

**ORIGINAL**

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BERNARD DAGGART FRAZIER,

APPELLANT

APPELLATE CASE NO. 2014-001178

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA  
2 COUNTY OF AIKEN

CIRCUIT COURT  
2014-GS-02-00359

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 BERNARD DAGGART FRAZIER,  
6 Defendant.

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

10  
11 BEFORE:

12 THE HONORABLE DONALD B. HOCKER  
13 AND A JURY

14  
15 APPEARANCES:

16 Counsel on behalf of the State:  
17 Kevin N. Molony, Esq.  
Samuel Brian Grimes, Jr., Esq.

18 Counsel on behalf of the Defendant:  
19 Michael D. Routzong, Esq.

20  
21 Cheri L. Young, RPR  
22 Official Court Reporter  
P O Box 5232  
23 Aiken, SC 29804-5232-1154  
24  
25

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

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

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

6 (Defendant enters courtroom.)

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

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

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

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

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

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

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

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

1 Carolina.

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

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

12 (No response.)

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

20 All right. Next question.

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

24 (No response.)

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

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

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

11           (No response.)

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

20           First, Solicitor?

21           MR. MOLONY: Thank you, Judge.

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

1 THE COURT: All right. For the defense?

2 MR. ROUTZONG: Good afternoon. Michael Routzong.

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

5 THE COURT: Thank you very much, counselors.

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

9 (No response.)

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

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

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

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

22 THE JUROR: No.

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

24 THE JUROR: Uh-huh.

25 THE COURT: Has any member of the jury panel

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

4 (No response.)

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

8 (No response.)

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

14 (No response.)

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

21 If so, please stand.

22 (No response.)

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

1 please stand.

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

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

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

9 THE JUROR: No, sir.

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

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

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

18 THE JUROR: No, sir.

19 THE COURT: Thank you, ma'am.

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

23 Yes, sir, your number and name?

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

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

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

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

6 THE JUROR: No, sir.

7 THE COURT: Thank you, sir.

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

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

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

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

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

24 THE JUROR: No, sir.

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

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

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

5 THE JUROR: Mr. Thurmond.

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

9 THE JUROR: No, sir.

10 THE COURT: Yes, sir?

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

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

17 THE JUROR: No, sir.

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

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

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

24 THE JUROR: No, sir.

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

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

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

11 Is there anyone? Stand please, okay.

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

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

15 THE JUROR: 122, Barbara Morgan.

16 THE COURT: You want off?

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

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

22 THE JUROR: I want to do it.

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

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

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

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

5 THE COURT: Okay. Thank you.

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

8 THE JUROR: 175, Jessica Thompson.

9 THE COURT: Okay. Ms. Thompson.

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

12 THE COURT: Okay. I'm sorry.

13 THE JUROR: Yes.

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

16 THE JUROR: No.

17 THE COURT: Thank you.

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

20 THE COURT: Okay, 69.

21 (Off-the-record discussion.)

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

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

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

3 Yes, sir, your number and name?

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

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

9 THE JUROR: No, sir.

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

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

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

14 THE JUROR: Yes, sir.

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

18 THE JUROR: No.

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

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

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

22 THE JUROR: (Nods head.)

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

1 THE JUROR: No, sir.

2 THE COURT: Thank you, ma'am.

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

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

6 THE COURT: And from the defense?

7 MR. ROUTZONG: No, sir.

8 THE COURT: Okay. Thank you very much.

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

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

17 THE CLERK: How many alternates?

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

20 MR. MOLONY: Yes, sir.

21 THE COURT: Okay.. One alternate.

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

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

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

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

15 MR. MOLONY: Yes, sir.

16 MR. ROUTZONG: Yes, sir.

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

20 Juror 61, Pamela Fischer.

21 (White female comes forward.)

22 THE CLERK: What say you for the State?

23 MR. MOLONY: Please present Ms. Fischer.

24 THE CLERK: What say you the defense?

25 MR. ROUTZONG: Please excuse Ms. Fischer.

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

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

1 One twenty-three, Christine Morgan.  
2 (Black female comes forward.)  
3 THE CLERK: What say you for the State?  
4 MR. MOLONY: Please present Ms. Morgan.  
5 THE CLERK: What say you for the defense?  
6 MR. ROUTZONG: Please seat Ms. Morgan.  
7 THE CLERK: Please have a seat in the jury box.  
8 Number Three, John Henry Allen.  
9 (White male comes forward.)  
10 THE CLERK: What say you for the State?  
11 MR. MOLONY: Please present Mr. Allen.  
12 THE CLERK: What say you for the defense?  
13 MR. ROUTZONG: Please excuse Mr. Allen.  
14 THE CLERK: Please return to your seat.  
15 Twenty-five, Larry Causey.  
16 (White male comes forward.)  
17 THE CLERK: What say you for the State?  
18 MR. MOLONY: Please present Mr. Causey.  
19 THE CLERK: What say you for the defense?  
20 MR. ROUTZONG: Please excuse Mr. Causey.  
21 THE CLERK: Please return to your seat.  
22 That's no strikes for the State, five strikes for  
23 the defense.  
24 One thirty-four, Cecilia Petty.  
25 (White female comes forward.)

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

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

1 case.

2 THE CLERK: Please return to your seat.

3 Thirty-three, Vernelle Crawford:

4 (Black female comes forward.)

5 THE CLERK: What say you for the State?

6 MR. MOLONY: Please present Ms. Crawford.

7 THE CLERK: What say you for the defense?

8 MR. ROUTZONG: Please excuse Ms. Crawford.

9 THE CLERK: Please return to your seat.

10 One twenty-one, Mollie Nixon.

11 (White female comes forward.)

12 THE CLERK: What say you for the State?

13 MR. MOLONY: Please present Ms. Nixon.

14 THE CLERK: What say you for the defense?

15 MR. ROUTZONG: Please seat Ms. Nixon.

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

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

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

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

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

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

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

9 (Off-the-record discussion.)

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

17 Okay?

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

20 THE COURT: Is the jury panel back in?

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

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

1 faces. That's a good sign. That's a good sign. Okay.  
2 All right.

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

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

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

15 THE CLERK: One-twenty, Carrie Mitchell.

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

17 (White female comes forward.)

18 THE CLERK: What say you for the State?

19 MR. MOLONY: Please present Ms. Mitchell.

20 THE CLERK: What say you for the defense?

21 MR. ROUTZONG: Please excuse Ms. Mitchell.

22 THE CLERK: Please return to your seat.

23 Number four, Stephanie Aubuchon.

24 (White female comes forward.)

25 THE CLERK: What say you for the State?

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

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

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

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

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

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

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

12 THE COURT: And from the defense?

13 MR. ROUTZONG: No, sir.

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

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

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

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

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

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

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

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

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

1 being fair and impartial.

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

5 So as a result of that I excused her.

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

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

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

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

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

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

1 Clerk, would you swear Mr. Frazier in?

2 (Defendant placed under oath.)

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

6 THE DEFENDANT: Yes, sir.

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

11 THE DEFENDANT: Yes, sir.

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

13 THE DEFENDANT: Well --

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

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

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

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

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

9           THE DEFENDANT: Yes, sir.

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

13          THE DEFENDANT: Yes, sir.

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

16          THE DEFENDANT: Yes, sir.

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

20          THE DEFENDANT: Yes, sir.

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

24          THE DEFENDANT: Yes, sir.

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

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

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

7 THE DEFENDANT: Yes, sir.

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

9 THE DEFENDANT: Yes, sir.

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

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

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

25 THE COURT: Okay.

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

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

9 MR. ROUTZONG: Yes, sir.

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

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

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

18 THE DEFENDANT: Yeah. Uh-huh.

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

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

25 THE COURT: All right. So, other public

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

4 THE DEFENDANT: Yes, sir.

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

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

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

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

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

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

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

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. All right.

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

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

3 THE DEFENDANT: No, sir.

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

7 THE DEFENDANT: No, sir.

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

14 THE DEFENDANT: Yes, sir.

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

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

21 THE COURT: All right. Is that correct?

22 THE DEFENDANT: Yes, sir.

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

1 lawyer?

2 THE DEFENDANT: No, sir.

3 THE COURT: Is there anything else?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay.

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

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

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

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

24 THE DEFENDANT: No, sir.

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

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

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

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

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

18 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 THE DEFENDANT: They're not doing it.

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

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

15 MR. ROUTZONG: No, sir.

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

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

20 MR. MOLONY: Yes, sir.

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

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

1 we can start.

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

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

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

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

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

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

1 have a matter that we need to deal with.

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

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

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

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

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

11 MR. GRIMES: Yes, Your Honor.

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

1 location is so that the police can respond.

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

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

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

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

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

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

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

16 MR. GRIMES: Yes, sir.

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

21 MR. GRIMES: Yes, sir.

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

24 MR. ROUTZONG: Good morning, Your Honor.

25 THE COURT: Good morning.

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

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

10 THE COURT: What's that cite?

11 MR. ROUTZONG: 348 SC 16.

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

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

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

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

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

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

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

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

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

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

19 THE DEFENDANT: Yes, sir.

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

22 THE DEFENDANT: (Nods head.)

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

25 THE DEFENDANT: Yes, sir.

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

2 THE DEFENDANT: Yes, sir.

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

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

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

24 THE DEFENDANT: Yes, sir.

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

1 stated?

2 THE DEFENDANT: No, sir.

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

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

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

9 THE COURT: Okay.

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

12 THE COURT: Okay. Great. Thank you.

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

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

17 MR. GRIMES: Yes, sir.

18 THE COURT: The portion that is in dispute.

19 MR. MOLONY: Yes, sir.

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

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

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

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

6 THE COURT: Solicitor, anything further on this?

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

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

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

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

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

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

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

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

11 THE COURT: Okay.

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

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

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

4 THE COURT: Thank you very much.

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

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

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

24 Anything further before we bring the jury out?

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

1 THE COURT: Okay. From the defense?

2 MR. ROUTZONG: No, sir.

3 THE COURT: Okay. All right.

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

7 (Off-the-record discussion.)

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

12 MR. ROUTZONG: Yes, sir.

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

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

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

24 MR. ROUTZONG: Thank you, Your Honor.

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

1 jury out?

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

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

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

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

8 THE JURY (COLLECTIVELY): Good morning.

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

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

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

21 (Jury impaneled.)

22 THE CLERK: Have a seat.

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

25 Now let me emphasize with you that a forelady of

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

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

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

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

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

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

1 maintain that seat at all times.

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

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

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

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

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

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

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

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

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

1 contribution today to our justice system.

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

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

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

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

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

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

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

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

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

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

1 about what the law is or should be.

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

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

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

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

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

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

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

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

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

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

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

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

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

7 THE COURT: And from the defense?

8 MR. ROUTZONG: No, sir.

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

16 First from the State.

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

19 THE COURT: Yes, sir.

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

22 THE JURY (COLLECTIVELY): Good morning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 I thank for your time.

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

1 MR. ROUTZONG: If it please the Court.

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

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

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

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

1 collectively make a decision about what happened.

2 Remember, you took an oath to do that.

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

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

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

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

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

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

## JACQUELINE KEY - DIRECT BY MOLONY

1 calls Jacqueline Key.

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

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

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

7 THE COURT: Your witness, Solicitor.

8 MR. MOLONY: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. MOLONY:

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

12 A. No, sir.

13 Q. Is that what you go by?

14 A. I don't mind.

15 Q. Jackie, where do you live currently?

16 A. [REDACTED]

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

18 A. Almost two years.

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

20 A. I rent.

21 Q. Who is your landlord?

22 A. Rick Brown.

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

JACQUELINE KEY - DIRECT BY MOLONY

1 A. Yes.

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

3 THE COURT: Certainly.

4 BY MR. MOLONY:

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

9 A. (Complies.) Yes, sir.

10 Q. What is this?

11 A. A lease.

12 Q. And who is this lease between?

13 A. Me and Ricky Brown.

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

16 A. Yes, sir.

17 Q. Thank you.

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

20 THE COURT: Okay. What says the defense?

21 MR. ROUTZONG: No objection, Your Honor.

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

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

## JACQUELINE KEY - DIRECT BY MOLONY

1 BY MR. MOLONY:

2 Q. Now, Jackie, do you know the Defendant in this  
3 case?

4 A. Yes.

5 Q. How long have you known him?

6 A. Around 18 years.

7 Q. I'm going to take you back to December 16th of  
8 2013. Where were you living during that time?

9 A. [REDACTED]

10 Q. The same place you're living now?

11 A. Yes.

12 Q. And what was your relationship like with the  
13 Defendant at that time?

14 A. At that time we wasn't together.

15 Q. Did the Defendant ever live with you at [REDACTED]  
16 [REDACTED]?

17 A. No.

18 Q. Did he have a key to the residence?

19 A. No.

20 Q. Did he have a toothbrush or clothes in the house?

21 A. No.

22 Q. When was the last time, if you remember, the  
23 Defendant being at that residence prior to December 16th,  
24 2013?

25 A. It was about a month, around a month.

JACQUELINE KEY - DIRECT BY MOLONY

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

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

6 Q. Who is Lashanda Washington?

7 A. She's a friend.

8 Q. And what about Stacey Gantt?

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

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

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

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

14 A. Inside. The living room.

15 Q. Was it dark outside?

16 A. Yes, sir.

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

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

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

JACQUELINE KEY - DIRECT BY MOLONY

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

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

9 Q. Okay.

10 Your Honor, may I approach?

11 THE COURT: Certainly.

12 BY MR. MOLONY:

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

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

19 Q. And what are these pictures of?

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

21 Q. The residence at [REDACTED]

22 A. Yes, sir.

23 Q. Is this residence in Aiken County?

24 A. Yes, sir.

25 Q. And are these fair and accurate representations of

JACQUELINE KEY - DIRECT BY MOLONY

1 your residence there at [REDACTED]

2 A. Yes, sir.

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

5 THE COURT: What says the defense?

6 MR. ROUTZONG: No objection, Your Honor.

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

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

12 THE COURT: Sure.

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

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

19 BY MR. MOLONY:

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

23 A. Yes, sir.

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

## JACQUELINE KEY - DIRECT BY MOLONY

1 A. The kitchen and the living room.

2 Q. Now is this the living room? Is this how the  
3 living room was set up on December 16th of 2013?

4 A. Yes, sir. The couch was here and one chair there,  
5 and the fireplace was on that side.

6 Q. Okay. And y'all were in there listening to  
7 Christmas music. If you would, just point to the  
8 picture. Where was Stacey Gantt sitting during that time?

9 A. Here.

10 Q. Where the fireplace is in that photo?

11 A. Yes, sir.

12 Q. And what about Lashanda, where was she?

13 A. She was sitting here.

14 Q. And yourself?

15 A. I was sitting on the sofa with Stacey.

16 Q. Okay. And what about your son?

17 A. He was sitting over on the armored (verbatim) chair  
18 with Lashanda.

19 Q. Now while you're listening to Christmas music I  
20 believe you testified you started hearing banging?

21 A. Yes, sir.

22 Q. Where was that banging coming from?

23 A. The back door and the window.

24 Q. Okay. And do you see the back door in this photo  
25 at all?

JACQUELINE KEY - DIRECT BY MOLONY

1 A. A little bit here.

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

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

7 Q. Being Four?

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

10 THE WITNESS: Okay. I'm sorry.

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

13 BY MR. MOLONY:

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

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

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

23 A. Yes, sir.

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

JACQUELINE KEY - DIRECT BY MOLONY

1 A. Uh-huh.

2 Q. And State's Seven?

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

6 Q. You can have a seat.

7 A. (Returns to witness stand.)

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

11 A. Uh-huh.

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

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

18 MR. ROUTZONG: Objection, Your Honor.

19 THE COURT: Sustained.

20 MR. ROUTZONG: Hearsay.

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

22 THE WITNESS: Okay.

23 THE COURT: Objection is sustained.

24 BY MR. MOLONY:

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

JACQUELINE KEY - DIRECT BY MOLONY

1 A. Yes.

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

3 A. Yes.

4 Q. Was it during that same conversation?

5 A. Yes.

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

7 THE COURT: Sure.

8 BY MR. MOLONY:

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

12 A. Yes.

13 Q. What is this?

14 A. A 9-1-1 call.

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

17 A. Yes, it is.

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

21 A. Yes, sir.

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

25 THE COURT: Okay. Other than what has already

JACQUELINE KEY - DIRECT BY MOLONY

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

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

6 THE COURT: I'm sorry?

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

9 THE COURT: Sure.

10 (Off-the-record discussion.)

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

14 MR. ROUTZONG: No, sir.

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

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

19 BY MR. MOLONY:

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

23 A. He did.

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

JACQUELINE KEY - DIRECT BY MOLONY

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

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

9 A. Yes, sir.

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

11 A. Yes, it is.

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

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

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

18 THE COURT: Certainly.

19 BY MR. MOLONY:

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

22 A. Yes, sir.

23 Q. And have you listened to it?

24 A. Yes, sir.

25 Q. What is it?

JACQUELINE KEY - DIRECT BY MOLONY

1 A. A 9-1-1 call.

2 Q. Are these your initials on this?

3 A. Yes.

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

6 A. Yes.

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

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

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

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

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

15 THE COURT: Okay.

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

18 BY MR. MOLONY:

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

20 A. Yes.

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

23 A. No.

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

JACQUELINE KEY - DIRECT BY MOLONY

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

3 A. Yes.

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

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

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

9 MR. MOLONY: Thank you, Judge.

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

12 A. Yes.

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

15 A. Yes.

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

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

20 MR. ROUTZONG: Objection, Your Honor.

21 THE WITNESS: That's what he said.

22 THE COURT: Wait.

23 THE WITNESS: And he --

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

JACQUELINE KEY - DIRECT BY MOLONY

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

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

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

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

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

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

19 So, Solicitor?

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

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

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

24 THE COURT: Okay.

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

JACQUELINE KEY - DIRECT BY MOLONY

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

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

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

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

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

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

19 THE COURT: Solicitor?

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

24 THE COURT: Right.

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

JACQUELINE KEY - DIRECT BY MOLONY

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

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

5 MR. ROUTZONG: Yes, sir.

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

10 Everybody be at ease for about 15 minutes.

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

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

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

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

JACQUELINE KEY - DIRECT BY MOLONY

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

3 MR. ROUTZONG: Thank you, Your Honor.

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

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

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

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

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

12 MR. MOLONY: Thank you, Judge.

13 BY MR. MOLONY:

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

17 A. Yes.

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

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

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

JACQUELINE KEY - DIRECT BY MOLONY

1 A. Uh-huh.

2 Q. And so why did you tell him no?

3 A. Because I was afraid he might come back if I told  
4 him that I did because he still had the gun.

5 Q. Jackie, briefly, just to summarize. Did the  
6 Defendant have consent to enter your house that night?

7 A. No.

8 Q. You pointed the Defendant out. Was he the one who  
9 assaulted your guest that night, Stacey Gantt?

10 A. Yes.

11 Q. Did the gun look real to you?

12 A. Yes.

13 Q. Were you scared?

14 A. Yes.

15 Q. At that time, December 16th, 2013, was there --  
16 were you and the Defendant fighting over anything?

17 A. No.

18 Q. To your knowledge, was he mad about anything?

19 A. No.

20 Q. Were you mad at him about anything at that time?

21 A. No, sir.

22 MR. MOLONY: Thank you, Your Honor.,

23 Jackie, please answer any questions Mr. Routzong  
24 has for you.

25 THE COURT: Cross-examination.

## JACQUELINE KEY - CROSS BY ROUTZONG

1. MR. ROUTZONG: Thank you, Your Honor.

2. CROSS-EXAMINATION

3. BY MR. ROUTZONG:

4. Q. Good morning, Ms. Key.

5. A. Good morning.

6. Q. Ms. Key, it's been your testimony that you've known

7. Mr. Frazier for about 18 years?

8. A. Yes, sir.

9. Q. And during that 18-year period of time you would

10. characterize your relationship as being

11. girlfriend/boyfriend or fiancée?

12. A. Off-and-on relationship.

13. Q. Say again?

14. A. Off and on.

15. Q. But he was your boyfriend?

16. A. At one point, yes.

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

18. A. No. I worked.

19. Q. Sometimes he did give you some money?

20. A. Yeah, he have.

21. Q. Sometimes he bought food?

22. A. No.

23. Q. He never bought food?

24. A. No.

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

## JACQUELINE KEY - CROSS BY ROUTZONG

1 A. No.

2 Q. Not a toothbrush as the solicitor said?

3 A. No.

4 Q. And this relationship had been going on for 18  
5 years, that's your testimony?

6 A. It really hadn't been 18. It really hadn't been 18  
7 because, like I said, it was on and off.

8 Q. For 18 years?

9 A. We've been knowing each other that long.

10 Q. Well, let's talk about on the 16th. It's your  
11 testimony that you were hanging Christmas decorations.  
12 Was there Christmas music? Kind of paint a picture for us  
13 a little bit.

14 A. Well, me and my son and his friend and Stacey, we  
15 was just chilling at home. It was coming up to Christmas,  
16 and we was listening to Christmas music and having drinks.

17 Q. And your testimony was you knew Stacey for about  
18 two weeks?

19 A. Yes.

20 Q. And you'll agree with me that when the police came  
21 that night and asked you about him, you refused to tell  
22 the police his name?

23 A. I can't remember that. I know I told them Stacey.  
24 I didn't know his last name.

25 Q. You didn't know his last name? You invited him in

## JACQUELINE KEY - CROSS BY ROUTZONG

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

2 A. Because we hung out at the pub.

3 Q. Do you admit or deny telling the police that, that  
4 you wished that your guest remain unnamed? Do you admit  
5 or deny that?

6 A. I don't remember.

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

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

9 Q. Well, in the context you're referring to Mr. Gantt,  
10 do you remember what you said in your statement? Didn't  
11 you, in fact, refer to him as 'the man'?

12 A. Yes.

13 Q. Only?

14 A. Uh-huh.

15 Q. You didn't even tell the police in your statement  
16 the name Stacey?

17 A. Well, well, I thought I did. I don't -- I mean,  
18 what was the big deal? Well, he was there.

19 Q. You don't have to read this out loud but I just  
20 wonder if you can tell me if you recognize that.

21 A. Yes.

22 Q. What is that?

23 A. My statement.

24 Q. If you can just read it to yourself. Don't read it  
25 out loud, just to refresh your memory.

## JACQUELINE KEY - CROSS BY ROUTZONG

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

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

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

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

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

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

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

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

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

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

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

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

25 A. Yes.

## JACQUELINE KEY - CROSS BY ROUTZONG

1 Q. And I know you've testified about how scared you  
2 were and how horrible this situation. You talked about  
3 there was a gun and threats against your life and that  
4 kind of thing, but the next day you went to see him;  
5 didn't you?

6 A. Yes.

7 Q. That was on the 17th?

8 A. Uh-huh. And when I went I called the police.

9 Q. You called the police?

10 A. Uh-huh.

11 Q. Well, did the police come?

12 A. They didn't come that day.

13 Q. They came on the next day?

14 A. Yeah.

15 Q. On the 18th?

16 A. And I called them then.

17 Q. And what your testimony is, you called the police  
18 but the Aiken County Sheriff's Office never came to rescue  
19 you on that day, and he had this gun that you're so scared  
20 of and you're telling these folks right here and myself  
21 that you went up to him the next day in spite of the fact  
22 that he had this gun, you say, and you sat in the car and  
23 drank beer with him?

24 A. No, sir. I didn't.

25 Q. You didn't?

## JACQUELINE KEY - CROSS BY ROUTZONG

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

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

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

13 Q. How so?

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

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

## JACQUELINE KEY - CROSS BY ROUTZONG

1 A. Like I said --

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

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

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

6 THE WITNESS: Okay.

7 THE COURT: Repeat the question.

8 THE WITNESS: Can you repeat that, please?

9 BY MR. ROUTZONG:

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

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

19 Q. And you called them?

20 A. Yes.

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

22 A. Can I explain?

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

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

JACQUELINE KEY - CROSS BY ROUTZONG

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

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

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

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

20 BY MR. ROUTZONG:

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

25 A. I just tried to explain what happened.

JACQUELINE KEY - REDIRECT BY MOLONY

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

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

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

11 A. No, I did not.

12 Q. -- drinking beer with him?

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

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

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

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

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

20 THE COURT: Redirect?

21 MR. MOLONY: Briefly Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. MOLONY:

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

## JACQUELINE KEY - REDIRECT BY MOLONY

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

3 A. Yes.

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

6 A. No.

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

9 A. No.

10 Q. Had he been staying at your house?

11 A. No.

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

15 A. Yes, sir.

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

18 A. Uh-huh.

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

22 A. No.

23 Q. Did you open the door for him?

24 A. Yeah.

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

## JACQUELINE KEY - REDIRECT BY MOLONY

1 scope.

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

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

5 THE COURT: And your position, Solicitor?

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

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

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

13 MR. ROUTZONG: Yes, sir.

14 BY MR. MOLONY:

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

17 A. Uh-huh.

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

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

20 Q. That's okay.

21 A. Uh-huh.

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

24 A. No.

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

## JACQUELINE KEY - REDIRECT BY MOLONY

1 at him and so scared of him that you went to his house  
2 where you knew he had a gun. You're explaining it to the  
3 jury. Were you scared of the Defendant after the 16th?

4 A. Yes.

5 Q. And you called the police the 16th and they showed  
6 up at the house; is that right?

7 A. Yes.

8 Q. And the 17th he was still out, he hasn't arrested  
9 at that point?

10 A. No.

11 Q. And were you still scared of him?

12 A. Yes.

13 Q. And you were continuing to try to contact the  
14 police to have them come arrest him?

15 A. Yes.

16 Q. And the next day?

17 A. I called them again and directed them to where he  
18 was.

19 Q. Okay.

20 A. Because, like I said, this is not the first time he  
21 have come in my house with a gun. When I lived in North  
22 Augusta --

23 Q. Just, let's end it there.

24 Thank you, Jackie.

25 THE COURT: Anything on recross?

LASHANDA WASHINGTON - DIRECT BY GRIMES

1 MR.. ROUTZONG: Just briefly, Your Honor.

2 RECROSS-EXAMINATION

3 BY MR. ROUTZONG:

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

7 A. No --

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

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

12 Q. That's correct. Thank you.

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

15 THE BAILIFF: Watch that step.

16 THE COURT: Solicitor?

17 MR. MOLONY: Thank you, Your Honor.

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

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

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

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

LASHANDA WASHINGTON - DIRECT BY GRIMES

DIRECT EXAMINATION

BY MR. GRIMES:

Q. Good afternoon, Ms. Washington.

A. Good afternoon.

Q. Are you familiar with Ms. Key?

A. Yes, I am.

Q. How are you familiar with Ms. Key?

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

Q. Okay. And you know her son?

A. Yes.

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

A. Yes, sir. On several occasions.

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

A. Oh, yes.

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

A. Yes, sir.

Q. And who all was there?

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

Q. And what was going on?

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

LASHANDA WASHINGTON - DIRECT BY GRIMES

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

2 A. Yes, sir. Yes.

3 Q. What happened that night that was noticeable?

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

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

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

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

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

LASHANDA WASHINGTON - DIRECT BY GRIMES

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

4 Q. You say, he hits who?

5 A. Mr.

6 Q. Just tell me who.

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

8 Q. Daggart?

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

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

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

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

LASHANDA WASHINGTON - DIRECT BY GRIMES

1 Q. Where is this in the front?

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

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

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

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

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

21 A. Yes.

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

23 A. That's Jackie residence.

24 Q. That's her residence?

25 A. Uh-huh.

LASHANDA WASHINGTON - DIRECT BY GRIMES

1 Q. And what's this? If you can kind of show us a  
2 little bit. And I'll try step back. Where is the front  
3 door?

4 A. This the front door, right here (indicating).

5 Q. Okay. And when you were talking about the back  
6 door, where is the back door?

7 A. That is this door.

8 Q. So it's kind of on the side?

9 A. Yeah, the side door.

10 Q. And then on the other side of that truck, is that  
11 the front yard?

12 A. Yes. That's the front yard.

13 Q. And when you came back to the residence after  
14 driving around the block --

15 A. Uh-huh.

16 Q. -- where were they in the yard?

17 A. Where? At this point Mr. Gantt had his truck  
18 parked over here. It wasn't in Jackie's driveway. It was  
19 on the grass area. So when I came back, they was in  
20 this -- because he had his SUV. It was parked. So  
21 they're basically in front of that fighting. Really  
22 wasn't a fight. He was pretty much being pummeled.

23 Q. Okay. You said Mr. Gantt's vehicle was parked in  
24 the front yard?

25 A. Yeah. It was on the grassy area because this would

LASHANDA WASHINGTON - DIRECT BY GRIMES

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

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

6 A. Yeah, it still would.

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

10 A. Yes, sir.

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

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

20 Q. Okay. And one moment, please.

21 A. Yes, sir.

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

24 A. Yes.

25 Q. Was that on foot?

## LASHANDA WASHINGTON - CROSS BY ROUTZONG

1 A. Yes.

2 Q. So he left his car there?

3 A. He had to go.

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

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

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

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

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

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

18 THE COURT: Cross-examination?

19 MR. ROUTZONG: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. ROUTZONG:

22 Q. Good morning.

23 A. Good morning.

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

25 A. Afternoon.

## LASHANDA WASHINGTON - CROSS BY ROUTZONG

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

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

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

5 A. Yes, sir.

6 Q. -- the police?

7 A. Yes, I do.

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

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

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

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

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

## LASHANDA WASHINGTON - CROSS BY ROUTZONG

1 A. Yes, when I got there he was there.

2 Q. Okay. Do you know how long he was there before  
3 you got there?

4 A. I'm not sure.

5 Q. And when you got there Ms. Key, she introduced you  
6 to Mr. Gantt?

7 A. Well, I kind of met him too. We met at the pub so  
8 we, I mean, I kind of met him during the same time she did  
9 because we were out that night at the pub when she  
10 initially met Mr. Gantt. We kind of met him together.

11 Q. When was that?

12 A. It was in December but I don't know -- I don't know  
13 the exact date. I can't tell you that, sir.

14 Q. That's okay. Was it a couple weeks before this was  
15 alleged to have happened? Or a week?

16 A. Probably about three, three to four weeks, maybe.  
17 Yeah, probably. Because, I mean, we had seen him at the  
18 pub before but on that occasion he came over and kind of  
19 introduced himself.

20 Q. What pub was that?

21 A. River Front Pub on Broad Street.

22 Q. Where is that at?

23 A. On Broad Street. In Augusta, Georgia.

24 Q. Oh, in Augusta?

25 A. Yes, sir.

## LASHANDA WASHINGTON - CROSS BY ROUTZONG

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

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

5 Q. Do you know his last name?

6 A. No.

7 Q. You didn't?

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

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

12 A. Yes, sir.

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

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

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

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

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

## LASHANDA WASHINGTON - CROSS BY ROUTZONG

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

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

8 A. Well, depends on the individual.

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

11 A. Yes, sir.

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

13 A. Uh-huh.

14 Q. -- as Ms. Key?

15 A. Uh-huh.

16 Q. And, he was your friend too?

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

20 Q. Do you own firearms?

21 A. No, sir.

22 Q. Have you ever had any firearm training?

23 A. No, sir.

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

## LASHANDA WASHINGTON - CROSS BY ROUTZONG

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

4 Q. At the front door?

5 A. Yes, sir. First few knocks.

6 Q. And nobody answered the door?

7 A. No, sir.

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

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

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

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

18 Q. But you're not really sure?

19 A. Black.

20 Q. It was black?

21 A. Yes, sir.

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

## LASHANDA WASHINGTON - CROSS BY ROUTZONG

1           You heard that testimony?

2   A.       Yes.

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

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

7   Q.       Which way did you run?

8   A.       I ran out the front.

9   Q.       Out the front door?

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

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

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

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

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

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

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

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

12 A. No, sir.

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

14 THE COURT: Sure.

15 (Defense counsel conferring.)

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

18 THE COURT: Any redirect from the State?

19 MR. GRIMES: None, Your Honor.

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

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

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

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

1 THE COURT: Okay. All right.

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

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

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

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

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

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

14 THE COURT: Defense?

15 MR. ROUTZONG: No, sir.

16 THE COURT: Okay. All right.

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

19 MR. MOLONY: Thank you.

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

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

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

25 THE COURT: Okay. All right.

STACEY GANTT - DIRECT BY MOLONY

1 MR. ROUTZONG: Yes, sir.

2 THE COURT: All right. Bring the jury out, please,  
3 ma'am.

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

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

7 Solicitor, you may proceed.

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

10 THE COURT: Come around please, sir.

11 STACEY GANTT, having been duly sworn, was examined  
12 and testified as follows:

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

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

16 DIRECT EXAMINATION

17 BY MR. MOLONY:

18 Q. Stacey, were you at Jackie Key's residence on  
19 December 16th, 2013?

20 A. Yes, sir.

21 Q. Okay. And around seven p.m. that night, what were  
22 y'all doing at Jackie's house?

23 A. In the living room listening to music.

24 Q. Was it dark outside?

25 A. Yes, sir.

STACEY GANTT - DIRECT BY MOLONY

1 Q. What, if anything, interrupted y'all while you're  
2 sitting there listening to music?

3 A. A couple of knocks and then a couple more bangs and  
4 then a kick.

5 Q. Okay. And where were these knocks and bangs coming  
6 from?

7 A. Well, one comes, came from the front door. Then  
8 the big knocks and the bang came from the side door.

9 Q. And the kick, what happened when you heard a kick?

10 A. When I heard the kick someone came in waving a gun.

11 Q. And did you get a look at the gun?

12 A. Yes, sir.

13 Q. What color was it?

14 A. Black.

15 Q. Did that gun appear real to you at the time?

16 A. It did.

17 Q. All right. Where were you at whenever this  
18 individual entered the residence?

19 A. Sitting on the couch.

20 Q. What room?

21 A. In the living room.

22 Q. Okay. Explain what he did.

23 A. He came in waving the gun. Do I have to say what  
24 he said?

25 Q. Well, did he say anything to you at that time?

STACEY GANTT - DIRECT BY MOLONY

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

STACEY GANTT - DIRECT BY MOLONY

1 A. It was a guy standing outside and I explained to  
2 him what had just happened. And he let me kind of stay  
3 right there until everything had kind of cooled down.

4 Q. Okay. Take you back a little bit. When you exited  
5 the residence that night, Jackie's house, running out, did  
6 you see another vehicle in the yard at that time?

7 A. It was, like, a pickup truck.

8 Q. Okay. Now, when you were with this gentleman down  
9 the road who's letting you kind of hide out with him,  
10 what, if anything, did you see at that time?

11 A. It was a truck came up the street flying real fast.

12 Q. Okay. And was there anything, any similarities  
13 between the truck that was at Jackie's house and the truck  
14 you saw going really fast?

15 A. It appeared to be the same truck to me.

16 Q. So what did you do at that time?

17 A. I walked back down and went back around the corner  
18 to her house. The police had got there by then.

19 Q. Okay. What, if anything, did you notice in regards  
20 to your truck at that time?

21 A. I had -- my window was busted.

22 Q. Which window?

23 A. The driver's side front.

24 Q. And had that window been busted out when you pulled  
25 up that day, that night?

STACEY GANTT - DIRECT BY MOLONY

1 A. No, sir. No, sir.

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

3 THE COURT: Certainly.

4 BY MR. MOLONY:

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

6 One --

7 A. Uh-huh.

8 Q. -- and ask if you can kind of point were, you know,  
9 where your truck was. Where did you park your truck that  
10 night

11 A. Like, right here in the grass.

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

13 A. Yes, sir.

14 Q. Now, specifically, was this guy that came in and  
15 that assaulted you, did you know him?

16 A. No, sir.

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

18 A. No, sir.

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

20 A. Yes, sir.

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

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

23 THE COURT: Well, now, I see four gentlemen sitting  
24 at that table.

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

## STACEY GANTT - CROSS BY ROUTZONG

1 end in front of the water jugs.

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

4 BY MR. MOLONY:

5 Q. Have you ever been married?

6 A. No, sir.

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

9 THE COURT: Cross-examination by the defense.

10 CROSS-EXAMINATION

11 BY MR. ROUTZONG:

12 Q. Good afternoon, Mr. Gantt.

13 A. How are you doing?

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

16 A. The couch.

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

18 A. Yes.

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

20 A. A little bit louder than that.

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

23 A. Yeah.

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

## STACEY GANTT - CROSS BY ROUTZONG

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

## STACEY GANTT - CROSS BY ROUTZONG

1 Q. Well, at some point in time your testimony is you  
2 ran down, you met some people and you didn't ask them to  
3 call 9-1-1?

4 A. Correct.

5 Q. And Ms. Key is in the house with a man waving a  
6 gun?

7 A. Yes.

8 Q. And you didn't go to those people and say, "Hey,  
9 call 9-1-1"?

10 A. They had already called. They called.

11 Q. That's a good question. So you're in this tussle  
12 and you're wrestling around on the floor, that's what your  
13 testimony is; right?

14 A. Correct.

15 Q. And you broke loose and you left?

16 A. Uh-huh.

17 Q. Did you come back at any time and talk to the  
18 police?

19 A. I did.

20 Q. When was that?

21 A. After everything -- after what happened cleared, I  
22 came back around and the police was there.

23 Q. But you didn't tell them what your name was?

24 A. They didn't ask me. They said they didn't even  
25 need me.

## RICKY BROWN - DIRECT BY GRIMES

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

2 A. I was.

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

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

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

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

10 MR. GRIMES: The State calls Ricky Brown.

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

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

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

17 DIRECT EXAMINATION

18 BY MR. GRIMES:

19 Q. Mr. Brown, good afternoon.

20 A. Good afternoon.

21 Q. How do you know Ms. Key?

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

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

25 A. I do.

## RICKY BROWN - DIRECT BY GRIMES

1 Q. The property there?

2 A. I own it.

3 Q. This is State Exhibit Number Eight. Is that the  
4 lease agreement for that property?

5 A. Yes, sir, it is.

6 Q. And who leases that property from you?

7 A. Jackie Key.

8 Q. Okay. And was she the tenant in that property in  
9 December of 2013?

10 A. Yes, sir. She were (sic).

11 Q. Is anybody else reflected on the lease?

12 A. No, sir.

13 Q. Do you know Mr. Frazier?

14 A. No, sir. I do not.

15 Q. Do you know anything about him staying there?

16 A. I never seen him before.

17 Q. Okay. Are you familiar with this incident that  
18 we've been here on today?

19 A. On the night of the incident I received a call from  
20 Ms. Key and she kind of informed me that there had been an  
21 incident there and the back door had been broken or kicked  
22 in.

23 Q. Do you remember about what time you got that call?

24 A. I don't exactly recall the time, but it was about  
25 nine or 10, something like that.

RICKY BROWN - DIRECT BY GRIMES

1 Q. That was at night?

2 A. Yes, sir.

3 Q. And did you go out there the next day?

4 A. I didn't go that night. I went out to assess the  
5 damage, I think, the day after.

6 Q. Okay. And what did you see when you got there as  
7 far as the damage goes?

8 A. The door had been forced open. There's a dead  
9 bolt on the door, as indicated, that the bolt was locked.  
10 It had sliced through the jamb of the door, therefore  
11 breaking the jamb we have and breaking the casing from the  
12 wall, the door casing.

13 Q. Before we go there, what's your occupation?

14 A. I'm a public safety officer at public -- Aiken  
15 Public Safety.

16 Q. That's in the City of Aiken?

17 A. That's correct.

18 Q. And this property is in Beech Island, so you're  
19 only associated with this incident by being the landlord  
20 at that property; is that correct?

21 A. That's correct.

22 Q. Okay. But you did see the damage to the door?

23 A. Yes, sir.

24 Q. Did it appear that the door was unlocked or locked  
25 when it was forced open?

RICKY BROWN - DIRECT BY GRIMES

1 A. It was locked.

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

5 A. Yes, sir.

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

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

11 Q. Uh-huh.

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

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

22 A. Yes, sir.

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

24 A. Yes, sir.

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

RICKY BROWN - CROSS BY ROUTZONG

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

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

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

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

11 Q. Yes, sir.

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

14 CROSS-EXAMINATION

15 BY MR. ROUTZONG:

16 Q. Good afternoon, Mr. Brown.

17 A. Good afternoon. How are you?

18 Q. Okay so far.

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

21 A. None at all.

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

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

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

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

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

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

7 A. Not all the time.

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

10 THE COURT: Anything on redirect?

11 MR. MOLONY: Nothing further from this witness.

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

14 THE WITNESS: Okay.

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

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

19 THE COURT: Solicitor?

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

21 THE COURT: All right.

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

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

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

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

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

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

9 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

1 jury.

2 Anything further from the State?

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

4 THE COURT: Anything further from the defense?

5 MR. ROUTZONG: No, sir.

6 THE COURT: Okay. All right.

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

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

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

15 THE CLERK: Yes, sir.

16 (Defendant placed under oath.)

17 THE CLERK: He's sworn.

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

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

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

25 THE DEFENDANT: Yes, sir.

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

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

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

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

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

1 testify.

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

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

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

14 THE DEFENDANT: Yes, sir.

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

17 THE DEFENDANT: No, sir.

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

21 THE DEFENDANT: Yes, sir.

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

24 THE DEFENDANT: No, sir.

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

1 THE DEFENDANT: No, sir.

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

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

5 THE COURT: Okay. All right.

6 Is that your decision to testify, sir?

7 THE DEFENDANT: Yes, sir.

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

10 THE DEFENDANT: Yes, sir.

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

13 THE DEFENDANT: Yes, sir.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 THE COURT: Sure. And let me just -- before we  
21 recess. Yesterday in chambers, there was some issue --  
22 and you may have resolved it, I don't know -- about, if  
23 there is a prior record.

24 Is there going to be any discussion necessary  
25 there?

1 MR. MOLONY: Your Honor, we met this morning,  
2 Mr. Routzong and I. And I believe we are in agreeance  
3 (verbatim) with the four prior convictions the State would  
4 be allowed to use should the Defendant testify.

5 THE COURT: Okay. And can you just give me the  
6 heads up?

7 MR. MOLONY: Sure. It's a 1995 grand larceny.

8 THE COURT: Okay.

9 MR. MOLONY: A '96 false information to law  
10 enforcement; 2006 possession of crack; 2008 possession of  
11 crack, second.

12 THE COURT: Okay. What date on the last one,  
13 Solicitor?

14 MR. MOLONY: 2008.

15 THE COURT: Okay. Mr. Routzong, is that correct,  
16 the statement as to what's been agreed to --

17 MR. ROUTZONG: Yes, sir.

18 THE COURT: -- concerning impeachment?

19 MR. ROUTZONG: Yes, sir.

20 THE COURT: Okay. All right. Y'all need about 10  
21 minutes?

22 MR. HAYES: Yes, sir.

23 THE COURT: Sure. We'll be in recess for about 10  
24 minutes.

25 (Break taken at 2:47 p.m. At 3:08 p.m., the trial

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 resumed:)

2 THE COURT: Thank you very much. Have a seat.  
3 Let's bring the jury out, please, sir.

4 THE BAILIFF: All right, sir.

5 (Jury enters courtroom at 3:09 p.m.)

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

8 Mr. Routzong, I turn it over to you, sir.

9 MR. ROUTZONG: Thank you, Your Honor.

10 The defense calls Mr. Daggart Frazier.

11 THE COURT: Come around, sir.

12 DAGGART BERNARD FRAZIER, having been duly sworn,  
13 was examined and testified as follows:

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

16 THE DEFENDANT: Daggart Bernard Frazier,  
17 F-R-A-Z-I-E-R.

18 DIRECT EXAMINATION

19 BY MR. ROUTZONG:

20 Q. Mr. Frazier, let me know if you need any water or  
21 anything or --

22 A. Yes, sir.

23 Q. -- if I can help you out. Mr. Frazier, how long  
24 have you known Ms. Key?

25 A. About 19 years.

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 Q. How old are you?

2 A. Thirty-seven in a couple more days.

3 Q. How old is Ms. Key?

4 A. Forty-eight years old.

5 Q. So she's a little bit older than you?

6 A. Eleven years.

7 Q. Now you've heard some testimony from Ms. Key that  
8 you had an off-and-on relationship for a period of 18  
9 years, and that at some point in time before this incident  
10 date, December 16th, that that relationship had broken  
11 off?

12 A. Yes, sir.

13 Q. Was your relationship broken off?

14 A. No, sir.

15 Q. When was the last time you spent the night at her  
16 house?

17 A. December 15th.

18 Q. The night before this incident?

19 A. 2013.

20 Q. Mr. Frazier, tell me a little bit about how this  
21 relationship worked. Where did you spend your daytime  
22 hours at?

23 A. My brother, James Frazier house.

24 Q. Were you spending the daytime over there?

25 A. Because the neighborhood that he stays in, they

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 burglarize around there a lot, breaking into. So I watch  
2 his house while he's at work during the daytime.

3 Q. What time does he usually come home?

4 A. Eight o'clock.

5 Q. About what time would you usually -- well, let me  
6 ask the question this way. What would you do after he  
7 comes home?

8 A. I probably walk around the corner or something.

9 Q. And what were you doing?

10 A. Go to a friend's house or something.

11 THE COURT: What was your answer, sir? I couldn't  
12 hear you.

13 THE DEFENDANT: Oh, Walk around the corner to a  
14 friend's house.

15 THE COURT: Okay.

16 BY MR. ROUTZONG:

17 Q. How often would you go to Ms. Key's house?

18 A. Basically every night.

19 Q. So after -- let me ask the question this way or  
20 maybe explain it this way. So after you would go to your  
21 friend's house, you might go over to Ms. Key's house?

22 A. Yeah.

23 Q. And your testimony is that happened almost every  
24 night?

25 A. Yes, sir.

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 Q. On December 16th, where were you before you went to  
2 Ms. Key's house?

3 A. James' house, my brother house.

4 Q. About what time did you leave?

5 A. It was right before eight o'clock. He hadn't  
6 gotten home yet at that time.

7 Q. Sometime before eight o'clock?

8 A. Yes, sir.

9 Q. About what time did you get to Ms. Key's house?

10 A. I guess it took around about 10 minutes to get  
11 there.

12 Q. So you're at Ms. Key's house something, about 10  
13 minutes -- or some period of time before eight o'clock?

14 A. Yes, sir.

15 Q. When you -- how did you get over there?

16 A. I drove.

17 Q. When you got to Ms. Key's house, what did you do?

18 A. I pulled in the front yard and got out the truck.  
19 I walked to the door, knocked on the door.

20 Q. Anybody come to the door?

21 A. No, sir.

22 Q. What did you see? Before you went up to the front  
23 door, what did you see?

24 A. I seen a blue Tahoe vehicle and her two cars in the  
25 yard and Lashanda vehicle's in the driveway also.

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

- 1 Q. Did you know whose car that was?
- 2 A. I know the car's Lashanda car.
- 3 Q. How about the other vehicle?
- 4 A. No, sir.
- 5 Q. Your testimony is that you knocked at the door and  
6 nobody came to the door?
- 7 A. Yes, sir.
- 8 Q. What was going through your mind?
- 9 A. I wondered what was going on, why nobody was not  
10 answering the door.
- 11 Q. Anything else going through your mind?
- 12 A. No, sir.
- 13 Q. And you were wondering this at the same time,  
14 you've testified, that you didn't know whose car that was?
- 15 A. Yes, sir.
- 16 Q. Did you have any concern?
- 17 A. Yes, sir.
- 18 Q. What were those concerns?
- 19 A. I was wondering what going on. I'm -- family, my  
20 wife and stepson in the house. So I wondering what was  
21 going on, why nobody done answered the door.
- 22 Q. What did you do next?
- 23 A. So I knocked a couple more times, no answer. So I  
24 walked to the back of the house, windows always open, I  
25 mean, the blinds always open in the living room. So I see

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 them in the living room. So I wonder why don't they open  
2 the door.

3 Q. Who did you see?

4 A. Ms. Key, Ms. Lashanda, Deontray, the guy that I  
5 don't know who he was at the time.

6 Q. What was going through your mind then?

7 A. When I'm knocking on the window they not answering  
8 the door. She's not saying nothing. I'm worried. I  
9 don't know what's going on, who he is. She's not  
10 saying nothing. Normally -- I don't know what's going  
11 on. Nothing. So I goes back to the door. Knocking  
12 again. No one answer. Go like this (indicating) and the  
13 door come open, just goes in.

14 Q. What were you feeling?

15 A. What was I feeling? I'm just wondering what's  
16 going on with my family in the house. That's it.

17 Q. And what did you intend to do when you went through  
18 the door?

19 A. Just to see why she's not talking. For some reason  
20 she's not talking.

21 Q. Did you intend to do anything else?

22 A. No, sir.

23 Q. Let's back up a little bit. Going back to your  
24 relationship with Ms. Key. What did you -- in terms of  
25 helping her out, what did you ever do?

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

- 1 A. Help pay all her bills in the house.
- 2 Q. Be more specific. What kinds of things?
- 3 A. Rent, light bill, cable bill, phone bill, and water  
4 bill. Every month.
- 5 Q. How did you pay that?
- 6 A. I gave her money. I get a Green Dot money-back  
7 card and she transfer it to some up little, some kind of  
8 debit card. She don't know how to do it. She give me the  
9 information. I used to do it off of my cell phone.
- 10 Q. What else did you buy for the house?
- 11 A. Groceries, soap; everything for the house.
- 12 Q. And this was -- you were doing these kinds of  
13 things up until when?
- 14 A. Until I came to jail.
- 15 Q. Going back to that night, Mr. Frazier, you're  
16 coming through the door, you see everybody in the room.  
17 Maybe I should ask the question this way. Who did you see  
18 in the room? Who was in the house?
- 19 A. Lashanda, Jacqueline Key, the guy, and Deontray.  
20 Just them four.
- 21 Q. Then what did you do?
- 22 A. I'm talking to her.
- 23 Q. What did you say?
- 24 A. What did I say? I be, "What's going on?" "Why you  
25 don't open the door?" She was not talking, period. I

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 don't know what's going on. While I'm talking to her the  
2 guy sitting beside her, he saying something to her. I  
3 blocked him out. So I didn't respond to him. I'm still  
4 trying to see what's going on with her.

5 So by this time he jumps up at me, swung at me. So  
6 I defended myself. And we got to tussle. We both went  
7 out the front door.

8 Q. When you both went out the front door, what  
9 happened then?

10 A. We went to his Tahoe. He was trying to get in. We  
11 were fighting right there against the door.

12 Q. What was your concern, if any, about him getting  
13 into the Tahoe?

14 A. I felt like he was trying to get something to hurt  
15 me. I don't know who he is. He's going to the truck for  
16 a reason. I don't know what's going on, especially when  
17 he jump and swung on me. I don't know what's going on.

18 Q. Once again, you don't know him?

19 A. I don't know him. Never seen him a day in my life.

20 Q. At this point in time after you -- there's this  
21 strange man, you don't know who he is, and he's in there  
22 with this lady that you've had this long-term relationship  
23 with --

24 A. Yes, sir.

25 Q. -- after all of this, what were you feeling?

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 A. After that?

2 Q. Yes.

3 A. I was upset, highly upset.

4 Q. Can you be more specific?

5 A. I was pissed off.

6 Q. Why?

7 A. Because we been together 18 years and I wonder  
8 what's going on. Why, you know. I'm hurting. So I went  
9 back in the house just to talk to her. I was screaming  
10 but wasn't trying to do no harm to no one. Didn't do no  
11 harm to no one.

12 Q. Mr. Frazier, there's been testimony that when you  
13 came in the house that you had in your hand a gun. Did  
14 you have a gun in your hand?

15 A. No, sir.

16 Q. What did you have in your hand?

17 A. A cell phone.

18 Q. What color is it?

19 A. All black.

20 Q. So it's your testimony that you didn't wave a gun  
21 around, you didn't point a gun at anybody?

22 A. No, sir.

23 Q. And why is that?

24 A. I had a cell phone in my hand, cell phone S3 with  
25 an OtterBox to it. Okay. Dropped in the process of the

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 altercation. I mean, me and the guy, Stacey, had it.

2 Q. Mr. Frazier, when the police arrived, were you  
3 there?

4 A. No, sir.

5 Q. Where did you go?

6 A. I just left because I was angry. I was always  
7 hoping -- I was just going to leave until I cooled off.  
8 So I left.

9 Q. Did you know that the police had been called?

10 A. No, sir.

11 Q. I know that your testimony is that you were angry?

12 A. Yes, sir.

13 Q. But specifically, you were angry and you left. But  
14 why did you leave?

15 A. Why did I leave?

16 Q. Yes, sir.

17 A. Because I was really pissed off. I didn't want to  
18 get in no trouble, so I just up and left.

19 Q. What were you afraid was going to happen, if  
20 anything?

21 A. I got in trouble.

22 Q. Mr. Frazier, you've heard testimony that on the  
23 17th of December, that's the day after this incident?

24 A. Yes, sir.

25 Q. Ms. Key admitted that she came to see you?

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 A. Yes, sir.

2 Q. About what time did she come to see you?

3 A. I can't be able to say the time, but it was just  
4 starting to get dark during that time that she came to see  
5 me.

6 Q. Why do you think she came to see you?

7 A. To get me to come back home.

8 Q. Why do you think that?

9 A. Why do I think that? Because we, we was a couple  
10 one time. Only reason she would come.

11 Q. Did she ask you for anything?

12 A. Yes, sir.

13 Q. What did she ask you for?

14 A. Money.

15 Q. Anything else?

16 A. Asked me would I buy her a beer.

17 Q. Did you buy her a beer?

18 A. Yes, sir.

19 Q. Did you give her the beer?

20 A. No, sir. My uncle went to the store to get it. He  
21 brought it back. He handed it to her.

22 Q. After she got her beer, what happened?

23 A. We sat in the car. We talked for a little while.

24 Q. What did you guys talk about?

25 A. Trying to get me to come back home.

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 Q. The police never came?

2 A. No, sir.

3 Q. Did you see her call the police?

4 A. No, sir. She wasn't on the phone at all.

5 Q. About how long did she stay?

6 A. She stayed about two hour, probably longer than  
7 that.

8 Q. Were you still mad?

9 A. Yes, sir. Yes.

10 Q. What did you tell her, if anything, before she  
11 left?

12 A. What did I tell her? I wasn't coming back. It was  
13 over with. You know, you get him to pay the bills and  
14 everything, I'm not coming back. It's over with. I'd  
15 rather sleep out here in the street, in the woods. I'm  
16 not coming back there. I don't trust you no more.  
17 Eighteen years. Ain't no trust now. Got to go. Have to  
18 move on. I hurt. Just have to deal with it.

19 Q. After she left, and that was on the 17th --

20 A. Yes, sir.

21 Q. -- what did you do?

22 A. We still out there at my brother house. Out there  
23 in the yard talking.

24 Q. Did you stay there all night?

25 A. No, sir.

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 Q. Where did you go?

2 A. I left there probably about 10 or something, walked  
3 up the street to Deluxe Inn, the motel right on Martintown  
4 Road. I stayed there.

5 Q. Why did you stay there?

6 A. Because I ain't -- I wanted to be by myself. I  
7 didn't want to be around nobody. I wanted to get my  
8 thoughts together.

9 Q. On the 18th, do you remember that day?

10 A. Yes, sir.

11 Q. Do you remember Ms. Key, she testified she came  
12 back on the 18th? Do you remember that?

13 A. Yes, sir.

14 Q. What happened with that? When did she come back?

15 A. It was afternoon when she came. I was on the  
16 porch. Me and my uncle and my cousin was on the porch  
17 drinking. And she pulled up, like, and laid out there.  
18 So I'm still sitting there, ain't paying her no  
19 attention. So she called me to come to the car.

20 MR. MOLONY: Objection, Your Honor. It's hearsay.

21 THE COURT: Okay. Don't quote what somebody told  
22 you, sir.

23 THE DEFENDANT: Yes, sir.

24 So, I didn't go out there to the car, period. I  
25 stayed on the porch. I ain't even come off the porch or

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 nothing. I was talking, front of the porch, to her.

2 BY MR. ROUTZONG:

3 Q. How long did she stay out there?

4 A. She stayed right there for about 30 minutes.

5 Q. And then what happened?

6 A. She left.

7 Q. Did anything happen after that, to you?

8 A. No, sir.

9 Q. When did the police come and get you?

10 A. I'd say around about an hour and a half or two  
11 hours after she left.

12 Q. Was -- who was it? Was it Aiken County or --

13 A. It was North Augusta at the door when I opened the  
14 door.

15 Q. Say again.

16 A. North Augusta Public Safety.

17 Q. How far do you live from the police station?

18 A. Well, I live at my brother house. It's, like,  
19 about three minutes away. Three minutes right down on  
20 Buena Avenue, Buena Vista Avenue. Three minutes away.

21 Q. Your brother's house is three minutes house?

22 A. From the police department.

23 Q. Mr. Frazier, is there anything else you'd like to  
24 tell the jury?

25 A. Yes, sir.

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 Q. What is that?

2 A. Well, I know people try to put me out to be a bad  
3 person. I'm not that bad person they're trying to put me  
4 out to be. I was living there the whole time, paying the  
5 bills the whole time.

6 Going on here when all of this happened. Dropped  
7 my cell phone. She gets it, see other females in it. So  
8 that's why it come to this. That's why it come to this.  
9 Didn't drop the cell phone it wouldn't have come to this,  
10 period.

11 And as far as me calling back, stated something  
12 about the police. I couldn't call them back because I  
13 ain't had no phone to call them with. I couldn't call no  
14 one, nobody.

15 And when I left, left the scene I got someone else  
16 to dial the number up to call my brother, let him know  
17 what happened. He told me not to go back home, stay where  
18 I was. So, he was trying to contact me, but he couldn't.

19  
20 But she calls my cousin off of my cell phone that I  
21 dropped in the house and called females on the cell phone  
22 that she saw in there off the cell phone. She called my  
23 cousin. Put him in jail for life. He got about 15  
24 charges on him, this and that, now. He gone for life now  
25 this time. So, my cousin came and found me where I was.

DAGGART BERNARD FRAZIER - DIRECT BY ROUTZONG

1 At the same time my brother was trying to call to see what  
2 was going on with me but he couldn't contact me because  
3 she had the cell phone.

4 So when my cousin come to get me I called my  
5 brother cell phone. He was saying, "my lady, Kierra  
6 Martin out looking for you." I said, "I seen her up  
7 Martintown Road." so he said, "let me get call her and  
8 get her turned around." She turns around and comes to the  
9 motel and comes and talks in the parking lot.

10 Ever since then she's been coming, checking on me.  
11 She was there also when Ms. Key was there.

12 Q. Mr. Frazier, one more time.

13 A. Yes, sir.

14 Q. Did you have consent to go in that house?

15 A. I felt like I had consent because I was living  
16 there. My possessions in that house; clothes, ID.  
17 Everything that I own is in that house. Basically  
18 everything I helped paid for that's in there.

19 Q. When you went in that house, what did you intend?

20 A. See what was going on with my family, why she's not  
21 answering the door, why she's not talking.

22 MR. ROUTZONG: Beg the Court's indulgence.

23 (Pause.)

24 Q. Mr. Frazier, I only have one other question.

25 Actually a couple questions.

## DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 A. Yes, sir.

2 Q. You've been convicted of grand larceny?

3 A. Yes, sir.

4 Q. Giving false information to a police officer?

5 A. Yes, sir.

6 Q. And been convicted of possessing crack twice?

7 A. Yes, sir.

8 Q. That's the same Bernard Frazier?

9 A. Yes, sir.

10 Q. Are you telling the truth today?

11 A. Yes, sir.

12 MR. ROUTZONG: Your witness, Solicitor.

13 THE COURT: Cross-examination.

14 MR. MOLONY: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. MOLONY:

17 Q. Mr. Frazier, how are you doing, sir?

18 A. I'm doing alright. How about yourself today, sir?

19 Q. I'm going good.

20 A. That's great.

21 Q. You know, after listening to your testimony there's  
22 a lot of things I think you and I would agree on. You  
23 would agree with me that you've known Jackie for a long  
24 time; right?

25 A. Yes, sir.

## DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 Q. And that you actually went to Jackie's house that  
2 night, December 16th?

3 A. Yes, sir. I did.

4 Q. I think you said a little after eight o'clock?

5 A. No, sir. It was before eight.

6 Q. Before eight. But it took you 10 minutes to get  
7 there?

8 A. Yes, sir.

9 Q. Eight o'clock, safe to --

10 A. Somewhere.

11 Q. -- say? So you were there, [REDACTED]

12 A. Yes, sir.

13 Q. I show you State's Exhibit One. Is this where you  
14 pulled up to?

15 A. Yes, sir.

16 Q. You'd also agree that you saw a vehicle you didn't  
17 recognize in the yard; didn't you?

18 A. Yes, sir.

19 Q. Do you agree that you knocked on the window,  
20 knocked on the door, ultimately banging on the side door;  
21 right?

22 A. Yes, sir.

23 Q. And that ultimately you kicked the door open;  
24 right?

25 A. No, sir.

## DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 Q. Okay. So there's one thing we'll disagree on. You  
2 didn't kick the door open. It just opened up when you hit  
3 it?

4 A. Yes, sir.

5 Q. Okay. Now, you would agree that you did testify  
6 that you were angry and, quote, pissed off at that time;  
7 right?

8 A. Not at that time, sir.

9 Q. Okay. So you're happy right now. You know, is  
10 that normally how you enter the house?

11 A. No, sir.

12 Q. Now, you also would agree, right when you walked in  
13 the house that you immediately approached this male that  
14 was in the room?

15 A. No, sir.

16 Q. You went and talked to Jackie first?

17 A. Yes, sir.

18 Q. Okay. Where was the male when you approached her?

19 A. He was sitting right beside her. She was  
20 sitting -- he was sitting here, she was sitting there  
21 (indicating).

22 Q. Okay. So we can agree that they were sitting on  
23 the couch together?

24 A. Yes, sir.

25 Q. And your testimony is that you approached Jackie?

## DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 A. Yes, sir.

2 Q. And began, what, having a conversation with Jackie  
3 at that time?

4 A. Trying to have a conversation with her but she  
5 wasn't responding. Just wouldn't say nothing. I didn't  
6 know what was going on.

7 Q. So at that point you became angry?

8 A. No, sir.

9 Q. So you're still calm and collected?

10 A. Yes, sir.

11 Q. Now you would agree that on a jail call you  
12 admitted that you walked in the house and, quote, jumped  
13 on that boy; right?

14 A. No, sir.

15 Q. You're denying that you said on a jail call that  
16 you entered her house and you jumped on a boy?

17 A. We got to fighting. Yes, sir. I mean, we got to  
18 fighting, yes, sir, but not just enter the dwelling,  
19 jumped on him, no, sir.

20 Q. Are you admitting or are you denying the fact that  
21 you said on a jail call, "I jumped on the boy"?

22 A. On the jail call, no, sir.

23 Q. You're denying that?

24 A. Yes, sir. I did not say it on the 9-1-1 call.

25 Q. No. On the jail call. You were in jail, you make

## DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 a phone call, you say, "I jumped on the boy"; did you or  
2 didn't you?

3 A. No, sir.

4 Q. So you're denying it?

5 A. I called Georgia-Carolina Bondman to let them know  
6 I was back in jail on some new charges, not to go off my  
7 bond because I'm here and why. And so my old lady, she  
8 say I came in the house and jumped on such-and-such.  
9 That's how it went. Just like that. I didn't say I just  
10 jumped on him, no. I didn't just jump on him for nothing,  
11 you know. He had to do something to me for me to put my  
12 hands on him. He had to strike me first.

13 Q. Is that what you said?

14 A. Sir?

15 Q. Or is that what you said -- or is that what you're  
16 saying right now in front of them?

17 A. I ain't saying all of that. What I'm saying now.

18 Q. Adding a little to it?

19 A. Yeah.

20 Q. Okay.

21 A. Jump on a guy for nothing? I don't know him, so  
22 why should I jump on him?

23 Q. You would admit you hit the guy in the room --

24 A. Yeah --

25 Q. -- the guy that's sitting right here; right?

## DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 A. -- after he hit me.

2 Q. That you'd never seen before --

3 THE COURT: Wait a minute. We got to make sure  
4 that only one speaks at a time.

5 Solicitor, ask the question, Mr. Witness, wait  
6 until the question is completely asked and then you can  
7 respond --

8 MR. MOLONY: Yes, sir.

9 THE COURT: -- because the court reporter, as good  
10 as she is, it makes it difficult for her to pick up all  
11 the testimony with you both talking at the same time.

12 THE DEFENDANT: Yes, sir.

13 BY MR. MOLONY:

14 Q. Mr. Frazier, this is the man you hit that night?

15 A. Yes, sir.

16 Q. And you didn't know him --

17 A. I --

18 Q. -- before then? You'd never seen him before?

19 A. -- never seen him before.

20 Q. Okay. So we can agree that you went in the house,  
21 it was nighttime, and you hit him?

22 A. Yes, sir.

23 Q. All right. Now I believe your testimony is that  
24 you were holding a black, a big black cell phone?

25 A. Yes, sir.

DAGGART BERNARD FRAZIER -- CROSS BY MOLONY

1 Q. Okay. So we would disagree with exactly what was  
2 big and black and in your hand that night.

3 And -- now, you stated you were living at your  
4 brother's house during this time?

5 A. No. I stayed at [REDACTED] I go to my  
6 brother's house every day to watch his house.

7 Q. Is [REDACTED] in Beech Island, three miles from  
8 the North Augusta Department of Public Safety?

9 A. Three miles? I don't know how many miles it is.

10 Q. You testified on direct that where you were living  
11 was three miles from the North Augusta Department of  
12 Public Safety.

13 A. Well, my brother, James, where he live at.

14 Q. Where's he live?

15 A. [REDACTED].

16 Q. Okay. When you were arrested and you went to the  
17 jail, what did you tell them your address was then?

18 A. 419, but they ain't put it on the form. They put  
19 an old address on there.

20 Q. Okay. So, the bond paperwork that you signed on  
21 the 19th of December that has [REDACTED], the address  
22 you just stated, your brother's address, listed as your  
23 address, they messed up on this?.

24 A. The 19th of December?

25 Q. Yeah.

## DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 A. I, I wasn't here the 19th of December.

2 Q. This is when it's dated. Right beside your  
3 signature. I'm just asking -- your testimony is that they  
4 messed this up; right?

5 A. Yeah.

6 Q. So you really told them that it was [REDACTED]

7 A. But they said they couldn't use it.

8 Q. Oh, okay.

9 A. They couldn't use it because she was a victim.

10 Q. Oh, so you had to find another address?

11 A. They put that in there.

12 Q. Oh, they just did that?

13 A. Yeah.

14 Q. And luckily it was your brother's?

15 A. Yeah. I used it before when was on probation. I  
16 used that address when I was on probation one time before.

17 Q. Okay. All right. Now, you'd agree that you ran  
18 from the house?

19 A. Yes, sir.

20 Q. And you stated on direct that you were scared you  
21 were going to get in trouble?

22 A. Yes, sir.

23 Q. The big thing that you say is that your intent, I  
24 think was the question, your intent when you entered that  
25 house was to just approach Jackie and talk to her; right?

## DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 A. Yeah. See what's going on.

2 Q. But I thought you were scared for the safety of  
3 your family?

4 A. I am. That's my family. I am.

5 Q. Okay. So you walk in and you see this guy sitting  
6 on the couch but you approach her?

7 A. Oh, I'm not walking past him because I don't know  
8 who he is. I'm standing right there so I can see him also  
9 at the same time. So he's sitting right there. I'm  
10 standing right here. Right here. I'm talking to her.

11 Q. Okay. So, "Hey, Jackie how you doing"?

12 A. Baby. I don't call her by her name.

13 Q. Oh, it's baby?

14 A. Yeah.

15 Q. And he tried to hit you first is your testimony?

16 A. Yes, sir.

17 Q. And after this your testimony is that she was  
18 trying to get you back home? She needed you back home?

19 A. Yeah.

20 Q. Okay. You heard the 9-1-1 call? You've been  
21 sitting right there; haven't you?

22 A. Yes, sir. I heard it.

23 Q. So all of that is fake too, her wanting you to go  
24 to jail is fake?

25 A. It's real because I heard it.

## DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 Q. I'm sorry?

2 A. It's real. I heard it.

3 Q. Okay. She changed this -- State's Exhibit 10 and  
4 11, all of that attitude and all of that fear changed  
5 overnight whenever she saw you the next day?

6 A. Yes, sir.

7 Q. Okay. And you were paying all the bills and doing  
8 all of that; right?

9 A. Yes, sir.

10 Q. Where were you working?

11 A. Where was I working?

12 Q. Where were you working?

13 A. I was doing mechanic work.

14 Q. Mechanic work?

15 A. Yes, sir.

16 Q. This blue Tahoe that you saw out front, that didn't  
17 make you real happy; did it?

18 A. What do you mean?

19 Q. It didn't make you happy seeing another car out  
20 front. So we'd agree on that?

21 A. It didn't make me mad. I just ain't know who it  
22 was. I didn't bother me at all. I just didn't know who  
23 it was. Because I know the family member vehicle. I know  
24 all the family vehicles. It wasn't one of them. It's a  
25 strange vehicle. I don't know who it is. So, yeah, I'm

## DAGGART BERNARD FRAZIER - CROSS BY MOLONY

1 concerned.

2 Q. You testified that you told Jackie, I'm not coming  
3 back. I don't trust her. I'm going to the streets. I'm  
4 moving on; is that right?

5 A. I sleep in the street.

6 Q. Rather than ever go back there?

7 A. Yeah.

8 Q. But you're writing her letters while you're in  
9 jail, weren't you?

10 A. I love her. We've been together 18 years off and  
11 on. You just can't let that go just like that.

12 Q. So you apologized. I'm sorry?

13 A. I said, going to take some time to just let go.  
14 You just can't let go like that. If you love her you're  
15 going to try to work things out. I'm pretty sure you  
16 would.

17 Q. I may, but you were the one saying that you're  
18 going into the streets, you're moving on, you don't trust  
19 her, you ain't coming back; right? You said that. Isn't  
20 that what you said?

21 A. Yes, sir.

22 Q. Okay. And you would agree that you wrote her a  
23 letter while you're in jail; right?

24 A. Yes, sir.

25 Q. And you sent it to her, you said, "Sweetheart, I am

## DAGGART BERNARD FRAZIER - REDIRECT BY ROUTZONG

1 in tears because I know I really hurt you." You said  
2 that, didn't you?

3 A. Yes, sir.

4 Q. And "I'm so sorry. I admit that I was absolutely  
5 wrong, dumb, foolish and stupid"; right?

6 A. Yes, sir.

7 Q. "Could you please forgive me"; right?

8 A. Yes, sir.

9 Q. "Please give me another chance. I'm going to do  
10 right, I promise."

11 A. Yes, sir.

12 Q. Okay. You did write that to her --

13 A. Yes, sir.

14 Q. -- after you were not coming back because you don't  
15 trust her and you'd rather sleep in the street?

16 A. Yes, sir.

17 MR. MOLONY: Okay. Thank you, Mr. Frazier. I  
18 don't have any further questions.

19 THE COURT: Anything on redirect?

20 MR. ROUTZONG: Yes, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. ROUTZONG:

23 Q. Mr. Frazier, the State seems very surprised by a  
24 couple things that you've testified to on cross-  
25 examination.

## DAGGART BERNARD FRAZIER - REDIRECT BY ROUTZONG

1 A. Yes, sir. I know.

2 Q. The 17th and the 18th of December, did you intend  
3 to go back to her?

4 A. No, sir.

5 Q. What was in your mind?

6 A. No more. Can't do it no more.

7 Q. You heard Ms. Key testify that you guys had an  
8 off-and-on relationship?

9 A. Yes, sir.

10 Q. What do you -- would you agree with that?

11 A. That's false.

12 Q. Did you ever get mad at her and not see her for a  
13 while?

14 A. When we did get mad at one another it's just been  
15 for a night. That's the longest it's ever been, one  
16 night. Longest it's ever been.

17 Q. So to make sure I understand what your testimony is  
18 is that you guys could get mad and then make up and then  
19 get mad and make up?

20 A. Yes, sir.

21 Q. Like all the rest of the people that are married in  
22 the world?

23 A. Yes, sir.

24 Q. Or have a relationship?

25 A. Yes, sir. Every relationship have their ups and

DAGGART BERNARD FRAZIER - REDIRECT BY ROUTZONG

1   downs.

2   Q.     The State's perplexed by the fact that Barton Road  
3   is showing up on your bond paperwork?

4   A.     Yes, sir.

5   Q.     And your testimony is you didn't have any intent on  
6   that --

7           MR. MOLONY:   Your Honor, I object.   This is all  
8   leading.

9           THE COURT:   Okay.   Try to restate, counsel.

10   BY MR. ROUTZONG:

11   Q.     Why did you put [REDACTED] down?

12   A.     I didn't put [REDACTED] down.   The county jail put  
13   [REDACTED] down.   They asked my address.   I told them  
14   [REDACTED].   The woman that write that, the officer gave it to  
15   me, can't put this down because it's the victim address.

16   Q.     If someone had asked you what address to put  
17   down --

18   A.     Yes, sir.

19   Q.     -- and your testimony is you didn't intend to go  
20   back, what address would you put down?

21   A.     What address would I put down?   I would put 419  
22   down because that was my address.

23   Q.     The State's perplexed by the letter compared to  
24   what you've testified about being mad and not wanting to  
25   have anything to do with her.

1 A. Yes, sir.

2 Q. You don't deny writing that letter?

3 A. No, sir.

4 Q. Was that how you felt when you wrote that letter?

5 A. When I wrote that letter we had, we were having ups  
6 and downs, you know what I'm saying, during that time. We  
7 had been arguing and stuff like that. I was apologizing  
8 for things in the past that we been through, things I had  
9 done to her, you know. That was it.

10 Q. Was that unusual in this long-term relationship?

11 A. No, sir.

12 MR. ROUTZONG: I don't have any other questions,  
13 Your Honor.

14 THE COURT: Anything on recross?

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

16 THE COURT: Thank you for your testimony, sir. You  
17 can step down.

18 Anything further from the defense?

19 MR. ROUTZONG: Your Honor, can we approach?

20 THE COURT: Sure.

21 (Off-the-record discussion.)

22 THE COURT: Madam Forelady, ladies and gentlemen of  
23 the jury, the defense needs to figure out something about  
24 maybe a potential witness or not. And I'm allowing them a  
25 few minutes to kind of decide what they're going to do.

KIERRA MARTIN - DIRECT BY ROUTZONG

1           So take a very short break. So if you'll go to  
2 your jury room. I remind you not to start discussing this  
3 case, please.

4           (Jury exits courtroom at 3:45 p.m.)

5           THE COURT: Okay. We'll be in recess a few  
6 minutes. Take some time to try to track that person down.

7           MR. ROUTZONG: Thank you, Your Honor.

8           THE COURT: You're welcome.

9           (Break taken. At 4:08 p.m., the trial resumed:)

10          THE COURT: Mr. Routzong, I understand you have one  
11 more witness that you're going to put up in your case?

12          MR. ROUTZONG: Yes, sir.

13          THE COURT: Okay. Let's bring the jury out.

14          (Jury enters courtroom at 4:09 p.m.)

15          THE COURT: Let the record reflect the jury's back  
16 in. Madam Forelady, ladies and gentlemen of the jury, I  
17 have been informed that the defense has one remaining  
18 witness that will now be called.

19          Mr. Routzong, turn it over to you, sir.

20          MR. ROUTZONG: The defense calls Kierra Martin.

21          KIERRA MARTIN, having been duly sworn, was examined  
22 and testified as follows:.

23          THE CLERK: Please have a seat in the witness box.  
24 State your full name for the Court and spell your last.

25          THE WITNESS: Good afternoon. My name is Kierra

KIERRA MARTIN - DIRECT BY ROUTZONG

1 Martin and it's M-A-R-T-I-N.

2 THE COURT: You can have a seat, ma'am.

3 THE WITNESS: Okay.

4 DIRECT EXAMINATION

5 BY MR. ROUTZONG:

6 Q. Good afternoon, Ms. Martin.

7 A. Good afternoon.

8 Q. Can you tell me what your relationship is with  
9 Mr. Frazier?

10 A. That's my brother-in-law.

11 Q. About how long have you known him?

12 A. A little over two years now.

13 Q. Okay. Where do you work at?

14 A. I am currently a manager at Chick Fil-A where I've  
15 been for eight years now.

16 Q. Do you go to school?

17 A. I do. I'm currently enrolled at Miller-Motte  
18 Technical College where I will be graduating in the end of  
19 September with my associate's in medical assisting and soon  
20 after I'm signed up to attend Phoenix University to get my  
21 bachelor's in small business entrepreneurship.

22 Q. I just have a couple questions for you,  
23 Ms. Martin.

24 A. Okay.

25 Q. Did Mr. Frazier ever ask your assistance with any

KIERRA MARTIN - DIRECT BY ROUTZONG

1 kind of financial issues?

2 A. Yes, sir. He has.

3 Q. What did he ask you?

4 A. One day I got a call and he asked if I was busy.  
5 At the moment I wasn't.

6 MR. MOLONY: Objection, Your Honor. This is  
7 hearsay.

8 THE WITNESS: I was asked --

9 THE COURT: Wait a minute, ma'am. Okay?

10 Mr. Routzong, do you want to respond to that objection?

11 MR. ROUTZONG: Well, she's merely telling the jury  
12 what the Defendant told her and he's --

13 THE COURT: Right. Well, the objection is based  
14 upon hearsay. Of course I don't know exactly what she's  
15 going to say. Let's maybe --

16 MR. ROUTZONG: I can rephrase the question, Your  
17 Honor.

18 THE COURT: Try to rephrase it. And, Solicitor,  
19 certainly if you need to object you can.

20 MR. MOLONY: Yes, Your Honor.

21 BY MR. ROUTZONG:

22 Q. What did you help him with?

23 A. I went out and purchased a Green Dot money-back  
24 card. And a Green Dot money-back card is a prepaid debit  
25 card which you load money onto to get transferred so that

KIERRA MARTIN - DIRECT BY ROUTZONG

1 he could pay bills for her.

2 Q. Did you become aware of why he wanted it?

3 A. So that he can pay her rent.

4 Q. Whose rent -- whose rent -- whose rent -- is it  
5 your understanding whose rent it was that he wanted to  
6 pay?

7 A. Ms. Key.

8 Q. Ms. Key?

9 A. Uh-huh.

10 Q. Did you become aware that Mr. Frazier stayed with  
11 Ms. Key?

12 A. Yes, sir.

13 Q. About how long have you been aware of that? In  
14 other words, as far as you can remember, how long had he  
15 been staying with her?

16 A. From my knowledge I would say two years.

17 Q. So practically the whole time you've known him --

18 A. Uh-huh.

19 Q. -- he's been staying with Ms. Key, to your  
20 knowledge?

21 A. Yes, sir.

22 Q. Have you ever become aware of how Mr. Frazier  
23 referred to the house he shared with Ms. Key?

24 A. Home.

25 Q. Did you become aware of anything that he kept at

KIERRA MARTIN - CROSS BY MOLONY

1 her house?

2 A. Clothes, shoes.

3 Q. Let me take you back to the 17th of December.

4 A. Uh-huh.

5 Q. Did you see Mr. Frazier on the 17th of December?

6 A. Yes, sir; I did.

7 Q. And did you see Ms. Key?

8 A. Yes, sir; I did.

9 Q. What was your impression of what was going on?

10 A. I assume they were talking but at the time I  
11 arrived he was kind of distant. Like, he was standing  
12 back from where she was actually sitting on her car.

13 Q. She -- Ms. Key was on her car?

14 A. Yes, sir.

15 Q. Did she have anything in her hand?

16 A. Yes, sir.

17 Q. Do you know what she had in her hand?

18 A. It was a bottle. I know that much.

19 Q. But you can't say what it was?

20 A. I can't say what it was, but I know it was a bottle  
21 and she had been drinking it. So I really can't state  
22 exactly what it was.

23 Q. Was anybody keeping her there as far as you could  
24 tell?

25 A. No, because he was distant. So as I arrived, he's

KIERRA MARTIN - CROSS BY MOLONY

1 standing back by the gate. She's on her car. So as I  
2 pulled up, we began to talk. He informed me everything  
3 was okay. I left.

4 MR. ROUTZONG: Just a moment, Your Honor.

5 THE COURT: Sure.

6 MR. ROUTZONG: Please answer any questions that  
7 Mr. Molony would have for you.

8 THE WITNESS: Okay.

9 CROSS-EXAMINATION

10 BY MR. MOLONY:

11 Q. Good afternoon, Ms. Martin. How are you?

12 A. I'm good. How are you?

13 Q. Good. I'm just curious. You stated that the  
14 Defendant's, all of his stuff was at Jackie's house; is  
15 that right?

16 A. Yes, sir.

17 Q. But you don't know Jackie, do you?

18 A. Not personally, no, but I've seen her several  
19 times.

20 Q. Okay. But you've never seen her house?

21 A. I have.

22 Q. But you don't know her?

23 A. I never went inside her house.

24 Q. Okay. So you don't know for sure -- you told the  
25 jury that his stuff was in the house but you didn't know

KIERRA MARTIN - CROSS BY MOLONY

1 for sure that his stuff was in the house; right?

2 A. I know for sure his stuff was in the house.

3 Q. Okay. So you can see through the house?

4 A. I can't see through the house, but he was driven to  
5 the house with me in car. He went inside the house,  
6 changed clothes, came back out and we left. That's -- I'm  
7 under the impression that he's living there. He has  
8 clothes there. He went in, changed from what he was  
9 wearing to a new outfit and came back out. So he's living  
10 there.

11 Q. Okay. So you helped him out a lot; didn't you?

12 A. Yeah, when I could. If I wasn't at work and if I  
13 wasn't at school, of course.

14 Q. You love him?

15 A. Like a brother, yeah, of course.

16 Q. As a matter of fact, when he's been locked up he's  
17 been calling you a bunch; hasn't he?

18 A. Yeah.

19 Q. And you've actually at his request called her;  
20 haven't you?

21 A. Once, to my knowledge.

22 Q. So you're the middle man?

23 A. No, I'm no one's middle man.

24 Q. But you do what you can to help him?

25 A. Yeah, of course.

KIERRA MARTIN - CROSS BY MOLONY

- 1 Q. Now, the Defendant's brother, Darrell, is your  
2 husband?
- 3 A. Yes. Not my husband, my boyfriend.
- 4 Q. Your boyfriend. I'm sorry.
- 5 A. Uh-huh.
- 6 Q. And where does he live?
- 7 A. We live together.
- 8 Q. Where do y'all live?
- 9 A. Crossroads Market in North Augusta.
- 10 Q. You say you bought a Green Dot prepaid card so that  
11 the Defendant could pay the bills for Ms. Key?
- 12 A. Yes, sir; I did.
- 13 Q. Where was his mechanic job at?
- 14 A. I'm sorry?
- 15 Q. Where was he a mechanic at?
- 16 A. Where was he a mechanic? I've never been to a job.
- 17 Q. Just a couple more questions, Ms. Martin. You  
18 weren't at Ms. Key's residence on December 16th, that  
19 night, were you?
- 20 A. No, sir. I was not.
- 21 Q. So you didn't see the Defendant enter the house?
- 22 A. No, sir.
- 23 Q. You didn't see him bust in the side door?
- 24 A. No, sir.
- 25 Q. You didn't see the Defendant go and attack Stacey

1 Gantt?

2 A. No, sir.

3 Q. Jackie's guest?

4 A. No, sir.

5 Q. So, really you don't know anything about this  
6 particular case, what happened the night of December 16th,  
7 do you?

8 A. I was told only small details because I don't get  
9 into people's personal lives.

10 Q. Yes, ma'am.

11 A. So I'm -- there's always two sides to every story.  
12 So what I heard, you know, he went in and then it's pretty  
13 much none of my business. But I've been there for him.

14 MR. MOLONY: Okay. Thank you. I don't have any  
15 further questions.

16 THE COURT: Anything on redirect?

17 MR. ROUTZONG: No, sir.

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

20 THE WITNESS: Thank you.

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

23 THE WITNESS: Okay.

24 THE COURT: Anything further from the defense?

25 MR. ROUTZONG: Defense rests, Your Honor.

1 THE COURT: Any rebuttal case on behalf of the  
2 State?

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

4 THE COURT: Okay. All right. The evidentiary  
5 record in this case is now closed.

6 Madam Forelady and ladies and gentlemen of the  
7 jury, we're going to go ahead and take a recess for today.  
8 And, I think if you can promptly be back here at, let's  
9 say ten o'clock in the morning. And at that time we will,  
10 the lawyers will make their closing arguments to you. The  
11 Court will give you the final charge on the law. And then  
12 when you are properly instructed, I will allow you to  
13 begin your deliberations.

14 But you still can't start. Don't talk about this  
15 case among yourselves. Don't talk about it with any of  
16 your friends or family members that you come into contact  
17 with this evening.

18 And we'll see you back at ten in the morning.  
19 Okay? Have a good evening, everybody.

20 (Jury exits courtroom at 4:20 p.m.)

21 THE COURT: Any motions for the record from the  
22 defense?

23 MR. ROUTZONG: Your Honor, the defense renews its  
24 directed verdict motion, Your Honor.

25 THE COURT: Thank you very much. Denied.

1           Okay. We will work on the final charges. We do  
2 have a request or a couple requests to charge from the  
3 State. I think maybe the defense has an issue with part  
4 of that charge that's underlined. I think maybe at least  
5 you told my law clerk that.

6           MR. ROUTZONG: Yes, Your Honor. I haven't really  
7 had a chance to digest it yet.

8           THE COURT: Okay. And we're not going to discuss  
9 it -- we'll wait until in the morning. Let's regroup at  
10 nine in the morning, give us ample time.

11           We'll have you a draft of a charge to look at and  
12 we can get all of that put together and try to hopefully  
13 get started back at ten in the morning. Okay?

14           We'll be in recess until ten in the morning.

15           MR. MOLONY: Thank you, Your Honor.

16           MR. ROUTZONG: Thank you, Judge.

17 END OF DAY'S PROCEEDINGS: 4:22 P.M.

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1 ON THURSDAY, MAY 21, 2014 AT 10:04 A.M.:

2 THE COURT: Okay. Let's go on the record in the  
3 Frazier -- oh. We need to get Mr. Frazier out here.

4 (Defendant enters courtroom.)

5 THE COURT: Mr. Routzong, do you need a few minutes  
6 with Mr. Frazier?

7 MR. ROUTZONG: I don't think so, Your Honor.

8 THE COURT: Okay.

9 MR. ROUTZONG: Are we good?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. We're on the record in the State  
12 versus Frazier case. We're at the stage of the trial now  
13 where closing arguments, final charge will be made.

14 I have provided to both sides a copy of the  
15 proposed charge. Has the State had an opportunity to  
16 review that?

17 MR. MOLONY: I have, Your Honor.

18 THE COURT: And do you have any objections or  
19 additions or deletions?

20 MR. MOLONY: I do not, Judge.

21 THE COURT: And how about the defense, have you had  
22 an opportunity to review the charge?

23 MR. ROUTZONG: Yes, sir.

24 THE COURT: And do you have any objections or  
25 additions or deletions?

1 MR. ROUTZONG: No, sir.

2 THE COURT: All right. And the verdict form,  
3 you've looked at the verdict form as well?

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

5 THE COURT: Is that satisfactory?

6 MR. MOLONY: It is.

7 MR. ROUTZONG: Yes, sir.

8 THE COURT: Okay. Well, let's bring the -- are you  
9 ready to make closing arguments? Got your thoughts  
10 together and --

11 MR. MOLONY: As good as I can, Judge.

12 THE COURT: All right. Is the State going to close  
13 in full or are you going to open on the law?

14 MR. MOLONY: We'll waive opening on the law, Your  
15 Honor.

16 THE COURT: All right. Well, let's bring the jury  
17 out, Mr. Whittle.

18 THE BAILIFF: Okay.

19 (Jury enters courtroom At 10:06 a.m.)

20 THE COURT: Let the record reflect the jury's back  
21 in. Good morning, everybody.

22 THE JURY (COLLECTIVELY): Good morning.

23 THE COURT: We're at the stage of the trial where  
24 the lawyers will make their closing arguments to you, and  
25 then I will charge you on the law. After that then

1 you'll be specifically instructed by me to start your  
2 deliberations.

3 So please give these fine attorneys your undivided  
4 attention. Pay very close attention to what they have to  
5 say.

6 Mr. Routzong?

7 MR. ROUTZONG: Thank you, Your Honor. Kevin.

8 Good morning.

9 THE JURY (COLLECTIVELY): Good morning.

10 MR. ROUTZONG: I'd like to draw your attention back  
11 to what I mentioned to you the other day about the  
12 presumption of innocence. You're going to hear more about  
13 that from the Judge, but I want to just remind you what  
14 that means again.

15 The State's case is wrong and the witnesses on  
16 behalf of the State that are testifying against  
17 Mr. Frazier are not being truthful, or maybe not  
18 completely truthful.

19 And as you sit here right now that's what you have  
20 to believe, because you took an oath to do that. That's  
21 his right and you have to do that. As you're considering  
22 all the evidence in the back, as you think about  
23 Mr. Molony's closing argument and my closing argument,  
24 that's your standpoint.

25 Let's go back to the relationship. We had

1 testimony about that. The testimony is that this was an  
2 18-year off-and-on relationship. I think what we can  
3 conclude from that is there were times when they would  
4 fight, they'd get back together, they'd fight again, get  
5 back together. And this is over an 18-year period of  
6 time.

7 Now the stories kind of diverged a little bit, at  
8 least the testimony diverges a little bit. Mr. Frazier  
9 says he spent the night there on the 15th of December.  
10 And Ms. Key said, no, he hadn't. She had put him out of  
11 the house maybe more than a month before that.

12 But she also said a couple other things. And this  
13 is the context of their relationship. She said he never  
14 had his clothes there, he never lived there. He never  
15 paid any bills. He never bought any food, he didn't live  
16 there. He spent the night once in a while over this  
17 18-year period of time that everybody agrees they had this  
18 relationship.

19 Now, remember, the State's case is wrong. That's  
20 your standpoint. So let's look at it from that  
21 standpoint. And you're presuming that.

22 You heard from Ms. Kierra Martin. And she  
23 testified to just a couple things. She said she became  
24 aware that Mr. Frazier wanted her to help him get a Green  
25 Dot card, put money on it so he could give it to Jackie so

1 she could pay some of her bills, or that some of her bills  
2 could some way get paid. Did she say that actually  
3 happened? I don't think she actually testified to that.

4 But if you presume that Mr. Frazier's innocent,  
5 then maybe they're not quite telling the truth from that  
6 standpoint. And considering her credibility as a witness,  
7 the way she presented herself, what do you believe about  
8 that?

9 And even more importantly, like I said, Ms. Key  
10 said they never lived together. And yet Kierra said she  
11 went with him to the house. And you remember Mr. Molony  
12 said, he asked her, how do you know he lived there? Could  
13 you see into the house with x-ray vision -- I don't think  
14 think he said x-ray vision but I presume he meant x-ray  
15 vision. She said no. I took him there. He had on one  
16 set of clothes, he went in and came back out with a  
17 different set of clothes. And she said, I can infer from  
18 that that he lived there.

19 That's their relationship. If you look at that,  
20 all the evidence right there concerning their  
21 relationship, you have to ask yourself: Right now, is  
22 Ms. Key being truthful about what she said was their  
23 relationship? Eighteen years, no bills, no money, just  
24 once in a while a sleep over. Does that sound truthful  
25 when you look at all the things?

1           Mr. Frazier said he paid bills, you know, he lived  
2 there up until the day before. So you got to bear in  
3 mind that if that's not truthful, what does that say about  
4 the rest of the story?

5           And let's go to the 16th. Let's be there on the  
6 16th in this house. You got a couple different  
7 perspectives. One perspective is Ms. Key's perspective.  
8 She's in her house. They're listening to Christmas  
9 music. I can -- I don't know if she has a fireplace but I  
10 can see a fireplace in my mind's eye. They're all sitting  
11 there drinking coffee spiked with eggnog or something  
12 listening to Christmas music with this man she says she  
13 doesn't know his last name that she met in a pub a couple  
14 weeks before, whatever it was, three or four weeks. She's  
15 known him a couple weeks. She's met him and  
16 Ms. Washington is in there with her. And they're sitting  
17 there contemplating Christmas music and they hear this  
18 (makes knocking sound). And what happens then? What was  
19 the testimony? Apparently nothing.

20           Nobody testified that they got up and looked to see  
21 who was at the door. They just sat there apparently.  
22 And they testified they heard (makes knocking sound). And  
23 still nobody testified they went to the door. Who is  
24 there? That's what I would do. I don't know about  
25 anybody else but if I get a knock on the door, I go look

1 and see who it is. I might be cautious if it's a certain  
2 time of night, but at least I get up and go look and see  
3 who it is. That's what I think normal people do in the  
4 normal course of events. But there's no testimony that  
5 any of them did that:

6           So let's stop right there and let's go for  
7 Mr. Frazier's perspective. Mr. Frazier testified that he  
8 considers this to be his home. That he lives there.

9           And he comes there and here's a truck that he  
10 doesn't know who it belongs to. First think he sees,  
11 that's what he testified to. And he comes up to the house  
12 and knocks on the door and there's no, no stirring in the  
13 house. Nobody comes and sees who's there.

14           And he testified that, you know, in his experience  
15 people will sometimes -- how did he put it? He says he  
16 stays at his brother's house because people burglarize the  
17 house. He stays there in the daytime. So that's the  
18 neighborhood that he lives in in North Augusta. And so he  
19 walks up there. Nobody's answering the door. And what  
20 did he testify to? I don't know what's going on in here.

21           That's Jackie in there and he referred to her son  
22 as her stepson -- as his stepson rather. And he knocks  
23 again and still no answer.

24           What's going on? He says as he's at the threshold  
25 of this door, he's wondering what's going on. Nobody's

1 coming to the door. Strange people in the house. What's  
2 going on?

3 And what happens next? There's some divergence in  
4 the story. So we need to stop right there at the door for  
5 a minute and go back to Ms. Key's perspective and what she  
6 testified to. In fact, all the witnesses testified to; a  
7 door was kicked in violently. That's what they said  
8 happened.

9 And Mr. Frazier said he pushed the door open.

10 Now jumping ahead a little bit, you know, the  
11 police were called and they came. And, I know the police  
12 investigated this case, apparently. I mean, they're  
13 supposed to. And this violent crashing into the door,  
14 wood splintering everywhere, I would expect damage the  
15 wall. Maybe the doorknob hits the wall. I don't know,  
16 I'd expect something. I'd expect particles of dust on the  
17 floor. A lot of times as you can imagine when somebody  
18 kicks in the door your common experience will tell you  
19 that sometimes they leave a footprint or maybe there's a  
20 dent on the door.

21 Well, I can look through all of these pictures that  
22 have been entered into evidence, and there's nothing. You  
23 mean to tell me this violent burglary first occurred and  
24 the police didn't take pictures of all the wood chips and  
25 the broken door and the broken deadlock? They didn't do

1 that? They didn't. So you can sit there and say, yeah,  
2 this was a violent pushing in of the door. They didn't do  
3 any of that?

4 That's breathtaking. If what they said is true,  
5 that's breathtaking.

6 And remaining at the door for just a minute. We  
7 heard from the landlord. And he said, well, he doesn't go  
8 there. He said that the property's pretty well kept up so  
9 he doesn't go there very often. He knew nothing about the  
10 events of this night. He knew that the door was reported  
11 to be broken. And he said, you know, I believe his  
12 testimony was this is what it looks like after it's been  
13 fixed. It makes me wonder what it looked like before.

14 Maybe there's no wood chips and violent destruction  
15 of the door because this is what it looked like. And  
16 they're just taking an opportunity to try to blame  
17 Mr. Frazier to help bolster their case.

18 We'll leave the door. We'll go back to Ms. Key's  
19 perspective from the door.

20 And here comes Mr. Frazier into the house. And  
21 Ms. Washington testified, he's coming this way and (makes  
22 noise) out the front door I go. I asked her, I said,  
23 doesn't sound like you wasted any time. And you remember  
24 what she said. She indicated she didn't waste any time  
25 getting out the door, getting to her car. I think she

1 said she drove around the block.

2 No 9-1-1 call from her, by the way, with this  
3 violent, gun-toting maniac that bursts through the back  
4 door. No 9-1-1 call from Ms. Washington.

5 She did say she thought it was a nine millimeter.  
6 And I asked, do you have a lot of firearms? And, how  
7 would you know it was a nine millimeter? Well, she  
8 doesn't have any firearms. I think she indicated some  
9 familiarity but you got to put that into context, ladies  
10 and gentlemen, of what her total testimony was. Here he  
11 comes, out the door I go. And she's going to sit there  
12 and tell me and you and everyone else it was a nine  
13 millimeter. Wow.

14 Mr. Gantt. Mr. Gantt's testified that at some  
15 point in time he got in a tussle or a wrestling match with  
16 Mr. Frazier. And he got away. He was able to extricate  
17 himself from this situation. He's going out to his car.  
18 I'm going to get out of here. He couldn't get into his  
19 car. He says he was pursued by Mr. Frazier. So he goes  
20 down to another house.

21 This horrible potential slaughter that's getting  
22 ready to happen in that house and he goes down and he  
23 testified he met with these people and did nothing. Does  
24 that sound credible? If you presume that they're not  
25 being truthful if the State's case is wrong, does that

1 push you towards believing it or does that make you step  
2 back and say, what? This thing is going on down here and  
3 you don't even call 9-1-1. You don't ask them, can I --  
4 everybody's got a cell phone practically. I bet there's a  
5 house phone. Wouldn't you try?

6           Wouldn't that be the reasonable thing? Don't you  
7 sit back now, ladies and gentlemen, after hearing his  
8 testimony and just kind of wonder, is that truthful?  
9 Because that's not how people would act if they're seeing  
10 this horrible burglary first with a gun-toting maniac.  
11 That doesn't make sense.

12           And you heard the 9-1-1 call. It was Ms. Key's  
13 son. You know the thing that's bad about that? I only  
14 wish that he had been here so I could ask him some  
15 questions. I wish he was here as a witness, but he  
16 wasn't. He wasn't subjected to cross-examination so I  
17 could truly dig into what he actually saw. I can't say,  
18 and neither you can nor the State say he was telling  
19 things that he actually saw. You heard that he sounded a  
20 little bit slow.

21           I could have asked him, if he was subject to cross-  
22 examination, did somebody tell that you some of these  
23 things were going on?

24           We do know that somebody was throwing a fit in the  
25 background. That somebody was Mr. Frazier. You can hear

1 his voice. Somebody back there yelling.

2 But ask yourself, ladies and gentlemen, in your  
3 experience, does that sound like something that's  
4 happening during a burglary? Is that your picture in your  
5 mind of what happens during a burglary? Or would that  
6 more correspond to your picture of what would be going on  
7 if a man comes home and finds his girlfriend or spouse  
8 with somebody else? And you actually care about that  
9 person, you actually love that person.

10 Does that sound more like that or does it sound  
11 like your burglary where someone's kicking in the door or  
12 somebody's running in the house? What does it sound  
13 like? Maybe it sounds like both, but it also sounds like  
14 somebody who's throwing a fit because they found somebody  
15 that they care about with another man.

16 And if you can't sit here and come to a decision  
17 about which of those it is, that's reasonable doubt.  
18 There's no guessing here. You have to be firmly  
19 convinced which one of those circumstances it is. You  
20 have to.

21 Let's see what Mr. Frazier testified to. He said  
22 he came to the door and he immediately walked up to  
23 Ms. Key. And he said, I believe he testified that  
24 gentleman was seated.

25 Now if the State wants to come to you and allege

1 that his intent to commit a crime when he entered the  
2 dwelling was to beat him up, wouldn't that have been the  
3 first thing he did? Wouldn't that be the reasonable  
4 assumption? Remember, they're wrong. That's what you  
5 have to presume, that they're wrong.

6 Now, what did Mr. Frazier testify to? I asked him  
7 specifically, did you have consent to be in the house? He  
8 felt he did. That was his testimony. What was your  
9 intent when you walked in and entered that dwelling? He  
10 said, my intent was to find out what was going on.

11 Ladies and gentlemen, if you believe that, you must  
12 find him not guilty of burglary because he has to enter  
13 into that dwelling with that intent. It can't be formed  
14 afterwards. If you go back there and say to yourself  
15 well, geez, something happened here. And there was a  
16 fight. Although Mr. Frazier did testify that Mr. Gantt  
17 swung at him first, I believe is how he put it, or made  
18 the first move or however you want to frame that. That's  
19 what Mr. Frazier's testimony is. Even if that's not true,  
20 even if Mr. Gantt didn't start the fight, if Mr. Frazier  
21 did not have any intent when he entered that dwelling he's  
22 not guilty and you have to find him not guilty.

23 You can't go back there and just say, well,  
24 something happened, he must be guilty of something. No.  
25 These are very specific elements that you have to find and

1 consider. If you don't do that you've broken your oath  
2 and his rights have been infringed.

3 At some point Mr. Frazier leaves. Police come.  
4 Mr. Frazier testified, I believe, that he wasn't aware  
5 that the police had actually been called.

6 We do know that this happened on the 16th. There's  
7 no pictures from the police investigation. There wasn't a  
8 police officer here for me to ask anything. You know, I  
9 could have said, did you find any crumbs on the floor or  
10 something? We didn't have a police officer either, by the  
11 way.

12 But anyway, the next day on the 17th, everybody  
13 agrees that would know, Ms. Key brought herself to that  
14 gun-toting maniac's brother's house and talked to him.

15 Ladies and gentlemen, that also is breathtaking.  
16 She testified how scared she was. This is horrible. The  
17 State elicited that testimony. You could picture it in  
18 your mind, the horror. I mean, it's -- a slaughter is  
19 almost getting ready to commence. It's so terrible and  
20 the next day without anybody, no police escort or nothing,  
21 she testified that she goes and sees him.

22 Does that sound more like this 20- or this 18-year  
23 relationship where they're, one day they're like this and  
24 one day they're like that? Does that sound more like  
25 that? Does that sound like what somebody would do who is

1 that frightened? And maybe even most unbelievable is she  
2 testified that she called the police. Now, there was  
3 testimony from Mr. Frazier that his brother's house is  
4 about three minutes away from North Augusta Police  
5 Department.

6 Burglary first. Gun. Scared. And she's calling  
7 the police. And as luck would have it that day, the  
8 police just didn't come. If you believe that, ladies and  
9 gentlemen, I don't know what to say because I don't  
10 believe it. I don't think any of you should believe  
11 that. And if she's not telling the truth about that, what  
12 else isn't she telling the truth about? Issues of  
13 consent, whether he lived there; can you believe her about  
14 anything?

15 Remember you have to presume that you can't believe  
16 it.

17 Ms. Martin testified, I saw Ms. Key there. She  
18 had -- she was drinking something and I remember when I  
19 talked to her, I said, please tell me she was drinking a  
20 beer. And she wouldn't do it. She couldn't do it. She  
21 said, I don't know what she was drinking. I just know  
22 that Mr. Frazier was sitting far away. And the word she  
23 used was 'distant'. He wasn't really talking to her. He  
24 wasn't ready to reconcile with her, apparently.

25 And by his testimony he said that. He said she

1 came there to try to be reconciled. Does that sound like  
2 this 18-year relationship that's off and on?

3 She said she didn't have a beer. I can't say that  
4 she had a beer or not. I can only say that Kierra Martin  
5 said and Mr. Frazier said she was drinking something.  
6 Kierra said she was drinking something. Mr. Frazier said  
7 it was a beer that one of his relatives got for her and  
8 there she sits.

9 Ladies and gentlemen, is that what you would do if  
10 you were the victim of first degree burglary with guns  
11 being waved, everybody scared to death? Standing outside  
12 the car, the testimony was, leaned up against the car  
13 drinking something with no police being called? I don't  
14 believe that for a minute. There's no evidence the police  
15 were called other than her saying it. And that's not  
16 believable because they would have been there if they were  
17 called. You know that.

18 Just to sum up this case, ladies and gentlemen.  
19 And maybe by way of example, just focusing on these two  
20 elements of burglary that the State has to prove beyond a  
21 reasonable doubt. I don't have to prove anything. They  
22 do. Just focus on two elements: Did he have consent to  
23 enter the dwelling; did he have any intent when he entered  
24 the dwelling to commit a crime.

25 Focusing on those two elements. By way of example,

1 I was thinking about this on the way to work this morning.  
2 Let's suppose, and I do I have two elderly people that  
3 are neighbors in the house next door. If I see or  
4 suspect something's wrong in there, let's say smoke's  
5 coming out of a window. I don't see them standing outside  
6 the house. Something could be wrong.

7 If I bust down the front door and go in to try to  
8 see if they're injured, passed out or something because  
9 there's something going on, something's wrong, I don't  
10 know what, do I have -- have I committed a burglary? I  
11 didn't have specific consent to come in their house.  
12 Nobody said, come in my house, extricate me from the fire.  
13 Do I need that? Or as a human being do I act?

14 That's a question you need to ask yourselves when  
15 you go back there because that's basically what he said he  
16 did. Whether you believe he got put out of the house or  
17 not, that's what he said, he testified to. He wanted to  
18 know what was going on. He suspected something was wrong.  
19 And you should consider that.

20 And focusing in on the intent to commit a crime, if  
21 you believe him and he's only going in the house to find  
22 out if something's wrong, even if something wrong happened  
23 later, let's suppose he's guilty of assault and battery.  
24 Let's suppose Mr. Gantt didn't attack him first. That's  
25 not burglary because it's not an intent to commit a crime

1 .when he entered.

2 Ladies and gentlemen, I guess that pretty much  
3 concludes my remarks. I just want to leave you with this  
4 final thought.

5 Mr. Molony mentioned a Missouri game and the  
6 Carolina game and how he attended. And a couple things  
7 strike me about that. When you listen to the evidence,  
8 if you really wanted to analogize that game and his  
9 actions, what he said that -- what he did at that game,  
10 you'd have to say that it was more like Carolina won and  
11 then he's up in the nosebleed section, he jumped out of  
12 the stadium, he fell 200 feet he was so happy. Because  
13 that's a little bit like being accused on the 16th and  
14 going to see Mr. Frazier on the 17th because they don't go  
15 together. If he's happy he stays in the stadium and  
16 celebrates. He doesn't jump out.

17 And the other thing is, this isn't a game. This  
18 is a man's life and you have an important duty to do.

19 And I appreciate you listening.

20 THE COURT: Thank you, Mr. Routzong.

21 Solicitor, are you ready?

22 MR. MOLONY: Yes, Your Honor. Thank you. May it  
23 please the Court. Mr. Routzong. Mr. Hayes. Ladies and  
24 gentlemen of the jury. Good morning.

25 THE JURY (COLLECTIVELY): Good morning.

1 MR. MOLONY: I promise I won't be up here all  
2 morning. I do have to address a couple things you just  
3 heard.

4 I'm not getting into the football thing anymore. I  
5 think what it comes down to is what did the Defendant  
6 say. Mr. Routzong is doing his job as a defense attorney  
7 which is to come up here and try to get you to look  
8 everywhere but what the testimony showed and the evidence  
9 proves, which is your job as the finders of the fact to  
10 use these, weigh the credibility of the individuals, the  
11 believability of these witnesses, to determine what  
12 happened.

13 The Judge ain't going to tell you that you must  
14 presume the State's witnesses are lying. That is, you're  
15 supposed to come in with an open mind, which you've all  
16 done, and use your common sense and weigh the testimony  
17 with the evidence.

18 Now the Defendant got up and testified. The  
19 Defendant's story is that he lived in that house. He had  
20 been there for two years, he says. That during the  
21 daytime he has to babysit his brother's house in North  
22 Augusta because of the crime there is so bad.

23 So he's playing detective there but then at night  
24 he goes to Jackie's house. He's also got this mechanic  
25 job during the day. I guess he works out with his

1 babysitting the brother's house in North Augusta that his  
2 sister-in-law who got up here and testified for him said  
3 she had never heard of him working a mechanic job, but so  
4 he's watching his house. He also says that on the 16th  
5 he's riding by the house and sees a car he doesn't  
6 recognize and decides, I'm going to protect my family. So  
7 he's protecting them now.

8 So he pulls in, and he knocks on the door. Nobody  
9 comes to the door. So he goes and looks in the window and  
10 he sees a man he never recognized before, Stacey Gantt,  
11 and he then knocks on the window. Stacey Gantt, nobody  
12 gets up, nobody comes and lets him in. We all agree with  
13 that.

14 So then he goes to the side door and he knocks on  
15 the side door. And the side door miraculously opens and  
16 he walks in and has a pleasant conversation with Jackie  
17 asking her, "What are you doing, baby? Said he doesn't  
18 call her Jackie, he calls her baby. "What are you doing,  
19 baby?" She doesn't say a word to him, he said. She just  
20 looks at him. And at that time Stacey Gantt jumps up and  
21 tries to fight with him.

22 So he does what anybody would do. He fights back,  
23 And he says -- and that time is when he's angry and upset  
24 the word he used was 'pissed off'. You saw Stacey walk up  
25 here. You saw the Defendant walk up here. But he's not.

1 mad or upset until Stacey tries to fight him.

2 And then the next day on the 17th and she comes to  
3 try to see him. He wants to go live in the woods and on  
4 the streets because he hates her. Then he writes her the  
5 love letter from the jail because then he loves her.  
6 That's a lot to take in. That's over here.

7 Your job -- and this why it's the best system in  
8 the world is because you get to use your common sense to  
9 come in here and determine what happened.

10 What's the evidence show? The evidence shows -- it  
11 all comes back to these couple of minutes on that night.  
12 Burglary first degree. He agrees he entered the residence  
13 that night. The only discrepancy he says is that it's  
14 his residence too. All right.

15 The lease agreement is Jackie's -- it's not  
16 Jackie's, it's Ricky Brown's house. Ricky rents it to  
17 Jackie. I don't doubt that the Defendant had been there  
18 before. She told you they had had a prior relationship.

19 For some reason some men think that you have a  
20 prior relationship with a woman you own her forever.  
21 She's your property. You won't hear that charge from the  
22 Judge. She said it had been a month or so since he last  
23 been there. She said, yeah, we've been together. I've  
24 known him for 18 years. We used to talk. But at the  
25 time, there was nothing going on.

1           The landlord, Ricky Brown, said, I've never heard  
2 of the man. I'd never seen him. I've never seen that guy  
3 in my life. I've been the landlord for her for two years  
4 and the man that's there every night, he's never seen or  
5 heard of in his life.

6           Again he admits though he goes in the house.  
7 Now -- without consent. Now, when you get to go back and  
8 discuss this consent, Mr. Routzong told you in the  
9 beginning this case is about consent. Knocking on the  
10 door, nobody comes to the door. That's what he says.  
11 Knocking on window, nobody comes to the door. Goes to the  
12 side door, and -- in this picture -- this was fixed the  
13 next day. From the testimony, Ricky Brown said, I went  
14 and fixed this the next day. I was there that night  
15 though. This door was shattered to pieces. The lock on  
16 the door was actually dead bolted. When he kicks the door  
17 open and shatters it. You can see where he tries to fix  
18 the frame where it rips the drywall off the wall. He told  
19 you the door just slides open.

20           You get to use your common sense, ladies and  
21 gentlemen.

22           That's not what happened. This isn't a consensual  
23 entry into this house. I got -- if Jackie wanted him in,  
24 get up and open the door.

25           Listen to the 9-1-1 call. Listen. That's when --

1 that's what was happening at that time. You hear the  
2 Defendant's voice. Mr. Routzong says, listen to his  
3 voice. Is that the pleasant conversation with Jackie that  
4 he says he's having, or is it exactly like everybody else  
5 says?

6 They're all scared to death. Nobody opens the  
7 door. The boy's hiding in the bathroom. He's having a  
8 hard time trying to get out what he's wanting to tell  
9 them, where he's at. He says in there -- he's dyslexic --  
10 he's sorry, but come help us, the guy's going crazy, he's  
11 got a gun, he's threatening to kill everybody.

12 There's no consent.

13 With the intent to commit a crime. The Judge is  
14 going to tell you, with the intent to commit a crime, the  
15 Defendant must have the intent to commit a crime when he  
16 enters the house. But he'll also tell you the State  
17 doesn't have to prove to you exactly what's in a guy's  
18 mind. There's no way for us to do that. It's not  
19 possible. You're able to infer by the actions and the  
20 conduct of the Defendant what his intent was when he  
21 kicked in this door. That's -- y'all get to do that. You  
22 get to infer things by looking at the actions and the  
23 conduct of the Defendant.

24 Now, the Defendant admits that he sees a car he  
25 doesn't like in the driveway. He pulls in. He bangs on

1 the door. Nobody's coming to the door. He kicks open  
2 the door with a pistol in his hand.

3 Now, there are -- these phones, I know they got a  
4 ton of different apps, all kind of things you can do on  
5 them. I've never seen one where you can hit a button and  
6 it turned into a pistol. Everybody in the house says he's  
7 got a pistol. Please come help us. Jackie too, that day  
8 and on this witness stand. Lashanda, Stacey, the boy in  
9 the bathroom; he's got a pistol, come help us.

10 You are the deciders of the facts. You get to  
11 decide exactly what happened based on this. Based on the  
12 evidence, not based on something that -- you know, we've  
13 all come in to trial, to court with things that have  
14 happened in the past. And your job is to use what we've  
15 got here, and what you've heard, and your common sense.

16 Now, the Defendant is presumed to be innocent until  
17 the State proves him guilty beyond a reasonable doubt.

18 Breaking and entering. The entering of a residence  
19 of another without consent with the intent to commit a  
20 crime.

21 If the Defendant went to her house that night with  
22 no intent to commit a crime and it was consensual, he had  
23 been there two years, (gesturing with a key), he'd have  
24 opened the door like everybody else does. He bangs on  
25 every door in the house and he kicks it off the hinges.

1           That's the evidence in the case, ladies and  
2 gentlemen.

3           Credibility of witnesses. Who has something to  
4 lose, who doesn't? Who has something to gain, who  
5 doesn't?

6           That's, the Judge will tell you, your job. The  
7 believability of witnesses. You decide who sat right  
8 here and told you what happened, and who sat right here  
9 and told you things that defy the law of physics. The  
10 door doesn't slide open and look like this. Either Ricky  
11 Brown's a liar along with everybody else in that house or  
12 the Defendant's guilty of breaking into that house without  
13 consent with a pistol and assaulting Stacey Gantt. The  
14 first thing he does when he breaks in the house is he  
15 finds that man he doesn't know who he is.

16           Jackie's not his. She's not his. If he's upset  
17 that's one thing. Be upset. That would be  
18 understandable. I don't know, really. You can't do  
19 this.

20           The law of burglary is here for this reason, ladies  
21 and gentlemen. We have this law so that people can feel  
22 safe in their home, so kids can feel safe in their homes,  
23 so families can feel safe in their home from actions like  
24 this guy.

25           This isn't the wild, wild west. This is Aiken

1 County and you can't do that.

2 Now the Judge is going to tell you the law. He'll  
3 charge you. If anything I've said with these elements and  
4 with the intent, listen to what the Judge says. But at  
5 the end of this thing you're about to be able to take all  
6 these exhibits and pictures, listen to these 9-1-1 calls  
7 that happened that day. You 12 get to come together as  
8 one and make a decision based on the evidence and based  
9 using your common sense.

10 And at the end of this thing, the State's convinced  
11 you'll come back with the only verdict that this evidence  
12 and the testimony shows, and that justice in this case  
13 require, and that is that the Defendant's guilty of  
14 burglary first, possessing that pistol during the burglary  
15 first, and assaulting Stacey Gantt.

16 Thank you all.

17 THE COURT: Thank you, solicitor.

18 We're going to take about a 10-minute break before  
19 the Court gives you the final charge. So, Madam Forelady,  
20 and ladies and gentlemen of the jury, if you'll take a  
21 short break to the jury room.

22 I caution you and remind you still, don't start  
23 your deliberations yet. We'll get you back out shortly.

24 (Jury exits courtroom at 10:49 a.m.)

25 THE COURT: We'll be in recess for about 10

1 minutes.

2 (Break taken. At 11:02 a.m., the trial resumed:)

3 THE COURT: Let's bring the jury out, please.

4 THE BAILIFF: Okay.

5 (Jury enters courtroom at 11:02 a.m.)

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

8 JUDGE'S CHARGE TO THE JURY

9 Madam Forelady and ladies and gentlemen of the  
10 jury, I now will charge you the law applicable to this  
11 case. You must consider the charge as a whole and not  
12 focus on some portions to the exclusion of other portions.

13 These three indictments charge the Defendant with  
14 three criminal offenses; one, burglary in first degree;  
15 secondly, possession of a weapon during the commission of  
16 a violent crime; and, third, assault and battery third  
17 degree.

18 I remind you, once again, the fact that the  
19 Defendant was arrested, charged, and indicted in this case  
20 is not evidence in this case and not -- and cannot be  
21 considered by you as evidence of guilt in this case, nor  
22 does it create any presumption or inference of guilt.

23 These documents are simply the formal written  
24 instruments which contains the charges made against the  
25 Defendant. These are the formal documents by which this

1 case is brought into court.

2 The indictments in this case allege several  
3 different offenses against the Defendant. The charges  
4 are, in Indictment 2014-GS-02-358, possession of a weapon  
5 during the commission of a violent crime; Indictment 359,  
6 burglary in the first degree; and Indictment 360, assault  
7 and battery in the third degree.

8 Each indictment charges a separate and distinct  
9 offense. You must decide each indictment separately on  
10 the evidence and the law applicable to it, uninfluenced by  
11 your decision as to any other indictment. And there's  
12 one little caveat with that which I'll explain to you in  
13 just a little bit.

14 The Defendant may be convicted or acquitted on any  
15 or all of the offenses charged. You'll be asked to write  
16 a separate verdict of guilty or not guilty for each  
17 indictment. And again, there's one little explanation  
18 there and I'll get to that in just a little bit and  
19 explain that to you.

20 I remind, Madam Forelady and ladies and gentlemen  
21 of the jury, that during this trial you and I have had  
22 certain duties and responsibilities to perform. As the  
23 Trial Judge it is my responsibility to preside over the  
24 trial of this case. I've also had the duty to rule on the  
25 admissibility of the evidence offered during the trial.

1 You are to consider only the competent evidence before  
2 you. If there was any testimony ordered stricken from the  
3 record in this case during this trial, I don't believe  
4 that there was but if there was, you must disregard that  
5 testimony.

6 You are to consider only the testimony which has  
7 been presented from the witness stand, any exhibits which  
8 have been made a part of the record in this case, and any  
9 stipulations of counsel.

10 I have the additional duty to charge you the law  
11 applicable to this case. As the Presiding Judge, I'm the  
12 sole judge of the law of this case. And it's your duty  
13 as jurors to accept and apply the law as I now state it to  
14 you.

15 As I told you at the beginning of this case  
16 yesterday, if you already had any idea as to what the law  
17 is or what the law ought to be and it does not agree with  
18 what I tell you during this final charge, you must abandon  
19 your idea because you are sworn to accept the law and  
20 apply the law exactly as I state it to you.

21 In every case tried in this court before a jury,  
22 the jury becomes the sole and exclusive judge of the facts  
23 in a case.

24 A trial judge cannot state, cannot intimate, cannot  
25 comment on, or make any statement to a trial jury about

1 the facts in a case. Since you, the jury, are the sole  
2 judge of the facts in this case, you're not to infer from  
3 what I have said during the progress of this trial, in  
4 ruling upon the admissibility of evidence or otherwise, or  
5 anything that I say now during the course of this  
6 instruction to you that I have any opinion about the facts  
7 in this case. I do not have an opinion about the facts in  
8 this case. The law doesn't allow me to have an opinion  
9 about the facts in this case.

10 This is a matter solely for you, the jury, to  
11 determine. As jurors it is your duty to determine the  
12 effect, value, weight, and truth of the evidence presented  
13 during this trial.

14 Madam Forelady and ladies and gentlemen of the  
15 jury, as you're aware, the Defendant has pled not guilty  
16 to the three indictments. Consequently that plea of not  
17 guilty puts the burden on the State to prove the Defendant  
18 guilty. A person charged with committing a criminal  
19 offense in South Carolina is never required to prove  
20 himself or herself innocent.

21 I charge you that it is an important rule of law  
22 that the defendant in a criminal trial, no matter how  
23 serious the charge or charges may be, will always be  
24 presumed to be innocent of the crime for which the  
25 indictment was issued unless guilt has been proven by

1 evidence satisfying you of that guilt beyond a reasonable  
2 doubt.

3 This presumption of innocence does not end when you  
4 begin your deliberations but it accompanies the Defendant  
5 throughout the trial, throughout your deliberations,  
6 unless you reach a verdict of guilt based upon evidence  
7 satisfying you of that guilt beyond a reasonable doubt.

8 This presumption of innocence is like a robe of  
9 righteousness placed about the shoulders of the Defendant  
10 which remains with the Defendant unless it has been  
11 stripped from the Defendant by evidence satisfying you of  
12 the Defendant's guilt beyond a reasonable doubt.

13 Now this presumption of innocence is not mere legal  
14 theory. It's not just a legal phrase that we use. It is  
15 a substantial right to which every defendant is entitled  
16 unless you, the jury, are satisfied from the evidence of  
17 the Defendant's guilt beyond a reasonable doubt.

18 Once again, the State has the burden of proving the  
19 Defendant guilty beyond a reasonable doubt.

20 Some of you may have served as jurors in civil  
21 cases where you were told that it is only necessary to  
22 prove that a fact is more likely true than not true, such  
23 as by the greater weight or the preponderance of the  
24 evidence. However, in criminal cases, the State's proof  
25 must be more powerful than that. It must be beyond a

1 reasonable doubt.

2       Proof beyond a reasonable doubt is proof that  
3 leaves you firmly convinced of the Defendant's guilt.  
4 Now, there are very few things in this world that we know  
5 with absolute certainty. And in criminal cases, the law  
6 does not require proof that overcomes every possible  
7 doubt. If, based on your consideration of the evidence,  
8 you are firmly convinced that the Defendant is guilty of  
9 each of the crimes charged, then you must find the  
10 Defendant guilty.

11       However, on the other hand, if you think there's a  
12 real possibility that the Defendant is not guilty, you  
13 must give the Defendant the benefit of the doubt and find  
14 him not guilty.

15       Now, Madam Forelady and ladies and gentlemen of the  
16 jury, there are two types of evidence which are generally  
17 presented during a trial; that being direct evidence, and  
18 that being circumstantial evidence.

19       Direct evidence directly proves the existence of a  
20 fact and does not require a deduction. However,  
21 circumstantial evidence is proof of a chain of facts and  
22 circumstances indicating the existence of a fact. Crimes  
23 may be proven by circumstantial evidence.

24       The law makes no distinction between the weight or  
25 value to be given to either direct or circumstantial

1 evidence. However, to the extent the State relies on  
2 circumstantial evidence, all of the circumstances must be  
3 consistent with each other. And, when taken together,  
4 point conclusively to the guilt of the accused beyond a  
5 reasonable doubt. If these circumstances merely portray  
6 the Defendant's behavior as suspicious, the proof has  
7 failed.

8 The State has the burden of proving the Defendant  
9 guilty beyond a reasonable doubt. This burden rests with  
10 the State regardless of whether the State relies on direct  
11 evidence, circumstantial evidence or some combination of  
12 the two.

13 Necessarily you must determine the credibility of  
14 witnesses who have testified in this case. Credibility  
15 simply means believability.

16 It becomes your duty as jurors to analyze and to  
17 evaluate the evidence and determine which evidence  
18 convinces you of its truth. In determining the  
19 believability of witnesses who have testified in this  
20 case, you may believe one witness over several witnesses,  
21 or several witnesses over one witness. You may believe a  
22 part of the testimony of a witness and reject the  
23 remaining part of the testimony of that very same  
24 witness. You may believe the testimony of a witness in  
25 its entirety or reject the testimony of a witness in its

1 entirety.

2           You may consider whether any witness has exhibited  
3 to you any interest, bias, prejudice or other motive in  
4 this case. You may also consider, if you choose to, the  
5 appearance and manner of a witness while on the witness  
6 stand.

7           Now the Defendant has been charged with first  
8 degree burglary. That's found in Section 16-11-311 of  
9 our Code of Laws. The State must first prove beyond a  
10 reasonable doubt that the Defendant entered a dwelling  
11 without consent.

12           A dwelling is defined as any building or portion of  
13 a building in which a person ordinarily sleeps. A  
14 building constructed as a dwelling that has never been  
15 occupied cannot be considered a dwelling for purposes of  
16 burglary, but a building is a dwelling even if the  
17 residents are temporarily absent from that building.

18           In order to prove that the Defendant entered the  
19 dwelling, the State does not have to show that the  
20 Defendant's entire body entered the dwelling. The  
21 smallest entry is sufficient. It may be any part of the  
22 body such as a hand or foot, or even an instrument such as  
23 a hook or other instrument. In addition, the State does  
24 not have to prove that force was used to gain entry.

25           If a person enters a building by using deception,

1 artifice, trick or misrepresentation to get consent to  
2 enter, this is an entry without consent.

3 Next, the State must prove beyond a reasonable  
4 doubt that the Defendant entered the dwelling without the  
5 right to lawfully possess the dwelling himself. The  
6 proper test for determining whether a Defendant's interest  
7 in a dwelling precludes a burglary conviction is whether,  
8 under the totality of the circumstances, a burglary  
9 defendant had custody and control of and the right and  
10 expectation to be safe and secure in the dwelling  
11 burglarized. If so, he is a person in lawful possession  
12 and cannot be convicted of burglary. But if not, then you  
13 must then determine beyond a reasonable doubt whether the  
14 alleged victim had this interest and whether the Defendant  
15 invaded it.

16 Next, the State must prove beyond a reasonable  
17 doubt that the Defendant intended to commit a crime,  
18 either a felony or a misdemeanor, at the time of entry.  
19 The mere entry into a dwelling without consent is not  
20 burglary. If the intent to commit a crime is formed after  
21 the entry, it is not burglary. On the other hand, if the  
22 Defendant intended to commit a crime at the time of the  
23 entry, it is a burglary even if the intent was abandoned  
24 after the entry. It does not matter that the intended  
25 crime was not completed.

1 Intent may be shown by acts and conduct of the  
2 Defendant and other circumstances from which you may  
3 naturally and reasonably infer intent.

4 Finally, the State must prove beyond a reasonable  
5 doubt that the Defendant entered or remained in the  
6 dwelling in the nighttime. Nighttime is the period  
7 between sunset and sunrise during which there is not  
8 enough daylight to recognize a person's face except by  
9 artificial light or moonlight.

10 Let me explain to you intent. In order to  
11 establish criminal liability, criminal intent is  
12 required. For example, the mental state required to be  
13 proven by the State for a particular crime might be  
14 purpose, intent, knowledge, recklessness or criminal  
15 negligence.

16 Criminal intent must be proven by the State beyond  
17 a reasonable doubt. Criminal intent is always a matter  
18 that must be determined by the jury from the circumstances  
19 surrounding the situation. There's no way to prove  
20 intent to a mathematical certainty. There's no way  
21 medical science can dissect a person's brain and determine  
22 what the person had in mind. So the law says that  
23 criminal intent may be inferred from the circumstances  
24 shown to have existed.

25 This is how you make a determination of whether or

1 not the element requiring intent was present. It is not  
2 necessary to establish intent by direct and positive  
3 evidence, but intent may be established by inference in  
4 the same way as any other act, by taking into  
5 consideration the acts of the parties and all the facts  
6 and circumstances of the case.

7 Criminal intent is a mental state, a conscious  
8 wrongdoing. It is up to you to determine what the  
9 Defendant intended to do based on the circumstances shown  
10 to have existed.

11 Criminal intent can arise from action or a failure  
12 to act. It may arise from negligence, recklessness, or  
13 an indifference to duty, or to consequences that is  
14 considered by the law to be the equivalent of criminal  
15 intent.

16 Now, the second indicted offense is possession of a  
17 weapon during the commission of or attempt to commit a  
18 violent crime. That's found in Section 16-23-490 of our  
19 Code of Laws.

20 The Defendant is charged with possession of a  
21 weapon during the commission of or attempt to commit a  
22 violent crime. The State must prove beyond a reasonable  
23 doubt that the Defendant was in possession of a firearm or  
24 visibly displayed what appeared to be a firearm during the  
25 commission of a violent crime.

1           Now a firearm has been defined and means any  
2 machine gun, automatic rifle, revolver, pistol, or any  
3 weapon which will and is designed to, or may be readily  
4 converted to expel a projectile.

5           In order to find the Defendant guilty of possession  
6 of a weapon during the commission of a violent crime, you  
7 must first -- and this is my explanation that I mentioned  
8 to you at the outset of my final charge -- you must first  
9 find the Defendant guilty of either committing a violent  
10 crime or attempting to commit a violent crime such as the  
11 burglary first degree. That is considered a violent  
12 crime.

13           If you were to find the Defendant not guilty of the  
14 burglary first degree, then there's no violent crime to  
15 have been committed for the possession of a weapon to come  
16 into play. And I'm going to touch on that one more time  
17 at the end when I explain to you the verdict form.

18           The State must prove beyond a reasonable doubt that  
19 the weapon further advanced or helped in the commission of  
20 a crime. If you find that the State failed to prove to  
21 you beyond a reasonable doubt that the Defendant committed  
22 the crime of burglary first degree, then the Defendant  
23 cannot be found guilty of possession of a weapon during  
24 the commission of a violent crime.

25           The third indicted offense is assault and battery

1 third degree. And that's found in Section 16-3-600  
2 Subsection E in our Code of Laws. A person commits the  
3 offense of assault and battery in the third degree if the  
4 person unlawfully injures another person, or offers or  
5 attempts to injure another person with the present ability  
6 to do so.

7 Now you have heard evidence from the witness stand  
8 that the Defendant had been convicted of a crime or crimes  
9 other than the one for which the Defendant is now on  
10 trial. This evidence may be considered by you, if you  
11 conclude it is true, only in deciding whether the  
12 Defendant's testimony is believable and for no other  
13 purpose. You cannot consider his prior convictions and  
14 his prior record as any evidence concerning the  
15 Defendant's guilt of the charges that we are here for  
16 today.

17 Now, Madam Forelady and ladies and gentlemen of the  
18 jury, your verdict must be unanimous on each of the  
19 charges. And when you reach a verdict you are to notify  
20 the bailiffs, they'll explain to you exactly how that is  
21 done, so we can bring you back in to receive your verdict.

22 Now, I'm going to come down and explain to you the  
23 verdict form. The top part is just the identifying  
24 information; the name of the case, the name of the  
25 Defendant, the indictment numbers, and it says 'verdict

1 form'.

2           The first question, Madam Forelady, that you will  
3 need to have answered unanimously by the entire jury as to  
4 the indictment concerning burglary first degree. We, the  
5 Jury, find the Defendant guilty or not guilty.

6           Now the order that we place guilty and not guilty  
7 is of no significance. We just have to place one before  
8 the other. Okay?

9           Now your instruction is if the verdict is guilty as  
10 a burglary first degree, then you go to number two.  
11 Okay? But if you were to find the Defendant not guilty as  
12 to burglary first degree as I explained to you, then  
13 there's no violent crime that was committed in order to  
14 look at number two, then you'd directly go to number  
15 three, assault and battery in the third degree. Okay?

16           So once again, you determine burglary first degree,  
17 guilty or not guilty. If you unanimously find him guilty  
18 then you can go to number two to determine whether he's  
19 guilty or not guilty as to the possession of a weapon  
20 during the commission of a violent crime.

21           Again, if you were to find him not guilty, then you  
22 go to number three. Okay? You will mark those questions,  
23 there's a place for you to sign and it has already been  
24 dated for you.

25           Now, I'm going to send you back to your jury room.

1 And, again, you cannot start your deliberations. I need  
2 to talk with the lawyers to make sure that my final charge  
3 has been correct.

4 Once the -- and if it has been, then the bailiffs  
5 will bring to you all of the exhibits, the verdict form,  
6 and the indictments. Two things will happen when that is  
7 done. One, Mr. Williams, you're the alternate. You will  
8 need to come back out here because you would not be a part  
9 of the deliberations. And then the second thing to  
10 happen, you will start your deliberations. Okay?

11 So go back to your jury room. Don't start  
12 deliberations yet and if you're not brought back out for  
13 any further instructions, then when the exhibits,  
14 paperwork, verdict form are brought to you, Mr. Williams  
15 you come back out with us and you start your  
16 deliberations. Okay?

17 Back to your jury room.

18 FORELADY OF THE JURY: Does everybody sign that  
19 paper?

20 THE COURT: No. Just you.

21 (Jury exits courtroom at 11:23 a.m.)

22 THE COURT: Any objections or exceptions from the  
23 State as to the Court's final charge?

24 MR. MOLONY: None from the State, Your Honor.

25 THE COURT: And from the defense?

1 MR. ROUTZONG: No, sir.

2 THE COURT: Thank you very much.

3 (Off-the-record discussion. Attorneys review  
4 exhibits.)

5 THE COURT: Good?

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

7 MR. ROUTZONG: Yes, sir.

8 THE COURT: Mr. Whittle, you can tell them they can  
9 start.

10 (Deliberations commence at 11:24 a.m. At  
11 11:29 a.m., the trial continued:)

12 THE COURT: We're back on the record.

13 The jury indicated that they want to listen to the  
14 9-1-1 CDs. The Court gave them two options. One, the  
15 solicitor's office has a laptop available for their use.  
16 It can go back in the jury room. Or, they can come back  
17 out in the courtroom and have it played as it was during  
18 the course of the case.

19 The jury has elected the first option, to utilize  
20 the solicitor's laptop to play it.

21 Does the defense have any objection for the  
22 solicitor's laptop to be used in order to accomplish  
23 that?

24 MR. ROUTZONG: No, sir.

25 THE COURT: All right. So, they'll take the

1 laptop. And are you going to get it powered up for them?

2 MR. GRIMES: Your Honor, just for the record, this  
3 laptop has a secure format for juries that they won't be  
4 able to access the Internet or anything of that nature.

5 THE COURT: I figured something in place to  
6 prohibit that. Okay, good.

7 (Thereafter, other matters were heard by the  
8 Court.)

9 (At 11:41 a.m., the trial continued:)

10 (Court's Exhibit No. 1, note from jury, received  
11 into evidence.)

12 THE COURT: Gentlemen, we're back on the record.  
13 The jury has submitted a question. And the question  
14 which has been marked as Court's Exhibit One: Could we  
15 have the lawyer's flip chart?

16 So, Solicitor Molony, apparently they were pretty  
17 impressed with your chart. Of course, I'm going to have  
18 to bring them out and tell them that the only evidence  
19 they can have back there is what has been put into  
20 evidence, properly marked. But to just make you aware,  
21 they liked your flip chart.

22 MR. MOLONY: They wouldn't be able to read it  
23 anyway.

24 THE COURT: Would you bring the jury out and let me  
25 just give them an explanation, please?

1 MR. WEEKS: Judge, we need the Defendant in court.

2 THE COURT: Oh. Wait just a minute. Yeah, bring  
3 him out.

4 (Defendant enters the courtroom.)

5 THE COURT: We're back on the record. Since I made  
6 this announcement I forgot that Mr. Frazier was not in the  
7 courtroom.

8 Mr. Frazier, the jury has submitted a question.  
9 And the question which is marked as Court's Exhibit One:  
10 Could we have the lawyer's flip chart?

11 And they evidently are referring to Solicitor  
12 Molony's' flip chart that he used for demonstration.  
13 That's not into evidence. I'm going to bring the jury  
14 back out and explain to them that the only matters that  
15 they can consider is what's in evidence. And his flip  
16 chart was not.

17 So, just so you're aware of what's going on.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay? All right.

20 If you'll bring the jury out, please.

21 (Jury enters courtroom at 11:43 a.m.)

22 THE COURT: Let the record reflect the jury's back  
23 in.

24 Madam Forelady, and ladies and gentlemen of the  
25 jury, looking at your question which reads: Could we have

1 the lawyer's flip chart, the only matters that you can  
2 consider along with the law as given by the Court is the  
3 testimony from the witness stand and any of the exhibits  
4 that have been put into evidence.

5 The lawyer's flip chart was used for demonstration  
6 purposes. It's not into evidence. Therefore that cannot  
7 be taken back to the jury room for you to use.

8 So if you'll go back to your jury room and continue  
9 with your deliberations. Okay?

10 (Jury exits courtroom at 11:45 a.m.)

11 THE COURT: We'll be at ease for whatever amount of  
12 time.

13 (Thereafter, other matters here heard by the  
14 Court.)

15 (At 1:35 p.m., the trial resumed:)

16 THE COURT: We're back on the record. And the next  
17 question that the jury has presented: Could you tell us  
18 again what assault and battery third degree consists of?

19 And my plan is to recharge them on assault and  
20 battery as I charged which is about four lines.

21 Okay? Satisfactory with both sides?

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

23 MR. ROUTZONG: Yes, sir.

24 THE COURT: Thank you very much. Bring the jury  
25 out, please.

1 (Jury enters courtroom at 1:36 p.m.)

2 THE COURT: Let the record reflect the jury's back  
3 in. And I hope you had a good lunch compliments of Aiken  
4 County.

5 Madam Forelady, I have been presented another  
6 question, and the question states: Could you tell us  
7 again what assault and battery third degree consists of?

8 And I will recharge you assault and battery third  
9 degree which is found in Section 16-3-600 Subsection E of  
10 our Code of Laws. States the following: A person commits  
11 the offense of assault and battery in the third degree if  
12 the person unlawfully injures another person, or offers or  
13 attempts to injure another person with the present ability  
14 to do so.

15 So if you will take that and for whatever use you  
16 need to make of it, and go back to your jury room and  
17 continue deliberations. Thank you very much.

18 (Jury exits courtroom at 1:37 p.m.)

19 (Court's Exhibit No. 2, note from jury, received  
20 into evidence.)

21 (The trial resumed at 1:46 p.m.)

22 THE COURT: Okay. Let's bring the jury out. Got  
23 everybody here? Yeah.

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

25 (Jury enters courtroom at 1:47 p.m.)

1 THE COURT: Let the record reflect that the entire  
2 jury is back in.

3 Madam Forelady, I've been informed that you have  
4 reached a verdict; is that correct?

5 FORELADY OF THE JURY: Yes, sir.

6 THE COURT: And is your verdict unanimous among the  
7 12 of you?

8 FORELADY OF THE JURY: Yes, sir.

9 THE COURT: Would you hand the verdict form to the  
10 bailiff, please?

11 FORELADY OF THE JURY: (Complying.)

12 THE COURT: Madam Clerk, would you publish the  
13 verdict, please?

14 THE CLERK: Your Honor, in the State of South  
15 Carolina versus Daggart Bernard Frazier, as to Indictment  
16 2014-GS-02-3590, the charge of burglary first degree, we,  
17 the jury, find the Defendant guilty.

18 As to Indictment 2014-GS-02-358, the charge of  
19 possession of a weapon during the commission of a violent  
20 crime, we, the jury, find the Defendant not guilty.

21 As to Indictment 2014-GS-02-360, the charge of  
22 assault and battery third degree, we, the jury, find the  
23 Defendant guilty.

24 I certify this decision was the unanimous decision  
25 of the jury, signed by Karen D. West, Foreperson.

1 Ladies and gentlemen of the jury, if this is your  
2 verdict, please indicate so by raising of your right  
3 hands.

4 THE JURY (COLLECTIVELY): (Complying.)

5 THE CLERK: All hands are raised, Your Honor.

6 THE COURT: Thank you very much, Madam Clerk.

7 Madam Forelady and ladies and gentlemen of the  
8 jury -- let me first ask either side. Any individual  
9 polling of the jury?

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

11 MR. ROUTZONG: No, sir.

12 THE COURT: Madam Forelady and ladies and gentlemen  
13 of the jury, let me once again thank you for your jury  
14 service. As I mentioned to you before, it's a very high  
15 civic responsibility that we all have.

16 I hope your time on the jury has been educational  
17 for you, that you've learned some things that maybe you  
18 didn't know before you got here on Monday. And it's a  
19 difficult job to serve on a jury, but I'm sure that you  
20 performed your duties and your responsibilities  
21 admirably. And, again, we appreciate your service.

22 Now you will be -- will they be mailed their  
23 checks?

24 You'll be mailed a check to compensate you -- well,  
25 I shouldn't say 'compensate you' because you may not

1 consider it just compensation for the time you've been  
2 here these last three days, but you will be receiving a  
3 check and you are free for the rest of the week. And best  
4 of luck to you, and hopefully we might see again one day.  
5 Good luck.

6 THE BAILIFF: Does anyone need a work excuse? Just  
7 go back to the jury room.

8 THE COURT: And, Madam Forelady, you'll need to  
9 hang around for just a second. Get with these two ladies  
10 right here because the actual indictment has to be signed  
11 by you as well on all three indictments. So if you'll  
12 just hang around for just a second and get with those  
13 ladies there, please.

14 Thank you. You're free to leave.

15 (Jury exits courtroom at 1:50 p.m.)

16 THE COURT: We'll take a few minutes' break, let  
17 both sides kind of digest what's happened and then we'll  
18 proceed into sentencing.

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

20 (Break taken from 1:51 p.m., until 2:13 p.m., when  
21 the trial resumed:)

22 THE COURT: We're on the record in the sentencing  
23 phase of this proceeding, State of South Carolina versus  
24 Daggart Bernard Frazier, the jury having returned a guilty  
25 verdict on two of the three indictments; the burglary

1 first, and also the assault and battery in the third  
2 degree.

3 With respect to sentencing, I'll first hear  
4 whatever the State wants to tell me. Then I'll turn  
5 matters over to the defense.

6 MR. MOLONY: Thank you, Judge.

7 I believe Your Honor's heard the facts. I just  
8 wanted to give you the Defendant's prior record.

9 He has a 1995 grand larceny.

10 '96, false information.

11 '97, strong-arm robbery and kidnapping.

12 2002, failure to stop for a blue light and some  
13 traffic charges.

14 2005, simple assault and battery.

15 2006, possession of crack.

16 2007, resisting arrest.

17 And 2008, possession of crack second offense, Your  
18 Honor.

19 THE COURT: Okay.

20 MR. MOLONY: The victim, she is present but does  
21 not wish to address the Court.

22 THE COURT: All right. Thank you very much,  
23 Solicitor.

24 MR. MOLONY: Yes, sir.

25 THE COURT: Counselor, I'll be glad to hear from

1 you, whatever you want to tell me. And if Mr. Frazier  
2 wants to address the Court, I'll be glad to hear from  
3 him.

4 I do remind you, Mr. Frazier, you're still under  
5 oath from your testimony from yesterday.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Mr. Routzong?

8 MR. ROUTZONG: Your Honor, I agree with the State;  
9 you've already heard the facts. We, of course, disagree  
10 with the verdict, but we'd ask the Court to consider a  
11 minimum sentence, Your Honor.

12 THE COURT: Mr. Frazier, is there anything you'd  
13 like to tell me, sir?

14 THE DEFENDANT: No, sir.

15 THE COURT: Well, this is certainly a little  
16 different in some respects, a little different burglary  
17 first case. I'll certainly consider the fact that the  
18 burglary took place at someone that you knew. I know that  
19 there was a difference of opinion as far as to the extent  
20 of your relationship with Ms. Key, but nonetheless it was  
21 somebody that you had some relationship with, somebody  
22 that you knew. It was not a situation where the burglary  
23 took place in a stranger's home. So I think that is  
24 important.

25 The fact that the statute requires a mandatory

1 minimum, this being a violent crime that it invokes an  
2 85-percent service of your sentence. So that's important  
3 too.

4 Certainly I'm taking into account the fact that  
5 even though you've got a pretty extensive prior record,  
6 Mr. Frazier --

7 THE DEFENDANT: Yes, sir.

8 THE COURT: -- at least there's been no involvement  
9 with the criminal system for at least six years.

10 TAKING EVERYTHING INTO CONSIDERATION, I'M GOING TO  
11 IMPOSE THE MANDATORY MINIMUM OF 15 YEARS ON THE BURGLARY  
12 FIRST. ON THE ASSAULT AND BATTERY, TIME SERVED, 30  
13 DAYS.

14 Good luck to you, sir.

15 THE DEFENDANT: Yes, sir.

16 MR. ROUTZONG: Thank you, Your Honor.

17 MR. MOLONY: Thank you, Your Honor.

18 MR. ROUTZONG: Your Honor, I neglected to tell you,  
19 he has 155 days on this charge.

20 THE COURT: How much?

21 MR. ROUTZONG: Sir, I believe it was 155 days.

22 THE COURT: Okay. Any dispute with with that,  
23 Solicitor?

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

25 THE COURT: I need to go on the record to note

1 that -- step back sir, step back.

2 THE DEFENDANT: (Returns to bar.)

3 THE COURT: Under section -- I need to note on the  
4 record under Section 16-23-500 that burglary first being  
5 deemed a violent offense, classified as a felony thereof,  
6 and make a finding that it is. That's all related to  
7 firearms. That's under 16-23-500. It's quite frankly  
8 something I just learned about that it needs to be put on  
9 the record, that finding. And it all relates to the  
10 possession of a firearm.

11 So, so noted on the record.

12 MR. MOLONY: Thank you, Judge.

13 MR. ROUTZONG: Thank you, Your Honor.

14 END OF CASE: 2:18 P.M.

15 \*\*\*

16 CERTIFICATE OF REPORTER

17 STATE OF SOUTH CAROLINA )

18 COUNTY OF AIKEN )

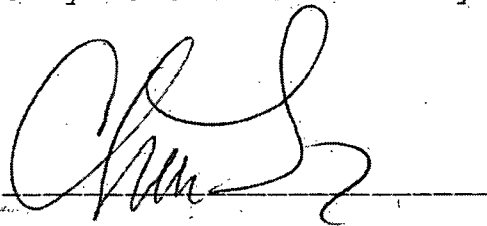
19

20 I, Cheri L. Young, Registered Professional Reporter  
21 and Official Court Reporter for the State of South  
22 Carolina, Second Circuit-At Large, do hereby certify that  
23 the foregoing proceedings were written stenographically by  
24 me using computer-aided translation; further, that the  
25 foregoing is a true, accurate and complete record, to the

1 best of my skill and ability, of all the proceedings had  
2 and evidence introduced in the hearing of the captioned  
3 case, relative to appeal, in the Court of General Sessions  
4 for Aiken County, on the 19th, 20th and 21st days day of  
5 May, 2014.

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

8 I have hereunder set my hand this 11th day of  
9 September, 2014.

10  
11 

12 Cheri L. Young, RPR  
13 Official Court Reporter  
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WITNESSES

Aiken County Sheriff

J Gantt

Law Enforcement Case #: 13-073173

DOCKET NO. 2014GS0200359

The State of South Carolina

County of Aiken

KNM

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

MARCH TERM 2014

2013A0210700638

FILED March 6 2014

Liz Godard  
C.C.P.A.O.S.  
Sherry Langley ss  
Deputy Clerk

THE STATE  
vs.

DAGGART BERNARD FRAZIER

ACTION OF GRAND JURY

true bill

Robert Wade

Foreperson of Grand Jury  
Date: March 6, 2014

CDR #: 0079

Indictment for

VERDICT

Guilty  
Green W. West  
May 21, 2014

Foreperson of Petit Jury  
Date:

BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
original documents which have been filed in my office this  
22 day of May 20 14  
Liz Godard  
C.C.P.A.O.S. Aiken County, S.C.  
Sherry Langley ss  
Deputy Clerk

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF AIKEN )  
 )

INDICTMENT FOR  
BURGLARY IN THE FIRST DEGREE

§ 16-11-0311

At a Court of General Sessions, convened on March 10, 2014, the Grand Jurors of Aiken County present upon their oath:

That DAGGART BERNARD FRAZIER did in Aiken County on or about December 16, 2013, wilfully and unlawfully enter the dwelling of Jacqueline Key located at [REDACTED] Beech Island, South Carolina, without consent and with the intent to commit a crime therein and the defendant entered or remained during the nighttime and/or was armed with a deadly weapon, all in violation of §16-11-311, Code of Laws of South Carolina (1976), as amended.

**RECEIVED**  
MAY 30 2014  
SC Court of Appeals

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

  
\_\_\_\_\_  
J. STROM THURMOND, SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 14, 2014,

Robert M. Pachak  
Robert M. Pachak  
Appellate Defender

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

ATTORNEY FOR APPELLANT

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NOV 14 2014

**SC Court of Appeals**