I believe that he's correct. Aggravating
3 factor for first degree is burglary, and I believe that
4 without that it would be assault and battery third.

5 THE COURT: Okay. Anything else for the Court
6 before we break for lunch?

7 MR. SCHWACKE: None from the Defense.

8 MS. TAYLOR: Nothing from the State, Your Honor.

9 THE COURT: Okay. Then, if you would be back at
10 1L40. The jurors will be here at 1:45. All right,
11 thank you. We are at ease.

12 (Lunch recess taken.)

13 THE COURT: Anything before we bring in the jury
14 from the State?

15 MS. TAYLOR: No, Your Honor.

16 THE COURT: From the Defense?

17 MR. SCHWACKE: No, Your Honor.

18 THE COURT: All right. Let's bring in the jury.

19 (Jury enters the courtroom.)

20 THE COURT: Thank you. Please be seated. Mr.
21 Schwacke, call your first witness.

22 MR. SCHWACKE: The Defense would call Derrick
23 Clark. Your Honor, hang on.

24 THE COURT: All right. Do we have a matter of
25 law?

TESTIMONY OF DERRICK CLARK

1 MR. SCHWACKE: Yes, ma'am.

2 THE COURT: Y'all may approach.

3 (Discussion held off of the record.)

4 THE COURT: Ladies and gentlemen, there's a matter
5 that I must take up outside of your presence. Do not
6 begin your deliberations. Do not discuss your case
7 amongst yourselves. Please rise for the jury. It'll
8 be just a few moments.

9 (Jury exits the courtroom.)

10 THE COURT: All right. Thank you. Be seated.
11 Unshackle Mr. Clark.

12 MS. TAYLOR: May I approach to get the bag? It
13 wasn't tendered. I wanted to make sure that we got it
14 out of the way.

15 THE COURT: Yes.

16 MR. SCHWACKE: Your Honor, do you want him seated?

17 THE COURT: Yes, I want him seated. Just like any
18 other witness. All right. Let's try this again.

19 (The jury enters the courtroom at 1:51 p.m.)

20 THE COURT: Thank you. Be seated. Mr. Schwacke.

21 MR. SCHWACKE: Your Honor, we would call Derrick
22 Clark.

23 THE COURT: All right. Mr. Clark, please come
24 forward and be sworn.

25 Thereupon,

TESTIMONY OF DERRICK CLARK

1 DERRICK LADON CLARK

2 was called as a witness, having been first duly sworn by the
3 Clerk, was examined and testified as follows:

4 THE CLERK: Please be seated. State your full
5 name, spelling your last name, for the record.

6 THE WITNESS: Derrick Ladon Clark, C-L-A-R-K.

7 DIRECT EXAMINATION

8 BY MR. SCHWACKE:

9 Q Derrick, how old are you?

10 A I'm now 25.

11 Q And where were you living?

12 A I was living with my father at [REDACTED]
[REDACTED]

14 Q And that would be here in Berkeley?

15 A Correct.

16 Q That is a trailer court?

17 A Yes, sir.

18 Q How long had you been living with him?

19 A A couple of months.

20 Q Were you employed?

21 A Yes, sir.

22 Q Where were you employed?

23 A I was working prior -- I used to work at Banks
24 Construction also, where my father worked, and then I got
25 called three months later at Swamp Fox Utilities

TESTIMONY OF DERRICK CLARK

1 Construction.

2 Q And where did you attend school?

3 A Lake Marion High, Santee, South Carolina.

4 Q Is that where you graduated high school?

5 A Correct. Correct.

6 Q You were arrested back in October of 2012.

7 October the 20th, 2012. Is that correct?

8 A Yes, sir.

9 Q And what do you wish to tell the jury regarding
10 that incident?

11 A Well, first of all, I would like to apologize to
12 everyone for my behavior for being here. I do accept
13 responsibility for my actions. However earlier that day I
14 was riding with a co-worker and we was going to cash my
15 check. I actually had planned on leaving out of town to go
16 to my prior girlfriend -- ex-girlfriend at the time, she
17 lived in Cherokee, North Carolina and -- but somehow
18 something went wrong with that plan. I ended up, ended up
19 drinking and smoking, which I shouldn't have been doing.

20 Q Drinking what?

21 A Earlier that day I had purchased some beer, Bud
22 Light, and a half of a gallon of gin and a fifth of Paul.

23 Q Of what?

24 A Fifth of Paul, Paul Mason.

25 Q And smoking?

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1 A Marijuana.

2 Q Okay. Sorry, go ahead.

3 A So, after that -- after that took place, you know,
4 I got intoxicated and me and my, you know what I'm saying,
5 baby brother at the time was over smoking with some friends,
6 some buddies, so call it, and I -- and --

7 Q Where was that going on?

8 A This was going on across the street from where my
9 father lived, where my home boy at the time was living right
10 across the street and we was smoking in his car and
11 drinking.

12 Q Okay. I'm sorry, go ahead.

13 A And so after that me and my baby brother went to
14 go sit in my father's car and we was talking and he
15 mentioned something about not being able to see somebody
16 ever again, it was like he was, you know, casting a curse or
17 something on me. And now I know prior me and him had some
18 prior issues, you know, and like I said, I am 25 years old.
19 I am the father of one daughter, three years old. And you
20 know, I was just going through a lot at the time, a lot of
21 stress. And I'm learning that stress can, can do some
22 damage; do you know what I'm saying? Not to only yourself
23 but to other people, not intentionally.

24 And so I, I just was drinking and smoking.

25 And I remember prior that my brother had said something

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1 about somebody going to put something in your marijuana.
2 Now, my understanding is that when I looked into this bag
3 later on I asked my brother, I was like, Do you see what I
4 see? And he said, Yes, but what is that? I said, I don't
5 know, you know. He asked me where did I get it from. I
6 purchased this from somebody that I normally do not purchase
7 from, but it did appear to be something was in the
8 marijuana. It was like white crystals or something. So, I
9 was introduced to a drug that I normally do not use and that
10 affected my behavior on why I did commit this crime.

11 And I would like to apologize to the Court,
12 once again, to being here; my victim. I realize that I have
13 caused some damage, you know, to my victim. And also I
14 would like to agree with him because at the time, you know,
15 I realized I -- I did not know what I was doing, but you
16 know, like I said, after the fact you do realize that it did
17 took place and it did happen. And I would just like to
18 apologize to him and to say that that is the kind of man
19 that I want to be, a stand-up father for my child, my
20 daughter, fighting for the family. Because if somebody
21 broke in my house I'm going to be honest, you know, Mr.
22 Whetsell, we tussled in his house and he was defending his
23 family. And I think that is the right thing to do in the
24 event of a burglary.

25 Q So, when you are saying that you are admitting to

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1 the crime, what are you admitting to?

2 A I'm admitting to coming into his house uninvited
3 and assaulting the victim and trying to get away.

4 Q One moment. So, how did you end up in that house
5 anyway? And for what, for what purpose?

6 A To be honest, I don't remember. All I know I was
7 going through some -- like I said, some frustration. And
8 anger prior because, you know, my daddy mentioned about
9 paying him \$150, which I was very highly upset being that he
10 has other people living there and they don't pay rent. And
11 I was feeling some type of way. I do remember that I told
12 him I would live on the streets on my own before I give you
13 \$150.

14 Q So, why that house?

15 A I can't really say other than, like I said before,
16 acting out of anger and resentment towards what I was
17 facing, not towards my victim at all. Because like I said,
18 I don't know him. I did not plan to burglarize or to harm
19 anybody but I just wanted to get away from my problems, my
20 issues, what I was facing at the time.

21 Q How did you get in?

22 A I can't really remember how I got in. It had to
23 have been, like they said, through the window.

24 Q What did you intend to do inside?

25 A I didn't really have an intention. I just, like I

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1 said, I just wanted to get away from my problems that I was
2 facing; didn't really have anywhere to go.

3 Q Is there anything else that you want to tell the
4 jury?

5 A No.

6 Q The tools that are in evidence, are those yours?

7 A Yes, they are.

8 Q What are they for?

9 A On side work I like to do mechanic work. I was
10 doing -- the same homeboy that we was smoking in his car, I
11 put an alternator in his car. That is why the burglar tools
12 appeared to be a little sharpened but, you know, like I say,
13 I didn't have the intent to harm anybody with that.

14 Q Did you take anything?

15 A No, sir, I didn't.

16 Q Did you have the intent to take anything?

17 A I didn't.

18 MR. SCHWACKE: Thank you. That's all of the
19 questions that I have.

20 THE COURT: Ms. Taylor.

21 MS. TAYLOR: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MS. TAYLOR:

24 Q So, Mr. Clark, you testified that you had cashed
25 your paycheck that day; is that correct?

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1 A That's correct.

2 Q But then you spent that money on alcohol and
3 drugs?

4 A Yes.

5 Q Your dad was demanding money for rent; is that
6 right?

7 A Yes.

8 Q But you didn't have that money to give him, did
9 you?

10 A I did. But like I said, you know, I was -- it was
11 lack of responsibility on my part. I do not make any
12 excuses, however I know that, you know, my priorities was
13 all messed up. I was young and a bit foolish.

14 Q Okay. But after you spent your money on alcohol
15 and drugs, you didn't have rent money to give your father,
16 did you?

17 A Yes.

18 Q You still had \$150?

19 A Yes.

20 Q Okay. And you said that you drank some beer?

21 A Uh-huh.

22 Q Drank some gin?

23 A Uh-huh.

24 THE COURT: I need you to answer out loud.

25 A Yes.

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1 THE COURT: Would you do that line of questioning
2 again? Thank you.

3 Q Drank some beer?

4 A Yes.

5 Q Drank some gin?

6 A Yes.

7 Q Also drank some other kind of alcohol?

8 A Yes.

9 Q Also smoked some marijuana?

10 A Yes.

11 Q You did that across the street from your dad's
12 house; is that right?

13 A Yes.

14 Q And now, the house that you broke into, that is
15 not on the same street that your dad lives on, is it?

16 A No, it isn't.

17 Q It is on a completely different street?

18 A Correct.

19 Q You don't remember getting inside the Whetsell
20 home?

21 A Correct.

22 Q You don't remember dragging the chair and trash
23 can?

24 A No.

25 Q You don't remember climbing on top of it?

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1 A No.

2 Q Do you remember prying the screen off of the
3 bathroom window?

4 A No, the only thing that I remember is that once I
5 was into the house I realized that what had happened and I
6 was trying to get out.

7 Q So, when you were dragging that chair around, you
8 didn't realize that you were going into somebody's house?

9 A Right.

10 Q And when you were climbing on top of that trash
11 can you didn't realize that you were going into somebody
12 else's house?

13 A Right.

14 Q And when you went in the window you didn't realize
15 that you were going into somebody else's house?

16 A Right.

17 Q When did you realize that it was somebody else's
18 house?

19 A Once Mr. Whetsell came down the hall and saw me in
20 there and that's when I realized, Oh, man, what have I done.
21 I was trying to get out.

22 Q Your testimony is that you went inside the house
23 for no reason, whatsoever?

24 A Correct.

25 Q It wasn't to steal stuff to get money?

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1 A No.

2 Q It wasn't to help you pay rent?

3 A No.

4 Q The tools that you said that you had with you,
5 those were the tools you used to work on somebody else's
6 car, correct?

7 A Correct.

8 Q That screwdriver, although it was sharpened, you
9 were using it to work on a car?

10 A Correct.

11 Q And that is not the screwdriver that you used to
12 pry the screen off?

13 A Yes.

14 Q You did use the screwdriver to pry the screen off?

15 A Yes.

16 THE COURT: I need you to answer out loud.

17 A Yes.

18 Q Mr. Clark, you do have prior convictions from
19 2011, breach of trust with fraudulent intent; is that
20 correct?

21 A Yes.

22 MS. TAYLOR: No further questions.

23 THE COURT: Mr. Schwacke.

24 REDIRECT EXAMINATION

25 BY MR. SCHWACKE:

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1 Q What was the amount of the check?

2 A Approximately \$700.

3 Q What was that for?

4 A I was work at Swamp Fox Utilities Construction and
5 I just got paid earlier that day.

6 Q That would have covered what kind of time period?

7 A Around -- I would say about two, three.

8 Q Two three what?

9 A Afternoon.

10 Q No, no. What was the pay period that that check
11 would have covered?

12 A Oh, it was -- it was my first paycheck, so it was
13 two weeks, over a two-week period.

14 Q You were asked by the Solicitor about money that
15 your dad wanted.

16 A Correct.

17 Q You had the money you just didn't want to pay it?

18 A Correct.

19 Q And what was that about again?

20 A That was really about because I have other -- my
21 baby brother lived there and he has other stepkids that live
22 there and doesn't pay any rent. And I felt that I was being
23 taken advantage of.

24 Now understand my situation, I was under -- I
25 was going through basically at the time and all had child

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1 support that I was paying.

2 MR. SCHWACKE: Thank you. No further questions.

3 THE COURT: Okay. Ms. Taylor.

4 MS. TAYLOR: Nothing from the State, Your Honor.

5 THE COURT: Okay. You may step down. Thank you.

6 Call your next witness.

7 MR. SCHWACKE: Sandra Clark.

8 Thereupon,

9 SANDRA CLARK

10 was called as a witness, having been first duly sworn,

11 was examined and testified as follows:

12 THE CLERK: Please have a seat and state your full
13 name, spelling your last name.

14 THE WITNESS: My name is Sandra Clark, C-L-A-R-K.

15 DIRECT EXAMINATION

16 BY MS. WHITE:

17 Q And Ms. Clark, what is your relationship to
18 Derrick Clark?

19 A I am his mother.

20 Q And so, you certainly would have known him all of
21 his life, right?

22 A Exactly.

23 Q What is his reputation for truth and veracity in
24 the community?

25 A Okay. He -- Derrick is a truth teller, you know.

TESTIMONY OF SANDRA CLARK

1 He is -- he is, you know, like any other kid. He is
2 basically quiet and kept to himself, church-going and, you
3 know, just kind of quiet.

4 Q Okay. And you know, you are his mother and you
5 are here to testify on his behalf about his character, and
6 so because you are his mother you certainly would be telling
7 the truth about his character, correct?

8 A Yes.

9 Q Okay. And you said again that his reputation for
10 truth and veracity is that?

11 A He's pretty much an honest -- you know, he's
12 honest. He, you know, like situations any normal kid will
13 tell little fibs to his parents, but pretty much he is an
14 honest person.

15 MS. WHITE: No further questions. Please answer
16 any questions that the State may have.

17 THE COURT: Ms. Taylor.

18 MS. TAYLOR: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. TAYLOR:

21 Q Ms. Clark, I'm sure that you love your son. You
22 were not at the Whetsell's home on October 20th, 2012; is
23 that correct?

24 A That is correct.

25 Q And you do know that your son has a prior

TESTIMONY OF SANDRA CLARK

1 conviction for breach of trust?

2 A Yes.

3 MS. TAYLOR: Thank you, Your Honor. No further
4 questions.

5 THE COURT: Redirect?

6 MS. WHITE: No, Your Honor.

7 THE COURT: You may step down. Call your next
8 witness.

9 MS. WHITE: Your Honor, we would call Delouise
10 Govan.

11 Thereupon,

12 DELOUISE GOVAN

13 was called as a witness, having been first duly sworn,
14 was examined and testified as follows:

15 THE CLERK: Please be seated. State your full
16 name, spell your last name for the record.

17 THE WITNESS: Delouise Govan, G-O-V-A-N.

18 DIRECT EXAMINATION

19 BY MS. WHITE:

20 Q Ms. Govan, please tell the jury your relationship
21 to Derrick Clark?

22 A I am his aunt.

23 Q Okay. So, you have known him his entire life as
24 well?

25 A Yes.

TESTIMONY OF DELOUISE GOVAN

1 Q His maternal aunt or his paternal aunt?

2 A His -- maternal aunt, uh-huh.

3 Q Can you just tell the jury what you know as his
4 reputation for truth and veracity in the community?

5 A He is -- he has always been a pretty good fellow,
6 really, always a good guy. And that basically is Derrick.
7 Just like he stood here and told what, you know, he knew. I
8 know Derrick and he is a good guy.

9 Q And certainly you do love him; he is your nephew?

10 A Yes, he used to stay with me, yes.

11 Q But you would be here today certainly to tell the
12 truth about what you know about his character to the jury,
13 correct?

14 A I would. I would.

15 Q Okay.

16 MS. WHITE: I have no further questions.

17 THE COURT: Ms. Taylor.

18 MS. TAYLOR: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. TAYLOR:

21 Q Ms. Govan, you have already testified, you love
22 your nephew?

23 A I do.

24 Q And you weren't present at the Whetsell home on
25 November 20th?

TESTIMONY OF DELOUISE GOVAN

1 A Huh-huh.

2 Q And you do know that he has previously been
3 convicted of breach of trust?

4 A Uh-huh.

5 MS. TAYLOR: Thank you. No further questions.

6 THE COURT: Anything further from the Defense?

7 MR. SCHWACKE: That is all from the Defense.

8 THE COURT: Okay. You rest at this time?

9 MR. SCHWACKE: Yes.

10 THE COURT: Okay. Reserving all motions and
11 matters, any rebuttal witnesses from the State?

12 MS. TAYLOR: Nothing from the State, Your Honor.

13 THE COURT: Ladies and gentlemen, you have now
14 heard all of the testimony that you will hear in this
15 case and have received into evidence all of the
16 exhibits that will be made a part of the record in this
17 case. There's a matter of law that I have to take up
18 outside of your presence. Do not begin your
19 deliberations. Do not discuss this case amongst
20 yourselves. When you return back to the courtroom you
21 will hear closing arguments from counsel and I'll
22 instruct you as to the law applicable in this case.
23 Feel free to take note pads with you or leave them in
24 your seats. We will receive you back momentarily.
25 Please rise for the jury.

TESTIMONY OF DELOUISE GOVAN

1 (Jury exits the courtroom at 2:13 p.m.)

2 THE COURT: Thank you. Be seated. Any motions or
3 matters, Mr. Schwacke, at this point?

4 MR. SCHWACKE: I would move -- I --

5 THE COURT: Are you renewing?

6 MR. SCHWACKE: I would renew my previous motion
7 for directed verdict of the Court.

8 THE COURT: Ms. Taylor, anything additional?

9 MS. TAYLOR: Nothing, Your Honor.

10 THE COURT: Okay. I have heard nothing that would
11 change my mind from my original analysis at the close
12 of the State's case in which you made your first motion
13 for a directed verdict. Deny the motion for a directed
14 verdict. Any other motions or matters?

15 MR. SCHWACKE: No, Your Honor.

16 MS. TAYLOR: Nothing from the State.

17 THE COURT: So, now with all of the testimony,
18 lesser included? Any additional lesser included?

19 MR. SCHWACKE: Nothing beyond the assault and
20 battery third, no, Your Honor.

21 MS. TAYLOR: Nothing new from the State.

22 THE COURT: All right. Are we ready for closing?

23 MS. TAYLOR: Yes, Your Honor.

24 MR. SCHWACKE: Can I have 10 or 15 minutes?

25 THE COURT: I'm about to move into it now. We are

TESTIMONY OF DELOUISE GOVAN

1 printing up the verdict form. I wanted to make sure
2 that there are no additional requested. So, before you
3 take your ten minutes, wait and we will print that out
4 and you can review the verdict form.

5 We are at ease for 15 minutes.

6 MS. TAYLOR: One question. The rule development
7 charge, is it the standard?

8 THE COURT: Firmly convinced.

9 MS. TAYLOR: All right. Thank you.

10 THE COURT: We are at ease. Thank you.

11 (Brief recess.)

12 MR. SCHWACKE: Your Honor, before we come in I
13 think that she said that she is waiving on the law. I
14 would ask that they be required to open on the law for
15 closing.

16 THE COURT: Your position Ms. Taylor?

17 MS. TAYLOR: I don't think that we are required
18 to, your Honor. I don't have any case law in front of
19 me on that issue.

20 THE COURT: Do you have case law that says -- I
21 know that there's been some discussion. I don't know
22 that there's case law that says that she must.

23 MR. SCHWACKE: I always thought that it was a
24 rule, actually, Your Honor, but -- I do not see that
25 charge.

TESTIMONY OF DELOUISE GOVAN

1 THE COURT: Mr. Schwacke, I think that you are
2 referring to Rule 43J in the Rules of Civil Procedure.

3 MR. SCHWACKE: Yes, ma'am.

4 THE COURT: Y'all can approach because I have my
5 book.

6 (Off-the-record discussion.)

7 THE COURT: All right. Based upon my reading of
8 43J of the Rules of Civil Procedure I'm denying your
9 request to make her open on the law. Note your
10 exception for the record and at some point maybe we
11 will get a definitive answer. And with that we can
12 bring the jury in.

13 Anything else Mr. Schwacke?

14 MR. SCHWACKE: No, Your Honor.

15 (Jury re-enters the courtroom at 2:30 p.m.)

16 THE COURT: Please be seated. You will now hear
17 closing arguments of counsel. Just as I indicated to
18 you, what is in opening statements is not evidence,
19 neither is what is in closing arguments. It is merely
20 the contention of the attorneys as to what the evidence
21 has shown you. After you have heard closing arguments
22 on behalf of counsel, I'll instruct you on the law
23 applicable to this case.

24 Please give your strict attention to Mr. Schwacke.

25 MR. SCHWACKE: Thank you, Your Honor. Thank y'all

CLOSING STATEMENT BY THE DEFENDANT

1 for being here this day. And as we indicated, this is
2 a short trial, but nevertheless a very important one.
3 In a few moments after we, the attorneys, speak to you
4 about our view of the case the Judge is going to
5 instruct you on the law. And you are going to combine
6 those two things when you go back in the jury room and
7 return with a verdict.

8 Now, we just celebrated a holiday, and I'm going
9 to tell you, I did two things: One, ate too much and
10 watched too much television. But one of the things
11 that -- one of the commercials that kept going on on TV
12 was an automotive commercial where they said and -- the
13 whole deal is and good, and it stressed the "and" of
14 something, whether hide and seek versus hiding, sweet
15 and sour versus sour.

16 So, the reason that I am bringing that up is
17 because when you are considering what to find on the
18 particular offenses that have been alleged here, there
19 are going to be elements that are added to each other.
20 So it is -- there will be an element A and an element B
21 and an element C. And it is important that every one
22 of those elements are found by you to have been met by
23 the evidence. And if it hasn't been met or if you
24 don't know, or if you are asked to speculate on one of
25 those things, then that is a failure of proof.

CLOSING STATEMENT BY THE DEFENDANT

1 And as the Judge is going to instruct you on that,
2 if it is a failure of proof that goes against the State
3 and it goes in favor of the Defendant. So, "and" is a
4 good thing, "and" is an important thing, "and" is a
5 necessary thing in this case.

6 I feel so sorry for the victims in this case
7 because I don't know what I would do if that happened
8 to me. But I also know that feeling sorry for someone
9 and feeling bad about someone is not a reason to return
10 a jury verdict. So, I have to ask you to distance
11 yourself from that moment while you consider what the
12 State is required to prove for a conviction.

13 The State must prove an unlawful entry into a
14 dwelling of another without consent "and" one of two
15 things that they have alleged in this case is that it
16 happened in the nighttime or a person was injured
17 during the course. That is an "or," but it is an "and"
18 because one of those two things must be proven. "And"
19 the person entering at the time of entry must have had
20 the intent to commit some crime therein. That is a big
21 "and".

22 They must prove and you must find that Mr. Clark
23 intended to commit a crime when he was entering that
24 residence. It must exist at that time. It can't be
25 formed later. It has to happen concurrently with the

CLOSING STATEMENT BY THE DEFENDANT

1 entry.

2 Now, the Judge is going to instruct you one thing
3 and I believe it doesn't foreclose you from still
4 looking at the information that comes from that. But
5 she's going to tell you that intoxication is not a
6 defense. Well, I'm not asking it to be a defense. It
7 is a fact that he was; he's admitted that he was. But
8 the officer told you that he was high or he was
9 intoxicated or he was something because he was a wild
10 man that night. And that is coming from the police
11 officer involved in this case. To the point that they
12 had to pepper spray him.

13 So the issue is: What crime did he intend to
14 commit? And again, when did he form that intent?
15 Because if it's formed after he's in the house it is
16 not a burglary. It is other things. There are other
17 crimes that the State -- they have alleged to cover
18 that conduct. They chose this one. It is the one that
19 they have wrapped up and given to you. And if it's not
20 all proven to your satisfaction, then your burden as
21 regards to the burglary must be not guilty.

22 So, what does that do to everything else? He's
23 admitted on the stand burglary. I'm not even going to
24 talk about it. Go back in there as soon as you can and
25 a look at that. That shows that he was being honest

CLOSING STATEMENT BY THE DEFENDANT

1 with you.

2 The other thing is if the State doesn't prove the
3 element of intent to commit a crime with burglary and
4 hasn't convinced you that there's proof of that beyond
5 a reasonable doubt, that also affects the other charge
6 of assault and battery in the first degree. Because
7 the only thing that makes it that is if it happens
8 during the burglary. The nature of the injuries
9 suffered are minor, so it actually would be proof of
10 guilt if you find Mr. Clark, which he admitted that he
11 got in a fight with the victim in this case, and he
12 apologized to that, then that would be assault and
13 battery in the third degree and not first degree.

14 These elements aren't just haphazard elements,
15 they are tried and true. They have been part of our
16 judicial system since we came over from England. It is
17 an important part. It is not just one that you can
18 poof at and say, Oh, I'm not going to worry about that.
19 It is a big interest. It is one that you must
20 consider. And it is one that you must find proof of
21 before you get to guilty of burglary, because if you
22 cannot establish intent to commit a crime -- nothing
23 was taken. Nothing was brought in to take anything out
24 with.

25 You have an intoxicated man who is in his father's

CLOSING STATEMENT BY THE DEFENDANT

1 neighborhood where he's living, intoxicated, he does
2 something stupid. He didn't have the intent to commit
3 a crime in that house and he's told you that and the
4 State hasn't proved it. And as badly as you do want to
5 feel for the victims in this case you can't do it
6 because you feel bad for them, you have got to do it
7 because the evidence was there or not there.

8 So I, you know, thank you for the attention that
9 you have paid. You have all been taking notes. And
10 you have had a short trial to consider these things. I
11 just ask that you follow the laws that is going to come
12 from the Judge and that you make sure that the State
13 has all of its ducks in a row because if they haven't
14 proven that, that intent to commit a crime, that's not
15 been done -- that falls on them -- and that requires
16 you to return a verdict of not guilty. Thank you.

17 MS. TAYLOR: Thank you, Your Honor. Common sense,
18 it is the one thing that Mr. Schwacke told you in your
19 opening you are allowed to bring with you into this
20 courtroom. And I submit to you, ladies and gentlemen,
21 that common sense will tell you you do not break into
22 someone's home for no reason. I'm going to briefly go
23 over the testimony. It's been a short trial. I will
24 try not to bore you.

25 First you heard from Mr. Whetsell, didn't know the

CLOSING STATEMENT BY THE STATE

1 Defendant, didn't invite him in. He said he had a
2 struggle and he was injured. Thankfully for
3 Mr. Whetsell he was not injured significantly. But you
4 will have the pictures to the scratches to his side and
5 you will see the red marks to his face -- or on his
6 neck.

7 You heard from Ms. Laurel, another Defendant,
8 didn't invite him in. She took his pants off in the
9 struggle that she had with him. The deputy told you
10 that the Defendant didn't have on pants and that the
11 screwdriver that was found in his possession is
12 commonly used in burglaries. You saw the pictures of
13 the pants found at the scene, found the screwdriver in
14 the pants. Pretty simple testimony.

15 The law, as the Judge will read it to you, and if
16 there is anything that I say differently from what she
17 tells you, please listen to what she says, she is the
18 judge of the law.

19 We have to prove -- we accept that burden. We
20 have to prove that Mr. Clark entered a dwelling, which
21 he admitted to. And that he did so without consent.
22 And here is the big one: With the intent to commit a
23 crime therein. And these are all "ands". And either
24 that he caused physical injury to someone, in this
25 case, Mr. Whetsell, or that it happened in the

CLOSING STATEMENT BY THE STATE

1 nighttime. Those are the elements of burglary in the
2 first degree.

3 And this is the one that we will talk about. The
4 intent to commit a crime therein. I will submit to
5 you, ladies and gentlemen, that when you break into
6 someone's house you have the intent to commit a crime
7 inside the house. You don't break in for no reason.
8 You don't break in to spend the night on someone's
9 couch that you don't know.

10 Intent can be assumed. We don't have to prove
11 exactly what was in Mr. Clark's head, because none of
12 us know that. You can find intent through his acts and
13 through his conduct. You can find that he intended to
14 commit a crime inside the Whetsell's home by the fact
15 that he dragged that chair from around the back and he
16 dragged the trash can around the back. He didn't knock
17 on the door and say, Can I sleep on your couch tonight,
18 I'm having a fight with my dad? He drug it around from
19 the corner, he crawled in through that open window that
20 Laurel left cracked from cleaning her house. He did it
21 quietly enough so that no one woke up when he did it.
22 I submit to you, ladies and gentlemen, you don't do
23 that without the intent to commit a crime.

24 And what Mr. Clark would ask you is that because
25 in this case he was stopped from stealing something,

CLOSING STATEMENT BY THE STATE

1 well then you have to find him not guilty because he
2 was interrupted with whatever intent he had to go
3 inside that house. He was interrupted before he could
4 steal something. That doesn't negate why he intended
5 to go in the house. It doesn't negate that he went in
6 there with the intent. And I will submit to you that
7 his acts and conduct shows that he intended to steal
8 when he went inside that house. Because common sense
9 will tell you, that is why you break into someone's
10 house in the middle of the night.

11 You can infer intent from the circumstances. The
12 circumstances of how he got into their house, quietly,
13 in the dead of night, without waking anybody up, that
14 shows you, those circumstances allow you to infer that
15 he intended to commit a crime. Because that is why he
16 didn't want anyone to hear him.

17 He's also charged with assault and battery in the
18 first degree. That requires an unlawful act, injuring
19 Mr. Whetsell, and that the act occurred during the
20 commission of a robbery, burglary, kidnapping or theft.
21 Mr. Clark has already consented that Mr. Clark did have
22 possession of those burglary tools. That is another
23 thing, he had the tools with him. It is a wrench and a
24 screwdriver, I understand that probably everybody has
25 one at home. He had those two tools in his pocket.

CLOSING STATEMENT BY THE STATE

1 You can look at that screwdriver, it's been altered,
2 and he told you that he used that screwdriver to pry
3 the screen off. And the fact that he had the tools
4 with him allows you to infer intent, intent to go
5 commit a burglary, intent to go in somebody's house.
6 Those are tools commonly used in the commission of a
7 burglary as you heard the deputy testify. Under
8 circumstances -- circumstance -- excuse me -- an intent
9 to use, and he admitted that.

10 The State's burden is beyond a reasonable doubt.
11 It is a high burden and we accept it. That's what it
12 should be. A reasonable doubt is a doubt that causes a
13 reasonable person to hesitate to act. It is a very
14 legal definition because we use the same words to
15 define it that it reads. It is important to remember
16 that. It is not every possible doubt.

17 None of, you jurors were there that night. No one
18 was inside Mr. Clark's head. There are very few things
19 in life that anyone can know with complete certainty;
20 it's just not possible. But what we are asking is if
21 you are firmly convinced that the Defendant is guilty,
22 then you must find him guilty. It is common sense,
23 ladies and gentlemen. It is what is reasonable.

24 Is it reasonable to believe, as Mr. Clark would
25 ask you to believe, that he was fighting with his dad

CLOSING STATEMENT BY THE STATE

1 because his dad wanted money, but he spent money on
2 alcohol and drugs, that he just happened to think, Hey,
3 it is a good idea for me to go in somebody's house for
4 no reason. There is no reason. He remembers that he
5 was intoxicated. He remembers that he used the
6 screwdriver to break off the screen. He remembers
7 fighting with Mr. Whetsell. But when I asked him on
8 the stand, So, you broke into the house for no reason?
9 And he said, No reason. Does that make sense? Is that
10 reasonable to believe?

11 I would submit to you, ladies and gentlemen, that
12 that is not reasonable; that we have proven beyond a
13 reasonable doubt that he broke into the Whetsells' home
14 with the intent to steal something from them. He told
15 you that he was having money problems. I know that he
16 told you that he cashed his check, but he also said he
17 wanted to go out of town but he spent his money on
18 alcohol and drugs and his dad was hounding him for rent
19 money. So, what better way to get extra cash than to
20 break into someone's house, steal something out of the
21 house?

22 Is it reasonable to believe that he went inside
23 that house for no reason, with no intent to commit a
24 crime? He went to all of the trouble of dragging that
25 chair around, dragging that trash can around, climbing

CLOSING STATEMENT BY THE STATE

1 on top of it. I know it's hard to tell in the
2 pictures, but if you put it together, you can see how
3 high that window is. He climbed onto that chair and
4 then onto that trash can and prying that screen off and
5 somehow squeezing through the teeny little window, just
6 'cause he felt like it.

7 I would submit to you, ladies and gentlemen, the
8 only reasonable explanation is that he intended to
9 steal from the home when he entered it. And if you
10 find that the State has proven that then you must find
11 him guilty of burglary in the first degree. If you
12 find him guilty of the burglary, ladies and gentlemen,
13 and then you find that he injured Mr. Whetsell, then
14 he's guilty of assault and battery. And he's admitted
15 his guilt to being in possession of burglary tools. We
16 would ask that you find him guilty under all three.
17 Thank you.

18 THE COURT: Ladies and gentlemen, I remind you
19 that during this trial you and I have had certain
20 duties to perform. As the trial judge it is my
21 responsibility to preside over this trial of this case.
22 And I have the additional duty to rule on the
23 admissibility of the evidence offered during this
24 trial. You are to consider only the evidence before
25 you. If there was any testimony stricken from the

JURY INSTRUCTIONS

1 record you must disregard that testimony. You are to
2 consider only the testimony that has been presented
3 from the witness stand as well as any exhibits that
4 have been made part of the record in this case.

5 I have the additional duty to charge you the law
6 applicable to this case. As the presiding judge I am
7 the sole judge of the law in this case. It is the duty
8 of yours to accept the law and apply the law exactly as
9 I state it to you now. If you have an idea as to what
10 the law is or what the law ought to be and it does not
11 agree with what I am about to tell you you must abandon
12 your own idea because you were sworn to accept the law
13 and apply the law exactly as I state it to you.

14 In every case tried in this court before a jury
15 the jury becomes the sole and exclusive judges of the
16 facts. A trial judge may not make any comment
17 regarding the facts in this case. You are the sole
18 judges of the facts in this case. Do not think from
19 anything that I have said or done throughout this trial
20 or during my charge to you that I have any opinion
21 about the facts in this case. The law does not allow
22 me to have an opinion about the facts in this case.

23 The indictments in this case charge the Defendant,
24 Derrick Clark, with one count of assault and battery in
25 the first degree, one count of unlawful possession of

JURY INSTRUCTIONS

1 burglary tools, and one count of burglary in the first
2 degree.

3 I remind you the fact that the Defendant was
4 arrested, charged and indicted in this case is not
5 evidence in this case and cannot be considered by you
6 as evidence of guilt nor can it convey any presumption
7 or inference of guilt. An indictment is simply a
8 formal written instrument which contains the charges
9 made against the Defendant. It is the formal document
10 by which this case was brought into this court.

11 Just as the indictment in this case is not
12 evidence, any terminology or labels used to refer to
13 the individuals involved in this case cannot be
14 considered as evidence. For example we use the term
15 Defendant and victim are merely formal labels and may
16 not be considered by you as evidence in this case. The
17 indictments in this case allege several different
18 offenses against the Defendant. Once again, the
19 charges are assault and battery in the first degree and
20 unlawful possession of burglary tools and burglary in
21 the first degree. Please note there is no significance
22 in the order in which I have read the indictments.
23 Each indictment charges a separate and distinct
24 offense. You must decide each indictment separately on
25 the evidence and the law applicable to it. I am

JURY INSTRUCTIONS

1 influenced by your decision as to any other indictment.

2 The Defendant may be convicted or acquitted on any
3 or all of the offenses charged. You will be asked to
4 write a separate verdict of guilty or not guilty for
5 each indictment. The Defendant has plead not guilty to
6 each indictment. A person charged with committing a
7 criminal offense in South Carolina is never required to
8 prove himself innocent. I charge you, it is an
9 important rule of the law in South Carolina that the
10 Defendant in a criminal trial, no matter what the
11 seriousness of the charge may be, will always be
12 presumed to be innocent of the crime for which the
13 indictment was issued unless guilt has been proven by
14 evidence showing you, satisfying you of that guilt
15 beyond a reasonable doubt.

16 The presumption of innocence does not end when you
17 begin your deliberations but does accompany the
18 Defendant throughout the trial until you reach a
19 verdict of guilty based upon evidence satisfying you of
20 that guilt beyond a reasonable doubt. The presumption
21 of innocence is not merely a theory, it is not just a
22 legal phrase, it is the substantial right to which
23 every Defendant is entitled unless you the jury are
24 satisfied from the evidence of the Defendant's guilt
25 beyond a reasonable doubt.

JURY INSTRUCTIONS

1 The State has the burden of proving the Defendant
2 guilty beyond a reasonable doubt. Some of you may have
3 served as jurors before in a civil case where you were
4 told that the burden of proof was the greater weight or
5 preponderance of the evidence. In criminal cases the
6 State's proof must be more powerful than that, it must
7 be beyond a reasonable doubt. Proof beyond a
8 reasonable doubt is proof that leaves you firmly
9 convinced of the Defendant's guilt.

10 There are very few things in this world that we do
11 know with absolute certainty, and in criminal cases the
12 law does not require proof that overcomes every
13 possible doubt. If, based upon your consideration of
14 the evidence, you are firmly convinced of the crime
15 charged you must find the Defendant guilty. On the
16 other hand, if you think there is a real possibility
17 that the Defendant is not guilty you must give the
18 benefit of the doubt to the Defendant and find him not
19 guilty.

20 There is two types of evidence that are generally
21 presented during a trial, direct evidence and
22 circumstantial evidence. Direct evidence directly
23 proves the existence of a fact; it does not require
24 deduction. Circumstantial evidence is proof of the
25 chain of facts and circumstances indicating the

JURY INSTRUCTIONS

1 existence of a fact. Crime -- excuse me -- crimes may
2 be proven by the circumstantial evidence. The law
3 makes absolutely no distinction between the weight or
4 value to be given either direct or circumstantial
5 evidence.

6 However, to the extent the State relies on
7 circumstantial evidence, all of the circumstances must
8 be consistent with each other, and when taken together
9 point conclusively to the guilt of the accused beyond a
10 reasonable doubt. If these circumstances merely
11 portray the Defendant's behaviour as suspicious the
12 proof will fail. The State has the burden of proving
13 the Defendant guilty beyond a reasonable doubt. This
14 burden rests with the State regardless of whether the
15 State relies on direct evidence, circumstantial
16 evidence, or some combination of the two.

17 Necessarily you must determine the credibility of
18 the witnesses who have testified in this case.
19 Credibility simply means believability. It becomes
20 your duty as the jury to analyze and to evaluate the
21 evidence and to determine which evidence convinces you
22 of the truth. In determining the believability of the
23 witnesses who have testified in this case you may
24 believe one witness over several witnesses or several
25 witnesses over one witness. You may believe a part of

JURY INSTRUCTIONS

1 the testimony of a witness and reject the remaining
2 part of the testimony of that same witness. You may
3 believe the testimony of a witness in its entirety or
4 reject the testimony of a witness in its entirety.

5 You may consider whether any witness has exhibited
6 to you any interest, bias, prejudice or other motive in
7 this case. You may also consider the experience and
8 manner of a witness while on the witness stand.

9 You have heard evidence that the Defendant was
10 convicted of a crime other than the one for which the
11 Defendant is now on trial. This evidence may be
12 considered by you, if you conclude that it's true, only
13 in deciding whether the Defendant's testimony is
14 believable and for no other purpose. You must not
15 consider the Defendant's prior record as any evidence
16 of the Defendant's guilt of the charge we are trying
17 today.

18 The Defendant has presented evidence of his good
19 reputation and character to show that it would be
20 inconsistent with the Defendant committing the crime.
21 The weight that you give that testimony, like all other
22 testimony in this case, is for you to decide in your
23 good judgement. You may consider testimony of the
24 Defendant's good character along with all other
25 evidence in deciding whether or not the Defendant

JURY INSTRUCTIONS

1 committed the crime.

2 In order to establish criminal liability, criminal
3 intent is required. For example, the mental state
4 required to be proven by the State for a particular
5 crime might be purpose, intent, knowledge, recklessness
6 or criminal negligence. Criminal intent must be proven
7 by the State beyond a reasonable doubt. Criminal
8 intent is always a matter that must be determined by
9 the jury from the circumstances surrounding the
10 situation.

11 There is no way to prove intent to a mathematical
12 certainty because there is no way to tell with exact
13 certainty what the person had in mind. The law says
14 that criminal intent may be inferred from the
15 circumstances shown to have existed. This is how you
16 make a determination of whether or not the element
17 requiring intent was present. It is not necessary to
18 establish intent by direct and positive evidence, but
19 intent may be established by inference in the same way
20 as any other fact by taking into consideration the acts
21 of the parties and all of the facts and circumstances
22 of this case.

23 Criminal intent is mental State, a conscious
24 wrongdoing. It is up to you to determine what the
25 Defendant intended to do based upon the circumstances

JURY INSTRUCTIONS

1 shown to have existed. The Defendant is charged with
2 first degree burglary. The State must first prove
3 beyond a reasonable doubt that the Defendant entered a
4 dwelling without consent. A dwelling is a building or
5 a portion of a building in which a person ordinarily
6 sleeps. A building constructed as a dwelling but has
7 never been occupied cannot be considered a dwelling for
8 purposes of burglary. But a building is a dwelling
9 even if the residents are temporarily absent from the
10 building.

11 In order to prove that the Defendant entered the
12 dwelling, the State does not have to show that the
13 Defendant's entire body entered the dwelling. The
14 smallest entry is sufficient. It may be any part of
15 the body such as a hand or foot or even an instrument
16 such as a hook or other instrument. In addition, the
17 State does not have to prove that force was used to
18 gain entry. If a person enters a building by using
19 deception or trick of misrepresentation to get
20 permission to enter, this is an entry without consent.

21 Next the State must prove beyond a reasonable
22 doubt that the Defendant intended to commit a crime,
23 either a felony or a misdemeanor at the time of entry.
24 A mere entry into a dwelling without consent is not
25 burglary. If intent to commit a crime is formed after

JURY INSTRUCTIONS

1 the entry it is not burglary. On the other hand, if
2 the Defendant intended to commit a crime at the time of
3 entry it is burglary even if the intent was abandoned
4 after the entry. It does not matter that the intended
5 crime was not completed. Intent may be shown by act or
6 conduct of the Defendant and other circumstances from
7 which you may naturally and pretty simply infer intent.

8 Finally the statements prove beyond a reasonable
9 doubt that when entering, while in the dwelling, or
10 when fleeing the Defendant or an accomplice caused
11 physical injury to anyone not participating in the
12 crime or the Defendant entered or remained in the
13 dwelling in the nighttime. Nighttime is the period
14 between sunset and sunrise during which there is not
15 enough daylight to recognize a person's face except by
16 artificial light or moon light.

17 A person commits the offense of assault and
18 battery in the first degree if the person unlawfully
19 injures another person and the act occurred during the
20 commission of a robbery, burglary, kidnapping or theft.

21 A person may also commit the offense of assault and
22 battery in the first degree if the person unlawfully
23 offers or attempts to injure another person with the
24 present ability to do so and the act either is
25 accomplished by means likely to produce death or great

JURY INSTRUCTIONS

1 bodily injury, or occurs during the commission of
2 robbery, burglary, kidnapping, or theft. Great bodily
3 injury means bodily injury which causes a substantial
4 risk of death or which causes serious permanent
5 disfigurement or protractive loss or impairment of a
6 section of a bodily member or organ.

7 If you do not find the Defendant guilty of the
8 charge of burglary you may not find him guilty of
9 assault and battery in the first degree. In this
10 instance you may consider whether the Defendant
11 committed assault and battery in the third degree. A
12 person commits the offense of assault and battery in
13 the third degree if the person unlawfully injures
14 another person or offers or attempts to injure another
15 person with the present ability to do so.

16 The Defendant is also charged with unlawful
17 possession of burglary tools. In order to find the
18 Defendant guilty of unlawful possession of burglary
19 tools the State must prove beyond a reasonable doubt
20 that the Defendant had in his possession any machine,
21 tool, fault key, pit, lock, bit, nippers or other
22 implement or thing adapted, designed commonly used for
23 the commission of burglary, larceny, safe cracking or
24 other crime.

25 Actual possession means that the item was in the

JURY INSTRUCTIONS

1 actual physical custody of the Defendant.

2 Constructive possession means that the Defendant had
3 dominion and control or the right to exercise dominion
4 and control over either the item or the property in
5 which they were found. Mere presence at the scene
6 where the items were found is not enough to prove
7 possession. Actual knowledge of the presence of the
8 items is strong evidence that the Defendant's intent to
9 control its disposition or use.

10 The State must also prove beyond a reasonable
11 doubt that the Defendant had an intent to use, employ
12 or allow the same to be used or employed in the
13 commission or a crime or knew that the same was
14 intended to be so used. It is not necessary that
15 articles in one's possession be originally designed for
16 such a purpose, it is only necessary that they be
17 suitable for breaking and entering.

18 Insanity caused by the use of drugs or alcohol may
19 be a defense if the insanity is permanent and destroys
20 the Defendant's ability to know right from wrong.
21 However, when voluntary intoxication has not produced
22 permanent insanity it is not a defense to a crime. A
23 person who voluntarily becomes intoxicated is just as
24 responsible for the acts committed while intoxicated as
25 when the person is not intoxicated.

JURY INSTRUCTIONS

1 Ladies and gentlemen, I am going to go over the
2 verdict forms with you. Madam foreperson, it is your
3 responsibility to complete the verdict forms. The
4 verdict forms, the decision, the verdict must be
5 unanimous, meaning all 12 of you must agree. There is
6 no significance in the order in which I read the
7 verdict forms. Simply something has to go first,
8 something has to appear on the paper.

9 "In the Court of General Sessions, 9th Judicial
10 Circuit, Indictment 2013-GS-0800035, State of South
11 Carolina versus Derrick Ladon Clark. We the jury find
12 the Defendant not guilty of assault and battery in the
13 first degree or we the jury find the Defendant guilty
14 of assault and battery in the first degree, or we the
15 jury find the Defendant guilty of assault and battery
16 in the third degree.

17 After you have reached a unanimous decision, Madam
18 Foreperson, you will sign the verdict form.

19 Indictment 2013-GS-08000036, we the jury find the
20 Defendant not guilty of the unlawful possession of
21 burglary tools or we the jury find the Defendant guilty
22 of unlawful possession of burglary tools. Once again,
23 must be unanimous all 12 of you must agree on the
24 verdict. Once you have reached a unanimous verdict you
25 will sign the verdict form.

JURY INSTRUCTIONS

1 Indictment 2013-GS-0800037, we the jury find the
2 Defendant not guilty of burglary in the first degree or
3 we the jury find the Defendant guilty of burglary in
4 the first degree. Once you have reached a unanimous
5 decision meaning all 12 of you must agree you will sign
6 the verdict form. Please remember, each indictment
7 must be considered independently of each other.

8 Ladies and gentlemen, this is the last time that I
9 will say this to you: Do not begin your deliberations,
10 do not discuss this case amongst yourselves. We are
11 gathering the verdict form as well as the evidence to
12 give back to you. The bailiff will alert you when you
13 may begin your deliberation. Is there any member of my
14 original 12, the first 12, not my two alternates, for
15 whatever reason cannot continue with deliberations? If
16 you cannot continue with your deliberation at this
17 time, please let me know. All 12 have indicated that
18 they are able to continue with their deliberation. The
19 two alternates, I will keep you separate.

20 Again, you may not discuss this case with each
21 other. Do not -- please do follow all of my
22 admonitions. Once the original 12 have begun their
23 deliberations I will release you. Thank you. Please
24 rise for the jury.

25 (The jury exits the courtroom at 3:02 p.m.)

JURY VERDICT

1 THE COURT: Thank you. Be seated. Any objections
2 or corrections to the charges read?

3 MS. TAYLOR: No, Your Honor.

4 MR. SCHWACKE: None, Your Honor.

5 THE COURT: All right. Thank you. Everything can
6 go back. State's 1 through 12. Correct?

7 (Pause.)

8 THE COURT: Anything before we await the verdict?

9 MS. TAYLOR: Nothing from the State.

10 MR. SCHWACKE: Nothing from the Defense.

11 THE COURT: Okay. At ease.

12 (The jury returns with a verdict at 3:45 p.m.)

13 THE COURT: All right. Anything before we bring
14 in the jury from the State?

15 MS. TAYLOR: No, Your Honor.

16 THE COURT: From the Defense?

17 MR. SCHWACKE: No, Your Honor.

18 THE COURT: All right. Thank you.

19 (Pause.)

20 THE COURT: Thank you. Please be seated. Madam
21 Foreperson, I understand that the jury has reached a
22 verdict. You can hand the verdict forms to the
23 bailiff.

24 (Pause.)

25 THE COURT: Please rise.

JURY VERDICT

1 THE CLERK: In the case, the State of South
2 Carolina, County of Berkeley, versus Derrick Ladon
3 Clark, Case No. 2013-GS-0800035, we the jury find the
4 Defendant guilty of assault and battery in the first
5 degree.

6 Case number 2013-GS-08-00036, we find -- we the
7 jury find the Defendant guilty of unlawful possession
8 of burglary tools.

9 Case number 2013-GS-0800037, we the jury find the
10 Defendant guilty of burglary in the first degree. They
11 are all signed with -- by the foreperson,
12 Ms. Blatchford.

13 Jury, if this is your verdict would you please
14 signify by raising your right-hand.

15 (Jury complies.)

16 THE CLERK: Judge, the verdict stands.

17 THE COURT: All right. Thank you.

18 MR. SCHWACKE: Your Honor, we would ask that they
19 be polled.

20 THE COURT: Using the jury numbers, please poll
21 the jury.

22 THE CLERK: Juror 20, is this your verdict?

23 JUROR: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR: Yes.

JURY VERDICT

1 THE CLERK: Juror 107, is this your verdict?
2 JUROR: Yes.
3 THE CLERK: Is this still your verdict?
4 JUROR: Yes.
5 THE CLERK: Juror 82, is this your verdict?
6 JUROR: Yes.
7 THE CLERK: Is this still your verdict?
8 JUROR: Yes.
9 THE CLERK: Juror 36, is this your verdict?
10 JUROR: Yes.
11 THE CLERK: Is this still your verdict?
12 JUROR: Yes.
13 THE CLERK: Juror 127, is this your verdict?
14 JUROR: Yes.
15 THE CLERK: Is this still your verdict?
16 JUROR: Yes.
17 THE CLERK: Juror 27, is this your verdict?
18 JUROR: Yes.
19 THE CLERK: Is this still your verdict?
20 JUROR: Yes.
21 THE CLERK: Juror 14, is this your verdict?
22 JUROR: Yes.
23 THE CLERK: Is this still your verdict?
24 JUROR: Yes.
25 THE CLERK: Juror 32, is this your verdict?

JURY VERDICT

1 JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 JUROR: Yes.

4 THE CLERK: Juror 152, is this your verdict?

5 JUROR: Yes.

6 THE CLERK: Is this still your verdict?

7 JUROR: Yes.

8 THE CLERK: Juror 135, is this your verdict?

9 JUROR: Yes.

10 THE CLERK: Is this still your verdict?

11 JUROR: Yes.

12 THE CLERK: Juror 81, is this your verdict?

13 JUROR: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR: Yes.

16 THE CLERK: Juror 29, is this your verdict?

17 JUROR: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR: Yes.

20 THE CLERK: Judge, the jury has been polled, the
21 verdict stands.

22 THE COURT: Okay. Anything further from the
23 Defense?

24 MR. SCHWACKE: No.

25 THE COURT: Anything further from the State?

JURY VERDICT

1 MS. TAYLOR: Nothing from the State, Your Honor.

2 THE COURT: Okay. You may be seated. Do you have
3 a sentencing sheet?

4 MS. TAYLOR: I do.

5 THE COURT: Are you prepared to go forward on the
6 sentencing at this time?

7 MR. SCHWACKE: Yes, Your Honor.

8 THE COURT: Is the State ready?

9 MS. TAYLOR: Yes.

10 THE COURT: Members of the jury, I'm going forward
11 on sentencing. You are not required to stay. Is there
12 anyone that wants to stay for sentencing, please raise
13 your hand. Is there anyone that wants to stay, or
14 doesn't wish to stay?

15 JUROR: Only because I have to go to work. Is
16 that okay?

17 THE COURT: I will be quick. It will take about
18 20 minutes. Thank you.

19 MS. TAYLOR: Your Honor, I have also prepared the
20 information sheet.

21 THE COURT: Thank you.

22 MS. TAYLOR: Your Honor, Mr. Whetsell asked me to
23 convey to the Court, although he was not physically
24 injured that their security in their home has been
25 forever taken from him.

JURY VERDICT

1 THE COURT: Prior record?

2 MS. TAYLOR: 2011, breach of trust. 2010,
3 unlawful carrying of a weapon. 2011, malicious damage
4 to property. And 2011, tampering with vehicles.

5 THE COURT: And I understand that is the State's
6 position as to sentencing?

7 MS. TAYLOR: Your Honor, obviously breaking into
8 someone's home in the middle of the night is one of the
9 most serious things that you can do. We think that he
10 deserves substantial time. We leave it to the
11 discretion of the Court.

12 THE COURT: Mr. Schwacke, I'm happy to hear from
13 you or anyone else as far as sentencing. I have heard
14 today from two family members.

15 MR. SCHWACKE: I believe that they wish to address
16 you in more detail.

17 THE COURT: All right.

18 MR. SCHWACKE: Your Honor, just with regard to the
19 prior record, the malicious entry to property, that was
20 a magistrate level offense, less than \$2000. There was
21 tampering with a vehicle, which I believe is also a
22 30-day magistrate level offense. The breach of trust
23 was also less than \$2,000 at a magistrate level
24 offense. So it's his only prior general sessions
25 involvement, unlawful carrying of a weapon, Dorchester

STATEMENTS IN SUPPORT OF DEFENDANT

1 County, 2010.

2 As he testified, Your Honor, he graduated from
3 lake Marion High School in 2007. He does have his high
4 school diploma. He has one daughter. He was last
5 working for Swamp Fox Construction. He does have 440
6 days credit on this offense.

7 Your Honor, Mr. Clark was an interesting client to
8 have represented. We did not always have -- there was
9 antagonism with regard to the involvement in the case
10 but it was always worked out and resolved between us.
11 Over the course of the time that I have known him I
12 have found him to be very religious. He was always
13 with his bible, reading it. And he would write me on a
14 regular basis, he would cite scripture verses.

15 So, Your Honor, there's something to indicate that
16 this incident was not par for the course for him, that
17 very much was a result of whatever it was that he
18 consumed or was -- it was laced with something. Not
19 only did the officer indicate in the report at the jail
20 that he was intoxicated, but while he was at the jail
21 he remained in that lock-down chair for a period of
22 time because he was so out of it the night of this
23 incident.

24 Your Honor, I believe that Derrick is going to
25 wish to address Your Honor and also his mother and his

STATEMENTS IN SUPPORT OF DEFENDANT

1 aunt would like to address the Court.

2 THE COURT: I'll hear from one -- I'll hear from
3 Mr. Clark and then either the mother or aunt since I
4 have heard from both of them on the stand. Mr. Clark,
5 I am happy to hear from you.

6 THE WITNESS: Yes, Your Honor, I would like to
7 apologize to the Court, apologize to everyone here for
8 my previous actions. I would say that I have grown up
9 a little bit, have changed. I have realized where I
10 made my mistakes. And again, I just want to ask my
11 victims for a little mercy and also the Court.

12 THE COURT: Thank you, sir.

13 MS. GOVAN: Your Honor.

14 THE COURT: Yes, ma'am, if you will -- again, I
15 know that you testified before, but if you will state
16 your full name for the record, spelling your last name.

17 MS. GOVAN: Delorise Govan, G-O-V-A-N.

18 THE COURT: Yes, ma'am?

19 MS. GOVAN: I basically just want you to know, in
20 Derrick's defense, his character. I mean, I just can't
21 stress it enough. It's not like he just started being
22 very religious like a lot of people do when they get --
23 no. He has been since birth. His mom kept him in the
24 church. It is all that he's ever known. Choir boy is
25 what he's called all of his life.

STATEMENTS IN SUPPORT OF DEFENDANT

1 As far as him taking the wrong path and doing
2 things, you know, we all have children, we don't know
3 what they are doing when they are not with us. I'm
4 speaking in his behalf and he is never -- it would be
5 seven kids in the house and if something happened we
6 went to Derrick to tell the truth. It doesn't matter,
7 telling on himself, to explain like he did, he was
8 using drugs, that is Derrick. I want to keep pushing
9 that to Your Honor have leniency on him because I know,
10 like I said, he had to be on something. Even the
11 people that know him, you know, the neighborhood people
12 that know him said that he is a little softy, how did
13 he get in trouble.

14 Has not been that type of person. Break into a
15 home. It has not been Derrick. It is not. I just
16 want to say to the jury, to the courts, not everybody
17 has intent even though it looks like that, that way,
18 and then people do find the wrong way and do go around
19 people that place things and do things out of
20 character. I know it is -- this is not Derrick.

21 His mom and dad are back here. They cannot bear
22 it. This is not a kid on the street, they kept him in
23 their home, going to church. It is hard for them. I'm
24 getting up to speak on his behalf. Please have
25 leniency on him. That is why he said him -- the

STATEMENTS IN SUPPORT OF DEFENDANT

1 individuals felt like they was going to kill him. He
2 felt like he was the victim out of his mind.

3 I thank you all very much. I ask that you all
4 have lenience on him. He is just not a criminal. He
5 is not.

6 THE COURT: Thank you, Ms. Govan.

7 MR. SCHWACKE: Just in conclusion, too, I ask the
8 Court to show as much leniency as possible. As you are
9 aware, burglary in the first degree is an 85 percent,
10 no parole offense that requires a mandatory minimum of
11 15 years. We ask you to show as much mercy as
12 possible.

13 THE COURT: Mr. Schwacke, you explained to your
14 client the classification?

15 MR. SCHWACKE: In very great detail, Your Honor,
16 yes, ma'am.

17 THE COURT: And Mr. Schwacke, you have also
18 explained to your client that he has the right to
19 appeal this verdict and sentence that I'm about to
20 impose or he or you or another attorney must do so
21 within 10 days.

22 MR. SCHWACKE: He's aware of that, Your Honor.

23 THE COURT: Ms. White, anything else?

24 MS. WHITE: Nothing further.

25 MR. SCHWACKE: Your Honor, just one matter, which

SENTENCING BY THE COURT

1 I think that we can, just to make sure that my motions
2 were marked as renewed after the --

3 THE COURT: I will, just for appellate purposes
4 and for the record, all of your previous motions were
5 renewed. I have heard nothing that would indicate to
6 the Court that I need to change my ruling.

7 MR. SCHWACKE: Thank you, Your Honor.

8 THE COURT: Anything further from the State before
9 I impose sentencing?

10 MS. TAYLOR: Nothing, Your Honor.

11 THE COURT: It is the order of the Court on
12 indictment -- Ms. Taylor, is the unlawful possession of
13 burglary tools, is there another term that is -- that
14 you had indicted for on 36, also known as possession of
15 master keys?

16 MS. TAYLOR: That is correct, that is the statute.

17 THE COURT: I wanted to make sure that I was
18 sentencing correctly as to what he wants.

19 MS. TAYLOR: Yes, Your Honor.

20 THE COURT: Assault and battery in the first
21 degree carries up to 10 years, possession of burglary
22 tools up to 5 years, and burglary three carries 15 to
23 life.

24 MR. SCHWACKE: Yes, ma'am.

25 THE COURT: Okay. Mr. Clark, I have listened to

SENTENCING BY THE COURT

1 the facts of this case today. I have taken into
2 account your account of events that evening as well as
3 your prior record. And I have also listened to the
4 facts in crafting my sentence.

5 It is the order of the Court on Indictment
6 2013-GS-0800035 that you be committed to County --
7 excuse me, State Department of Corrections for a term
8 of 10 years. I'll give you credit for the 440 days.

9 So ordered by the Court on Indictment
10 2013-GS-0800036, that you be committed to the State
11 Department of Corrections for a term of 5 years, giving
12 you credit for the time that you have served.

13 So ordered by the Court on Indictment
14 2013GS0800037, that you be committed to the State
15 Department of Corrections for a term of 17 years.

16 Those three indictments are to run concurrent. I
17 will give you credit for the time that you have served.
18 Good luck, sir.

19 (Pause.)

20 THE COURT: Ladies and gentlemen, if you will go
21 to your jury deliberation room I'll be in there in just
22 a few moments.

23 (Jury exits the courtroom.)

24 THE COURT: Thank you. Be seated. Anything
25 further from the State?

SENTENCING BY THE COURT

1 MS. TAYLOR: No, Your Honor.

2 THE COURT: Anything further?

3 MR. SCHWACKE: No, Your Honor. Thank you.

4 THE COURT: Thank you. And we will start back in
5 the morning at what time?

6 MS. TAYLOR: 9:30.

7 THE COURT: Does that work for you? You are first
8 up.

9 MR. SCHWACKE: I'll let Ms. Williams know 9:30.

10 THE COURT: 9:30, tell Ms. Williams on the plea.

11 Thank you.

12 Good luck to you Mr. Clark.

13 (Whereupon, the trial concluded.)

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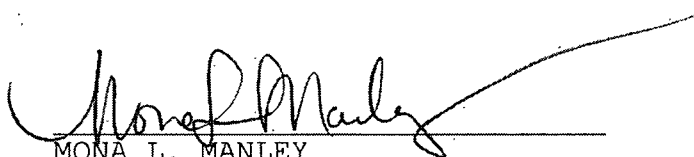
CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF BERKELEY:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 13th day of March, 2014.

A handwritten signature in cursive script, reading "Mona L. Manley", is written over a horizontal line.

MONA L. MANLEY
Official Court Reporter, Ninth Circuit
(850) 893-6662
mmanley@sccourts.org

COR2012-10-01912

WITNESSES

Berkeley County Sheriff's Office

SA M Tiller

AGENCY CASE NUMBER

201210046867

ARREST WARRANT NUMBER

2012A0810200190

DATE OF ARREST

October 20, 2012

ACTION OF GRAND JURY

True Bill

HPKondrick
person of Grand Jury

Date: *1-11-13*

VERDICT

guilty

True Bill

Norahy Blatford *12-4-13*

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS0800035

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

January Term 2013

THE STATE

Vs

DERRICK LADON CLARK

[REDACTED]
B/M

Indictment for

Assault and Battery, First Degree

13 JAN 16 PM 4:42
MARY T. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

JFH

JFH

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on January 16, 2013 the Grand Jurors of Berkeley County present upon their oath:

Assault and Battery, First Degree

That Derrick Ladon Clark did in Berkeley County, South Carolina, on or about October 20, 2012, commit an assault and battery in the first degree constituting an unlawful act injuring the victim, Marion Whetsell, and the act occurred during the commission of a robbery, burglary, kidnapping or theft; all in violation of Section 16-3-600(C)(1) of the South Carolina Code of Laws (1976) as amended.

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


ASHLEY B. CORNWELL
ASSISTANT SOLICITOR

172
STATE OF SOUTH CAROLINACOUNTY OF Berkeley
STATE VS.
Derrick Ladon Clark

AKA:

Race: BLACK Sex: M Age: 24

DOB: SS#:

Address:

City, State, Zip: Summerville, SC 29483

DL#: SID#: SC01929210

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Assault / Assault & Battery 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0800035

A/W#: 2012A0810200190

Date of Offense: 10/20/2012

S.C. Code § : 16-03-0600(C)(1)

CDR Code #: 3412

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *C. Taylor*
Taylor, Colleen E.73731
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-08-36 + 2013-GS-08-37
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 440 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

173

COR2012-10-01912

WITNESSES

Berkeley County Sheriff's Office

Sgt M Tiller

AGENCY CASE NUMBER

201210046867

ARREST WARRANT NUMBER

2012A0810200191

DATE OF ARREST

October 20, 2012

ACTION OF GRAND JURY

True Bill

J. J. McDonuck
Person of Grand Jury

Date: *1-16-13*

VERDICT

guilty

True Bill

Norahy Blatnyora 12-4-13

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS0800036

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

January Term 2013

THE STATE

Vs

DERRICK LADON CLARK

[REDACTED]
B/M

Indictment for

Unlawful Possession of Burglary Tools

13 JAN 16 PM 4:42
MARY H. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

JFH

JFH

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

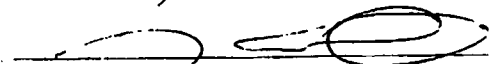
INDICTMENT

At a Court of General Sessions, convened on January 16, 2013 the Grand Jurors of Berkeley County present upon their oath:

Unlawful Possession of Burglary Tools

That Derrick Ladon Clark did in Berkeley County, South Carolina, on or about October 20, 2012, have in his possession a 5/8th wrench and green handled sharpened screw driver, which is commonly used for burglary, larceny or other such crimes, and that he did possess said tools under such circumstances evincing an intent to use them or allow them to be used in the commission of a crime, or knowing that they are intended to be so used, in violation of 16-11-0020 of the South Carolina Code of Laws, (1976) as amended.

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


ASHLEY B CORNWELL
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

175

COUNTY OF Berkeley
STATE VS.Derrick Ladon Clark

AKA:

Race: BLACK Sex: M Age: 25DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Summerville, SC 29483DL#: [REDACTED] SID#: SC01929210*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Possession of Tools of a CrimeINDICTMENT/CASE#: 2013GS0800036A/W#: 2012A0810200191Date of Offense: 10/20/2012S.C. Code §: 16-11-0020CDR Code #: 0717

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-11-0020 of the S.C. Code of Laws, bearing CDR Code # 0124☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Taylor, Colleen E.73731
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-08-35+37
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter: Mona Manley

SCCA/217 (03/2011)

Presiding Judge

Judge Code: Sentence Date: 2/5/13
12/4/13
KWM

COR2012-10-01912

WITNESSES

Berkeley County Sheriff's Office

Sgt M Till

AGENCY CASE NUMBER

201210046867

ARREST WARRANT NUMBER

2012A0810200192

DATE OF ARREST

October 20, 2012

ACTION OF GRAND JURY

True Bill

J. J. Rhondrick
Person of Grand Jury

Date: *1-16-13*

VERDICT

guilty

True Bill

Morany Blatford 12-4-13

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2013GS0800037

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

January Term 2013

THE STATE

Vs

DERRICK LADON CLARK

B/M

Indictment for

Burglary, First Degree

13 JAN 16 PM 4:42
MARY E. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

JFH

JFH

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

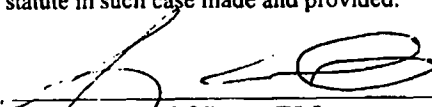
INDICTMENT

At a Court of General Sessions, convened on January 16, 2013 the Grand Jurors of Berkeley County present upon their oath:

Burglary, First Degree

That Derrick Ladon Clark did in Berkeley County, South Carolina, on or about October 20, 2012, during night time hours enter the dwelling of Marion Whetsell, located at [REDACTED] [REDACTED] without consent and with the intent to commit a crime therein, to wit: larceny. That, in addition, the defendant injured a non-participant in the crime; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


ASHLEY B CORNWELL
ASSISTANT SOLICITOR

178
STATE OF SOUTH CAROLINA

COUNTY OF Berkeley
STATE VS.
Derrick Ladon Clark

AKA:
Race: BLACK Sex: M Age: 24

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Summerville, SC 29483

DL#: [REDACTED] SID#: SC01929210

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Burglary, 1st degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS0800037

A/W#: 2012A0810200192

Date of Offense: 10/20/2012

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 73731
Taylor, Colleen E. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$, provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-08-36+35
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 440 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP days/hours Public Service Employment
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
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§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ <u>133.98</u>

Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

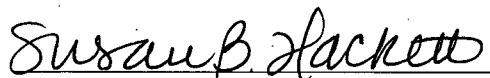
Clerk of Court/Deputy Clerk [Signature]
Court Reporter: Mona Manley
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 2131
Sentence Date: 12/4/13

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 17, 2014



Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT