

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Clifton Newman, Circuit Court Judge

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S.C. Supreme Court

TODD MICHAEL SOWELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF RICHLAND ) 2005-GS-40-393

The State of South Carolina, )  
vs. )  
Todd Sowell, ) TRANSCRIPT OF RECORD  
Defendant. )  
\_\_\_\_\_ )

March 15 and 16, 2007  
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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Official Court Reporter

EXHIBITS

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MARCH 15, 2007

COURT: Bring the jury up.

(The jury panel entered the courtroom at approximately 10:08 A.M.)

THE COURT: Are we ready to get started? We're missing one juror. We have enough to select a jury. Is that okay with everybody?

MS. WEISS: Yes, sir.

MR. SCHARDT: Yes, Your Honor.

THE COURT: Good morning once again, members of the jury panel. At this time we will select a jury in the case of The State of South Carolina versus Todd Sowell. Now this is an -- well, this case involves a burglary, it's a burglary first. I'll read the allegations in the indictment for you.

The indictment alleges that Mr. Todd Sowell, did in Richland County, on or about December the 1st of 2004, unlawfully enter the dwelling of Sandrica --Sandrica, is that right?

MS. WEISS: Yes, sir.

THE COURT: Sandrica Jacobs, without consent and with the intent to commit a crime therein. He did enter the building during the hours of darkness and/or caused physical injury to any person who was not a participant in the crime.

1           Now, basically the charge is breaking into  
2 Ms. Jacobs' apartment, I think it is.

3           Now, I would ask that Mr. Sowell stand up and  
4 face the jury panel. Mr. Sowell, be kind enough to  
5 stand up and face the jury panel.

6           (Complied.)

7           THE COURT: This is Mr. Todd Sowell. Thank  
8 you, sir.

9           (Defendant was seated.)

10          THE COURT: Now, the question I need to ask  
11 the members -- you, the members of the jury panel, is  
12 this. Is any member of this jury panel related by  
13 blood or connected by marriage or employment or are  
14 you a close personal acquaintance of Mr. Todd Sowell?

15          If so, please stand.

16          I'll repeat that. Any member of the jury  
17 panel jury panel related by blood or connected by  
18 marriage or employment or are you a close personal  
19 acquaintance of Mr. Todd Sowell?

20          If so, please stand.

21          (No response.)

22          THE COURT: All right. Now, members of the  
23 jury panel, I'm now going to read you a jury list, a  
24 list of potential witnesses in this case. And to each  
25 of these names, I'll ask that you listen carefully,

1 that I call out, I'll ask you the same questions.  
2 Basically, do you know them, do you work with them are  
3 you related to them, that sort of thing.

4 (Pause.)

5 THE COURT: Okay. All right, first of all, a  
6 potential witness is Ms. Sandrica Jacobs, the victim  
7 in this case.

8 Ms. Jacobs, will you stand up and face the  
9 jury panel, please, ma'am?

10 (Complied.)

11 THE COURT: Thank you. Also, Investigator  
12 Kevin Reese of the Columbia Police Department. This  
13 is Investigator Kevin Reese.

14 (Investigator Reese stands.)

15 THE COURT: Thank you, sir. Carolyn  
16 Strothers. Ms. Strothers, would you stand up and face  
17 the jury panel, please, ma'am?

18 (Complied.)

19 THE COURT: Thank you. Officer J. Jenkins  
20 from the Columbia Police Department. This is Officer  
21 Jenkins.

22 (Officer Jenkins stands.)

23 THE COURT: Thank you, sir. Also, Ms.  
24 Patricia Preston. Is Ms. Preston present, Mr.  
25 Schardt?

1 MR. SCHARDT: No, Your Honor.

2 THE COURT: Is she a fact witness? Is she  
3 related to somebody or what?

4 MR. SCHARDT: With no one in this room, Your  
5 Honor.

6 THE COURT: I understand that. She's a fact  
7 witness in this case, I would assume?

8 MR. SCHARDT: Yes.

9 THE COURT: All right. Okay. Ms. Carolyn  
10 Sowell. Is Ms. Sowell present?

11 MR. SCHARDT: Not yet, Your Honor.

12 THE COURT: Now, I think I've covered all the  
13 names that have been submitted by both parties, is  
14 that fair enough, have I? And I would assume -- both  
15 -- some names are on both lists. But does that cover  
16 everybody?

17 MR. SCHARDT: Yes, Your Honor.

18 THE COURT: All right. Let me run back  
19 through them again.

20 Sandrica Jacobs, Investigator Kevin Reese  
21 from the Columbia Police Department, Ms. Carolyn  
22 Strothers, Office J. Jenkins from the Columbia Police  
23 Department, Patricia Preston, Carolyn Strothers -- I  
24 mentioned her, Todd Sowell. Does that cover everybody  
25 again? Y'all listen to those names.

1 Now the question is this, members of the jury  
2 panel, are you related by blood or marriage or  
3 connected by employment or are you a close personal  
4 friend or acquaintance of any of those names I just  
5 called out?

6 If so, please stand. Do you know anybody  
7 involved?

8 (No response.)

9 THE COURT: Now, the Defense in this case,  
10 that is the lawyers that represent Mr. Sowell, there's  
11 first Mr. Maxwell Schardt of the Richland County  
12 Public Defender's office.

13 Mr. Schardt, stand up and face the jury  
14 panel.

15 (Complied.)

16 THE COURT: Thank you, sir. And also, Mr.  
17 Deon O'Neil of the Public Defender's office. They  
18 represent Mr. Sowell.

19 (Mr. O'Neil stands.)

20 THE COURT: Thank you. Now the question  
21 now is this, members of the panel, have you or any  
22 members of your immediate family ever been represented  
23 by Mr. Schardt or Mr. O'Neil or anybody in the  
24 Richland County Public Defender's office?

25 If so, please stand.

1 (No response.)

2 THE COURT: Have you or any members of your  
3 immediate family ever been on the other side of a case  
4 involving Mr. Schardt, Mr. O'Neil or anybody from the  
5 Richland County Public Defender's office?

6 If so, please stand.

7 (No response.)

8 THE COURT: Now, in this case, members of the  
9 jury panel, the State or the prosecution is being  
10 represented by Ms. Heather Weiss. Ms. Weiss from the  
11 5th Circuit Solicitor's office.

12 (Ms. Weiss stands.)

13 THE COURT: Thank you, Ms. Weiss. And also  
14 Mr. Bob Maldonado from the 5th Circuit Solicitor's  
15 office.

16 (Mr. Maldonado stands.)

17 THE COURT: Thank you, sir. Now, my question  
18 is this, have you or any members of your immediate  
19 family ever been represented by Ms. Weiss or Mr.  
20 Maldonado from the 5th Circuit office or anybody from  
21 the 5th Circuit office? That means, you could have  
22 been the victim of a crime, or a family member, and  
23 the Solicitor's office prosecuted the case.

24 If so, please stand.

25 (No response.)

1 THE COURT: All right. Now, members of the  
2 jury panel, I'm going to have to ask you a series of  
3 questions. It might take a little while. The reason  
4 for these questions is to try to select a fair and  
5 impartial jury. One or two of these questions may be  
6 potentially embarrassing for some of you to answer.

7 So what I'm going to do, if I ask a question  
8 and you feel uncomfortable answering it, I may invite  
9 you down to speak with me privately, along with the  
10 lawyers down here. That's sort of the way we do it.

11 Are we all understood on that?

12 (Affirmative response.)

13 THE COURT: Very well. Now, is any member of  
14 the jury panel related by blood or marriage to, or an  
15 acquaintance of any member of any law enforcement  
16 agency? And what that sort of means is the Sheriff's  
17 Department, the City Police Department -- okay, SLED  
18 or the Richland Count Sheriff's Department.

19 So, is any member of the jury panel related  
20 by blood or marriage to, or a friend or acquaintance  
21 of any member of any law enforcement agency?

22 If so, please stand.

23 All right, yes, sir, your name please.

24 MR. SHEALY: Mark Shealy.

25 THE COURT: Mr. Shealy, you have, I think the



1 other day you told me, a relative or a nephew or  
2 something.

3 MR. SHEALY: My son works for the FBI.

4 THE COURT: Your son works for the FBI. Now,  
5 the fact that your son works for the FBI, Mr. Shealy,  
6 would that or could that affect your ability to be a  
7 fair and impartial juror in the trial of this case?

8 MR. SHEALY: No, sir.

9 THE COURT: Are you sure about that?

10 MR. SHEALY: Yes, sir.

11 THE COURT: Thank you, Mr. Shealy.

12 Yes, ma'am, your name, please.

13 MS. SMITH: Lacosha Smith.

14 THE COURT: I can't hear you.

15 MS. SMITH: Lacosha Smith.

16 THE COURT: Ms. Smith, is it you or a family  
17 member?

18 MS. SMITH: Family member.

19 THE COURT: Who's the family member?

20 MS. SMITH: Valerie Thompson. (phonetic) ---

21 THE COURT: All right, what relationship?

22 MS. SMITH: Oh, aunt.

23 THE COURT: She's your aunt?

24 MS. SMITH: Yes.

25 THE COURT: And who does she work with?

1 MS. SMITH: The City of Columbia.

2 THE COURT: The City of Columbia. The fact  
3 that your aunt works with the City of Columbia -- as  
4 an officer or as a clerk?

5 MS. SMITH: As a clerk.

6 THE COURT: As a clerk. The fact that your  
7 relative works for the City Police Department, would  
8 that or could that affect your ability to be a fair  
9 and impartial juror in the trial of this case?

10 MS. SMITH: No.

11 THE COURT: You sure about that?

12 MS. SMITH: Yes.

13 THE COURT: All right, thank you, Ms. Smith.  
14 Yes, ma'am, your name, please.

15 MS. TYLER: Nina Tyler.

16 THE COURT: Ms. Tyler, who is it?

17 MS. TYLER: I work with some of the Richland  
18 County Police officers.

19 THE COURT: You do what now?

20 MS. TYLER: I work with two of them.

21 THE COURT: In what capacity?

22 MS. TYLER: At Spring Valley High School ---

23 THE COURT: As Resource Officers, that's  
24 right. I think you told me the same thing two days  
25 ago.

1 She works at Spring Valley. She works with  
2 two Resource Officers from the Richland County  
3 Sheriff's Department, is that correct?

4 MS. TYLER: Yes, sir.

5 THE COURT: All right. Stand up again.

6 MS. TYLER: Sorry.

7 THE COURT: I'm going to give you some  
8 exercise. Would that or could that relationship  
9 affect your ability to be a fair and impartial juror  
10 in the trial of this case?

11 MS. TYLER: No, sir.

12 THE COURT: Are you sure about that?

13 MS. TYLER: Yes, sir.

14 THE COURT: All right, thank you, ma'am.

15 Yes, sir, your name, please.

16 MR. TOATLEY: Yeah, Robert Toatley. Robert  
17 Toatley.

18 THE COURT: I couldn't quite hear, I'm sorry.  
19 We went through this the other day.

20 MR. TOATLEY: Yeah, Robert Toatley.

21 THE COURT: Oh, Toatley.

22 MR. TOATLEY: Yeah.

23 THE COURT: Mr. Toatley, who is it that you  
24 know, sir?

25 MR. TOATLEY: I know Ray and Roy Livingston

1 on the Sheriff's ---

2 THE COURT: I'm sorry. And it's my fault,  
3 not yours but I'm having trouble hearing you. I'm  
4 going to ask you to speak a little bit louder and a  
5 little bit slower. Now, tell me again.

6 MR. TOATLEY: Ray and Roy Livingston on the  
7 Richland County Sheriff's Department.

8 THE COURT: Are they related to you or do you  
9 just know them?

10 MR. TOATLEY: No, we're just good friends.

11 THE COURT: I think you said you've known  
12 them for 30 years or a long time or something the  
13 other day?

14 MR. TOATLEY: Yeah.

15 THE COURT: Would that relationship that you  
16 have with the Richland County Sheriff's deputies that  
17 you mentioned, would that or could that affect your  
18 ability to be a fair and impartial juror in the trial  
19 of this case?

20 MR. TOATLEY: No.

21 THE COURT: You're sure about that?

22 MR. TOATLEY: Yeah.

23 THE COURT: All right, thank you, sir.

24 Yes, ma'am, your name, please.

25 MS. MORANT: Sandra Morant.

1 THE COURT: Morant?

2 MS. MORANT: Yes, sir.

3 THE COURT: Ms. Morant, who is that you know,  
4 in what way?

5 MS. MORANT: Huh?

6 THE COURT: Who is that you know or are  
7 related to?

8 MS. MORANT: Oh, my brother-in law, he works  
9 for the Richland County Sheriff.

10 THE COURT: All right, your brother-in-law  
11 works for the Richland County Sheriff's Department.  
12 Would that or could that affect your ability to be a  
13 fair and impartial juror in the trial of this case?

14 MS. MORANT: No.

15 THE COURT: You're sure about that?

16 MS. MORANT: Yes.

17 THE COURT: All right, thank you, Ms. Morant.  
18 Yes, sir, your name, please.

19 MR. PETERS: Francisco Peters:

20 THE COURT: What?

21 MR. PETERS: Francisco Peters.

22 THE COURT: That's right, Mr. Peters. And  
23 who do you know, in what way are you related?

24 MR. PETERS: My wife, she works for SLED.

25 THE COURT: Your wife works for SLED?

1 MR. PETERS: Yes.

2 THE COURT: She was working for SLED Monday,  
3 wasn't she? Now, would that or could that affect your  
4 ability to be a fair juror in the trial of this case?

5 MR. PETERS: No.

6 THE COURT: All right, thank you, sir.

7 Yes, ma'am, your name, please.

8 MS. HARMON: Roberta Harmon.

9 THE COURT: Ms. Harmon, who is that you know  
10 or are related to?

11 MS. HARMON: Reginald Harmon.

12 THE COURT: And who does he work for?

13 MS. HARMON: The City of Columbia.

14 THE COURT: The City of Columbia. And what  
15 relationship do you have with him?

16 MS. HARMON: My cousin.

17 THE COURT: Your cousin. A first cousin, I  
18 assume?

19 MS. HARMON: Yes.

20 THE COURT: All right. Would that  
21 relationship or could that relationship affect your  
22 ability to be a fair and impartial juror in the trial  
23 of this case?

24 MS. HARMON: No, sir.

25 THE COURT: You're sure about that?

1 MS. HARMON: Yes, sir.

2 THE COURT: All right, thank you, ma'am.

3 Yes, ma'am, your name, please.

4 MS. TAYLOR: Yvette Taylor.

5 THE COURT: Sanders, is it?

6 MS. TAYLOR: Yvette Taylor.

7 THE COURT: Taylor, Taylor. Who is it -- who  
8 are you related to, Ms. Taylor?

9 MS. TAYLOR: I work for the DJJ, Department  
10 of Juvenile ---

11 THE COURT: That's right, you work for the  
12 Department of Juvenile Justice. In what capacity?

13 MS. TAYLOR: I'm a juvenile corrections  
14 officer.

15 THE COURT: Okay. Would that or could that  
16 affect your ability to be a fair juror in the trial of  
17 this case?

18 MS. TAYLOR: No, sir.

19 THE COURT: And you're sure about that?

20 MS. TAYLOR: Yes, sir.

21 THE COURT: All right, thank you, ma'am.

22 Anybody else?

23 (No response.)

24 THE COURT: All right. Is any member of the  
25 jury panel employed by, related by blood or marriage

1 to, or a friend or acquaintance of anyone employed by  
2 the South Carolina Attorney General's office, the 5th  
3 Circuit Solicitor's office or any prosecuting  
4 attorney's office, that means the U.S. Attorney's  
5 office or the City of Columbia prosecution, things  
6 like that?

7 Yes, ma'am, tell me your name again for the  
8 record.

9 MS. TYLER: Nina Tyler.

10 THE COURT: Yes, Ms. Tyler.

11 MS. TYLER: A federal prosecuting attorney is  
12 a friend.

13 THE COURT: Ma'am?

14 MS. TYLER: A federal prosecuting attorney is  
15 a friend.

16 THE COURT: It wasn't Ruschky. Who was it  
17 the other day?

18 MS. TYLER: Bob Jendron.

19 THE COURT: Bob Jendron, that's right. The  
20 fact that you know Mr. Jendron who has been with the  
21 U. S. Attorney's office probably about 30 years now, I  
22 think, would that or could that relationship affect  
23 your ability to be a fair and impartial juror in the  
24 trial of this case?

25 MS. TYLER: No, sir.



1 THE COURT: All right, thank you, ma'am.

2 Dr. Epps, I think it is.

3 DR. EPPS: Yeah.

4 THE COURT: Who is it that you know?

5 DR. EPPS: The Solicitor.

6 THE COURT: Oh, that's right, you know

7 Barney. The fact that you know Mr. Giese, would that

8 or could that affect your ability to be a fair and

9 impartial juror in the trial of this case?

10 DR. EPPS: No.

11 THE COURT: Are you sure about that?

12 DR. EPPS: Yes.

13 THE COURT: All right, thank you, sir.

14 Excuse me. Now, has any member of the jury  
15 panel every been employed by any civilian or military  
16 law enforcement agency? Have you personally ever  
17 worked for any law enforcement agency?

18 If so, please stand.

19 Okay, tell me your name once again, please.

20 MS. WHITE: Michele White and I worked with  
21 Senate Security several years ago.

22 THE COURT: Senate Security up at the State  
23 House?

24 MS. WHITE: Yes.

25 THE COURT: There ain't too many things

1 secure up at the State House. Anyway, the fact that  
2 you were so employed, would that or could that affect  
3 your ability to be a fair juror in the trial of this  
4 case?

5 MS. WHITE: No.

6 THE COURT: All right, thank you, ma'am.

7 All right. Is any member of the jury panel a  
8 member of or contributor to any group which has as its  
9 primary concern the promotion of law enforcement or  
10 victim's rights. These groups would include, but are  
11 not limited to, CAVE, CADRE, MADD, SADD or Sister  
12 Care? I'm sure y'all understand that question.

13 If so, please stand.

14 Give any money to or you're a member of any  
15 of these organizations or groups?

16 If so, please stand.

17 Yes, ma'am, your name, please.

18 MS. MOORE: Maura Moore.

19 THE COURT: Yes, Ms. Moore.

20 MS. MOORE: I've made clothing donations to  
21 Sister Care.

22 THE COURT: All right. The fact that you've  
23 made clothing donations to Sister Care, would that or  
24 could that affect your ability to be a fair juror in  
25 the trial of this case?

1 MS. MOORE: No, sir.

2 THE COURT: All right, thank you, ma'am.

3 Yes, ma'am, your name, please.

4 MS. RODILLO-FOWLER: Ellen Rodillo-Fowler.

5 THE COURT: And you're the actor, right?

6 MS. RODILLO-FOWLER: Yes.

7 THE COURT: I'm sorry, actress. Tell me your  
8 name once again, for the record.

9 MS. RODILLO-FOWLER: Ellen RODILLO-FOWLER.

10 THE COURT: Yes, ma'am and ---

11 MS. RODILLO-FOWLER: And sometimes we've had  
12 performances, like I said, the proceeds benefit Sister  
13 Care ---

14 THE COURT: All right. Would that or could  
15 that affect your ability to be a fair juror in the  
16 trial of this case?

17 MS. RODILLO-FOWLER: No.

18 THE COURT: Thank you. I'll ask this  
19 question still, Mr. Schardt, I think I've covered it.  
20 Is any member of the jury panel employed by, related  
21 by blood or marriage to, or a friend or acquaintance  
22 of any prospective witness in this case, the names I  
23 read out to you earlier?

24 (No response.)

25 THE COURT: All right. Has any member of the

1 jury panel or their immediate family ever been the  
2 victim of a criminal -- of a criminal domestic  
3 violence case? Has any member of the jury panel or  
4 their immediate family ever been the victim of a  
5 criminal domestic violence?

6 If so, please stand.

7 (No response.)

8 THE COURT: And this is one of those  
9 sensitive questions I have to ask and I would ask you  
10 to come down and speak with me privately if you fall  
11 -- if you have to respond to these questions.

12 Let's see. Now, has any member of the jury  
13 panel or their immediate family ever been the victim  
14 of an assault of any kind?

15 If so, please stand.

16 Have you ever been assaulted or a member  
17 your family?

18 (Jury panel members stand.)

19 THE COURT: Do you want to come down and talk  
20 to me about it? I've got to invite the lawyers to  
21 join us, of course.

22 Now I think the other day there were several  
23 people that fell within this category. If you do,  
24 just line up and I'll talk to you one by one.

25 (THEREUPON, the following voir dire was held

1 on the record in the presence of the jury panel, but  
2 out of hearing of the jury panel.)

3 THE COURT: Tell us your name again for the  
4 record.

5 MS. TYLER: My name is Nina Tyler.

6 THE COURT: And what's your juror number?

7 MS. TYLER: 213.

8 THE COURT: All right. Now, Ms. Tyler -- can  
9 y'all hear me?

10 MR. SCHARDT: Yes, sir.

11 THE COURT: Was it you or a family member?

12 MS. TYLER: I was mugged.

13 THE COURT: That's right. That was a couple  
14 of weeks ago you said?

15 MS. TYLER: About five years ago.

16 THE COURT: She was mugged about five years  
17 ago. Now would that or could that affect your ability  
18 to be a fair juror in this case?

19 MS. TYLER: No.

20 THE COURT: You're sure about that?

21 MS. TYLER: Yes, sir.

22 THE COURT: All right, thank you, Ms. Tyler.  
23 Tell me your name again, please, for the  
24 record.

25 MR. TANNER: Andre Tanner.

1 THE COURT: Mr. Cannon (sic), now what was  
2 your situation?

3 MR. TANNER: Tanner.

4 THE COURT: Tanner, I'm sorry.

5 MR. TANNER: I was assaulted in my home.

6 THE COURT: That's right, you were --  
7 somebody was doing construction on his house, he was  
8 assaulted and how long ago was that?

9 MR. TANNER: Approximately five years.

10 THE COURT: Now would that or could that  
11 affect your ability to be a fair juror in this case?

12 MR. TANNER: No.

13 THE COURT: Are you sure about that?

14 MR. TANNER: Positive.

15 THE COURT: Okay. All right, thank you, sir.

16 Come up a little bit and tell me your name  
17 and your juror number for the record.

18 MS. MCCLINTON: Sonja McClinton.

19 THE COURT: McClinton?

20 MS. MCCLINTON: Uh-huh.

21 THE COURT: Did y'all get that? And what  
22 happened to you, Ms. McClinton?

23 MS. MCCLINTON: --

24 THE COURT: I can't hear you.

25 MS. MCCLINTON: --

1 THE COURT: Okay. She has -- so I would take  
2 you off this jury.

3 MS. MCCLINTON: Okay.

4 THE COURT: What number is she, got that?

5 MS. MCCLINTON: 126.

6 THE COURT: Y'all understand why, obviously.

7 (Pause.)

8 THE COURT: How are you doing today?

9 MS. ROMNEY: Good.

10 THE COURT: I need you to tell me your name  
11 again and your jury number for the record.

12 MS. ROMNEY: Doretha Romey, 174.

13 THE COURT: Yes, Ms. Romey.

14 MS. ROMNEY: My son got shot in the leg.

15 THE COURT: That's right, it was a drive by  
16 shooting?

17 MS. ROMNEY: Uh-huh.

18 THE COURT: Her son was shot in the leg. How  
19 long ago was that?

20 MS. ROMNEY: About 8 or ---

21 THE COURT: About 8 years ago, okay. Now  
22 would that or could that affect your ability to be a  
23 fair juror in this case?

24 MS. ROMNEY: No.

25 THE COURT: Are you sure?

1 MS. ROMNEY: Positive.

2 THE COURT: All right, thank you.

3 How are you doing today? Ma'am, you need to  
4 tell us your name again for the record.

5 MS. BROWN: Rebecca Brown, number 23.

6 THE COURT: All right, I think you've been  
7 the victim of several different things?

8 MS. BROWN: Uh-huh.

9 THE COURT: Tell me again what they were.

10 MS. BROWN: Our house was robbed.

11 THE COURT: Your house was robbed when?

12 MS. BROWN: Several years ago.

13 THE COURT: All right.

14 MS. BROWN: And then my car was broken into  
15 and vandalized.

16 THE COURT: Your car vandalized, broken into.

17 MS. BROWN: And then part of two attempted  
18 rapes.

19 THE COURT: All right. Okay, that's a lot.

20 Now would those experiences or could those experiences  
21 affect your ability to be a fair juror in this case?

22 MS. BROWN: No.

23 THE COURT: Are you sure about that?

24 MS. BROWN: Uh-huh.

25 THE COURT: Okay, thank you.



1           You doing all right today?

2           MS. MENDER: Yes.

3           THE COURT: All right, tell me your name and  
4 your number.

5           MS. MENDER: Duana Mender, 130.

6           THE COURT: All right, Ms. Mender.

7           MS. MENDER: I was assaulted by an ex-  
8 boyfriend.

9           THE COURT: Assaulted by an ex-boyfriend?

10          MS. MENDER: I was in North Carolina ---

11          THE COURT: Okay. North Carolina, assaulted  
12 by an ex-boyfriend, how long ago was that?

13          MS. MENDER: Maybe 7 or 8 years ago.

14          THE COURT: Okay. Now would that experience  
15 or could that experience affect your ability to be a  
16 fair juror in this case?

17          MS. MENDER: No.

18          THE COURT: Are you sure about that?

19          MS. MENDER: Uh-huh.

20          THE COURT: Positive?

21          MS. MENDER: Yeah.

22          THE COURT: Okay, thank you, ma'am.

23          MS. MENDER: You're welcome.

24          (Pause.)

25          THE COURT: All right. Yes, ma'am.

1 MS. HARMON: My name is Roberta Harmon.

2 THE COURT: Yes, ma'am, Ms. Harmon.

3 MS. HARMON: I spoke with you the other day,  
4 wrote a bad check, and I talked with Barbara Scott ---

5 THE COURT: We did and we took care of that.

6 MS. HARMON: Okay.

7 THE COURT: She came up here the other day,  
8 she had written a bad check, in Magistrate's Court,  
9 about six years ago. She just wanted everybody to  
10 know that.

11 All right, thank you.

12 (Pause.)

13 THE COURT: Up here at the bar, the State  
14 objects to the last five voir dire, proposed voir dire  
15 questions by the Defense. I've read those questions  
16 and I think that all those matters are covered in my  
17 charge to the jury. Is a matter of -- it's a question  
18 of law that they'll be told about. We don't need to  
19 go into them now.

20 If there's any objections at my not asking  
21 them, I'll give you a chance to place it on the record  
22 later on. But I've read them in chambers and I've  
23 read them again. It was brought to my attention and  
24 it goes to certain charges that I have to tell the  
25 jury anyway, Mr. Schardt.

1           Could I give you chance to place any  
2 objection you have on the record at a later time?

3           MR. SCHARDT: Sure.

4           THE COURT: All right. I'm not sure about  
5 number 8, I'll ask it again, if I haven't asked it.

6           Has any member of the jury panel or their  
7 immediate family ever been a victim of a burglary?  
8 Has anybody ever broken into your house?

9           If so, please stand.

10          THE COURT: All right, first of all, tell me  
11 your name again.

12          MS. BROWN: Rebecca Brown.

13          THE COURT: And we've already had the benefit  
14 of Ms. Brown's experience.

15          You may sit down, Ms. Brown.

16          THE COURT: And your name again, sir.

17          MS. TANNER: Andre Tanner.

18          THE COURT: Mr. Tanner and we've already had  
19 the benefit of Mr. Tanner's experience. Thank you,  
20 sir.

21          THE COURT: And your name, please.

22          MS. SCRIVEN: Avais Scriven.

23          THE COURT: What?

24          MS. SCRIVEN: Avais Scriven.

25          THE COURT: All right, you want to come down

1 here, ma'am, and let me talk to you about it.

2 (Pause.)

3 THE COURT: How are you doing? You doing all  
4 right?

5 MS. SCRIVEN: Yes, sir.

6 THE COURT: Now tell me your name again for  
7 the record.

8 MS. SCRIVEN: Avais Scriven.

9 THE COURT: What happened, Ms. Scriven?

10 MS. SCRIVEN: My first apartment was broken  
11 into and took the TV and ---

12 THE COURT: How long ago was that?

13 MS. SCRIVEN: About a year ago.

14 THE COURT: About a year ago. Did you get  
15 that? Somebody broke into her apartment and stole her  
16 TV and some other personal items.

17 Would that or could that affect your ability  
18 to be a fair juror in this case?

19 MS. SCRIVEN: It shouldn't.

20 THE COURT: I know, but would it?

21 MS. SCRIVEN: No.

22 THE COURT: You sure?

23 MS. SCRIVEN: Yes.

24 THE COURT: Okay. Y'all got her number?

25 MR. O'NEIL: Yes, sir, thank you.

1 BAILIFF: We've got one more there, Your  
2 Honor.

3 THE COURT: All right, well.

4 MS. ROMNEY: Doretha Romney.

5 THE COURT: Didn't we just talk, Ms. Romney, a  
6 few minutes ago? I'll be happy to talk to you again  
7 about it. Did we cover that? I'm not sure we did.

8 MS. ROMNEY: I don't think we did.

9 THE COURT: Come up, Ms. Romney

10 (Pause.)

11 THE COURT: When we ask all these questions,  
12 two or three are very similar, and we have these  
13 situations.

14 All right, now tell us again, when?

15 MS. ROMNEY: About four years ago.

16 THE COURT: About four years ago and what  
17 happened, somebody was hurt?

18 MS. ROMNEY: Just stole my cell phone ---

19 THE COURT: Her house was burglarized and  
20 personal property was stolen?

21 MS. ROMNEY: Right.

22 THE COURT: Would that or could that affect  
23 your ability to be a fair juror in this case?

24 MS. ROMNEY: No, it wouldn't affect me.

25 THE COURT: Are you sure about that?

1 MS. ROMNEY: Uh-huh.

2 THE COURT: Okay.

3 (Pause.)

4 THE COURT: Are we all ready?

5 Now, has any member of the jury panel read or  
6 heard anything about this case today or before today?

7 If so, please stand. Have you heard anything  
8 about this case?

9 (No response.)

10 THE COURT: All right. Has any member of the  
11 jury panel discussed this case or heard anyone else  
12 discuss this case, or a similar case, today or before  
13 today?

14 If so, please stand.

15 (No response.)

16 THE COURT: Has any member of the jury panel  
17 formed an opinion about this case either today or  
18 before today?

19 If so, please stand.

20 (No response.)

21 THE COURT: Is there anything in the  
22 allegations -- is there anything in the nature of the  
23 allegations in this case which would cause any member  
24 of the jury panel any problem with sitting as a juror?

25 And basically what it says is, this is a

1 burglary case where somebody breaks into somebody's  
2 apartment. Would that -- would the nature of this  
3 case in any way affect your ability to be a fair and  
4 impartial juror, if you have to sit as a juror, on a  
5 burglary case, in any way, shape or form?

6 (No response.)

7 THE COURT: So questions 13, 14, 15, 16 and  
8 17 I decline to give the jury at this time. I'll give  
9 you an opportunity to make any exceptions you would  
10 later on, Mr. Schardt.

11 All right, anything further on behalf of the  
12 Defense, Mr. Schardt?

13 MR. SCHARDT: Nothing else, Your Honor.

14 THE COURT: Anything on behalf of the State?

15 MS. WEISS: No, Your Honor.

16 THE COURT: Very well, Ms. Johnson, you may  
17 give us a jury. The strikes are 10 and 5 I do  
18 believe. Is that correct?

19 MR. SCHARDT: Yes, Your Honor.

20 THE COURT: All right.

21 THE CLERK: Ladies and gentlemen of the jury  
22 panel, as I call your name, please come to the  
23 microphone located here in the center. At the  
24 microphone, please state your name and your place of  
25 occupation. Please bring any personal items that you

1 may have with you.

2 Juror number 204, Valerie Stubblefield.

3 (Valerie Stubblefield, a black female, now  
4 comes forward.)

5 MS. STUBBLEFIELD: Valerie Stubblefield,  
6 retired military and I work for the Employment  
7 Security Commission.

8 THE CLERK: What says the State?

9 MS. WEISS: Please present Ms. Stubblefield.

10 THE CLERK: What says the Defense?

11 MR. SCHARDT: Please seat this juror.

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

14 Juror number 10, Claudia Black.

15 (Claudia Black, a white female, now comes  
16 forward.)

17 MS. BLACK: Claudia Black, homemaker.

18 THE CLERK: What says the State?

19 MS. WEISS: Please present Ms. Black.

20 THE CLERK: What says the Defense?

21 MR. SCHARDT: Please excuse this juror.

22 THE CLERK: Please return to the back of the  
23 courtroom.

24 Juror number 153, Francisco Peters.

25 (Francisco Peters, a black male, now comes



1 forward.)

2 MR. PETERS: Francisco Peters, unemployed.

3 THE CLERK: What says the State?

4 MS. WEISS: Please present Mr. Peters.

5 THE CLERK: What says the Defense?

6 MR. SCHARDT: Please excuse this juror.

7 THE CLERK: Please return to the back of the  
8 courtroom.

9 Juror number 218, Robert Watson.

10 (Robert Watson, a white male, now comes  
11 forward.)

12 MR. WATSON: Robert Watson, Learfield  
13 Communications (phonetic).

14 THE CLERK: What says the State?

15 MS. WEISS: Please present Mr. Watson.

16 THE CLERK: What says the Defense?

17 MR. SCHARDT: Please seat this juror.

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

20 Juror number 189, Carolyn Simuel.

21 (Carolyn Simuel, a black female, now comes  
22 forward.)

23 MS. SIMUEL: Carolyn Simuel, Carolina Health  
24 Rehab (phonetic).

25 THE CLERK: What says the State?

1 MS. WEISS: Please present Ms. Simuel.

2 THE CLERK: What says the Defense?

3 MR. SCHARDT: Please seat this juror.

4 THE CLERK: Please have a seat in the juror  
5 box.

6 Jury number 55, Ronald Epps.

7 (Ronald Epps, a black male, now comes  
8 forward.)

9 MR. EPPS: Ronald Epps, educational  
10 consultant, Schlechty Foundation (phonetic).

11 THE CLERK: What says the State?

12 MS. WEISS: Please present Mr. Epps.

13 THE CLERK: What says the Defense?

14 MR. SCHARDT: Please seat this juror.

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

17 Juror number 194, Carol Smith.

18 (Carol Smith, a white female, now comes  
19 forward.)

20 MS. SMITH: Carol Smith. I'm retired, a  
21 manager of the gift shop in the hospital.

22 THE CLERK: What says the State?

23 MS. WEISS: Please present Ms. Smith.

24 THE CLERK: What says the Defense?

25 MR. SCHARDT: Please seat this juror.

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

3 Juror number 185, Mark Shealy.

4 (Mark Shealy, a white male, now comes  
5 forward.)

6 MR. SHEALY: Mark Shealy. I'm retired from  
7 BellSouth.

8 THE CLERK: What says the State?

9 MS. WEISS: Please present Mr. Shealy.

10 THE CLERK: What says the Defense?

11 MR. SCHARDT: Please seat this juror.

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

14 Juror number 209, Robert Toatley.

15 (Robert Toatley, a black male, now comes  
16 forward.)

17 MR. TOATLEY: Robert Toatley, disabled.

18 THE CLERK: What says the State?

19 MS. WEISS: Please excuse Mr. Toatley.

20 THE CLERK: Please return to the back of the  
21 courtroom.

22 Juror number 6, Peggy Bauer.

23 (Peggy Bauer, a white female, now comes  
24 forward.)

25 MS. Bauer: Peggy Bauer. I ???

1 THE CLERK: What says the State?

2 MS. WEISS: Please present Ms. Bauer.

3 THE CLERK: What says the Defense?

4 MR. SCHARDT: Please excuse this juror.

5 THE CLERK: Please return to the back of  
6 courtroom.

7 Juror number 221, Michelle White.

8 (Michele White, a white female, now comes  
9 forward.)

10 MS. WHITE: Michele White. I'm a nurse with  
11 DHEC.

12 THE CLERK: What says the State?

13 MS. WEISS: Please present Ms. White.

14 THE CLERK: What says the Defense?

15 MR. SCHARDT: Please seat this juror.

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

18 Juror number 138, Sandra Morant.

19 (Sandra Morant, a black female, now comes  
20 forward.)

21 MS. MORANT: Sandra Morant. SCANA Services  
22 (phonetic), accounts payable clerk.

23 THE CLERK: What says the State?

24 MS. WEISS: Please present Ms. Morant.

25 THE CLERK: What says the Defense?

1 MR. SCHARDT: Please seat the juror.

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

4 Juror number 168, Judy Ripley.

5 (Judy Ripley, a white female, now comes  
6 forward.)

7 MS. RIPLEY: Judy Ripley. I'm a training  
8 (phonetic) consultant, self-employed.

9 THE CLERK: What says the State?

10 MS. WEISS: Please present Ms. Ripley.

11 CLERK: What says the Defense?

12 MR. SCHARDT: Please seat this juror.

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

15 Juror number 208, Yvette Taylor.

16 (Yvette Taylor, a black female, now comes  
17 forward.)

18 MS. TAYLOR: Yvette Taylor, Department of  
19 Juvenile Justice.

20 THE CLERK: What says the State?

21 MS. WEISS: Please present Ms. Taylor.

22 THE CLERK: What says the Defense?

23 MR. SCHARDT: Please excuse the juror.

24 THE CLERK: Please return to the back of the  
25 courtroom.

1 Juror number 136, Maura Moore.

2 (Maura Moore, a white female, now comes  
3 forward.)

4 MS. MOORE: Maura Moore, Footnotes  
5 Incorporated, dance instructor.

6 THE CLERK: What says the State?

7 MS. WEISS: Please present Ms. Moore.

8 THE CLERK: What says the Defense?

9 MR. SCHARDT: Please excuse this juror.

10 THE CLERK: Please return to the back of the  
11 courtroom.

12 Juror number 182, Avais Scriven.

13 (Avais Scriven, a black female, now comes  
14 forward.)

15 MS. SCRIVEN: Juror number 182, self-  
16 employed.

17 THE CLERK: What says the State?

18 MS. WEISS: Please excuse Ms. Scriven.

19 THE CLERK: Please return to the back of the  
20 courtroom.

21 Juror number 173, Ellen Rodillo-Fowler.

22 (Ellen Rodillo-Fowler, female, now comes  
23 forward.)

24 MS. RODILLO-FOWLER: Ellen Rodillo-Fowler,  
25 senior statistician at the Office of Research and

1 Statistics and actress.

2 THE CLERK: What says the State?

3 MS. WEISS: Please present Ms. Rodillo-  
4 Fowler.

5 THE CLERK: What says the Defense?

6 MR. SCHARDT: Please seat this juror.

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

9 Juror number 188, James Sims.

10 (James Sims, a black male, now comes  
11 forward.)

12 MR. SIMS: James Sims.

13 THE CLERK: What says the State?

14 MS. WEISS: Please present Mr. Sims.

15 THE CLERK: What says the Defense?

16 MR. SCHARDT: Please seat this juror.

17 THE CLERK: Please have a seat in the box.

18 Juror number 23, Rebecca Brown.

19 (Rebecca Brown, a white female, now comes  
20 forward.)

21 MS. BROWN: Rebecca Brown, Time Warner Cable  
22 Construction Company.

23 THE CLERK: What says the State?

24 MS. WEISS: Please present Ms. Brown.

25 CLERK: Was says the Defense?

1 MR. SCHARDT: Please excuse this juror.

2 THE CLERK: Please return to the back of the  
3 courtroom.

4 Juror number 220, Glenda Wesley.

5 (Glenda Wesley, a black female, now comes  
6 forward.)

7 MS. WESLEY: Glenda Wesley, employed at Stein  
8 Mart.

9 THE CLERK: What says the State?

10 MS. WEISS: Please present Ms. Wesley.

11 THE CLERK: What says the Defense?

12 MR. SCHARDT: Please seat this juror.

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

15 THE COURT: All right. We'll select one  
16 alternate. Strikes will be two and one, I do believe.

17 THE CLERK: Juror number 192, Betty Smith.

18 (Betty Smith, a black female, now comes  
19 forward.)

20 MS. SMITH: My name is Betty C. Smith. I  
21 work for the U.S. Post Office.

22 THE CLERK: What says the State?

23 MS. WEISS: Please present Ms. Smith.

24 THE CLERK: Which says the Defense?

25 MR. SCHARDT: Please excuse this juror.



1 THE CLERK: Please return to the back of the  
2 courtroom.

3 Jury number 205, Halbert Swift.

4 (Halbert Swift, a black male, now comes  
5 forward.)

6 MR. SWIFT: Halbert Swift, retired army  
7 recreation specialist, Fort Jackson.

8 THE CLERK: What says the State?

9 MS. WEISS: Please excuse Mr. Swift.

10 THE CLERK: Please return to the back of  
11 courtroom.

12 Juror number 46, Diann Davis.

13 (Diann Davis, a white female, now comes  
14 forward.)

15 MS. DAVIS: Diann Davis, South Carolina  
16 Worker's Compensation Commission.

17 THE CLERK: Does the State excuse for cause?

18 MS. WEISS: No.

19 THE COURT: What says the Defense?

20 MR. SCHARDT: Please seat this juror.

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

23 THE COURT: All right. Any matters need to  
24 be taken up at this time in connection with the  
25 selection of this jury?

1 Anything from the Defense?

2 MR. SCHARDT: Nothing, Your Honor.

3 THE COURT: Anything from the State?

4 MS. WEISS: No, Your Honor.

5 THE COURT: Now, to the remaining members of  
6 this panel, I take this opportunity, once again, to  
7 thank you for being patriotic citizens and coming out  
8 and participating in this process.

9 You know, a government of the people, by the  
10 people and for the people cannot exist without the  
11 people, that means the participation of each and every  
12 one of you in this.

13 I thank you on behalf of everybody here at  
14 the courthouse for coming out this week. I hope your  
15 stay wasn't too unpleasant. I know some of y'all  
16 learned to line dance while you were here.

17 You're free to go back downstairs where you  
18 should receive slips to let everybody know you were  
19 here and should be on your way. But thank you all so  
20 very much. I wish you the very best, ladies and  
21 gentlemen.

22 (The remaining jury panel members retire from  
23 the courtroom at approximately 10:50 A.M.)

24 THE COURT: Now, to the members of this  
25 particular jury, the most important thing I can tell

1 you at this point in time now is this, please don't  
2 discuss this case in any way, shape or form. The time  
3 to talk about this case will be at the end of it, once  
4 you've heard all the evidence and once I explain to  
5 you the law that applies to this case.

6 Before we even begin, there are some  
7 preliminary matters I need to take up with the lawyers  
8 involved. The only way I can do that is in your  
9 absence though.

10 I'm going to ask you to go to the jury room  
11 that you will use during the course of this trial.  
12 Don't talk about the case. You can talk about  
13 anything else you want to except for this case. And  
14 I'm going to ask that you look among yourselves and  
15 try to elect a foreperson. Y'all should be able to do  
16 that.

17 So, I'm not sure how long this is going to  
18 take. It could be 30 minutes, it could be a little  
19 bit longer. If it's going to go much longer than 30  
20 minutes, I'll let you know, give you a little break to  
21 walk around or something like that.

22 But just don't talk about the case and I'll  
23 bring you back out as soon as I dispose of these  
24 matters.

25 (The jury retires from the courtroom at

1 approximately 10:52 A.M.)

2 THE COURT: Now, first of all, Ms. Weiss, I  
3 have a list of motions -- proposed pretrial motions  
4 from Mr. Schardt, six of them. Have you seen them?

5 MS. WEISS: Yes, sir, Your Honor.

6 THE COURT: All right. Now, any matters have  
7 already been resolved or do we have to go through each  
8 and every one of them? It doesn't matter to me.

9 MR. SCHARDT: Your Honor, I believe we have  
10 to go through each and every one.

11 THE COURT: All right, very well. Let's  
12 start with number one, renew Rule 5 motion for  
13 discovery and Brady.

14 Anything additional you need to give to the  
15 Defense, Ms. Weiss, before we start this case?

16 MS. WEISS: Nothing that I'm aware of ---

17 THE COURT: Stop, okay. That awareness makes  
18 me nervous. Is there -- and you know, nothing you're  
19 aware of, who else would know about it but you or Mr.  
20 Maldonado?

21 MS. WEISS: No, I don't believe -- I believe  
22 he has everything that we have. If he wants to look  
23 through anything else, he's welcome to look through  
24 our files to see if anything's missing. But as far as  
25 we know ---

1 THE COURT: All right. I'm not picking on  
2 you but, I mean, if you don't know about, who does?

3 Mr. Schardt, what's your response, sir?

4 MR. SCHARDT: Your Honor, I am under the  
5 impression I have everything.

6 THE COURT: All right, very well.

7 Two, motion to sequester witnesses. How  
8 about that, Ms. Weiss?

9 MS. WEISS: Your Honor, we would ask the  
10 investigating officer and the victim be allowed to  
11 remain.

12 THE COURT: All right, that's granted.

13 Anything other than that?

14 MR. SCHARDT: Nothing, Your Honor.

15 THE COURT: Well, that applies evenhandedly  
16 to both sides, you understand that?

17 MR. SCHARDT: Yes, Your Honor.

18 THE COURT: All right. All right, motion to  
19 exclude mention of Defendant's probationary status or  
20 visitation of probation agent to incident location.

21 How about that, Ms. Weiss? What is that  
22 about?

23 MS. WEISS: Your Honor, we had no intent --  
24 that's not in our chief -- case in chief, so.

25 THE COURT: All right. How about that, Mr.

1 Schardt?

2 MR. SCHARDT: Well, Your Honor, I was just  
3 concerned that that would come up as part of the  
4 victim's testimony.

5 THE COURT: Well, we'll take it up at that  
6 time. But, I mean, it's something that she said is not  
7 in the case in chief but she might want to use it on  
8 reply or something like that, I believe.

9 Do you understand that?

10 MR. SCHARDT: Yes, sir.

11 THE COURT: All right, very well. How about  
12 number five, motion to settle the records of all  
13 proposed witnesses? Have y'all done an exchange about  
14 who has a prior record or anything?

15 MS. WEISS: Yes, Your Honor, we have. We  
16 have -- we gave Mr. Schardt the victim's rap sheets  
17 which ---

18 MR. SCHARDT: I don't believe I have that.

19 MS. WEISS: Oh ---

20 THE COURT: Well, just take your time. Any  
21 other State witnesses that might have a record, Ms.  
22 Weiss?

23 MS. WEISS: No, Your Honor, the other two  
24 witnesses are law enforcement, so.

25 THE COURT: Well, they got records too. All

1 right.

2 MR. SCHARDT: Okay.

3 THE COURT: Yes, sir.

4 MR. SCHARDT: I was asking about their other  
5 -- the victim's mother, Ms. Strothers, I was asking  
6 about her.

7 MS. WEISS: Your Honor, we didn't run it. We  
8 don't intend to put her up. But if we do, we'll get  
9 it to him if anything changes.

10 THE COURT: All right. Is that all right?

11 MR. SCHARDT: Yes, Your Honor.

12 THE COURT: Okay. All right, let's see,  
13 that's number five. Motion to dismiss on double  
14 jeopardy grounds, what's that about, Mr. Schardt?

15 MR. O'NEIL: Thank you, Your Honor, may it  
16 please the court.

17 THE COURT: Or Mr. O'Neil.

18 MR. O'NEIL: Basically we would move to  
19 dismiss the case based on the double jeopardy clause  
20 of both the federal and state constitutions and Title  
21 17-23-20 of the South Carolina Code.

22 THE COURT: What's the basis?

23 MR. O'NEIL: Basically, Your Honor, this case  
24 -- our first argument would be that the CDV Mr.  
25 Sowell's already pled to, under the ---

1 THE COURT: I think he's charged with  
2 burglary, isn't he?

3 MR. O'NEIL: Yes, Your Honor..

4 THE COURT: What does the CDV have to do with  
5 it?

6 MR. O'NEIL: Our argument would be that the  
7 CDV under these fact findings is a lesser included of  
8 a burglary.

9 THE COURT: I don't understand the motion.  
10 He is charged with burglary. We are proceeding to  
11 trial on burglary. What does the CDV have to do with  
12 this?

13 MR. O'NEIL: Your Honor, it's our  
14 understanding that the elements of burglary that would  
15 -- the CDV accompanies would be the intent to commit a  
16 crime and causing physical injury to someone within.

17 THE COURT: They're not proceeding against  
18 Mr. Sowell for CDV, it's for burglary.

19 MS. WEISS: Yes, Your Honor.

20 THE COURT: So, I mean, what's the point of  
21 the motion? I don't understand it.

22 MR. O'NEIL: Our argument is that in this  
23 case he's already pled simply to the lesser included  
24 offense, under these facts situations, which would be  
25 the CDV.



1 THE COURT: The motion is denied. Anything  
2 further?

3 MS. WEISS: On that issue?

4 THE COURT: Well, you know ---

5 MS. WEISS: Your Honor ---

6 THE COURT: He's -- y'all are proceeding for  
7 burglary.

8 MS. WEISS: Yes, Your Honor.

9 THE COURT: And I don't know if there was a  
10 previous CDV but you're not going to bring up a CDV  
11 when this is a burglary case, I assume.

12 MS. WEISS: No, Your Honor, he -- when he  
13 broke inside he committed a CDV against the victim I  
14 believe is what they're talking about. But, I mean,  
15 we are proceeding on the burglary.

16 THE COURT: All right. Well, I don't know  
17 about this case so y'all help me out a little bit.

18 MR. O'NEIL: Your Honor, basically, Mr.  
19 Sowell originally broke inside and committed the CDV.  
20 That's one of the basic ---

21 THE COURT: So you're saying you want me to  
22 exclude the factual underpinning of this case that  
23 after he broke inside he assaulted the lady?

24 MR. O'NEIL: Yes, Your Honor. He's already  
25 pled to that offense, Your Honor.

1 THE COURT: Well, I, you know, will take that  
2 up when it gets to it. But I -- you know, I can't  
3 exclude those -- he's not charged with that.

4 MR. O'NEIL: Yes, Your Honor.

5 THE COURT: Okay. He will not be charged  
6 with that but that's what happened in the case.

7 MR. O'NEIL: Your Honor, it is our contention  
8 that 17-23-20 says once you plead in Municipal Court,  
9 that it bars prosecution for those things ---

10 THE COURT: I understand what your argument  
11 is, it's denied.

12 MR. O'NEIL: Thank you.

13 THE COURT: Anything further?

14 MS. WEISS: Not on that.

15 THE COURT: Anything further from the  
16 Defense?

17 MR. SCHARDT: No, Your Honor.

18 THE COURT: That.

19 MS. WEISS: As far as motions, Your Honor?

20 THE COURT: Yes, that's what we're doing.

21 MS. WEISS: We would like to do a Jackson v.  
22 Denno on the statement of the Defendant.

23 THE COURT: Call your first witness.

24 MS. WEISS: Thank you, Your Honor. The State  
25 calls Kevin Reese.

1 THE COURT: Wait a minute. Yes, sir.

2 MR. SCHARDT: Your Honor, if I may, I had one  
3 further motion.

4 THE COURT: That's not listed, right?

5 MR. SCHARDT: Well, no, it's listed as number  
6 four.

7 THE COURT: Four, mention (sic) to exclude  
8 mention of the Defendant's arrest for harassment on  
9 1/3/05. What's that all about, Solicitor?

10 MS. WEISS: Your Honor, after this offense occurred

11 ---

12 THE COURT: This the your Lyle evidence, is  
13 it?

14 MS. WEISS: No, Your Honor.

15 THE COURT: Well, go ahead.

16 MS. WEISS: There was -- after this offense  
17 occurred, another offense occurred which is the Lyle  
18 that we're going to talk about. And then after that,  
19 he was arrested for harassment and the only reason I  
20 think this would even come in may come to the -- may  
21 be -- may be relevant to the Denno ---

22 THE COURT: What now? Slow down, slow down,  
23 slow down. Start over.

24 MS. WEISS: Thank you, Your Honor. It may be  
25 relevant to the Denno hearing because he was in jail

1 on the harassment, which happened after the second --  
2 after the second offense.

3 THE COURT: All right.

4 MS. WEISS: He was arrested on that by  
5 another officer involving the same victim and that's  
6 when Investigator Reese was able to talk to him.

7 MR. SCHARDT: Your Honor, we would have two  
8 concerns here. First, that if the victim were -- her  
9 mother were to take the stand, they would continue  
10 their testimony beyond the issue in front of the court  
11 here today and talk about other bad acts meaning the  
12 harassment that occurred after ---

13 THE COURT: You know, you can't cross a river  
14 before you get to it. We'll take that up in a motion  
15 in limine or anything else, we'll do it in camera, if  
16 a problem arises. But, I mean, I don't know what's  
17 going to happen. I don't know what the testimony is  
18 going to be.

19 MR. SCHARDT: Well ---

20 THE COURT: I understand your concern, but I  
21 can't rule in a vacuum.

22 MR. SCHARDT: My other concern would be, and  
23 this is very specific, Investigator Reese went to  
24 question my client in jail after he had been arrested  
25 for the harassment charge. And we would just ask that

he testifies, to go into ---

THE COURT: Stop, I cannot rule in a vacuum  
3 on something I haven't heard. You have to take these  
4 matters up in camera. That's what we'll do. I'll  
5 make a record for everybody. If the evidence should  
6 be excluded, I can't exclude it without having it on  
7 the record first. And the only way to do that, folks,  
8 is to hear it in camera. That way, you make your  
9 side, she makes her side, we have a clear ruling from  
10 me.

11 MR. SCHARDT: Yes, sir.

12 THE COURT: But until we get to the river, I  
13 can't cross it.

14 Anything further?

15 MS. WEISS: The State would like to do the  
16 Jackson v. Denno.

17 THE COURT: Call your first witness.

18 MS. WEISS: Thank you, Your Honor. The State  
19 calls Kevin Reese.

20 (Kevin Reese, after being duly sworn,  
21 testified as follows:)

22 THE CLERK: Thank you. Please have a seat  
23 and state your full name for the record.

24 THE WITNESS: Investigator Kevin Reese,  
25 Columbia Police Department.

## 1 DIRECT EXAMINATION

2 BY MS. WEISS:

3 Q Investigator Reese, what is your position with  
4 the Columbia Police Department?

5 A Criminal Investigator.

6 Q And was that your same position back on January  
7 6th of 2005?

8 A As in Investigator, that's right.

9 Q Okay. Was there a difference in your position at  
10 this time?11 A Now I'm assigned to the VCAP Unit which is the  
12 Violent Crimes Against Persons. Then I was  
13 assigned to property crimes.

14 Q Okay. And where was your office at the time?

15 A At that time my office was on Ensor Avenue, it  
16 was 35 -- 3905 Ensor Avenue which is the North  
17 Region Satellite Station off of Main Street.18 Q And were you involved in a case that involved  
19 Sandrica Jacobs and Todd Sowell?

20 A Yes, ma'am.

21 Q And what was your involvement in that case?

22 A I was the investigator ---

23 Q Okay.

24 A --- assigned.

25 Q And were you the one that actually signed the

1 warrant for Mr. Sowell?

2 A That's correct.

3 Q Okay. And did you have an opportunity to talk to  
4 Mr. Sowell about the case?

5 A Yes, I did.

6 Q And when was that?

7 A I interviewed Mr. Sowell on January the 6th, 2005  
8 at 10:30 in the morning.

9 Q And how did you get in touch with Mr. Sowell?

10 A I got information that he was incarcerated at the  
11 Richland County Detention Center. I sent the  
12 uniform officer there. They transported him back  
13 to my office.

14 Q Okay. And did he have a choice whether or not to  
15 come to your office?

16 A Yeah, he could have refused. He came.

17 Q So when he came to your office, he came to 3905  
18 Ensor Avenue, the North Region Satellite Station?

19 A That's correct.

20 Q And once he was there, what did you do next?

21 A The first thing I did was in terms of  
22 interviewing him, I advised him of his rights.  
23 He waived his rights and we got on with the  
24 statement ---

25 Q Okay. When you say you advised him of his

1 rights, did you use an Advice of Rights  
2 interrogation form?

3 A Yes, I did.

4 Q Do you have that?

5 A A copy of it, right.

6 MS. WEISS: Your Honor, at this time I'd like  
7 to mark this as State's Exhibit 1.

8 THE COURT: Go ahead.

9 (WHEREUPON, State's Exhibit No. 1, Advice of  
10 Rights Form, was marked for identification.)

11 Q Can you identify this form?

12 A This is the interrogation Advice of Rights form  
13 that my department uses.

14 Q Okay. And in the top right hand corner, is that  
15 handwriting?

16 A That's correct.

17 Q And what does that indicate?

18 A It indicates the place where the interview took  
19 place is 3905 Ensor Avenue. It also indicates  
20 the date it was -- the interview took place was  
21 January the 6th, 2005. And it indicates the time

22 ---

23 Q Okay.

24 A --- the interview took place.

25 Q And then how do you proceed with the Advice of



1 Rights when you do an interrogation?

2 A I start to read the line of questions here, the  
3 line of advisements to ---

4 Q Okay.

5 A --- the Defendant.

6 Q And when you -- do you read all of them at one  
7 time or do you read each one individually?

8 A Normally I read -- I read every line but normally  
9 I would read them separately. And after I'd  
10 complete one line, I'd ask them, do you  
11 understand it.

12 Q Okay. And did Mr. Sowell indicate whether or not  
13 he understood these rights?

14 A He -- he did indicated that he understood those  
15 rights and when it got down to last, where it  
16 says Waiver of Rights, I generally ask them to  
17 read that portion out aloud. That's sort of my  
18 way of knowing that they can read or that's sort  
19 of my way knowing that they can read or write,  
20 it's an indication that they do understand what's  
21 going on and what they're doing.

22 Q Okay. Did Mr. Sowell read that section aloud?

23 A Yes, he did.

24 Q And whose signature is that right below that  
25 section?

1 A Mr. Sowell's signature, he signed it.

2 Q You watched him sign it there?

3 A Yes, I did.

4 Q Okay. And the person that signed that is the  
5 same person seated at the Defense table?

6 A That's right.

7 Q Okay. And below that, did you sign your name as  
8 a witness to that signature and to those Advice  
9 of Rights?

10 A That's correct.

11 Q And then you put the time that you signed it,  
12 again at the bottom?

13 A The time that -- the general time is 10:30.

14 Q Okay. Then once you finished that, did he  
15 understand -- did you feel that he understood he  
16 had a right to leave at any time?

17 A My office, yeah.

18 Q You would have provided him transport back to the  
19 jail at any time?

20 A That's correct.

21 Q Did he ever indicate that he wanted to leave?

22 A No. As a matter of fact, I recall him indicating  
23 that he really wanted to go on and get this over  
24 with.

25 Q When he said, go ahead and get this over with,

1 did he explain that in any way or how did you  
2 take that to mean?

3 A As I recall, he was basically saying, you know, I  
4 did this, I want to, you know -- he felt bad  
5 about it. He was showing remorse. He really  
6 wanted to get this whole thing behind him.

7 Q Okay. And if you turn to the next page, the  
8 first page of the statement, on that page, whose  
9 handwriting is on that page?

10 A That would be my handwriting.

11 Q Okay. And did Mr. Sowell put his handwriting any  
12 where on the page?

13 A He signed it, the statement.

14 Q Okay. And that's his signature? You saw him  
15 sign it?

16 A That's right.

17 Q Okay. And you said you had him read aloud so you  
18 knew he could read. Is there a reason that you  
19 did a question/answer versus having him write the  
20 statement?

21 A It normally depends on the mood of the interview  
22 itself generally. Back then it's very seldom  
23 that I would ask a person that's in custody to  
24 handwrite their statement out. I generally -- we  
25 talk about it and then I ask the questions and

1 put down my questions that I ask and the answers  
2 that he gives.

3 Q Okay. And you said, typically somebody in  
4 custody. Why would that make a difference?

5 A It actually doesn't make a difference. It's the  
6 way I was doing things back then.

7 Q Okay. And when you write the question, do you --  
8 do you interview them first and then do the  
9 question/answer or do you do it all at the same  
10 time?

11 Q The way the interview process goes with me is,  
12 we'll have a little conversation that with things  
13 like, where are you from, what's your name, that  
14 kind of thing. And then we'll get into why  
15 you're there, do you know why you're there. If  
16 the answer's yes -- if it's no, I'll explain why  
17 you're there.

18 And then in this scenario here, I just went  
19 right into -- after advising him why he was there  
20 or he either told me why he -- that he understood  
21 or knew why he was there, just went right on into  
22 the questioning.

23 Q Okay. And when you write the questions, do you  
24 read them to the Defendant or does he read them  
25 himself?

- 1 A You mean after the questions ---
- 2 Q Once you write the question or ask the question?
- 3 A I'll ask the question then write the question.
- 4 Q Okay. Does he have an opportunity to read it at
- 5 this time?
- 6 A No, he has an opportunity to read it afterwards
- 7 but generally I read it myself to them and I
- 8 explain to them that the reason I'm reading it is
- 9 so that you know that I didn't write down
- 10 anything you did not tell me.
- 11 Q Okay. And that happened all the way through the
- 12 entire -- the entire statement, is that correct?
- 13 A That's correct.
- 14 Q Okay. And when you get to the end of the
- 15 statement, what is your procedure that you go
- 16 through at that time?
- 17 A That's when I go back over the statement with
- 18 him. That's when I advise him, you know, this is
- 19 what you told me, do you agree. If he says, no,
- 20 and there is any corrections, then I make
- 21 corrections.
- 22 Q Okay. And do you read it to him or does he have
- 23 an opportunity to read it himself?
- 24 A I can't tell you in this scenario whether he read
- 25 it himself or I read it to him. It would have

1           happened one way or the other. He would not have  
2           left the interview room without either reading it  
3           or me reading it to him.

4   Q    Okay. And he had an opportunity to see this  
5           because he had to sign it at the bottom?

6   A    That's right.

7   Q    And at any time did he indicate he wanted to  
8           leave?

9   A    No, he never did.

10   Q   And at any given time, he could have gotten up  
11          and left?

12   A   Anytime he could have told me that he wanted to  
13          terminate the interview, he was ready to go back  
14          and that would have been afforded to him.

15   Q   Did he ask for an attorney at any time?

16   A    No, he never did.

17               MS. WEISS: Beg the Court's indulgence one  
18   moment.

19               (Pause.)

20   Q   Investigator Reeves, did you promise the  
21          Defendant anything if he wrote out a statement or  
22          signed the statement?

23   A    No ---

24   Q   Did you threaten him?

25   A    No, ma'am.

1 MS. WEISS: Okay. Your Honor, the State  
2 would rest at this time.

3 THE COURT: All right, Mr. Schardt.

4 MR. SCHARDT: Thank you, Your Honor, may it  
5 please the Court.

6 CROSS EXAMINATION

7 BY THE MR. SCHARDT.:

8 Q Good morning, Investigator?

9 A Hey.

10 Q You testified that you picked up Mr. Sowell and  
11 took him to your office?

12 A I had a transport officer bring him up to my  
13 office.

14 Q So you weren't the one who transported him?

15 A No, they go to the Detention Center, sign him  
16 out, bring him up to the office.

17 Q So when you say, they, you're referring to ---

18 A Whoever the transport officer would have been.

19 Q Do you remember who it was on that day?

20 A I don't recall which one it was.

21 Q Do you know if any conversation occurred while he  
22 was in that transport vehicle?

23 A To my knowledge, nothing was told to me about a  
24 conversation. But in all probability, he would  
25 have been in the back of the paddy wagon. They

1 wouldn't have had a chance to communicate.

2 Q Yes, sir. Okay. Then he was brought to your  
3 office?

4 A Yes, sir.

5 Q Okay. In your office -- who was present in your  
6 office at the time?

7 A Who was present?

8 Q Yes, sir?

9 A All right, do you mean the interview or the  
10 office itself?

11 Q Not the office as a whole, not the building, I'm  
12 talking about in the room where the interview was  
13 conducted.

14 A It would have been me, myself. It would have  
15 been -- I'm not sure because I cannot read the  
16 signature of the person that witnessed it. It  
17 definitely was not my normal partner. I'm  
18 thinking it might have been the transport officer  
19 himself. And I don't know who that was. I can't  
20 recall.

21 Q Now, are we talking about witnessing this -- the  
22 rights or the entire interview?

23 A Basically, this right here. They would have been  
24 witnessing the Waiver of the Rights.

25 Q Okay.



1 A Me reading the rights and ---

2 Q Okay. Do you remember if anyone else was there  
3 for the entire interview?

4 A I don't even remember if he was there -- or  
5 whoever this was was there for the entire  
6 interview. No, I don't know.

7 Q So it may have been one on one, it may have been  
8 two on one for the interview?

9 A They are free to come and go. So it could have  
10 been sitting there for a while then got up and  
11 left out, came back in. I'm not too sure what  
12 happened then.

13 Q By your normal partner, you're talking Dewight  
14 (phonetic) Thomas?

15 A That's right.

16 Q But he wasn't there?

17 A No, not by this signature. He -- if he would  
18 have been there, he would have signed this.

19 Q Let's talk a little bit about where this  
20 interview took place. It was in your office?

21 A It was in the interview room at North Region  
22 Police Headquarters.

23 Q Could you describe the interview room for me?

24 A I'm ---

25 Q How large is the interview room?

1 A Well, there's two or three of them that we would  
2 use. So I'm trying to -- I'm not sure which one  
3 he would have -- we would have put him in.

4 Q Is it a smaller room?

5 A A small room?

6 Q Yes, sir.

7 A It could be small.

8 Q Are there ---

9 A Depending on what's small

10 Q --- doors and windows?

11 A A couple of them have -- all of them have doors.

12 A couple of them have windows that you can open.

13 One has a window that's a view window. You  
14 cannot open it.

15 Q Would you have been sitting at a table or -- I  
16 assume Mr. Sowell was sitting down in a chair?

17 A Yes, yes, sir.

18 Q Would he have been in chains at this time or  
19 would he have been without restraint?

20 A No, he would not have been without restraint. He  
21 would have had handcuffs on and/or handcuffs to  
22 -- his -- the hand that he does not write with  
23 would have been free. The handcuffs would have  
24 been on the other hand and I don't know what he  
25 would have been handcuffed to, probably the arm

1 of the chair at this time. I can't remember.

2 Q Do you have a copy of the statement?

3 A Yes, sir.

4 Q Okay. The -- let's talk about the Waiver of  
5 Rights form. You've testified in this  
6 courthouse, correct?

7 A I'm sorry?

8 Q You've testified before in this courthouse?

9 A Yes, sir.

10 Q Okay. And you were the investigator on the  
11 Calvin James (phonetic) case?

12 A Calvin James?

13 Q Calvin James case?

14 A I think so ---

15 MS. WEISS: Objection, Your Honor. I don't  
16 understand the relevance.

17 THE COURT: I don't either but I'll let  
18 him proceed for right now.

19 Q Generally speaking, and in your testimony in this  
20 courthouse before, when you're taking a  
21 statement, when you're going over the Waiver of  
22 Rights form, do you make dots next to each,  
23 right? That's the way you review it with the  
24 Defendant?

25 A I make -- I think I know what you're getting at.

1 I make lines and give them a chance to initial  
2 it, is what you're talking about?

3 Q Yes, sir.

4 A Uh-huh.

5 Q Okay. Did you do this in this case?

6 A As I explained to Ms. Weiss just now, back then I  
7 was doing things differently and, you know,  
8 there's nothing to bind you to the way you do  
9 things, you know. You do things according to  
10 your experience.

11 At this time I don't -- I obviously did not  
12 do it. I can't remember why I didn't do it, but  
13 I did not do it this time.

14 Q Now generally the reason for doing it is so that  
15 you can have documentation and specific  
16 recollection going over individual rights,  
17 correct?

18 A That's correct.

19 Q And this time it was not done?

20 A That's right.

21 Q Is your testimony still that you specifically  
22 recall going over all of his rights?

23 A Yeah, I specifically recall going over all his  
24 rights.

25 Q And you testified that he seemed to understand

1 his rights?

2 A Yes, sir.

3 Q Did you -- did you at any time during the  
4 questioning or prior to question -- prior to his  
5 waiver of rights, did you ever discuss with him  
6 his educational background and things of that  
7 nature?

8 A I am not sure if I did on Mr. Sowell or not.

9 Q How would you have determined that he understood  
10 his rights?

11 A I -- the only way I can determine is if I ask him  
12 and you tell me, yes.

13 Q And he indicated that he understood?

14 A Yes, sir.

15 Q You testified that he read the bottom portion?

16 A The bottom portion ---

17 Q Yes.

18 A --- of the rights? Yes, sir.

19 Q Did he read it out loud or to himself, do you  
20 recall?

21 A No, I would require them to read it out loud.

22 Q Let's talk specifically -- you discussed the  
23 interview process. He was brought over by  
24 transport and you said before he gave his  
25 statement, there was some conversation, okay?

1 A Generally.

2 Q Correct? And there was conversation in the case?

3 A As I recall.

4 Q That would have been after the waiver of rights  
5 or before?

6 A If it's anything that's going to be  
7 incriminating, we don't get into that. I make  
8 sure we don't. Generally I talk about your name,  
9 where you're from, that kind of stuff.

10 Q Okay. And ---

11 A Then I advise you that this is what this is all  
12 about, I'm going to read you your rights.  
13 Sometimes they'll start talking to me. I'm not  
14 sure in this case. They'll start talking to me  
15 and I have to stop them and go on and read them  
16 their rights.

17 Q Okay. So you talk to him about certain things  
18 that were going on in his life. Part of that is  
19 to establish rapport, correct?

20 A Is to establish a rapport, that's correct.

21 Q And a certain level of trust so that the  
22 Defendant will talk to you?

23 A Say that again.

24 Q It's to establish a certain level of trust so the  
25 Defendant will talk to you?

1 A I'd like to say it's to set everything at ease in  
2 the room?

3 Q It's part of being a good detective, right?

4 A That's what you say.

5 Q And would you agree with that?

6 A Well, I -- I'm trying not to allow you to put  
7 words in my mouth though.

8 Q Okay.

9 A That's what you say, counselor. That's not what  
10 I'm saying.

11 Q Do you typically try to establish a rapport with  
12 the Defendants?

13 A Yes, sir.

14 Q Do you specifically recall the conversation you  
15 had with Mr. Sowell before you took the  
16 statement?

17 A Not everything. I do recall him saying some  
18 things about what happened, he wanted to get it  
19 over with. I think he cried at one point or  
20 tears welled up in his eyes at one point. And I  
21 thought he showed genuine remorse.

22 Q So he started showing remorse, he was emotional?

23 A Yes, sir.

24 Q Now, you're aware that -- of the general nature  
25 of this case that it was about a relationship?

1 A (No response.)

2 Q At this time you were aware that it was about a  
3 relationship gone bad?

4 A I wasn't aware of everything there was because --  
5 that you're asking me about. Just what's in the  
6 police report is all I was aware of. Basically,  
7 I don't ---

8 Q You were aware of the incident report?

9 A (Nods affirmatively.)

10 Q You were aware ---

11 A Yes.

12 Q --- that he was accused of going into his ex-  
13 girlfriend's house?

14 A Yes, sir.

15 Q Did you talk to him about his relationship at all  
16 at that time?

17 A Prior to the right?

18 Q Prior -- no, prior to the statement?

19 A Prior to the statement or prior to me reading the  
20 rights to him?

21 Q No, prior to statement, after you read the  
22 rights.

23 Q After I read the rights to him, I could have  
24 talked to him about anything but it would have  
25 been whatever concerns these -- that's in these



1 cases. I'm not sure what you're asking me.

2 Q Specifically, you talked to him briefly about his  
3 relationship with Sandrica, correct?

4 A I could have, I'm not too sure if I did or not.

5 Q You don't specifically recall?

6 A No, I don't specifically recall everything I  
7 talked to him about or everything he said to me  
8 unless it's written down on his statement.

9 Q Do you specifically recall talking about the  
10 interracial nature of their relationship, any  
11 discussion about that?

12 A Well, I'm going to tell you this, counselor. I  
13 don't know where you heard that from but if he  
14 told you that, he told you a lie, because I don't  
15 -- I never discussed that with him.

16 Q Then you proceeded to question/answer, correct?

17 A As some point.

18 Q And you said that that often -- you decided to  
19 write the answers, write your questions and write  
20 the answers, you were doing the writing?

21 A Right.

22 Q And you said that often depends on the mood of  
23 ---

24 A It -- it depends -- I mean, I write my questions  
25 based on what we have talked about. And I write

1 my questions based on what the police report --  
2 what's in the police report and what I know about  
3 the investigation itself.

4 Q So you specifically tailor it to the individual?

5 A I tailor it to the conversation, not the  
6 individual. I tailor it to the -- what's in the  
7 police report. That's the only way to do it.

8 Q Well, let me ask you, what was the tone -- and  
9 you talked about his demeanor but what was the  
10 tone of the conversation?

11 A I -- I'm not even sure if I follow you.

12 Q Was it tough to pull things out of him?

13 A I don't -- I don't recall it that way, no.

14 Q So he was basically breaking down in front of  
15 you?

16 A Pretty much, you know, at -- it wasn't like he  
17 denied anything.

18 Q Would -- in layman's terms, he was spilling his  
19 guts, would that be fair to say?

20 A Your interpretation of what spilling the guts  
21 mean and mine could mean two different things.  
22 So I don't -- what are you...

23 Q In your experience, was he a tough Defendant to  
24 break down ---

25 THE COURT: Mr. Schardt, the object of this

1 hearing is to determine whether or not he gave this  
2 statement freely and voluntarily and whether or not I  
3 should admit it.

4 I remind you of that, sir.

5 MR. SCHARDT: Yes, sir.

6 Q What tactics were required to begin taking his  
7 statement?

8 A What tactics?

9 Q Yes -- or did he just start talking?

10 A I didn't -- I didn't -- you know, this wasn't a  
11 case where I had to use that much tactics. He  
12 came in and he knew what he was there about and  
13 he started talking. He felt bad about what he  
14 had done. I think he did say at some point that  
15 he loved this woman, you know, and those kind of  
16 things. I didn't have to use any kind of  
17 tactics.

18 Q And as far as promises, you testified that you  
19 never made any promises -- you did tell him at  
20 some point -- and I would just want to verify  
21 this, you decided not to charge him with another  
22 burglary, correct?

23 A Right.

24 Q Was that determined beforehand -- you said you  
25 talked, I won't charge you with another burglary,

1 was that afterward saying you talked, I won't  
2 charge you with another burglary?

3 A No, I -- I didn't see the necessity to charge him  
4 with another burglary. I see that as stacking  
5 charges, not like he gave me a whole lot of  
6 problems, you know, or any problems at all in the  
7 interview. So I didn't find it necessary to  
8 stack charges on him.

9 Q Did you ever tell him that it wouldn't be that  
10 bad? Did you ever assure him that it wouldn't be  
11 that bad, that he did the right thing?

12 A I don't think so, but I doubt very seriously if I  
13 assured him of anything.

14 MR. SCHARDT: I have no further questions.

15 THE COURT: All right, anything further from  
16 the State?

17 MS. WEISS: No, Your Honor.

18 THE COURT: You may step down, sir.

19 THE WITNESS: Thank you, Your Honor.

20 (The witness leaves the witness stand.)

21 THE COURT: All right. Call your next  
22 witness.

23 MS. WEISS: That would be the State's  
24 witness.

25 THE COURT: All right. Any arguments?

1 MS. WEISS: Yes, Your Honor. We feel that  
2 the State has shown that the Defendant gave his  
3 statement freely and voluntarily without any sort of  
4 coercion or inducement, without any threat. He was  
5 free to leave.

6 And we believe the statement should be  
7 admitted.

8 THE COURT: All right, Mr. Schardt.

9 MR. SCHARDT: For the record, we would argue  
10 that there was no indication of prior statements that  
11 could have been made from the State's case ---

12 THE COURT: Stop, you're confusing. I'll let  
13 you start over. What prior statements? I don't  
14 understand.

15 MR. SCHARDT: We heard that he was  
16 transported.

17 THE COURT: All right.

18 MR. SCHARDT: At that point we feel that he  
19 definitely would have been in custody.

20 THE COURT: Well, he was in jail when they  
21 picked him up, Mr. Schardt.

22 MR. SCHARDT: Yes, Your Honor.

23 THE COURT: I don't know what he was in jail  
24 for but he was in jail. Now that would be a concern  
25 but y'all didn't raise that.

1 MR. SCHARDT: And my concern was he was  
2 certainly in custody, we don't know if anything was  
3 said during the transportation ---

4 THE COURT: Well he does, and you have a  
5 right to call him now if you want to supplement the  
6 record with it but I cannot rule on something that's  
7 not in the record.

8 MR. SCHARDT: Yes, Your Honor.

9 THE COURT: That's important.

10 MR. SCHARDT: Your Honor ---

11 THE COURT: All right, anything further then?

12 MR. SCHARDT: Nothing else, Your Honor.

13 THE COURT: The statement is in.

14 Next motion.

15 MS. WEISS: Your Honor ---

16 THE COURT: When I say this, I don't want  
17 anybody to take me wrong, but I cannot rule on  
18 something that's not in the record.

19 MR. SCHARDT: Your Honor ---

20 THE COURT: There's nothing in the record  
21 about how he was or what he said. But he has a right  
22 to testify in a Jackson versus Denno hearing and not  
23 before the jury and all those others. But if you  
24 don't put him up, there's nothing in the record.

25 MR. SCHARDT: Yes, Your Honor, I just have

1 one other issue to bring up ---

2 THE COURT: Go ahead.

3 MR. SCHARDT: I think this is the appropriate  
4 time. As far as the statement that you just ruled  
5 would come in, we do have a concern with the  
6 statement. He was questioned on two different  
7 burglaries. Now I understand we have a Lyle issue  
8 coming up. But we would ask that when that statement  
9 comes in, it be redacted to only include the statement  
10 regarding this case and not ---

11 THE COURT: I haven't seen the statement.  
12 Has it been admitted? You've got to admit it, by the  
13 way. I haven't seen the statement. I don't know  
14 what's in it.

15 MR. SCHARDT: Yes, Your Honor.

16 THE COURT: But y'all -- but y'all know  
17 what's in it so y'all help me out here.

18 MS. WEISS: Yes, Your Honor.

19 THE COURT: What's your position, Ms. Weiss?

20 MS. WEISS: Your Honor, I would like to do my  
21 State v. Lyle hearing and determine whether or not  
22 you're going to ---

23 THE COURT: Go ahead.

24 MS. WEISS: Thank you, Your Honor. The State  
25 recalls Kevin Reese.

1 THE COURT: You're still under oath.

2 Now, clarify the record for me.

3 MS. WEISS: Yes, Your Honor.

4 THE COURT: The only thing I'm concerned  
5 with, know about so far, is the indictment that  
6 alleges the burglary took place on December the 1st,  
7 2004.

8 MS. WEISS: Yes, sir.

9 THE COURT: Now I've not been informed,  
10 advised, there were any other break-ins or any other  
11 burglaries. So I assume that's what Mr. Schardt knows  
12 about and you know about. So why don't y'all inform  
13 me so I'll know about it also.

14 MS. WEISS: Yes, Your Honor, and that would  
15 be the basis of his motion. 10 days -- approximately  
16 10 days later, the Defendant went back -- Ms. Jacobs  
17 went to the hospital as a result of the first break-  
18 in. She was in the hospital and not at her apartment.  
19 Approximately 10 to 11 days later, Mr. Sowell went  
20 back to her apartment, broke in ---

21 THE COURT: And this is something that you  
22 could have charged him with but you didn't?

23 MS. WEISS: Correct. He was charged with the  
24 malicious injury to property as a result of that. He  
25 broke in and then he went through and sliced up



1 everything in her apartment.

2 THE COURT: All right, I understand that.

3 MS. WEISS: And the State is moving to bring  
4 it in under Lyle to show motive, intent, lack of ---

5 THE COURT: All right, that's denied.

6 Anything further? I'm not going to allow  
7 that in. We've talked about the burglary that  
8 happened on December the 1st. That's what he's  
9 charged with. That's what he's been prosecuted for,  
10 not something that happened 10 days later. And I  
11 understand your Lyle position. But it's my position  
12 that it's not coming in. The prejudice outweighs the  
13 probative value.

14 We're trying him on what happened on December  
15 the 1st, not what happened next month or next year or  
16 any other time.

17 If that's your Lyle evidence, it's not coming  
18 in.

19 Anything further from anyone?

20 MS. WEISS: No, Your Honor.

21 THE COURT: Let's take a break. We'll come  
22 back and we'll get started on this case.

23 (WHEREUPON, the court was in recess.)

24 THE COURT: All right, let's go back over all  
25 these so we'll be on the same page and make sure we're

1 clear about it.

2 MS. WEISS: Yes, Your Honor.

3 THE COURT: You've given them all the Rule 5  
4 and Brady materials that you have up to date.

5 MS. WEISS: Yes, Your Honor.

6 THE COURT: And there's no reason for you to  
7 think otherwise at this point in time?

8 MR. SCHARDT: Correct.

9 THE COURT: Okay. Sequestration of the  
10 witnesses, that's been granted. We have Investigator  
11 Reese, the victim. We have nobody from the Defense  
12 here. Seems okay so far. Additionally, of course  
13 y'all know you need to tell your witnesses, don't talk  
14 to somebody, after they testified, about their  
15 testimony. That's a problem but I'm sure you've done  
16 this many times before, Ms. Weiss. I'm sure you'll  
17 advise the other witnesses of that.

18 MS. WEISS: Yes, Your Honor.

19 THE COURT: Motion to exclude mention of  
20 Defendant's probationary status or visitation of  
21 probation agent to incident location. Ms. Weiss  
22 indicated and I don't see how -- you're not going to  
23 bring that up, don't think she needs to.

24 Motion to exclude mention of Defendant's  
25 arrest for harassment and motion to settle the record

1 -- well, we've taken care of that. Motion to dismiss  
2 on double jeopardy grounds, that's been denied.

3 Now, lets' see. Anything else I need to  
4 clarify for anybody?

5 MS. WEISS: Your Honor, our first witness  
6 would be the -- is going to be the victim, Ms. Jacobs.  
7 And I believe the Defense wants to bring in a prior  
8 record. And we would object to that. You want to  
9 handle that now before we get started?

10 THE COURT: All right, what' the prior  
11 record?

12 MR. SCHARDT: Your Honor, it's a fraudulent  
13 check from 1997. Our stance would be that it falls  
14 within the 10 year time frame. It's from April 21st,  
15 1997 was the arrest date. And she pled to it, from  
16 what I'm being told. This would be a crime of  
17 dishonesty that would not fall under the rule that  
18 requires a one year minimum sentence.

19 We would just argue that it goes to  
20 credibility.

21 THE COURT: All right, Ms. Weiss, what's your  
22 position?

23 MS. WEISS: Your Honor, this is a 30 day  
24 misdemeanor that she just paid a fine for it. I don't  
25 believe she even went to court. I don't know if she

1 went to court. But she went through Magistrate's  
2 Court and paid a fine.

3 And we'd say this is so close to being within  
4 10 years that there's no basis for it to be entered  
5 and -- that there's no reason for it to be entered.  
6 That it would -- the -- I mean, it would just ---

7 THE COURT: It does involve a crime of moral  
8 turpitude, does it not?

9 MS. WEISS: I didn't think fraudulent --  
10 fraudulent check was ---

11 THE COURT: Well, something -- I haven't  
12 looked at the rules. I'll look at them now. Involves  
13 dishonesty, cheating, lying, stealing, that sort of  
14 thing.

15 Look, this is sort of innocuous in a case  
16 like this anyway.

17 MS. WEISS: Yes, Your Honor, I agree. That's  
18 fine.

19 THE COURT: I mean, it would go maybe to her  
20 credibility, believability or something like that.

21 THE COURT: Go ahead, Mr. Schardt, I'm not  
22 going to stop you.

23 MR. SCHARDT: Your Honor, I believe that the  
24 words are, a crime shall be admitted if it involved  
25 dishonesty or false statement, regardless of the

1 punishment. I believe State v. Al-Amin is a case  
2 where the ---

3 THE COURT: I just about gave you a clear  
4 indication I was going to let you use it. But if you  
5 want to try and talk me out of it, go ahead.

6 MS. SCHARDT: No, Your Honor, thank you.

7 THE COURT: All right. So explain to her she  
8 needs to say, yeah, I had a bad check years ago.  
9 That's all it is, a Magistrate's Court offense. This  
10 is a burglary case.

11 But, I mean, out of an abundance of caution,  
12 only out of an abundance of caution am I going to let  
13 this in. Think you need to talk to her about it first  
14 or something?

15 MS. WEISS: No, Your Honor. I spoke to her  
16 about it. I'll just ---

17 THE COURT: Okay. That's fine. Like I said,  
18 this case is not going to rise or fall on whether or  
19 not she had a back check when she was a kid.

20 Anything else we need to do? Mr. Schardt,  
21 anything further?

22 MR. SCHARDT: Not at this time, Your Honor.

23 THE COURT: All right. And how long y'all  
24 think this is all going to take?

25 (Pause.)

1 THE COURT: That's all right. That's all  
2 right. You need to talk to her? I'll stop and let  
3 you do so but my question is, how long do you think  
4 this all is going to take?

5 MS. WEISS: Your Honor, the State intends to  
6 call three witnesses.

7 THE COURT: All right.

8 MS. WEISS: So we plan on it being a fairly  
9 short trial.

10 THE COURT: All right. But my -- you might  
11 be right, Ms. Weiss, but my guess we won't finish this  
12 until tomorrow morning sometime. That's my guess. I  
13 could be wrong.

14 Oh, yeah, there's a note from the juror, I  
15 think the actress, that wants to leave by 5:30. We'll  
16 see how that goes. If there's any real problem with  
17 that, we have an alternate. I might just excuse her.  
18 But we'll talk about that if we get to that point.

19 This is a note from the juror: I need to be  
20 out by 5:30 -- oh, gee-whiz -- at the latest to make  
21 my call for my performance Tuesday evening.

22 I'll let y'all look at this note. We've got  
23 13. This is a problem with her. And y'all think  
24 about it, talk to your clients about it, and the  
25 victim and I just assume sending her home and let's

1 keep going if we have to. But we'll see how long it  
2 takes.

3 Do you understand that?

4 MR. SCHARDT: Yes, Your Honor.

5 THE COURT: Okay. Anything further?

6 MS. WEISS: Not a this time, Your Honor.

7 THE COURT: And look, my bark is a lot worse  
8 than my bite. I'm not barking at anybody today but  
9 we're going to move this case along and I'm going to  
10 try and be as fair as I can to everybody.

11 And, you know, if you don't agree with my  
12 rulings, that's fine. You have a right to put your  
13 exceptions on the record. I'm going to allow you to  
14 do that at any point in time.

15 There was one, I think, Mr. Schardt, that I  
16 mentioned that you failed to bring back up and that  
17 was the -- my, not refusal, but I wasn't going to ask  
18 the last five questions on your proposed voir dire. I  
19 thinks they went to obviously things I'm going to  
20 charge the jury about anyway, presumption of innocence  
21 and things sort of along those lines. Don't blame you  
22 for asking but I think they're sort of misplaced.

23 Anything you want to add about that?

24 MR. SCHARDT: Nothing, Your Honor.

25 THE COURT: I will make your request part of

1 the record so we'll have it on the record, those last  
2 five questions.

3 Anything further?

4 MS. WEISS: No, Your Honor.

5 THE COURT: All right. Y'all all ready to  
6 go. Well, good luck to everybody. Bring the jury in,  
7 sir.

8 (The jury returned to the courtroom at  
9 approximately 11:45 A.M.)

10 BAILIFF: The jury's all present, Your Honor.

11 THE COURT: Welcome back Madam Forelady and  
12 members of the jury.

13 Jackie, you may swear them.

14 THE CLERK: Madame Foreperson, ladies and  
15 gentlemen of the jury, please stand, raise your right  
16 hands to be sworn.

17 (The jury was duly sworn.)

18 THE CLERK: You may be seated.

19 THE COURT: Madam Forelady and members of the  
20 jury, what I will now say is intended to serve as an  
21 introduction in the trial of this case. It is not a  
22 substitute for the detailed instructions of the law  
23 which I will give you at the close of the case and  
24 before you retire to consider your verdict.

25 This is a criminal case commenced by the



1 State, which is sometimes referred to as the  
2 prosecution, against Todd Sowell. This case is based  
3 on the indictment that I read to your earlier, members  
4 of the jury, which the Solicitor doesn't have to read  
5 but I've already read it to you.

6 You should distinctly understand that the  
7 indictment is simply a charge and that it is not any  
8 sense -- in any sense evidence against the Defendant  
9 or evidence of any allegation it contains. They are  
10 allegations they will have to prove to you that he in  
11 fact committed this crime.

12 Now the Defendant has plead not guilty to the  
13 indictment, Mr. Sowell. The State therefore has the  
14 burden of proving each of the essential elements of  
15 the indictment beyond a reasonable doubt. The  
16 purposes of the trial is to determine whether the  
17 State can meet or has met its burden at the end.

18 Your purpose as jurors is to find and  
19 determine the facts. Under our system of criminal  
20 procedure, you are the judges, the sole judges, of the  
21 facts. If at any time I should make any comments  
22 regarding the facts, members of the jury, you are at  
23 liberty to disregard it.

24 It is especially important that you perform  
25 your duty of determining the facts diligently and

1 conscientiously, for ordinarily there is no means of  
2 correcting an erroneous determination of the facts by  
3 a jury.

4           On the other hand, and with equal emphasis, I  
5 instruct you that the law as given by the Court, that  
6 is by me, constitutes the only law for you to consider  
7 and for your guidance. It is your duty to accept and  
8 follow it as I give it to you. It is your duty to  
9 follow the law even though you may disagree with the  
10 law. And it's my duty to tell you the law even though  
11 I may disagree with it. We all understand that.

12           Now you are to determine the facts of this  
13 case from the testimony you hear and from the evidence  
14 introduced in court. It is up to you to determine the  
15 emphasis which you feel may properly be drawn from the  
16 evidence. You must not consider anything you may have  
17 read or heard about this case outside of the  
18 courtroom, whether before or during this trial.

19           And until this case is submitted to you,  
20 members of the jury, you must not discuss it with  
21 anyone, even with your fellow jurors. And after it is  
22 submitted to you, you must discuss it only in the jury  
23 room and with your fellow jurors. It is important  
24 that you keep an open mind and not decide any issue in  
25 the case until the entire case has been submitted to

1 you under the instructions of the court.

2 It is your added duty, Madam Forelady, to  
3 preside in the jury room and to be the jury's  
4 spokesperson here in court.

5 Now, with that in mind, we will begin this  
6 trial with opening statements on behalf of the State  
7 and on behalf of the Defense. The State, once again,  
8 has the burden of proving that Mr. Sowell is guilty of  
9 breaking into this apartment, the allegations -- the  
10 elements of that crime, beyond a reasonable doubt.  
11 The lawyers will talk to you about that.

12 Now, since the State has the burden of proof,  
13 we will first hear from Ms. Weiss, followed by Mr.  
14 Schardt. And I'll tell you procedurally how this  
15 matter will unfold as we go along.

16 Any exceptions or additions to those remarks?

17 MS. WEISS: Mr. Maldonado will be making the  
18 opening statement.

19 THE COURT: Oh, Mr. Maldonado, I'm sorry.  
20 Mr. Maldonado will make the opening statements. And I  
21 invite your keen and close attention to the opening  
22 statements on behalf of the State as well as on behalf  
23 of Mr. Sowell.

24 Mr. Maldonado.

25 MR. MALDONADO: Thank you, Your Honor, may it

1 please the Court.

2 THE COURT: Yes, sir.

3 OPENING STATEMENT ON BEHALF OF THE STATE

4 BY MR. MALDONADO:

5 It is almost afternoon, ladies and  
6 gentlemen, and my name is Bob Maldonado. I am an  
7 Assistant Solicitor with the 5th Circuit. Along with  
8 Heather Weiss, we are representing the people of the  
9 State of South Carolina in this case, The State versus  
10 Todd Sowell.

11 Some crimes happen and they're awful. For  
12 the victims, they're just in the wrong place at the  
13 wrong time. Their car gets stolen, someone takes your  
14 identity and runs up credit. Those crimes are awful  
15 and they just -- but they never stop other crimes.  
16 There are other crimes where the victim, as the  
17 victim, you're the target. And in those crimes, the  
18 word scary goes to a whole other level.

19 A home invasion is that type of crime because  
20 it's your home where you feel safe, where you need to  
21 feel safe. It's where your family is.

22 This case, this incident happened December  
23 1st, 2004. Sandrica Jacobs was at home when someone  
24 busted through her front door and attacked her. Who  
25 was that? The Defendant Todd Sowell.

1           How do we know it was him? She just got out  
2 of a relationship with him. She knows him. She was a  
3 target. She knew he was coming over. He told her he  
4 was coming over.

5           It was 11:00 at night. Her son, who was  
6 about five years old at the time, was sleeping in the  
7 other room. She couldn't sleep in her bed because she  
8 didn't feel at ease. She was in the living room and  
9 somebody just pounded on the door. Let me in, if you  
10 don't open this door, I'm going to break it down.

11           Well, he did. Didn't -- she didn't even have  
12 time to dial 911, he was through the door and on top  
13 of her. Ms. Jacobs was a victim not only of this but  
14 of sickle cell anemia. She has medical issues and she  
15 has two scars on her chest, tubes going in through her  
16 chest. I don't know -- I'm not a doctor. I can't  
17 explain all that and she will. But Mr. Sowell knew  
18 this. He was beating her on the chest. He knows her  
19 weaknesses. He was taking advantage of that.

20           Todd Sowell is charged with burglary in the  
21 first degree. That's the legal definition. I'll go  
22 ahead and -- the Judge read to you the indictment so  
23 you will get an idea of what you're actually looking  
24 at. Burglary in the first degree is defined as  
25 entering a dwelling, and that's, you know, a house,

1 someone's apartment, without consent, with the intent  
2 to commit a crime and either enters during the hours  
3 of darkness or cause physical injury to any person not  
4 a participant in the crime. Basically, just hurt  
5 someone else. It doesn't have to be both of those.  
6 In this case, it was both of those but if you find  
7 either one, ladies and gentlemen, you must find the  
8 Defendant guilty of burglary in the first degree.

9           First degree might confuse you. There are  
10 just different kind of degrees based on different kind  
11 of burglaries. The law differentiates between a house  
12 and a business or a daytime or the nighttime. So  
13 that's the only reason there's the degrees part of it.

14           But the issue is whether or not we meet these  
15 elements and whether or not we can prove beyond a  
16 reasonable doubt that he did these and he meets these  
17 elements of burglary in the first degree. And we  
18 submit to you, ladies and gentlemen, after you hear  
19 from the witnesses, you'll have no doubt that that's  
20 what happened in this case.

21           Now, how do we know all of this? Ms. Jacobs  
22 is going to tell you about what happened. And you're  
23 going to hear from her and we ask that you please  
24 listen carefully because this is her only day in  
25 court. It's Mr. Sowell's only day in court also.

1 But sometimes the victims get lost in the  
2 whole process. So we ask you, ladies and gentlemen,  
3 please don't forget about her. And listen to her,  
4 listen to her tell the story of what happened that  
5 night.

6 Victims aren't familiar with the process and,  
7 you know, most of them have never been in front of a  
8 jury and probably very nervous. But she is here today  
9 to try to tell you what happened that night.

10 So we appreciate your listening to all this.  
11 But beyond all that, how else do we know what happened  
12 that night? Well, this is a little bit unusual but  
13 you're going to hear from another witness. You're  
14 going to hear from Mr. Sowell because he gave a  
15 statement to the police. And he admitted that he did  
16 that that night. He broke in, he assaulted her.

17 The police in the case, they did come out and  
18 there are a lot of things they did do and there's a  
19 lot of that they didn't do. You're going to hear  
20 about that too. Most of them -- there's reasons for  
21 some of that and I don't know what the Defense is  
22 going to argue. I have no way of knowing. But  
23 sometimes they blame the victim or blame the officers  
24 or whatever.

25 But keep in mind that, you know, there's

1 certain reasons for certain things. For example,  
2 you're not going to hear about any fingerprints  
3 because Mr. Sowell lived in the house previously.  
4 They had just broken up. You're going to hear about,  
5 you know, there's no DNA. Well, you know, that  
6 wouldn't be conclusive that would help you because he  
7 lived in the house. There's not going to be DNA.

8           There's things that the police did not do.  
9 They didn't take a statement right away from the  
10 victim. Well, she was going to the hospital the next  
11 morning.

12           So we just ask you to keep in mind the whole  
13 picture of what happened. And please focus on what  
14 did happen, what did happen to the victim in the case,  
15 how she felt the pain that was involved, her fear.  
16 And we ask you to remember that throughout this whole  
17 process because sometimes we get lost in the process.

18           We have to prove this case beyond a  
19 reasonable doubt. And I believe once you hear all the  
20 evidence that you will find the Defendant guilty of  
21 burglary in the first degree.

22           Now, it's not beyond all doubt because the  
23 only way that can be possible is if you were actually  
24 there. But then in a weird twist of the fate, then  
25 you couldn't be jurors on this case because you would



1 be witnesses in the case. So it's not beyond all  
2 doubt, beyond a reasonable doubt. You have to use  
3 your commonsense.

4 Take a look at the evidence and then -- when  
5 you swore on your hand just now, when the Judge swore  
6 you in, he asked you to -- go back and think about  
7 what you said because it happened so quickly. That  
8 you truly try and true deliverance make. And that  
9 means without passion or prejudice, tell the court,  
10 tell the people, this is what happened. And we're  
11 asking, if you can to find the Defendant guilty of  
12 burglary in the first degree.

13 Thank you.

14 THE COURT: Mr. Schardt.

15 MR. SCHARDT: Your Honor, Mr. O'Neil will be

16 ---

17 THE COURT: All right, Mr. O'Neil.

18 MR. O'NEIL: Thank you, Your Honor, may it  
19 please the court.

20 THE COURT: Yes, sir.

21 OPENING STATEMENT ON BEHALF OF THE DEFENSE

22 BY MR. O'NEIL:

23 Good afternoon, ladies and gentlemen. Let me  
24 introduce you to a man called Todd Sowell. Now, when  
25 I first met Todd, I tried to clarify some things. I

1 said, Todd, are you called Todd Sowell or Todd Sowell.  
2 He said to me, Mr. O'Neil, it doesn't matter. Call me  
3 what you want to call me.

4 So I invite you to do the same thing this  
5 afternoon. Call him what you want to call him. But I  
6 guarantee you one thing, that if you're in this trial  
7 where you're hearing all the evidence there is to  
8 hear, one thing you won't be able to call Todd is  
9 guilty.

10 Now my name is Deon O'Neil and along with  
11 Maxwell Schardt, it's our job to represent Todd and  
12 it's our pleasure to represent Todd. Well, let's  
13 clarify one thing up front. It is not our job to  
14 prove that he's not guilty. Because as Todd sits in  
15 front of you at this very moment, he's an innocent  
16 man. And when you all hear the evidence in this case,  
17 at the conclusion of this case, he still will be an  
18 innocent man.

19 Now, it's the State's burden of proof to  
20 Prove to you that Todd is guilty. They have a  
21 tremendous burden to prove to you beyond a reasonable  
22 doubt that Todd is guilty of burglary in the first  
23 degree, the most serious of all the burglaries that we  
24 have.

25 Now the lawyers on the State's side, Mr.

1 Maldonado, Ms. Weiss, they take their job very  
2 seriously. They're good at their job. But they have  
3 one problem with this case today. The evidence in  
4 this case just does not support the conclusion that  
5 Todd burglarized any one.

6 Now this is the most important day in Todd's  
7 life. He sits before you this afternoon an innocent  
8 man charged with burglary in the first degree.

9 Now Mr. Maldonado talked about home  
10 invasions. You're going to hear a lot of evidence in  
11 this case. But what you will not hear is that this is  
12 a case about a masked assailant with a gun busting  
13 into someone's house and taking away their belongings.  
14 What happened in this case was definitely not that.  
15 We're giving a totally different story.

16 Now as you will hear, Todd and Sandrica, they  
17 knew each other very well. You will hear about their  
18 seven month long relationship they had. And back in  
19 September of 2004, Todd Sowell and Sandrica were  
20 engaged. They were engaged to be married.

21 On December 12th -- I'm sorry, September  
22 12th, they actually went down to Freidman's Jewelry to  
23 pick out an engagement ring and helped pay for the  
24 engagement ring.

25 You will hear that Todd, at that particular

1 point, moved into Ms. -- Sandrica's apartment in  
2 Prescott Manor. Sandrica stayed there, her young son  
3 stayed there. And you will hear how Todd was a father  
4 figure for her young son.

5           You will hear how Todd's name was on some of  
6 the utilities there at Apartment 70 at Prescott Manor.  
7 You will hear how Todd slept there at Apartment 70 at  
8 Prescott Manor. You will hear how Todd and Sandrica  
9 intended on spending the rest of their lives together.

10           And like most relationships, they had their  
11 ups and downs, their breakups. But you will hear as  
12 recently as two weeks before this incident, they  
13 decided to reconcile. See Sandrica had told Todd that  
14 she was pregnant and they decided to make things work  
15 for the child that they would be having.

16           You will hear about Todd moving back into the  
17 apartment that day. You will hear about Todd having a  
18 key to the apartment. He slept there. He ate there.  
19 His clothes were there. Todd Sowell stayed in the  
20 apartment that he is now accused of burglarizing.

21           Now, the police came out there that night.  
22 These are trained individuals, trained to do their job  
23 to protect the citizens of the City of Columbia. You  
24 will hear how they came out, they did their  
25 investigation, they observed the crime scene, they

1 talked with witnesses, they gathered information they  
2 needed and you will hear about the conclusions they  
3 made that particular night. Pay very close attention  
4 to the conclusions that the police made on that  
5 particular night. The police are individuals who the  
6 State requires and relies on to prosecute individuals.  
7 Remember the conclusions that the police made on that  
8 particular night.

9           Now still despite all this evidence, the  
10 State wants to make you believe that Todd is guilty of  
11 burglary in the first degree beyond a reasonable  
12 doubt. Beyond a reasonable doubt is the highest level  
13 of scrutiny we have in our criminal justice system.  
14 It's the highest burden of proof.

15           Ladies and gentlemen, I guarantee, when you  
16 hear both sides of this story, you will have a reason  
17 to doubt that Todd is guilty of burglary.

18           Now there's an old saying that only fools  
19 fall in love. You will hear all the evidence in this  
20 case and you will hear how Todd loves Sandrica.

21           So, ladies and gentlemen, feel free to call  
22 Todd a fool. Call him a fool for love. What you  
23 won't be able to call him is guilty.

24           Thank you.

25           THE COURT: Okay. Now, members of the jury,

1 so y'all won't get too anxious, I'm going to stop for  
2 lunch about 1:00. I'm sure it's not on your minds now  
3 but I didn't want y'all to wonder about it. That's  
4 usually what we do here.

5 So with that in mind, Ms. Weiss, I invite you  
6 to call your first witness.

7 MS. WEISS: Thank you, Your Honor. May it  
8 please the court. The State would call Sandrica  
9 Jacobs.

10 (Sandrica Jacobs, after being duly sworn,  
11 testified as follows:)

12 THE CLERK: Please have a seat and state  
13 your full name for the record.

14 THE WITNESS: My name is Sandrica Kimona  
15 (phonetic) Jacobs.

16 DIRECT EXAMINATION

17 BY MS. WEISS:

18 Q Ms. Jacobs, where are you from?

19 A I was born and raised here in Columbia, South  
20 Carolina.

21 Q And is your mother still here in Columbia?

22 A Yes, she lives here.

23 Q Where did you go to high school?

24 A C. A. Johnson.

25 Q And do you have any children?

- 1 A I have a seven year old son.
- 2 Q Okay. Ms. Jacobs, where were you living on
- 3 December 1st of 2004?
- 4 A 1601 Prescott Road.
- 5 Q And was that -- is that in Richland County?
- 6 A Yes.
- 7 Q Is that in the City of Columbia?
- 8 A I would say it is, yes.
- 9 Q Who were you living with on December 1st of 2004?
- 10 A It was me and my son -- December 1st?
- 11 Q Yes.
- 12 A 2004?
- 13 Q The date that we're talking about today?
- 14 A Me and my son.
- 15 Q Okay. Prior to that, had you had a relationship
- 16 with Todd Sowell?
- 17 A What day are you talking about? You're confusing
- 18 me.
- 19 Q The year prior to that, had you had a
- 20 relationship with Todd Sowell?
- 21 A Before 2004?
- 22 Q In the year leading up to December 1st, yes?
- 23 A Yes, yes, we were in a relationship.
- 24 Q Okay. And do you see him the room today?
- 25 A Yes.

1 Q Can you point him out for the jury?

2 A He's over there.

3 MS. WEISS: Your Honor, let the record  
4 reflect she's indicated the Defendant.

5 THE COURT: Yes, ma'am.

6 MS. WEISS: Thank you.

7 Q Can you please tell the jury what your  
8 relationship entailed with Mr. Sowell, how long  
9 ---

10 A From the beginning?

11 Q Yes, from the beginning. How long were y'all  
12 together?

13 A Not really a whole year. It was maybe like six  
14 months.

15 Q Okay. And at some point during that were you  
16 engaged?

17 A Yeah, we did get engaged but we never went and  
18 got married. It was just the ring on my finger.

19 Q How long were you engaged?

20 A Maybe two months.

21 Q And who called off that engagement?

22 A I did.

23 Q And what happened when you called that off?

24 A Well, I initially broke up with Todd because I  
25 saw some violent ---



1 MR. SCHARDT: Ob ---

2 A --- tendencies.

3 MR. SCHARDT: May we be heard?

4 THE COURT: Do you have an objection?

5 MR. SCHARDT: Yes, sir.

6 THE COURT: You need to stand up and make it,  
7 Mr. Schardt. And what's your objection, sir?

8 MR. SCHARDT: Your Honor, I am concerned that  
9 it's prejudicial.

10 THE COURT: Y'all approach.

11 (WHEREUPON, a bench conference was held  
12 off the record, in the presence of the jury,  
13 but out of the hearing of the jury.)

14 THE COURT: All right continue.

15 Q Okay. Ms. Jacobs, without getting into detail as  
16 to why you broke up, you did breakup at one time,  
17 right?

18 A Yeah, we broke up.

19 Q And at that point did Mr. Sowell move out?

20 A Yes, I had him get his things and leave. He was  
21 reluctant but he left.

22 Q Okay. Did you get back together after that first  
23 breakup?

24 A Yeah, we did.

25 Q Okay. What brought you back together?

1 A I was pregnant. I found out I was.

2 Q And do you remember about when that was?

3 A That was like right after we got engaged or he  
4 bought the ring.

5 Q Do you remember if that was sometime in the fall?

6 A Yeah, it was in the fall.

7 Q And he came back and moved back in with you?

8 A Yeah, when he moved out the first time, he went  
9 somewhere. I don't know where he went, but,  
10 yeah, he came back. And we tried to work it out,  
11 whatever.

12 Q And how long did that last?

13 A A month, like a couple weeks after Thanksgiving.

14 Q Okay. So through Thanksgiving ya'll were still  
15 together?

16 A Yeah.

17 Q And you spent -- he spent Thanksgiving with you  
18 and your son?

19 A Yeah.

20 Q Did the relationship end again?

21 A Yes.

22 Q And was that -- how far before the incident that  
23 we're here for today, December 1st, how far  
24 before that did the incident at the second time  
25 -- did the relationship end the second time?

1 A Not far, maybe a couple of days before that.

2 Q And was there any question when the relationship  
3 ended this time that it was over?

4 A Did he question me?

5 Q No, did you have any question -- did -- let me  
6 rephrase it. Who ended the relationship the  
7 second time?

8 A I did.

9 Q And will you please tell the jury what happened  
10 the second time ---

11 A I ended the relationship?

12 Q --- that you ended the relationship. How did you  
13 go about ending the relationship that time?

14 A Well, after I found out I had a miscarriage and I  
15 realized that that was the wrong reason to get  
16 married and be together, I told him that I had a  
17 miscarriage and you don't have to stand around  
18 for that. And he had said to me, well, that's  
19 not why I'm here, you know, I care for you,  
20 whatever.

21 And I said, well, I appreciate that but I'm  
22 just not ready. And he didn't take it so  
23 lightly, you know, he got angry about it, about  
24 me breaking up with him.

25 Q And ---

1 A I didn't know that he was going take it so hard.

2 Q Okay. Just focusing on when you first broke up,  
3 he was living with you prior to breaking up with  
4 him that time?

5 A Uh-huh.

6 Q And when you broke up, did you ask him to move  
7 out?

8 A Yes, I asked him to leave, give me my key. And I  
9 knew he had somewhere to go because he went with  
10 his mom. So I didn't just throw him out on the  
11 street. He was reluctant to give me my key back  
12 but he gave it back. And he left. And he just  
13 kept calling all that day, just calling.

14 Q Okay. Did he take his things when he first --  
15 when he left that first time?

16 A Yes, I had him take his things.

17 Q Okay. Was there anything left in your apartment  
18 that belonged to Todd Sowell?

19 A No.

20 Q And how do you know that? What did you do with  
21 all of his things?

22 A Because I packed it up and I gave it to him.

23 Q Okay. Did you place it anywhere for him to pick  
24 up?

25 A Yes, I placed outside my apartment.

1 Q And did you go through it and make sure you had  
2 everything that belonged to him?

3 A Yes.

4 Q Were you there when he came to pick it up?

5 A Yes.

6 Q Was anybody else there with you?

7 A No, I was there, me and my son, that night he got  
8 his stuff.

9 Q Okay. And did you give him an opportunity to  
10 look through and make sure everything was there?

11 A Well, he didn't do all of that. He wasn't  
12 worried about all that. He was, you know, upset  
13 and angry. He wasn't even thinking about his  
14 things. He was, you know, mad.

15 Q You had packed everything up?

16 A Yeah.

17 Q Is there any question there was anything left in  
18 the apartment that belonged to Todd Sowell?

19 A No.

20 Q In fact did that -- did his things include even a  
21 bed?

22 A No, he packed up his bed and everything and took  
23 it to his mom's.

24 Q He took the bed and took all his things?

25 A Uh-huh.

1 Q And this was still a couple of days before  
2 December 1st, before the incident we're here for  
3 today?

4 A Uh-huh.

5 Q And now, Sandrica, before we start talking about  
6 this incident, I want to talk to the jury for a  
7 minute about something very personal. Can you  
8 tell the jury a little bit about your health  
9 issues?

10 A I don't want to do that.

11 Q You don't want to do that?

12 A No.

13 Q Okay. Do you have a port -- a port catheter in  
14 your chest?

15 A Yes.

16 Q Okay. And how was that put into your chest?

17 A By surgery.

18 Q And do you have a scar on the other side of your  
19 chest?

20 A Yes.

21 Q And what is that from?

22 A A port.

23 Q And the port was removed from that side?

24 A Yes.

25 Q About how long ago was that?

1 A Some years.

2 Q Okay. So what's the most vulnerable part of your  
3 body?

4 A My chest.

5 Q And is it vital to you that that port catheter  
6 remain in place?

7 A Yes.

8 Q And what type -- what do you receive through the  
9 port?

10 A I get blood and medications for sickle cell  
11 disease.

12 Q And how often do you receive that?

13 A As often as I get sick, maybe every six months,  
14 every three months, depending on what my body is  
15 like at the time.

16 Q And is there any way for you to know day in or  
17 day out what that ---

18 A When I'm going to be sick?

19 Q Yes.

20 A No.

21 Q It can hit at my time?

22 A Yes.

23 Q And when the sickle cell disease hits, it's very  
24 painful?

25 A Very painful, much like arthritis, rheumatoid

1       arthritis, just -- it's just a pain that you  
2       can't bear.

3   Q     But in spite of this, you've been -- you're going  
4       to school?

5   A     Yes. I'm applying at Kenneth Shuler.

6   Q     Okay. And what do you hope to do with that?

7   A     Get this cosmetology license.

8   Q     And before that, were you working anywhere else?

9   A     No, I'm on disability.

10   Q    Okay. I'm going to bring you back to the day of  
11       December 1st, 2004. At this point, Todd had been  
12       gone a couple of days?

13   A     No, he had just left that day.

14   Q     He wasn't living with you?

15   A     No.

16   Q     He had been gone -- he was not living with you  
17       for a couple of days by this point in time?

18   A     Yeah.

19   Q     And on December 1st, there's nothing of his in  
20       the house?

21   A     No.

22   Q     He had no clothes?

23   A     (Nods affirmatively.)

24   Q     Nothing. But he had -- you said he had just  
25       left? He had come over to your apartment?



1 A To do what?

2 Q On December 1st, you said he had just left?

3 A He got his things and left.

4 Q Okay. Had he been at your apartment on the day  
5 in question, the day we're talking about?

6 A No.

7 Q The morning of?

8 A No.

9 Q Had you heard from Todd Sowell that day?

10 A Yes, he was calling.

11 Q Okay. And how often was he calling?

12 A Every few minutes.

13 Q And what was he saying when he called ---

14 A He was trying to get back together, questioning  
15 for reasons for why we broke up.

16 Q Okay. When he first started calling, what was he  
17 acting like?

18 A He was really loud and saying stuff to scare me.

19 Q Okay. And how long throughout that day did he  
20 keep calling?

21 A All night.

22 Q And when did the calls start that day?

23 A Well after -- right after I got my son from  
24 school.

25 Q About what time was that?

1 A That's like around 2:25. I got home around maybe  
2 a quarter to 3.

3 Q He started calling at that time?

4 A Well, he was outside the apartment during that  
5 afternoon. And I told him he needed to leave  
6 because he wasn't coming in, he didn't have  
7 anything to come in there for.

8 Q Did you talk to him at the time?

9 A Yes.

10 Q And what ---

11 A That's what I said to him.

12 Q Okay. And did he leave then?

13 A No.

14 Q What did he do then?

15 A He hung around and talked to the guys out there.

16 Q Okay. And at some appoint did you notice he had  
17 finally left?

18 A Yeah, the truck was gone.

19 Q And what type of truck is that?

20 A I believe he had a Ford pickup.

21 Q So it was pickup truck?

22 A Yeah, 2 door and ---

23 Q And -- go ahead, I'm sorry.

24 A It was blue.

25 Q Okay. And sometime after he left, is that when

1 the phone calls started?

2 A Yes.

3 Q And you said at first he was trying to get back  
4 together, was that on the ---

5 A He was just, you know, questioning me why, why I  
6 wanted to breakup with him and why, you know --  
7 why was I acting the way I was acting.

8 Q And what did you tell him?

9 A I said that this -- I don't want -- this  
10 relationship is not going to work. I mean,  
11 because for one, he drank ---

12 Q Okay ---

13 MR. SCHARDT: Objection, Your Honor.

14 THE COURT: Basis. She's talking about  
15 things that happened during the course of the  
16 relationship. What's your objection, sir? I need you  
17 to tell me.

18 MR. SCHARDT: Overly prejudicial.

19 THE COURT: The fact that he drank, that's  
20 admissible. Your objection is overruled. You may  
21 continue.

22 Q And was there any question during these phone  
23 calls that you were going to even consider  
24 reconciling?

25 A No.

1 Q He was not -- he was out of control. I didn't  
2 want to be with him.

3 Q And that he kept calling, you said, every few  
4 minutes?

5 A Yes.

6 Q And your son was there during all of this?

7 A He was there but I wasn't letting him hear  
8 anything. He was in the room basically.

9 Q Okay.

10 A He plays a lot with his toys and stuff so. And  
11 he would ask who was calling and I would say,  
12 like, you know, prank calls, nobody.

13 Q But in fact, it was Todd?

14 A Uh-huh.

15 Q And has he -- did his questions turn into more  
16 than that as the phone calls continued?

17 A Yeah, it turned into violent like, I'm coming  
18 over there, you can't stop me. You think you're  
19 safe in there, well, you're not. I can get in.

20 And I was like, well, I'll call the police.  
21 You come right on over and I'll call the police.

22 Q What did he say to that?

23 A And he was like, I ain't scared of no police. I  
24 ain't scared of no police.

25 Q Okay.

- 1 A I'm hanging up.
- 2 Q After you hung up, did he call back?
- 3 A Uh-huh. I didn't answer that time. I just let
- 4 the phone ring.
- 5 Q How many more times did the phone ring?
- 6 A A lot.
- 7 Q A lot?
- 8 A I don't know, I wasn't counting but it was lot.
- 9 It was more than two, more than three, more than
- 10 four.
- 11 Q Did you answer any of those calls?
- 12 A I answered two of the calls.
- 13 Q And what happened when you answered those calls?
- 14 A That's what he was saying. He was, you know,
- 15 like, you think you're safe over there and, you
- 16 know, I'm coming over there. You can't stop me.
- 17 I ain't gonna let this go down like this. You're
- 18 gonna talk to me.
- 19 Q Was he getting angrier as the calls went on?
- 20 A Yes.
- 21 Q And what were -- what were you feeling as you
- 22 were listening to these phone calls?
- 23 A I was upset and, you know, scared. I didn't know
- 24 what to do. I didn't drive at the time so I
- 25 couldn't leave my home. So I just stayed there

1 and I called the police. They came out. He  
2 wasn't there. But they came out and they took a  
3 report and said, you know, just let us know if he  
4 calls back again or, you know, call if he comes  
5 back again. And they left.

6 Q Okay.

7 A I said, well, he's out there, you know. He's  
8 going to keep calling me and he's going to come  
9 by, he said he was going to come by.

10 Q And you believed what he was saying?

11 A Yeah.

12 Q Was there any question in your mind he was going  
13 to come by there?

14 A No.

15 Q And that's -- that's your home, right?

16 A Yes, that was me and my son's place.

17 Q And did Todd ever pay the bills there?

18 A No, I paid all my bills.

19 Q And had you -- did you have that home prior to  
20 meeting Todd Sowell?

21 A Yes.

22 Q And how long ---

23 A Everything was in my name.

24 Q And how long ---

25 A Nothing was in his name.

1 Q Okay. And how long had you lived there prior to  
2 that?

3 A About a year and a half.

4 Q Okay.

5 A Two years maybe.

6 Q And you didn't want to leave that night?

7 A No, I was comfortable.

8 Q But you called the police and you let them know  
9 that you believed he was coming?

10 A Yes.

11 Q Okay. What time -- do you recall what time you  
12 put your son down that night?

13 A It was a little after 10 -- no, I think it was  
14 right before 10 or a little after 10, I'm not  
15 sure exactly but I'm pretty sure it was that  
16 time.

17 Q Did you put him to bed about the same time every  
18 night?

19 A Yeah, yeah, he'd usually go to sleep at that  
20 time.

21 Q Okay. When you put him down, was the phone still  
22 ringing?

23 A Yeah.

24 Q After you put him down, what did do?

25 A I took the phone off the hook and I cut the





1 ringer off.

2 Q Okay.

3 A So if it was ringing, I didn't hear it. And I  
4 tried to lay down in my room and couldn't sleep  
5 in there, I wasn't comfortable, so I slept up  
6 front.

7 Q When you say you weren't comfortable, can you  
8 explain to the juror what you mean by that?

9 A I just wasn't comfortable because he was calling  
10 so much and he said that he was going to come  
11 over. And I wanted to be where I can protect my  
12 son or, you know -- his bedroom is right beside  
13 mine but I just didn't feel comfortable in my  
14 room. I just wanted to be up front so that maybe  
15 I could get to the phone quicker, I could call  
16 somebody quicker, maybe somebody can hear me from  
17 the front versus the back of my apartment.

18 Q And so then what did do you?

19 A So I laid down in the chair and I turned out the  
20 light.

21 Q And where was the phone ---

22 A It was in the kitchen but I had the cordless  
23 phone.

24 Q Uh-huh.

25 A So I had it in my hand when I feel asleep.

1 Q Do you recall about what time that might have  
2 been?

3 A It was like a little after 11, maybe going on 12.

4 Q And ---

5 A And what woke me up -- something woke me up, it  
6 was the loud noise from outside, from a car, and  
7 the lights were shining directly into my window  
8 because I have -- the way the apartments are  
9 made, the bottom window you can -- somebody can  
10 just step right in your apartment, unsecured.

11 So I put something down in the window to keep  
12 it secure. I told the maintenance to fix it but  
13 they never came out and fixed it.

14 Q And had you put anything to try to secure the  
15 door?

16 A Yeah, I put a chair up to the door and ---

17 Q And the lights woke you up, what did do you?

18 A The lights woke me up. I jumped up off the chair  
19 and I, you know -- I pulled the curtain back a  
20 little bit to see if I could see anything but I  
21 couldn't, the lights were blinding me.

22 So -- and then that's when I heard the boom,  
23 boom, boom on the door, you know. Boom, boom,  
24 boom, you know. Open up this door.

25 Q What did you say?

1 A I was like, I'm not, I'm not opening -- you  
2 better not -- you can't get in here anyway. I'm  
3 calling the police, you know.

4 And he was like, open the door, open the  
5 door. By the time I could even dial or say  
6 anything on the phone, he was in and already at  
7 me, you know. I was -- he knocked me down to the  
8 floor and he was like slapping me a little bit  
9 and then he hit me in my chest.

10 And that's when I grabbed something and I  
11 tried to hit him with it. And I didn't hit hard  
12 enough, I guess. But at that time my neighbor  
13 was coming home and he jumped up off of me and  
14 ran out. I mean, he kicked the whole door in.

15 Q Okay.

16 A The door was off the hinges.

17 Q So the door was secured with a chair?

18 A I wasn't secured with the chair because the chair  
19 obviously didn't work.

20 Q But you attempted ---

21 A I attempted.

22 Q When you look outside and were you able to see  
23 the vehicle at all?

24 A Not with the light flashing or nothing. When he  
25 left, when he finally got -- when I finally got

1 my breath and was able to get up off the floor to  
2 tell my neighbor what was going on, he had  
3 already gone. So I didn't get a good look at the  
4 car but it had loud music and I knew it wasn't  
5 his truck.

6 Q Okay. So it was a different car ---

7 A Uh-huh.

8 Q And when did you call 911?

9 A At that very moment when he was -- when he busted  
10 in. I didn't have a chance to say anything so I  
11 redialed 911 but the police were already on  
12 route, I guess. And when they got there, he was  
13 gone.

14 Q Okay.

15 A And they came in and that's when I gave him my  
16 statement and told him everything what was going  
17 on. They saw the door and everything. And a  
18 policeman, he was taking my statement and Todd  
19 called. He called after he left my apartment,  
20 after what he just did to me, he called.

21 Q Did you answer the phone?

22 A No, the police officer answered the phone.

23 Q Okay.

24 A And what he said to him, he said to me. He said  
25 the same thing to him what he said to me.

1 Q Could you hear what he was saying?

2 A No, but just what the officer said.

3 Q Okay.

4 A You know, this guy ---

5 Q And how far -- how big is your apartment? How  
6 far way from the door were you?

7 A My chair was like -- when you come into my  
8 apartment, it's like a little -- a walkway right  
9 here and there's a wall, there's the door and  
10 there's a closet. And then my chair right  
11 against this wall where the door is. I have a  
12 couch that was sitting right there. That's what  
13 I was laying on.

14 Q Okay.

15 A So I wasn't far from the door.

16 Q And when the lights woke you up, how -- did you  
17 go towards the door?

18 A No, I went towards the window to see why the  
19 lights were, you know -- who was that out there  
20 and what was that noise, the boom, you know, the  
21 music.

22 Q Okay. And then you heard the booming on the  
23 door?

24 A Yes, that's when I started to get towards the  
25 door and that's when he started saying, you know,

1 let me in here, you can't keep me out. You know,  
2 unlock this door, I can bust this down in a  
3 minute.

4 Q Did you think he could?

5 A Yeah.

6 Q And did he?

7 A Yeah.

8 Q Okay. You said the door was off the hinges?

9 A Yeah, the maintenance -- I was charged for that  
10 too. The maintenance had to come in and fix the  
11 door after what he did. But they didn't fix it  
12 too good because ---

13 Q Were you able to ---

14 A I can't talk about that, so.

15 Q Was it -- so the door was off the hinges. You  
16 were able to fix it -- you were able to fix it  
17 that night after ---

18 A No, I couldn't fix it that night because  
19 maintenance wouldn't come out.

20 Q Okay.

21 A And so I had to secure it the best way I could.

22 Q Okay. After Todd left, you called the police,  
23 they came out, did you call anybody else?

24 A I called my mom. She caught a cab over and  
25 stayed the night.

1 Q Okay.

2 A I didn't sleep at all. I was just up wondering  
3 if he was going to come back, stressed, crying,  
4 nervous, a wreck. So that's when my mom said,  
5 you know, if you're not feeling well, you know,  
6 you need to go to the hospital. We need to make  
7 sure your chest is all right and there's no  
8 damage.

9 So, at first I was reluctant to go but I  
10 went. And they kept me in there for like a week.

11 Q Okay.

12 A And at this time Todd was still not arrested. He  
13 was loose, still running around, trying to find  
14 me and wondering where I was, you know.

15 Q So, when you got out of the hospital, did you go  
16 back home?

17 A No, I -- it wasn't safe to go back home at that  
18 time because my apartment had been broken in  
19 again.

20 MR. SCHARDT: Objection, Your Honor.

21 THE COURT: About again?

22 Q Where did you go when you left the hospital?

23 A I went to Richland Memorial -- oh, where did I go  
24 afterwards?

25 Q Yes.

1 A I left there and the lady from Sister Care, she  
2 took me over to Sister Care.

3 Q Okay.

4 A And I stayed over there and got is some  
5 counseling and still was a nervous wreck. But I  
6 did it. I left, went back to my mom's house. I  
7 felt safer over there ---

8 Q Okay.

9 A --- because I was around family, you know, had  
10 somebody.

11 Q Where was your son during this time?

12 A He was with my mom when I was in the hospital.

13 Q Okay.

14 A When I was at Sister Care, he was with me, he had  
15 to go with me.

16 MS. WEISS: Beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 (Pause.)

19 A He had to go with me, he was 5. He was 5. He  
20 was 5.

21 (Pause.)

22 THE COURT: Members of jury panel, go to the  
23 jury room. Take a short break. Don't discuss this  
24 case. I'll bring you back out in a moment.

25 (The jury retires from the courtroom at



1 approximately 12:34 P.M.)

2 THE WITNESS: I apologize.

3 THE COURT: Just take your time. Let's be at  
4 ease for a few moments. Give you a chance to collect  
5 yourself, all right? Just take your time. Take about  
6 five minutes.

7 (WHEREUPON, the court was in recess.)

8 MR. SCHARDT: Your Honor, at this time we  
9 would move for a mistrial?

10 THE COURT: For what, basis?

11 MR. SCHARDT: It was mentioned and I  
12 believe it could be inferred by the jurors from the  
13 testimony that there was a later incident that was  
14 ---

15 THE COURT: Your motion is denied.

16 MR. SCHARDT: Thank you, Your Honor.

17 THE COURT: I mean, I don't want to stop you  
18 from making your argument but she said something about  
19 break-in. You objected, I sustained the objection.  
20 There's no basis in my mind for a mistrial based on  
21 what's unfolded so far, Mr. Schardt.

22 MR. SCHARDT: Yes, Your Honor.

23 THE COURT: You all ready?

24 MS. WEISS: The State's ready.

25 THE COURT: All right bring the jury back in.

1 (The jury returned to the courtroom at  
2 approximately 12:42 P.M.)

3 BAILIFF: The jury's all present, Your Honor.

4 THE COURT: All right, welcome back, Madam  
5 Forelady and members of the jury. Ms. Weiss, you may  
6 continue.

7 MS. WEISS: Thank you, Your Honor.

8 DIRECT EXAMINATION CONTINUES

9 BY MS. WEISS:

10 Q Just a couple more questions, Ms. Jacobs. After  
11 the incident occurred and you were at Sister Care  
12 and you lived with your mother.

13 A Uh-huh.

14 Q How long did you stay at your mother's house?

15 A For a long time, for about half the new year and  
16 half the spring of that following year.

17 Q So even after they did arrest Mr. Sowell ---

18 A I couldn't go back to my apartment. I didn't  
19 have one.

20 Q And as a result of the assault, did you take out  
21 a separate warrant from the one we're on trial  
22 here for today?

23 A Yes.

24 Q And what was that charge?

25 A It was a criminal domestic violence charge.

1 Q Okay. And did you go to City Court on that?

2 A Yes.

3 Q And what happened in that case?

4 A He pled guilty to that and that's what happened.

5 MS. WEISS: Your Honor, I'd like to mark this  
6 as State's Exhibit 1 -- I mean, State's Exhibit  
7 2.

8 THE COURT: Have you shown it to Mr. Schardt?  
9 Do you know what it is, Mr. Schardt?

10 MR. SCHARDT: Yes, Your Honor, I do.

11 THE COURT: Any objection?

12 MR. SCHARDT: No objection.

13 THE COURT: All right, without objection.

14 (WHEREUPON, State's Exhibit No. 2, Letter of  
15 Disposition, was marked for identification.)

16 MS. SCHARDT: Your Honor, at this time, I  
17 would like it moved into evidence.

18 THE COURT: Without objection.

19 MS. SCHARDT: Thank you, Your Honor.

20 (WHEREUPON, State's Exhibit No. 2 was entered  
21 into evidence.)

22 Q Ms. Jacobs, I'm going to show you this piece of  
23 paper. Have you seen this piece paper?

24 A Yes.

25 Q And does that -- is that what you remember he

1       pled guilty to?

2   A    Uh-huh.

3   Q    Okay.

4   A    It was in downtown, Washington -- on Washington  
5       Street, we done that. And that's where we had to  
6       -- that's when he pled guilty.

7               MS. WEISS: Okay, thank you. No further  
8       questions at this time, Your Honor.

9               THE COURT: All right. Members of the jury,  
10   I think this is a good time to stop and send you to  
11   lunch. It's about 10 till 1.

12              I've got to remind you, please don't talk  
13   about this case. I hope you have a pleasant lunch.  
14   There's a lot of places to wine and dine here around  
15   this area. I hope you find one.

16              Be back at 2:30 in the jury room. And I will  
17   tell you this beforehand, there's another small matter  
18   unrelated to this case I've got to do right at 2:30  
19   I've scheduled. It should take me about 10 minutes or  
20   so but I want you back in the jury room at 2:30.

21              Have a good lunch. Don't talk about the  
22   case. We'll see you back here.

23              Thank you.

24              (The jury retires from the courtroom at  
25   approximately 12:46 P.M.)

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1 THE COURT: Anything further we need to take  
2 up, Mr. Schardt, any other motions or anything?

3 MR. SCHARDT: Your Honor, I have one further  
4 issue that's just an attempt to protect my client's  
5 rights?

6 THE COURT: What now?

7 MR. SCHARDT: I'm a little concerned about  
8 the gentlemen back there wearing the SCDC shirts.

9 THE COURT: And?

10 MR. SCHARDT: I'm concerned that that would  
11 insinuate to the jurors that they are here with my  
12 client who was transported over from SCDC. I would  
13 just ask the Court if they would consider to -- to  
14 consider ---

15 THE COURT: I don't know what you want ---

16 MR. SCHARDT: --- ordering them to ---

17 THE COURT: Stop, let me help you out a  
18 little bit. And I understand your concern but this is  
19 their job. I think they've been ordered to stay here  
20 and watch over Mr. Sowell.

21 Is that correct, gentlemen?

22 OFFICER: (Nods affirmatively.)

23 THE COURT: You know, y'all didn't bring an  
24 extra suit or something with you?

25 OFFICER: No.

1 THE COURT: All right. What now?

2 OFFICER: We can take them off.

3 THE COURT: All right, why don't you take  
4 them off so the people won't be able to look at them.  
5 I understand your concern but that's -- I can't ask  
6 them to leave. And so that won't have SCDC written  
7 on them, just take them off for this afternoon and  
8 remain in the trial.

9 MR. SCHARDT: Thank you, Your Honor.

10 THE COURT: Anything else?

11 MS. WEISS: Your Honor, just briefly. I told  
12 Mr. Schardt we do not intend to call Ms. Strothers,  
13 the victim's mother. And because we're breaking for  
14 lunch, I didn't want it to be a problem if the victim  
15 and her mother did have lunch ---

16 THE COURT: If she's not going to be called  
17 as a witness, then she can't be sequestered as a  
18 witness. So it's permissible for her to come in if  
19 she's not going to testify.

20 But having brought her in, if later on it  
21 becomes -- if it later on becomes a problem where you  
22 want to call her, she's going to be excluded.

23 You understand that?

24 MS. WEISS: I don't really want to bring her  
25 in, just ---

1 THE COURT: That's fine but I mean, look, if  
2 that's the girl's mother, that's her mother, Ms.  
3 Jacobs' mother, she's not going to be a witness, I'm  
4 going to let her stay in here with her daughter.

5 Any objection?

6 MR. SCHARDT: No objection, Your Honor.

7 THE COURT: The sequestration goes to the  
8 witnesses, not the public or anybody else.

9 MS. WEISS: Thank you.

10 THE COURT: I think we're all good with that.

11 Y'all have a good lunch and be back at 2:30.

12 But I have a little probationary matter that y'all  
13 might be familiar with. It should take about 10  
14 minutes at 2:30.

15 THE COURT: All right, we'll see y'all after  
16 lunch.

17 MR. SCHARDT: Yes, sir.

18 (The witness leaves the witness stand.)

19 (WHEREUPON, the court was in recess.)

20 THE COURT: We're back on the record of the  
21 trial of State of South Carolina v. Todd Sowell.

22 (The jury returned to the courtroom at  
23 approximately 2:34 P.M.)

24 THE COURT: All right. Welcome back, Madam  
25 Forelady, members of the jury. I hope y'all had a

1 pleasant lunch.

2 Ms. Weiss -- Ms. Jacobs, you may come back  
3 and take the stand, ma'am. You're still under oath.

4 (The witness returns to the witness stand.)

5 MS. WEISS: May it please the court.

6 THE COURT: Yes, ma'am.

7 MS. WEISS: Thank you, just one more  
8 question.

9 DIRECT EXAMINATION CONTINUES

10 BY MS. WEISS:

11 Q Ms. Jacobs, back in 1997, did you pay a fine for  
12 a fraudulent check?

13 A Excuse me?

14 Q Back in 1997, did you pay a fine for a fraudulent  
15 check?

16 A Yes.

17 MS. WEISS: Thank you.

18 THE COURT: Anything further, Ms. Weiss?

19 MS. WEISS: No further questions from the  
20 State.

21 THE COURT: All right, you may cross examine,  
22 Mr. Schardt.

23 MR. SCHARDT: Thank you, Your Honor, may it  
24 please the court.

25 THE COURT: Yes, sir.



## CROSS EXAMINATION

1  
2 BY MR. SCHARDT:

3 Q Good afternoon, Ms. Jacobs.

4 A Hi.

5 Q You testified that you were living at Prescott  
6 Manor at this time, 1601 Prescott Road, Prescott  
7 Manor, Columbia, at this time?

8 Q At what time?

9 Q At the time of this incident?

10 A Yes.

11 Q Okay. How long -- how long had you been living  
12 there?

13 A Approximately about a year and a half, close to  
14 two years.

15 Q I'm going to ask that you listen to my questions  
16 carefully. You testified that Mr. Sowell knocked  
17 on your door, you said he kicked in the door.  
18 Before you met Mr. Sowell, before you knew Mr.  
19 Sowell at all, had your door at Prescott Manor  
20 ever been pushed in before?

21 A Yes.

22 Q When had the occurred?

23 A During the time me and my son's father was living  
24 there.

25 Q Your son's father would be Douglas Hines

1 (phonetic)?

2 A Yes.

3 Q At the time that that occurred, was that around  
4 the time that you and Mr. Hines were breaking up?

5 MS. WEISS: Objection, Your Honor.

6 THE COURT: Relevancy, Mr. Schardt.

7 MR. SCHARDT: I ---

8 THE COURT: The objection is on relevancy,  
9 how is this relevant in this case?

10 MR. SCHARDT: I believe it will show ---

11 THE COURT: You believe?

12 MR. SCHARDT: I ---

13 THE COURT: Y'all approach.

14 (WHEREUPON, a bench conference was held  
15 off the record, in the presence of the jury,  
16 but out of the hearing of the jury.)

17 THE COURT: I'm going to have the jury panel  
18 go to the jury room. Don't talk about the case there's  
19 a matter that I need to take up in your absence.

20 (The jury retires from the courtroom at  
21 approximately 2:34 P.M.)

22 THE COURT: Now, Mr. Schardt, I want to  
23 know how it's relevant, something that happened prior  
24 to this relationship, is relevant to this case. You  
25 may examine this witness and prove it to me.

1 Go ahead.

2 MR. SCHARDT: Yes, Your Honor.

3 CROSS EXAMINATION (IN CAMERA)

4 BY MR. SCHARDT:

5 Q Ms. Jacobs, your door was previously kicked in?

6 A Yes.

7 Q And when did this occur?

8 A It occurred around the time me and my son's  
9 father was living together. We had gotten the  
10 apartment together.

11 Q Was this around the time when you and your son's  
12 father -- you and your son's father, Mr. Hines,  
13 have since broken up?

14 A Yes, we have been apart for some years now.

15 Q And when your door was kicked in before, or  
16 pushed in before, you were at the house?

17 A No.

18 Q At the time this occurred, was this around the  
19 same time or at the same time when you and your  
20 son's father were breaking up?

21 A No.

22 Q Did you ever determine who had kicked in your  
23 door?

24 A No, they never -- the police never knew who did  
25 it. Nobody -- we never found out who did that.

1 Q What was missing from your apartment?

2 A Nothing, just a couple of dollars, some money  
3 that I had, like \$50.00.

4 THE COURT: What's the relevancy?

5 MR. SCHARDT: Your Honor, I would -- I was  
6 asking questions. I have not had an opportunity to

7 ---

8 THE COURT: Stop. Your questions have to be  
9 relevant to the matter we're trying.

10 MR. SCHARDT: Yes, Your Honor.

11 THE COURT: It's something that happened  
12 prior to the relationship with Mr. Sowell, not  
13 involving Mr. Sowell. It's not relevant in this case.

14 MR. SCHARDT: Yes, Your Honor.

15 THE COURT: The objection is sustained.

16 THE WITNESS: Can I explain why he's probably  
17 asking me that?

18 THE COURT: I don't know why, ma'am, but you  
19 can go ahead and say anything you want. I'm not going  
20 to stop you.

21 THE WITNESS: The area that I previously  
22 lived in, Prescott Manor, those apartments had a lot  
23 of break-ins ---

24 THE COURT: Stop. That has nothing to do  
25 with this case.

1           Your objection is sustained, it's not  
2 relevant. Bring the jury back in.

3           MR. SCHARDT: Thank you, Your Honor.

4           THE COURT: Let's talk about the alleged  
5 break-in in this particular case on indictment number  
6 2006(sic)-393.

7           (The jury returned to the courtroom at  
8 approximately 2:40 P.M.)

9           BAILIFF: The jury's all present, Your Honor.

10          THE COURT: Madam Forelady and members of the  
11 jury, let me explain something to you I should have  
12 told you at the outset in my preliminary instructions  
13 to you.

14          From time to time, either side may object or  
15 could object to some evidence, either that Mr. Schardt  
16 is trying to introduce or Ms. Weiss is trying to  
17 introduce.

18          Now, an objection is a procedure that we use  
19 for the lawyers to bring to my attention a possible  
20 violation of the rules of introducing evidence.

21          Now you should not take how I rule on an  
22 objection that I favor one side or the other. I  
23 don't. And you should not read anything into my  
24 having to send you out because somebody objects  
25 because it's a legal matter I can only handle in (sic)

1 your presence, and you should not be concerned with  
2 it.

3           So -- but that's the way we have to do it  
4 because I have to decide from a legal standpoint  
5 whether or not something should come in or stay out,  
6 objection or sustain. And sometimes the only way I  
7 can do is to send you out. Sometimes I have to bring  
8 the lawyers up here and we can whisper about it,  
9 discuss it, but that's not your concern, if it's a  
10 legal issue that I have to resolve. That's what I  
11 just did.

12           So, it has nothing to do with the merits of  
13 this case one way or the other. Now I say this so  
14 you'll understand what's going on, we're all on the  
15 same page.

16           And I'll ask if there are any exceptions or  
17 additions to those remarks, either from Mr. Schardt or  
18 Ms. Weiss?

19           MR. SCHARDT: No, Your Honor.

20           MS. WEISS: No, Your Honor.

21           THE COURT: You may continue.

22           MR. SCHARDT: Thank you, Your Honor.

23           CROSS EXAMINATION CONTINUES

24 BY MR. SCHARDT:

25 Q   Ms. Jacobs, in your direct testimony, when Ms.

1 Weiss was asking you questions, you testified  
2 that your relationship lasted one month after  
3 Thanksgiving, correct?

4 A When we initially got back together?

5 Q Yes.

6 A It lasted, yeah, about the month.

7 Q Now, the allegations are that this happened  
8 December 1st, correct?

9 A Uh-huh.

10 Q So you would agree that -- and I'm not trying to  
11 give you a hard time, you agree that -- your  
12 relationship, as you considered it, ended by  
13 December 1st, correct?

14 A Yeah.

15 Q So there was no relationship after that. So you  
16 would agree that the relationship did not last  
17 one month after Thanksgiving?

18 A Yes, it may have not, I mean, because we were  
19 having our ups and downs. And it was around  
20 Thanksgiving.

21 Q Yes, ma'am.

22 A And around that time.

23 Q All these days that we're talking about, it's a  
24 bit confusing, isn't it?

25 A No, I know exactly when he broke into my home.

1 Q As far as your relationship goes, I just would  
2 like to clarify some dates. You're testifying  
3 off your memory, correct?

4 A Yes.

5 Q You don't have any notes?

6 A (Nods affirmatively.)

7 Q This happened over two years ago, August.

8 A Uh-huh.

9 Q And did anyone from the police department ever  
10 come and take a statement from you, a written  
11 statement?

12 A About ---

13 Q About ---

14 A -- the incident?

15 Q --- the incident.

16 A Yes. After the police came out, and they took a  
17 statement that night.

18 Q Did -- do you have a written statement of what  
19 you told the police?

20 A I may have. It may be at home somewhere. I keep  
21 all my papers.

22 Q Well, I'm just trying to try and clear up some of  
23 the specifics, okay, because I know this was a  
24 long time ago.

25 First of all, let's talk about the



1 relationship that you had with Mr. Sowell. How  
2 long did that -- I believe you said it was six  
3 months, is that accurate?

4 A That would be accurate because it wasn't a whole  
5 year. I met him during the summer.

6 Q Summer of 2004?

7 A Yes.

8 Q And you were romantically involved?

9 A We were involved, I don't know about love on my  
10 part.

11 Q You were engaged?

12 A Uh-huh.

13 Q He put a ring on your finger on September 12th of  
14 2004, is that correct?

15 A I don't know the exact date but he put a ring on  
16 my finger in September.

17 Q September, okay. And after he put the ring on  
18 your finger, y'all began to live together the  
19 next day?

20 A No, we were already living together.

21 Q You were already living together?

22 A Yeah, he didn't -- when I met him, he really  
23 didn't have a place to stay.

24 Q Okay. So would you say you began to live  
25 together in September or in August?

1 A In August.

2 Q August of 2004, and this was in Prescott Manor?

3 A Yes.

4 Q Your apartment, it's a 2 bedroom apartment?

5 A Yes.

6 Q One bedroom was for Todd and yourself?

7 A One bedroom was for my son and the other bedroom  
8 was for me, then Todd moved in.

9 Q Okay. And your son is Jamel (phonetic)?

10 A Yes.

11 Q And he's not Todd's son, he's from a previous  
12 relationship?

13 A Yes.

14 Q Would Todd interact with your son?

15 A I mean, Jamel don't take to people too much but  
16 they were all right together.

17 Q Did he watch your son sometimes?

18 A Yeah.

19 Q Take him places?

20 A Yeah.

21 Q You would let your son be with Todd without you  
22 being there?

23 A Not all the time, but yeah. Like when I'm in the  
24 hospital, Jamel would have to go to my mom's.

25 Q Okay.

- 1 A He wouldn't be with Todd.
- 2 Q Would it be fair to say that in August of 2004,  
3 when he was there with you, you two began to rely  
4 on each other?
- 5 A Well, I was still paying all the bills and stuff.  
6 So I didn't really rely on him. I just -- he was  
7 there.
- 8 Q He would be helpful, would you at least say that?
- 9 A On occasions.
- 10 Q Okay. Now, the rent -- and, ma'am, we understand  
11 you're on assistance for sickle cell.
- 12 A Uh-huh.
- 13 Q This is not intended to embarrass you. There was  
14 rent assistance, correct, Prescott Manor?
- 15 A No, I paid rent.
- 16 Q And did you pay the rent?
- 17 A Yes.
- 18 Q And you were not -- were you working at the time?
- 19 A No, I was on disability.
- 20 Q Okay. You were on disability. And was Todd  
21 working?
- 22 A He worked for like maybe a week or two and he  
23 stopped.
- 24 Q He was doing work with Mr. David Powell  
25 (phonetic) at that time, correct?

1 A Yeah, and for some reason he lost the job and he  
2 wasn't there a whole month.

3 Q How about transportation, did you have a car?

4 A No.

5 Q Did Todd have a car?

6 A He had a truck.

7 Q So y'all used his truck for transportation?

8 Q Uh-huh.

9 Q And Todd would help care for Jamel?

10 A Care for him like what, watch him?

11 Q Take him places?

12 A Oh, yes, he didn't take ---

13 Q Pick him up ---

14 A --- care of him, no.

15 Q We understand that before Todd was in the  
16 picture, you were taking care of Jamel and he was  
17 doing just fine, right?

18 A Yeah.

19 Q During the relationship, you -- you had sickle  
20 cell crisis several times during the  
21 relationship, is that fair to say?

22 A Yeah.

23 Q Okay. And during this time, your mother lived in  
24 the area so she would help?

25 A Yes.

1 Q But Todd would also try to help you, correct?

2 A Yes. He would come to the hospital sometimes, sit  
3 up there with me.

4 Q Now ---

5 MR. SCHARDT: Beg your patience.

6 (Pause.)

7 Q I'm going to try to write and not knock the easel  
8 over.

9 I'm just going to ask you certain questions  
10 and mark it on this calendar. If I do anything  
11 incorrectly, just stop me, okay.

12 You said in early August -- or in -- I'm  
13 sorry, in August, Todd moved in?

14 A (Nods affirmatively.)

15 Q So he was living in Prescott Manor with you in  
16 August, September and October, correct?

17 A (Nods affirmatively.)

18 Q Correct?

19 A (Nods affirmatively.)

20 Q And at some point in November, in direct you  
21 testified that you put him out?

22 A Yes, we broke up.

23 Q And you testified that he went somewhere and you  
24 didn't know where?

25 A Yeah, he said he was leaving, he was going to

1 give me some time to think about stuff.

2 Q Do you remember approximately what time in  
3 November this would have occurred?

4 A Actually the first breakup occurred in October.

5 Q Okay.

6 A Before Thanksgiving.

7 Q Okay. In October?

8 A And then we reconciled or whatever. We got back  
9 together in November and it was around  
10 Thanksgiving. He wanted me to meet his mom.

11 Q Okay.

12 A And all of that. So we went there and we came  
13 back after Thanksgiving.

14 Q Okay. So the first -- the first breakup we're  
15 talking about is in October?

16 A Uh-huh.

17 Q Okay. At some point before Thanksgiving, you  
18 told him you pregnant, correct?

19 A Uh-huh.

20 Q Okay. When did you -- do you remember  
21 approximately when you told him you were  
22 pregnant, when you ---

23 A It was like a week before Thanksgiving.

24 Q So maybe the 18th, about that time?

25 A A week before Thanksgiving. I don't know the

1 exact day.

2 Q So y'all had been split up the entire month of  
3 November before that?

4 A (Nods affirmatively.)

5 Q Okay. Now, let's talk about the week before  
6 Thanksgiving when you called Todd. You didn't  
7 know where he went, correct?

8 A No, but he had a cell phone.

9 Q Okay. And you contacted him, right?

10 A Uh-huh.

11 Q You called him, you told him you were pregnant?

12 A Uh-huh.

13 Q You told him that you wanted to try to work it  
14 out?

15 A No. I told him that I needed an abortion because  
16 I don't want another child, I don't -- I didn't  
17 want another child. And it wasn't good for my  
18 health to have another child.

19 Q Okay.

20 A That's what I told him.

21 Q And you told him he was the father?

22 A Yes.

23 Q Okay. On direct, when Ms. Weiss asked you a  
24 question, you said you decided you were going to  
25 try to work things out?

1 A I said if -- when I told him that I needed the  
2 money for an abortion, he was like, no, don't --  
3 let's not do that, you know, let's try to work it  
4 out, whatever. You know, he was changing my mind  
5 a lot about stuff, you know, trying to keep me  
6 with him. And at the time, yeah, I probably  
7 said that but it wasn't what I really wanted.

8 Q But at the time you told him, we'll try to work  
9 it out?

10 A Yeah.

11 Q Because I pregnant?

12 A Yeah.

13 Q Okay. And wouldn't it be true that you called  
14 him on that Thursday, when did he return back to  
15 Prescott Manor to live with you?

16 A He came back that weekend.

17 Q That weekend?

18 A It was probably like a Sunday.

19 Q And I apologize for having a 5 day calendar. But  
20 Sunday the 21st, Todd returned and he began  
21 staying in the apartment with you, correct?

22 A Yeah, he stayed for a couple of days.

23 Q And that was with your blessing? You told him ---

24 A Yeah, he come, yeah.

25 Q All right. Now you started talking about



1 Thanksgiving and that would be that Thursday?

2 A Yeah, we went to Charleston to see his mom.

3 Q Actually, the day before Thanksgiving you went to  
4 see Todd's mother, correct?

5 A Well, we went Thanksgiving day as well. I think  
6 it was either Thanksgiving day or the day before,  
7 one of them. But we were there Thanksgiving.

8 Q So you spent the night and then you spent  
9 Thanksgiving, part of Thanksgiving day there,  
10 correct?

11 A Yes.

12 Q Okay. So on the 24th, that Wednesday, went to  
13 Todd's mother's. Okay. And when you're talking  
14 about we, you went, Todd went, and Jamel went,  
15 correct?

16 A Uh-huh.

17 Q Okay. And you stayed there Wednesday night?

18 A Yes.

19 Q And then on Thursday, Todd's mother wasn't  
20 feeling very well, was she? You cooked? You  
21 ended up cooking most of Thanksgiving dinner,  
22 correct?

23 A Yeah, I had to help her.

24 Q Okay. And you left that Thanksgiving day,  
25 correct?

1 A Uh-huh.

2 Q All right. And all three of you returned to  
3 Columbia, correct?

4 A Yes.

5 Q All right. And later that day, you went to spend  
6 Thanksgiving with your family, correct?

7 A Yes.

8 Q And you took Todd with you?

9 A Yeah, he went.

10 Q Okay. So on Thursday you had Thanksgiving with  
11 Todd's mother and then you, Jamel and Todd went  
12 to your family's house?

13 A Uh-huh.

14 Q And throughout this time, you were pregnant with  
15 Todd's child?

16 A Yeah.

17 Q Okay. The day after Thanksgiving, that Friday,  
18 you, Jamel and Todd spent the night, on that  
19 Thursday, spent the night at your family's house?

20 A No.

21 Q You didn't? You went back to Prescott Manor?

22 A Yes.

23 Q Okay. That Friday you went into sickle cell  
24 crisis, right?

25 A Yes, I went to the hospital.

1 Q Okay. And you stayed in the hospital until that  
2 Monday, correct?

3 A And what now?

4 Q You stayed in the hospital throughout the weekend  
5 and ---

6 A I stayed till like Sunday.

7 Q Till Sunday?

8 A It wasn't very long. It was like a short --  
9 because I recall going to Baptist, I think.

10 Q Okay. And Todd was with you at the hospital at  
11 that time?

12 A Yeah, and it was not on good terms.

13 Q Well, in fact, at the hospital, that's when you  
14 realized that you were -- you were not pregnant,  
15 correct?

16 A No, I had a miscarriage in the hospital.

17 Q Right. And that's when the doctors told you  
18 about that?

19 A Yeah.

20 Q On the 29th, you and Todd and Jamel returned back  
21 to Prescott Manor, correct?

22 A I went back home and Jamel went back home. And  
23 Todd took me home because I didn't have a car.  
24 So, yeah, he came and he took me home.

25 Q Okay. So up to this Monday, Todd was still

1 staying with you?

2 A No.

3 Q At Prescott Manor?

4 A No. Because that Sunday, when he brought me  
5 home, we fell out.

6 Q Okay.

7 A We -- I was stressed and wasn't feeling well and  
8 he was so persistent and stuff on moving forward  
9 and at the time I wasn't. It probably had  
10 nothing to do with him. It was probably was just  
11 me. And I tried to tell him that. But he was so  
12 persistent in being together.

13 Q Uh-huh.

14 A And I didn't want -- I didn't want to.

15 Q So you put him out ---

16 A So I wanted him to leave.

17 Q And then you put him out. And I just want to  
18 make the dates clear. So you put him out that  
19 Sunday, or that Monday?

20 A I put him out that Monday.

21 Q He was doing temporary work at this time?

22 A No he wasn't working.

23 Q He wasn't working?

24 A He had lost his job. He had got arrested for  
25 drunken driving or something like that. But he

1 didn't -- he didn't make it to work and so they  
2 fired him.

3 Q Okay. Did he -- did he have a lot of money at  
4 this time?

5 A No.

6 Q Did -- would it be fair to say he was broke?

7 A Yes.

8 Q Now, you -- you testified -- he had stuff at your  
9 house, I would assume?

10 A No. Because that Monday when I told him, you  
11 know, he had the leave, I made him get his stuff,  
12 you know, clothes and everything that he had,  
13 shoes, whatever.

14 Q When he was staying here, I'm talking about, he  
15 had stuff -- he was living at your house?

16 A Yeah, he had clothes. He didn't have like  
17 furniture or anything like that. He had  
18 clothing.

19 Q He didn't have any personal effects?

20 A Any what?

21 Q Personal effects? He didn't have any stereos or  
22 bed or bedding or anything like that?

23 A No, he had a computer. That's the only thing  
24 that he had and he took that with him.

25 Q Now, you met with Ms. Weiss yesterday about this

1 case, right?

2 A Yes.

3 Q I just wanted to clarify this. Did you tell her  
4 yesterday that -- you testified that you packed  
5 his stuff and put it out on the porch?

6 A Yeah, clothing.

7 Q Did you tell her yesterday that your bother was  
8 there?

9 A My brother initially came that Monday morning  
10 because Todd was -- you know, that night, that  
11 Sunday night, he was reluctant to leave and  
12 stuff. And so he made a big thing but eventually  
13 he left.

14 And then that Monday morning, my brother came  
15 over because, you know, I called him and told him  
16 what happened and stuff. And I said, you know,  
17 I'm just waiting on him to come by and get his  
18 stuff now because he's not going to come back in.

19 Q So your brother was there to help pack his stuff  
20 or ---

21 A No, just to -- for my protection, so to speak.

22 Q What's your brother's name?

23 A Brad (phonetic).

24 Q Where does he stay?

25 A I don't know his address but ---

1 Q Does he stay in Columbia?

2 A Yeah.

3 Q You don't have to give it to me but do you know  
4 his phone number?

5 A He don't have no phone.

6 Q Do you know where he stays if you needed to find  
7 him?

8 A Yeah.

9 Q Okay. Just one more thing, when Ms. Weiss was  
10 asking you questions, you talked about the night  
11 in question.

12 A Uh-huh.

13 Q That would be December 1st. And I don't want to  
14 misquote you but I think you said that Todd was  
15 calling you and threatening you.

16 A Yeah.

17 Q Okay. And then he jumped on you? He kicked in  
18 the door and he jumped on you and started beating  
19 you?

20 A Uh-huh.

21 Q Okay. And the Solicitor ---

22 A Yes, he was.

23 Q Okay. The Solicitor said that, you know, they  
24 talked about and -- what -- forget my ignorance  
25 on this. What is -- what are the, you know ---

- 1 A The scars?
- 2 Q --- the tubes in your chest called?
- 3 A That is a portacath.
- 4 Q What?
- 5 A A portacath. It's a dual chamber, the needle
- 6 connects to a major artery.
- 7 Q Okay. And you heard the Solicitor talking about
- 8 the portacath and how Todd was going after your
- 9 weakness?
- 10 A Uh-huh.
- 11 Q Okay. And you testified on direct that he was
- 12 hitting you and he had pushed you down and was
- 13 hitting you?
- 14 A Uh-huh.
- 15 Q On your portacath?
- 16 A In my chest area ---
- 17 Q In your chest ---
- 18 A -- and was slapping me and stuff.
- 19 Q And you testified that you took out a warrant on
- 20 Todd for this, correct?
- 21 A Yes.
- 22 Q For criminal domestic violence?
- 23 A Uh-huh.
- 24 Q And you were the one that signed this warrant?
- 25 A Yes.



1 Q You're the affiant?

2 A Yes.

3 Q And you testified in front of a judge as to what  
4 was true on -- as to what was on the warrant as  
5 being true?

6 A Yes.

7 Q Okay. Did you sign the warrant?

8 A (No response.)

9 Q You signed the warrant?

10 A Yes.

11 Q Okay.

12 MR. SCHARDT: Your Honor, my I approach the  
13 witness.

14 THE COURT: Show it to Ms. Weiss.

15 (Complied.)

16 THE COURT: All right.

17 Q Ms. Jacobs, that warrant that you signed that you  
18 testified to, it says that Mr. Sowell hit you  
19 about the face with his hands, correct?

20 A Yeah, he was slapping me.

21 Q Does it say anything about hitting you in the  
22 chest?

23 A Well, that's what he was doing. That's what I  
24 testified to. So I don't know why it's not on  
25 here.

- 1 Q The only hitting that is on the warrant is him  
2 hitting you in the face with the hands, correct?
- 3 A Uh-huh, that's on there.
- 4 Q Now, the Solicitor talked about this criminal  
5 domestic violence and showed you a sheet. Do you  
6 recognize this sheet?
- 7 A Yes.
- 8 Q Okay. And this is the sheet that indicates that  
9 Todd pled to this charge?
- 10 A Uh-huh.
- 11 Q Okay. And looking at the sheet, could you read  
12 to me what day his court date was?
- 13 A December 12th.
- 14 Q Thank you. Is it January 12th, ma'am?
- 15 A Oh, wait, January 12th.
- 16 Q Thank you. Okay. Were you there?
- 17 A Huh?
- 18 Q Were you there in the courtroom?
- 19 A January 12th?
- 20 Q Yes, ma'am.
- 21 A I'm not sure.
- 22 Q Okay.
- 23 A I don't know. I don't recall that.
- 24 Q That -- that sheet that you said you recognized  
25 indicates to you that as far as these

164

1       accusations, hitting you in the face, Todd went  
2       in front of a judge ---

3   A    Oh ---

4   Q    --- admitting he was guilty, correct?

5   A    Down at the Washington Street?

6   Q    Yes, ma'am.

7   A    Yes, I was there.

8   Q    He stood in front of a judge and the judge said,  
9       did you hit Ms. Jacobs in the face, and he said,  
10      yes, I'm guilty. He took responsibility, didn't  
11      he?

12   A    Yes, he took responsibility for that.

13               MR. SCHARDT: I have no further questions.

14               THE COURT: All right anything on redirect?

15               MS. WEISS: Very briefly, Your Honor.

16                       REDIRECT EXAMINATION

17   BY MS. WEISS:

18   Q    Ms. Jacobs, this warrant that the Defense was  
19       alluding to. Did you type the warrant yourself?

20   A    No.

21   Q    Okay. And was it true he did hit you in the  
22       face?

23   A    Yes.

24   Q    Okay. Thank you.

25   A    I didn't want to say he didn't.

1 MS. WEISS: And beg the Court's indulgence  
2 one moment.

3 Q And as far as all of these dates that Mr. Schardt  
4 was alluding to, this was November of 2004?

5 A Yes.

6 Q And to your knowledge, I mean, could you recall  
7 -- other than we've told you December 1st was the  
8 date that we were here about, do you recall any  
9 of these dates in your head, what the actual  
10 dates were?

11 A The court dates, yeah, I do but ---

12 Q But the dates in 2004 that Mr. Schardt was  
13 writing on the calendar?

14 A No, not exactly.

15 Q Okay. But you remember that time in your life?

16 A I remember that time because it was a difficult  
17 time. I was going through something and I was  
18 trying to deal with some things and let this  
19 person in my life know that this wasn't the right  
20 time to be in my life. And he didn't want to  
21 hear that. He wanted to pursue it.

22 Q When it comes to all of those dates that Mr.  
23 Schardt was talking to, talking about, are you  
24 certain about the dates -- the dates leading up  
25 to the date that we were talking about today?

1 A The Thanksgiving days and all that stuff?

2 Q No, the day that you told Todd Sowell to move out  
3 the last time?

4 A Oh, yes.

5 Q Is there any doubt that he had moved all his  
6 things out of your apartment?

7 A No.

8 Q On December 1st, 2004, did he have a key to your  
9 apartment?

10 A No.

11 Q Did he live in your apartment?

12 A No.

13 Q Did you let him into your apartment that night?

14 A Of the attack?

15 Q Yes.

16 A No.

17 Q And is there any doubt that he kicked that door  
18 in and attacked you?

19 A Yes ---

20 MR. SCHARDT: Objection ---

21 THE COURT: Basis?

22 MR. SCHARDT: She's going beyond the scope

23 ---

24 THE COURT: Overruled.

25 A Yes, he kicked the door in and he maliciously

1 attacked me.

2 Q Thank you.

3 A He didn't come in for things. He came in for me  
4 because he knew his things weren't there.

5 MS. WEISS: Thank you, no further questions.

6 THE COURT: Anything on recross?

7 MR. SCHARDT: No, sir.

8 THE COURT: You may step down, Ms. Jacobs.

9 (The witness leaves the witness stand.)

10 THE COURT: Call your next witness. I think  
11 we have to go get them, right?

12 MR. MALDONADO: State calls Officer Jenkins.

13 (Pause.)

14 (Joel Jenkins, after being duly sworn,  
15 testified as follows:)

16 THE CLERK: Thank you. Please have a seat  
17 and state your full name for the record.

18 THE WITNESS: Joel Jenkins.

19 DIRECT EXAMINATION

20 BY MR. MALDONADO:

21 Q Officer Jenkins, where is it that you work?

22 A I work for the Office of Public Safety in the  
23 Bureau of Personal Protection.

24 Q Okay. And where were you were working on  
25 December 1st, 2004?

- 1 A The Columbia Police Department.
- 2 Q How long had you worked there?
- 3 A About two and a half years.
- 4 Q And did you work anywhere before that?
- 5 A The Richland County Sheriff's Department, two
- 6 years.
- 7 Q Anywhere before that?
- 8 A New York City Police Department for 20 years.
- 9 Q 20 years, so you've had some experience in law
- 10 enforcement, correct?
- 11 A Yes, sir.
- 12 Q Okay. So as you just stated, you were working
- 13 December 1st, 2004?
- 14 A Yes, I was.
- 15 Q Okay. And what was your duties that night?
- 16 A Patrol, North Region Area 120, which ---
- 17 Q What shift were you on?
- 18 A 6 P.M. to 6 A.M.
- 19 Q Okay. So through the night?
- 20 A (No response.)
- 21 Q Night shift?
- 22 A Night shift.
- 23 Q And did you have a chance to be called out to
- 24 1601 Prescott Road?
- 25 A Yes, I did.

1 Q What happened?

2 A The had called me at approximately 11:25 hours  
3 that night in regards to harassing phone calls.

4 Q Okay. The dispatch called and sent you out  
5 there?

6 A Yes.

7 Q And obviously at 11:30 at night, I'm assuming it  
8 was dark out?

9 A Yes, It was.

10 Q What happened when you got there?

11 A When I got there -- I had problems finding her  
12 apartment, when I found it, the door had been  
13 damaged and forced in.

14 Q Okay. And this residence was in Richland County,  
15 correct?

16 A It's Richland County and confines of Columbia,  
17 City of Columbia.

18 Q The door was -- you said the door was kicked in.  
19 What else did you see? Was anybody there?

20 A When I got inside, after knocking on the door, a  
21 female did come to the door and I spoke to her.

22 Q Okay. And that was the victim in this case?

23 A Yes.

24 Q What was her name?

25 A Sandrica Jacobs.



1 Q And so you spoke with her. How did she look to  
2 you?

3 A She was distraught.

4 Q Okay. What did she -- which happened then?

5 A Basically she explained to me that her ex-  
6 boyfriend had called her by the telephone  
7 numerous times during the night. I don't know  
8 how many times, we didn't go through that. But  
9 she stated that he came over at approximately  
10 11:30 or so and that he knocked in the door.  
11 When she wouldn't answer it, he forced his way in  
12 the door.

13 Q Okay. What else did she -- did she say he did?

14 A She said that once inside, they got in an  
15 argument and he struck her about the face and  
16 head.

17 Q Okay. Did you see any injuries at that time?

18 A She had slight -- starting to bruise up a little  
19 on the side of the face.

20 Q Did anything happen while you were taking the  
21 statement from the victim?

22 A The phone started ringing again and she informed  
23 me that he was calling.

24 Q And who answered?

25 A She answered.

1 Q Okay. And what happened?

2 A She hung up.

3 Q Okay.

4 A And the calls came, and I can't say how many  
5 times calls came in, but it was almost  
6 continuous. So that's when I thought that he may  
7 have still been outside so we did search the area  
8 and we didn't find him.

9 Q So he wasn't found in the area?

10 A No.

11 Q So she gave you a description of who actually did  
12 this?

13 A Yes, she did.

14 Q Okay. And who did she say had done this?

15 A She gave me a description and just basically told  
16 me his name was Todd Sowell, that he was 5-7  
17 about 200 pounds.

18 Q Did you ever have a chance to see Mr. Sowell?

19 A No, I didn't.

20 Q Okay. So did you call anybody else out to the  
21 scene and take fingerprints or anything?

22 A No, I didn't. Of course, the fact that she  
23 explained that he had moved out and had been in  
24 the residence, that any fingerprints would have  
25 been his anyway from previously being there.

1 Q Okay. Did you take any DNA or anything ---

2 A No, ---

3 Q Did you ---

4 A --- the same -- no, we didn't.

5 Q In your report you have as one of the incidents

6 -- as the incident you list simple assault and

7 harassing phone calls. You didn't mention

8 burglary. Why is that?

9 A No, I didn't. I just felt that if there was any

10 other charges, it would going to investigations

11 and they would look at it and determine if any

12 additional charges would be able to be filed.

13 Q Okay. So the case gets assigned -- the case gets

14 basically pushed up the chain and an investigator

15 is assigned?

16 A Right.

17 Q And then that investigator follows up on the

18 investigation?

19 A Right, he might find out additional information

20 that I didn't at the time.

21 Q Okay. What else did you do before you left the

22 residence?

23 A Well, we looked around the area and when I went

24 back to her residence, we were trying to figure a

25 way to secure that door and I basically showed

1 her how to put a chair up under the doorknob to  
2 hold it tight in case he did come back. And  
3 informed her to call us right away and that I  
4 would be in the area.

5 Q Was an ambulance called?

6 A I'm sorry?

7 Q Was an ambulance called?

8 A I do not believe there was an ambulance call at  
9 that point.

10 Q The victim didn't request an ambulance?

11 A I can't remember if she requested one, I don't  
12 believe she did at that time.

13 Q Okay. So did you actually fill out the incident  
14 report?

15 A Yes, I did.

16 Q And did you give Ms. Jacobs a copy of that  
17 report?

18 A I gave her a copy with the incident number,  
19 informed her that she could get a readable copy  
20 since we've got to press through about six  
21 copies. Later on she could obtain a readable  
22 copy.

23 Q But you never sat down and actually got her to  
24 handwrite her own statement ---

25 A Right.

1 Q You basically wrote down what she told you?

2 A Right.

3 MR. MALDONADO: No further questions.

4 THE COURT: You may cross examine.

5 MR. O'NEIL: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. O'NEIL:

8 Q Good afternoon, officer.

9 A How you doing?

10 Q You were a member of the Columbia Police Force  
11 back in 2004?

12 A Right.

13 Q And you would agree with me that the primary goal  
14 of the Columbia Police Force is to prevent crime?

15 A Yes.

16 Q And to essentially improve the quality of life  
17 for the citizens of Columbia?

18 A Yes.

19 Q And you take that -- those kind of goals  
20 seriously, correct?

21 A Yes.

22 Q And you took your duty to protect and serve the  
23 citizens of Columbia seriously as well also?

24 A Yes.

25 Q And you were trained to be a police officer,

1 correct?

2 A Yes.

3 Q And in fact, you had over 25 years of prior  
4 police experience?

5 A At the time, 23.

6 Q 23 at that time. You were good at your job?

7 A I guess.

8 Q And you had to be good at your job because  
9 people's lives are at stake?

10 A Right.

11 Q Your life is at stake on a daily basis?

12 A Right.

13 Q And back then you were a responding officer,  
14 correct?

15 A Right.

16 Q And responding officers are those individuals  
17 who, when someone calls 911, you're the person  
18 that shows up?

19 A Yes.

20 Q And you -- you are the first on the scene?

21 A Yes.

22 Q And you go there to collect information?

23 A Yes.

24 Q And you talk to witnesses?

25 A Yes.

- 1 Q You talk to victims?
- 2 A Yes.
- 3 Q And you observe the scene?
- 4 A Yes.
- 5 Q You take statements if necessary?
- 6 A Yes.
- 7 Q You use your training to see any clues you can  
8 find about the crime scene, correct?
- 9 A Yes.
- 10 Q And if there is a suspect on the scene and the  
11 situation warrants, you would arrest that  
12 suspect, correct?
- 13 A Yes.
- 14 Q And you would charge that suspect with the  
15 appropriate crime in your eyes?
- 16 A Yes.
- 17 Q And then you would go back to your office and you  
18 would file a report?
- 19 A Yes.
- 20 Q And the investigators rely on your report to do  
21 their follow up investigation?
- 22 A Yes.
- 23 Q Because investigators don't arrive on the scene  
24 first?
- 25 A No.

1 Q Okay. And you know these reports are important?

2 A Yes.

3 Q And these incident reports are used in cases such  
4 as these, correct?

5 Q Yes.

6 Q You handle a lot of cases, is that correct?

7 A Yes.

8 Q And so it's important to write down in the  
9 incident report what happened so you can remember  
10 on a later date, correct?

11 A Correct.

12 Q And you try to be as accurate as possible?

13 A Yes.

14 Q Because these reports are relied on when you come  
15 to court?

16 A Yes.

17 Q And you're actually trained on how to do these  
18 reports at the academy, correct?

19 A Yes.

20 Q And you try to include all the important  
21 information in this report?

22 A At that particular time, yes.

23 Q All the pertinent information you get at that  
24 particular time, you're going to put in this  
25 report?



- 1 A Yes.
- 2 Q Okay. And you responded to 1601 Prescott Road on  
3 December 1st, correct?
- 4 A Yes.
- 5 Q And you said you were dispatched for harassing  
6 phone calls?
- 7 A I believe that was the call.
- 8 Q You wasn't dispatched for a burglary in progress  
9 ---
- 10 A Not ---
- 11 Q --- when you went out there?
- 12 A Not that I can recall.
- 13 Q And you do the usual procedure when you get to  
14 the incident location, correct?
- 15 A Yes.
- 16 Q You go there and try to secure the scene?
- 17 A Yes.
- 18 Q And you try to talk to any witnesses you can talk  
19 to?
- 20 A Yes.
- 21 Q And you talked with Ms. Jacobs on that night,  
22 correct?
- 23 A Yes.
- 24 Q And you were there at the scene?
- 25 A Yes.

1 Q You looked around to see what you could see  
2 there, right?

3 A Yes.

4 Q Do you have a copy of the report in front of you?

5 A Yes.

6 Q This report has different boxes that can be  
7 checked?

8 A Right.

9 Q Indicating different things that might have been  
10 happening at the scene of the incident, correct?

11 A Yes.

12 Q Okay. Like time of day?

13 A Yes.

14 Q Was the victim under any kind of alcohol  
15 beverages or was the suspect under any kind of  
16 alcohol beverages. Important things that need to  
17 be noted, correct?

18 A Right.

19 Q There's a box on this incident report that says,  
20 forced entry, correct?

21 A Yes.

22 Q And you talked with Ms. Jacobs on this incident  
23 date, correct?

24 A Yes.

25 Q And you looked and you observed the whole scene,

1       like I said, when you got to the scene, correct?

2   A     Yes.

3   Q     And under box of forced entry you checked, no,  
4       correct?

5   A     As I can see on here, yes, sir.

6   Q     In fact, you checked, no, on two occasions on  
7       this incident report when it asked whether there  
8       was forced entry ---

9   A     Yes.

10   Q     --- is that correct?

11   A     Yes.

12   Q     And then there's also a box on here that says,  
13       does the victim have any physical injuries,  
14       correct?

15   A     Yes.

16   Q     And you would have talked to Ms. Jacobs, correct?

17   A     Right.

18   Q     And you would have looked at Ms. Jacobs, correct?

19   A     Uh-huh.

20   Q     And on the incident report you checked, no, she  
21       didn't have any physical injuries, is that  
22       correct?

23   A     Yes.

24   Q     And you also have a box that says, is the victim  
25       complaining of any non-physical injuries,

1 correct?

2 A Yes.

3 Q And you would have spoken to Ms. Jacobs, correct?

4 A Yes.

5 Q You would have asked her if she was complaining  
6 of any non-physical injuries?

7 A Yes.

8 Q And you checked, no, she was not complaining of  
9 any non-physical injuries, is that correct?

10 A At the time.

11 Q And in your narrative portion -- there's also a  
12 narrative portion of the incident report,  
13 correct?

14 A Excuse me?

15 Q There's a box where you can write down on --  
16 there's a box under the checkbox where you write  
17 down certain things that you were told on that  
18 particular day?

19 A Right.

20 Q And in that particular narrative portion of the  
21 incident report, you wrote that Ms. Jacobs told  
22 you that Mr. Sowell hadn't been there for about  
23 two weeks?

24 A Yes.

25 Q And Ms. Jacobs didn't tell you anything was

1 missing from her residence, did she?

2 A No.

3 Q And you wrote down other things that Ms. Jacobs  
4 told you, is that correct?

5 A Yes.

6 Q And if the Defendant had called and talked to you  
7 on that particular point, you would have wrote  
8 that in your incident report?

9 A He didn't talk to me.

10 Q But if he would have called and you would have  
11 spoke to him, you would have put that in your  
12 incident report?

13 A Had I spoke to him, yes.

14 Q That would have been important?

15 A Yes.

16 Q And you would have put that in your incident  
17 report?

18 A Yes.

19 Q And if the door was off the hinges, that would  
20 have been important, correct?

21 A Yes.

22 Q And you would have put that in your incident  
23 report?

24 A Yes.

25 Q And you said that Ms. Jacobs told you that when

1 Mr. Sowell first came into her apartment, they  
2 had an argument first?

3 A Not my report.

4 Q Okay. It's not in your report but earlier in  
5 your testimony you said when Mr. Sowell first got  
6 into the apartment, he and Ms. Jacobs got into an  
7 argument first?

8 A Yes.

9 Q Okay. And you got all the information you could  
10 about this incident, and after you got all the  
11 information you could about the incident, you  
12 only charged Mr. Sowell with simple assault,  
13 correct?

14 A And harassing phone calls?

15 Q And harassing phone calls, is that correct?

16 A Yes.

17 MR. O'NEIL: Beg the Court's indulgence.

18 (Pause.)

19 THE COURT: Yes, sir.

20 MS. O'NEIL: Thank you, Your Honor, no  
21 further questions.

22 THE COURT: Anything on redirect?

23 MR. MALDONADO: Yes.

24 REDIRECT EXAMINATION

25 BY THE MR. MALDONADO:

- 1 Q Going back to that personal injury box, you  
2 checked there's no personal injury, correct?
- 3 A Yes, that might be an oversight on my part.
- 4 Q Okay. But the actual words of the incident  
5 report, you did mention bruises?
- 6 A Yes.
- 7 Q And you also mentioned damage to the structure?
- 8 A Yes.
- 9 Q You estimated about how much that was?
- 10 A That was about \$300.00.
- 11 Q So you in fact did see damage ---
- 12 A Yes.
- 13 Q So that was just a scrivener's error?
- 14 A Right.
- 15 Q Lack of forced entry. So -- and you did mention  
16 the fact that -- that you did see that she did  
17 have bruises on her face, right?
- 18 A Yes, she was...
- 19 Q But she didn't request any assistance for any of  
20 that?
- 21 A No, not at that time.
- 22 Q And did you actually take out the actual  
23 warrants?
- 24 A No, I didn't.
- 25 Q So you didn't have anything to do with the actual

1 charges, you just took the incident report,  
2 correct?

3 A Right.

4 Q Okay. So the fact that what you write, the  
5 simple assault, wasn't the actual charge,  
6 correct?

7 A Not that I know, what the investigator done  
8 later.

9 Q Right. So the investigator was the one who  
10 actually signs the warrants on those?

11 A Right. The actual report was left open to an  
12 investigator for him to further the case.

13 MR. MALDONADO: Thank you, nothing  
14 further.

15 THE COURT: Anything further of this witness.

16 MR. O'NEIL: Just briefly, Your Honor.

17 RECROSS EXAMINATION

18 BY MR. O'NEIL:

19 Q You say the investigator -- the investigator  
20 furthered this case, correct?

21 A Right.

22 Q But his investigation was based on your initial  
23 findings at the scene on that day?

24 A Based on the initial findings but when I go to  
25 the scene and make out a report, there's always a



1 follow up done which the investigator will talk  
2 back to the victim. At that time additional  
3 information can be found, additional charges can  
4 be brought up.

5 Q I understand but when you were there on the  
6 scene, that night ---

7 A Right.

8 Q --- you didn't have enough information to charge  
9 Mr. Sowell with burglary, is that correct?

10 A No.

11 MR. O'NEIL: Thank you, no further questions.

12 THE COURT: Anything further of this witness?

13 MR. MALDONADO: Yes, Your Honor, I'm sorry to  
14 have to ---

15 THE COURT: It's got to end at some point in  
16 time but I'll let you go ahead.

17 RE-REDIRECT EXAMINATION

18 BY MR. MALDONADO:

19 Q Why didn't you charge -- why didn't you mention  
20 burglary on the report?

21 A At the time I was unsure of the total living  
22 conditions between the two of them.

23 Q So that -- so that was to be further investigated  
24 by the investigator, correct?

25 A Right.

1 MR. MALDONADO: Thank you.

2 THE COURT: You may step down, sir.

3 (The witness leaves the witness stand.)

4 THE COURT: Okay, call your next witness.

5 MR. MALDONADO: Can we excuse Officer

6 Jenkins?

7 THE COURT: Beg your pardon?

8 MR. MALDONADO: Can we excuse Officer

9 Jenkins?

10 THE COURT: I don't care.

11 MR. SCHARDT: No objection.

12 THE COURT: You're free to go, Officer, thank  
13 you very much.

14 MS. WEISS: The State calls Investigator  
15 Kevin Reese.

16 THE COURT: All right.

17 (Kevin Reese, after being duly sworn,  
18 testified as follows:)

19 THE CLERK: Thank you. Please have a seat  
20 and state your full name for the record.

21 (Pause.)

22 THE COURT: Don't talk about the case.

23 There's a little matter I need to clear up. And

24 once again, I can only do that without you. So

25 don't talk about the case. The bailiffs will get

1 you some refreshments, if you want some, okay.

2 (The jury retires from the courtroom at  
3 approximately 3:32 P.M.)

4 THE COURT: All right. It's obvious to Ms.  
5 Weiss and Mr. Schardt why I did that. I have looked  
6 at the statement but I assume from what the -- I  
7 assume from what your saying, there was something  
8 actually needed to be redacted, like you redact a part  
9 of something. So let's make sure we're all on the  
10 same page.

11 MS. WEISS: Yes, Your Honor.

12 MR. SCHARDT: If I could just have a moment  
13 to look.

14 THE COURT: That's why I sent the jury out,  
15 Mr. Schardt, so you can take your time.

16 MR. SCHARDT: Yes, Your Honor.

17 THE COURT: And would you provide me with a  
18 clean copy of the statement so I can look at, please,  
19 before it was redacted?

20 MS. WEISS: Yes, Your Honor.

21 (Pause.)

22 THE COURT: That means, what's next.

23 MR. SCHARDT: Well, Your Honor, I think the  
24 Solicitor's office is just redacting the statement  
25 with white out to erase any implication that ---

1 THE COURT: That he broke into it when she  
2 was in the hospital?

3 MR. SCHARDT: Right.

4 THE COURT: All right.

5 MR. SCHARDT: As opposed to having black  
6 lines through it.

7 THE COURT: All right, take your time.

8 And for future references, don't redact any  
9 statement in a trial without letting the trial judge  
10 look at it first before you redact it. That's the way  
11 you should do it. And that's the way you need to do  
12 it in front of me.

13 MS. WEISS: Yes, sir.

14 THE COURT: I don't know how you do it in  
15 front of anybody else but don't redact anything, don't  
16 touch anything, don't change anything, until I get a  
17 chance to look at it first and we'll do it together.

18 MS. WEISS: Yes, sir, Your Honor.

19 THE COURT: All right, I'm going to take a  
20 little short break. I'll be right back.

21 Now, let me ask y'all about this young lady  
22 that left me this note about 5:30. Do y'all want her  
23 on the jury or not, because it's up to y'all? We have  
24 an alternate. I think she's actually on the jury, is  
25 she not? But if she's got to go at 5 -- well, there's

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1 either one of two things I can do. I don't care about  
2 her going at 5:30. I'll make her stay. But it ain't  
3 my case. I don't know whether I want a juror that's  
4 upset on my jury either. But we have an alternate.  
5 So that's one thing you need to consider.

6 I'll go see how important it is for her to  
7 actually leave at 5:30. If it is, I'll let y'all  
8 decide what you want to do, take her off, put the  
9 alternate on or I can make her stay. That's the  
10 choice.

11 MS. WEISS: Your Honor, I don't see any  
12 reason to make her stay.

13 THE COURT: I don't either but, you know,  
14 talk to your client about it first, talk to your  
15 victim about it. I'll come back and ask y'all again.

16 (WHEREUPON, the court was in recess.)

17 MS. WEISS: I just wanted to cover a  
18 couple of issues. Just one because I've not dealt  
19 with a redacted statement before and what  
20 Investigator Reese is going to testify to, his  
21 original -- the original statement, that statement,  
22 we put that into the court record and this will be  
23 what we go back to, this is all he could read of  
24 what's in ---

25 THE COURT: Yeah. Yeah, to jury. I'll

1 explain that there is certain other information that  
2 had nothing to do with this case. I'll make it easy  
3 for both of you.

4 MS. WEISS: Thank you and ---

5 THE COURT: Otherwise they're going to wonder  
6 why there's all this struck out. I need to explain  
7 that to them probably.

8 MR. SCHARDT: We actually took care of that  
9 with white out and we took the last two pages off so  
10 ---

11 THE COURT: Okay ---

12 MR. SCHARDT: --- I don't even think that  
13 needs to be ---

14 THE COURT: Okay, y'all all fine with that?  
15 But it's -- the first page is one of four.

16 MS. WEISS: I think ---

17 MR. SCHARDT: Okay, I understand.

18 THE COURT: Well, that's okay but I really  
19 liked it better that way anyway so -- but I can -- if  
20 I have to, if y'all think I need to, I'll explain  
21 there were certain other things they talked about that  
22 had nothing to do with this case and we took those out  
23 and that was my decision as the judge to do that,  
24 blah, blah, blah.

25 MS. WEISS: Yes, sir.

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1 THE COURT: I think it might be wise to say  
2 -- I'll let y'all -- we'll let it unfold. If y'all  
3 think I need to say that, I will. I think I probably  
4 should.

5 MS. WEISS: Would you like to see a copy of  
6 the final one with the white out?

7 THE COURT: No, I think you just showed it to  
8 me but my eyes aren't as good as they used to be.  
9 I'll take a closer look.

10 MS. WEISS: And...

11 THE COURT: Yeah, this looks better than  
12 having all that other stuff. And it does -- it has  
13 page one of four, that's the only other thing you  
14 might need to -- my suggestion would be to white out  
15 the one of four too but -- I've been on the jury  
16 before and I can assure you somebody will look at one  
17 of four up there and say, why is there only two pages.

18 So what do y'all want to do about the one of  
19 four up there on the top there?

20 MR. SCHARDT: I would prefer if we white it  
21 out and then that would just ---

22 THE COURT: Okay, I think that's good. And  
23 still if there's any explanation needs to be made,  
24 I'll make it.

25 MS. WEISS: Your Honor, I guess we need to

1 make copies again.

2 THE COURT: That's fine. That's fine. This  
3 is all right. Now, my question is this, Officer Reese  
4 -- is it Reese?

5 MS. WEISS: Yes, sir, Your Honor.

6 THE COURT: Okay, there you go. He's your  
7 last witness and an hour or so, you think, maybe?

8 MS. WEISS: Yes, Your Honor.

9 THE COURT: However long it takes, it takes.

10 MS. WEISS: I think -- I mean, I don't expect  
11 it to be that long.

12 THE COURT: Okay. It shouldn't be but I  
13 don't know, it might.

14 MR. SCHARDT: I'm long winded but I'll try --  
15 it shouldn't be that long.

16 THE COURT: Well, I'm -- I talked to this  
17 juror and I got the impression that she wants to stay  
18 if she can. But I explained to her that court doesn't  
19 work the way where somebody's got to go at 3:15,  
20 somebody's got to go at 5:30. But, you know, you want  
21 them to serve. It's there prerogative to serve. I  
22 get the impression she still wants to. So I'm going  
23 to speak to her a little bit more and say -- I told  
24 them I usually stop at 5, I usually stop in enough  
25 time for her to get out of here anyway. So let me go.



1 make sure of that and we can wipe that out and we'll  
2 be ready to go.

3 MS. WEISS: The only other question, if you  
4 want me to do it now, we talked about this in  
5 pretrial. That the way that Investigator Reese knew  
6 how to get in touch with Todd Sowell was that he had  
7 been arrested on other charges and he was in the Alvin  
8 S. Glenn Detention Center.

9 And he was able to at that point get somebody  
10 to transport him to North Region Headquarters to  
11 interview him. I know the Defense has problems with  
12 the harassment as part of the pretrial. I just want  
13 to know how Your Honor sees us handling that so that  
14 we don't step into any problems during direct.

15 THE COURT: All right. Well, Mr. Schardt,  
16 let me hear you.

17 MR. SCHARDT: I ---

18 THE COURT: My suggestion would be he was --  
19 somebody picked him up and brought him in. You don't  
20 have to say they picked him up from Alvin S. Glenn but  
21 he was picked up or brought into the office or  
22 something like that. I mean, you want to stay away  
23 from like, they went to Kirkland and picked him up.  
24 You know, that implies he's in jail for something else  
25 which he was. But the idea is like, he was brought in

1 and he talked to me and then he left. I mean, you  
2 don't need to say where you got him from or where you  
3 took him back to. The only important thing is the  
4 statement it seems to me now.

5 That would be my observation and suggestions.  
6 But I'll be happy to listen to anything y'all want to  
7 add to that.

8 MR. SCHARDT: That sounds great.

9 THE COURT: The idea is like he was brought  
10 in, I took the statement and then he left and went  
11 back.

12 MS. WEISS: Yes, Your Honor.

13 THE COURT: You don't have to say where he  
14 came from or where he went back to.

15 MS. WEISS: And just for clarification,  
16 Investigator Reese, we talked about that he could say  
17 that he was notified of where Mr. Sowell could be  
18 found and then Mr. Sowell was brought in, not just to  
19 say how he found out.

20 THE COURT: Yeah.

21 MS. WEISS: Does that work?

22 THE COURT: Yeah, yeah.

23 MS. WEISS: Thank you, Your Honor.

24 THE COURT: And I think that's fair to  
25 everybody. Because the important thing is not where

1 he was or went back, the statement he gave when he was  
2 there.

3 MS. WEISS: Yes, sir.

4 THE COURT: Okay. All right. If those are  
5 satisfactory, let me know. Let's see whether or not  
6 this juror wants -- I think she wants to stay and I'm  
7 going to try to do everything I can to get her to  
8 stay. I'll be right back.

9 (Judge exits the courtroom.)

10 (Judge returns to the courtroom.)

11 BAILIFF: All rise, please.

12 THE COURT: Thank you, keep your seats,  
13 ladies and gentlemen.

14 So many times in trials like these you find  
15 out how important this whole process is to people.  
16 It's obvious that this juror wants to serve. I told  
17 her we would probably be through in time to get her  
18 out. If it's so close that it might be another five  
19 minutes left for in the morning. But, you know, I  
20 don't want to abridge anybody's right to serve their  
21 country in this capacity so, I think we'll be fine.

22 Let's see, anything further we need to take  
23 up? Everybody's satisfied with the redaction and all  
24 that, the way it's been covered? Any objections or  
25 exceptions or additions?

1 MR. SCHARDT: No, Your Honor.

2 MS. WEISS: No, Your Honor.

3 THE COURT: All right. We're all ready then.  
4 You may invite them back in, Mr. Hollis.

5 (The jury returned to the courtroom at  
6 approximately 3:58 P.M.)

7 THE COURT: Now, Mr. Hollis here, he'll make  
8 sure you're in the seat you're supposed to be in, if  
9 y'all notice, now. He played basketball for  
10 University High back in 1956, was it, Billy?

11 MR. HOLLIS: No, it was early 50's, Your  
12 Honor.

13 THE COURT: Okay, I'm sorry, 1946 it was. It  
14 was a long time ago, a long time ago.

15 THE COURT: Welcome back, Madam Forelady and  
16 members of the jury. Ms. Weiss, you may continue.

17 MS. WEISS: Thank you, Your Honor. May it  
18 please the court.

19 THE COURT: Yes, ma'am.

20 DIRECT EXAMINATION

21 BY MS. WEISS:

22 Q Investigator Reese, what is your current  
23 position?

24 A I'm a criminal investigator with the Columbia  
25 Police Department.

1 Q And as a criminal investigator with the Columbia  
2 Police Department, can you just tell the jury  
3 what some of your duties are?

4 A Right now I'm assigned to the VCAP Unit. The  
5 acronym's for Violent Crimes Against Persons. I  
6 investigate homicides and all violent crimes that  
7 are not -- all violent crimes that are felonies  
8 against persons.

9 Q And was your job the same back on December 1st of  
10 2004?

11 A On December 1st of 2004, I was assigned to  
12 Property Crimes Unit, burglary and any crimes  
13 against property.

14 Q And where would -- where was your office located  
15 on December 1st of 2004?

16 A North Main Street area, 3905 Ensor Street. It's  
17 in the Eau Claire area.

18 Q Will you explain to the jury basically how you --  
19 at least at that time, how you would have gotten  
20 cases, you know, this case or any case in  
21 particular?

22 A When a police report is generated, it's -- back  
23 then when investigators were out in the region,  
24 reports were generated and then they were sent to  
25 the various regions in which they were generated.

1 This particular case, as all the cases in the  
2 North Region, were compiled, after they were  
3 taken and read over by a supervisor, and then  
4 assigned to investigators.

5 Q And then what would be your job at that time?

6 A My job at that time would then be to follow up on  
7 those reports that were assigned to me.

8 Q And what does it take to become an investigator  
9 with the City of Columbia Police Department?

10 A (No response.)

11 Q Do you start off as an investigator?

12 A No, I started at the Police Department --  
13 actually it was my second tour, when I started my  
14 second tour there in 1991, and basically you work  
15 your way up to rank of investigator, as well as  
16 any other rank.

17 Q Okay. So you said it was your second tour. When  
18 did you start with the Columbia Police  
19 Department?

20 A I started in 1980, left in '85 to go back to  
21 school. I got a master's degree, an  
22 undergraduate degree. And I came back in '91 to  
23 the Columbia Police Department.

24 Q When you came back, what was your rank then?

25 A When I came back, I was a patrolman. I was

1 promoted eventually to master patrol officer and  
2 then from there, my dream which was criminal  
3 investigator.

4 Q And how many years have you been a criminal  
5 investigator?

6 A Since 1999 when I was promoted to investigator.

7 Q Back in '91, when you first came back, you were  
8 responding -- were the initial responder on calls  
9 such as this one, is that ---

10 A That's right.

11 Q And then it took about eight years to get to  
12 where you are now?

13 A Right.

14 Q Or to get to the beginning where you are now?

15 A Right.

16 Q Okay. Turning to this case in particular, how  
17 did you become involved with this case?

18 A This case was assigned to me by my supervisors.

19 Q And when did you first see this case? How -- I  
20 mean, the case incident occurred December 1st,  
21 2004, when did you first become involved in this?

22 A It would have been after -- I'd actually have to  
23 see the report to tell you exactly when, when it  
24 was assigned to me. I don't have a copy of that  
25 report.

1           It's after the supervisors read over it, it's  
2 assigned. And the only way I can tell you when  
3 it was assigned to me is look at the bottom of  
4 the report which will tell you the date it was  
5 assigned.

6           The day that it was assigned doesn't  
7 necessarily mean it's the day I started working  
8 on it. I could have been busy on other cases and  
9 then eventually got around to this one.

10 Q       Okay.

11 A       All right. If it's not assigned on -- I believe  
12 this case here, I would not have been initially  
13 assigned to it because it's a simple assault case  
14 and harassing phone calls. Generally the victim  
15 can just go down to the police department and  
16 sign their own warrant, to the warrant division.  
17 And you don't necessarily need an investigator  
18 for it in this case.

19           But if you read over the narrative of some of  
20 the cases then there would be something that the  
21 officer might have neglected for whatever reason  
22 to put in the report and then an investigator  
23 would follow up on it, whatever was not put in  
24 there.

25 Q       Okay. And at some point, this case was assigned



1 to you as a burglary, a possible burglary?

2 A Yes.

3 Q Okay. So it took awhile to go through, for  
4 somebody to realize going through the body of the  
5 report that this actually had been more than just  
6 a simple assault and harassment?

7 A Exactly.

8 Q Okay. So then it came to you and what did you do  
9 next?

10 A I began the follow up process on it.

11 Q And what did you find out in your initial  
12 following up?

13 A That it was actually more than -- than harassment  
14 and simple assault. That it actually required  
15 the -- that an investigator look into the matter.

16 Q Now, in a typical case, when you have a victim,  
17 you know, what is the -- what is the first thing  
18 you're going to do to follow up on the case?

19 A I generally try to make contact with the victim  
20 and interview the victim.

21 Q And did you attempt to do that in this case?

22 A I did.

23 Q And how did you find out?

24 A I made several phone calls, as I recall, but I  
25 could never get the victim. And I think I would

1 leave messages and eventually I got a phone call,  
2 I believe, from the victim's aunt advising me  
3 that the victim was in the hospital.

4 Q Okay. And do you have sort of a personal policy  
5 about victims that are in the hospital?

6 A It's my own personal policy, I generally don't  
7 like to bother victims while they're in the  
8 hospital, for various reasons. And I can wait  
9 until they get out of the hospital. I don't need  
10 to Bogart their rooms like that, you know.

11 Q Okay. And while you were waiting for  
12 her to get out of the hospital, did you get some  
13 more infor -- the only information you had about  
14 this, you did not find out that night, obviously?

15 A To the scene?

16 Q Right, to the scene?

17 A No.

18 Q Okay. So the only information you had was what  
19 was given to you in that incident report?

20 A That's right.

21 Q And did you receive some information about the  
22 suspect that was listed in that incident report?

23 A Yes, I did.

24 Q And what was that information?

25 A Information on where I could locate him.

1 Q Okay. And what did you do with that information?

2 A I sent someone and asked them to bring him to me  
3 and they did.

4 Q And he was asked voluntarily whether he wanted to  
5 come talk to you? He had a choice whether or not  
6 to come talk to you?

7 A He had a choice, yeah, he could have refused.

8 Q Okay. And -- but what did he decide to do?

9 A To come to the office.

10 Q And when he got to the office, what did you  
11 initially -- can you tell me what happened once  
12 he got there?

13 A Initially when he got to the office, we  
14 conversated a little while, not -- on nothing  
15 that would have incriminated him. It was just to  
16 break the ice kind of thing, where are you from,  
17 how old you are and that kind of thing. And  
18 eventually I ended up advising him of his rights  
19 after advising him what this was all about and we  
20 got down to business.

21 Q I'm going to ask you to look at what's been  
22 marked as State's Exhibit 1.

23 A Okay.

24 Q Can you tell me what that form is?

25 A This form is Interrogation Advice of Rights form.

1 It's generally a form that -- so as there will be  
2 no questions later on of whether or not the  
3 investigator actually said what was supposed to  
4 have been said in terms of advising the person of  
5 their rights, it's spelled out to you on this  
6 form, so there will be no mistakes.

7 Q Okay. And for the benefit of the jury, will you  
8 go through, please, and just read. What are  
9 those questions that you read to the suspect in  
10 the case?

11 A There -- there are -- at first we start with I  
12 let them know exactly what's going on, which is:  
13 before we ask any questions, you must understand  
14 your rights. You have the right to remain  
15 silent. Anything you say can be used against you  
16 in court. You have the right to talk to a lawyer  
17 for advice before we ask you any questions and to  
18 have him with you during questioning. If you  
19 cannot afford a lawyer, one will be appointed to  
20 you before questioning, if you wish. If you  
21 decide to answer questions now without a lawyer  
22 present, you will have the right to stop  
23 answering questions at any time. You also have  
24 the right to stop answering questions at any time  
25 until you have talked to a lawyer.

1 Q Okay. And when you were reading that, you were  
2 reading that to Todd Sowell, do you read like  
3 that? Do you read it all at one time?

4 A No, I'll read one line first and then I'll simply  
5 ask, do you understand that.

6 Q And finally, once you go through all of that,  
7 what do you do with the statement at the bottom?

8 A Are you talking about where he waives ---

9 Q Yes.

10 A --- the signing part? There's a paragraph at the  
11 bottom that says, Waiver of Rights, and I'll just  
12 read it to you: I have read this statement of my  
13 rights and I understand what my rights are. I am  
14 willing to make a statement and answer questions.  
15 I do not want a lawyer at this time. I  
16 understand and know what I am doing. No promises  
17 or threats have been made to me. No pressure or  
18 coercion of any kind has been used against me.

19 Q And do you read that statement to him?

20 A I would read it sometimes or I would ask the --  
21 whoever I'm interviewing to read it.

22 Q Do you recall if Todd Sowell read that statement?

23 A I don't recall exactly. I can tell you that  
24 either he read it or I read it to him.

25 Q Okay. And then whose signature is that right

1 below the Waiver of Rights?

2 A That would be Mr. Sowell's signature.

3 Q Okay. And is that your signature down to the  
4 left below his?

5 A That would be right.

6 Q And there's another signature there. Do you know  
7 who that belongs to?

8 A I believe that would be the ---

9 Q Another witness?

10 A Another witness, right.

11 Q Do you recall who that is at this time?

12 A No, I can't read their writing.

13 Q Okay. And you noted a time on there. Do you  
14 recall what time of day that was?

15 A It was 10:30 in the morning.

16 Q Okay.

17 MS. WEISS: Your Honor, at the time I would  
18 ask that State's Exhibits 1 and 5 be entered into  
19 evidence.

20 THE COURT: Which is one 1, what is 1?

21 MS. WEISS: 1 is the Advice of Rights and  
22 Statement.

23 THE COURT: Okay. 5 is his statement?

24 MS. WEISS: Yes, Your Honor.

25 THE COURT: Okay, thank you. Any objections

1 noted for the record already.

2 MR. SCHARDT: No objection, Your Honor.

3 THE COURT: Huh?

4 MR. SCHARDT: No objection, Your Honor.

5 THE COURT: Okay. All right, in light of the  
6 previous matter?

7 MR. SCHARDT: Yes, Your Honor.

8 (WHEREUPON, State's Exhibit No. 1 was entered  
9 into evidence.)

10 (WHEREUPON, State's Exhibit No. 5, Columbia  
11 Police Department Statement Form (Redacted),  
12 was entered into evidence.)

13 Q Okay. So you've read him his rights. Did you  
14 have a conversation with Mr. Sowell about these,  
15 did he have any questions about what he was there  
16 for?

17 A No, there was no question about what he was there  
18 for.

19 Q Did he say anything to you while you were going  
20 over this?

21 A While I was reading the rights to him?

22 Q And talking to him about the case?

23 A Basically he showed remorse and I thought it was  
24 genuine remorse. I didn't think he was playing  
25 with me. He said that -- I believe he said he

1 was sorry and that he just wanted to get this  
2 over with.

3 Q So did you threaten him in any way or promise him  
4 any way to get him to give a statement?

5 A No, I didn't.

6 Q Did you feel that he was forthcoming when he gave  
7 you the statement?

8 A I believed that he was, yes.

9 Q Okay. And when you took this statement, can you  
10 explain to the jury the manner in which you write  
11 the statement as far as the format that you use  
12 to write the statement?

13 A The format that I used on this one is I asked Mr.  
14 Sowell a question, I'd write the question down,  
15 he'd give me the answer and I'd also write the  
16 answer down that he gave me.

17 Q And would he have an opportunity to go over those  
18 questions and answers with you?

19 A Right. After -- after the entire process, the  
20 statement, I would advise him that I'm going to  
21 read the statement over to him, asked him to let  
22 me know that if there were any discrepancies or  
23 if I made any mistakes, put anything in there  
24 that he did not tell me or left anything out that  
25 he did say to me. And once I do that, then it's



1 ready to -- for me to swear him in for him to  
2 sign it.

3 Q Okay. Now I'm going to ask you to look at the  
4 statement that you wrote for Todd Sowell. And  
5 you asked each of these questions directly to him  
6 and you wrote his answers, right?

7 A That's right.

8 Q I'm going to ask you to read for the jury, start  
9 with the first question that you asked him.

10 A The first question I asked him was -- and this is  
11 how it goes, Q, question: On 12-01-04, did you go  
12 to 1601 Prescott Manor 7A in Columbia?

13 His answer was: Yes.

14 Q The next question.

15 A The next question was: What time of the day did  
16 you go there?

17 His answer was: I think it was nighttime, it  
18 was dark.

19 Q Okay. The next question.

20 A The next question was: Did you force open the  
21 door to this apartment?

22 His answer was: It probably was locked. I  
23 budged it with my shoulder. It came open.

24 Next question: Did you check to see if the  
25 door was locked?

1       The answer was: No, I knocked on the door  
2       and nobody would answer. I was drunk that night.

3       The next question was: Did you think anyone  
4       was in the house?

5       His answer was: No, because I knocked on the  
6       door and nobody would answer and I called and  
7       nobody would pick up.

8       Next question was: After you go inside the  
9       house, what happened?

10       His answer was: Sandrica was standing inside  
11       the door and started screaming. She cursed me.  
12       I told her to come -- I told her I came to get --  
13       get my stuff. She pushed me to keep me from  
14       coming into the house. I got inside -- I got  
15       into the living room. She kept pushing me like  
16       she was throwing all of her body weight on me. I  
17       pushed her back and she fell on the couch. She  
18       was yelling like crazy so I just left. I went  
19       back to the hotel I was staying in on Sunset.

20 Q     At that point he told you he wasn't staying in  
21       that apartment, is that -- that's what you've got  
22       right there?

23 A     That's correct and that's what I took it to mean  
24       since he was staying at a hotel on Sunset.

25 Q     Okay. What was the next question?

1 A The next was: Have you ever lived at this  
2 residence with Sandrica Jacobs?

3 His answer was: Yes, she was my fiancé. We  
4 lived there together.

5 The next question was: How long did you live  
6 there with her?

7 His answer was: About three months.

8 The next question was: What kind of bills  
9 did you pay while there?

10 His answer was: Grocery and light bill one  
11 time.

12 The next question was: Did she ask you to  
13 move out of her house?

14 His answer was: Yes. About the beginning of  
15 November I left and went to Charlotte. She  
16 called me later and said she was pregnant. We  
17 even went to my mom's house on Thanksgiving Day.

18 Q Okay. And what was his demeanor while he is  
19 giving you his statement?

20 A He -- he was -- there was tears that would well  
21 up in the eyes and I really felt he really felt  
22 bad about what he had done. And that was his  
23 demeanor. He wasn't argumentative. He wasn't  
24 belligerent with me or anything, hostile.

25 Q Okay. And after you got this statement from Todd

1 Sowell, and you had the incident report that was  
2 given -- that was given to you through the  
3 investigation, what did do you with that  
4 information?

5 A I obtained a -- an affidavit of arrest warrant  
6 from Mr. Sowell.

7 Q Okay. And at the time had you talked with  
8 Sandrica Jacobs about the case?

9 A It was rather difficult to get in touch with Ms.  
10 Jacobs at times. So I believe I did speak with  
11 her very briefly or I talked with one of --  
12 either she or one of her relatives over the  
13 phone. I believe she came by the office to drop  
14 off some items prior to that and I wasn't there.

15 Q Okay. Looking at your investigative report, what  
16 did you base your warrant for burglary on?

17 A I -- I based the warrant on what Mr. Sowell had  
18 told me in his sworn statement, what was in the  
19 report and that was it. I don't have a copy of  
20 that report here.

21 (Copy given to witness.)

22 A Thank you. I basically based it on what was in  
23 the police report and what he told me in his  
24 statement.

25 Q Okay. And based on the confession that he gave

1       you -- typically would you say defendants, when  
2       they're giving you their side of the story, does  
3       just that, give you their side of the story?

4   A     Right. I believe he gave me his side of the  
5       story.

6   Q     Okay. In a light most favorable to him?

7   A     Right.

8   Q     But still, from that statement, did you find that  
9       he was not living with Sandrica Jacobs?

10  A     That's correct, I did.

11  Q     And also that he forced his way into the  
12       apartment?

13  A     That's right.

14  Q     And that it was in the nighttime?

15  A     Yes, ma'am.

16  Q     And that he committed an assault when he got in  
17       there?

18  A     Yes, ma'am.

19  Q     Is there any doubt in your mind that he's guilty  
20       of burglary?

21               MR. SCHARDT: Object, Your Honor.

22               THE COURT: Sustained. That's for the jury  
23       to determine.

24               Any further questions of this witness?

25               MS. WEISS: No, Your Honor.

1 THE COURT: You may cross examine.

2 MR. SCHARDT: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. SCHARDT:

5 Q Good afternoon, Investigator.

6 A Hey.

7 Q I just want to clear up one thing that you just  
8 talked about. You talked about after -- once you  
9 started to investigate, you had trouble finding  
10 Ms. Jacobs? You had trouble getting a statement  
11 from her, I'm sorry?

12 A Getting in touch with her.

13 Q Getting in touch with her?

14 A Right.

15 Q And that was because she was in the hospital?

16 A I know she was in hospital. I don't know when  
17 she got out of the hospital but whenever I'd go  
18 to the apartment, I couldn't find her, I couldn't  
19 get her on the telephone.

20 Q And you're not alleging that she was in the  
21 hospital for any injuries that Mr. Sowell gave to  
22 her, it was for her sickle cell, correct?

23 A I -- I know sickle cell had something to do with  
24 it but I don't know if anything else put her in  
25 there.

- 1 Q Okay.
- 2 A I didn't know at the time.
- 3 Q Okay. Investigator, I'm going to talk to you a  
4 little bit about the work you did on this case?
- 5 A Sure.
- 6 Q This -- these charges stem from an incident that  
7 allegedly occurred on December 1st of 2004,  
8 correct?
- 9 A Yes, sir.
- 10 Q And do you have a copy of your notes, other than  
11 the statement? Do you have a copy of your case  
12 notes?
- 13 A No.
- 14 Q Okay. Would you like a copy of them?
- 15 A You have a copy of the notes?
- 16 Q Yes, sir.
- 17 (Copy given to witness.)
- 18 A Oh, this is the police report.
- 19 Q Are you the ---
- 20 A All right, I thought you were talking case notes  
21 but -- there's a difference but ---
- 22 Q Oh, I'm sorry. Are you the author of those -- of  
23 that police report?
- 24 A Right.
- 25 Q Okay.

1 A I am.

2 Q Your first notes from the case -- and you did  
3 explain there was a delay. Your first notes in  
4 the case are from December 21st, 2004, correct?

5 A Right.

6 Q Okay. So for the first -- for the first 20 days,  
7 there was really no work done on this case other  
8 than the attempts to contact the victim, correct?

9 A Judging by this ---

10 MS. WEISS: Your Honor, may we approach?

11 THE COURT: Sure.

12 (WHEREUPON, a bench conference was held  
13 off the record, in the presence of the jury,  
14 but out of the hearing of the jury.)

15 THE COURT You may continue, Mr. Schardt.

16 MR. SCHARDT: Thank you, Your Honor.

17 Q For the first 20 days, you made efforts to  
18 contact the victim but there was no other work  
19 done in the investigation of this case, correct?

20 A I made an effort to contact her but it wasn't  
21 like, well, each 20 days, I made efforts to  
22 contact her. You know, I would -- there were a  
23 lot of cases we were working and, you know, I  
24 would get around -- back around to her case and  
25 make an effort to contact her and couldn't.



1 Q Yes, sir. And at that point you -- you  
2 administratively closed the case?

3 A I -- yes, that's right.

4 Q Okay. And this case reopened on January 6th of  
5 2005, correct?

6 A That's right.

7 Q You reopened the case -- and January 6th is 37  
8 days later, you reopened the case and you went to  
9 take the statement from Mr. Sowell, correct?

10 A That was the day I took the statement, that's  
11 right.

12 Q Other than taking the statement from Mr. Sowell,  
13 was there any other work that you did on this  
14 case?

15 A I'm not sure if I understand what you're asking  
16 me.

17 Q I ---

18 A Did I go to house or what are you asking me?

19 Q I'll ask you some specifics?

20 A Okay.

21 Q Okay. You were -- you're familiar with the case,  
22 correct?

23 A That's right.

24 Q And you were in court today and you're familiar  
25 with the claims that Ms. Jacobs made that Mr.

1 Sowell called her repeatedly on December 1st --  
2 on December 1st, the date of the incident?

3 A You mean based on what she said today?

4 Q Yes.

5 A Yes, sir.

6 Q That he called her house a number of times?

7 A Yes, sir.

8 Q Okay. And that is Sandrica's word on the stand  
9 but claims such as -- as an investigator, you  
10 know claims that if someone calls someone else,  
11 they can be verified, right?

12 A That's right.

13 Q You can pull phone records and verify claims that  
14 people make?

15 A You can.

16 Q Okay. And when you pull phone records, you can  
17 see who called whom, when these phone calls were  
18 made, how long these phone calls took place, how  
19 long the conversations took place, correct?

20 A Phone records will tell you what number dialed  
21 which number. It won't tell you exactly who  
22 dialed the numbers.

23 Q To pull phone records, all you needed is a phone  
24 number, correct?

25 A And a search warrant.

- 1 Q And a search warrant?
- 2 A Right.
- 3 Q And on the incident report that you have or that
- 4 you had at the time, you were aware of what Ms.
- 5 Jacobs' phone number was, correct? You had been
- 6 calling her, correct?
- 7 A Right. I'm not sure where the number was going,
- 8 whether it was going to her house or her aunt's
- 9 house. I know -- I believe her aunt answered the
- 10 phone like one time, so it could have been her
- 11 aunt's house, I'm not sure.
- 12 Q You were aware though how to get in contact with
- 13 Ms. Jacobs?
- 14 A Through that phone number or either at her
- 15 apartment.
- 16 Q So you ---
- 17 A But nowhere else.
- 18 Q It's fair to say that you could have gotten her
- 19 home number and her cell phone number at the time
- 20 as the investigator?
- 21 A Ms. Jacobs' phone number?
- 22 Q Yes, sir.
- 23 A I -- I believe I could of but I don't -- I'm not
- 24 really following you. That you could get it but
- 25 -- if it's available, you can get it.

1 Q Right. Well, I asked if you pulled any phone  
2 records. Did you pull any phone records ---

3 A No.

4 THE COURT: That's asked and answered.

5 Q And to clarify what I'm asking, to pull phone  
6 records, you said you would need a number. Could  
7 you have gotten Ms. Jacobs' number at that time,  
8 as an investigator?

9 A Are you talking about the number where to locate  
10 her at that time?

11 Q I'm talking her phone number and her cell number.  
12 As an investigator, could you have ascertained  
13 her phone numbers?

14 A If I would have been able to get in touch with  
15 perhaps the aunt, I probably would have been able  
16 to get it. But you -- you can't just -- I think  
17 what you're asking me, can you pull a phone  
18 number out of the air and the answer to that, is  
19 no. You've got to have -- if I want to research  
20 a phone number, utilizing a search warrant, I --  
21 I should already have that phone number. That's  
22 how that works. You can't just throw seven  
23 digits out there and say, I want to research  
24 this.

25 Q You said you would have had to determine what her

1 phone number is?

2 A And if she had a phone number in her name or --  
3 it just -- it bounces back how easy it could be.  
4 It's not that easy, no.

5 Q Did you ever attempt to pull her phone records?

6 A Her phone records, no.

7 Q Now, I am going to -- as a follow up to your  
8 investigation, you were in here today when Ms.  
9 Jacobs gave her story two years after the  
10 investigation?

11 A Yes.

12 Q Two years after the incident?

13 A Yes, sir.

14 Q Okay. Now, you take statement -- as an  
15 investigator, you take statements from witnesses  
16 ---

17 A That's right.

18 Q --- and suspects?

19 A That's right.

20 Q And victims?

21 A That's right.

22 Q Okay. Why do you take statements?

23 A Why do I take statements?

24 Q Why do you take statements as opposed to people  
25 just coming in here on the day of court and

1       testifying? Why -- what is the reasons for  
2       taking a statement?

3   A    Basically to document it as a matter of record.

4   Q    Would you say it is fair to say that it preserves  
5       the story from memory lapse? If the case is  
6       going two years later, it would be a statement to  
7       refer back to?

8   A    That's ---

9   Q    Fresh in one's mind?

10  A    That's right, that's fair.

11  Q    And wouldn't you also say it locks a person into  
12       a story so it can't change later on?

13  A    You could say that.

14  Q    You know, those are the reasons you investigators  
15       take statements, right, to lock people in and  
16       prevent memory lapses?

17  A    I would go along with that.

18  Q    Now, you took a statement from Mr. Sowell,  
19       correct?

20  A    That's right.

21  Q    So he would -- he's been locked into his story he  
22       gave you shortly after the incident?

23  A    Say that again?

24  Q    He's been locked into his story?

25  A    Right.

1 Q Okay. And I understand you testified that you  
2 don't go to take statements when people are in  
3 the hospital. But did you ever in the past two  
4 years take a statement from Sandrica Jacobs? Did  
5 you ever get a written statement from her?

6 A No, I never got a written statement from her.

7 Q So when she walked into court here today, she  
8 wasn't locked into a story at all, correct?

9 A No.

10 Q And there was a potential that she could have had  
11 lapses of memories without a statement to refer  
12 back to, correct?

13 A I don't -- I can't answer that one for you, Mr.  
14 Schardt.

15 Q There's potential that she could have changed her  
16 story ---

17 MS. WEISS: Objection.

18 THE COURT: Sustained.

19 MS. WEISS: Thank you.

20 Q I asked you specifics about the things you did,  
21 pulling up the telephone logs, getting a  
22 statement from Ms. Jacobs. And I'll ask you  
23 again, is getting the statement from Mr. Sowell  
24 the only investigation you did on this case?

25 A I believe so. I got the statement from him and I

1 think I spoke with -- I believe I spoke with her  
2 at least once at my office.

3 Q But there wasn't a written statement?

4 A No.

5 Q Okay.

6 A Either that or on the telephone, over the  
7 telephone.

8 Q And you -- you signed the warrant, correct, for  
9 the burglary? You decided to charge Mr. Sowell  
10 with burglary?

11 A That's right.

12 Q You did this after you took his confession?

13 A That's right.

14 Q And at the time, your knowledge of this case was  
15 limited -- the things you knew about this case  
16 were you reviewed the incident report and his ---

17 A His statement.

18 Q --- confession? Okay. I would like to talk with  
19 you a little bit about the confession what we've  
20 been talking about?

21 A Sure.

22 Q Okay. And again, this is January 6th of 2005 at  
23 10:30 A.M., correct?

24 A That's right.

25 Q You met with him and you advised him of his



1 rights?

2 A Right.

3 (Pause.)

4 Q Before we talk about the specifics, I'd like to  
5 go back to the burglary warrant one more time.

6 Do you have a copy of the warrant?

7 A Warrant number H858449?

8 Q Yes, sir.

9 A I've got it.

10 Q You're the affiant?

11 A That's right.

12 Q Okay. That means you swore to the facts of the  
13 warrant being true?

14 A Right.

15 Q Okay. And the last sentence reads: On  
16 January the 6th, 2005, the Defendant was  
17 interviewed and gave a sworn confession  
18 statement, correct?

19 A Right.

20 Q That's the basis of this warrant, other than the  
21 incident report?

22 A That's right.

23 Q Okay. Let's -- let's talk a little bit about his  
24 statement now. We talked about you met with  
25 Mr. Sowell, and the first thing is you read him

1 his Miranda rights, correct?

2 A Right, right.

3 Q He didn't have an attorney present?

4 A No.

5 Q And you did what you were supposed to do as an  
6 investigator, right?

7 A Yes, sir.

8 Q You told him he had the right to remain silent,  
9 anything you say can and will be held against  
10 you?

11 A Yes, sir.

12 Q You have a right to have an attorney here, and he  
13 reviewed it and signed it, correct?

14 A Right.

15 Q And after that happened, you began to talk to him  
16 and establish a rapport, correct?

17 A Right.

18 Q You informed Mr. Sowell why he was there?

19 A Right.

20 A So he would know before you put anything on  
21 paper?

22 A Right.

23 Q And you just -- I believe you testified that he  
24 appeared emotional?

25 A That's right.

- 1 Q He had tears welling up in his eyes?
- 2 A Right.
- 3 Q Or that he may have been crying?
- 4 A He could have been.
- 5 Q And he said to you, I just want to get this
- 6 behind me?
- 7 A Right.
- 8 Q Then you took your statement -- took his
- 9 statement, I'm sorry?
- 10 A That's right.
- 11 Q Okay. There's question and answer, you asked the
- 12 questions, he asked the answers -- I mean, gave
- 13 the answers?
- 14 A Right.
- 15 Q You didn't twist his arm?
- 16 A No.
- 17 Q You didn't withhold anything from him? You didn't
- 18 use any tactics at all, did you?
- 19 A No, no tactics.
- 20 Q He just came forward and gave you the statement?
- 21 A Yes, sir.
- 22 Q Then afterwards you reviewed the statement with
- 23 him?
- 24 A Right.
- 25 Q Did you let him read it or did you read it to

1 him?

2 A I don't exactly recall. I can tell you that it  
3 was one or the other.

4 Q And he would have been ---

5 A It could have been where I read it to him and he  
6 also read it himself.

7 Q And he would have been sure to have understood  
8 it?

9 A Right.

10 Q And he signed it and said it was accurate,  
11 correct?

12 A Yes, sir.

13 Q He understood what was going on?

14 A I believe he did.

15 Q He appeared to trust you, didn't he?

16 A He didn't appear to distrust me. I don't know  
17 how much he did trust me but...

18 Q He was emotional. In layman's terms, he was  
19 spilling his guts to you, correct?

20 A Again, Mr. Schardt, I don't really know what that  
21 means, spilling your guts to you? He talked to  
22 me about what happened.

23 Q And you are aware of false confessions, when  
24 people admit to things they don't do?

25 A I am aware of that.

1 Q And of that possibility. In your opinion, is --  
2 that's not what was happening here, he was being  
3 up front and honest, correct?

4 A I thought so.

5 Q Let's see -- do you have a copy of the statement?

6 A Right.

7 Q I'd like to review just some of the contents of  
8 the statement and some of the ramifications of  
9 those -- of the statement.

10 First of all, and as you discussed with Ms.  
11 Weiss, Todd immediately admitted to -- in writing  
12 he admitted to being present at Prescott Manor,  
13 Apartment 7A, on December 1st, 2004, correct?

14 A That's correct.

15 Q He told you he had been living there recently  
16 with Sandrica Jacobs?

17 A Right, he said he used to live there.

18 Q And he told you about how they'd been engaged and  
19 a prior relationship?

20 A He said he used to be --- he was her fiancé, she  
21 was his fiancé, right.

22 Q And he told you how they had broken in -- in  
23 November, 2004?

24 A He said he moved out of the house November -- the  
25 beginning of November.

1 Q All right, and then he told you that about -- the  
2 story about Sandrica thought she was pregnant and  
3 how they had gotten back together for a short  
4 time before this incident?

5 A He said that she called him later -- she called  
6 later and said she was pregnant. And then he went  
7 on to say, we even went to my mom's house on  
8 Thanksgiving Day. But he didn't really elaborate  
9 on that and I didn't go into it with him.

10 Q So he also told you they all went to his mom's  
11 house for Thanksgiving?

12 A Right.

13 Q He told you that he had called Sandrica several  
14 times before coming over and never received an  
15 answer?

16 A Right.

17 Q You asked him if the door was open. And he -- he  
18 said, no. He admitted to budging it open, didn't  
19 he?

20 A Are you reading on the first page or -- tell me  
21 where you're reading at so I can follow along  
22 with you.

23 Q I'm sorry.

24 A If you don't mind.

25 Q You asked, did you force open the door ---

1 THE COURT: I assume that's the second page.

2 MR. SCHARDT: Oh, I'm sorry, Your Honor.

3 THE COURT: That's all right.

4 Q It's the first page ---

5 A The first page, did you force open the door to  
6 this apartment, is that what you're talking  
7 about?

8 Q Yes, sir.

9 A Right, I asked him that.

10 Q And he told you he budged it open with his  
11 shoulder?

12 A He said, it was probably locked, I budged it with  
13 my shoulder, it came open.

14 Q On that same page you asked him did he -- you  
15 didn't even ask him, he told you that he was  
16 drinking that night, correct?

17 A He said he was drunk.

18 Q Okay. He told you -- on the first page, you  
19 asked him what time of the day did you go there?  
20 He told you that, I think it was nighttime, it  
21 was dark, correct?

22 A Right.

23 Q Okay. So he admitted to you that the incident  
24 occurred at night. Now this is important to you  
25 as an investigator, correct?

1 A Right.

2 Q And without going into specifics, the fact that  
3 this occurred at nighttime can make a burglary  
4 second degree going to a case of burglary first  
5 degree, correct?

6 A That's one of the elements of a first degree  
7 burglary.

8 Q And a first degree is more serious?

9 A Exactly.

10 Q Okay. So him telling you it happened at night,  
11 it wasn't in his best interest, correct?

12 A No, it certainly wasn't.

13 Q Okay. Now, the admission that he gave in his  
14 statement that he was at the incident location,  
15 that wasn't in his best interest, was it?

16 A No, it wasn't.

17 Q Okay. The admission that he budged the door  
18 open, that it could have been locked, that wasn't  
19 in his best interest?

20 A No, it would not have been.

21 Q Okay. The fact that he was said he had been  
22 drinking that night, that wasn't in his best  
23 interest, was it?

24 A I don't know when he was drinking. I put in his  
25 statement what he said which was, I was drunk. I



1 didn't ask him, was you drunk from yesterday's  
2 liquor binge or were you drunk from an hour ago.  
3 He just said, I was drunk.

4 Q But he admitted to you that he was drunk at the  
5 time?

6 A Yes, drunk.

7 Q And you also asked him what happened when he  
8 kicked down the door -- excuse me, when he budged  
9 down the door -- budged the door open?

10 A Say that again?

11 Q You asked him about what happened after he budged  
12 the door open, right? After he got inside the  
13 house, what happened? It's on the first page.

14 A On the first page? Right, after you got inside  
15 the house, what happened?

16 Q And he told you Sandrica was standing inside the  
17 door and started screaming?

18 A Right.

19 Q She cursed me. I told her I came to get my  
20 stuff. She pushed me to keep me from coming in  
21 the house?

22 A Right.

23 Q Then on the second page, he told you he pushed  
24 her back and she fell on the couch, correct?

25 A That's right.

1 Q This -- this admission that he pushed Sandrica  
2 so hard she feel on the couch, that was not in  
3 his best interest, his legal best interest,  
4 whatever?

5 A Not at this time, it would not have been, no.

6 Q In fact, this lead to -- this was evidence that  
7 could be used against him in prosecution for  
8 criminal domestic violence, correct?

9 A Yes, sir.

10 Q The charge that Todd Sowell pled to, plead guilty  
11 to, correct?

12 A Yes, sir.

13 Q That he admitted to?

14 A I wasn't there. I -- that's what I understand,  
15 right.

16 Q And also, you asked him specifically ---

17 A Second page?

18 Q On page one. You asked him specifically, did you  
19 think anyone was in the house?

20 A Right.

21 Q And his answer was no, because I knocked and  
22 nobody would answer and I called and nobody would  
23 pick up?

24 A That's right.

25 MR. SCHARDT: I have no further questions.

1 THE COURT: All right. Anything on redirect?

2 MS. WEISS: Yes, Your Honor, just briefly.

3 REDIRECT EXAMINATION

4 BY MS. WEISS:

5 Q Investigator Reese, Mr. Schardt handed you  
6 several papers that said Investigative Report.

7 A Right.

8 Q To refresh your memory.

9 A Right.

10 Q I ask you to look at the one with the number --  
11 look at the number at the top of the one that  
12 says the case is administratively closed.

13 A Okay.

14 Q Do you see that? And then the follow up  
15 investigation to this case that we're talking  
16 about today, the top of that page, the number at  
17 the top of that page.

18 A Are you talking about the case numbers?

19 Q Yes.

20 A Right.

21 Q So the case we're talking about today was not  
22 administratively closed, was it?

23 A No, that's -- that's not the case that was  
24 administratively closed.

25 Q And the Defense attorney said when Todd Sowell

1 was giving you the statement, he didn't have an  
2 attorney with him. And, in fact, Todd Sowell  
3 didn't have an attorney, didn't tell you he had  
4 an attorney, did he?

5 A No, he didn't say he had an attorney.

6 Q You offered him the right to have an attorney?

7 A I advised him of that, correct.

8 Q And he never expressed any interest to have  
9 anybody there?

10 A No, once you -- you could be in the middle of a  
11 five hour interview and once the Defendant says,  
12 I want a lawyer, the law requires you to stop and  
13 that is definitely what I would have done. He  
14 never at any time requested an attorney.

15 Q Mr. Schardt went through several parts of the  
16 statement that were not in his interest. But in  
17 your opinion, as a law enforcement officer, are  
18 there things in this statement that were in Mr.  
19 Sowell's interest?

20 MR. SCHARDT: Objection, Your Honor.

21 THE COURT: Basis?

22 MR. SCHARDT: Speculation.

23 THE COURT: She's asking him specifically  
24 what's in the statement. You said there were certain  
25 things not in his best interest. She's saying there

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1 are certain things that could have been in his best  
2 interest. It's just the opposite of what you asked.

3 It's overruled. He may answer that question,  
4 ma'am.

5 A Yeah, there were some things in his statement  
6 that would have been in his best interest. You  
7 -- you can pretty much, you know, sugarcoat a  
8 statement and make yourself look better than what  
9 you are currently looking. Like I -- we get that  
10 all the time, you know.

11 Q Can you tell the jury some of the examples that  
12 you see, in your opinion of this statement, that  
13 were in his interest?

14 A Okay. Sometime a Defendant would be caught, you  
15 know, sort of dead to rights and there was just  
16 no other way out except to say, I did this or I  
17 did that, but make it look a little less severe  
18 than what it actually was.

19 One of the things that he said was -- well,  
20 first of all he said, I think it was nighttime,  
21 it was dark.

22 You know, it doesn't take a rocket scientist  
23 to know the difference between night and day and  
24 whether it was dark out there. He was trying to  
25 let me know that somebody must have told me it

1 was dark or somehow I know it was dark out.

2 Other -- that's why I asked that question.

3 Did you force your way into this apartment --  
4 into the door of this apartment. Said, it  
5 probably was locked. I budged it with my  
6 shoulder. It came open.

7 If a door is locked and you budge it with  
8 your shoulder, it's not going to come open just  
9 like that. You've got to use a significant  
10 amount of force. So that's definitely another  
11 way he tried to sugarcoat what he was actually --  
12 actually telling me.

13 Did you check to see if the door was locked?  
14 He said, no, I knocked on the door and nobody  
15 would answer.

16 I was drunk that night. And I don't really  
17 know whether he was drunk that night or not but  
18 it appears to me that he'd do that in -- in there  
19 to offer some sort of mitigating reasons on why  
20 he actually did what -- what he did. And that's  
21 what I picked up during the interview.

22 When he said, I knocked on the door -- and  
23 when I asked him about checking the door, he  
24 said, I knocked on the door and nobody would  
25 answer it.

1           It seems to me that commonsense, if you're  
2           going there, one of the first things to do when  
3           nobody would answer, is to keep from -- this was  
4           an apartment complex. And to keep from making so  
5           much noise where everybody else in the building  
6           would know what's going on, commonsense would  
7           tell you to check the doorknob first. So that's  
8           another way that he tried to -- in my opinion,  
9           tried to sugarcoat what actually happened there.

10          I can go on and on.

11 Q       Okay. And look at this -- I don't want you to go  
12       through every statement. But the part at the  
13       bottom of page one, top of page two, where he  
14       sort of went into an explanation?

15 A       Bottom of page one, after you got inside?

16 Q       Yes.

17 A       After you got inside, what happens? He said,  
18       Sandrica was standing inside the door and started  
19       screaming. She cursed me and I told her I came  
20       to get my stuff. She pushed me to keep me from  
21       coming into the house. I think he was already in  
22       the house around that -- by that time, after she  
23       was standing there, he entered the house. I got  
24       inside the living room and she kept pushing me,  
25       throwing her body weight on me.

1 I think what he's trying to do there is to  
2 make it appear as if she was the aggressor in  
3 this incident and she attacked him. He was  
4 rightfully there so he had to defend himself  
5 against her attacks.

6 But when we take a statement, it's the reason  
7 I gave him the opportunity to read over the  
8 statement once it was finished. I put down what  
9 he said to me and nothing else.

10 MS. WEISS: Thank you. No further questions,  
11 Your Honor.

12 THE COURT: Anything on recross.

13 MR. SCHARDT: One question, Your Honor.

14 THE COURT: All right.

15 RECROSS EXAMINATION

16 BY MR. SCHARDT:

17 Q Investigator Reese.

18 A Yes, sir.

19 Q Ms. Weiss just asked you about things that might  
20 have been self-serving. Did you pretty much just  
21 cover all the major parts of that statement that  
22 were self-serving? Is there any other glaring  
23 examples that you feel are self-serving in Mr.  
24 Sowell's statement?

25 A I could probably go on with some more.



1 Q Well, are there any glaring examples? I would  
2 ask that you review the statement and point out  
3 ---

4 THE COURT: This is for everybody, Mr.  
5 Schardt and Ms. Weiss, the statement speaks for  
6 itself.

7 MS. WEISS: Yes, Your Honor.

8 THE COURT: You've got to bear all that in  
9 mind..

10 MR. SCHARDT: Yes, sir.

11 THE COURT: It speaks for itself. All right,  
12 you may continue, sir.

13 Q Are there any other glaring examples that you  
14 would like to point that you feel...

15 A I wouldn't like to necessarily like to point them  
16 out but I'll point them out if that's what you're  
17 asking me to do. I -- explain what you mean by  
18 glaring. I don't have a problem with it.

19 Q Could you point out what -- in your opinion ---

20 A Yes, sir.

21 Q --- the most self-serving thing Mr. Sowell said  
22 in this statement?

23 A The most self-serving?

24 Q Yes, sir.

25 (Pause.)

1 A I don't necessarily find any one question and  
2 answer more significant than the other in terms  
3 of him trying to make himself look good. I think  
4 he tried to make himself look good on each one of  
5 the answers that he gave.

6 MR. SCHARDT: Thank you.

7 THE COURT: Anything further of this witness?

8 MS. WEISS: No, Your Honor.

9 THE COURT: You may step down, Officer.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Anything further from the State?

12 MS. WEISS: No, Your Honor.

13 THE COURT: All right. Well, members of the  
14 jury, we'll let Officer Reese get -- let him get down.  
15 Thank you, sir.

16 (The witness leaves the witness stand.)

17 THE COURT: That's all the evidence you shall  
18 hear today. Now we will resume this trial in the  
19 morning. And we may or may not hear from the Defense  
20 because they are not required to prove anything. You  
21 can't hold that against them if they don't present any  
22 evidence.

23 But in the meantime, please don't talk about  
24 this case. I hope -- well, I hope that you have a  
25 pleasant and restful evening. Anyway, y'all have a

1 pleasant and restful evening. Be back tomorrow  
2 morning at 9:30. Just don't talk about the case.

3 And I hope if you have acting lessons or  
4 something, you get there on time. Thank you all so  
5 very much.

6 JUROR: Do we report directly downstairs?

7 THE COURT: Ma'am?

8 JUROR: Do we report directly ---

9 THE COURT: No, no, no, y'all come back up  
10 here.

11 JUROR: Come back up here, okay.

12 THE COURT: Billy Hollis will show you how  
13 to get back up here and everything.

14 (The jury retires from the courtroom at  
15 approximately 4:56 P. M.)

16 THE COURT: Anything we need to take up this  
17 afternoon?

18 MR. O'NEIL: Your Honor, we would like to at  
19 this point renew our previous objections and motions,  
20 Your Honor.

21 THE COURT: Specifically, what are you  
22 talking about?

23 MR. O'NEIL: All previous -- specifically  
24 just our motion to dismiss for double jeopardy.

25 THE COURT: Denied. Go ahead, what's next.

1 MR. O'NEIL: We would move for a directed  
2 verdict at this time, Your Honor.

3 THE COURT: Denied. What's the next one?

4 MR. O'NEIL: That's all, Your Honor.

5 THE COURT: All right. Anything from the  
6 State -- I'm not being frivolous. When you -- and you  
7 should have been more specific, Mr. O'Neil. When you  
8 move for a directed verdict, it's got be for a lack of  
9 evidence on the record.

10 And the witnesses have testified -- Ms.  
11 Jacobs testified that this man broke into her house,  
12 all right. He gave a statement that he -- he gave a  
13 statement that he broke into the house.

14 So, it's an issue for the jury to decide,  
15 whether or not he's guilty of breaking into the house.

16 I mean, so, I'm not -- I'm not just being  
17 curt and said denied, but that's the reason because of  
18 the evidence in the case. The only way to resolve it  
19 is for a jury to decide and not a judge.

20 So there's evidence in the case for this  
21 matter to go to the jury. And that's the more  
22 specific reason. And I'm sure you understand that,  
23 but I'll put it on the record so it won't sound as  
24 though I'm picking on you.

25 Anything further, Mr. Schardt?

1 MR. SCHARDT: Again, I guess we'd like to  
2 renew our motion for a mistrial based on the  
3 statements ---

4 THE COURT: Well, you never really got to  
5 that basis. I think the witness said something about  
6 what -- what was that word, the other, maybe. Or what  
7 was the word? There was one word that was mentioned.  
8 You objected. I sustained it.

9 MR. SCHARDT: I think she said, the other  
10 break, and then I objected.

11 THE COURT: The other break, that's exactly  
12 what happened. The objection was sustained. And  
13 besides, if you make motions for a mistrial, it has to  
14 be contemporaneous with the matter that you're  
15 alleging caused the harm. But it's at that time is  
16 when you should have made the motion for the mistrial,  
17 when you objected, and not later on.

18 But in any event, I would not have granted  
19 the motion.

20 All right, anything further?

21 MS. WEISS: No, Your Honor. If the Defendant  
22 can take the stand or if we're going to do that in the  
23 morning, the advice ---

24 THE COURT: I don't know.

25 MS. WEISS: Okay.

1 THE COURT: It's up to them. I'm sure they  
2 want to talk to the client. I'm not going to make him  
3 decide right now.

4 MS. WEISS: Okay.

5 THE COURT: So talk to your client overnight,  
6 decide whether or not he wants to take the stand.  
7 I've got to ask the questions, does he understand what  
8 he's doing, so, that's all.

9 Anything else?

10 MS. WEISS: No, sir, Your Honor.

11 THE COURT: All right. So you've rested.  
12 I'm going to give you a chance to think overnight if  
13 there's any additional motions you want to make, okay,  
14 or any additional grounds.. You can renew them in the  
15 morning.

16 Is that fair enough?

17 MR. SCHARDT: Yes, sir.

18 THE COURT: All right. See ya'll at 9:30 in  
19 the morning.

20 MR. SCHARDT: Thank you.

21 (WHEREUPON, the court was in recess.)

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23 THE COURT: Are you going to present a case  
24 or not?

25 MR. SCHARDT: No, Your Honor.

1 THE COURT: I didn't think so.

2 MR. SCHARDT: Your Honor, if I could just  
3 talk to my client one more time?

4 THE COURT: Listen, take your time. You can  
5 talk to him as long as you want. I didn't think you'd  
6 put up any evidence but that's your -- you know, I've  
7 been around a little bit, Mr. Schardt.

8 So I'm going to give you as long as you need  
9 to talk to your client. We'll have a charge  
10 conference. I'll explain to the jury we have all of  
11 these legal matters to take up which will take us 30  
12 minutes or so.

13 (Pause.)

14 MS. WEISS: I just want to put this on the  
15 record. Our victim had to go to the emergency room  
16 last night. She will not be able to make it to court  
17 today. I know she doesn't have to be here but I  
18 wanted to let the court know. I don't know if there's  
19 any way to give an instruction that she was unable to  
20 attend.

21 THE COURT: It's possible. Since it's your  
22 problem, why don't you suggest a solution.

23 MS. WEISS: I would just ask that possibly,  
24 you know, if you could just instruct the jury that she  
25 was unable to attend, don't get into why, just that

1 she was unable to attend today.

2 THE COURT: How about that, Mr. Schardt?  
3 What's your position on this?

4 MR. SCHARDT: That would be fine, Your Honor.

5 THE COURT: All right. See that was so easy,  
6 wasn't it.

7 MS. WEISS: Thank you, Your Honor.

8 THE COURT: Even Mr. Schardt agreed.  
9 Something came up, she's not able to be here. She's  
10 -- I'm say something. People understand these things,  
11 they really do.

12 So we're waiting on your client and you need  
13 to talk to him. We're going to have a charge  
14 conference. It shouldn't take that long.

15 Do you have any -- your request for charge  
16 now? I can be looking at them beforehand.

17 MR. SCHARDT: Your Honor, we don't have any  
18 printed out at this ---

19 THE COURT: Well, this -- are you going to  
20 have some or you don't have them yet?

21 MR. SCHARDT: Yes, Your Honor.

22 THE COURT: You remind of -- who is that guy  
23 from -- the other day I asked a guy who he was and he  
24 told them where he was from, Ms. Lafay's (phonetic)  
25 husband.



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1           So do you need to print them out?

2           MR. SCHARDT: That would be up to you, Your  
3 Honor. We would just ask ---

4           THE COURT: Well, you want to later on, you  
5 want to do it now?

6           MR. SCHARDT: Do you want us to go do it now?

7           THE COURT: Yeah, sure. What else are we  
8 doing?

9           Do you have any?

10          MS. WEISS: Well, we were just going to see  
11 what your typical charge is ---

12          THE COURT: That's fine.

13          MS. WEISS: --- any additional.

14          THE COURT: I'm sure y'all will have some  
15 anyway. But whatever you have, we'll have a charge  
16 conference. If you don't have some, I'm going to let  
17 you go get it.

18          MR. SCHARDT: Okay.

19          THE COURT: But if you've got them now, go  
20 get them. I mean, it's kind of vanilla. I don't see  
21 anything particularly -- one thing I was thinking  
22 about, do you want me to charge voluntary  
23 intoxication, for example?

24          MS. WEISS: Yes, Your Honor, that is not a  
25 defense.

1 THE COURT: I mean, you know, I don't know  
2 what your position is but it's in evidence that he was  
3 drunk. I think I probably need to. And there's a  
4 couple of other notes I made.

5 What else did I say? How about -- well we've  
6 got the Defendant's right not to testify. Do you want  
7 me to charge on confessions, Mr. Schardt, or what?

8 I'll give you chance to think about it but  
9 I'm just telling you just some of the things that came  
10 up. And, of course, a witness who has a prior record.  
11 I probably need to mention that too.

12 But I'm going to go over all these things  
13 with you. If you have some special ones, I'll be  
14 happy to consider it but I think I've got generic  
15 charges for most of these issues.

16 MS. WEISS: As far as the dwelling house  
17 without consent, what are charges -- what are your  
18 charges ---

19 THE COURT: I read the elements of the  
20 offense burglary. You break into somebody's house,  
21 somebody's got to be living there, it's at nighttime,  
22 without consent, with the intent to commit a crime  
23 therein. I don't think that's changed in the last 200  
24 years.

25 MS. WEISS: No, sir, Your Honor.

1 THE COURT: Are you talking about something  
2 specific?

3 MS. WEISS: I was just looking for -- if you  
4 had any clarification as to who lived there. Because,  
5 you know, the charge postulated to that the legal  
6 occupant does not consent to somebody else coming in.

7 THE COURT: You're confusing me. But if you  
8 have a charge -- and listen.

9 MS. WEISS: Yes, sir.

10 THE COURT: The evidence reveals that this  
11 lady lived there.

12 MS. WEISS: Yes, sir, Your Honor.

13 THE COURT: Okay. I -- even his confession  
14 said she lives there.

15 MS. WEISS: Yes, sir.

16 THE COURT: What problem are you raising?  
17 She lived there. She lived there all the time. He  
18 lived there for a while. He moved out. He moved back  
19 in. He moved out.

20 MS. WEISS: Okay.

21 THE COURT: What else do you want?

22 MS. WEISS: That's all, thank you.

23 THE COURT: All right. Anything else y'all  
24 want to make me happy about this morning before we get  
25 started?

1           Take your time but go get your charges, Mr.  
2 Schardt. Y'all all relax. If you have any charges,  
3 I'm going to consider them, I'm going to give them.  
4 But I'm going to explain to the jury it's going to  
5 take a while.

6           MS. WEISS: Thank you.

7           THE COURT: All right. They're getting  
8 anxious, I mean, you know. They're not as thrilled  
9 about all this as we are.

10           What I mean is, you know, I'm going to let  
11 you take your time. I'm going to go talk to them and  
12 explain it's going to be a little while.

13           Go ahead, Mr. Schardt, get out of here.

14           (WHEREUPON, the court was in recess.)

15           THE COURT: Any additional motions that I  
16 need to hear at this time? Anything from the Defense?

17           MR. SCHARDT: Nothing else, Your Honor.

18           THE COURT: You sure about that?

19           MR. SCHARDT: Yes, Your Honor.

20           THE COURT: All right. Anything from the  
21 State?

22           MS. WEISS: No, Your Honor.

23           THE COURT: Very well.

24           BAILIFF: May I approach the bench, Your  
25 Honor?

1 THE COURT: Yes, sir.

2 (Pause.)

3 THE COURT: One of our jurors had to go down  
4 to his car to get his cell phone. He had scheduled a  
5 luncheon meeting and the number's on his cell phone in  
6 his case. So we're waiting on him.

7 (Pause.)

8 THE COURT: Another thing. The jurors told  
9 me to tell both sides, y'all are not talking loud  
10 enough, that they were having trouble hearing you, as  
11 I have throughout the course of this trial. So,  
12 that's what they told me and that's heads up for you.

13 So when you're arguing, you need to talk up a  
14 little bit. I mean, they weren't upset or anything.  
15 They just -- they had a hard time hearing both sides.

16 All right. So my point to you now is talk so  
17 I can hear you.

18 MR. SCHARDT: Yes, Your Honor.

19 THE COURT: All right.

20 MR. SCHARDT: I don't believe that Mr. Sowell  
21 has been advised of his rights ---

22 THE COURT: He has not been. Mr. Sowell.

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Stand up, sir. Raise you right  
25 hand.

1           (The Defendant, Todd Sowell, was duly  
2           sworn.)

3           THE COURT: All right. Put your hand down,  
4           Mr. Sowell.

5           Now, Mr. Sowell, you have a constitutional  
6           right to take the stand or not take the stand. This  
7           is your right.

8           Now, I'm sure you have consulted with Mr.  
9           Schardt and Mr. O'Neil about -- about testifying.

10          Now, is it your decision not to testify in  
11          this case?

12          THE DEFENDANT: Based upon the legal advice  
13          of these two gentlemen, it is my decision not to  
14          testify.

15          THE COURT: All right. And you're making  
16          this decision on advice of your counsel?

17          THE DEFENDANT: Very good advice.

18          THE COURT: And the facts are such that, you  
19          know -- you know the testimony that's been heard. If  
20          you were to testify then the State would be able to go  
21          into your prior record and all this things -- all  
22          these things. That would be brought before the jury.  
23          I don't know whether you have a prior record. I think  
24          you do.

25          But if you were to testify, they could use

1 your prior record to impeach you and all that. The  
2 jury would have to consider not only this charge but  
3 what you were previously convicted of that would be  
4 admissible. And I'm not sure what they are but I'm  
5 sure Mr. Schardt and Mr. O'Neil have gone over those  
6 with you.

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: You understand that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: So it is, right now, your desire  
11 not to testify based on your understanding of what's  
12 happened and that advice of your lawyers?

13 THE DEFENDANT: That is correct.

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

15 THE DEFENDANT: Thank you.

16 THE COURT: Now you want me to make any  
17 further inquiries along this line, the State?

18 MS. WEISS: No, Your Honor.

19 MR. SCHARDT: No, Your Honor.

20 THE COURT: All right. And we're still  
21 waiting on Mr. Epps, right?

22 BAILIFF: Right.

23 THE COURT: So how long y'all going to  
24 argue?

25 MS. WEISS: I don't know, till we're done?

1 THE COURT: Give me a hint, give me an idea.

2 MS. WEISS: I don't think I'd take -- it  
3 wouldn't take longer than 30 minutes.

4 THE COURT: Beg your pardon?

5 MS. WEISS: I don't think it would be longer  
6 than 30 minutes.

7 THE COURT: All right. If you get at 30  
8 minutes, I'm going to tell you it's 30 minutes.

9 Mr. Schardt, how long do you want to argue?

10 MR. SCHARDT: Your Honor, I don't believe I'm  
11 running past 20 minutes.

12 THE COURT: All right. So I give you kind of  
13 roughly 30 minutes. Look, that probably should be  
14 long enough.

15 MS. WEISS: Yes, sir.

16 THE COURT: If you go beyond 30 minutes,  
17 then, you know, I'll hold my breath for a little while  
18 and then say, okay, it's 35 minutes. But I'll let you  
19 finish whatever you've started. I'm not going to say,  
20 sit down, or anything like that.

21 MS. WEISS: Thank you.

22 THE COURT: Let's see, there was one other  
23 thing I thought I needed to mention. Oh, yeah, the  
24 order of the arguments. They get the last argument,  
25 no evidence.



1           Now do you want to open on the law, then  
2 argue? How y'all want to do this?

3           MS. WEISS: No, Your Honor, I'll just do one  
4 closing.

5           THE COURT: Okay, is that good enough for  
6 everybody?

7           MR. SCHARDT: Yes, Your Honor.

8           THE COURT: All right. Very well. I think  
9 that covers everything I can think of, but I'm not  
10 sure.

11           (Pause.)

12           BAILIFF: The jury's ready, Your Honor.

13           THE COURT: Yes, sir. Yes, sir.

14           (The jury returned to the courtroom at  
15 approximately 11:03 A.M.)

16           BAILIFF: The jury's all present, Your Honor.

17           THE COURT: Welcome back and good morning,  
18 once again, Madam Forelady and members of the jury.

19           A couple of things I need to tell you before  
20 we get started. First of all, Mr. Sowell, the  
21 Defendant, will not present any evidence in this case.  
22 And that's one reason why it took a little while to  
23 get started this morning.

24           Now, he's not required to prove his innocence  
25 by any means. And I'll talk to you a little bit more

1 about that, that is his not taking the stand, in a  
2 little bit and the lawyers will, at least Mr. Schardt,  
3 I think, will mention that in some way.

4           What else do I need to tell you? Once again,  
5 the State has the burden of proof. What the lawyers  
6 say are arguments and not evidence. The evidence  
7 obviously came from this witness stand and whatever  
8 exhibits have been introduced into evidence.

9           Under our system, since the State has the  
10 burden of proof, typically we would hear from the  
11 State, they would have an opportunity to reply to Mr.  
12 Schardt's argument. But when a Defendant doesn't  
13 offer any evidence, he gets the last argument.

14           So we'll first have to first hear from Ms.  
15 Weiss, followed by Mr. Schardt. And once we've heard  
16 the arguments, I will tell you the law that applies in  
17 this case. And a lot of the things they may argue  
18 about, I will tell you the law that applies to some of  
19 the arguments they make. That's sort of the way we've  
20 always done it and we won't change it here.

21           So with all that in mind, members of the  
22 jury, I would invite your keen and close attention to  
23 the final arguments on behalf of the State, from Ms.  
24 Weiss, and on behalf of Mr. Sowell, from Mr. Schardt.

25           Ms. Weiss.

1 MS. WEISS: Thank you, Your Honor, may it  
2 please the court.

3 THE COURT: Yes, ma'am.

4 CLOSING ARGUMENT ON BEHALF OF THE STATE

5 BY MS. WEISS:

6 December 1st, 2004, Sandrica Jacobs was a  
7 target. She was targeted by Todd Sowell, her ex-  
8 boyfriend. He targeted her fears. He targeted her  
9 weaknesses. He called, he threatened her, threatened  
10 her home. And then came over, forced his way through  
11 a locked closed door and attacked Sandrica Jacobs.  
12 And for that, Todd Sowell is guilty of burglary in the  
13 first degree.

14 Good morning. My name is Heather Weiss and I  
15 along with Bob Maldonado represent the State. And  
16 it's our honor to represent the State but it's also  
17 our duty to prove to you, beyond a reasonable doubt,  
18 that Todd Sowell is guilty of burglary.

19 As the Judge just instructed you, this will  
20 be my final statement, this will be the final time you  
21 hear from the State. So the first thing I want to do  
22 is thank you for service, thank every one of you for  
23 being here, for sitting through the trial. You were  
24 very attentive yesterday, you've listened. This is a  
25 very important case to both the State and to Mr.

1 Sowell and I appreciate your time. I'm sure there's  
2 somewhere else that you could be or would rather be.  
3 So I thank you for your attention.

4 I also thank you for being here because  
5 without you, the system wouldn't work. We ask you to  
6 bring in your life experiences, to bring in your  
7 commonsense, to bring in what you know, to judge these  
8 cases. That is the way our system works. And that's  
9 all we're asking of you.

10 At the end of the case, the end of this day,  
11 the end of these closings, when you go back in the  
12 room to deliberate, I ask you to use your commonsense,  
13 use what you know and what you've observed, and decide  
14 your verdict based on that.

15 The case we're here for today is a burglary  
16 first degree. The board Mr. Maldonado showed you at  
17 the beginning of this case, burglary first degree, one  
18 charge, and it's a fairly simply charge.

19 It's the State's duty and burden to prove to  
20 you beyond a reasonable doubt that the Defendant  
21 entered a home, dwelling, apartment, without consent,  
22 with the intent to commit a crime and either entered  
23 during the hours of darkness and caused physical  
24 injury to any person not a participant in the crime.  
25 That is what we have to prove today. That is what

1 we've been trying to prove to you over the last day,  
2 these elements. There are no other cases that you  
3 need to consider other than this one right here.

4 And I submit to you, the evidence that we  
5 have presented proves each and every one of these  
6 elements.

7 Sandrica Jacobs finally had her chance to  
8 tell her story, to tell you what happened to her in  
9 2004. Sandrica came into this courtroom and took the  
10 stand.

11 Now the Judge is going to instruct you of  
12 this, the only evidence that you can consider in this  
13 case, the evidence you've gotten from the people who  
14 have taken this stand, sworn under oath to tell you  
15 the truth, and the evidence that is given to you back  
16 in the jury room. That's it. Nothing I say, nothing  
17 Mr. Schardt says, can be considered as evidence.

18 Sandrica Jacobs had the chance to come up  
19 here and sit before you and tell you what happened in  
20 2004. It's been two years, over two years, since this  
21 crime occurred. That is not Ms. Jacobs' fault and I  
22 ask you not to fault her for that if you're going  
23 fault anyone. But please don't fault Sandrica Jacobs.

24 She came in two years later. She was  
25 nervous. She's sick and this is the first time that

1 she had to look at Todd Sowell and remember what  
2 happened to her back in 2004.

3           So when you take that into consideration, I  
4 ask you to judge her on her credibility, judge the  
5 facts as she presented them. You're the sole triers  
6 of the facts and that includes the credibility of the  
7 witnesses.

8           When Sandrica talked to you about 2004, she  
9 didn't talk to you about every detail like it was  
10 yesterday. She said this was 2004, she gave you round  
11 about times, the seven months that she and Todd Sowell  
12 were together.

13           She -- Mr. Schardt had to pinpoint her, get  
14 her to speak of dates, and she said, you know, that  
15 week, right around Thanksgiving, that was clear to me  
16 because that was a traumatic time in my life. And  
17 then she was able to recount those.

18           But prior to that, she said, the end of -- I  
19 believe that was the end of October, that happened in  
20 September, she was giving you round about times. Use  
21 that to judge her credibility. She wasn't trying to  
22 feed you something that she thought you wanted to  
23 hear. She was answering the questions as best she  
24 could from over two years ago, telling you the truth  
25 as to what happened.

1           Mr. Schardt put up his calendar and tried to  
2 pinpoint her down the dates. When it got to the week  
3 of Thanksgiving, that's when she told you, that's what  
4 she remembered clearly.

5           Mr. Schardt asked lots of questions about the  
6 year leading up to that, but very few about that week.  
7 Sandrica Jacobs said she was very clear about that  
8 week because that was a very hard time for her.

9           She went to Todd Sowell's house, where his  
10 mother was, on Thanksgiving, with her son. She came  
11 back to her mother's house and then she had a sickle  
12 cell attack where she had to go into the hospital.  
13 She went into the hospital and was there through  
14 Sunday where she also had a miscarriage.

15           And that Sunday, with so much going on in her  
16 life, she told you, it was probably her, but she  
17 didn't want a relationship then. That was her right.  
18 She had a home, a son, a place to live and she didn't  
19 want the relationship. They had broken up just a few  
20 weeks before. She was trying to work on it but she  
21 realized, this is not the right time.

22           And she told you she came home on Sunday. He  
23 brought her home because she doesn't have a car. And  
24 he knows that. He brought her home and she said, I  
25 don't want this, I need for you to move out. She

1 broke off the relationship on Sunday and she told you  
2 that.

3 She took back his key, which he gave back  
4 reluctantly. And she told him to take his things,  
5 which she said he took some of his things and he left.  
6 He left on Sunday.

7 On Monday, she gathered up the rest of his  
8 things, put them outside. Her brother came over  
9 because she said, she testified to you, that he had no  
10 reason to come back inside her place. She took all of  
11 his things, which she said he didn't have too much.

12 But she took all the things he had, put them  
13 on the porch and had her brother come over to protect  
14 her, protect her home, so that he could come over and  
15 get his stuff. So he had all of his stuff. As of  
16 Monday, he had all of his stuff.

17 Then on Wednesday, she went to pick her son  
18 up from school. She remembers that. In fact, it was  
19 a weekday, it was a Wednesday. She went to pick up  
20 her son from school and brought him home.

21 And then she noticed that Todd Sowell was  
22 hanging around outside her apartment. And she told  
23 him then, you need to go, you need to go. This is  
24 over. Don't come back up here. Go. Said he was  
25 talking to some people and that he wouldn't leave



1 right away. But he left. Eventually he left.

2 But that's when the phone calls started.

3 That's when the phone started ringing over and over.

4 You think you're safe in there? You think your home

5 is safe? I can get in there. I can get in there. I

6 don't care about the cops. I'm not afraid of the

7 cops. You think you're safe. Over and over, time

8 after time after time, he called to the point that she

9 finally called the police and said, he keeps calling.

10 He says he's going to come over.

11 They came. She was scared. They came.

12 They looked around and said, we don't see him anywhere

13 around but if he calls again, please call us. We're

14 in the area and we'll come back. Call us. They left

15 but he kept calling.

16 Every few minutes he called. She had no car.

17 He knew that. This was her home. This had been her

18 home for a year and a half. This was her home.

19 She put her son to bed about 10:00 at night.

20 Put her son to bed and she tried to go to sleep. She

21 tried to lay in her own bed but knew that was too far

22 back in the apartment. She was still afraid.

23 The phone was still ringing. She cut off the

24 ringer. She cut off the ringer so she would stop

25 hearing the phone ring. Yes she went to sleep in the

1 chair holding the cordless phone. Just like the  
2 officer said, if you see him, you call us. We're in  
3 the area. She held the phone.

4 Then she fell asleep. So we're already  
5 talking well after 10:00 at night, in the dark,  
6 nighttime. She was awakened by bright lights coming  
7 through her window. Those bright lights woke her up.

8 She went to the window, carrying that phone.  
9 As she got to the window to see what that car -- what  
10 was going on, what car was out there, all of a sudden,  
11 bam, bam, bam, knocking on the door. Let me in. You  
12 can't keep me out of there. You've got to let me in.  
13 I'll get in if you don't let me in.

14 She immediately dialed 911. She told you  
15 that. Before she could get the numbers dialed, or she  
16 thought before she had even -- before she could speak  
17 to anybody, boom, the door was open and Todd Sowell  
18 was on top of her. He was on top of her, beating her.

19 She said she tried to hit him. She was  
20 screaming. She was scared for herself, for her son.  
21 Her neighbor heard the screaming. Yelled, what's  
22 going on in there? And then Todd Sowell's up and out  
23 the door.

24 She called 911 again immediately. They said,  
25 they're already on the way. So they had already

1 gotten that first call. They were on the way.  
2 Officer Jenkins was on the way to that first call,  
3 they had gotten the 911 call. They heard it was an  
4 assault, that's what they put it out as, testified.  
5 They were on their way. Officer Jenkins came to her  
6 address.

7           And it wasn't until everything calmed down,  
8 until her mother came to watch after her son, take  
9 care of her son, that she realized she was hurting,  
10 her chest was hurting. And her mother said, I've got  
11 your son. She went to the hospital. And that's where  
12 she remained for at least a week.

13           Ladies and gentlemen, I submit to you at this  
14 point, Officer Jenkins could -- had the evidence to  
15 charge Todd Sowell with burglary in the first degree.  
16 But that was not his job to do.

17           Now, you heard evidence from the two people  
18 who were there. You've heard from Sandrica Jacobs and  
19 you've heard from Todd Sowell. When Sandrica Jacobs  
20 took that stand, she opened herself for you to hear  
21 about her prior record. And you heard that 10 years  
22 ago she paid a fine for a fraudulent check. That has  
23 nothing to do with this case today. She was willing  
24 to deal with that as she was reluctant to tell you  
25 about the sickle cell anemia that she suffers from.

1 She took the stand because she wanted to tell you what  
2 happened.

3       You heard from the two law enforcement  
4 officers that responded in this case. First was  
5 Officer Jenkins. Officer Jenkins came out to the  
6 scene, responded to that call, the call, the assault  
7 call that she made.

8       He got on scene. Ladies and gentlemen,  
9 Officer Jenkins works for the Bureau of Protective  
10 Services. He's no longer with the City of Columbia,  
11 which he was at the time.

12       He came to the scene and he took a report.  
13 He checked some wrong boxes, he wrote some odd things.  
14 Two weeks, two days, regardless, he wasn't living  
15 there. He wrote some things in the report. I don't  
16 condone that. I'm not saying that's okay. Please,  
17 but don't blame Sandrica Jacobs for that. Blame  
18 Officer Jenkins, blame me, blame the State, but don't  
19 blame Sandrica. She didn't write that report,  
20 Officer Jenkins did.

21       But what he got right with that on December  
22 1st, 2004, at 11:30 at night, clearly at night, that  
23 Sandrica Jacobs was a victim and that Todd Sowell, who  
24 did not live there, was an ex-boyfriend, came over,  
25 forced his way through the door, which he noted, a

1 forced entry, and assaulted Sandrica Jacobs, slapped  
2 her in her face, beat her in her chest. He didn't put  
3 very many details in that report. But he said he did  
4 put in the report that Todd Sowell attacked Sandrica  
5 Jacobs. The best thing he did was he forwarded that  
6 report on to investigations.

7           That report then went to Investigator Kevin  
8 Reese. Investigator Reese at the time, as he told  
9 you, was a property crimes investigator. He was  
10 trained to investigate burglaries, crimes against  
11 property. And that's exactly what he did. He took  
12 -- he took the incident report, as reported by  
13 Sandrica Jacobs, as written by Officer Jenkins but  
14 reported by Sandrica, and got the information, the key  
15 information that he needed, to realize, this was  
16 probably a burglary.

17           But before he did anything with warrants, he  
18 wanted to talk to the parties involved. He attempted  
19 to contact Sandrica Jacobs. As you heard, Ms. Jacobs  
20 was in the hospital. As Investigator Reese told you,  
21 he waits till people get out of the hospital. That's  
22 his personal policy, whether you agree with it or not.  
23 That's his personal policy. That's what he does.

24           He did not go to the hospital. Before he was  
25 able to talk with Sandrica Jacobs, he found out where

1 Todd Sowell was and he had the opportunity to talk to  
2 Todd Sowell. And he had the opportunity to talk to  
3 Todd Sowell. There are two sides to every story. He  
4 wanted to get both sides.

5 So he had Todd Sowell brought to his office  
6 at which time he talked to Todd. Todd came in and  
7 said to him, I feel really bad about this. I want to  
8 talk. He teared up, he said, you know, I want this  
9 over with. I want to tell you what happened. He was  
10 read his rights.

11 It's up to you to decide if he understood  
12 those rights. You're the judge -- you're the judges  
13 of the facts. You'll have those rights back when  
14 you're in the deliberation room. You can look at  
15 them. Todd Sowell signed those rights. He  
16 understood. He had the right to an attorney. It was  
17 very clear. He had the right to remain silent but he  
18 said, I want to tell you what happened. And in fact,  
19 that's just what he did.

20 Investigator Reese only knew what had been  
21 told to him or what he had read on the report. So he  
22 asked the basic questions: Did you go to 1601  
23 Prescott Manor in Columbia? Answer: Yes.

24 General question: What time of day did you  
25 go there? I think it was nighttime. It was dark.

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1 Did you force open the door? It probably was  
2 locked. I budged it with my shoulder and it came  
3 open.

4 Did you check to see if the door was locked?  
5 No, I knocked on the door and nobody would answer. I  
6 was drunk that night.

7 That's no excuse, ladies and gentlemen.  
8 Voluntary intoxication, that you'll be charged by the  
9 Judge, is no excuse to any crime.

10 He got drunk, he came over and knocked on the  
11 door. He called and nobody would answer. He called  
12 and called and called, nobody would answer because by  
13 that time the ringer was turned off.

14 And then he budged the door and it came open.  
15 He knocked. And then he also said, I'm getting in  
16 there if you don't let me in. And then he kicked open  
17 that door.

18 But he told Investigator Reese, his words,  
19 it was probably locked, I budged it with my shoulder,  
20 it came open. I was drunk.

21 Did you think anyone was in the house? No,  
22 because I knocked and nobody would answer and I had  
23 called and nobody would pick up. Maybe nobody wanted  
24 you there. It was 11:30 at night, he was drunk.

25 And what did he do when he knocked and he

1 called and nobody would answer, nobody would pick up?

2 He budged the door open and forced it open.

3       Then he said after he got inside, what  
4 happened? She was standing in the door and started  
5 screaming. Even at that point, he didn't turn and  
6 leave. He said, she cursed me. I told her, I came to  
7 get my stuff. 11:30 at night, drunk with a five year  
8 old in the house asleep, and he came to get his stuff?  
9 That's what he told Investigator Reese. That came in,  
10 he came to get his stuff.

11       But when he came to get his stuff at 11:30,  
12 drunk with a five year old asleep in the house,  
13 banging on the door, forcing it open, he was cursed  
14 and she was screaming.

15       But still he didn't turn around and leave.  
16 No, he tried to come in. So she pushed him, trying to  
17 keep him from coming in. She feared for her son. And  
18 you will see, Todd Sowell signed that.

19       When he got in, she kept pushing, throwing  
20 all of her body weight. You saw Sandrica Jacobs. You  
21 know the condition Sandrica Jacobs is in. Yet she was  
22 trying to force him out of there, trying to be strong,  
23 trying to protect her son.

24       So he pushed her back and she fell on the  
25 couch. Ladies and gentlemen, Todd Sowell pled guilty



1 to criminal domestic violence for that push. She was  
2 yelling like crazy, so I just left. I went back to  
3 the hotel I was staying in on Sunset.

4 Have you ever lived at the residence? Yes.  
5 How long did you -- she was my fiancé. I lived there  
6 three months. I paid the grocery bill and the light  
7 bill one time. This was Sandrica's home.

8 Did she ask you to move out? Yes. He gave  
9 the information about moving to Charlotte. Sandrica  
10 told you about all of that, all of that up to that  
11 Sunday when he -- she took his key and told him to  
12 leave.

13 Ladies and gentlemen, I'm going to ask you  
14 now to focus. Don't let the Defense confuse you.  
15 Kevin Reese took that statement. From that statement,  
16 from the information he had from the report, he knew,  
17 he was trained as a burglary investigator, that Todd  
18 Sowell was guilty of burglary first. And he  
19 immediately, without wasting time, went and got a  
20 warrant to that effect, burglary first. And that is  
21 the only case we're here for today. Not harassing  
22 phone calls, nothing else, just burglary first. Kevin  
23 Reese had the evidence for burglary first.

24 Let's go through those elements one more  
25 time. The first element is to enter a dwelling

1 without consent. According to Todd Sowell, it was  
2 probably locked, I budged it with my shoulder and it  
3 came open. And she pushed me to keep me from coming  
4 in. Sandrica said she took the key and gave him his  
5 things. He didn't have consent to come in. It was  
6 11:30 at night, he was drunk and he was coming to get  
7 his things? He had his things and he entered and  
8 forced open the door without consent.

9 With intent to commit a crime therein, with  
10 intent to commit a crime. He called. He told her  
11 what he was going to do. I'm coming over. You're not  
12 safe. I can get in. I'll show you. I'm not afraid  
13 of the cops. He threatened, goes to intent.

14 Then what did he do? He came over. She  
15 wasn't safe and he kicked the door open. He  
16 physically assaulted her. And, ladies and gentlemen,  
17 he pled guilty to criminal domestic violence for  
18 assaulting this household member, assaulting someone  
19 he had lived with. He pled guilty to assaulting her.  
20 He threatened her and then he did it and he's already  
21 pled guilty to doing it.

22 Cause physical injury to any person who is  
23 not a participant in the crime. And, ladies and  
24 gentlemen, you saw the report. Its says, and either.  
25 The State has to prove one of several different

1 options. The Judge will probably go through all of  
2 those. There's two that we mentioned in our  
3 indictment and we only have to prove one of these.

4 One, caused physical injury to persons not --  
5 who is not a participant. He pled guilty to criminal  
6 domestic violence for physically assaulting Sandrica.  
7 And on top of that, she was hospitalized for a week.  
8 And take your victims as you find them. He knew her  
9 weaknesses. He knew about the sickle cell. Yet he  
10 came in, he beat her, he assaulted her and she was in  
11 the hospital for over a week.

12 Finally, this part's almost simple. The  
13 injury has to occur at nighttime. Todd Sowell said, I  
14 think it was nighttime, it was dark. Todd Sowell knew  
15 it was nighttime.

16 A five year old asleep in bed. You heard  
17 from Sandrica. He was five and he was asleep.  
18 Sandrica was asleep.

19 He was drunk. He was beating on the door.  
20 Law enforcement responded. I don't have an exact  
21 time, around 11:30 P.M. It was dark. It was  
22 nighttime.

23 Ladies and gentlemen, there are two sides to  
24 every story. In this case, you've heard both sides.  
25 The State submits to you that Todd Sowell broke into

1 Sandrica Jacobs' home, targeting her, knowing her  
2 fears and knowing her weaknesses. But when you take  
3 both sides of the story, the words from Todd Sowell  
4 and the words from Sandrica Jacobs, Todd Sowell is  
5 guilty of burglary in the first degree

6 Thank you.

7 THE COURT: Are you ready to proceed, Mr.  
8 Schardt?

9 MR. SCHARDT: Yes, Your Honor.

10 THE COURT: Yes, sir, go ahead.

11 MR. SCHARDT: Thank you, Your Honor, may it  
12 please the court.

13 THE COURT: Yes, sir.

14 CLOSING ARGUMENT ON BEHALF OF THE DEFENSE

15 BY MR. SCHARDT:

16 When Todd Sowell walked through that door, he  
17 did not intend to harm anyone.

18 My name is Maxwell Schardt. I am Todd  
19 Sowell's attorney.

20 We've heard a lot of facts here today and  
21 yesterday about what happened. I do not intend to  
22 waste your time as jurors. We will not call -- we  
23 will not allege that this is a police conspiracy. We  
24 will not allege that Sandrica Jacobs is a liar. We  
25 will not say that people have it out for Todd Sowell.

1 We will not say Sandrica Jacobs started a fight. I'm  
2 not going to waste your time.

3           Todd Sowell messed up. He did a bad thing.  
4 These facts that are coming out, almost unanimously,  
5 almost all the facts, the Defense agrees with what  
6 happened. And I'm not going to waste your time  
7 arguing, calling people liars, saying it's all made  
8 up.

9           But I will at the same time ask you, the  
10 jurors, to review the law with me. At some point we  
11 will review the law. And it will show right there,  
12 based on these facts that we agree to, that Todd  
13 Sowell is guilty of criminal domestic violent, the  
14 charge he pled to. He's not guilty of burglary in the  
15 first degree.

16           There are many facts that have come out over  
17 the past two days, yesterday in testimony. And let's  
18 just review some of these facts that we know, that we  
19 can agree on.

20           Sandrica Jacobs lived at Prescott Manor.  
21 This was her place. Sandrica testified to that, Todd  
22 said in his statement, it's true. Sandrica and Todd  
23 had a relationship for about six months, they were  
24 engaged. It's true.

25           Reality, I think it becomes pretty clear

1 through Sandrica's testimony, through Todd's  
2 statement, Sandrica may not have loved Todd as much as  
3 Todd loved Sandrica. She may not have loved Todd at  
4 all. And that's not a knock on Sandrica. That's a  
5 knock on Todd. He may have been taking this  
6 relationship to quickly. He loved her too much.

7           They lived together for a couple of months.  
8 They broke up in October, 2004. And let me stop right  
9 there and say one thing about, you know, what the  
10 Solicitor just said about me trying to trick Sandrica.  
11 The goal isn't to trick Sandrica. The goal is to get  
12 an accurate description. That's what this calendar  
13 was all about. It wasn't to pinpoint her. It wasn't  
14 to pinpoint her, it was to make y'all have an accurate  
15 understanding of exactly what the relationship was.

16           I thought it was confusing at first. So we  
17 put it on a calendar. They were together for two  
18 months. They broke up. She found out she was  
19 pregnant by Todd. They tried to reconcile and save  
20 their relationship. Sandrica regards it as a mistake.  
21 Todd probably wanted it to happen. He certainly wanted  
22 it to happen. So all this is true. Sandrica told us,  
23 Todd knows it.

24           It didn't work. Sandrica put Todd out on  
25 November 29th. That's what the calendar says,

1 November 29th. That's what she told me, November 29th.  
2 No doubt about it, we agree. She wasn't lying to you.

3 It was tough for Todd. When she put Todd  
4 out, it was a tough pill for him to swallow. And it's  
5 not her fault. He was in love. It's his fault.

6 On December 1st, 2004, the day of this  
7 incident, Todd went over to Prescott Manor. Sandrica  
8 said it and Todd said it in his statement. It's true.  
9 We're not arguing this.

10 Sandrica was staying there on December 1st.  
11 That was her home. Todd was not. Todd didn't live  
12 there. It wasn't his house. It wasn't his apartment.  
13 Sandrica put him out and he was wrong for being there,  
14 absolutely. It wasn't his house.

15 We didn't put that calendar up there to  
16 allege that somehow she kicked Todd out of what was  
17 his house. It wasn't his. He knows that. We know  
18 that.

19 Todd was calling that evening. Sandrica  
20 stopped answering the phone. She turned the ringer  
21 off. That's true. Sandrica wasn't lying.

22 Todd came over, knocking on the door, banging  
23 on the door. That's true. Sandrica said it, Todd  
24 said it. There was no answer.

25 Todd pushed in the door in some way. All

1 right. You have Todd's statement, he said he hit it  
2 with his shoulder. Sandrica felt that he kicked it.  
3 Sandrica may not have seen it correctly, being inside  
4 when it came open. It doesn't matter. It really  
5 doesn't matter. Todd was dead wrong, absolutely.

6 Todd Sowell was not invited in. Sandrica  
7 didn't open the door for him. He forced himself in.  
8 Todd was wrong.

9 Todd entered. An argument ensued. We heard  
10 from the responding officer, Officer Jenkins. He said  
11 in his initial investigation, argument ensued. Led to  
12 a physical altercation, just as Todd's statement says,  
13 led to a physical altercation.

14 Now Todd's -- you know, you get two sides to  
15 the story there. Todd says, well, she was pushing on  
16 me and I pushed her over the coach. Sandrica says,  
17 well, he put his hands on me first. It doesn't  
18 matter. It doesn't matter. Todd was wrong. He  
19 wasn't supposed to be there. That was his fault  
20 completely.

21 Now, there was physical contact. Todd said  
22 in his statement. Now, there's a -- we separate a  
23 little here from the Solicitor's. In the Solicitor's,  
24 as you recall, opening statements, you know, they  
25 really tried to make it sound like it was attempted



1 murder. That Sandrica had tubes and Todd was going  
2 after those tubes. And now we're hearing that  
3 Sandrica was in the hospital for a week or over a week  
4 following this.

5 Well, we heard Officer Jenkins say there was  
6 no physical injuries. Sandrica said Todd hit her in  
7 the face. Inexcusable. Todd said he put his hands on  
8 her. Inexcusable. It wasn't attempted murder.

9 And it doesn't really -- that doesn't really  
10 matter either except if it looks like attempted  
11 murder, it makes Todd look a little worse.

12 So as that we not get carried away with that,  
13 he put his hands on a woman and that was wrong, Todd  
14 was wrong.

15 Another thing that we agree with, Todd gave a  
16 confession. Investigator Reese talked to Todd, sat  
17 him down, treated him nice. He did what he was  
18 supposed to do, he made Todd feel comfortable. Todd  
19 was emotional and he wrote down Todd's statement. And  
20 Todd told on himself.

21 Those are the facts that have been presented  
22 and we don't dispute them. Except for a couple of  
23 little areas we think, you know, might be exaggerated  
24 by the State, we don't dispute them. But those are  
25 the facts.

1 Up to this point, we've heard about the  
2 facts. And I want to tell you right now, ladies and  
3 gentlemen, up to this point, average person, anybody,  
4 just average somebody that would be in this courtroom,  
5 would say, Todd Sowell is guilty of burglary. Their  
6 mind would be made up. I would be wasting my breath  
7 because we found out he went into a house, uninvited,  
8 knocked down the door, did horrible things, put his  
9 hands on the resident. It would be case closed.

10 But, ladies and gentlemen, you are not just  
11 somebody that has to determine if something sounds  
12 like burglary as we commonly think of it. You are the  
13 jurors. And you are here to apply the law. We asked  
14 you to be jurors, to apply the law. We didn't ask for  
15 somebody, we asked for you, the jurors.

16 The facts are half of the story or half of  
17 what this is about. The other half is the law. So  
18 let's look at the law.

19 This is the statute, burglary in the first  
20 degree. This is South Carolina law. And as you will  
21 hear, the State must prove their case beyond a  
22 reasonable doubt. And they must prove every element  
23 of their case beyond a reasonable doubt, to each and  
24 every one of you jurors.

25 Now you look at this. A person is guilty of

1 burglary in the first degree if. The first element,  
2 an entry. The second element, of a dwelling, without  
3 consent, with intent to commit a crime in the  
4 dwelling. Number five, they have these aggravators  
5 that make something burglary in the first degree, make  
6 it a burglary in the first degree, make it more  
7 serious, okay.

8 Let's go through these. And, I promise, I'm  
9 not going to waste your time.

10 Entry. Todd pushed the door open. He kicked  
11 it, he budged it with his shoulder, Todd told you  
12 that. You have his statement. You have his  
13 statement. He told you that. It's true. Let's do it  
14 like this. Entry. He was there. Done. I'm not  
15 going to waste your time.

16 Dwelling. Sandrica was living in apartments.  
17 That's where she lived. That's her residence. That's  
18 her dwelling. It was a dwelling. Done.

19 Without consent. Okay, now that's a  
20 complicated thing. You could presumably get consent.  
21 If you lived there, obviously you would have consent.  
22 Or if someone invited you in or let you in, that would  
23 be consent, okay.

24 Todd did not live there. She put him out  
25 November 29th. He was wrong to be there. He had no

1 right to be there, okay. Sandrica didn't invite him  
2 in, she didn't let him in. He had no consent. He was  
3 wrong. Done. Okay. His statement says it, her  
4 testimony says it.

5 Let's look at these aggravators that make it  
6 burglary first, okay.

7 We had, causes physical injury. Sandrica  
8 said it happened. And again, Sandrica didn't boost up  
9 the amount of injury like the Solicitors are in their  
10 statements. She said, he -- she never said, he tried  
11 to kill me, he was going after my weakness, that's  
12 what it was. But physical injury? Yeah, she said it  
13 occurred.

14 Todd? What did he do? He pled guilty to  
15 criminal domestic violence. He went in front of a  
16 judge and said, yeah, I did it. I'm guilty. Okay.  
17 Done.

18 What about the entering or remaining occurs  
19 at nighttime? Sandrica called the police, nighttime.  
20 Her testimony, nighttime. Officer Jenkins, arrived  
21 nighttime. Todd's statement, -- and again you'll look  
22 at Todd's statement. He said, you know, yeah, it was  
23 dark, it was nighttime. Done.

24 I hope that simplifies these aspects for you  
25 because I don't want to waste your time. But there's

1 one more element that they must prove beyond a  
2 reasonable doubt to each and every one of you jurors.  
3 And that is that he had the intent to commit a crime  
4 when he went into that dwelling, when he went into  
5 Sandrica Jacobs' apartment.

6 Now, the Judge is going to charge on the law  
7 in this case. Now if he says something different, go  
8 by what he says. But the law, with intent to commit a  
9 crime in the dwelling, is that you have to intend to  
10 commit a crime in the dwelling when you cross the  
11 threshold of that dwelling. When you're pushing the  
12 door open, you have to be intending to commit the  
13 crime. That's the law. That's not me playing mind  
14 games or trying to persuade you or trick you. That's  
15 the law. To be guilty of burglary.

16 You know, generally we don't think of  
17 burglary like that when we're on the street. But in  
18 the courtroom, in the statutes book, the law says that  
19 when you push that door open or when you cross that  
20 plane, at that moment in your mind you have to have  
21 the intent to commit a crime in the dwelling.

22 What does this mean? Well, it means two  
23 things. It means two things.

24 First of all, it means that you can commit a  
25 burglary without ever committing a crime in the

1 dwelling. It means you can push down a door intending  
2 to beat someone up and then they run off or they're  
3 not there, and you never commit that crime. But you  
4 entered their dwelling, you crossed that threshold  
5 with the intent of doing it.

6           It's not whether you commit the crime, it's  
7 whether you intended to cross that threshold. At the  
8 time you crossed that threshold, you intended to  
9 commit it. So you don't have to commit the crime  
10 inside. You don't have to beat someone up inside to  
11 be guilty of burglary.

12           But conversely it also means something else.  
13 It means you can commit a crime in the dwelling and  
14 not be guilty of burglary. If you go into the  
15 dwelling and at that point when you're pushing the  
16 door open, when you're crossing that plane, and you  
17 don't intend to beat someone up, it means even if you  
18 beat them up when they're in there, even if you get  
19 into an argument and it turns physical, even if you  
20 have an altercation, you're not guilty of burglary  
21 because you didn't intend to do that when you were  
22 crossing the plane. This is not lawyer tricks. This  
23 is the law. This is what you, the jurors, have taken  
24 an oath to uphold.

25           Now, you have Todd's confession in evidence.

1 You will be able to read it carefully, scrutinize it  
2 and read it and read it again. And you know what, I'm  
3 so glad that you have that confession in evidence.  
4 I'm so glad that you, the jurors, will be able to read  
5 it because there's something about this confession.

6 This confession, Todd's statement -- we've  
7 been calling it a confession all along. Investigator  
8 Reese has been on the stand and said, yeah, I took  
9 Todd's confession. Confession. Confession.  
10 Confession. The Solicitor has called it a confession  
11 again and again and again.

12 Mr. O'Neil and myself, we've called it a  
13 confession too, said we're going to turn to his  
14 confession, again and again and again. That's where  
15 this stops. Okay. We're not going to call it a  
16 confession anymore because it's not. It's a  
17 statement.

18 Not only is it not a confession, it's a  
19 statement of Todd's innocence. Not a knowing  
20 statement. In Todd's statement that you have with  
21 you, he unknowingly proved his own innocence without  
22 even realizing it, just by telling the truth.

23 Specifically, what I would like for you to  
24 look at is on the first page, the first page of Todd's  
25 statement. The statement he gave while he was trying

1 to get this behind him, when he was spilling his guts,  
2 when he was all emotional as we know Todd can get,  
3 when he was so full of remorse, when he was telling  
4 the truth, he was telling it all to the investigator.

5 Investigator Reese asked, did you think  
6 anyone was in the house, the first page. No, because  
7 I knocked and nobody would answer and I called and  
8 nobody would pick up.

9 From the beginning, the Solicitors made the  
10 case that Todd wanted to go over there. He was broken  
11 hearted, upset, out of his mind, and he wanted to hurt  
12 Sandrica Jacobs, the woman that he loved so much.

13 He didn't know she was home. He was calling  
14 and calling. She wasn't answering. She turned off  
15 the ringer. There was no answer. He thought she was  
16 gone.

17 He goes and knocks on the door, banging on  
18 the door, again and again. No answer. Busted down  
19 the door. Now why would he do that?

20 Well, it could be that he had stuff there,  
21 could be. Sandrica testified that she packed up all  
22 of Todd's stuff. Todd was not a wealthy man. He was  
23 probably bitter. As bitter men tend to do, probably  
24 if she left one thing in there, he was going to  
25 reclaim it, being dumb and stupid.



1           Or maybe he wanted to talk to her. Maybe he  
2 was going to go over to her house and sit there, sit  
3 there and wait for her to get home so she'd have to  
4 talk to him about their relationship, about how they  
5 could get it together again because they got it  
6 together several times. How they could get it  
7 together again, how they could make this work because  
8 he was broken hearted. Okay.

9           He went there for a reason. But the  
10 Solicitors want you to believe that he went there to  
11 beat up the woman that he cared about, the woman that  
12 he was so remorseful about. That doesn't make any  
13 sense. He didn't want to beat her up. He wanted to  
14 get back together with her.

15           When he was crossing that threshold, when he  
16 was pushing that door down, he was trying to take  
17 actions that were going to lead to them getting back  
18 together. He wasn't trying to beat her up. Okay.

19           Now, his statement. You say, well, Mr.  
20 Schardt, how can you believe Todd's statement helps  
21 him? Maybe he was just setting it up, okay. Well,  
22 maybe he was just saying he didn't know anyone was  
23 there but he really did, you know. And I can  
24 understand why you would think that. But I can think  
25 of several reasons why we can believe his statement.

1 First of all, it makes sense. Sandrica  
2 didn't lie. She said she stopped answering the phone.  
3 She took the phone off the ringer. She said Todd  
4 came. She was in the front room, in the dark. He's  
5 banging on the door, she didn't answer. He busted the  
6 down the door. It fits her story. Her story  
7 indicates that Todd would not have known anyone was  
8 home. Her story fits the story that Todd was just  
9 trying to get in the house. Maybe spitefully take the  
10 last little thing that's his. Maybe trying to sit in  
11 there to talk it out with her.

12 And then upon busting down the door, finding  
13 Sandrica right there, into an argument that turns  
14 physical quickly. But that wasn't his intent when he  
15 was going in there, to harm the woman that he so  
16 clearly loved. It fits her story.

17 Secondly, why else can we believe that he  
18 really didn't know anyone was in there. Well, think  
19 about when he gave his statement. He didn't give it  
20 last week after talking to me and me whisper in his  
21 ear, well, they need to prove you had intent to commit  
22 the crime. He gave it two years ago, over two years  
23 ago. Okay. He gave it to the investigator in the  
24 investigator's office. He didn't have any advice.  
25 He's locked into that story. He's been locked into

1 that story. He didn't know she was home.

2 Why else can you believe it, that he really  
3 didn't know anyone was home? Well, how about the fact  
4 that the State wants you to believe everything else in  
5 his statement. They want you to believe everything  
6 else, believe that too. He didn't know anyone was at  
7 home.

8 The other stuff's true. We admit to that.  
9 But that's true too.

10 And then the State started talking to  
11 Investigator Reese when he was on the stand about, you  
12 know, things in his statement that tend to make Todd  
13 look better. And they were asking him to analyze, you  
14 know, what was going through Todd's mind, how he could  
15 make himself look better, what may be a little bit  
16 coerced by Todd or trying to mitigate his  
17 responsibility.

18 And, you know, he got up there and he looked  
19 at him and said -- he had the part that when Todd said  
20 he was drunk, yeah, that might have been Todd trying  
21 to get out of things a little bit. Or the part where  
22 he said he budged the door as opposed to kicking it  
23 in, that might have been part, you know, him trying to  
24 get out of it. Or the part where Sandrica -- he said,  
25 it was kind of mutual as opposed to him attacking her.

1 That might have been him getting out of it a little  
2 bit.

3 But he never said the part where Todd said no  
4 one was home. And -- and I saw, saw y'all rolling your  
5 eyes at me when I walked up there and I said, well,  
6 look at the statement. Did you see anything else?  
7 Did you see anything else in that statement that seems  
8 like he was trying to get out of anything?

9 And I asked him to look at it. He said,  
10 well, there's several things. I said, well, pick one  
11 in particular. What's the most egregious part of that  
12 statement that is Todd trying to get out of something?

13 And he said, well... And he couldn't answer  
14 it. Why couldn't he answer it? Investigator Reese  
15 was still looking at that statement as a confession.  
16 He didn't realize the fact that Todd didn't know  
17 anyone was home. Help Todd. He looked at his  
18 confession not as Todd's defense.

19 Investigator Reese, an investigator in  
20 property crime. He deals with burglaries all the  
21 time, didn't know that. How did Todd?

22 Remember, the Solicitor asked Investigator  
23 Reese, you know, when she thought I was insinuating  
24 Investigator Reese did him wrong by talking to him  
25 without a lawyer. Well, did he have a lawyer at the

1 time? He didn't have a lawyer at the time, did he?  
2 And Investigator Reese said, well, no, he didn't. He  
3 didn't have anyone advising him.

4 He gave a statement and it was true, because  
5 it was true. He was spilling his guts and said, I  
6 didn't know anyone was home. He was spilling his guts  
7 and no one planned it because it's the truth.

8 Bottom line, Todd Sowell was wrong. He did a  
9 lot things wrong. He knows he did. He's pled to  
10 charges, to a charge stemming from this incident. He  
11 was wrong. He budged the door down not knowing anyone  
12 was home and he ran into Sandrica standing there. He  
13 ran into Sandrica, the woman he loves, the woman who  
14 had just broke his heart, and he tried to talk to her  
15 and work it out. And they got into an argument and it  
16 turned physical and he did a very bad thing. He put  
17 his hands on her. He committed criminal domestic  
18 violence which he pled to.

19 Todd Sowell, when he was pushing that door in  
20 and going through, he had no intention, as the State  
21 would have you believe, of harming Ms. Jacobs in any  
22 way. He didn't know she was home. The statement shows  
23 that.

24 In conclusion, the State warned you in  
25 opening, they said, oh, these Defense attorneys, what

1 are they going to do? They're going to attack the  
2 police. I'll be the first one -- and I thought we  
3 made this clear throughout the trial. Investigator  
4 Reese, he treated Todd with the utmost respect.

5 Those rights that we're all talking about,  
6 that they're arguing like I'm going to fight it, those  
7 rights about whether it was read to him and whether he  
8 voluntarily read his rights, Investigator Reese made  
9 sure he knew his rights, made sure Todd knew his  
10 rights. He sat there, set up a rapport with Todd,  
11 explained to him what was going on, listened to Todd.  
12 Todd is crying, emotional. I believe he had sympathy  
13 for Todd. He understands. He wasn't bashing Todd.  
14 He said Todd seemed to have genuine remorse. He  
15 treated Todd like a gentleman.

16 And we're not attacking the police. We never  
17 went after the police. The State has tried ---

18 THE COURT: Mr. Schardt, it's been 30  
19 minutes, sir.

20 MR. SCHARDT: Yes, Your Honor.

21 THE COURT: Wrap it up.

22 MR. SCHARDT: The State has tried to attack  
23 the police. They just did in their closing. We've  
24 never attacked the police.

25 Attacking the victim. They said we were

1 going to attack the victim. Sandrica Jacobs didn't  
2 deserve this. She wasn't wrong. She's a victim. She  
3 didn't lie. She did nothing wrong. We never attacked  
4 her. Never will.

5           They talk about the confession. They said,  
6 there's a confession in this case. There's no  
7 confession. Todd's statement, I invite you to read it  
8 carefully, please read it carefully, scrutinize it,  
9 talk about it. It shows that he did not know Ms.  
10 Jacobs was in there. It shows that when he crossed  
11 that threshold, he did not intend to commit criminal  
12 domestic violence. He did not intend to assault her.

13           Todd Sowell made many mistakes at the time.  
14 He made many mistakes. He's not perfect. He was at  
15 fault completely, not Sandrica, Todd. He was a fool  
16 for being so in love, not handling things correctly.  
17 He's guilty of that.

18           He's also guilty of criminal domestic  
19 violence. He's also guilty of criminal domestic  
20 violence. He's guilty of putting his hands on  
21 Sandrica in that way. He pled guilty to that. He  
22 stood in front of a judge and took responsibility for  
23 that a long time ago.

24           But the one thing that Todd Sowell is not  
25 guilty of, the one thing we're here today for, is

1 burglary in the first degree. He was wrong with a lot  
2 of things he did. But he did not intend to hurt  
3 Sandrica when he crossed the threshold of her  
4 dwelling. And that is the law.

5 Ladies and gentlemen, it's not tricks or  
6 games. All we're asking is that you apply law to the  
7 facts of this case. Because under the law, Todd  
8 Sowell is not guilty of burglary.

9 Thank you.

10 THE COURT: Move the easel out of the way,  
11 when you get a chance, Mr. Schardt.

12 MR. SCHARDT: Yes, Your Honor.

13 (Complied.)

14 THE COURT: Thank you, sir.

15 MR. SCHARDT: Yes, sir.

16 CHARGE BY THE COURT:

17 Now, members of the jury, I'm going to have  
18 to read the charge to you. When I first took this  
19 job, I didn't need glasses and I didn't have gray  
20 hair. So I hope you'll bear with me.

21 Now, Madam Forelady and members of the jury,  
22 you have heard the evidence in this case and the  
23 arguments. I will now tell you the law that applies  
24 to this case for you to apply in your deliberations.

25 The State, as you know, has charged Mr.



1 Sowell with burglary in the first degree. I read the  
2 indictment to you earlier at the beginning of this  
3 case. I won't repeat the allegations therein at this  
4 time.

5 But you need to understand that the  
6 indictment is simply a formal piece of paper which  
7 charge the Defendant and puts him on notice as to what  
8 he's charged with. An indictment is not evidence.

9 Now, to this indictment Mr. Sowell has pled  
10 not guilty. And this places the burden of proof upon  
11 the State to prove him guilty beyond a reasonable  
12 doubt.

13 Now, it is a vital and basic rule of law in  
14 this state that a person who is accused of a crime is  
15 presumed innocent. And that presumption of innocence  
16 remains with that person from the very beginning part  
17 of this process right up until you, the jury,  
18 determine that the State has proved the Defendant  
19 guilty beyond a reasonable doubt.

20 Now, what is a reasonable doubt, Madam  
21 Forelady and members of the jury? The explanation we  
22 have generally used over the years in this state is  
23 that a reasonable doubt is the kind of doubt that  
24 would make a reasonable person hesitate to act. A  
25 reasonable doubt is a kind of doubt that would make a

1 reasonable person hesitate to act.

2 Now, so you see the State had the burden of  
3 proving the Defendant guilty beyond a reasonable  
4 doubt. When I say proof must be established beyond a  
5 reasonable doubt, those words should be given their  
6 plain and ordinary meaning.

7 A reasonable doubt may arise from the  
8 evidence presented to you, members of the jury, or the  
9 lack of evidence presented to you. To think that a  
10 Defendant is probably guilty or that the circumstances  
11 are strongly suspicious is not enough. And this is  
12 because the State must prove the Defendant guilty  
13 beyond a reasonable doubt.

14 Now, members of the jury, under our  
15 constitution of laws, you are the sole judges of the  
16 facts in this case. I cannot tell you what the true  
17 facts are nor would it be proper for me to render an  
18 opinion about the facts of this case. Indeed I have  
19 no opinions about the facts of this case and if I did,  
20 I could not impart them to you.

21 Please do not try to gather any opinion from  
22 anything I may have said or done during the trial of  
23 this case or any rulings I might have made. Because,  
24 as I say, I do not have any opinions about the facts.  
25 And if I did, I could not impart them to you.

1           Now in making your determination, you may  
2 consider the credibility, which means the  
3 believability, of the witnesses who have come before  
4 you. And passing upon their credibility, you may  
5 consider all the circumstances including the  
6 following. How did the witness appear? Were they  
7 straightforward or hesitant in answering any  
8 questions? What was the ability of the witness to see  
9 or to hear or to experience with one of their senses  
10 what it is they say they experienced? Is their  
11 testimony consistent with what others have said? Is  
12 it consistent with what the witness has said on a  
13 prior occasion? Is there any reason for the witness to  
14 favor one side or the other? That is, is there any  
15 bias or prejudice on the part of the witness.

16           All these things you may consider, keeping in  
17 mind that you must give the Defendant the benefit of  
18 every reasonable doubt.

19           Now, by the same constitution that makes you  
20 the finders of the facts, as I've just explained, also  
21 make me the instructor of the law. Now, members of  
22 the jury, you must accept the law as I instruct it to  
23 you and you should not be concerned, members of the  
24 jury, what you may think the law should be. Or for  
25 that matter, I cannot be concerned with what I think

1 the law ought to be. You can only be concerned with  
2 what the law is, that is, as I tell it to you, as I  
3 charge it to you.

4 Now, of course, Todd Sowell is charged with  
5 burglary in the first degree. I will define that for  
6 you.

7 Under Section 60-11-311, under the South  
8 Carolina Code of Laws, burglary in the first degree is  
9 defined as the entering of the dwelling of another  
10 without consent and with the intent to commit a crime  
11 therein. And I will define for you -- which it's  
12 accompanied by one of the following circumstances. I  
13 will define burglary in the first degree and show you  
14 the circumstances that would make it burglary in the  
15 first degree.

16 One, when entering or while in the house or  
17 in fleeing, the Defendant or his accomplice, and  
18 there's no accomplice in this case, is armed with a  
19 weapon, that's not present in this case, causes  
20 physical injury to anyone not participating in the  
21 crime, and that is an element in this case, uses or  
22 threatens to use a dangerous object or displays what  
23 appears to be a knife, pistol, revolver, rifle, side  
24 gun, machine gun or other firearm.

25 But you see, under number one, when entering

1 or while in the house or in fleeing, the Defendant or  
2 his accomplices, is armed with a weapon, causes  
3 physical harm or injury to someone not participating  
4 in the crime, uses or threatens to use a dangerous  
5 object.

6 Two, the Defendant entered or remained in the  
7 house at night. And common law, the nighttime is that  
8 period between sunset and sunrise during which the  
9 face of a person cannot be discerned by the light of  
10 the sun.

11 There are four essential elements to the  
12 requirement that the Defendant entered into the  
13 dwelling house of another without consent and with the  
14 intent to commit a crime therein.

15 They are that one, there must be an entering.  
16 The State must prove that there was an entering, that  
17 is, the Defendant actually went inside the house or  
18 some part of it. It is not necessary, however, that  
19 the entire body of the Defendant entered the house.  
20 The smallest entry is sufficient and it may be of any  
21 part of the body as a hand or foot or even an  
22 implement such as a hook or other instrument. No  
23 force need to be used to gain entry.

24 Two, the entry must be without consent.  
25 Aside from the usual or normal understanding of the

1 phrase without consent, the term entry also means to  
2 enter a dwelling by using deception, artifice, trick  
3 or misrepresentation to gain consent to enter from the  
4 person in lawful possession.

5         Three, the place entered must be a dwelling  
6 house. The term dwelling house means any building  
7 inhabited by a person or persons in which they  
8 customarily sleep. A building constructed as a  
9 dwelling that has never been occupied cannot be  
10 considered a dwelling within the definition. But a  
11 temporary absence of the inhabitant or inhabitants  
12 does not affect the building's character as such.

13         The term dwelling also means the living  
14 quarters of a building used or normally used for  
15 sleeping, living or lodging by a person. All houses,  
16 outhouses, buildings, sheds and erections that are  
17 within 200 yards of a dwelling shall be considered a  
18 part of it.

19         Four, the Defendant must have an intent to  
20 commit a crime. The mere entry into a dwelling house  
21 without consent is not a violation of this burglary  
22 statute. It is only where there is an intent to  
23 commit a crime, whether it be a felony or misdemeanor,  
24 that the crime is complete. Proof of intent  
25 necessarily rests on inference from conduct.

1           Excuse me. It is essential, members of the  
2 jury panel -- I meant, members of the jury, that the  
3 felonious -- felonious intent exists at the time of  
4 the entry. It is not sufficient that the felonious  
5 intent is formed afterwards. On the other hand, where  
6 the intent exists at the time of the entry, it is no  
7 defense that the intent was abandoned after the entry.  
8 It does not matter that the intended crime was not  
9 complete.

10           Now, in this particular case I had mentioned  
11 to you earlier, and as you well know, Mr. Sowell did  
12 not testify in this case. And as to his not  
13 testifying, I need to tell you the following.

14           The fact that a defendant in a trial of a  
15 criminal case did not testify in his own behalf is not  
16 a factor to be considered by you in any way in your  
17 deliberation and in your consideration on the question  
18 of the guilt or the innocence of the accused. It must  
19 not be considered by you in any manner whatsoever  
20 against the defendant or mitigate against him in any  
21 respect whatsoever.

22           A defendant has the constitutional right to  
23 remain silent. And the assertion of such a  
24 constitutional right cannot be considered by you in  
25 your deliberations.

1 Under your oath then, members of the jury,  
2 you are to reach no inference and draw no conclusion  
3 whatsoever from the fact that a defendant in this case  
4 did not testify. The fact that a defendant did not  
5 testify should not even be discussed in the jury room.

6 The burden of proof, as I have stated to you,  
7 is upon the State. It is not incumbent upon the  
8 accused to prove his innocence. The burden of proof  
9 remains upon the State to prove guilt beyond a  
10 reasonable doubt. The fact that a defendant exercised  
11 his constitutional right to remain silent is not a  
12 factor to be considered by you in determining the  
13 guilt or innocence of the defendant.

14 Now, there's a confession admitted in this  
15 case. And as to the admission of that confession, I  
16 need to tell you as follows.

17 There's been admitted into the record in this  
18 case a statement alleged to have been made by the  
19 Defendant. Before you may consider this statement as  
20 evidence for any purpose, you must determine four  
21 questions.

22 First, did the Defendant make the statement?  
23 Second, was the Defendant warned of his constitutional  
24 rights? Third, did the Defendant knowingly and  
25 intelligently waive his constitutional rights? And



1 four, was the statement given voluntarily?

2       The fact that the court has admitted a  
3 statement into evidence should not be considered by  
4 you as any evidence whatsoever that the defendant made  
5 such a statement or that the required constitutional  
6 safeguards were in fact provided and waived by the  
7 defendant or that statement was voluntarily given  
8 because these issues are for you, the jury, to  
9 determine.

10       The State must prove beyond a reasonable  
11 doubt each of the four requirements that I've just  
12 stated to you before you may consider the statement as  
13 evidence for any purpose whatsoever. Once again,  
14 first, did the defendant make the statement? Second,  
15 was the defendant warned of his constitutional rights?  
16 Third, did the defendant knowing and intelligently  
17 waive his constitutional rights? And fourth, was his  
18 statement voluntarily given?

19       Now, also in this case we have the -- we have  
20 some evidence of, at least through the statement,  
21 voluntary intoxication. As to that issue, I will tell  
22 you as follows.

23       Voluntary intoxication, where it has not  
24 produced permanent insanity, is never an excuse or a  
25 defense to a crime, regardless of whether the crime is

1 one involving general or specific intent. A person  
2 who has voluntarily rendered himself intoxicated is no  
3 less responsible for his acts while in such a  
4 condition.

5           If one voluntarily drinks intoxicating  
6 liquors, wine or beer, and becomes intoxicated to  
7 whatever degree, and if while in that condition a  
8 person commits an act that would be a crime if it had  
9 been committed by a sober person, the fact of  
10 drunkenness would not relieve the intoxicated person  
11 from the responsibility.

12           Now, members of the jury, a witness in this  
13 case, it was actually Ms. Jacobs, had a conviction for  
14 a fraudulent check. And that involves to a certain  
15 extent fraud, deceit, a certain amount of dishonesty.  
16 In this regard, talking about a witness with a prior  
17 record who has testified, this can be considered by  
18 you in determining a witness's truthfulness or worthy  
19 of belief. It doesn't disqualify her as a witness.  
20 You can take that into account as I'm sure you would  
21 using your good commonsense and of the facts of this  
22 case.

23           I further charge you, Madam Forelady and  
24 members of the jury, that a verdict in this case  
25 cannot be based on sympathy, passion, prejudice or

1 emotion or something not found in the record. And I  
2 mean in the record, that's where people have testified  
3 and where exhibits have been introduced, like the  
4 confession and things that you will have a chance to  
5 look at when you got back to the jury room.

6 Now, with those words in mind, I'm going to  
7 ask that you go to the jury room but please don't  
8 discuss this case yet. The time to do so will be when  
9 the bailiff knocks on the door and will hand you this  
10 form, Madam Forelady.

11 And it says, State of South Carolina, County  
12 of Richland, in the Court of General Sessions. It  
13 lists the indictment number. It says, Verdict Form.  
14 The State of South Carolina versus Todd Sowell,  
15 Defendant. We, the jury, by unanimous consent, find  
16 the Defendant -- and there's two verdicts, guilty or  
17 not guilty.

18 Now, I had to list one before I did the  
19 other. The reason is I can't list them both on the  
20 same line. So the fact that I mentioned guilty first  
21 and not guilty second has nothing to do with or  
22 suggest in no way what you do.

23 You base your decision on the facts of this  
24 case as you've heard them. You use your good  
25 commonsense and you keep in mind the laws I've

1 instructed to you. And you always give the Defendant  
2 the benefit of every reasonable doubt.

3 So, go to the jury room, don't discuss this  
4 case. The time to begin your deliberations will be  
5 when the bailiff knocks on the door, hands you the  
6 exhibits that have been introduced, along with this  
7 verdict form.

8 Until then, don't talk about the case. Thank  
9 you all so very much.

10 (The jury retires from the courtroom at  
11 approximately 12:20 P.M.)

12 THE COURT: All right. Any exceptions are  
13 additions from the Defense?

14 MR. SCHARDT: No, Your Honor.

15 THE COURT: From the State?

16 MS. WEISS: Your Honor, we were hoping you  
17 were going to instruct, tell the jury that the victim  
18 couldn't be here but I think ---

19 THE COURT: Well, I meant to do that. And  
20 that's why my law clerk was worrying me to death.  
21 What I will do -- y'all can -- y'all can follow me.  
22 I'm just going to tell them in the jury room, I meant  
23 to tell you earlier, she wasn't here.

24 What did she have, a medical procedure or  
25 something like that?

1 MS. WEISS: She's at the pain clinic.

2 THE COURT: The what?

3 MS. WEISS: Yeah, she's in the hospital.

4 THE COURT: All right. Why don't y'all  
5 follow me. Y'all have any objections? I meant to --  
6 that's what you were bothering me for. Anyway, let's  
7 go tell them right now.

8 MS. WEISS: Thank you, Your Honor.

9 (Judge and Counsel exit the courtroom.)

10 (Judge and Counsel return to the courtroom.)

11 THE COURT: Thank you, very much. Y'all look  
12 at the exhibits, check the verdict form, and if  
13 everything is okay, what's in should be in, we'll give  
14 it to the jury.

15 (Pause.)

16 I'm putting it in as a Court Exhibit. The  
17 other one is going to the jury, the one that's been  
18 redacted.

19 (WHEREUPON, Court's Exhibit No. 4, Original  
20 Columbia Police Department Statement Form,  
21 was marked for identification.)

22 THE COURT: Thank you, do I need to add  
23 anything else to that?

24 MR. SCHARDT: Your Honor, we're just trying  
25 to make sure.

1 THE COURT: Well, go ahead, I'm not stopping  
2 you. What else do you want to know?

3 MR. SCHARDT: We're just trying to make sure  
4 he doesn't take the -- it appears we were about to  
5 bring the other one to the jury. We're just trying to  
6 make sure he doesn't.

7 THE COURT: Stop. She knows how to do it.  
8 Send the one to the jury that's been redacted. It has  
9 two pages on it and nothing at the top. Is that what  
10 he has?

11 (Pause.)

12 THE COURT: Give him that one. All right,  
13 what's the next thing right there?

14 COURT REPORTER: The letter.

15 THE COURT: That goes in too. Anything else?

16 MR. SCHARDT: No, Your Honor.

17 THE COURT: You've got the Verdict Form?

18 BAILIFF: I have the Verdict Form, sir.

19 THE COURT: All right. So we had everything  
20 he needed. Please give it to him and bring Ms. Diann  
21 Davis, the alternate out, once you give it to the  
22 jury.

23 (WHEREUPON, Exhibits and Verdict Form were  
24 delivered to the jury to begin deliberations at  
25 approximately 12:25 P.M.)

1 (Alternate Juror, Diann Davis, returns to the  
2 courtroom.)

3 THE COURT: Well, Ms. Davis, I guess you got  
4 invited to the dance but didn't get a chance to get  
5 out on the floor. But I'm sure you're familiar with  
6 these, with your background and where you've worked.  
7 And I want to thank you on behalf of everybody  
8 involved, Ms. Weiss and Mr. Maldonado on behalf of Ms.  
9 Jacobs for the State. And of course, Mr. Schardt and  
10 Mr. O'Neil on behalf of Mr. Sowell, the Defendant in  
11 this case.

12 It is not a necessarily easy thing to do, as  
13 you know, but I appreciate your service. And, you  
14 know, you're probably free to go now. You need to go  
15 back downstairs and get one of those slips that just  
16 says where you were and that sort of thing. And when  
17 you see Brooks Shealy again, be sure and give him my  
18 best wishes.

19 MS. DAVIS: I will.

20 THE COURT: All right. Thank you so very  
21 much.

22 (Ms. Davis exits the courtroom.)

23 THE COURT: Anything further from anyone?

24 MS. WEISS: No, Your Honor.

25 THE COURT: I guess we'll be at ease.

1 (WHEREUPON, the court was in recess awaiting  
2 a verdict.)

3 THE COURT: Bring the jury in, Mr. Hollis.

4 (The jury returned to the courtroom at  
5 approximately 1:35 P.M.)

6 BAILIFF: The jury's all present, Your Honor.

7 THE COURT: Thank you. Welcome back, Madam  
8 Forelady and members of the jury.

9 Jackie.

10 THE CLERK: Madam Foreperson, have you  
11 reached a verdict?

12 FORELADY: Yes, we have.

13 THE CLERK: Will you hand it to me?

14 (Complied.)

15 THE COURT: All right, you may publish it.

16 VERDICT OF THE JURY:

17 THE CLERK: Indictment number 2005-GS-40-393,  
18 The State of South Carolina versus Todd Sowell.

19 We, the jury, by unanimous consent, find the  
20 Defendant guilty of burglary first.

21 This is signed Foreperson, Michele White,  
22 March 16th, 2007.

23 Madam Foreperson, is this your verdict and  
24 the verdict of the entire jury?

25 FOREPERSON: Yes, it is..



1 THE COURT: All right, anything further of  
2 this jury on behalf of the Defense? Do you want to  
3 poll the jury or anything?

4 MR. O'NEIL: Yes, Your Honor.

5 THE COURT: All right. Jackie, you want to  
6 poll them?

7 THE CLERK: Ladies and gentlemen of the jury,  
8 I am going to ask you two questions regarding your  
9 verdict. If you would just answer yes or no to the  
10 questions.

11 Michele White, was this your verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: Valerie Stubblefield, was this  
16 your verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: Robert Watson, was this your  
21 verdict?

22 JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: Carolyn Simuel, was this your

1 verdict?

2 JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR: Yes.

5 THE CLERK: Ronald Epps, was this your

6 verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Carol Smith, was this your

11 verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: Mark Shealy, was this your

16 verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: Sandra Morant, was this your

21 verdict?

22 JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: Judy Ripley, was this your

1 verdict?

2 JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR: Yes.

5 THE CLERK: Ellen Rodillo-Fowler, was this  
6 your verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: James Sims, was this your  
11 verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: Glenda Wesley, was this your  
16 verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: The jury's been polled, Your  
21 Honor.

22 THE COURT: All right. Anything further?

23 MR. O'NEIL: No, Your Honor.

24 THE COURT: Anything further from the State?

25 MS. WEISS: No, Your Honor.

1 THE COURT: Madam Forelady and members of the  
2 jury, I think I might have said earlier this week how  
3 difficult it was, at least in my mind, to sit in  
4 judgment of your fellow citizens. I was on about  
5 three juries myself several years ago before I became  
6 a judge. You can read about it in the newspaper, you  
7 can watch it on TV, but until you're actually in that  
8 jury room yourself, you know, it's not an easy thing.

9 And so I appreciate your efforts in this  
10 case. I think you reached the right result, it was  
11 based on the law and the evidence. And there's one  
12 reason why at the end of every charge, the judge will  
13 say you can't base your verdict on sympathy, passion,  
14 emotion or something not in the evidence. You base it  
15 on what you hear and the laws the judge tells you.  
16 And that's exactly what y'all did.

17 I guess parenthetically and at the end, y'all  
18 have been one of the best groups to work with this  
19 week I can recall. I've never known members of a jury  
20 to line dance before. But that's a good thing. I  
21 mean, you're here not quite as volunteers, but  
22 everything isn't heavy and, you know, you don't have  
23 to be burdened to death but you do the best you can.

24 You've done that. And after you've done  
25 that, then there's nothing for you to feel bad about

1 or guilty about or anything else. You've done a good  
2 job. You should go home and put it behind you.

3 But I hope if you ever meet again somewhere  
4 out on the streets or at Wal-Mart at Target, as a  
5 group or individually, I hope y'all meet again as  
6 friends because if I see y'all or any of you again, I  
7 would count you as being one of my friends.

8 So I wish you the very best. Go back  
9 downstairs to the jury room. They'll give you a little  
10 slip letting everybody know you were here and then  
11 you're free for the week.

12 Thank you all so very much.

13 JURORS: Thank you.

14 (The jury retires from the courtroom at  
15 approximately 1:39 P.M.)

16 THE COURT: All right, sentencing.

17 MS. WEISS: Yes, Your Honor.

18 THE COURT: Bring Mr. Sowell around.

19 MR. O'NEIL: Your Honor, we have a couple of  
20 motions ---

21 THE COURT: All right, go ahead and make it.

22 MR. O'NEIL: Your Honor, just for the record,  
23 we want to renew our directed verdict motion,  
24 specifically as it relates to the element of intent.

25 THE COURT: All right. Well, I think it's

1 intent, after he broke into the place, he beat her.

2 All right, anything else?

3 MR. O'NEIL: We would have a motion for a new  
4 trial, Your Honor, based on the witness's -- the  
5 victim's partial answer concerning the second  
6 burglary.

7 THE COURT: What now?

8 MR. O'NEIL: The victim's partial answer as  
9 it relates to the second burglary, we would move for a  
10 new trial ---

11 THE COURT: That's been denied already. It's  
12 denied again.

13 MR. O'NEIL: And we would just renew all our  
14 other previous objections and motions.

15 THE COURT: Denied.

16 MR. O'NEIL: Thank you.

17 THE COURT: Bring Mr. Sowell around.

18 (Complied.)

19 THE COURT: What's his prior record,  
20 Solicitor?

21 MS. WEISS: Yes, Your Honor. His prior  
22 record is a 1996 conviction for breach of trust with  
23 fraud over 5,000. A 1996 malicious injury to real  
24 property, driving under suspension, 1996 grand  
25 larceny, 1996 assault and battery of a high and

1 aggravated nature, 1998 trespassing, 1998 forgery  
2 numerous counts. Then 2002 two counts of burglary  
3 third and two counts of grand larceny, 2005 stalking  
4 and you heard about that other, the same victim.

5 And that, I believe, is the extent of his  
6 record. Oh, he also has an out of state, North  
7 Carolina breaking and entering in 1995. And that  
8 appears to be the extent of the record.

9 THE COURT: Now, Mr. Schardt and Mr. O'Neil,  
10 is that his record?

11 MR. SCHARDT: Yes, sir.

12 THE COURT: You both agree, all right. I'll  
13 be happy to hear from you, Mr. Schardt.

14 MR. SCHARDT: Thank you, Your Honor, may it  
15 please the court. Standing before you is Mr. Sowell.  
16 He's 33 years of age. He grew up in Charleston with  
17 his father. His parents split when he was young. He  
18 has four sisters and one brother. He made it through  
19 the 10th grade and later acquired his GED.

20 He's done mostly manual labor throughout his  
21 life, low paying jobs, and he's just gotten by.

22 You heard about his criminal record. But  
23 yesterday when we finally split from trial, I found  
24 his mother sitting in our office, the Public Defender  
25 Office. I actually had to drive her home to

1 Summerville.

2           She couldn't be here today but she --  
3 throughout the drive she gave me a little insight on  
4 Todd. She knows that he does have quite a record but  
5 she assured me, and this is what she said again and  
6 again, he made very bad decisions at times. He gets  
7 emotional. He wants to be liked, wants to be  
8 accepted, wants to be part of something. He wants to  
9 be part of a family and he's made a lot of mistakes  
10 trying to be accepted.

11           She assured me that deep down though he is a  
12 -- he is a good man and dealing with him, I've seen --  
13 you know, once you get beyond the criminal record,  
14 I've seen that he has a good heart inside. He gave  
15 myself and Mr. O'Neil a very nice card today.

16           Your Honor, we talked about going to trial.  
17 Obviously it was his decision. I think a lot of -- I  
18 don't think that he denied that he was wrong for the  
19 things he did. I think a lot of his decision making  
20 to go to trial was an attempt to hold on to some sort  
21 of relationship he had with Sandrica Jacobs who was  
22 the victim.

23           I think a big part of it is the fact that  
24 he's been a social butterfly and through that  
25 relationship he finally thought he was part of a



1 family. He thought he was going to be a father figure  
2 for her son and that he was going to be a good man for  
3 her. Things didn't work out and he handled it  
4 completely the wrong way, Your Honor.

5 He regrets failing Sandrica. I think from in  
6 the investigator's testimony, when he gave his  
7 confession, that he was sincere. He regrets what he  
8 did to her. He regrets failing her son. He regrets  
9 this all happened.

10 And some of his decision making that led to  
11 us standing here today in front of you was poor  
12 decision making but it was his decision. And I just  
13 think it was influenced by this continuing need to be  
14 part of something and for actual genuine feelings that  
15 he still has for the victim.

16 THE COURT: All right.

17 MR. SCHARDT: And I think that had a big part  
18 in this.

19 Your Honor, I understand and he understands,  
20 certainly he's understood from the beginning, that the  
21 penalties he's looking at for this charge are very  
22 hefty, 15 years to life. And we understand that he  
23 elected to go to trial. But, Your Honor, we're asking  
24 that you would have mercy on Mr. Sowell and consider  
25 the minimum sentence of 15 years or something close to

1 that. And he is very sorry.

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

3 Schardt. Mr. O'Neil, anything you'd like to add, sir?

4 MR. O'NEIL: I would just take on Mr.

5 Schardt's sentence ---

6 THE COURT: Anything you want to tell me, Mr.

7 Sowell?

8 THE DEFENDANT: Yes, Your Honor.

9 Mr. Manning, what I would like to say is that my  
10 decision for coming to trial was based that -- this  
11 thing involved in this case, I feel it was -- I was  
12 charged to an extent -- I know I did something wrong  
13 but, you know, I had questions in my mind -- you know,  
14 I researched my case myself -- (pause) -- with all due  
15 respect, Mr. Manning.

16 THE COURT: All right. Very well. I'm  
17 taking into account the testimony I've heard, your  
18 prior record and the affect on the victim.

19 SENTENCE OF THE COURT:

20 THE COURT: On indictment number 2005-393,  
21 The State versus Todd Sowell, it is the sentence of  
22 the court that you, Todd Sowell, be committed to the  
23 South Carolina Department of Corrections for a period  
24 of 20 years, credit for time served.

25 Good luck to you, Mr. Sowell. Thank you all

1 so very much. This matter is concluded.

2 MR. SCHARDT: Thank you, Your Honor.

3 MS. WEISS: Thank you, Your Honor.

4 (WHEREUPON, Court's Exhibit Nos. 1 through 3,

5 Juror's Notes, were marked for

6 identification.)

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----- END OF TRANSCRIPT OF RECORD -----

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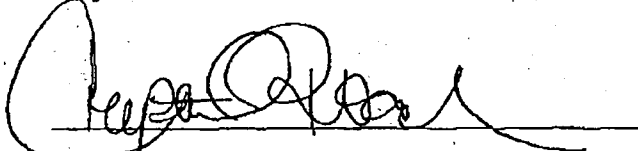
## CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA       )  
COUNTY OF RICHLAND            )

I, Crystal Roach, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and Complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 15th and 16th days of March, 2007.

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

September 6, 2007

A handwritten signature in dark ink, appearing to read 'Crystal Roach', is written over a horizontal line.

Crystal Roach, Court Reporter

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 ) FIFTH JUDICIAL CIRCUIT  
 COUNTY OF RICHLAND ) 2005-GS-40-395

THE STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 TODD SOWELL, )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

TRANSCRIPT OF RECORD  
 EXCERPT

MARCH 22, 2007  
 COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE S. GOODSTEIN, JUDGE

A P P E A R A N C E S:

HEATHER S. WEISS, ESQUIRE, ASSISTANT SOLICITOR  
 ATTORNEY FOR THE STATE

MAXWELL SCHARDT, ESQUIRE  
 DEON O'NEAL, ESQUIRE  
 ATTORNEYS FOR THE DEFENDANT

ELIZABETH B. HARRIS, CVR  
 CIRCUIT COURT REPORTER

I N D E XWITNESS/DESCRIPTIONPAGE NO.

## EXCERPT ONE:

STATEMENT OF FACTS BY SOLICITOR . . . . . 3

## EXCERPT TWO:

SENTENCE OF THE COURT . . . . . 5

CERTIFICATE PAGE . . . . . 8

E X H I B I T SNO.DESCRIPTIONEV.

NO EXHIBITS INTRODUCED DURING THIS PORTION.

1 (PRIOR TO GUILTY PLEA, THE DEFENDANT IS SWORN.)

2 EXCERPT ONE: STATEMENT BY THE SOLICITOR

3 THE COURT: And we're got Mr. Sowell.

4 MS. WEISS: Thank you, Your Honor. First of all, I'd  
5 like to start this with, as Mr. Sowell brought up, last  
6 week we did go to trial on an initial case that occurred  
7 appropriately ten days prior to this where Mr. Sowell was  
8 convicted a burglary first degree on the victim in this  
9 case, Ms. Sandrika [phonetic] Jacobs.

10 As a result of that burglary first, and there was a  
11 CDV that he pled to included in that. Ms. Jacobs suffers  
12 from Sickle Cell Anemia. As a result of that, she was sent  
13 -- she ended up going to the hospital. As a result of her  
14 Sickle Cell Anemia, she had an acute attack and ended up  
15 staying in the hospital for several days.

16 During that time, Mr. Sowell came back to her  
17 residence while she was in the hospital, at 1601 Prescott  
18 Road, Apartment 7-A which is Prescott Manor which is in the  
19 city of Columbia in Richland County, and went through her  
20 home. Broke in and then went through her home and cut up  
21 and destroyed most of her belongings. And, Your Honor, I'd  
22 like to hand up the pictures which the defense has. We  
23 provided them in the trial.

24 THE COURT: Just awful pictures.

25 MS. WEISS: Your Honor, Mr. Sowell was arrested after

1 -- well, the damage was over \$1,000 but less than \$5,000.  
2 Also as a result of this, Ms. Jacobs never returned to that  
3 address and never felt that that was her home again, and  
4 ended up living with her mother for most of the next year  
5 with her five-year-old son before she gained another  
6 residence.

7 As a result -- okay, then after that, she's living  
8 with her mother who then -- and her mother was the one who  
9 found the apartment in this manner because she was checking  
10 on the apartment while her daughter was in the hospital.

11 As a result of this, he ended up being arrested on a  
12 separate and distinct charge of stalking, which he was  
13 convicted of. And when he was in jail on that and was  
14 brought to police headquarters, at which time he confessed  
15 to all of the crimes that I'm talking about. He gave a  
16 complete confession.

17 As a result of that confession, Investigator Kevin  
18 Reese, who was the investigator on the case, charged him  
19 with the burglary first for the incident that we tried last  
20 week and chose not to charge him on a burglary first for  
21 this incident. But charged him with a malicious injury to  
22 personal property because he felt that would be stacking  
23 charges, being it's sort of the same events.

24 And in exchange for this plea, we had discussed -- I  
25 was going to directly present the burglary first on this



1 were we to go to trial. And in exchange for this plea, the  
2 state is agreeing not to directly present that burglary  
3 first.

4 *END OF EXCERPT ONE*

5 *EXCERPT TWO: SENTENCE OF THE COURT*

6 THE COURT: This would be the order of the court. Ms.  
7 Weiss, you may want to tell the victim.

8 MS. WEISS: Yes, ma'am.

9 THE COURT: That my reasoning is this. My reasoning  
10 is that -- and Mr. Schardt hit the nail on the head. It's  
11 to keep this man away from this woman as long a period of  
12 time as possible, and balance that, the amount of prison  
13 time that has already been visited to him.

14 Obviously, one of the issues is these events occurred  
15 afterwards. It's enough that he broke into her home that  
16 he could have twenty years.

17 What I have done is when I look at these events at the  
18 time of his age, I am not going to run his jail or prison  
19 time concurrent. I am going to run a probationary term  
20 concurrent.

21 The second thing of course is if he makes community  
22 supervision, what would the relationship between the  
23 probation be and community supervision? We had that case  
24 that talks about probation being subsumed into community  
25 supervision. The probationary term was stayed during

1 community supervision. The difference is we don't know  
2 about having two different charges.

3 So, what I have done -- because there is that, at this  
4 moment, ambiguity -- what I have done, Mr. Sowell, I am  
5 going to commit you to the State Department of Corrections  
6 for a period of five years, which I'm going to suspend and  
7 place you on probation for five years. But this  
8 probationary sentence will run consecutive to the term that  
9 you are currently serving.

10 There is one -- actually, there are two terms of your  
11 probationary sentence. The first one is that you have no  
12 contact whatsoever, directly or indirectly, with Ms. Jacobs  
13 at work, at home, at play in any regard at any time. And  
14 pursuant to 35-13, you must pay \$500 for the public  
15 services you've had for your defense. That is the term.  
16 That is the reason for the probation.

17 If she gets five more years out of this man staying  
18 away from her beyond the community supervision, I think  
19 that the sentence is well served.

20 You need to explain to him if he violates this, he  
21 stands to return to prison for a couple of years.

22 MS. WEISS: Your Honor, could I just add Ms. Jacobs  
23 and her family?

24 THE COURT: Absolutely.

25 MS. WEISS: Is that okay? I mean, I don't think, I

1 don't think -- yeah, to the no-contact.

2 THE COURT: Anyone else that she feels compelled  
3 that's been in need.

4 MS. WEISS: Thank you.

5 THE COURT: Absolutely.

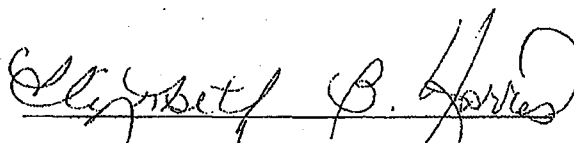
6 END OF EXCERPT TWO

7 --- END OF EXCERPTED TRANSCRIPT OF RECORD ---

## CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED  
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH  
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO  
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE  
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE  
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING  
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE  
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON  
THE 22ND DAY OF MARCH, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

  
ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

APRIL 8TH, 2010

WITNESSES

(S) KEVIN REESE - CPD

ARREST WARRANT NUMBER

H858449

ACTION OF GRAND JURY

**TRUE BILL**

Forperson of Grand Jury

Date:

JUN 16 2005

VERDICT

Forperson of Petit Jury

Date:

DOCKET NO. 2005-GS-40-393

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

JUNE TERM 2005

102

THE STATE

vs.

TODD SOWELL

Indictment for

BURGLARY/(AFTER 6/20/85)  
1<sup>ST</sup> DEGREE

SC Code: 16-11-311

CDR Code: 079

Class FEL-EXM(V)

After being fully advised as to my  
legal rights, I hereby waive presentment  
to the Grand Jury.

Defendant

hereby appear in my own proper person and plead  
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)  
COUNTY OF RICHLAND )

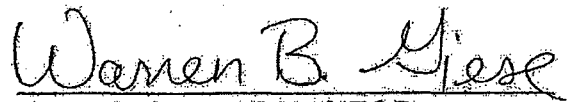
## INDICTMENT

At a Court of General Sessions, convened on June 15, 2005, the Grand Jurors of Richland County present upon their oath:

**BURGLARY/(AFTER 6/20/85) - 1ST DEG**

That Todd Sowell did in Richland County on or about December 1, 2004, unlawfully enter the dwelling of Sandrica Jacobs, without consent and with the intent to commit a crime therein, To wit: the defendant did enter during the hours of darkness and/or caused physical injury to any person who is not a participant in the crime, all in violation of Code Section §16-11-311, Code of Laws of South Carolina (1976, as amended).

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

  
Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF  
STATERichland

VS.

Todd Souwell

AKA:

Race: WhiteSex: Male

Age: \_\_\_\_\_

DOB: \_\_\_\_\_

SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

DL# \_\_\_\_\_

SID# \_\_\_\_\_

A/VN#:

Date of Offense: 12-1-04S.C. Code §: 16-11-311CDR Code #: 01 01 7 1 9☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

Burglary 1stin violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 01 01 7 1 9☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ \$17-25-45 w/minor 1<sup>st</sup> or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury: \_\_\_\_\_ (Defendant Initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Heather S. Weiss  
Solicitor

Defendant

[Signature]  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_ plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered:

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:

\$14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ \_\_\_\_\_

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_

\$56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

\$35-13 (Public Def/Prob) \$500 \$ \_\_\_\_\_

\$73-3, 1B TP (Law Enforcement Funding) \$25 \$ \_\_\_\_\_

\$33-7, 1B TP (Drug Court Surcharge) \$100 \$ \_\_\_\_\_

\$50-21-114(BUI Breath Test Fee) \$50 \$ \_\_\_\_\_

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_

3% to County (if paid in installments) \$ \_\_\_\_\_

Total: \$ \_\_\_\_\_

Barbara A. Scott

Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

PTUP \_\_\_\_\_

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve WVE beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

☐ Appointed PD or appointed other counsel, \$35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: A T T E S TSentence Date: 12-1-04[Signature]  
J. C. C. P. & G. S.

2009CP40026 86

JTB/BF

STATE OF SOUTH CAROLINA )

In the Court of Common Pleas

County of Richland )Todd Michael Sowell, 232581 )

Full name and prison number, if any, of applicant )

v. )

The State of South Carolina )

Name of Respondent )

APPLICATION FOR

POST-CONVICTION RELIEF

JEANETTE W. McBRIDE  
C.C.P. & G.S.

2009 APR 14 AM 11:10

RICHLAND COUNTY  
FILEDINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence General Sessions, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 2005-GS-40-393, Burglary 1<sup>st</sup> degree
  - (b) N/A
  - (c) N/A
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) March 16<sup>th</sup>, 2007; 20 years
  - (b) N/A
  - (c) N/A



5. Check whether a finding of guilty was made
- (a) after a plea of guilty n/a
  - (b) after a plea of not guilty ✓
  - (c) after a plea of nolo contendere n/a
6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
    - i. The South Carolina Court of Appeals
    - ii. The Supreme Court of South Carolina
    - iii. n/a
  - (b) the result in each such Court to which you appealed:
    - i. Appeal dismissed
    - ii. No longer entertain petitions for writ of certiorari after Anders review.
    - iii. n/a
  - (c) the date of each such result:
    - i. January 2, 2009
    - ii. April 6, 2009
    - iii. n/a
  - (d) if known, citations of any written opinion or orders entered pursuant to such results:
    - i. State v. Sowell, Op. No. 2009-UP-040 (S.C.Ct. App. Filed January 15, 2009)
    - ii. State v. Lyles, S.C. Supreme Court Order February 19, 2009 (Shearouse Adv.Sh. No 9 at 36)
    - iii. n/a
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) n/a
  - (b) n/a
  - (c) n/a
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Double jeopardy
  - (b) Ineffective assistance of trial counsel; appellate counsel
  - (c) Prosecutorial misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) Applicant was previously tried for the same act in Magistrate Court. S.C. Code Ann. § 17-23-20 completely bars this prosecution, as well as S.C. Const. Art. I, § 12; USCA Const. Amend 5.
- (b) Ineffective utilization of discovery procedures, failure to 1. subpoena witness, 2. preserve Speedy Trial violation, 3. advise of Jackson v. Denno procedure, 4. assert consent defense, failure to raise preserved issues.
- (c) Unfair or improper remarks about defendant and counsel, reference to previous convictions, presentation of false evidence, material misstatements of law, and fact.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law?  
N/A
- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?  
N/A
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A
- (d) any other petitions, motions or applications in this or any other Court?  
Yes

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. FOIA litigation, 08-CP-40-8533
- ii. N/A
- iii. N/A
- iv. N/A

(b) the name and location of the Court in which each was filed:

- i. Court of Common Pleas, Richland County Judicial Center, 1701 Main Street, Columbia SC 29201
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. Approaching
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? Yes

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. Double jeopardy
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. prese petitions in SC Court of Appeals, SC Supreme Court (not adjudicated)
- ii. N/A
- iii. N/A

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) N/A
- (b) # 9(b) - Appellate Court only looks to see if the trial judge made errors of law.
- (c) # 9(c) - Appellate Court only looks to see if the trial judge made errors of law.

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?  
Yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Maxwell Schardt and Dean O'Neil, Public Defender's Office, P.O. Box 192, Col. SC 29201
- ii. Robert M. Pachale, SCCID, P.O. Box 11589, Col. SC 29201
- iii. N/A

(b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Appeal
- iii. N/A

18. State clearly the relief you seek in filing this application.

1. Vacate the judgement of the trial court. 2. Grant the Applicant a retrial on specific issues.  
3. Reclassify and for Resentence the Applicant's conviction. 4. And further relief as this Court may deem to be just and proper.

19. Are you now under sentence from any other court that you have not challenged?

Yes

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF Richland )

## VERIFICATION

I, Todd Michael Sowell, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

T. Sowell

FILED  
 APR 14 AM 11:18  
 JANNIE W. McBRIDE  
 C.C.P. & C.S.  
 RICHLAND COUNTY

Sworn to and subscribed before me

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

L.S.

Notary Public for South Carolina

My Commission Expires \_\_\_\_\_

APPLICATION TO PROCEED WITHOUT PREPAYMENT  
 OF COSTS AND AFFIDAVIT  
 IN SUPPORT THEREOF

I, Todd Michael Sowell, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

T. Sowell  
 Applicant

Sworn to and subscribed before me

This 08 day of April, 2008.

Jannik (Franklin) L.S.

Notary Public for South Carolina

My Commission Expires: 01.31.2010

STATE OF SOUTH CAROLINA )

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND )

) 2009CP4002686

) Sowell, Todd, 00238581, )

) Applicant, )

) v. )

) RETURN

) State of South Carolina, )

) Respondent. )

2009 JUL -8 PM 1:35  
 JEANETTE M. McBRIDE  
 C.C.P. & G.S.

RICHLAND COUNTY  
 FILED

The Respondent, making its Return to the Application for Post-Conviction Relief filed April 14, 2009, would respectfully show this Court:

## I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by Maxwell G. Schardt, Esquire and E. Deon O'Neil, Esquire. On March 16, 2007, after a jury trial with the Honorable L. Casey Manning, the Applicant was convicted and sentenced to the following:

|      |               |                                                                                  |    |    |
|------|---------------|----------------------------------------------------------------------------------|----|----|
| 6-05 | 2005CS4000393 | 0079 16-11-0311 * 154 * Burglary / Burglary (After June 20, 1985) - First degree | 20 | No |
|------|---------------|----------------------------------------------------------------------------------|----|----|

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence pursuant to an Anders

brief. State v. Todd Sowell, Op. No. 09-UP-040 (S.C. Ct. App. filed January 15, 2009 remittitur date April 8, 2009).<sup>1</sup>

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

## II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
  - (a) Double jeopardy
  - (b) Ineffective assistance of trial counsel; appellate counsel
  - (c) Prosecutorial misconduct
10. State concisely and in the same order the facts which support each of the grounds set out in (9)
  - (a) Applicant was previously tried for the same act in Magistrate Court, S.C. Code Ann. § 17-23-20 completely bars this prosecution, as well as S.C. Const. Art. I, § 12; USCA Const. Amend 5.
  - (b) Ineffective utilization of discovery procedures, failure to 1. subpoena witness, 2. pursue Speedy Trial Violation, 3. advice of Jackson v. Denno procedure, 4. assert consent defense; failure to raise preserved issues.
  - (c) Unfair in improper remarks about defendant and counsel, reference to previous convictions, presentation of false evidence, material misstatements of law and fact.
18. State clearly the relief you seek in filing this application.
  1. Vacate the judgement of the trial court.
  2. Grant the Applicant a retrial on specific issues.
  3. Rehabilitate by and/or Rescind the Applicant's conviction.
  4. And further relief as the Court may deem to be just and proper.
19. Are you now under sentence from any other court that you know of? no

<sup>1</sup> Anders v. California, 386 US 738 (1967).

## VI.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

HENRY DARGAN McMASTER  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

BRIAN T. PETRANO  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
Telephone: (803) 734-3737

July 2, 2009



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

)  
) IN THE COURT OF COMMON PLEAS

2009-CP-400-2686

Todd Sowell, 238581

Applicant,

vs

State of South Carolina,

Respondent.

)  
)  
)  
) AFFIDAVIT OF SERVICE BY MAIL  
)  
)  
)  
)

JEANETTE W. McBRIDE  
C.C.P. & G.S.

2009 JUL - 8 PM 1:35

RICHLAND COUNTY  
FILED

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tommy Arthur Thomas, Esquire  
P.O. Box 88  
7588 Woodrow Street  
Irmo, SC 29063

DATED this 2<sup>nd</sup> day of July, 2009.

  
Jean R. Indriago, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF RICHLAND ) FIFTH JUDICIAL CIRCUIT

2009-CP-40-02686

Todd Michael Sowell, )

Plaintiff, )

v. )

Transcript of Record

State of South Carolina )

Defendant )

April 14, 2010  
Columbia, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge

A P P E A R A N C E S:

Brian Petrano, Esquire  
Attorney for the State

Tommy Thomas, Esquire  
Attorney for the Defendant

Hilda M. Jordan, CVR  
Circuit Court Reporter

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## TESTIMONY IN ORDER OF APPEARANCE:

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1 THE COURT: All right, Counsel.

2 MR. PETRANO: Thank you, Your Honor.

3 May it please the Court. This is 2009-CP-40-02686, Mr.  
4 Todd Sowell.

5 On the bench, Your Honor, was a supplementary  
6 transcript. I do not believe it was in your packet, as we  
7 just received it.

8 THE COURT: Okay.

9 MR. PETRANO: It may be in your package. I don't  
10 remember. I'm sorry, but this was an application filed  
11 April 14, 2009. There was a jury trial in front of Judge  
12 Manning on March 16, 2007. The applicant was represented by  
13 the public defenders office, a Mr. Maxwell Schardt. I hope  
14 I'm saying that correctly.

15 The applicant had been indicted in the June, 2005, term  
16 of the Richland County Grand Jury, 2005-GS-40-000393, first  
17 degree burglary. He received a 20 year sentence. There was  
18 a direct appeal. That was an Anders brief. South Carolina  
19 Court of Appeals affirmed the conviction on January 15,  
20 2009. That was 09UP040. That remittitur was April 8, 2009,  
21 and just by way of brief explanation, Your Honor, Mr.  
22 Schardt, I believe is how you say his name. He is listed as  
23 inactive in the South Carolina Bar website. I have no known  
24 address for him. Rumor has it he is a PD in Georgia. I  
25 have emailed him repeatedly. I do not have him here today.

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1 I believe he is outside the Court's jurisdiction, in the  
2 since that he is in Georgia. That is just my explanation.

3 I will turn it over to Tommy Thomas, the applicant's  
4 current counsel of record.

5 Thank you, Judge.

6 THE COURT: Yes, sir, Mr. Thomas.

7 MR. THOMAS: Yes, Your Honor, please the Court.

8 I have also tried to get in touch with Mr. Schardt. My  
9 understanding is that he is in Atlanta, somewhere, and I  
10 have also been unable to talk with him or make arrangements  
11 for him to be here today.

12 Your Honor, please the Court, my client has been very  
13 active in assisting in the preparations of this case. I  
14 have given a copy of these documents to the Attorney  
15 General, and I have, basically, what is a pre-trial brief, I  
16 guess, Your Honor, with the issues, and I am agreeable to  
17 submit this on my client's behalf. Just for the record,  
18 Your Honor.

19 THE COURT: All right.

20 (Applicant's Exhibit No. 1, brief,  
21 was marked and entered.)

22 MR. THOMAS: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 MR. THOMAS: Yes, sir.

25 Your Honor, if it please the Court, we would call Todd

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1 Sowell to the stand.

2 THE COURT: All right.

3 (WHEREUPON, Todd Michael Sowell,  
4 was sworn to tell the truth.)

5 MR. THOMAS: If it please the Court.

6 THE COURT: Yes, sir.

7 TODD MICHAEL SOWELL - DIRECT EXAMINATION

8 BY MR. THOMAS:

9 Q Mr. Sowell, you're currently incarcerated with the  
10 South Carolina Department of Corrections?

11 A Yes, sir.

12 Q And where are you being housed?

13 A At Lee County Correctional.

14 Q All right, sir, and how long have you been  
15 incarcerated?

16 A Since January 3, 2005.

17 Q All right, sir, and you are serving time for what?

18 A Burglary, first degree.

19 Q And are you serving any other sentences?

20 A No, sir.

21 Q All right, sir.

22 MR. THOMAS: Your Honor, if I could beg the Court's  
23 indulgence, just for a second?

24 THE COURT: Yes, sir.

25 BY MR. THOMAS:

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1 Q Do you have a charge with -- where you went back and  
2 you pled to malicious injury?

3 A Yes, sir.

4 Q All right, sir. When was that, the date of that?

5 A The week after my trial for the burglary, first.

6 Q Yes, sir.

7 A It was March 22nd.

8 Q Right, and that arose out of the same transaction or  
9 occurrence -- do you know what I mean by transaction or  
10 occurrences?

11 A Uh --

12 Q It arose out of the same factual situation as the  
13 burglary?

14 A Yes, sir.

15 Q All right, sir, and you pled to that?

16 A I pled to that. Yes, sir.

17 Q And what did you receive on that charge?

18 A I received probation.

19 Q All right. And that is the supplemental excerpt  
20 transcript that was presented to the Court?

21 A Yes, sir.

22 Q All right. Now, Mr. Sowell, you understand that you've  
23 elected to go forward on a Post Conviction Relief today?

24 A Yes, sir, I have.

25 Q Do you understand that you have certain exposure?

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1 A Exposure?

2 Q Should you be successful in what you're asking for, a  
3 new trial?

4 A Yes, sir.

5 Q And that you originally -- that you've been charged  
6 with burglary first?

7 A Yes, sir. I've been charged with that.

8 Q And was convicted of burglary first by jury trial?

9 A Yes, sir.

10 Q All right, sir, and should you be successful and you  
11 get a new trial, that you could go back before a jury on a  
12 trial for burglary first?

13 A Yes, sir.

14 Q And your exposure could be greater than the amount of  
15 time that you've received?

16 A I'm aware of that possibility.

17 Q All right, sir, and being aware of that possibility are  
18 you still wanting to go forward today?

19 A I am, because I believe also that other relief that  
20 could be granted in addition, it would not only be a new  
21 trial, but also if the relief is applicable in the sense  
22 that the sentence may be vacated. So under these issues,  
23 yes, I'm -- under both circumstances, yes, I'm -- I would  
24 like to have a new trial, too, if possible.

25 Q All right, sir. Now, Mr. Sowell, you were represented



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1 by the public defenders?

2 A Yes, I was.

3 Q And who represented you?

4 A Maxwell Schardt and Mr. Deon O'Neal.

5 Q And Mr. Schardt was first chair -- he was the one --

6 A Uh-huh. (Affirmative response.)

7 Q All right, sir. Where were you -- so you were arrested  
8 and you were taken to the Richland County Detention Center?

9 A Yes, sir.

10 Q And you had, at that time, outstanding warrants; is  
11 that how you got picked up?

12 A Yes, sir.

13 Q And your outstanding warrants were for what?

14 A For misdemeanor charges, and they were improper use of  
15 the telephone, a simple assault, which later became a CDV  
16 charge. Malicious injury to personal property, -- malicious  
17 injury to real property, and otherwise I can't recall. Four  
18 misdemeanors.

19 Q All right, sir. How did this action get initiated; how  
20 did you end up getting charged with burglary first?

21 A I believe the investigator in the case, a day after I  
22 pled in municipal court to the CDV, Investigator Kevin  
23 Reese, of the Columbia City Police Department, he come and  
24 questioned me about the same situation that happened that  
25 night that I had already just pled for in municipal court,

1 and he -- he wanted me to -- he wanted to get my version of  
2 the events. I said, Mr. Reese, I just already deal with  
3 this at the municipal court and everybody that was there.  
4 And he said, I know, I know, but the complainant -- in this  
5 case, Ms. Jacobs, he even made a statement to me in the  
6 interview, he said, Ms. Jacobs and her aunt keep coming down  
7 here talking to my supervisors. I have to do something in  
8 this case.

9 Q All right. Let me stop you. You know your case very  
10 well.

11 A Yes, sir.

12 Q The Court certainly does not, because they're hearing  
13 it today. This was a domestic situation?

14 A Yes, it was.

15 Q Between you and who?

16 A My ex-fiance.

17 Q And you had at one time been engaged to be married?

18 A Yes.

19 Q And you had lived in this residence?

20 A Six months.

21 Q And she had asked you to leave?

22 A We had an agreement, a set agreement, for a day for me  
23 to get my belongings and leave at the end of that week,  
24 which was a Friday.

25 Q So you were breaking up?

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1 A We had broke up. Yeah, we broke up quite a few times  
2 and this was the last, yes, this was the last one.

3 Q All right. Now, when you were picked up by the  
4 Sheriff's Department and you were taken -- the investigator  
5 asked to see you, you gave him a statement; is that correct?

6 A I did give him a statement.

7 MR. THOMAS: Your Honor, beg the Court's indulgence.

8 May I approach, Your Honor?

9 THE COURT: Yes.

10 BY MR. THOMAS:

11 Q All right. Mr. Sowell, can you identify that document?

12 A It's an Advice of Rights form.

13 Q All right. What's behind that?

14 A The Columbia, South Carolina Police Department  
15 statement form.

16 Q Is that the statement that you gave?

17 A Yes, it is.

18 Q All right.

19 MR. THOMAS: Your Honor, we'd like to admit this as  
20 Applicant's No. 2.

21 MR. PETRANO: No objection.

22 THE COURT: All right.

23 (Applicant's Exhibit No. 2, Advice  
24 of Rights form and Columbia Police Department statement  
25 form, were marked and admitted.)

1 MR. THOMAS: Your Honor, just so I don't forget. That  
2 statement was redacted, and it was sent to the jury. I'm  
3 going to go ahead and enter the redacted portion of it, too,  
4 Your Honor.

5 MR. PETRANO: I have no objection.

6 BY MR. THOMAS:

7 Q Mr. Sowell, can you identify that document?

8 A This, as you said, is a redacted statement.

9 Q And why was it redacted?

10 A Because it's actually two different -- I was given a  
11 statement to Investigator Reese about two different cases.  
12 So the case I went forward with the trial, they -- the un-  
13 redacted part was the statement of the incident I was going  
14 to trial for. The other, the redacted version is a  
15 statement for what I took a plea for a week later, the  
16 malicious injury to personal property.

17 Q So the malicious injury charge the statement regarding  
18 that did not go to the jury?

19 A To my knowledge, no.

20 Q Okay.

21 MR. THOMAS: Your Honor, we would like to mark this as  
22 Applicant's No. 3.

23 (Applicant's Exhibit No. 3,  
24 redacted version of statement, was marked and entered.)

25 BY MR. THOMAS:

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1 Q Now, Mr. Sowell, after you met with the investigator,  
2 you were then served with a burglary charge; is that  
3 correct?

4 A Yes.

5 Q You were charged with burglary first?

6 A Yes, I was.

7 Q And you met with your public defender?

8 A Maxwell Schardt. Yes, and Deon O'Neal.

9 Q And he came to see you while you were in the Richland  
10 County Detention Center?

11 A Yes. The week before the trial, I had an interview a  
12 couple of days before the trial.

13 Q How many times did you meet with him?

14 A Two days -- I believe I met with him that Tuesday, that  
15 Wednesday -- and my trial may have been the third. I know I  
16 met him two days before the trial, two interviews.

17 Q Okay, and how long were you in the Richland County  
18 Detention Center?

19 A Oh, no. I'm sorry. I wasn't in the Detention Center  
20 when I met with him. I actually was in Kershaw Institution  
21 for a probation violation. I had been there -- this is 26  
22 months later after I was charged with burglary, first  
23 degree, that I finally went to trial.

24 Q All right.

25 A So I was incarcerated, but not in the jail at SCDC.

1 Q Now, I know that you made certain allegations that your  
2 counsel was ineffective for failure to investigate your  
3 claims, your case.

4 A Yes.

5 Q Why do you feel like he failed to investigate your  
6 case?

7 A I feel like he failed to investigate, first and  
8 foremost, for failure to discover medical evidence in this  
9 case, because it was brought up in my trial, which he told  
10 me they might try to present this evidence. There was a  
11 physical altercation, and he said that as a result of the  
12 situation that unfolded that the complainant, Ms. Jacobs, is  
13 claiming that she was hospitalized as a result of the  
14 incident. I said, well, we could get the hospital records,  
15 you know, to refute this. And Mr. Schardt made a statement  
16 to me, there is no time for that and this and that. We're  
17 going forward.

18 And we was under a lot of pressure, you know, and he  
19 didn't get this medical evidence, and I believe it, it  
20 definitely would have went to -- I believe that should have  
21 been it -- they should have got the medical evidence.

22 If you say that I did something on this day and you  
23 were hospitalized. This agency would be able to back you  
24 up. I can't understand why the solicitor don't have this  
25 information. I don't understand why my lawyer didn't get

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1 it.. Everybody just says this is what happened. The  
2 hospital is a public body, they should have it. It would  
3 have been easy to get these records. I don't know why --

4 Q Right. To simplify this somewhat, you were alleged to  
5 have what, as far as the burglary first?

6 A The CDV, and that's all that happened. The prior CDV,  
7 which I pled to, which I asked the Judge and the Court, I  
8 don't know what the CDV is she's blaming me. I can  
9 basically just brush her shoulder and I would be guilty of  
10 CDV. This was the element they used to enhance my burglary  
11 first.

12 Q Now, they're saying you went over to her apartment; is  
13 that correct?

14 A This is our apartment.

15 Q Your apartment?

16 A I stayed there with my fiance six months.

17 Q You stayed there?

18 A Yes.

19 Q And they said that you had been attempting to speak  
20 with her?

21 A Yes, they said that.

22 Q All right. And did you go back over there that  
23 evening?

24 A During the incident?

25 Q Uh-huh. (Affirmative response.)

1 A That night?

2 Q Uh-huh. (Affirmative response.)

3 A Yes, I was there.

4 Q Okay, and you entered; you testified that you entered  
5 the dwelling?

6 A I testified I did enter the dwelling -- no, I did not  
7 testify. I did not testify at the trial.

8 Q You didn't testify, but in your statement?

9 A Oh, yes, in my statement. Yes, I believe that my  
10 statement will reflect that. This is what happened, I  
11 entered into the dwelling, but not with any intent to commit  
12 a crime.

13 Q Right.

14 A And not without consent. I stayed there.

15 Q What was the purpose for you going in?

16 A I wanted to get my stuff. The rest -- the little bit  
17 of stuff I had out of that house and take it to my mother's  
18 house in Summerville, because we were splitting up. I  
19 wanted my things out of the house.

20 Q And you told the investigator that story in your  
21 statement; is that correct?

22 A Yes, I did. Yes, it's in the statement.

23 Q Now, you were found guilty and were sentenced to what?

24 A Twenty years.

25 Q And when do you max out?



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1 A They don't have my sentence start date applied  
2 correctly. I max out, according to the computer, February  
3 8, 2024.

4 Q So how many more years do you have before you max out?

5 A That will roughly take it to 13 years, 10 months left.

6 Q And you've served how much?

7 A I have served five, but they are only giving me credit  
8 for three.

9 Q Now, it's somewhat confusing, but as this is going on,  
10 you're standing trial for burglary first; is that correct?

11 A Uh-huh. (Affirmative response.)

12 Q And you had also been charged with CDV?

13 A Previously, in the magistrate court.

14 Q And the criminal domestic violence charge was signed --  
15 was a warrant signed by whom?

16 A Sandrica Jacobs.

17 Q And who is she?

18 A The complainant and my ex-fiance.

19 Q She is the alleged victim or the victim in this case?

20 A Uh-huh. (Affirmative response.) Yes, sir.

21 Q All right. And --

22 MR. THOMAS: Your Honor, may I approach?

23 THE COURT: Yes.

24 BY MR. THOMAS:

25 Q Mr. Sowell, I want to show you this document and ask

1 you if you can identify that?

2 A This is an arrest warrant for criminal domestic  
3 violence.

4 Q And is that factual situation on that criminal domestic  
5 violence the same factual situation in regards to your  
6 burglary first?

7 A Allegedly.

8 Q Allegedly, same facts, set of circumstances?

9 A Same facts. Exactly. Same time, place, people,  
10 location, event. Allegedly, yes.

11 Q All right. I want to show you this document and ask if  
12 you can identify that?

13 A It's an indictment, State of South Carolina, County of  
14 Richland for criminal domestic violence.

15 Q It doesn't show whether it's true billed or not does  
16 it?

17 A I cannot see where it is any type of true bill.

18 Q All right, and I want to ask you, this third document,  
19 and see if you can identify that third document?

20 A The letter of disposition. I guess that would be the  
21 Court disposition on the criminal domestic violence.

22 Q All right, sir, and that is what happened -- what is  
23 the disposition of that?

24 A Thirty days. Thirty days.

25 Q What's the warrant number on the conviction in city

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1 court; can you see that on the document?

2 A Yes, sir. On the disposition or the warrant -- the  
3 warrant number is 858420.

4 Q And what's the warrant number on the conviction from  
5 the City of Columbia?

6 A The same, 858420.

7 Q Now, I want to show you this last document; can you  
8 identify that?

9 A It says, Magistrate Court, criminal domestic violence,  
10 warrant description.

11 Q Is it from the City of Columbia?

12 A I believe so. I never did any --

13 Q Look down there at the bottom?

14 A Yes, it's from the City of Columbia. It had to be  
15 because I've never been accused or pled guilty to any other  
16 -- it would only have happened in Columbia.

17 Q The facts in this from the City of Columbia are the  
18 same facts, the same factual allegations in the burglary  
19 first?

20 A The same factual allegations, yes. They re-litigated  
21 this case. All the facts and circumstances totally overlap.

22 Q The same facts?

23 A Exactly the same facts.

24 MR. THOMAS: Your Honor, we want to mark these as I  
25 think four, Applicant's four.

1 MR. PETRANO: Is that No. 3 or 4?

2 MR. THOMAS: I think No. 4.

3 (Applicant's Exhibit No. 4,  
4 documents, were marked and entered.)

5 BY MR. THOMAS:

6 Q So when you were -- when representation was undertaken  
7 by the public defenders office, for you, you had a CDV  
8 charge; and you had a burglary first charge; is that  
9 correct?

10 A When representation was -- came to me from the public  
11 defenders office --

12 Q Right.

13 A -- the CDV was -- there was a disposition on that, and  
14 the burglary first was pending.

15 Q And they were from the exact same facts and  
16 circumstances; is that right?

17 A The exact -- December 1, 2004.

18 Q All right. Did you discuss this with your public  
19 defender?

20 A Yes, I did.

21 Q And what did you talk about?

22 A I -- when we came to this topic in the interview I  
23 basically asked him, I said, -- he said -- he wanted to me  
24 to see the legal wisdom of pleading guilty. I did not plead  
25 guilty. He said, you should do this, you should do this. I

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1 said, well, hold it, slow down. I want to ask you a  
2 question. How can they try me for this in general sessions  
3 court; I've already pled to this in magistrate's court. He  
4 said, what are you talking about. I said, I already had a  
5 CDV. I pled to this. I already -- the same thing they're  
6 saying here, I've already pled to that. He said, it's not  
7 on your arrest record. I said, I know. I don't know why  
8 it's not on my arrest record. As you can see the  
9 disposition the arrest record was faulty. He said, where  
10 was you -- what court was this? I said, I don't know what  
11 court it was. I tell him around the date it was.  
12 Afterwards he said I'm going to check on it. I'm going to  
13 check on it.

14 The morning of the trial. He wasn't there. I sat at  
15 the table. And he came to me almost in disbelief and he  
16 says, we found a copy of the disposition on the CDV.

17 Q Found it the morning of the trial?

18 A Yes. And then made a pre-trial motion for double  
19 jeopardy.

20 Q Now, what did he tell you about representation in  
21 municipal court or magistrate's court, if anything?

22 A No, he did not say anything about representation. As  
23 far as their office?

24 Q Yes?

25 A As far as their office, as I understand, you -- in

1 magistrate's court you're not afforded any type of -- if you  
2 want to retain a lawyer. I don't think the public  
3 defender's office will handle those issues. I have no idea.

4 Q All right. Now, what was the theory of your defense.  
5 This case went to trial. Did you discuss it with your  
6 public defender?

7 A Yes.

8 Q A defense to this charge?

9 A Oh, yes.

10 Q And what was the defense?

11 A That I had no intent to commit a crime. I only wanted  
12 to get my stuff out of the same place I'd been staying at  
13 taking care of this woman. I didn't do anything to her.  
14 She lied on me. I go to trial for this reason.

15 Q It was a two day trial wasn't it?

16 A Yes -- no, one --

17 Q One day?

18 A -- Yes, two days.

19 Q Two days. Did she even show up the second day?

20 A No. After she -- after they obligated to do what she  
21 -- she -- I guess they said, you must show up to this. She  
22 showed up, the next day she did not show up.

23 Q Now, did your attorney argue, at all, a defense that  
24 was your residence or that you still resided there?

25 A No. He elected to -- in contrast to what I tell him

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1 about my defense, I feel I had consent. We had an  
2 agreement. I had consent. Okay, we're not getting along.  
3 I'm going to leave Friday. He said, I'm not going to argue  
4 consent, because if it was consent we wouldn't even be going  
5 through this, but I want to argue the intent that you did  
6 not have to commit a crime, because you just wanted to get  
7 your stuff.

8 So he didn't argue consent. But he argued intent. I  
9 wanted him to argue the whole thing.

10 Q Matter of fact, he told the jury in his closing  
11 arguments -- well, let me ask you this, this way -- what did  
12 he tell the jury in his closing argument about you living  
13 there?

14 A He actually -- I believe he actually caused me more  
15 damage than anything. As he stood up in front of the jury  
16 and told them I had no right to be there. That I was wrong  
17 for that. This is not what we discussed in interview. I  
18 told him we had an agreement when I was supposed to leave  
19 this place.

20 I wanted to say something. I didn't want to be  
21 disrespectful in the court. I wanted to say, that's not  
22 true. I don't want to fire the lawyer. I know it's foolish  
23 to represent yourself in any kind of -- a person who  
24 represents himself has a fool for a client. I cannot fire  
25 the man. I don't to make a scene, but I did not agree with

1 that.

2 MR. THOMAS: Your Honor, I beg the Court's indulgence  
3 just for a second.

4 BY MR. THOMAS:

5 Q Todd, while I'm looking for this in your record, what  
6 happened with the CDV; did it come back -- did that  
7 conviction come back to haunt you?

8 A I'd say so. They talked about it about seven different  
9 times in my trial.

10 Q All right. Now, there was a pre-trial conference where  
11 your counsel argued that the CDV was -- that the burglary  
12 first was double jeopardy?

13 A Oh, yes. They argued under South Carolina Code 17-23-  
14 20 that double jeopardy bars -- from a conviction acquittal  
15 in the magistrate's court would bar further prosecution in  
16 any other court.

17 Q Okay. And were they successful?

18 A I believe -- no, but I believe, but Mr. O'Neal, he made  
19 a good -- he argued, as far as looking back on my  
20 transcript, he made the argument, but what Judge Manning  
21 misapprehend, (sic) when he made the argument he said this  
22 is from the same situation. He told the solicitor you're  
23 not going to bring up a CDV when this is a burglary trial.  
24 Then the solicitor, she said, well, it's the state's  
25 contention -- Mr. O'Neal made further grounds on it, and he



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1 said, well, I'll tell you what -- Mr. Manning, the Honorable  
2 Judge Manning, he said, he will not be charged with this,  
3 and that's what happened in the case, and I feel is where  
4 Mr. Manning misapprehended. I was charged with that, as all  
5 the documents that have already been entered. I've already  
6 been charged with that and convicted. So for his rationale  
7 to say this is not double jeopardy, I won't be charged with  
8 that, but it's what happened in the case is a pivotal point  
9 there. He misapprehended. I was charged with that. I was  
10 convicted of that.

11 I'm not a lawyer, but the code 17-23-20, the South  
12 Carolina Code clearly states this. Also Waller verses  
13 Florida. 90 Supreme Court 1184 bars prosecution for a  
14 felony after a conviction in a magistrate's court of the  
15 same fact and situation in a lesser included offense. Under  
16 South Carolina State law, State verses Dobson, at Page 309  
17 S.E.2d at page 752, a lesser included offense under South  
18 Carolina law is one that does not require any proof beyond  
19 that of the greater.

20 I'm not a lawyer. And that's why I went -- I just want  
21 somebody, a court, if they could explain to me how -- if I'm  
22 wrong in this, fine. Where is it that -- I believe this is  
23 a lesser included offense. In the elements of burglary  
24 first, all of that encompasses everything that a CDV --  
25 that's what they utilize. I went -- I'm just seeking a

1 ruling on that issues. That is one of my issues aside from  
2 ineffectiveness of counsel, that it's also a grounds for  
3 relief in PCR. If you go to South Carolina Digest at  
4 Criminal Law, Key 1462, double jeopardy in itself, aside  
5 from ineffective assistance of counsel, double jeopardy is a  
6 grounds for relief, and that's also what I'm clearly raising  
7 on my PCR application.

8 The return from Mr. Petrano concerned me because they  
9 he said, they said on the return they're interpreting  
10 everything on my application to encompass just ineffective,  
11 but no, it's double jeopardy. Ineffective -- ineffective  
12 assistance of appellate counsel and also some prosecutorial  
13 misconduct. All of these keys are separate grounds.

14 Q Right. Now, you did have an appeal?

15 A I had an appeal.

16 Q And an Anders brief was submitted?

17 A Yes, it was.

18 Q And the Anders brief was submitted on what issue?

19 A On the directed verdict.

20 Q All right, because there was no evidence of intent to  
21 commit a crime? Of the intent?

22 A Yes, and he stated in brief -- and I agree with that on  
23 that part. He said I just wanted to come back -- the record  
24 reflected in my statement I just wanted to go back and get  
25 my stuff out of the house.

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1 Q Now, you filed a supplemental brief to that; isn't that  
2 correct?

3 A Yes, I did.

4 Q And you raised the issue of the double jeopardy?

5 A I raised it, and I raised other issues, and then the  
6 Order of the South Carolina Court of Appeals, it clearly  
7 states that my attorney for me, raised the double jeopardy  
8 -- a directed verdict argument and it says, Sowell also  
9 raised various arguments. I don't know if you could  
10 consider they educated on the merits of actually what I  
11 raised. They just said I raised various arguments.

12 Q But you did raise it?

13 A Yes. To preserve.

14 Q Okay. Now, in closing -- getting back to the theory of  
15 this case, in closing -- have you got your transcript with  
16 you?

17 A It's there on the table.

18 Q All right.

19 MR. THOMAS: Your Honor, may I approach?

20 THE COURT: Yes.

21 BY MR. THOMAS:

22 Q Actually, this is your copy of your record on appeal?

23 A Yes, from the South Carolina --

24 Q And you want to use that?

25 A All right.

1 Q Let me direct you to the closing arguments, Page 284.

2 A All right.

3 Q And the -- your counsel addresses the issue of burglary  
4 first?

5 A Right.

6 Q Okay. Line 10, he discusses entry?

7 A Yes.

8 Q And what does he say -- I don't necessarily want you to  
9 read it, but does he say that you entered the dwelling?

10 A No.

11 Q Look at 14, Line 14; what does it say?

12 A Entry -- a one word sentence there.

13 Q He says, he was there?

14 A Yes.

15 Q Look at 16; Line 16. Says dwelling?

16 A Dwelling.

17 Q Look at 18; what does Line 18 say?

18 A It was a dwelling done.

19 Q All right. Look at Line 19. It says without consent?

20 A Without consent. And it says without consent.

21 Q Right. Look at Line 24?

22 A It says, Todd did not live there.

23 Q Okay. Then he talks about Line 19 on the next page.  
24 Nighttime?

25 A Yes. It says at nighttime.

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1 Q Okay. And then on 286, he says the last element on  
2 Line 1?

3 A One more element that they must prove.

4 Q One more element? Is three, is that where he raises  
5 the intent to commit a crime?

6 A Yes, it is.

7 Q So he informs the jury that your actions fit all of the  
8 criteria for the burglary first except for the intent?

9 A Except for the intent, but he thoroughly made me look  
10 very bad until that point, and that's not what I discussed  
11 with him in the interview.

12 Q Now, with the CDV and the CDV conviction, that was  
13 introduced as evidence?

14 A Yes, it was.

15 Q The conviction was introduced?

16 A Yes, it was.

17 Q Okay. And if you look --

18 THE COURT: Do you have the page and line of the  
19 transcript where you are, again?

20 MR. THOMAS: Yes, sir, I do. It's Page 131.

21 A And it was entered in without objection from my lawyer.

22 MR. THOMAS: Actually, it's 132, Your Honor. It goes  
23 from Line 17 to Line 12 on 132 where it says no objection.

24 THE COURT: Tell me what's happening here.

25 MR. THOMAS: What they're doing is moving in -- I would

1 like to mark this as State's Exhibit 1, which is Line 6, I  
2 mean, State's Exhibit 2, which is the CDV conviction, Your  
3 Honor.

4 THE COURT: Before this line you were on page?

5 MR. THOMAS: 131, Your Honor.

6 THE COURT: Before that? Previous testimony --

7 MR. THOMAS: Previous testimony was just that of the --  
8 the closing argument, Your Honor, which began on 284.

9 THE COURT: 284?

10 MR. THOMAS: Yes, sir, and runs through 286.

11 THE COURT: All right.

12 MR. THOMAS: Regards to elements of burglary.

13 BY MR. THOMAS:

14 Q I know that you've been very active in this case. How  
15 was the CDV conviction entered into evidence?

16 A Improperly, because in South Carolina Rules of  
17 evidence, Rule 609(a)(1), it states the criteria for  
18 entering in impeachment evidence. And I didn't testify. I  
19 don't understand why they're entering this in, and even if I  
20 did testify the punishment of the crime according to Rule  
21 609(a)(1) of the South Carolina Rules of Evidence, the  
22 punishment must be -- exceed one year. The CDV is only 30  
23 days, and also --

24 Q The same CDV --

25 A Yeah.

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1 Q -- that we're talking about that we're introduced  
2 copies from the City of Columbia; is that correct?

3 A Right. And Mr. Schardt, he didn't raise any objection  
4 to them entering it in, and I think it would have also been  
5 in my best interest for him to at least put the burden of  
6 admissibility of this prior on the state. Why you want to  
7 -- there was nothing -- he didn't said nothing.

8 Q Was there a foundation laid, and I'll direct your  
9 attention to the bottom half of 131, the transcript, there  
10 was a foundation laid regarding the charge. In what manner  
11 was that done?

12 A Criminal domestic violence charge.

13 Q Right, but who swore the warrant?

14 A I know who swore the warrant was Sandrica Jacobs.

15 Q All right, and the question in the transcript as she is  
16 on the stand, they're asking her if she had taken out the  
17 warrant?

18 A Uh-huh. (Affirmative response.)

19 Q And then it goes further, and she says that she  
20 actually appeared in court and saw that you were convicted;  
21 is that correct?

22 A Yes.

23 Q And then they moved, at that point in time, to admit  
24 the conviction into evidence?

25 A Yes, they did.

1 Q And that's how that transpired?

2 A Yes.

3 Q Without objection from counsel?

4 A Without objection of counsel and originally they  
5 motioned in pre-trial to exclude the -- exclude the record,  
6 my record for these offenses.

7 Q Right.

8 A And they got snuck in there.

9 Q Okay. Now, the CDV conviction is referred to in your  
10 case numerous times; is that correct?

11 A Seven, I saw.

12 Q All right, and I don't want to belabor this point, but  
13 can we do this very briefly?

14 A Yes.

15 Q If you look at Page 161.

16 A All right.

17 Q The Lines 19 and 22.

18 A Yes.

19 Q They mention the CDV, the warrant?

20 A Yes, they do.

21 Q And on Page 235, Line 6?

22 A 235?

23 Q Yes, sir.

24 A Line -- 20 --

25 Q Line 6?



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1 A Line 6. Yes.

2 Q All right. If you look at Line 10, it says the charge  
3 that Todd Sowell pled to, pled guilty to; correct?

4 A Uh-huh. (Affirmative response.)

5 Q They're talking about the CDV?

6 A Yes. I have -- all the references that I found that  
7 they made to the CDV is what I have in my report --

8 Q And the simplest way to do this --

9 A Okay.

10 Q -- on Page 273, they made reference to the CDV?

11 A Yes, sir.

12 Q On 274, they made reference to the CDV?

13 A Yes, sir.

14 Q 276, they make reference to the CDV?

15 A Oh, yes. That's around six or seven.

16 Q Todd Sowell pled guilty to criminal domestic violence?

17 A Uh-huh. (Affirmative response.)

18 Q On 278?

19 A Line 13, 278.

20 Q Todd Sowell is guilty of criminal domestic violence.  
21 That's in the closing argument of Mr. Schardt, isn't it?

22 A Yes, it is.

23 Q This is your court appointed attorney?

24 A Supposedly.

25 Q And he, in his closing argument says that you pled

1 guilty to criminal domestic violence.

2 A Yeah.

3 Q Okay.

4 A He said that.

5 Q Okay. And on 294 the statement is made on Line 9; he's  
6 pled guilty to the charges, to the charge stemming from this  
7 incident?

8 A Yes.

9 Q And again that's from Mr. Schardt?

10 A From Mr. Schardt, yes.

11 Q And he says he was wrong; is that correct?

12 A Yes.

13 Q And that's your attorney that's representing you?

14 A That's right.

15 Q Now, there was also -- moving on. There was also  
16 confusion about your statement; is that correct? You  
17 actually gave a statement?

18 A Yes.

19 Q And it's been marked as an exhibit, and that's the copy  
20 that the court has, both the original and the redacted copy?

21 A Yes, it has been marked.

22 Q Okay. Now, how is that statement referred to in your  
23 trial; was it referred to as a confession?

24 A Yes, it was referred to as a confession statement.

25 Q Okay. Now, again, we can do this very quickly. On

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1 Page 213, of the transcript, Line 25 it says, and this is in  
2 front of the jury. Okay, and based on the confession. Is  
3 that correct?

4 A That's what it says.

5 Q All right. And then, I think that statement is made by  
6 the solicitor; is that correct?

7 A That's correct.

8 Q On 305 --

9 A 305?

10 Q Page 305. Yes, sir. Line 14?

11 A Yes.

12 Q There's a confession admitted in this case.

13 A Yes, sir. As I have studied my case for three years, I  
14 did not see this point until you work on my case.

15 Q All right. How about Page 225?

16 A 225?

17 Q Yes, sir. Line 12?

18 A Yes, this says confession.

19 Q And I guess this is from the, actually, the  
20 investigator, it says, you did this after you took his  
21 confession?

22 A Yes.

23 Q And on 18. I would like to talk with you a little bit  
24 about his confession?

25 A Yes.

1 Q On --

2 A I told Mr. Schardt in the pre-trial interview, I even  
3 have a complaint I wrote against the issue of me taking my  
4 statement, and he accepted it, and then when it came up to  
5 the issue in pre-trial, the Jackson verses Denno about  
6 admitting this evidence, I was never under the knowledge  
7 that I could have gave any testimony about the statement. I  
8 told them I requested a lawyer.

9 Q And you did have a Jackson v. Denno?

10 A Yeah.

11 Q Let's talk about that. You did have a Jackson v. Denno  
12 hearing?

13 A Yes.

14 Q And what advice did you have in regards to the Jackson  
15 v. Denno hearing?

16 A Absolutely, none. He didn't tell me a word about the  
17 issue on it, and I didn't realize later until I was back at  
18 the Department of Corrections, that it would have been  
19 possible for me to testify, because there's -- I'm bilingual  
20 in Spanish, and one of the Mexican people there with me, I  
21 would try to help him with his -- try to read his --  
22 translate his transcript, and I see from his judge, Howard  
23 King, the Honorable Howard P. King, that he advised for him  
24 to tell his client in that case if he wants to bring forth  
25 anything at that point in the Jackson v. Denno he can

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1 without waiving away his Fifth Amendment right to self-  
2 incrimination.

3 I said, I never knew this. I thought if I ever get up  
4 any time in that courtroom whatsoever and say anything they  
5 will use my priors against me.

6 Q You thought that you would waive your rights?

7 A Yeah. I would have definitely got up and said I did  
8 request a lawyer pursuant to Edwards verses Arizona, and he  
9 never respected that.

10 Q All right. Now, in closing argument of your attorney  
11 on Page 288, it appears that he tries to solve this problem?

12 A 288?

13 Q Yes, sir. If you'll look at Line 15?

14 A Okay.

15 Q And he says we're not going to call it a confession any  
16 more. It's not. It's a statement.

17 A He said this in the closing. I believe we could have  
18 established that if he had put me up at the Denno hearing.

19 Q But all along they've been calling it a confession?

20 A All along.

21 Q Now, there was some confusion in regards to her  
22 injuries?

23 A Uh-huh. (Affirmative response.)

24 Q Which I guess goes to your theory of defense regarding  
25 a crime being committed and the intent to commit a crime?

1 A Right.

2 Q Now, what was your concern, if any, in regards to the  
3 trial and how her injuries were presented?

4 A My concern was I wanted the evidence, the medical --  
5 they said she was hospitalized, I said, why don't we get the  
6 medical records. Okay. I told him in the interview, I  
7 said, I wouldn't do anything to hurt her. I loved her. He  
8 said, well, love is not a defense. I said, love might not  
9 be a defense, but the proper defense in that is evidence.  
10 Okay, if you're not going to take my word for it, there's  
11 professionals at the medical center, and they can have  
12 things documented there.

13 Q Was there conflicting testimony in regards to what her  
14 injury was?

15 A Oh, yes. He told me that in the interview. He said,  
16 you need to talk to me and tell me what's going on, because  
17 first when the investigator goes down there she said you was  
18 hitting her in her face and they said, well, ma'am, we don't  
19 see anything wrong. You don't have no swelling, no bruises.  
20 She changed all of a sudden to I hit her in her shoulders  
21 and it's this on-going changing of events with her. That's  
22 one thing he prompted to me.

23 He said you need to cooperate with me, because if I go  
24 on just what she says I will have to charge you with about  
25 seven different things here, and I said, well, she's saying

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1 a lot of things, but I don't understand you can just say  
2 this, say this, but if you're saying, okay, it's one thing  
3 if we have an assertion that I did this, and did this, but  
4 you say you was hospitalized as a result. Okay, there's  
5 some way to prove that fact. Let's prove it, then.

6 Q Did your attorney do anything to assist you in proving  
7 what her real injuries were; did he get the medical records?

8 A No.

9 Q Now, --

10 A No. He said there wasn't enough time.

11 Q Wasn't enough time. Now, the incident reports indicate  
12 what in regard to her injuries?

13 A All the physical -- oh, from the physical injury box  
14 indicated that there was no -- it was checked no physical  
15 injuries. They brought this up in the trial for the  
16 investigator and this is what Mr. O'Neal -- he brought that  
17 up.

18 Q Now, who's Mr. O'Neal?

19 A He's the assistant public defender on that case.

20 Q All right.

21 A And he brought that up to the investigator, and the  
22 investigator, he looked shocked when he looked down at his  
23 report. He said, I seemed to have checked no visible  
24 injuries.

25 The state attempted to rehabilitate that, and Mr.

1 Maldonado asked on cross, asked, well, investigator, isn't  
2 it true in the particulars of your report you did mention  
3 bruises, though. And he said, yes, yes, I did.

4 Clearly, in the back of the report I have, that same  
5 incident report, Officer Jenkins, was what his name was,  
6 there's no mention of any bruises. Okay. There was no  
7 physical injury. Impossible. Nothing happened.

8 Q Now, she testified as to what as to how she was  
9 injured?

10 A She gave testimony, I believe, to that fact.

11 Q That she was struck about her face?

12 A Right.

13 Q All right. Now counsel, I guess the prosecution,  
14 actually made some reference to her being treated for sickle  
15 cell?

16 A Right.

17 Q And what were their concerns about her injuries in  
18 regards to her treatment for sickle cell?

19 A Well, the regards to her injury, this is what it was.  
20 In the interview, I said, I didn't strike her in her face.  
21 I came -- she hit me twice, first of all. Understandable,  
22 I'm not -- and I pushed her. I didn't push her to hurt her.  
23 I knew she would land on the couch. A CDV.

24 They said, well no, but she changed her story. They're  
25 saying you pushed her in her chest where she has these



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1 porta-caths. where she gets medicine. I said, I know those  
2 things are in there, that's why I push her on the outside of  
3 her shoulder. They said, that's not what she's claiming  
4 that that's where she gets medicine for her life depending  
5 things and this and that. That's when I said, I love her.  
6 I would never harm her like that. I sat in the hospital  
7 with her constantly when she would go in crisis, by her  
8 bedside and would do -- I can't believe she trying to  
9 utilize that, her own medical condition to retaliate against  
10 me in some shape, form or fashion which is absolutely not  
11 true.

12 Q Let me ask you if you'll look at Page 95. I believe  
13 this is the opening statement on behalf of the state. And  
14 if you'll look at Lines 14 through 19.

15 THE COURT: Page what, now?

16 MR. THOMAS: 95, Your Honor, and it's Lines 14 through  
17 19.

18 BY MR. THOMAS:

19 Q They indicate you were attempting to do what, Mr.  
20 Sowell?

21 A Is what I just stated earlier, that I was --

22 Q That you were beating her on the chest?

23 A Yeah. It's hard for me to even say what it says.  
24 That's absolutely not true.

25 Q And that you knew her weaknesses?

1 A Oh, yes.

2 Q So there was some sort of intent to create,  
3 substantiate, her injuries?

4 A That's what they are insinuating.

5 Q How did your attorney address that?

6 A (No response.)

7 Q What did he do to try to show your version of what she  
8 said in regards to injury?

9 A Nothing. Not that I seen. Nothing. I don't think he  
10 believed me, you know, because if you want -- I'm telling  
11 you to get the medical records. If you don't want to get  
12 it, I don't understand --

13 Q Was there any other evidence in the trial that she was  
14 beaten in the chest?

15 A No. There was none. I don't believe that reflects a  
16 reasonable strategy, a trial strategy, to rebut this  
17 accusations against me, but it came out, I believe later.  
18 And that's the other transcript. The same solicitor, Ms.  
19 Weiss for -- she made a statement for the charge I pled to,  
20 the other case, she made statements that refers to Sandrica  
21 and her hospitalization.

22 Now, my trial, many times she said I'm the cause of  
23 this hospitalization. At this -- at this -- because in  
24 front of Judge -- the Honorable Judge Goodstein had concerns  
25 about me taking a plea. I said, I don't know if this case

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1 is on appeal, if I plead it -- she said consult with your  
2 lawyers, they said no. So Ms. Weiss, in reference to this,  
3 she said, yes, Mr. Sowell was down here, he took -- he was  
4 at trial last week and -- it was a CDV and Ms. Jacobs was  
5 hospitalized as a result of her sickle cell condition.

6 Q Matter of fact, they discussed many times in the trial,  
7 the injuries?

8 A Yes.

9 Q And they varied greatly?

10 A Yes.

11 THE COURT: Let me stop you for a moment.

12 MR. THOMAS: Yes, sir.

13 THE COURT: I see everyone is getting kind of antsy. Is  
14 it time to go?

15 MR. THOMAS: I'm just about done, Your Honor. Of  
16 course, we've got Mr. Petrano's cross-examination.

17 MR. PETRANO: The state never sleeps, Your Honor.

18 MR. THOMAS: I'll be glad to come back in the morning,  
19 Your Honor.

20 THE COURT: All right.

21 Where did you come from to get here today?

22 MR. SOWELL: Bishopville.

23 THE COURT: Bishopville. All right. Do y'all have to  
24 come back tomorrow with more people?

25 DEPUTY: Yes, sir.

1 THE COURT: All right. Okay. Go ahead.

2 MR. THOMAS: I'll be more than happy to come back  
3 tomorrow.

4 THE COURT: Let's see how it goes. I'm just trying to  
5 gauge where we are and how long we'll be.

6 MR. THOMAS: All right, sir.

7 THE COURT: All right.

8 BY MR. THOMAS:

9 Q Now, I'll show you this document, which is part of the  
10 court's record, the transcript of record. The excerpts from  
11 your plea?

12 A Yes, sir.

13 Q And the plea was basically -- well, what was the plea,  
14 just to take care of the rest of the charges?

15 A Yes, it was.

16 Q And that charge was what, what were you pleading to?

17 A Malicious injury to personal property.

18 Q All right, and that was from the second charge that was  
19 in your statement; is that correct?

20 A Yes, it was.

21 Q And was there a comment made by the solicitor in  
22 regards to what her injuries were?

23 A Yes.

24 Q And there had been numerous mentions about her going to  
25 the hospital?

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1 A At the trial, it was.

2 Q At the trial. What does it say in there, anything  
3 about the hospitalization?

4 A It says, as a result of that burglary first, and there  
5 was a CDV that he pled to included in that. Period. Ms.  
6 Jacobs suffers from sickle cell anemia. As a result of  
7 that, she was sent -- she ended up going to the hospital as  
8 a result of her sickle cell anemia.

9 Q No indication that she went to the hospital as a result  
10 of injuries that you may have caused?

11 A I'd never do nothing to her.

12 Q And you felt like that your counsel could have more  
13 effectively addressed that?

14 A Definitely.

15 Q Now, you had some appellate defense issues; have you  
16 and I discussed that?

17 A Yes, sir.

18 Q All right. And your concern about appellate defense  
19 was the issue of the double jeopardy?

20 A Yes, because I seen a case law, very good case law,  
21 Jackson verses Leonardo, at 162 F.3d 81. It's closely  
22 mirrors my situation where this individual -- this  
23 individual had went and had his trial. They motion for a  
24 directed verdict. It was denied based on a reasonable doubt  
25 situation. That's the same thing that was denied on mine.

1 My -- my attorney, he -- he briefed the same issue. They --  
2 they -- in that case they also found a double jeopardy  
3 issue, and they could not find why this attorney chose to  
4 abandon the double jeopardy issue to pursue what was not  
5 more promising grounds. The double jeopardy issue was  
6 clearly obvious and more stronger than that issue, and I  
7 feel that the same case applies here.

8 Q But in all candor, you did raise this issue in your  
9 appeal through your supplemental brief?

10 A Oh, yes. Yes.

11 Q All right. Now, Mr. Sowell, this is your day in court.  
12 You've spent a lot of time. You and I have discussed this  
13 at length about preparation for today. Is there anything  
14 else that you would like to bring before the Court, tell the  
15 Court before we close our case?

16 A That I'm absolutely innocent of this accusation against  
17 me, and I will respect that the documents that I have in  
18 Court right now, if you read them and make a decision. I  
19 didn't do it.

20 Q And we've covered all your issues that you wanted to  
21 present?

22 A They're -- everything I wanted to say is right there on  
23 everything I turned in.

24 Q The pre-trial brief?

25 A Yes, sir.

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1 Q And I've raised the issues that you wanted to present,  
2 as well?

3 A (Nods head.) (Affirmative response.)

4 Q All right.

5 MR. THOMAS: I have no further questions, Your Honor.

6 THE COURT: All right.

7 Yes, sir?

8 MR. PETRANO: Nothing from the state.

9 THE COURT: All right, sir. You may step down.

10 Mr. Thomas, argument.

11 MR. THOMAS: Your Honor, please the Court.

12 Your Honor, we would submit to the Court that in this  
13 case there is ineffective assistance of counsel. It's  
14 really difficult a lot of times, even on the more simple  
15 ones about preparing the case and investigating the case to  
16 present it. I think there's testimony presented that all  
17 this kind of came together the day of trial or a day or so  
18 before trial. As a result of this, we ended up with a CDV  
19 conviction being allowed to come in as evidence, which could  
20 have, in my evaluation of the case, could have been kept  
21 out.

22 THE COURT: Did they try to keep it out?

23 MR. THOMAS: Your Honor, I didn't see, and, of course,  
24 learned counsel may know better. I read the transcript a  
25 number of times, and I didn't see where they tried to keep

1 it out.

2 Go ahead.

3 MR. PETRANO: I was kind of concerned about that. He  
4 mentioned that on the stand, but I didn't want to break in  
5 with questions about the record. On Page 81 to 84, they  
6 keep out a prior burglary, and talk about that, and that's a  
7 Lyle issue, but I didn't see anything about trying to  
8 exclude the CDV plea.

9 MR. THOMAS: No, Your Honor, they talk about the double  
10 jeopardy issue. The Court denies that. The next thing is  
11 they do discuss the statement and the voluntariness of the  
12 statement, and they do attempt to keep the statement out.  
13 And then, of course, there is an agreement with regards to  
14 the redaction, but those are the only things that I see pre-  
15 trial.

16 Counsel admit -- without objection --

17 THE COURT: Was the paper with all these black marks,  
18 is that what the jury got?

19 MR. THOMAS: Yes, sir. What happens is that as you  
20 read the statement it goes, it talks about what he did, and  
21 this will come back a little bit in our argument. He never  
22 says that he -- he enters with the intent to commit a crime.  
23 If you take the statement on its own, I don't think the  
24 statement is sufficient to find the conviction for burglary  
25 first.



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1           So I don't think it's a confession.

2           THE COURT: But what went to the jury?

3           MR. THOMAS: What went to the jury, Your Honor, is the  
4 first pages and then the last --

5           THE COURT: Yeah --

6           MR. THOMAS: -- and then the last couple of pages that  
7 talk about his --

8           THE COURT: Being in the hospital?

9           MR. THOMAS: No, sir. Talk about him -- well, they  
10 talk about while she's in the hospital he breaks back in the  
11 apartment and does damage to the apartment, and that is  
12 redacted out of the statement, that is submitted to the  
13 jury.

14           So the only thing that goes to the jury is only the  
15 information pertaining to what he says happened the night of  
16 the burglary first.

17           THE COURT: So they had two exhibits, two and three.

18           MR. THOMAS: Yes, sir.

19           THE COURT: Neither one went to the jury. These are  
20 not representative of what went to the jury?

21           MR. THOMAS: The first one did, Your Honor.

22           THE COURT: The first one went to the jury?

23           MR. THOMAS: Yes, sir. It went to the jury, and the  
24 second one -- if you put the two together, the first one is  
25 the whole statement.

1 THE COURT: Okay.

2 MR. THOMAS: And what you would do is take out the last  
3 couple of pages of the whole statement and insert the  
4 redacted portions, and that's what went to the jury.

5 THE COURT: All right.

6 MR. THOMAS: So they received the redacted statement.

7 Your Honor, I don't think that the CDV conviction  
8 should have ever come in, and it did come in. Not only did  
9 it come in, they introduced, from my reading of the  
10 documents and the transcript, they actually introduced the  
11 conviction itself, and without any objection. And they  
12 hammered him. I mean, they talked about he had been  
13 convicted of this, he pled to this. There is testimony of  
14 the victim that she went down and swore out a warrant, and  
15 that she was there.

16 THE COURT: Well, it's sort of trial strategy of, well,  
17 he's already guilty of what he's guilty of.. Sort of a  
18 backdoor means of arguing of double jeopardy, he was guilty  
19 of CDV, pled guilty to it. Let's leave him alone and let  
20 him move on.

21 MR. THOMAS: Well, I don't know. I've thought about  
22 that, Your Honor. I think it's more ineffective, though. I  
23 think that, you know, what counsel did was stand up there  
24 and say, and it's throughout the transcript, he did this, he  
25 committed this crime.

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1       The problem is the factual situation with the CDV and  
2       the factual situation of the burglary first were the same.  
3       Exactly the same. And if his strategy was to say there was  
4       an attempt to commit a crime. But with regards to she hit  
5       me and I pushed her back on the sofa, it just doesn't fit.  
6       Really, what I think he did was get him convicted, because  
7       -- and then he goes -- he narrows the issue to such an  
8       extent, in his closing argument, and he says, the elements  
9       of burglary first are, and he goes, one, he's guilty, he's  
10      done that. He goes through the whole thing and basically  
11      says, he's guilty of all of these elements of burglary, but  
12      he didn't intend to commit the crime. If you take the CDV  
13      conviction and put it into the mix you've got a crime that  
14      he pled to. And --

15      THE COURT: That is intent to commit a crime.

16      MR. THOMAS: That is intent to commit a crime. Yes,  
17      sir. So I think that really when he went into it, he didn't  
18      have a defense.

19      THE COURT: The intent can be formed after the entry.

20      MR. THOMAS: Yes, sir -- well, I -- yes, sir. I think,  
21      though what happened at trial -- really, what this case is  
22      is a CDV-HAN. Unfortunately, he got a big sentence on  
23      burglary first, which carries a minimum of 15, when it was a  
24      domestic situation. I personally think it was more properly  
25      -- more properly charged as a CDV-HAN, and it ended up being

1 charged as a burglary first, because the detective who comes  
2 back at a later date is familiar with burglary and decides,  
3 well, this looks like a burglary first. And he's serving a  
4 tremendous sentence on what, in my opinion, should have been  
5 a CDV-HAN.

6 THE COURT: Is there any consensus on how long he'd  
7 been out of the house?

8 MR. THOMAS: No, sir. Unfortunately, counsel, trial  
9 counsel, admits that he was out of the house, that he had  
10 moved out.

11 In discussions with my client and in testimony today he  
12 actually says, and in the statement he says, I was going  
13 back to the house to get my stuff.

14 THE COURT: He was still moving out?

15 MR. THOMAS: Yes, sir, he was still moving out. And I  
16 don't understand why they abandoned the issue of he was  
17 still a resident there, because if he was still a resident  
18 there he certainly had the right to enter. And to me,  
19 looking back, hindsight, that's a much stronger defense with  
20 the way the facts poured out, than saying he lacked intent  
21 when you've got that CDV problem. And I think it's  
22 ineffective for them not to use that because they had  
23 evidence of it in the statement.

24 THE COURT: Well, how about a double jeopardy aspect of  
25 this under the Blockburger test?

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1 MR. THOMAS: Well, --

2 THE COURT: The Court kind of cut Mr. O'Neal off as he  
3 tried getting to it.

4 MR. THOMAS: Yes, sir. I have looked, and I have spent  
5 some time trying to find information in regards to the  
6 double jeopardy issue. To me, personally, it appears to be  
7 -- I think it is a double jeopardy issue. I think if you  
8 look at it from that side. He was tried on CDV. The facts  
9 and circumstances are the exact same. I think the proper  
10 charge is a CDV-HAN. A simple CDV or CDV first in  
11 magistrate or municipal court is a lesser included of a CDV-  
12 HAN. So I think it is double jeopardy.

13 Now, the opposite side of that, of course, would be  
14 that they are both two distinct crimes, and they have two  
15 distinct elements of the crime.

16 THE COURT: Right. This case Jivers, (sp) says  
17 Blockburger test focuses on the statutory elements of the  
18 offense. If each requires proof of a fact that the other  
19 does not, the Blockburger test is satisfied and there is no  
20 double jeopardy violation.

21 MR. THOMAS: But, you know, that's an interesting  
22 concept, Your Honor, if you talk about the CDV case, CDV  
23 cases, you know, it apprehension or fear. It doesn't even  
24 necessarily have to be a battery. It can be to place  
25 someone in fear.

1           If you take her facts of what happened under the  
2 burglary first, if, you know, he's there, bangs on the door,  
3 and then he comes in the door. I mean, aren't all those  
4 elements of apprehension or fear of the CDV statute, and  
5 then there, you know, there is a battery. Allegedly there  
6 is a battery, but you could have a battery in the CDV.

7           If you look at it -- and I think that's why I really do  
8 think this is a CDV-HAN. If you look at look at what  
9 happens in Haviland, (sp) and you take those facts and you  
10 try and apply it to that burglary first, what's we're  
11 talking about is a CDV. We're talking about she was afraid.  
12 He shows up, he's bigger than her. He comes in and forces  
13 himself on her. She's terrified and she calls 911. There's  
14 some discussion -- there's some disparity as to whether or  
15 not there's a battery or not. Clearly she's fearful, and he  
16 runs off. Plus, we have the domestic situation in the  
17 transcript, which we, of course, didn't raise in this  
18 hearing, but it is in the transcript. She was expecting,  
19 unfortunately there was a miscarriage. That's when things  
20 kind of really went sour, but there was a very close  
21 relationship, they were engaged to be married. I mean, it's  
22 domestic from beginning to end.

23           THE COURT: All right.

24           MR. THOMAS: One other thing, Your Honor.

25           THE COURT: Yes, sir.

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1 MR. THOMAS: Which I did find some case law which I  
2 thought was very interesting is this idea of this confession  
3 statement. Now, I haven't been able -- and I'll hand it up.

4 THE COURT: Who -- I mean who -- your problem that the  
5 defense allowed it to be referred to as a confession --

6 MR. THOMAS: Actually, called it a confession.

7 THE COURT: Oh, the defense called it a confession?

8 MR. THOMAS: Yes, sir, they called it a confession, and  
9 the thing is that really kind of -- let me see if I can find  
10 -- that really got me interested in it when I was looking at  
11 research is that -- let's see -- the general rule -- now,  
12 this is applying to a verbal statement, but that there is a  
13 case that says that a verbal statement that is taken into a  
14 written statement, and what they say is a general rule  
15 though not an absolute inflexible one as to admissibility --  
16 well, let's see -- All right. Confession in legal sense is  
17 restricted to acknowledgment of guilt and does not apply to  
18 mere statement of facts from which guilt may be inferred by  
19 the jury.

20 So if you've got a statement, in this case the  
21 statement says I went over there to get my clothes. Not  
22 that I went over there to beat her about the head. There's  
23 no confession of guilt.

24 THE COURT: To the jury when you hear he confessed,  
25 means, I'm guilty.

1 MR. THOMAS: I'm guilty. I'm guilty. And he --

2 THE COURT: Not that I made a statement?

3 MR. THOMAS: Right. It doesn't say he made a  
4 statement, which goes on to -- I mean, it gets revolved and  
5 around the whole thing about CDV and whether it's a CDV-HAN  
6 and all this other stuff. But, you know, the trial counsel  
7 tries to cure it, I think, at closing. He says, we're not  
8 going to call it a confession any more, we're going to call  
9 it a statement.

10 Well, I think the damage has been done. You know, he's  
11 just telling them that he's confessed to this burglary  
12 first. I don't think you can interchange those terms.

13 THE COURT: All right.

14 MR. THOMAS: Thank you, Your Honor.

15 THE COURT: All right.

16 Yes, sir?

17 MR. PETRANO: He doesn't use the word confession to  
18 imply that he confessed to burglary first. He says  
19 confessed to certain elements of the burglary first. He  
20 confesses to going 'in. That kind of thing. I think he  
21 might have confessed to nighttime. I'm not sure what parts  
22 were excluded on the redacted part.

23 THE COURT: He confessed to everything except the CDV.

24 MR. PETRANO: Except the intent.

25 THE COURT: Oh, intent.



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1 MR. PETRANO: The intent to commit the crime therein.

2 Now, you can say he confessed to that by pleading  
3 guilty to the CDV, but that's another angle to it  
4 altogether.

5 I'm going to go right to the double jeopardy, if I may?

6 THE COURT: All right.

7 MR. PETRANO: I think you already touched on the  
8 Blockburger test. There's been some suggestion here on an  
9 analysis with a CDV-HAN and how that would apply, but I just  
10 wanted to point out specifically that, I think it's State  
11 verses Elliott or Elliott verses State, that Blockburger  
12 analysis does not apply to a CDV-HAN, and I may be getting  
13 that wrong, but anyway, back to the actual case at hand,  
14 here. The elements of household member. That's part of the  
15 CDV. That's not in the burglary. So you can't have the CDV  
16 as a lesser included, if it includes an element that's not  
17 in the greater offering. So the Blockburger analysis just  
18 fell right there.

19 I'm a little confused as to some of the applicant's  
20 testimony as far as what -- that they agreed -- I think he  
21 touched on this in the very beginning of the argument at the  
22 end of his testimony, what was included -- they agreed that  
23 the CDV would not be introduced. I don't think that's the  
24 case. As far as I can tell that was just the prior  
25 burglary. There were a series of burglaries here. At least

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1 that was the suggestion. I don't have all those records.  
2 That was in '81 to '84.

3 THE COURT: Let me ask you, if the CDV is a separate  
4 and distinct offense totally unrelated to the burglary, was  
5 not a part, as the judge's, Judge Manning's sense totally  
6 separate crime. We're here about the burglary, not the CDV.  
7 And hearing testimony -- how -- why would the CDV be  
8 admissible?

9 MR. PETRANO: Only as impeachment. You're saying  
10 hearing the testimony, you're meaning hearing his testimony  
11 here today?

12 THE COURT: Well, not only hearing his testimony but in  
13 reference to the transcript and how that was utilized by  
14 counsel, state and defense. Why was that admissible, how  
15 could it be admissible given the -- it's a 30 day offense.

16 MR. PETRANO: My answer is two-fold. One, he didn't  
17 testify at the trial so what he testified to here today  
18 would be a separate analysis, so I'll do that second.

19 First, it's admissible as an intent, -- as far as the  
20 element of the intent to commit a crime. It was the exact  
21 same scenario, which question prefaced it on what if it was  
22 unrelated. If it was completely unrelated I would submit  
23 that on the surface it does appear that it would not be  
24 admissible, but since it was that actual event, that  
25 December 1st, that same night. That's part of the elements

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1 of the burglary first. It could have been a grand larceny.  
2 It could have been anything. It just happens to be a CDV,  
3 so some of the elements overlap so the suggestion could be  
4 it's a lesser included.

5 THE COURT: But did the Court admit it on that basis to  
6 show motive, lack of intent?

7 MR. PETRANO: Your Honor, I don't have that --

8 THE COURT: The court did some type of Lyle analysis on  
9 that?

10 MR. PETRANO: There was a Lyle analysis for the prior  
11 burglary, and that's at Pages 80 plus, 80 to 85, but I don't  
12 think the Lyle -- I don't have it at my fingertips as  
13 whether the Lyle was done again for the CDV, but even if it  
14 was not, if you were to do one here today, it's still an  
15 element of the crime. I don't see how it could be kept out.

16 The applicant, then you get to a point where it gets  
17 twisted, because the applicant testifies here. He said,  
18 well, I never had any intent to harm her. I would never  
19 hurt her. He didn't testify at trial, so we don't have  
20 that, so it -- it would probably come in to impeach him, but  
21 he didn't testify so the argument gets kind of wacky. I'm  
22 not trying to be difficult, it's just a separate kind of  
23 analysis today, here.

24 THE COURT: Well, we don't have -- He didn't testify at  
25 the trial. The lawyer who represented him at the trial is

1 not here.

2 MR. PETRANO: Right. The state has to put up a case  
3 and demonstrate and prove the elements, and one of those  
4 elements is the intent to commit a crime. The CDV is  
5 absolutely an element.

6 Now, I guess the argument hasn't been articulated here,  
7 but perhaps counsel could have conceded that there was -- I  
8 don't know how you would do it delicately, if the prejudice  
9 is still at the conviction of CDV and that's too  
10 prejudicial, acknowledge and admit the intent to commit a  
11 crime. I don't know how you would do that delicately.

12 Applicant's counsel here said there really was no  
13 defense in this case. And I'm going to have to concede that  
14 it's difficult to pick one out. I'm going to say that this  
15 probably should have been a plea. The evidence was pretty  
16 good. The applicant didn't want to testify, so it's a he  
17 said, she said. So it's really hard to do a defense. I'm  
18 not saying he has to put up a defense, but the same time,  
19 you know, it's difficult to counter and defend against the  
20 state's case when he's not going to testify, and he's got  
21 the confession to part of the elements, and, basically, the  
22 confession -- the statement is a confession to everything,  
23 it's just redacted for the jury, so it's only a confession  
24 to certain elements. Taken as a whole, it certainly is a  
25 confession to the burglary first. He says pushed her, he

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1 says he was kicked out, he says he was out, he says he  
2 entered the dwelling. So all the elements are there.

3 I'm sorry, I lost my train of thought.

4 Oh, plea. This isn't a plea. He did not want to plea.  
5 So, you know, trial counsel, as a member of the bar, as  
6 appointed attorney, he has to put up some kind of defense,  
7 and the best he could do was say that there was no intent  
8 here, because everything else was really established, and  
9 state submits the conviction is solid, the application  
10 fails.

11 Thank you.

12 THE COURT: The Court redacted it, but his counsel  
13 nevertheless called it a confession.

14 MR. PETRANO: It is a confession.

15 THE COURT: With a redacted portion that went to the  
16 jury.

17 MR. PETRANO: Jury -- there are parts that -- the un-  
18 redacted parts that are confessions to certain elements of  
19 burglary.

20 THE COURT: Include the redact -- I mean, whatever was  
21 as redacted would it be a confession.

22 MR. PETRANO: Well, as he said, I'm not going to insult  
23 your intelligence. I'm not -- those aren't his words, I'm  
24 paraphrasing. I'm not going to insult and waste your time.  
25 I think he says I'm not going to waste your time, jury.

1 Yes, he entered. Yes, it was nighttime. You know, whatever  
2 the few elements that were clearly established he confessed  
3 to those elements, and that's not improper, that's not  
4 inaccurate.

5 I hope I'm answering your question.

6 THE COURT: Yes, sir.

7 MR. PETRANO: Thank you.

8 MR. THOMAS: Your Honor, may I?

9 THE COURT: Yes, sir.

10 MR. THOMAS: Counsel was saying something that made me  
11 think about this. He's talking about the CDV, you have to  
12 be a household member. You're talking about a household  
13 member. You're talking about they're engaged to be married,  
14 they're living together, which then jumps to the next  
15 conclusion in my mind, he should have raised the defense  
16 about him living there.

17 I mean, we go from a CDV saying well, the CDV statute  
18 says it needs to be a household member, you know, now, we're  
19 talking about --

20 THE COURT: I think by definition household member  
21 includes former household members.

22 MR. PETRANO: And Your Honor, that was a setup. I have  
23 the case, it's State verses Leonard. I figured he was going  
24 to go there.

25 THE COURT: Well, it's not current household member --

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1 MR. THOMAS: Right.

2 THE COURT: Current or former.

3 MR. THOMAS: And the other thing, I don't think -- I  
4 think you get really problematic when you start talking  
5 about a statement and confession and start trying to  
6 distinguish between with the jury that he's confessed to  
7 certain elements of a crime, but it's a statement as to  
8 other elements of a crime. As to whether or not he  
9 committed the crime. I just think it's much clearer just to  
10 call it a statement throughout.

11 THE COURT: With respect -- we've been here three days  
12 now, we've spent these three days, for the most part,  
13 listening to cases that bordered on being frivolous, almost,  
14 as PCRs. This one is one that is unlike those and must be  
15 given serious consideration, as they all have been, but as  
16 far as analysis at the end.

17 So it means that I'm going to have to read the entire  
18 record line by line in detail and then evaluate the merits  
19 of the claim, and after making some determination either  
20 draw the order or have one of you draw an order, and in the  
21 interim, I can have both of you submit proposed orders.

22 I know when you step into Court, Mr. Thomas, you're  
23 usually -- you're coming in for -- you're coming in to walk  
24 out victorious. You're not just going through the motions.  
25 You're a counselor who usually comes in with solid thoughts

1 and analysis and ideas and all that.

2 MR. THOMAS: Thank you, Your Honor.

3 THE COURT: I'm only saying that because all other  
4 lawyers are now gone, otherwise, I'd be -- like him, you  
5 know.

6 But it is a serious matter raising some very serious  
7 issues, and I'm going to give it serious consideration.

8 MR. THOMAS: Thank you, sir.

9 THE COURT: If you'd like to submit -- I mean, I can  
10 have you submit a proposed order and then rather than having  
11 Mr. Petrano submit one and defense counsel respond, I can  
12 have you submit it, and he can respond. He's already loaded  
13 up with many orders to submit already.

14 MR. THOMAS: I'll be glad to do that.

15 THE COURT: Well, we'll do it that way, and if you'll  
16 submit it within 30 days.

17 MR. THOMAS: Yes, sir. Your Honor, sometimes -- do you  
18 want me to -- the Court not having had the opportunity to  
19 read the transcript, I have submitted them before in cut and  
20 paste form where I may have certain arguments that the Court  
21 does not feel -- in that way the Court can pick and choose.

22 THE COURT: Yes, that will be fine. Generally, you can  
23 email whatever it is you're offering or come up with.

24 MR. THOMAS: Yes, sir.

25 THE COURT: Copy it to Mr. Petrano, and then we can go



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1 from there.

2 MR. THOMAS: Thank you, Your Honor.

3 THE COURT: And we can also hear his picking apart  
4 whatever you've submitted before any final conclusion.

5 MR. THOMAS: Yes, sir. Thank you.

6 THE COURT: All right.

7 MR. PETRANO: Thank you, Judge.

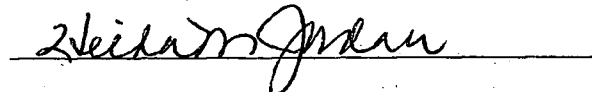
8 THE COURT: Thank you all. We are done for this day.

9 (This proceeding was concluded.)  
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## CERTIFICATE

I, THE UNDERSIGNED HILDA M. JORDAN, CVR, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON THE 14TH DAY OF APRIL, 2010.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR

COLUMBIA, SOUTH CAROLINA

AUGUST 6, 2011

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND )

Todd Michael Sowell, 238581, )

2009-CP-400-2686

Applicant, )

v. )

ORDER OF DISMISSAL

State of South Carolina; )

Respondent. )

RICHLAND COUNTY  
FILED  
2011 APR -6 PM 4:04  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 14, 2009. The Respondent made its Return on or about July 2, 2009. An evidentiary hearing into the matter was convened on April 14, 201 at the Richland County Courthouse before the Honorable Clifton Newman. The Applicant was present at the hearing and was represented by Tommy A. Thomas, Esquire. Brian T. Petrano, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

The Applicant testified on his own behalf at the hearing. This Court also had before it a copy of the transcript of the Applicant's trial, the records of the Richland County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by Maxwell G. Schardt, Esquire and E. Deon O'Neil, Esquire. On March 16, 2007, after a jury trial with the Honorable L. Casey Manning, the Applicant was convicted and sentenced to the following:

*CW*  
Sowell, Todd Michael - Order of Dismissal (2009CP4002686)  
Page 1 of 11

| Grand Jury Term | Indictment Number | Charged Offense:                                                                  | Sentence Received | Sentenced to Lesser Offense? |
|-----------------|-------------------|-----------------------------------------------------------------------------------|-------------------|------------------------------|
| 6-05            | 2005GS4000393     | CDR - S.C. Code § 15-L * Burglary / Burglary (After June 20, 1985) - First degree | 20                | No                           |
| NOTES           |                   |                                                                                   | TOTAL<br>20       | POSSIBLE<br>LIFE             |

A timely Notice of Appeal was filed on Applicant's behalf, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence pursuant to an Anders brief. State v. Todd Sowell, Op. No. 09-UP-040 (S.C. Ct. App. filed January 15, 2009 Remittitur date April 8, 2009).<sup>1</sup>

### ALLEGATIONS

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Double jeopardy
- (b) Ineffective assistance of trial counsel; appellate counsel
- (c) Prosecutorial misconduct

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

- (a) Applicant was previously tried for the same act in Magistrate Court, S.C. Code Ann. § 17-23-20 completely bars this prosecution, as well as S.C. Const. Art. I, § 12; USCA Const. Amend 5.
- (b) Ineffective utilization of discovery procedures, failure to 1. subpoena witness; 2. preserve Speedy Trial violation; 3. advice of Jackson v. Denno procedure; 4. assert consent defense; failure to raise preserved issues.
- (c) Unfair or improper remarks about defendant and counsel reference to previous convictions, presentation of false evidence, material misstatements of law, and fact.

18. State clearly the relief you seek in filing this application.

- 1. Vacate the judgement of the trial court; 2. Grant the Applicant a retrial on specific issues.
- 3. Reversify and/or Resentence the Applicant's conviction; 4. And further relief as this Court may deem to be just and proper.

19. Are you now under sentence from any other court that you have not challenged?

<sup>1</sup> Anders v. California, 386 US 738 (1967).

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80(2003).

### Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's

Sowell, Todd Michael – Order of Dismissal (2009CP4002686)

deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Applicant alleged that Trial Counsel was ineffective for failing to argue consent in his case. However, the evidence in the case would not support an argument of consent. Applicant's statement to law enforcement was admitted at trial. This statement directly contradicted any argument of consent that could have been made. Accordingly, this Court finds that Counsel's failure to argue consent was reasonable under prevailing professional norms when the weight of the evidence would not have borne such a claim. This Court further finds that Applicant failed to demonstrate any prejudice or deficient performance from Counsel's failure to argue consent when that theory was in fact contrary to the weight of the evidence in the case. An obvious twist to this argument was presented at the PCR hearing suggesting that but for ineffective assistance of counsel the statement would not have been admitted. This argument fails because for the Applicant to attempt to argue consent he would have to testify to the same, doing so would be contradicted by the statement and the statement (or its premise if making the statement was denied) would have been admissible as a prior inconsistent statement. *See generally* Rule 613(b), SCRE.

The Applicant further alleged that Trial Counsel was ineffective for failing to develop any theory of defense. Applicant then testified that Counsel had a theory of defense, it just was not effective. The Applicant testified that Trial Counsel told Applicant he was going to try to convince the jury that at the point Applicant entered the victim's home, he lacked the intent to commit a crime, an essential element of burglary. Applicant testified that Counsel failed to get medical records to prove that Victim was hospitalized for an unrelated condition, however,

hospitalization is not an element of Criminal Domestic Violence; the crime upon which the elements of the burglary somewhat overlapped, only harm or "offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril," is necessary to constitute Criminal Domestic Violence. S.C. Code Ann. § 16-25-20 (2003). Accordingly, proceeding on the theory that Applicant lacked the intent to commit a crime, without raising the fact that Victim was in the hospital is not indicative of a failure to develop a theory of defense. This Court finds that this allegation is without merit and is hereby denied and dismissed.

The Applicant then alleged that Trial Counsel improperly referred to Applicant's statement as a "confession." Trial Counsel called the statement given to police by Applicant after the crime a confession throughout the trial and in his closing argument. Counsel, in his closing argument noted that he and the solicitor had been calling this statement a confession, and used the term to stress the honesty of Applicant. Trial Counsel, in using the term confession spoke of how Applicant had "confessed" to several elements, and several unsavory details, but stated that the confession was really "a statement of [Applicant]'s innocence" because it lacked any intent to commit a crime when he entered his old residence. The use of the term "confession" was in fact obviously an attempted strategy by trial counsel to bolster the credibility of Applicant in pursuing the theory that Applicant lacked the intent to commit a crime and therefore could not be guilty of burglary. (Trial Transcript, p. 288, 293, 296). Accordingly, Counsel's failure to object to the term does not constitute deficient representation when Counsel's use of the term was in an effort to assist the Applicant. Therefore, this Court finds that this allegation is hereby denied and dismissed.

The Applicant further alleged that Trial Counsel was ineffective for failing to challenge the admission of his CDV conviction pursuant to Rule 403, and 404, SCRE. The CDV conviction, however was not used as character evidence or give the impression that Applicant was predisposed to some sort of mischief, but to establish some of the elements of burglary, i.e., that the Applicant had the intent to commit a crime in the dwelling he entered. Rule 404 SCRE. Rule 403, SCRE permits exclusion of relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice." Rule 403 SCRE. However, while the evidence of a conviction may be prejudicial to a defendant, in a burglary case, where intent to commit a crime inside the dwelling is an essential element of the crime, the probative value of evidence of the crime being committed clearly outweighs the prejudicial effect. Once, again, it is also obvious rebuttal evidence concerning the Applicant's claim that he did not intend to commit a crime when he entered his former residence. The Applicant pled guilty to a CDV for hitting the victim, which is relevant to what his intentions were when he entered the house.<sup>2</sup> It cannot be said that had Counsel made the motion at issue he would likely have prevailed. Accordingly, this Court finds that this allegation is without merit and is hereby denied and dismissed.

The Applicant next alleged that Trial Counsel and Appellate Counsel both provided ineffective assistance by failing to argue that being subjected to prosecution for the Burglary charge, after pleading guilty to the Criminal Domestic Violence charge arising from the same incident amounted to Double Jeopardy.

"The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments for the same offense."

<sup>2</sup> This Court notes that the CDV and Burglary charges do somewhat overlap considering they are from the same incident involving the Applicant and his former girlfriend that evening.



State v. Elders, 386 S.C. 474, 481, 688 S.E.2d 857, 861 (Ct. App. 2010) quoting Stevenson v. State, 335 S.C. 193, 198, 516 S.E.2d 434, 436 (1999). See U.S. Const. amend. V ("No person shall be ... subject for the same offence to be twice put in jeopardy of life or limb ...") "In both multiple punishment and successive prosecution cases, double jeopardy claims are evaluated under the "same elements" test set forth in Blockburger v. United States, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932)." Elders, at 481, 688 S.E.2d at 861 (Ct. App. 2010). "[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." Blockburger, 284 U.S. at 304, 52 S.Ct. 180; "Under the Blockburger test, a defendant may be convicted of two separate crimes arising from the same conduct without being placed in double jeopardy where his conduct 'consists of two "distinct" offenses.' " Elders, at 482, 688 S.E.2d at 861 (2010), citing State v. Pace, 337 S.C. 407, 417, 523 S.E.2d 466, 471 (Ct.App.1999) (quoting State v. Moyd, 321 S.C. 256, 258, 468 S.E.2d 7, 9 (Ct.App.1996)); accord State v. Hall, 280 S.C. 74, 77, 310 S.E.2d 429, 431 (1983); State v. Steadman, 216 S.C. 579, 589, 59 S.E.2d 168, 173 (1950); State v. Lewis, 321 S.C. 146, 148, 467 S.E.2d 265, 266 (Ct.App.1996).

"A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and . . . the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or the entering or remaining occurs in the nighttime." S.C. Code Ann. § 16-11-311 (1995). Conversely, to establish that a person is guilty of Criminal Domestic Violence, the State must prove that the defendant "cause[d] physical harm or injury to a person's own household member" S.C. Code Ann. §16-25-20 (2003). A household member for purposes of the

criminal domestic violence statute is defined by the legislature as "a male and female who are cohabiting or formerly have cohabited" S.C. Code Ann. 16-25-10 (2005) (emphasis supplied).

Upon application of the Blockburger test, the transaction at issue here clearly violated two separate and distinct statutory provisions, and therefore did not subject the Applicant to "double jeopardy". Burglary requires the element that the perpetrator have two or more previous convictions, or that the crime is committed at night. Criminal Domestic Violence requires that the perpetrator harm a household member. Accordingly, prosecution for these separate and distinct statutory provisions was proper. Because the prosecutions did not violate the constitutional prohibition on "double jeopardy", it cannot be said that submission of this argument against them would likely have resulted in a different outcome. Further, Applicant testified that his pro se brief to the Court of Appeals during the course of his direct appeal contained a challenge on this very ground, meaning this very issue has been previously presented to the court. Therefore, it is the finding of this Court that the allegations that Trial and Appellate Counsel were ineffective for failure to argue that the prosecution constituted impermissible "double jeopardy" is without merit and is hereby dismissed. Finally, regarding the first degree burglary charge, the *intent to commit a crime* element of burglary can be satisfied from trespass, or it can be inferred from the breaking and entering if done so at night. McMillian v. State, 383 S.C. 480, 680 S.E.2d 905 (2009). Accordingly, the evidence against him is overwhelming considering that his own statements (and testimony at the PCR hearing) establish all of the elements except for his disagreement of *intent to commit a crime*; when, as explained throughout,

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Counsel was not deficient in any manner, nor was Applicant prejudiced by counsel's representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise the remaining allegations set forth in his application at the hearing and has, thereby, waived them. As to any and all allegations that were or could have been raised in the application or at the hearing in this matter, but were not specifically addressed in this Order, this Court finds Applicant failed to present any probative evidence regarding such allegations. Accordingly, this Court finds that Applicant waived such allegations and failed to meet his burden of proof regarding them. Accordingly, they are dismissed with prejudice. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court cautions the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453

Sowell, Todd Michael – Order of Dismissal (2009CP4002686)

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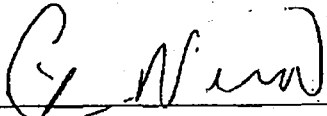
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(1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6<sup>th</sup> day of April, 2011.

  
\_\_\_\_\_  
Clifton Newman  
Presiding Judge  
Fifth Judicial Circuit

Columbia, South Carolina.

Sowell v. State  
Case No.: 09-CP-40-2686  
Summary of Applicant's report

| ISSUES                                                 | GROUND                                                                                                                                                                                                                                                                 | CASES and AUTHORITIES                                                                                                                                                                                                                                                                                                                                                                                  | PG.                  |
|--------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 1. Double Jeopardy                                     | All elements to prior convictions for MIPP + CDV are included in BUSE 1st, and all arose in same factual predicate.                                                                                                                                                    | Waller v. Florida, 40 S.Ct 1184 Bars prosecution of a felony if already convicted of misdemeanor of same act and lesser included offense. St. v. Dobson, 309 S.B. 752 lesser included requires no proof beyond greater. See S.C. Code Ann §17-23-20; S.C. Const. Art. I §12                                                                                                                            | 2<br>2<br>2          |
| 2. Failure to Investigate                              | (I) Failure to discover medical evidence to disprove abuse<br>(II) Absence of documents to support motion to dismiss on double jeopardy                                                                                                                                | (1) C.J.S. Criminal law § 502 deo process accesses medical records. Matholland v. Dietz, 896 F.Supp 179 confidentiality in medical records not absolute. Holsem v. White, 183 F.3d 1582 Not to conduct any investigation into lack of medical evidence not reasonable. (2) Cross v. Odeleberio, 411 F.2d 1008 Test for.                                                                                | 3<br>4<br>4<br>6     |
| 3. Failure to Subpoena witnesses                       | Applicant prejudiced by not having witnesses who could have testified the Complainant tried to extort \$10,000                                                                                                                                                         | Martinez v. State, 403 S.B. 118 Failure to subpoena witnesses ineffective. St. v. Schmidt, 342 S.B. 401 evidence concerning hard feelings relevant. See S.C. Code Ann §17-23-60, 17-7-60.                                                                                                                                                                                                              | 7<br>7<br>7          |
| 4. Failure to preserve Speedy Trial Violation          | Counsel failed to motion to dismiss for violation of the Speedy Trial provision that Applicant filed with Clerk on 1/14/06                                                                                                                                             | St. v. Ridge, 236 S.B. 401 Four factors determining whether Speedy Trial deprived. U.S. v. Giambrone, 920 F.2d 176 Shows "extremely low" Speedy Trial attitude. See S.C. Code Ann §17-23-90                                                                                                                                                                                                            | 9<br>14<br>8         |
| 5. Failed to advise of Jackson v. Denno                | Counsel failed to advise Denno hearing testimony not waiver to fifth amendment                                                                                                                                                                                         | Collazo v. Estelle, 940 F.2d 411 Unvoluntary confession even after Miranda warnings. Edwards v. Arizona, 451 U.S. 477 (1981)                                                                                                                                                                                                                                                                           | 16                   |
| 6. Failed to assert consent defense                    | Counsel misadvised verbal agreement not legal. Misrepresented in closing argument on issue.                                                                                                                                                                            | Rickborn v. Liberty, 448 D.C. 282, Berkley v. Blue Cross, 245 S.B. 898 Contract based on verbal understanding. Osborn v. Shilling, 639 F.Supp 616 Publicly chastising client as evidence of ineffectiveness.                                                                                                                                                                                           | 18<br>19             |
| 7. Appellate counsel failed to raise meritorious issue | Failed to brief significant and obvious issue while pursuing issue that was weaker                                                                                                                                                                                     | In re Flannery, 180 F.3d 143 Sixth Amend. guarantee requires Appellate counsel to be effective. U.S. v. Schuge, 903 F.3d 24 Standard of review. Jackson v. Genovese, 162 F.3d 81 ineffective for failure to raise double jeopardy on appeal.                                                                                                                                                           | 19<br>19<br>20       |
| Prosecutorial Misconduct                               | Due process denied by cumulative effect of prosecutorial misconduct                                                                                                                                                                                                    | U.S. v. Conrad, 320 F.3d 851 two part test of prosecutorial misconduct with factors of prejudicial effect.                                                                                                                                                                                                                                                                                             | 21                   |
| 8. Unfair remarks                                      | (I) Calculated closing argument inflamed the passions of the jury<br><br>(II) Disparaging Counsel                                                                                                                                                                      | (I) U.S. v. Newton, 369 F.3d 659 Closing statement asking jury if they would trust defendant with children improper. St. v. McMill, 3 S.B. 257, St. v. Under 278 D.D. 335 Conduct of prosecutor calculated to prejudice not tolerated (2) U.S. v. Rodriguez, 159 F.3d 439 Combination of misstatement of law with unwarranted attack on defense denied fair trial                                      | 22<br>23<br>24       |
| 9. References to previous convictions                  | Impeachment evidence entered in and Applicant did not testify. Under workarounds this was inadmissible because the prior crime must be punishable in excess of one year.                                                                                               | Martin v. Perless, 11 F.3d 613 references to prior violated due process. Green v. St. 527 S.B. 98 two part test for prior to impeach. U.S. v. LeGairre, 943 F.2d 1534 Some matters of prosecutorial misconduct cannot be removed by curative instruction. See 609 (a) (1) S.C. Code                                                                                                                    | 25<br>25<br>25<br>25 |
| 10. False evidence                                     | Groundless, unconfirmed statements of hospitalization without records                                                                                                                                                                                                  | Gioglio v. U.S., 92 S.Ct 763 Deliberate presentation of false evidence incompatible with justice. Napue v. Illinois, 796 Ct 1173 if government knowingly permitted false testimony reversal automatic.                                                                                                                                                                                                 | 26<br>27             |
| 11. Material misstatements of law and fact             | (I) Contrary to Law (i) countering the reasonable doubt instruction in opening statement. (ii) Instruction with misstatement of law prompted jury to negate deliberation of all elements. (II) State made misstatement of fact about material point in incident report | (1)(i) St. v. Osborne, 345 S.B. 256 Closing argument stating reasonable doubt means only use common sense was inappropriate. (ii) Keating v. Hood, 191 F.3d 1053 Constitutional law K 260 (1) Every fact necessary must be proven. (2) U.S. v. Watson, 171 F.3d 645, misstatement of evidence is error when made to jury not supported by evidence at trial regardless if deliberate or in good faith. | 28<br>29<br>30       |

## INTERROGATION; ADVICE OF RIGHTS

YOUR RIGHTS

Place 3905 ENSO A Ave.  
 Date 01-06-05  
 Time 10:30

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer, one will be appointed for you before any questioning if you wish.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer.

WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signed [Signature]

Witness: [Signature]

Witness: [Signature]

Time: 10:30



COLUMBIA S.C. POLICE DEPARTMENT  
STATEMENT FORM

Page 1 of 4

Date: 01-06-05 Time: 1030 Place: 3905 Enson Ave.  
 am Todd Sowell My birthday is 7-7-74 (30) 248-63-8253  
 My address and phone number are: 703 EAST 3RD NORTH ST. Summerville, SC  
 I am giving this statement concerning 1601 Prescott Manor - 7-A 843-8716  
 to K.E. Reese who has identified himself as Investigator 8716a

Q: On 12-01-04 did you go to 1601 Prescott Manor 7-A in Columbia?

A: Yes

Q: What time of the day did you go there?

A: I think it was night time it was dark.

Q: Did you force open the door to this apt?

A: It probably was locked. I budge it with my shoulder. It came open.

Q: Did you check to see if the door was locked?

A: No I knocked on the door and nobody would answer. I was drunk that night.

Q: Did you think anyone was in the house?

A: No - because I knocked and nobody would answer and I called and nobody would pick up.

Q: After you got inside the house what happened?

A: Sandra was standing inside the door and started screaming. She cursed me. I told her I came to get my stuff. She pushed me to keep me from coming into the house.

Sworn and subscribed to me this  
 day of Jan 2005

NOTARY PUBLIC OF SOUTH CAROLINA  
 MY COMMISSION EXPIRES: 2014

ISI [Signature]

ISI \_\_\_\_\_

\_\_\_\_\_ received a copy of this statement consisting of \_\_\_\_\_ pages  
 from \_\_\_\_\_ ISI \_\_\_\_\_

Form 34-91

COLUMBIA S.C. POLICE DEPARTMENT  
STATEMENT CONTINUATION

I got into the living room. She kept pushing me like she was throwing all her body weight on me. I pushed her back and she fell on the couch. She was yelling like crazy so I just left. I went back to the hotel I was staying in on Sunset.

Q: Have you ever lived at this residence with Sandra Jacobs?

A: Yes, she was my fiancé - we lived there together.

Q: How long did you live with her?

A: About 3 months.

Q: What kind of bills did you pay while there?

A: Groceries and the light bill one time.

Q: Did she ask you to move out of her house?

A: Yes - About the beginning of November I left and went to Charlotte. She called later and said she was pregnant. We even went to my Mom's house on Thanksgiving day.

Q: Did you break into Ms. Jacobs' apt while she was in the hospital?

A: Yes - But I did not know she was in the hospital.

Sworn and subscribed to me this

day of Jan 2005

Notary Public of South Carolina

My Commission Expires: 2014

/s/

/s/

\_\_\_\_\_ received a copy of this statement consisting of \_\_\_\_\_ pages

from \_\_\_\_\_

/s/

88POL03



COLUMBIA S.C. POLICE DEPARTMENT  
STATEMENT CONTINUATION

Q: How did you get in?

A: I went through the window.

Q: What time of the day did this happen?

A: In the afternoon - I think it was a Sunday.

Q: What did you do while inside?

A: I cut up some of her stuff with a boxcutter.

Q: Did you bring a boxcutter with you?

A: I always have it on me.

Q: Did you make a telephone call to Mami, the  
concerning this incident?

A: Yes. I called Doug, her baby's father. I told  
him what I did. I wanted to accuse him that  
I never intended any harm towards his son.  
I didn't intend to harm Sandra either.

Q: Why did you take the telephone?

A: I did want her to hear the messages - those  
crazy messages I left on it.

Q: Were you shown a series of photos ~~of~~ of damage  
inside Sandra's house?

A: Yes.

Q: Did you commit the damage in those photos?

A: Yes.

Sworn and subscribed to me this  
day of Jan 2003

NOTARY PUBLIC OF SOUTH CAROLINA  
MY COMMISSION EXPIRES: 2014

ISI

ISI

\_\_\_\_\_ received a copy of this statement consisting of \_\_\_\_\_ pages

from \_\_\_\_\_ ISI \_\_\_\_\_

88POL03

COLUMBIA S.C. POLICE DEPARTMENT  
STATEMENT CONTINUATION

Q: Is there anything else you want to say?

A: I didn't know she was in the hospital  
and when I found out I felt real bad  
about it. I was just real hurt.

End Statement

Sworn and subscribed to me this

10th day of Sept 2005  
Kenneth Ross

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES: 2014

/S/ [Signature]

/S/ \_\_\_\_\_

\_\_\_\_\_ received a copy of this statement consisting of \_\_\_\_\_ pages

from \_\_\_\_\_ /S/ \_\_\_\_\_

88POL03



COLUMBIA S.C. POLICE DEPARTMENT  
STATEMENT CONTINUATION

Q: Is there anything else you want to say?

A: I didn't know she was in the hospital  
and when I found out I felt bad  
about it. I was just real hurt.

End Statement

Sworn and subscribed to me this  
10th day of Jan 2015

NOTARY PUBLIC OF SOUTH CAROLINA  
MY COMMISSION EXPIRES: 2014

/S/

/S/

\_\_\_\_\_ received a copy of this statement consisting of \_\_\_\_\_ pages  
from \_\_\_\_\_ /S/ \_\_\_\_\_

.88POL03

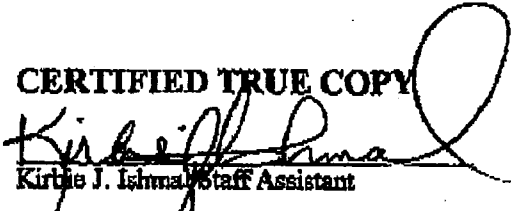
**CITY OF COLUMBIA  
SOUTH CAROLINA**

MUNICIPAL COURT / P.O. BOX 644 / COLUMBIA, S.C. 29202 / 803 / 545-3150 FAX 803 / 733-8433

**LETTER OF DISPOSITION**

Defendant's Name: **Todd M. Sowell**  
Race: W Sex: M DOB: 07/07/1974  
Warrant/Ticket Number: H-858420  
Violation Date: 01/05/2005  
Charge: **Criminal Domestic Violence**  
Disposition of Case: **Guilty**  
Sentence: 30 Days  
Condition(s): N/A  
Court Date: 01/12/2005  
Session: 0009  
Page: 01  
Line: 03

Honorable Judge Hanna presiding at the hearing

**CERTIFIED TRUE COPY**  
Kirtle J. Ishma, Staff AssistantDate APR 13 2010**"EVERYBODY COUNTS. EVERYBODY CONTRIBUTES. EVERYBODY BENEFITS."**

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

## INDICTMENT

At a Court of General Sessions, convened on June 15, 2005, the Grand Jurors of Richland County present upon their oath:

**CRIMINAL DOMESTIC VIOLENCE**

That Todd Sowell did in Richland County on or about December 1, 2004, cause physical harm or offer or attempt to cause physical harm to the victim, Sandrica Jacobs, a family or household member, with apparent present ability under circumstances reasonably creating fear of imminent peril, all in violation of Section Code 16-25-20, Code of Laws of South Carolina, (1976, as amended).

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

  
WARREN B. GIESE, SOLICITOR

## ARREST WARRANT

H- 858420

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
COLUMBIATHE STATE  
against

TODD M SOWELL

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 5'07" Weight: 200

DL State: [REDACTED] DL #: [REDACTED]

DOB: 07/07/1974 Agency ORI#: SC0490100

Prosecuting Agency: CITY OF COLUMBIA

Prosecuting Officer: JENKINS J

Offense: CRIMINAL DOMESTIC VIOL

Offense Code: CDV

Code/Ordinance Sec. 16-25-20

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of  
COLUMBIAThe accused  
is to be arrested and brought before me to be  
dealt with according to law.

Signature of Judge (L.S.)

Date: [REDACTED]

## RETURN

A copy of this arrest warrant was delivered to  
defendant [REDACTED]

on [REDACTED]

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
COLUMBIA

## AFFIDAVIT

Personally appeared before me the affiant SANDRICA JACOBS who  
being duly sworn deposes and says that defendant TODD M SOWELL  
did within this county and state on 12/01/2004 violate the criminal laws of the  
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of COLUMBIA)

In the following particulars:

DESCRIPTION OF OFFENSE: CRIMINAL DOMESTIC VIOL 16-25-20

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:AFFIANT STATES THAT THE DEFENDANT HER EX-BOYFRIEND CALLED HER VIA  
TELEPHONE NUMEROUS TIMES DURING THE NIGHT. THE DEF THEN CAME TO  
RESIDENCE, 1601 PRESCOTT ROAD (PRESCOTT MANOR) COLUMBIA, SC. AN  
STARTED BANGING ON THE DOOR, KICKED THE DOOR IN, FORCING HIS  
WAY INTO RESIDENCE LEAVING DAMAGES OF ABOUT \$300 TO THE DOOR. C  
INSIDE DEF STRUCK THE AFFIANT ABOUT HER FACE WITH HIS HANDS. THE  
FLED BEFORE ARRIVAL OF R/O. THE DEF THEN CONTINUED CALLING AFFI  
BY PHONE USING PROFANITY MAKING THREATS TO KILL HER. AFFIANT AND  
DID PREVIOUSLY CO-HABITATE AT SAID LOCATION.

Signature of Affiant

Affiant's Address 1601 PRESCOTT RD  
COLA, SC. 29203Affiant's Telephone 7358275

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of  
COLUMBIA

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe  
on 12/01/2004 defendant TODD M SOWELL  
did violate the criminal laws of the State of South Carolina (or ordinance of☐ County/ ☒ Municipality of COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE: CRIMINAL DOMESTIC VIOL 16-25-20

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said  
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be deli  
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

[REDACTED]

Ministerial Records (L.S.)

Signature of Issuing Judge

Judge Code: 10-2003

Judge's Address CITY OF COLUMBIA, SCMUNICIPAL COURT, P.O. BOX 644

Judge's Telephone [REDACTED]

Issuing Court: ☐ Magistrate ☒ Municipal

ORIGINAL

Approved by  
Clerk General  
April 21, 2005  
SCCA 618

CRIMINAL RECORDS

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |                               |  |                           |  |           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------|--|---------------------------|--|-----------|
| WRNT2T200182APR1310 1004                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | INQ                           |  | NEXT SCREEN               |  | WRNT2     |
| NARRANT SCREEN #2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                               |  |                           |  |           |
| Warrant Number H858420                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  | Magistrate Code 403003        |  | Agency Code               |  | SC0400100 |
| Fine Amount/Days 0 / 0                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  | Restitution Amount 0          |  |                           |  |           |
| Court Date and Time                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  | Appeared? Y/N                 |  | Docket Pg/Ln              |  |           |
| Charge Code CDV                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  | Section Violated 16-25-20     |  | Violation Date 12012004   |  |           |
| Violation Description CRIMINAL DOMESTIC VIOL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                               |  | Community Service         |  | Y/N       |
| <b>WARRANT DESCRIPTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |                               |  |                           |  |           |
| <p>AFFIANT STATES THAT THE DEFENDANT HER EX-BOYFRIEND CALLED HER VIA TELEPHONE NUMEROUS TIMES DURING THE NIGHT. THE DEF THEN CAME TO HER RESIDENCE, 1601 PRESCOTT ROAD (PRESCOTT MANOR) COLUMBIA, SC., AND STARTED BANGING ON THE DOOR. KICKED THE DOOR IN, FORCHING HIS WAY INTO RESIDENCE LEAVING DAMAGES OF ABOUT \$300 TO THE DOOR. ONCE INSIDE DEF STRUCK THE AFFIANT ABOUT HER FACE WITH HIS HANDS. THE DEF FLED BEFORE ARRIVAL OF R/O. THE DEF THEN CONTINUED CALLING AFFIANT BY PHONE USING PROFANITY MAKING THREATS TO KILL HER.</p> |  |                               |  |                           |  |           |
| Location Code WS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | & Description WARRANT SECTION |  |                           |  |           |
| Warrant Withdrawn or Void Ans - Y N                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  | Withdrawn Date 00000000       |  |                           |  |           |
| Reason not served                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  | mmddccyy                      |  |                           |  |           |
| Remarks                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                               |  |                           |  |           |
| Remarks SJD                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |                               |  |                           |  |           |
| Disposition JAIL                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | Disposition Date JAN 12 2005  |  | Arrested Date JAN 05 2005 |  |           |
| To Inquire on the first part of this warrant enter X and XNIT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                               |  | <input type="checkbox"/>  |  | INQ @     |
| 15:46:20:80 INPUT REQUEST                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | 0.00                          |  |                           |  |           |



bie J. Ishmal  
3-545-3154



|                                                                                                    |        |                         |        |                        |       |                 |  |
|----------------------------------------------------------------------------------------------------|--------|-------------------------|--------|------------------------|-------|-----------------|--|
| WARNTT200181APR1910 1004 INQ                                                                       |        | DEC 06 2004 11830       |        | WARNT NEXT SCREEN      |       | WARNT           |  |
| WARRANT SCREEN #1                                                                                  |        |                         |        |                        |       |                 |  |
| Warrant Number <b>H858420</b>                                                                      |        |                         |        | Issue Date DEC 06 2004 |       |                 |  |
| Warrant Type A A-Arrest T-Traffic C-Criminal S-STP J-Jury R-Restitution                            |        |                         |        |                        |       |                 |  |
| Incident No. 0439905                                                                               |        | Booking/Warrant No.     |        | STP No.                |       |                 |  |
| Defendant Last Name SOWELL                                                                         |        | First & Mid TODD M      |        | Gen                    |       |                 |  |
| Defendant AKA Lstnm                                                                                |        | First & Mid             |        |                        |       |                 |  |
| Sex M                                                                                              | Race W | Height 5                | 7      | Weight 200             | Age 0 | D.O.B. 07071974 |  |
| SSN                                                                                                | 0      | DL State                | DL No. | mmddccyy               |       |                 |  |
| Address : Street No.                                                                               |        | Name 3RD NORTH          |        | Type ST                |       |                 |  |
| Apartment No.                                                                                      |        | Phone No.               |        | 0                      |       |                 |  |
| City SUMMERVILLE                                                                                   |        | State SC                |        | Zip Code 29485         |       |                 |  |
| Affiant Last Name JACOBS                                                                           |        | First & Mid SANDRIC     |        |                        |       |                 |  |
| Address : Street No.                                                                               |        | Complex COLA, SC. 29203 |        | Phone No.              |       | 7358275         |  |
| Prim Wtns Last Name                                                                                |        | First & Mid             |        | mmddccyy               |       |                 |  |
| Off Responsible No 0                                                                               |        | Name JENKINS J          |        | & Date                 |       | 12062004        |  |
| Off Serving P/R No 9633                                                                            |        | Name ANTOINETTE         |        | Served Date            |       | 01052005        |  |
| Judge's Name                                                                                       |        | Restitution Name        |        |                        |       |                 |  |
| To inquire on the second part of this warrant enter an X and XMIT <input type="checkbox"/>   INQ & |        |                         |        |                        |       |                 |  |
| 15:46:02:08                                                                                        |        | INQUIRY REQUEST         |        | 0.00                   |       |                 |  |



Irbie J. Ishmal,  
33-545-3154