

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

R. Markley Dennis, Jr., Circuit Court Judge

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CARL B. CRAINE,

S.C. Supreme Court

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213624

APPENDIX

BENJAMIN J. TRIPP
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

KAREN RATIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

INDEX

INDEX.....	i
TRIAL TRANSCRIPT (OCTOBER 23 – 25, 2007).....	1
COURT OF APPEALS OPINON NO. 2010-UP-499 (FILED NOVEMBER 10, 2010).....	215
REMITTITUR (NOVEMBER 29, 2010).....	216
APPLICATION FOR POST-CONVICTION RELIEF (JANUARY 18, 2011).....	217
STATE’S RETURN (FILED MAY 26, 2011).....	226
PCR EVIDENTIARY HEARING TRANSCRIPT (OCTOBER 29, 2012).....	231
PCR EXHIBIT #1.....	259
ORDER OF DISMISSAL (FILED NOVEMBER 19, 2012).....	266
CLERK OF COURT RECORDS	272

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

COURT OF GENERAL SESSIONS
2003-GS-39-01866; 01867

ORIGINAL

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
vs.)
CARL BRIAN EUGENE CRAINE,)
DEFENDANT.)

TRANSCRIPT OF RECORD

October 23-25, 2007
Pickens, South Carolina

B E F O R E:

THE HONORABLE EDWARD W. MILLER, JUDGE.

A P P E A R A N C E S:

LUCAS MARCHANT, ESQ.
Attorney for the State

DAVID HARRISON, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

I N D E X

(SW) - Denotes State's Witness
(DW) - Denotes Defense Witness
(IC) - Denotes In Camera

Monday, October 23, 2006

Jackson -v- Denno Hearing.....5

(SW) JODY CARTEE (IC):

Direct Examination by Mr. Marchant.....5
Cross-Examination by Mr. Harrison.....14
Redirect Examination by Mr. Marchant.....24
Recross-Examination by Mr. Harrison.....25

(SW) EARL MAW (IC):

Direct Examination by Mr. Marchant.....26
Cross-examination by Mr. Harrison.....29

(DW) CARL CRAINE (IC):

Direct Examination by Mr. Harrsion.....34
By the Court.....37
Cross-Examination by Mr. Marchant.....38
Redirect Examination by Mr. Harrison.....41

Motions.....42

Tuesday, October 24, 2006

Jury Qualification.....48
Jury Selection.....71
Introductory Remarks by the Court.....79
Matters of Law.....85
Opening Statement by Mr. Marchant.....95
Opening Statement by Mr. Harrison.....96

(SW) ROGER DAVIS:

Direct Examination by Mr. Marchant.....100
Cross-Examination by Mr. Harrison.....107

(SW) LIBERTY DAVIS:

Direct Examination by Mr. Marchant.....109
Cross-Examination by Mr. Harrison.....111

(SW) SUSAN PACE:

Direct Examination by Mr. Marchant.....114
Cross-Examination by Mr. Harrison.....122

///
///

INDEX (CONTINUED)

1		
2	<u>(SW) TONYA TANT:</u>	
3	Direct Examination by Mr. Marchant.....	123
4	Cross-Examination by Mr. Harrison.....	129
5	Redirect by Mr. Marchant.....	130
6	<u>(SW) JODY CARTEE:</u>	
7	Direct Examination by Mr. Marchant.....	131
8	Matters of Law.....	142
9	<u>CARL CRAINE:</u>	
10	Examination by the Court.....	143
11	Matters of Law.....	144
12	<u>Wednesday, October 25, 2006</u>	
13	Motions.....	152
14	<u>MIKE GILLESPIE:</u>	
15	Examination by the Court.....	153
16	<u>(SW) JODY CARTEE:</u>	
17	Cross-Examination by Mr. Harrison.....	164
18	<u>(SW) EARL MAW:</u>	
19	Direct Examination by Mr. Marchant.....	165
20	Cross-Examination by Mr. Harrison.....	169
21	Redirect Examination by Mr. Marchant.....	171
22	State Rests.....	172
23	Motions.....	173
24	<u>(DW) CARL CRAINE:</u>	
25	Direct Examination by Mr. Harrison.....	180
26	<u>(DW) BARRY CRAINE:</u>	
27	Direct Examination by Mr. Harrison.....	187
28	Cross-Examination by Mr. Marchant.....	189
29	Defense Rests.....	191
30	Motions.....	191
31	Matters of Law.....	192
32	Closing Argument by Mr. Harrison.....	193
33	closing Argument by Mr. Marchant.....	197
34	Charge on the Law by the Court.....	199
35	Verdict.....	210
36	Sentencing by the Court.....	213

INDEX (CONTINUED)

Certificate of Reporter.....214

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(State's Exhibits)		
S-1	Rights Form.....	94.....	136
S-2	Voluntary Statement.....	94.....	168
S-3	Convictions 1993.....	94.....	161
S-4	Convictions 1993.....	94.....	161
S-5	Pawn Ticket.....		118
S-6	Driving Record.....		162

(Defense Exhibits)

There were no Defense Exhibits.

(Court's Exhibit's)

C-1	Note from Jury.....		9
C-2	Mr. Craine's Jail Medication List.....		145
C-3	Psychological Evaluation of Mr. Craine.....		150

All Exhibits were retained by the Clerk of Court for
Pickens County.

1 Monday, October 23, 2006

2 (WHEREUPON, State's Exhibit No.'s 1 and 2 were
3 marked for identification.)

4 MR. MARCHANT: May it please the Court this the first on
5 the trial roster is the morning. State vs. Carl Brian Eugene
6 Craine, Indictment No. 2003-GS-39-1866, an indictment for
7 burglary, first degree. 2003-GS-39-1867, indictment for
8 grand larceny. At this point in time the State would like to
9 proceed with a Jackson v. Denno hearing

10 THE COURT: All right.

11 MR. MARCHANT: State would call Jody Cartee.

12 Jody Cartee, after being duly sworn, testified
13 as follows:

14 THE CLERK: State your name for the record.

15 THE WITNESS: Joel Lee Cartee.

16 DIRECT EXAMINATION

17 BY MR. MARCHANT:

18 Q Mr. Cartee, where are you employed presently?

19 A With 31 W Installation in Greenville, South Carolina.

20 Q Back in 2003, where were you employed?

21 A With the Pickens County Sheriff's Office.

22 Q And how long were you employed with the Sheriff's Office?

23 A Approximately 10 and a half years.

24 Q In what capacity were you employed?

25 A I was anywhere from a road officer and last four years I

1 was a detective with the sheriff's office.

2 Q Okay. So in 2003, what was your status?

3 A I was investigator.

4 Q Okay. Bring your attention to this case, Carl Craine,
5 what was your involvement in Mr. Craine's case?

6 A I was the lead investigator.

7 Q Okay. And what does lead investigation do?

8 A Once the road unit makes the actual report from the
9 victim, the lieutenant or whoever is in charge at that time
10 assigns cases. And I was the one who was assigned this case.

11 Q At some point in time was Mr. Craine arrested?

12 A Yes, he was.

13 Q Did you have an opportunity to interview him?

14 A Yes, I did.

15 Q Okay. And where did that interview take place?

16 A At the Pickens County sheriff's office in the detective
17 division itself.

18 Q Okay. Please explain to, His Honor, when you say the
19 detective division, what is the general layout of that
20 facility?

21 A It's actually downstairs of the sheriff's office. When
22 you go into from the back side or front side, there is a door
23 there. You enter the office. There is several cubicles. As
24 a matter of fact I think there were six at that time. The
25 Captain's office is on the right-hand side, the lieutenant's

1 office, a waiting room and a interview room. Once you enter
2 into the cubicles, there were six cubicles at that time.

3 Q Okay. And where in relation was your cubicle?

4 A I was in the far back right hand or left-hand corner.

5 Q Okay. And in between the cubicles, it is opened or is it
6 doors?

7 A There's no doors it is opened.

8 Q Okay. At the time back in 2003, when you interviewed
9 Mr. Craine, do you know how old he was?

10 A I think according to the statement he was 28.

11 Q Okay. Let me show you what's been pre-marked as State's
12 Exhibit No. 2.

13 A Yes, 28 years of age.

14 Q Okay. And had you ever seen or dealt with Mr. Craine
15 before?

16 A No. Not really dealt with him. I had seen him.

17 Q Okay. That day or that evening what was his appearance
18 if you remember?

19 A The appearance when we first dealt with him he was --

20 Q Let me rephrase, was the defendant intoxicated?

21 A No, he was not.

22 Q Was he coherent?

23 A Yes, he was.

24 Q Was he awake?

25 A Yes, he was.

1 Q Do you remember what time of day this interview started
2 taking place?

3 A It was around -- the actual interview started at 17:25
4 which is 5:25.

5 Q Okay. And at the beginning of any interview, what is
6 your normal procedure?

7 A I advise them of their Miranda Rights.

8 Q Okay, why do you do that?

9 A It's their Constitutional rights. They have the right to
10 speak with me or they can speak with a lawyer.

11 Q How much did you advise Mr. Craine of his rights that
12 evening?

13 A There is a standardized form used by the Pickens County
14 Sheriff's Office. I know especially in the investigation
15 division, a sheet of paper that states on the top, Your
16 Rights. And the date and time. Date and time it and you
17 read them the rights.

18 Q What date did this take place?

19 A The time was 17:25 which is 5:25 on 7-14-03.

20 Q Okay. When you were informing Mr. Craine of his rights,
21 please tell the Court specifically how you informed him of
22 his rights?

23 A I actually read the rights. Before we actually question
24 you, you must understand your rights. You have the right to
25 remain silent, anything you say can be used against you

1 court, you have a right to talk to your lawyer for advise
2 before you ask him any questions and have him or her here
3 with you during questioning. If you have no money to pay a
4 lawyer's fee the Court will appoint one to represent you
5 without any cost, if you wish. If you decide to answer
6 questions without a lawyer present you will still have the
7 right to stop answering at any time. You also have a right
8 to stop answering at any time until you talk your lawyer. I
9 read it to him.

10 Q Word for word?

11 A Word for word.

12 Q On this evening you did that with Mr. Craine?

13 A Yes, I did.

14 Q Did he appear to understand what you were talking about?

15 A Yes, he did.

16 Q At the end of that did he waive his rights?

17 A Yes, he did.

18 Q How do you know he waived his rights?

19 A There's also a waiver of right which I read to him and he
20 signed it.

21 Q Please tell the Court where he signed it.

22 A He signed it where it says sign where I had a little mark
23 to be signed. It's right under waiver of rights.

24 Q Okay, who was present when he waived his rights?

25 A I was.

1 Q Okay. Is your signature on this page as well?

2 A Yes, it is.

3 MR. MARCHANT: At this time the State would move exhibit
4 No. 1 into evidence.

5 THE COURT: Any objection?

6 MR. HARRISON: No, Your Honor.

7 THE COURT: All right, for purposes of this hearing.

8 (WHEREUPON, State's Exhibit No. 1 was admitted
9 into evidence.)

10 MR. MARCHANT: Thank you, Your Honor.

11 BY MR. MARCHANT:

12 Q Okay. After Mr. Craine waived his rights, what did you
13 do?

14 A Well, after he waives his rights and he wishes to speak
15 with me without a lawyer present, we just go through and
16 basically just have a conversation about the case that I was
17 the lead investigator on. And from there he told me what
18 happened. After this happens I asked him if he will give me
19 a voluntary statement to -- or a statement to what had
20 happened. And at that time he did give me is statement.

21 Q He gave you written statements?

22 A He gave me a written statement.

23 Q At what time did that written state -- what time did he
24 give you that written statement?

25 A At 6:30 p.m. on 7-14-2003.

1 Q So approximately how long did you speak with Mr. Craine
2 before he gave you the written statement?

3 A An hour and five minutes.

4 Q At any point in time did he ever ask for an attorney?

5 A No, he did not.

6 Q Did he ever refuse to speak to you?

7 A No, he did not.

8 Q Did you threaten him in any manner?

9 A No, I did not.

10 Q Did you make any promises to him?

11 A No, I did not.

12 Q Was there anyone else in the interview facility when you
13 were interviewing Mr. Craine?

14 A In the interview facility, like I said, there's six to
15 seven -- or six cubicles actually in there. And no one was
16 with me while I interviewed him. But as far as being
17 investigated -- being in the detective division, I can't say
18 if they were there.

19 Q In the detective division, however, were there other
20 officers at there cubicles or desks?

21 A Yeah, they're usually in and out all the time.

22 Q So this was not a confined space?

23 A No, as a matter of fact my cubicle is at the very back
24 and when I was conducting interviews throughout the --
25 refrigerator and everything was back there so it was in and

1 out all the time.

2 Q Okay. Throughout this whole process, did Mr. Craine have
3 any trouble understanding what was going on?

4 A Not that I remember.

5 Q Okay. And did any point in time did he ever change his
6 mind and ask for an attorney?

7 A No, he did not.

8 Q To the best of your knowledge was he statement freely and
9 voluntarily?

10 A Yes, it was.

11 Q Who actually wrote this statement as marked as State's
12 Exhibit No. 2?

13 A Barry Craine.

14 Q Okay. Did he sign the statement?

15 A I'm sorry, Brian Craine.

16 Q Brian Craine?

17 A Yes.

18 Q Did he---

19 A Yes, Brian did write it and Brian did sign it.

20 Q Did you see him sign it?

21 A Yes, I did.

22 Q Okay. And did you witness that you saw him sign it,
23 however?

24 A No. Let me rephrase that. I did not witness him sign
25 this particular statement.

1 Q Okay. Did you witness him write the statement?

2 A I did. At the top of the statement -- once I conducted
3 the interview, the top of the statement was filled out by me.
4 Once he started writing it, I do not remember if I actually
5 saw him writing this statement. I could have walked away, I
6 do not remember but I did not sign this. I did not witness
7 this particular interview or this particular written
8 statement.

9 Q Okay. Now, during this interview, was this defendant
10 free to leave at any time?

11 A No, he was not.

12 Q He was under arrest?

13 A Yes, he was.

14 Q And he was a suspect?

15 A Yes, he was.

16 Q Now, you saw you did not witness this statement?

17 A Right, I did not witness this statement.

18 Q All right. Do you know who witnessed the statement?

19 A Earl Mall, Jr. who was lieutenant at that the detective
20 division and also Brett Barwick.

21 Q Now, was it uncommon at this time for someone else to
22 witness a statement after you had conducted the actually
23 interview?

24 A No, it was common.

25 Q Okay. And any point in time did he ask for the attorney?

1 MR. HARRISON: Your Honor, asked and answered.

2 THE COURT: Go ahead.

3 MR. MARCHANT: That's all the questions I have of this
4 witness at this time, Your Honor.

5 THE COURT: Okay.

6 MR. MARCHANT: Please answer any questions Mr. Harrison
7 may have.

8 CROSS-EXAMINATION

9 BY MR. HARRISON:

10 Q Well you knew Mr. Crane was is user of methamphetamine,
11 didn't you?

12 A I did not.

13 Q Okay. And you say that he was not intoxicated at the
14 time, was there some drug test that you ran on him or
15 something like that?

16 A No, there was not.

17 Q I know when the Solicitor asked you the question about
18 whether or not what was his appearance, that you didn't
19 answer that but yet when he gave you the question about was
20 he intoxicated you could answer that?

21 A That's correct.

22 Q Okay. So you don't remember what his appearance was
23 then?

24 A I remember him being coherent. Not appeared to be
25 intoxicated. He wasn't stumbling, he didn't appear to be

1 intoxicated.

2 Q He wasn't jumpy and nervous?

3 A No. I don't remember that.

4 Q So he was very coherent, very calm?

5 A I don't remember if he was calm.

6 Q So he had been arrested for burglary, and you went and
7 saw him in his jail cell and he was calm and coherent and not
8 nervous or jittery like any kind of a drug addict?

9 A I didn't go see him in his jail cell.

10 Q You didn't see him in his jail cell?

11 A No.

12 Q You had him brought down to you?

13 A I really don't remember. I don't remember if I put him
14 in a holding cell or not.

15 Q Okay. So I mean, it is possible that you did see him in
16 his jail cell then if you don't remember?

17 A I did not go to the jail cell.

18 Q Okay. But you don't know how he got down to you?

19 A No, I don't.

20 Q Okay. Well isn't it true that you already had some other
21 individuals under arrest for this crime?

22 A Yes.

23 Q Okay. And so you knew that when you arrested him you had
24 already obtained statements and so forth for some other
25 individuals, let's just say co-defendants in this matter; is

1 that correct?

2 A No, at the time I obtained a statement from one of the
3 witnesses, she was not under arrest as far as I remember.
4 She was not given her Miranda Rights.

5 Q Do you know who that individual was?

6 A It was a girlfriend.

7 Q A girlfriend. She had given you a statement -- so she
8 wasn't under any suspicion, had she given you a statement
9 indicating that she thought Mr. Craine was a guilty party
10 here? I mean --

11 A Yes, she did give me a statement.

12 Q Okay. And did you obtain -- I mean, Mr. Craine was --
13 had been arrested, correct?

14 A That is correct.

15 Q And he was arrested on an arrest warrant for this charge
16 that we're talking about here today, is that correct?

17 A That is correct.

18 Q Okay. So you had already obtained statements from
19 someone, sufficient that you thought had enough credibility
20 that you were then able to obtain an arrest warrant?

21 MR. MARCHANT: Your Honor, I'm going to object at this
22 time, this is to the voluntariness of the statement that he
23 was given.

24 MR. HARRISON: Well I'm getting to that.

25 THE COURT: I'll let him ask it, go ahead.

1 THE WITNESS: Could you repeat the question?

2 BY MR. HARRISON:

3 Q Okay. You already obtained statements which you deemed
4 to be -- implicated Mr. Craine and you took from those
5 statements, you went and got an arrest warrant -- did you get
6 the arrest warrant?

7 A Yes, I did sign the -- yes, I did.

8 Q Okay. Then you had -- then you had him arrested on the
9 arrest warrant. Then you brought him down or he came down
10 somehow, I assume he didn't leave his jail cell on his own to
11 go down there to see you, is that correct?

12 A That's correct.

13 Q Okay. So you had him brought down there, he still would
14 have been -- if you bring an individual down from their jail
15 cell, are they in cuffs?

16 A I don't remember if he was in cuffs.

17 Q It is the sheriff's policy that when individuals are
18 removed from a jail cell that they have to be in cuffs?

19 A Yes, it was.

20 Q So it would be fair to assume then that he was brought
21 down to you in cuffs?

22 A Like I said, I don't remember if when we arrested him --
23 I actually made the arrest on the street. I can't remember
24 if he was brought into the detective division and place in a
25 holding cell. I do not remember the booking procedure.

1 Q But procedure would have been for him to be in cuffs?

2 A That is correct.

3 Q All right. So you set him down and did you discuss with
4 him what you already knew?

5 A I don't remember.

6 Q Did you discuss with him the fact that he was charged
7 with a burglary?

8 A I'm sure I did.

9 Q Well, did you tell him about what charge he was charged
10 with? Did you discuss that with him?

11 A I do not remember.

12 Q So your memory is you just brought him down, sat him down
13 and he just opined on his own wrote this statement out
14 without you telling him anything?

15 A I'm sure we discussed the location of the burglary and
16 what was taken. Other than that I don't know what else was
17 discussed.

18 Q Okay. So you discussed at least the location of the
19 burglary and what was taken with him, is that correct?

20 A Like I said I do not remember. I don't remember exactly
21 what the conversation was.

22 Q Okay. So you don't even remember the conversation. So
23 you can't tell us whether or not you supplied this
24 information to this defendant or not, can you?

25 A (There was no response.)

1 Q Isn't that what you just said?

2 A If he was arrested he knew what he was being questioned
3 for.

4 Q Well isn't that a supposition on your part? Aren't you
5 telling us what you think was in his mind?

6 A Am I thinking what's in his -- say that one more time.

7 Q You're standing here telling me that you know what was in
8 his mind but you don't know what was in your own mind, is
9 that right?

10 A I don't know what was in his mind.

11 Q Okay. So you didn't know what he knew?

12 A No.

13 Q Okay. But you do know that you would have discussed, as
14 you said, as best you can remember, what you can remember
15 what your conversations with him, where it took place and
16 what was taken?

17 A More than likely, yes.

18 Q Now, and do you -- although you don't remember the exact
19 conversations, you specifically remember that he did not
20 appear to be jittery or nervous or complain about his drug
21 addiction?

22 A I do not remember that.

23 Q It could have happened?

24 A It could have happened.

25 Q And it could have also happened that he wanted to know

1 what did he have to do to get out of jail, they ever ask you
2 that?

3 A Many time.

4 Q Many times. And is it -- would it be unusual that you
5 would tell an individual, you know, if you write this
6 statement out for me, I can help you out. Ever do that?

7 A I don't remember that.

8 Q Have you ever done that?

9 A I don't recall.

10 Q Well you don't recall but it could have happened,
11 couldn't it?

12 A I could have happened.

13 Q And if an individual -- have you ever indicated to an
14 individual that if they would give you a statement you give
15 them what was taken, where it was taken from but if they give
16 you a statement that you might could help them get out on
17 bail?

18 A I did not discuss anything about the bail.

19 Q Well you don't remember your conversations with him?

20 A I do remember I didn't discuss anything about bail with
21 him.

22 Q Well you do remember that, you didn't discuss anything
23 about bail?

24 A That was just coming from me. I didn't discuss bail.

25 Q But you could have had a discussion with him about if he

1 give a statement I could help you?

2 A Possibility.

3 Q Now I wrote down that you first said you don't know who
4 was present when you were talking to him. That's what you
5 said, didn't you?

6 A Say that one more time.

7 Q You do not know -- you did not know who was present when
8 you were talking to him?

9 A Yeah and I -- I don't know who was in the room. But as
10 far as the statement, yeah I do know who was there with the
11 statement. As far as inside the actual detective division, I
12 don't know who was in the detective division at that time.
13 That's what I was referring to.

14 Q Okay. So you filled out the top of this statement that
15 Mr. Craine wrote out, right?

16 A Right.

17 Q All right. Then at whose direction did he wrote it down,
18 your direction?

19 A He was writing what he told me.

20 Q So he was writing that down before you filled out the
21 top?

22 A No. At 5:25 we went through the Miranda Rights and we
23 talked. After we talked I filled this out. The top portion
24 out. Signed it at 6:30 and then he started writing after
25 that. And he completed at 6:50.

1 Q And he contains where it took place, and what was taken,
2 correct?

3 A That is correct.

4 Q And I see there looks appear to be little correction
5 here. You note on his statement -- let me count the lines
6 for you 1, 2, 3 on the 4th line the statement stops with
7 Blueridge Pawn and a period, is that correct?

8 A That's correct.

9 Q All right. Now let's go to the fifth line. In that
10 statement there appears to be a correction at the end of
11 that, doesn't it? On the end of that line. A word was added
12 after it appears to have been written, is that correct?

13 A With a little error?

14 Q Uh-huh.

15 A Yes, sir.

16 Q And wouldn't you say that's a correction?

17 A I guess it would be.

18 Q Well let's say it more specificity about the location
19 where the crime was allegedly taken place, is that correct?

20 A According to the statement that's what it looks like.

21 Q Okay. You think that might have been something that you
22 had provided to him after you read over his statement?

23 A I don't even know if I was -- when he writing this down,
24 I don't even know if I was in his presence when he was
25 writing this.

1 Q So it could have been. Somebody could have -- somebody
2 could have pointed it out and had him make the correction, is
3 that correct? You think that would be a reasonable
4 assumption here?

5 A I don't know.

6 Q You just don't know?

7 A No, sir.

8 Q Where were you at the time that this statement was
9 written?

10 A I was -- I was interviewing -- if you can find the paper
11 work---

12 THE COURT: Well what does that have to do with it if he
13 wasn't there with him?

14 MR. HARRISON: I'll withdraw the question.

15 THE COURT: All right.

16 BY MR. HARRISON:

17 Q I note on the -- I note on the Waiver of Rights form
18 which would be State's Exhibit for identification No. 1, do
19 you have that before you?

20 A No, sir. I have No. 2.

21 Q Okay.

22 A Yes, sir.

23 Q There's block down there -- there's a witness block down
24 there on the bottom, isn't there?

25 A Yes, sir.

1 Q And it lists two witnesses, doesn't it?

2 A Yes, sir.

3 Q And you didn't get another witness on there like your
4 form shows, did you?

5 A No, I did not.

6 Q You just did your own?

7 A That's correct.

8 MR. HARRISON: Just one second. That's all I have, thank
9 you, Your Honor.

10 THE COURT: All right, anything else?

11 MR. MARCHANT: Just briefly.

12 REDIRECT EXAMINATION

13 BY MR. MARCHANT:

14 Q On these areas that Mr. Harrison pointed out that have
15 been marked out and rewritten, do you note any other things
16 that's been written above what's been marked out?

17 A Whenever they were writing a statement if they had to go
18 back and change something or spelled something wrong or
19 whatever, they would mark it out and they would put their
20 initial above where they had...

21 Q And what are the initials that had been placed in those
22 particular spots on that statement.

23 A There's two on here. Both of them B.C.

24 Q Okay. Did you write those?

25 A No, I did not.

1 Q Okay. And typically when a statement is given -- well in
2 this statement, who wrote, if you know, who marked that out
3 and wrote B.C. up there?

4 A It would have been Brian Craine who was giving the
5 statement.

6 Q Okay. And what's written on that paper, is that the
7 conversation y'all had in that hour prior?

8 A Well, as far as I can tell. Yes, apparently so.

9 Q And lastly, Mr. Harrison asked you about promises, did
10 you make any promises to him in this case? If you can
11 recall?

12 A I do not make promises.

13 Q Okay.

14 A I do not make promises.

15 Q Well maybe he asked if you could possibly help him if he
16 were to give a statement. Did you tell him how you would
17 help him or did you tell him you would help him?

18 A I do not remember.

19 MR. MARCHANT: That's all I have, Your Honor.

20 THE COURT: All right, you can step down.

21 MR. HARRISON: Just a real brief re-cross.

22 THE COURT: All right.

23 RE-CROSS EXAMINATION

24 BY MR. HARRISON:

25 Q Somebody apparently pointed out errors that he made and

1 had him change them, didn't they?

2 A If they made a mistake, and they -- and like I said I do
3 not remember this because I wasn't here, but if I was giving
4 somebody a statement in another case, if they said this is
5 wrong, they would scratch it out, I would tell them to
6 scratch it out and then put their initials above it.

7 Q So the officer would direct them to errors in their
8 statement and to correct them and have them initial it?

9 A Never, no. If they brought up that they had made a
10 mistake, then they would initial it.

11 MR. HARRISON: That's all I have.

12 MR. MARCHANT: State would call Earl Mall to the stand.

13 Earl Maw, after being duly sworn, testified as
14 follows:

15 THE CLERK: Please state your name for the record.

16 THE WITNESS: Jewel Earl Maw, Jr.

17 DIRECT EXAMINATION

18 BY MR. MARCHANT:

19 Q Mr. Mall, where are you employed right now?

20 A I'm retired.

21 Q Where are you retired from?

22 A Pickens County Sheriff's Office.

23 Q How long were you employed there?

24 A I worked for the sheriff's office 22 years as a full-time
25 officer.

1 Q Okay. Back in June of 2003, what was your capacity with
2 the sheriff's office?

3 A I was a lieutenant assigned to the detective division
4 there.

5 Q What exactly does lieutenant do?

6 A You have -- I had six investigators, had to coordinate
7 investigations, sign out cases. If they need any assistance
8 I would do that. Also I had cases that I worked myself.

9 Q Okay. On -- with respect to this case what was your
10 involvement?

11 A I assigned this case to Detective Cartee at the time.
12 And he had -- he called me and asked me he said he had what
13 he thought accumulated enough to obtain a warrant for people
14 involved and wanted me to meet him at the Magistrate's office
15 in Liberty. Which I did. He didn't want to go pick up
16 anybody with just one person. So I also made sure they was
17 adequate amount of people. So if there was warrant issued he
18 would need more.

19 Q Okay. And after all the warrant and everything was
20 issued, did you have an opportunity to sit down with this
21 defendant in this case?

22 A Yes, I did. On the statement.

23 Q Okay. Specifically with this statement only, what was
24 your involvement?

25 A They was other people in there that Detective Cartee was

1 interviewing at the time concerning this related incident.

2 And he asked me if I would sit in while Brian give the

3 statement.

4 Q Okay. Did you see this defendant write this statement?

5 A Yes, I did.

6 Q Okay. On the bottom of that did you witness this

7 defendant's signature?

8 A That's correct.

9 Q Okay. So to be clear, on the bottom right whose
10 signature is that?

11 A Brian Craine.

12 Q And where is your signature located?

13 A First witness.

14 Q Prior to having that defendant sign a statement, what do
15 you do?

16 A I have other related jobs in the office that I do.

17 Q I'm sorry, let me clarify. Prior to witnessing his
18 signature, do you go over the statement with him?

19 A Yes, I have him look back over it, see if there's any
20 corrections they want to make or change anything. If they do
21 I make sure they initial or see that they initial any places
22 that they changed.

23 Q Were you present when these changes were made?

24 A Yes.

25 Q At any point in time did Mr. Craine ever say what was on

1 that paper was untrue?

2 A Not to me.

3 Q Did he ever ask for an attorney?

4 A Not that I recall, no, sir.

5 Q Did you have any other involvement with respect that
6 statement.

7 A No, I did not.

8 MR. MARCHANT: Okay. That's all the questions I have.

9 MR. HARRISON: May it please the Court, Your Honor?

10 THE COURT: Yep.

11 CROSS-EXAMINATION

12 BY MR. HARRISON:

13 Q Do you have the statements in front of you?

14 A I have it here, yes, sir.

15 Q Okay, very good. If you look can -- can you kind of look
16 through on that third line there where it's all scratched
17 out. And I'm going to ask you, I guess, be a little bit of a
18 Hudini here, but it doesn't it appear to you it starts out,
19 We and then that's been scratched through and initialed by
20 him and now it starts out, I.

21 A Talking about after TV?

22 Q Yes, sir. Can you see that W under there, about We did?

23 A I can't.

24 Q You can't make it out, that's okay.

25 A I can't make it out but it could be a W but I can't say

1 for sure.

2 Q Well and then you said that what you do, the only time
3 you go over the statement with them is after they've written
4 it out, you read it back to them to see if there's any errors
5 and then -- that they've made or that they notice and then
6 you correct those and have them initial it?

7 A I don't necessarily read it back to them. I might have
8 them read it. I can't remember whether I read it back or
9 whether he did but it's gone back over at the time prior to
10 signing it to see if there's anything that he would need to
11 change or correct.

12 Q So in other words, you're not sitting there, as it were,
13 looking over their shoulder, making corrections as you go
14 along and telling them what they've done wrong?

15 A It's their statement.

16 Q Okay. But now doesn't it appear that on this third line
17 that he started out a statement and then changed that,
18 initialed it and then picked up writing. As though in
19 mid-stream as it were. Not a post-written correction but a
20 middle of the writing correction?

21 A He changed something or doodled out and made the
22 correction.

23 Q But that -- but that correction would have been made as
24 it were in stream? That is to say, as he's writing it, that
25 was changed. Doesn't it appear that to you?

1 A It appears that he might have had another thought
2 changed, is my guess. I can't say for sure.

3 Q In stream. Wasn't it after the statement that you would
4 have had him write BC on there?

5 A Yeah, that was standard procedure. That shoes that he
6 made those changes, that nobody else would have made those
7 changes.

8 Q Did he appear to you to be a drug addict that was in
9 withdrawals?

10 A He didn't. If we thought someone was impaired in some
11 way we would not normally take a statement. It would not
12 make the statement any good. To my recall I cannot say that
13 I remember him being that way but I would say that we would
14 not have taken this statement if we thought he would have
15 been impaired.

16 Q Well---

17 A That was standard.

18 Q Well would it be safe to say so that he appeared to you
19 to be a drug addict?

20 A I can't say that.

21 Q You can't say either yes or no?

22 A I've dealt with people that I'd never thought would have
23 used. You know, you can't always go by what somebody looks
24 like.

25 Q But don't bad teeth -- shakes would appear to be a drug

1 addict; wouldn't it? When you generally guess that?

2 A I could be that he just didn't brush his teeth too, I
3 don't know.

4 Q All right. Did you -- did you tell him that -- did you
5 also discuss with him about the fact that giving a statement
6 would enable him to get out on bond?

7 A No, sir.

8 Q Did you tell him that if he wrote a statement out that
9 you could also maybe help him out of his cases?

10 A The only thing that I might have told him would be that
11 any cooperation that he did would be relayed on to the
12 prosecuting attorney for them to evaluate what they might see
13 that they might do with that. I had no authority to get him
14 out or I might tell somebody that he cooperated or did not
15 cooperate. And what they did was, you know, up to the
16 prosecuting attorney.

17 Q And that wouldn't be unusual for you to have that
18 discussion with somebody who was giving a statement, would
19 it?

20 A I have done that, yes, sir.

21 Q Okay. Just one second. If you didn't think that he was
22 a drug addict and on drugs at the point in time, why did
23 y'all send the vice and narcotics agents to speak to him
24 immediately after this?

25 A I didn't know that was done. But---

1 MR. CRAINE: Sir, that's a lie.

2 A --a lot of time that he might have done that said, you
3 know, they all always wanting to get out of jail and they --
4 a lot of them do want to do work to get out of jail or to
5 work with the narcotics people to assist in their case and
6 might do something that would look favorable to them. So if
7 we have anything that needs to be relayed on to them,
8 sometimes we go to them and say you might need to talk with
9 this guy or something in relation to drugs he might have some
10 information. Now what they do with that and what that gets
11 sent up or assistance with them, I don't know.

12 Q And but that process---

13 A It could have happened.

14 Q Could have also enabled him maybe, for example, get
15 released, get on bond?

16 A I don't know.

17 Q You didn't -- did you have any discussion with him about
18 the availability of a bond for someone who would cooperate?

19 A I don't recall it. I might have.

20 MR. HARRISON: That's all the questions I have. Thank
21 you.

22 MR. MARCHANT: Nothing further, Your Honor.

23 THE COURT: Thank you, sir, you can step down.

24 MR. MARCHANT: That's all I have, Your Honor.

25 THE COURT: You got anything?

1 MR. HARRISON: Yes, Your Honor. I'd like to call the
2 defendant.

3 THE COURT: Come on around and be sworn.

4 THE CLERK: Place your left hand on the Bible, raise your
5 right hand.

6 Carl Craine, after being duly sworn testified
7 as follows:

8 THE CLERK: Please state your full name for the record.

9 THE WITNESS: Carl Brian Eugene Craine.

10 THE COURT: Speak up a little bit.

11 THE WITNESS: Carl Brian Eugene Craine.

12 MR. HARRISON: May I proceed, Your Honor?

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. HARRISON:

16 Q Mr. Craine, do you understand what you're doing here
17 today?

18 A Yeah.

19 Q Okay. Do you understand that we're here to discuss the
20 voluntariness of statements that you gave to the sheriff's
21 department that was introduced?

22 A Yeah.

23 Q Okay. Mr. Craine, do you feel that you've given that
24 statement voluntarily?

25 A Voluntarily yeah but not truthful no.

1 Q Okay. Had they made any promises to you in order to get
2 you to make that state Mr. Craine?

3 A Yeah.

4 Q What promises -- well let me back up a minute. What was
5 your physical state of condition? What kind of condition were
6 you in when you were arrested and taken before these
7 officers?

8 A I'd been up from anywhere between six to nine days on
9 methamphetamine.

10 Q Okay. How long had you been off the methamphetamine --
11 or when was the last time you had your methamphetamine prior
12 to your arrest?

13 A Right before, a few hours.

14 Q How long were you in jail before you met Officer Cartee?

15 A I really don't.

16 Q You don't remember exact hours or time? Do you remember
17 any conversation -- what was your initial conversation with
18 Officer Cartee about in reference to this statement? You
19 giving a statement?

20 A I talked to both of them. I talked Detective Maw and it
21 was few of them. All I know is they told me that---

22 Q Well, let me ask you this, most of the time were both of
23 them together when they were talking to you?

24 A Yeah.

25 Q Were you handcuffed?

1 A I don't remember.

2 Q You don't recommend that. Can you tell us what, if
3 anything, they told you before you entered -- before you
4 began this statement with them?

5 A (There was no response.)

6 Q Did they make any promises to you in order to get you to
7 write this statement, Mr. Craine?

8 A Yeah. Yeah.

9 Q What promises and what officers were made -- what
10 officers made them and what promises were made?

11 A This is exactly what happened. They told me you write
12 this statement right here and we'll talk to Judge about
13 getting you out of here. I wanted out so I told them I'd
14 write the statement. That's how it was. They said they
15 didn't know I was on drugs at the time, they asked me where I
16 got the drugs, they sent the narcotics agent to talk to me
17 when they got through questioning me to talk to me about the
18 drugs and everything else. You know?

19 Q And so you only entered into this statement -- did they
20 tell you what to write in that statement?

21 A Yeah. And when I went to write I put we on there and
22 when they went back and read it they said, Oh no, you can't
23 put we on there you got to crash it out and put I on there.

24 Q So they're literally with you as you wrote it---

25 A Yeah---

1 Q Looking there with you and helping you and correcting you
2 as you wrote it?

3 A Yeah.

4 Q Did they furnish the location and so forth to you? Did
5 they tell you the basic facts of this burglary before you
6 even started that statement?

7 A I mean, I knew everything about it.

8 Q So they didn't supply that to you?

9 A No. They just told me what time it happened and all
10 that.

11 Q They did supply that to you?

12 A Yeah.

13 Q Did you feel that you had to give them that statement?

14 A Yeah, if I was going to get out.

15 Q So you basically just wrote this statement out in order
16 to get out on bond, that the was promise they made?

17 A (The witness nods.)

18 Q And they gave you the information? They sat there told
19 you what the write in this statement?

20 A (The witness nods.)

21 Q You have to speak up.

22 A Yeah.

23 MR. HARRISON: That's all I have, Your Honor.

24 EXAMINATION

25 BY THE COURT:

1 Q Well you just said you knew all about it.

2 A Of course I did it was my brother and the girl I was
3 living with. I mean, I knew everything about it. As far as
4 what was took and all that stuff.

5 Q All right. So them telling it to you didn't make any
6 difference at all, you already knew it?

7 A The only thing I didn't know was what hours it happened

8 THE COURT: Okay. Where is that statement? One right
9 here laying in front of me? I don't believe it's been
10 admitted for purposes of this hearing.

11 You moving it in?

12 MR. MARCHANT: State would move State's Exhibit No. 2 in
13 for the purposes of this hearing.

14 THE COURT: Any objection?

15 MR. HARRISON: No objection for the purpose of the
16 hearing.

17 THE COURT: You want to ask him any questions?

18 MR. MARCHANT: Briefly, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. MARCHANT:

21 Q Let's see, Mr. Craine, you ever been arrested before?

22 A Yeah.

23 Q You have?

24 THE COURT: Where you going with this?

25 MR. MARCHANT: Well it's the voluntariness of the

1 statement, Your Honor. Been here before and done it prior.

2 THE COURT: All right.

3 MR. HARRISON: Objection, Your Honor.

4 THE COURT: All right, I'll let him go. Go ahead.

5 BY MR. MARCHANT:

6 Q How many times approximately if you recall?

7 A I don't know early 90's it's been a long time.

8 Q Okay. Did you give a statement back then? Did you speak
9 with investigators?

10 A Yeah.

11 Q Did you waive your rights back then?

12 A (The witness nods.)

13 Q Do you remember?

14 A Yeah.

15 Q And you spoke with investigators?

16 A Yeah.

17 Q Okay. Did they make you write the statement back in
18 1993?

19 A No.

20 Q Okay. But you don't remember anything else about this
21 case except that they made you write what's on that paper?
22 You don't remember how long the interview lasted, you don't
23 remember where it was?

24 A Yeah, I know where it was at.

25 Q Where was it?

1 A Downstairs in the detective part of the building.

2 Q And Lieutenant Maw and Detective Cartee were present?

3 A Both of them took place in the car, riding around.

4 Q Did they let you smoke a cigarette that evening?

5 A Yeah.

6 Q Let you have something to drink?

7 A No.

8 Q Did you ever tell them you wanted an attorney?

9 A (The witness shook his head.)

10 Q Do you remember---

11 THE COURT: He's indicating no for the record.

12 BY MR. MARCHANT:

13 Q Do you recall signing this Waiver of Rights; is that
14 signature?

15 A Uh-huh.

16 Q Does this signature match the same as your signature on
17 Exhibit No. 2?

18 A (The witness nods.)

19 Q So you're telling the Court that everything on here and
20 everything that happened is correct that evening but that
21 these officers made you write this information down?

22 A They didn't -- they didn't really hold me down and force
23 me write it, they just told me if you do this we'll talk to
24 the Judge, get you a bond and get you out of here.

25 Q Do you know whether they talked to the Judge?

1 A No they didn't. Like I said, they sent narcotics
2 detective to talk to me and then after they come around said,
3 Well we got some warrant for some bad checks for you right
4 here and they sent me down the road. After I signed the
5 statement.

6 Q So any potential help they may have promised you, you
7 don't know whether or not they followed through?

8 A Well I know they didn't because I didn't get out.

9 MR. MARCHANT: That's all I have, Your Honor.

10 A They just told me---

11 MR. MARCHANT: That's all right.

12 That's all I have, Your Honor.

13 MR. HARRISON: Just a short redirect, Your Honor.

14 THE COURT: Okay.

15 RECROSS-EXAMINATION

16 BY MR. HARRISON:

17 Q Did you contest -- did you ever argue that your prior
18 statement that they brought up that you'd given back in '93,
19 did you ever argue about that being involuntary?

20 A No.

21 Q And you freely admitted your guilt at the point and wound
22 up entering a guilty plea over that very statement, didn't
23 you?

24 A (The witness nods.)

25 Q Okay. So you were truthful back then about the

1 voluntariness of it.

2 A Yeah.

3 Q Are you truthful today when you say that this one wasn't
4 voluntary?

5 A Yeah. Truthful what they told me to say.

6 MR. HARRISON: That's all I have.

7 THE COURT: All right, you can step down.
8 Anything else?

9 MR. HARRISON: Nothing else, Your Honor.

10 THE COURT: Anything y'all want to tell me?

11 MR. MARCHANT: Your Honor, with respect to the
12 voluntariness of the statement, you have two officers with
13 sheriff's office, one is a lieutenant for over 22 years that
14 witnessed this statement. Asked him at that point in time
15 whether or not what he had written was voluntary and whether
16 or not it was the truth. At that point in time he told
17 Lieutenant Maw that it was correct and Lieutenant Maw also
18 stated to the Court that any corrections were made were made
19 by this defendant. That he was not directed at any point in
20 time. Any changes that were made were done through this
21 defendant. Detective Cartee went over the Waiver of Rights
22 form. He voluntarily decided to speak with these officers.
23 He tells, His Honor, that he knew what happened that night
24 because his brother and his girlfriend were there or a
25 girlfriend.

1 That the length of the interrogation was minimal, it was
2 45 minutes. He was asked if he would provide a written
3 statement, which he did. A through these two officers
4 testimony it was voluntary. Again, it was at the sheriff's
5 office. It was not in a confined space. It was in the open
6 detective division where there are a number of cubicles. He
7 was not confined by himself. Additionally, through the
8 officers recollection he appeared to be fine, that he was
9 coherent. He was knowledgeable at the time. He's been in
10 this situation before. He's told His Honor that. It's the
11 State's position that this was voluntarily and knowingly made
12 and we'd ask that it be admitted -- or the State be able to
13 proceed with this statement at trial.

14 THE COURT: All right.

15 MR. HARRISON: Well, Your Honor, not to necessarily
16 dispute what my esteem colleague has just told the Court but
17 I think it's a little ludicrous to talk about a man whose
18 been arrested, put in a jail cell and is held down at the
19 detention center is not confined. I mean, under any stretch
20 of the imagination that is confinement, Your Honor. Okay.
21 The man who is the focus of an investigation, in fact is
22 charged under a warrant. So he was confined at the time of
23 this, okay. So that does vitiate somewhat against his
24 freewill in this matter.

25 Secondly, I would also like to point out that the

1 testimony of the officers is only about what they remember
2 would be general procedures. None of these officers -- none
3 of these officers testified about specific memory about it.
4 In fact, they testified they could have made those promises.
5 They could have done this. They could have. But they just
6 don't have a specific memory about it. Now you have
7 non-specific memory talking about general procedures that
8 admit what the defendant says could have happened. He has a
9 specific memory about being made promises and being told what
10 to write. The detectives can only talk about in a general
11 means, in a general manner about their procedures. And yet
12 under the specific questions I ask him about the specific
13 allegations that the defendant raises, they say, Well, it
14 could have. I can't say it didn't.

15 So you have non-specific testimony from the officers and
16 specific testimony from the defendant about the crux of this
17 thing. That is the voluntariness of the statement and the
18 contents of the statement itself.

19 THE COURT: All right. Well, not a whole lot of good
20 memories from anybody but I'm going to deny your motion to
21 suppress the statement and allow them to go forward with it.
22 This is burglary first, is that correct?

23 MR. MARCHANT: Yes, Your Honor.

24 THE COURT: That's a life sentence, right?

25 MR. HARRISON: Up to, Your Honor. I believe the statute

1 is the potential of 25 up to---

2 THE COURT: Maximum is life---

3 MR. HARRISON: Maximum is life in prison, Your Honor.

4 THE COURT: Got a confession. Going to trial in the
5 morning, is that right?

6 MR. HARRISON: Your Honor, you know, I'm counsel. My job
7 here, Your Honor, all I can do---

8 THE COURT: Well I know, you're his mouth piece. Does
9 he want to -- ask him.

10 MR. HARRISON: Yes, Your Honor, we are going to trial in
11 the morning.

12 THE COURT: What time is the jury coming in?

13 MR. MARCHANT: 9:30, Your Honor.

14 THE COURT: We'll be picking this jury about what time?
15 Around 1030?

16 THE CLERK: Around 10:00, 10:30. By the time we get
17 everything taken care of.

18 THE COURT: All right, anything else we need to take care
19 of?

20 MR. MARCHANT: Brief motion, Your Honor to amend the
21 indictment. This case was indicted back in -- on November
22 11th, 2003, the burglary statute alleged nighttime. The
23 State would like to amend that to include two prior burglary
24 convictions in that indictment, Your Honor. In support -- to
25 support that motion, we point the Court to State v. Corrals

1 that there would be no surprise in this case. Mr. Craine
2 readily admitted on the stand his prior convictions for
3 burglary. I have certified copies for the Court.
4 Additionally, on August the 11th, September the 11th and
5 October the 9th, I've had communications with Mr. Harrison
6 about this amendment and the State's position is there would
7 be no surprise at this point in time, Your Honor.

8 THE COURT: All right, Mr. Harrison.

9 MR. HARRISON: Well, I would just say to the Court that I
10 have, in fact, had that communication and I have shared that
11 communication as well with my client. I would say I do
12 believe that this would be prejudice to my client. And
13 additionally I would argue that the burglary convictions that
14 they're seeking to allege are burglary seconds. Also, they
15 took place more than 10 years ago. So my argument would be
16 that they are not a sufficient statutorily to burglary first
17 in lieu of the nighttime charge. For that reason I would
18 argue that it does create prejudice for the defendant.

19 THE COURT: Well sure it does. But I'm going to grant
20 the State's motion to amend the indictment to include the
21 allegations of the two prior convictions to enhance to bring
22 it up to first.

23 How are you going to handle it though? Without waiving
24 your objection to this motion? You want to agree -- I mean,
25 how are you going to handle it? You going to put in the

1 convictions?

2 MR. MARCHANT: Yes, Your Honor.

3 THE COURT: How many do you have? Pick out two.

4 MR. MARCHANT: Two.

5 THE COURT: Okay. All right.

6 MR. HARRISON: I would suggest, Your Honor, perhaps in
7 the morning when he selects his two that we can have just --
8 I don't think it will take very long, just have a brief
9 discussion about which two they are. They're all from '93,
10 it was a series all lumped together at the same time. So the
11 basic argument would apply to the same one.

12 THE COURT: All right. Anything else?

13 MR. MARCHANT: Nothing further from the State, Your
14 Honor.

15 THE COURT: Okay.

16 MR. HARRISON: Nothing further from the Defense.

17 THE COURT: Okay. All right, we'll be adjourned for the
18 evening then. All right.

19 (WHEREUPON, court was adjourned for the day at
20 approximately 5:16 a.m. to reconvene Tuesday,
21 October 24, 2006 at approximately 9:30 a.m.)
22
23
24
25

Tuesday, October, 24, 2006

1 THE COURT: All right, ladies and gentlemen, I'm going to
2 go right into asking these questions now. I think they're
3 seven or eight of them, something like that. There all
4 pretty simple. I want you to know that some of them for some
5 reason might cause you one of you some form of embarrassment.
6 And that's the last thing we want you to do is to suffer any
7 embarrassment in front of your fellow jurors. So I'm going
8 to ask you the question, if you can respond to it without too
9 much embarrassment please do that if you need to respond to
10 it. But at the end of the questioning I'm going to give you
11 all a chance to come up and speak with me privately. And so
12 if you need to answer a question and you need to do so
13 privately we'll do that at the end. But let me encourage if
14 you can answer the question to go ahead and answer it.
15 Otherwise that will shorten the process. If I have to speak
16 to each of you individually, you can imagine how long we'll
17 be here. So just keep that in mind. But again, if you need
18 to speak with me privately I'll give you a chance to do that.
19 And, of course, you're under oath and we need full, complete
20 and truthful answer to the questions.

21 The first one is pretty tough. Is there a member of jury
22 panel who's not a citizen of the United States? If so,
23 please stand.
24
25

1 There was no response.

2 Is there any member of the jury panel who is not a
3 citizen and resident of Pickens County? If so, please stand.

4 There was no response.

5 Is there any member of the jury panel unable to read
6 write, speak or understand the English language? If so,
7 please stand.

8 There was no response.

9 I don't know how you respond to that if you can't
10 understand it but. Is there any member of the jury panel who
11 has less than a sixth grade education or its equivalent? If
12 so, please stand.

13 There was no response.

14 Is there any member of the jury panel unable because of a
15 mental or physical infirmity to render efficient jury
16 service? For example, is there any member of the jury panel
17 who has a medical condition that would prevent you from
18 serving this week? If so, please stand.

19 There was no response.

20 Is there any member of the jury panel who has been
21 convicted by guilty plea or trial in a state or federal court
22 of record of a crime punishable by imprisonment for more than
23 one year and your civil rights have not been restored by
24 pardon or amnesty? If so, please stand.

25 There was no response.

1 Is there any member of the jury panel a clerk or deputy
2 clerk of court, a constable, sheriff or other commissioned
3 law enforcement officer, probate Judge, county commissioner,
4 Magistrate or other county officer or employed within the
5 walls of any courthouse? If so, please stand.

6 There was no response.

7 Is there any member of the jury panel who has previously
8 served on jury duty in Circuit Court which is not Federal
9 Court, not Municipal Court, not Magistrate's Court but in
10 Circuit Court during this calendar year? If so, please
11 stand.

12 There was no response.

13 Is there any member of the jury panel who has served as a
14 member of the Pickens County Grand Jury during the past three
15 years? If so, please stand.

16 There was no response.

17 How about that, we moved right through that. Those are
18 the qualification questions. And you can imagine we're a lot
19 more sophisticated in this day in age than we were just 20 or
20 30 years ago with respect to who's a citizen of where and
21 those types of things. But we still need to ask those
22 questions.

23 Now we're going to move on to exemptions. If you need to
24 respond to this, it doesn't mean you're not qualified, it
25 means that you may fit into a category which may allow you to

1 exempt your service or transfer your service to another week.
2 The first one I want to go into, I'm not sure -- well I think
3 there might be one person who I heard who would qualify for
4 this but I would say that this group of people represents a
5 huge group of talent which would be very much appreciated on
6 jury service. But I want to tell you that if you've reached
7 the age of 65 or older you have earned the right to say I
8 choose not to serve. So if you are 65 years of age or older
9 and you wish to be exempted, please stand. Great.

10 All right. Another exemption concerns prior jury
11 service. While you're not allowed to serve more than once a
12 year, if you have served during the past three years in
13 Circuit Court, which is not Federal Court, not Magistrate's
14 Court, not Municipal Court, but in Circuit Court, you served
15 during the past three years and you wish to be exempted,
16 please stand.

17 There was no response.

18 That's one of those categories, we're pretty good at
19 knowing who has served and who hasn't so we don't get a lot
20 of responses to that. The same is true about the grand jury
21 service. If you have served on the Pickens County or Pickens
22 County Grand Jury during the past five years and you wish to
23 be exempted, please stand.

24 There was no response.

25 Okay, the next question has several parts to it. All the

1 parts have to apply to you if you're able to avail yourself
2 of this exemption so please listen carefully to the whole
3 question. You maybe exempted from jury service if you have a
4 small child or small children under the age of 7. You have
5 legal custody of that child or children, you have the
6 principle care, custody and control of that child or
7 children. And you are unable to make arrangements for the
8 adequate care of your child or children while performing jury
9 duty. If all those requirements apply to you and you wish to
10 be exempted, please stand.

11 Yes, sir, your name?

12 PROSPECTIVE JUROR: David Hendrix.

13 THE COURT: All right, Mr. Hendrix, I'll speak to you
14 privately after, okay. Great. Thank you.

15 The next exemptions applies to those of you who maybe
16 attending school. I'm not sure I heard anybody who fit in
17 this category or working at a school during this time. If
18 this exemption applies to you we can transfer your service to
19 another week that won't conflict with your school related
20 duties or responsibilities. So is there any member of the
21 jury panel who is a full-time student, school teacher, school
22 crossing guard, school bus driver or who serves in any other
23 school related function who is unable to serve on jury duty
24 this week because of that school responsibility? If so,
25 please stand.

1 There was no response.

2 Is there any member of the jury panel who is employed
3 with the Department of Corrections? If so, please stand.

4 There was no response.

5 Is there any juror who performs services for a business
6 commercial or agricultural enterprise which are so essential
7 to the operation of that enterprise that if you were required
8 to serve on jury duty this week the enterprise would have to
9 close its doors. Is there anybody that fits into that
10 category? Please stand.

11 There was no response.

12 THE COURT: All right. Now, ladies and gentlemen, that's
13 it for exemptions. But we do have sort of a safety net,
14 catch all situation that if for some reason -- before I say
15 this, ladies and gentlemen, we recognize that you all
16 consider jury service -- we recognize that it is an
17 inconvenience. And you all certainly at this point feel that
18 way about it. But -- and I know y'all would rather be some
19 where else. Most of you, I think. And so we do have this
20 one sort of safety net feature that if this week is for some
21 reason, is more than a mere inconvenient, and would present
22 sort of an extreme hardship on you, then I can transfer you
23 to another week. A this category kind of covers something,
24 for instance, if you have a medical procedure that's
25 scheduled for the week, you have a long standing vacation

1 plans and you've already purchased tickets and those sort of
2 things or you're involved in some business related event that
3 is very significant, then I can transfer you to another week
4 if this -- if this doesn't -- if this week is terrible for
5 you. So is there anybody that fits into that category?

6 Yes, sir? If you'd stand and identify yourself.

7 PROSPECTIVE JUROR: My name is Quinton Dougan---

8 THE COURT: I tell you what, I'll speak to you privately
9 about it.

10 Yes, sir, in the back.

11 PROSPECTIVE JUROR: Todd Cochran.

12 THE COURT: Okay, anybody else?

13 PROSPECTIVE JUROR: Billy Ray.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR: I have 10 year-old son I have to pick
16 up everyday at school.

17 THE COURT: Okay, I'll speak to you privately about that.
18 That doesn't fit you into anything but I'll talk to you about
19 it.

20 All right, ladies and gentlemen, I'm going to ask you all
21 to stay in the courtroom. Please stand and stretch and but
22 don't go anywhere. I'm going to ask those people who need to
23 speak with me privately to line up right here. These fine
24 bailiffs will direct you to where you need to be.

25 THE COURT: Your name, again.

1 PROSPECTIVE JUROR: Quinton Dougan.

2 THE COURT: All right. Let us find you on the list, Mr.
3 Dougan. How you spell that?

4 PROSPECTIVE JUROR: D-O-U-G-A-N.

5 MR. HARRISON: Number 32.

6 THE COURT: Number 32, yes, sir.

7 PROSPECTIVE JUROR: First of all, I have got some examine
8 Thursday and Wednesday and I can't get out of work so I've
9 been up since 10:00 yesterday. So this week is just...

10 THE COURT: Well when's a better week for you?

11 PROSPECTIVE JUROR: If I get like a couple more weeks to
12 get everything worked out with work and school. I go to Tech
13 this week and I don't have---

14 THE COURT: When's the next term of court?

15 THE CLERK: 13th but the notices went out yesterday.
16 Then we another the 27th of November. October that week.
17 Civil.

18 PROSPECTIVE JUROR: I can work that one out.

19 THE COURT: Okay, November 27th.

20 PROSPECTIVE JUROR: All right.

21 THE COURT: Well good, thanks. Go sit down. No you turn
22 in your badge and you can head on your way.

23 Transferred.

24 THE COURT: Yes, sir. I can't remember your name.

25 PROSPECTIVE JUROR: David Hendrix. I have a 6 year-old

1 daughter congestive heart failure. She goes to Heller
2 Elementary School. She has high blood pressure. I pick her
3 up in this afternoon and take her to school in the mornings.
4 And she has to have special care. She's limited on her --
5 what she can and cannot do like cannot ride bikes. And my
6 wife works.

7 THE COURT: Okay, I'm going to excuse you this week.

8 PROSPECTIVE JUROR: Thank you, very much.

9 PROSPECTIVE JUROR: Billy Ray.

10 THE COURT: All right, Mr. Ray, hang on one second. All
11 right, yes, sir.

12 PROSPECTIVE JUROR: I have a 10 year-old son in middle
13 school I have to pick up every evening at 2:30. I'm having a
14 rough time with my ex about it. She works days and it's just
15 really left up to me to pick him up.

16 THE COURT: Well when would be a good time for you to
17 serve?

18 PROSPECTIVE JUROR: Well---

19 THE COURT: Do it in the summer?

20 PROSPECTIVE JUROR: Yes, sir, I can do it in the summer.

21 THE COURT: All right, let's transfer him to summer time.
22 All right. Good luck.

23 PROSPECTIVE JUROR: Thank you.

24 THE COURT: Yes, sir.

25 PROSPECTIVE JUROR: James Samuels.

1 THE COURT: Hang on one second. All right, yes, sir.

2 PROSPECTIVE JUROR: I'm self-employed and I do ornate
3 iron work. I have a railing that I have install and get
4 there C.O.

5 THE COURT: Okay. When---

6 PROSPECTIVE JUROR: If there's another time that would be
7 better.

8 THE CLERK: We have a term in December, December 11th or
9 do we need to go into January?

10 PROSPECTIVE JUROR: December 11th probably be all right.

11 THE COURT: Okay, great. Thank you. Samuels.
12 Your name?

13 PROSPECTIVE JUROR: Todd Cochran.

14 THE COURT: Hang on a second, Mr. Cochran.

15 THE CLERK: Number 21.

16 THE COURT: Number 21. All right, sir.

17 PROSPECTIVE JUROR: I'm sole bread winner for twin girls,
18 my wife is at home. Then the bills. I'm in landscaping
19 business. So I basically will be locked down the time I'm
20 here. If I had some time to prepare like a couple weeks or
21 something I can line that up and serve at that time

22 THE COURT: When would be a good time.

23 PROSPECTIVE JUROR: Like in December.

24 THE CLERK: Have a term December 11th.

25 PROSPECTIVE JUROR: Okay. Will I get a notice?

1 THE COURT: You'll get notice but you get notice now so
2 go ahead and line it up.

3 PROSPECTIVE JUROR: Thank you, sir.

4 THE COURT: Good luck.

5 Okay. All right. Now y'all have voir dire? Do you
6 have a witness list?

7 MR. HARRISON: I have no witnesses but he'll make a
8 decision about he's testifying and at that point I can put
9 him up then question.

10 THE COURT: Do you have any voir dire?

11 MR. HARRISON: No.

12 MR. MARCHANT: No voir dire, I have a witness list.

13 THE COURT: All, right ladies and gentlemen, thank for
14 your patience. I didn't tell these folks before I excused
15 them that this is probably a pretty good week to serve. We
16 know we got two trials, we may not have anything else. So
17 you remember if you get picked -- or actually you all now for
18 three years can exempt out of service. So if you don't get
19 picked then you can go home feeling like your winner.

20 Personally I think the folks who get picked and get to serve
21 are the winners. Of course, I'm a little biased about this
22 but this is a great opportunity for each of you to serve as a
23 juror. And it's been said, it's been attributed to a lot of
24 people, Thomas Jefferson, Winston Churchill and a number of
25 other people but whoever originally said it I think it's very

1 true. That the service of a citizen on jury service is the
2 most important civic duty you can perform for you country in
3 peace time. I really believe that. And if you worked up
4 everyday up here in the system you would see how true it is.

5 We can't -- your system of justice, and I want you all to
6 take ownership interest in this because this your justice
7 system, would look down if there weren't citizens like you
8 were willing to serve. So whether you get picked or not, I
9 want y'all to feel proud that you have been up here doing
10 your civic duty and keeping the wheels of justice turning.
11 I'd like to say that you all are the hub of the wheel, the
12 center of the whole system and it keeps things going. So
13 having said that, ladies and gentlemen, you're qualified to
14 serve this week. But now we've got to determine whether or
15 not you're qualified to serve on at least right now two
16 different cases. So I'm going to ask you another series of
17 questions about these cases. I'll introduce the case to you.
18 Then we'll go through a short list of questions to make sure
19 that you're qualified to serve on that jury. So bear with me
20 and, please, again, give full, complete and truthful answers
21 to the questions that I ask you.

22 These are both criminal cases. And I want to emphasize
23 to you that any time a citizen is charged with a crime in
24 Pickens County or anywhere in this great country of ours,
25 they are presumed innocent. Unless and until the state, who

1 has the burden of proof, can prove them guilty of each and
2 every element of the offense or offenses that they are
3 charged with and they must do that beyond a reasonable doubt.
4 And I'm going to read to you in each case an indictment. Now
5 an indictment is not evidence and it is mere language or
6 allegations that are used to, it's written on a piece of
7 paper, that is used to bring this case through the system to
8 this point in time. So it's not evidence and no presumption
9 or inference of any kind should be taken from the indictment
10 because it is not evidence. The first case that we're going
11 to engage in and we'll go through this case, then we'll pick
12 a jury, then I'll introduce the second case to you.

13 Is the State of South Carolina vs. Carl Brian Eugene
14 Craine. And there are two indictments in this case. The
15 first one is indictment number 2003-1866, it is an indictment
16 for burglary in this first degree. And it alleges that Carl
17 Brian Eugene Craine did in Pickens County, between the 29th
18 day of June, 2003 and the 30th day of June 2003, willfully
19 and unlawfully enter the dwelling of Roger Dale Davis located
20 at Road, Six Mile, South Carolina, without
21 consent and with the intent to commit a crime therein. And
22 the entering and/or remaining occurred in the nighttime
23 and/or Mr. Craine has at least two prior burglaries on his
24 record. The second indictment is for grand larceny. And it
25 reads that Carl Brian Eugene Craine did in Pickens County,

1 between June 29th, 2003 and the 30th day of June, 2003,
2 feloniously took and carried away the personal property of
3 Roger Dale Davis of a value of more than \$1000. Described as
4 follows: Jewelry, electronics, model cars and other items
5 with the deprive the owner of permanently of such property.

6 Now, ladies and gentlemen, to these indictments Mr.
7 Craine has pled not guilty. And as such that places a burden
8 on the State to prove guilt beyond a reasonable doubt on each
9 and every element of each offense that he is charged with and
10 these offenses must be considered separately. Now before I
11 go any farther and ask you some questions to qualify you, I'm
12 going to ask at this time the parties to stand, introduce
13 themselves and who they work with and for.

14 Mr. Marchant.

15 MR. MARCHANT: My name is Lucas Marchant, I'm an
16 Assistant Solicitor for the 13th Judicial Circuit which
17 encompasses Greenville and Pickens County. Specifically I'm
18 employed in this office in Pickens County.

19 THE COURT: Thank you.

20 Mr. Harrison.

21 MR. HARRISON: My name is David Harrison. I'm a
22 practicing attorney here in South Carolina. I have the
23 pleasure today to represent Mr. Craine who has been charged
24 with what the court has indicated. Thank you.

25 THE COURT: All right, thank you, gentlemen.

1 All right. Now, ladies and gentlemen, is there any
2 member of the jury panel who is related by blood or marriage
3 or have a personal, social, or business relationship? Have
4 you ever been represented by or involved in any business
5 relationship with any of the attorneys involved in this case
6 or anyone involved in their law firm or their law practice?
7 That would include the 13th Circuit Solicitor's Office. If
8 so, please stand.

9 Yes, ma'am, your name?

10 PROSPECTIVE JUROR: My name is Cathy Murphy. And when my
11 daughter, Jennifer Woods, was getting a divorce, Mr. Harrison
12 represented her.

13 THE COURT: Okay. Would the fact that he represented
14 your daughter impair your ability to be fair and impartial in
15 this case to both the State and to the defense?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: And could you under your oath follow the law
18 as I give it to you?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: All right. Thank you, very much.

21 Yes, sir?

22 PROSPECTIVE JUROR: Mr. Harrison has helping me on a
23 family court case.

24 THE COURT: All right, your name?

25 PROSPECTIVE JUROR: Kenneth Rhodes.

1 THE COURT: Kenneth Rhodes?

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: Mr. Rhodes, would the fact that he
4 represented you before cause you to be unable to be fair and
5 impartial to both the State and defense?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Could you follow the law as I give it to you
8 under your oath?

9 PROSPECTIVE JUROR: Yeah.

10 THE COURT: Okay, thank you, very much.

11 Yes, ma'am, your name?

12 PROSPECTIVE JUROR: Amy Cummings.

13 THE COURT: Ms. Cummings?

14 PROSPECTIVE JUROR: Uh-huh.

15 THE COURT: Yes, ma'am.

16 PROSPECTIVE JUROR: Mr. Harrison represented my ex
17 husband in our divorce.

18 THE COURT: All right. Would the fact that he
19 represented your husband in this divorce cause you to be
20 unfair and partial in this matter?

21 PROSPECTIVE JUROR: No.

22 THE COURT: All right. You can put that aside and be
23 fair to both the State and the defense?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Could you follow the law as I give it to you

1 under your oath?

2 PROSPECTIVE JUROR: Yes.

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

4 All right, is there any member of the juror who is
5 related by blood or marriage to Mr. Carl Brian Eugene Craine
6 or to Mr. Roger Dale Davis? If so, please stand.

7 There was no response.

8 I'm going to read you a -- is there any member of the
9 jury panel who has a business or social relationship with
10 either of those two individuals? If so, please, stand.

11 There was no response.

12 Now I'm going to read you a list of potential witnesses
13 in this was whose names have not already been called. And
14 I'm going to need to know the same information so please
15 listen to this list. Roger Davis, Liberty Davis, Susan Pace,
16 with Pace's Pawnshop, Jody Cartee a former Pickens County
17 Sheriff's Office employee, Lieutenant Earl Maw, Jr., who's
18 retired from the Pickens County Sheriff's Office, Mike
19 Ferguson with the Pickens County Sheriff's Office, Lieutenant
20 Lane Byers with the Pickens County Sheriff's Office and Tonya
21 Tant. Is there any member of the jury panel related by blood
22 or marriage or have a personal, social or business
23 relationship with any of the individuals whose names I have
24 just read.

25 Yes, ma'am?

1 PROSPECTIVE JUROR: Stephanie Smith.

2 THE COURT: All right, your name, please, ma'am?

3 PROSPECTIVE JUROR: Stephanie Smith.

4 THE COURT: All right, Ms. Smith?

5 PROSPECTIVE JUROR: I'm friend with Susan Pace of Pace's
6 Pawnshop.

7 THE COURT: All right. Would the fact that you're
8 friends with her impair your ability to be fair and impartial
9 to both the State and the defense in this case?

10 PROSPECTIVE JUROR: Possibly.

11 THE COURT: All right.

12 PROSPECTIVE JUROR: I'm being honest.

13 THE COURT: Yes, ma'am, that's what we want. Absolutely
14 nothing wrong with that. And would that -- would the fact
15 that you know her, would you be able to weigh her testimony
16 the same as you would weigh any other witness in this case?

17 PROSPECTIVE JUROR: I'm sorry, sir, I should be excused.
18 from this one.

19 THE COURT: All right, thank you, ma'am. If you'll have
20 a seat.

21 Your name?

22 PROSPECTIVE JUROR: Pamela --

23 THE COURT: I'm sorry?

24 PROSPECTIVE JUROR: Pamela Hendrix.

25 THE COURT: Hendrix. All right and who do you?

1 PROSPECTIVE JUROR: I know Jody Cartee just from a
2 business relationship.

3 THE COURT: Okay. Would the fact that you know
4 Mr. Cartee impair your ability to be fair and impartial in
5 this case?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Could you follow the law officer as I give it
8 to you under your oath?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: All right, thank you, so much.

11 All right. All right. Now, ladies and gentlemen, is
12 there any member of the jury panel who is aware of any of the
13 events that have been alleged in this indictment. If so,
14 please stand.

15 There was no response.

16 Any member of the jury panel whose heard anything about
17 this case? If so, please stand.

18 There was no response.

19 Is there any member of the jury or family member of a
20 juror or friend who has ever been charged with or the victim
21 of this type of offense? If so, please stand.

22 Yes, sir, your name?

23 PROSPECTIVE JUROR: William Bright.

24 THE COURT: Yes, sir, Mr. Bright?

25 PROSPECTIVE JUROR: My house has been broken into and

1 burglarized about five or six times in the last 35 years.

2 THE COURT: All right, Mr. Bright, would the fact that
3 that's happened to you, would that impair your ability to be
4 fair and impartial in this case to both to state and the
5 defense?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: And could you follow the law under your oath
8 as I give it to you?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: All right. Thank you.

11 Yes, ma'am, your name?

12 PROSPECTIVE JUROR: Sharon Hudson.

13 THE COURT: All right, Ms. Hudson.

14 PROSPECTIVE JUROR: My house was broken into in the past.

15 THE COURT: All right. Would the fact that your house
16 has been broken into impair your ability to be fair and
17 impartial in this case to both the State a the defense?

18 PROSPECTIVE JUROR: No.

19 THE COURT: And could you follow your oath as I -- follow
20 the law under your oath as I give it to you?

21 PROSPECTIVE JUROR: Yes, sir.

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

23 All right, is there any member of the jury panel who is
24 aware of any bias or prejudice towards either the State or
25 the defense? If so, please stand.

1 There was no response.

2 Is there any member of the jury panel who's a contributor
3 to a group whose primary concern is the promotion of law
4 enforcement or victim's rights? Such as MADD, SADD or CADD?
5 If so, please stand.

6 PROSPECTIVE JUROR: My name is Helen Moore and I
7 contribute to SADD.

8 THE COURT: All right. Hang on.

9 Your name, sir.

10 PROSPECTIVE JUROR: Hiu Leung. I contribute to MADD.

11 THE COURT: To what?

12 PROSPECTIVE JUROR: I contribute to some of those.

13 THE COURT: MADD, SADD or CADD?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: All right, to each of you I want to ask a
16 question, the fact that you have done that, would that impair
17 your ability to be fair and impartial in this case to both
18 the State and the defense?

19 Ma'am?

20 PROSPECTIVE JUROR: No, it would not.

21 PROSPECTIVE JUROR: No.

22 THE COURT: A could you under your oath follow the law as
23 I give it to you?

24 Sir?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Ma'am?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: All right, thank you, so much.

4 Okay. Now, is there any member of the jury panel who is
5 aware of any reason whatsoever why they could not or should
6 not serve in this case with particular inferences on your
7 ability to be fair and impartial to both the State and the
8 defense and to follow the law as I give it to you under your
9 oath? If so please stand.

10 There was no response.

11 Thank you, very much.

12 Gentlemen, let me talk to you for a second.

13 (WHEREUPON, a bench conference was held.)

14 THE COURT: All right, ladies and gentlemen, anybody out
15 there who has trouble hearing me?

16 There was no response.

17 You know I think I'm going deaf so I think I might speak
18 too loudly. So if I'm speaking too loudly y'all let me know.
19 You need this microphone or can you hear me? Okay. I turned
20 it on any way. All right, we're going to -- we're going to
21 do what we now call strike the jury. Which is really just
22 the same as choosing the jury. So what we're going to ask
23 you to do is we're going to call -- randomly you're picked
24 out, selected. And I ask you to stand. And I don't --

25 Y'all want them to come up front or do you just want them

1 to stand?

2 THE CLERK: That's up to you, Judge.

3 THE COURT: Well, we'll -- I think what we'll do is ask
4 you all to stand in place. And instead of asking you to come
5 up to the front we'll just ask you to stand in place and then
6 the attorneys will make a determination as to whether or not
7 they think that you would be suitable to be sworn as members
8 of this jury. And please don't take anything personal from
9 whether you're selected or not selected. There is nothing
10 personal about it. These advocated doing their job and
11 trying to swear a jury that they think will be the most fair
12 and impartial jury that they can find for this particular
13 case. And it changes for every case. So without any -- let
14 me get off my soap box and let's go to work.

15 Your Clerk of Court has just freed me up to talk some
16 more. I don't have a whole lot to say but I will tell you
17 that when I was a young lawyer, first got out of school over
18 in Greenville in that great big courthouse we had, in that
19 courtroom, go in and there was a barrel. Literally, the
20 diameter was like this and it must have been five feet long.
21 And they would put all the names of the jurors into the --
22 they had this big barrel and they had a crank and they would
23 turn it and select jurors names at random like picking out of
24 a hat. Hold a hat up and have somebody jump up and grab the
25 name. Well we're much more sophisticated now and the

1 computer does it. So I've been buying time trying to let
2 this computer go to work and randomly select a list of juror.
3 And I'm trying to watch the screen and see if she's done.
4 I'm not sure -- I'm not sure I'd know if she was done. Oh,
5 we are done. Okay. Let's give -- y'all give a copy to each
6 of the attorneys.

7 THE COURT: Okay. When your name's called if you would
8 please stand in place. Thank you.

9 THE CLERK: Phillip Landreth.

10 (Phillip Landreth, a white male, came forward.)

11 What says the State?

12 THE CLERK: I'm sorry, it's number 67 is the juror
13 number.

14 MR. MARCHANT: Please present the juror.

15 THE CLERK: Defense?

16 MR. HARRISON: Please seat the juror.

17 THE CLERK: Sir, come on around.

18 Helene K. White.

19 (Helen K. White, a white female, came forward.)

20 What says the State?

21 MR. MARCHANT: Please present the juror.

22 THE CLERK: Defense ?

23 MR. HARRISON: Please excuse Ms. White.

24 THE CLERK: Ma'am, just have a seat. Thank you.

25 Pamela K. Nalley, number 83.

1 (Pamela K. Nalley, a white female, came forward.)

2 What says the State?

3 MR. MARCHANT: Please present the juror.

4 THE CLERK: Defense?

5 MR. HARRISON: Please excuse this juror.

6 THE CLERK: Ma'am, just have a seat. Thank you.

7 Sandi L. Fowler, number 41.

8 (Sandi L. Fowler, a white female, came forward.)

9 What says the State?

10 MR. MARCHANT: Please present the juror.

11 THE CLERK: Defense?

12 MR. HARRISON: Please seat this juror.

13 THE CLERK: Ma'am, come on around.

14 Ruth W. Clark.

15 (Ruth W. Clark, a white female, came forward.)

16 What says the State?

17 That's juror number 19.

18 MR. MARCHANT: Please excuse the juror from the trial of
19 this case.

20 THE CLERK: Ma'am, just have a seat. Thank you.

21 Dorothy H. Aultman, number 3.

22 (Dorothy H. Aultman, a white female, came forward.)

23 What says the State?

24 MR. MARCHANT: Please present the juror.

25 THE CLERK: Defense?

1 MR. HARRISON: Please excuse this juror.

2 THE CLERK: Ma'am, just have a seat.

3 Deborah C. Herron, number 54.

4 (Deborah C. Herron, a white female, came forward.)

5 What says the State?

6 MR. MARCHANT: Please present the juror.

7 THE CLERK: Defense?

8 MR. HARRISON: Please seat this juror.

9 THE CLERK: Ma'am, come on around.

10 Joseph J. Jackson, number 62.

11 (Joseph J. Jackson, a black male, came forward.)

12 What says the State?

13 MR. MARCHANT: Please present the juror.

14 THE CLERK: Defense?

15 MR. HARRISON: Please seat this juror.

16 THE CLERK: Sir, come on around.

17 Pamela M. Cantrell, number 16.

18 (Pamela M. Cantrell, a white female, came forward.)

19 What says State?

20 MR. MARCHANT: Please present the juror.

21 THE CLERK: Defense?

22 MR. HARRISON: Please seat this juror.

23 THE CLERK: Ma'am, come on around.

24 Josephine M. Bowens, number 6.

25 (Josephine M. Bowens, a black female, came forward.)

1 What says the State?

2 MR. MARCHANT: Please present the juror.

3 THE CLERK: Defense?

4 MR. HARRISON: Excuse this juror.

5 THE CLERK: Madam, just have a seat, thank you.

6 Mitchell D. Ramey, number 93.

7 (Mitchell D. Ramey, a white male, came forward.)

8 What says the State?

9 MR. MARCHANT: Please present the juror.

10 THE CLERK: Defense?

11 MR. HARRISON: Please excuse this juror.

12 THE CLERK: Sir, just have a seat.

13 Amy K. Cummings, number 26.

14 (Amy K. Cummings, a white female, came forward.)

15 What says the State?

16 MR. MARCHANT: Please present the juror.

17 THE CLERK: Defense?

18 MR. HARRISON: Please seat the juror.

19 THE CLERK: Come on around, ma'am.

20 Sharon J. Hudson, number 60.

21 (Sharon J. Hudson, a white female, came forward.)

22 What says the State?

23 MR. MARCHANT: Please present the juror.

24 THE CLERK: Defense?

25 MR. HARRISON: Please excuse this juror.

1 THE CLERK: Ma'am, just have a seat, thank you.

2 Kathy D. Murphy, number 82.

3 (Kathy D. Murphy, a white female, came forward.)

4 What says the State?

5 MR. MARCHANT: Please excuse the juror from the trial of
6 this case.

7 THE CLERK: Thank you.

8 Diane P. Satterfield, number 109.

9 (Diane P. Satterfield, a white female, came forward.)

10 What says the State?

11 MR. MARCHANT: Please present the juror.

12 THE CLERK: Defense?

13 MR. HARRISON: Please excuse the juror.

14 THE CLERK: Ma'am, just have a seat.

15 June Livingston, number 71.

16 (June Livingston, a white female, came forward.)

17 What says the State?

18 MR. MARCHANT: Please present the juror.

19 THE CLERK: Defense?

20 MR. HARRISON: Please seat the juror.

21 THE CLERK: Ma'am, come on around.

22 Glenda C. Aiken-Carlson, number 17.

23 (Glenda C. Aiken-Carlson, a white female, came forward.)

24 What says the State?

25 MR. MARCHANT: Please present the juror.

1 THE CLERK: Defense?

2 MR. HARRISON: Please seat the juror.

3 THE CLERK: Ma'am, come on around.

4 Gregory L. Gillespie, number 46.

5 (Gregory L. Gillespie, a white male, came forward.)

6 What says the State?

7 MR. MARCHANT: Please present the juror.

8 THE CLERK: Defense?

9 MR. HARRISON: Please excuse the juror.

10 THE CLERK: Sir, just have a seat. Thank you.

11 Joey A. Roberts, number 102.

12 (Joey A. Roberts, a white male, came forward.)

13 What says the State?

14 MR. MARCHANT: Please present the juror.

15 THE CLERK: Defense?

16 MR. HARRISON: Please seat the juror.

17 THE CLERK: Sir, come on around.

18 Jerald W. Dial, number 29.

19 (Jerald W. Dial, a white male, came forward.)

20 What says the State?

21 MR. MARCHANT: Please excuse the juror from the trial of
22 this case.

23 THE CLERK: Sir, just have a seat. Thank you.

24 Patricia L. McKinney, number 75.

25 (Patricia L. McKinney, a black female, came forward.)

1 What says the State?

2 MR. MARCHANT: Please present the juror.

3 THE CLERK: Defense?

4 MR. HARRISON: Seat the juror.

5 THE CLERK: Ma'am, come on around.

6 Stephanie A. Dover, number 33.

7 (Stephanie A. Dover, a white female, came forward.)

8 What says the State?

9 MR. MARCHANT: Please present the juror.

10 THE CLERK: Defense?

11 MR. HARRISON: Present the juror.

12 THE CLERK: Ma'am, come on around.

13 David B. Fleming, number 40.

14 (David B. Fleming, a white male, came forward.)

15 What says the State?

16 MR. MARCHANT: Please excuse the juror from the trial of
17 this case.

18 THE CLERK: Thank you, sir, just have a seat.

19 Wallace R. Fowler, number 42.

20 (Wallace R. Fowler, a white male, came forward.)

21 What says the State?

22 MR. MARCHANT: Please present the juror.

23 THE CLERK: Defense?

24 MR. HARRISON: Please seat the juror.

25 THE CLERK: Sir, come on around.

1 THE COURT: One and two. One alternate.

2 THE CLERK: Marian L. Rivers, number 101.

3 (Marian L. River, a white female, came forward.)

4 What says the State?

5 MR. MARCHANT: Please present the juror.

6 THE CLERK: Defense?

7 MR. HARRISON: Please seat the juror.

8 THE CLERK: Ma'am, come on around.

9 THE COURT: All right. We're going to spend the wheel
10 again to pick the next jury. And you all will be happy to
11 know that you're back in there again. Right now we're going
12 to take a 10 minute break. We've kept y'all and we need to
13 give all 10, 15 minute break, get y'all to stretch a little
14 bit while we get organized to select a jury in the next case.
15 So y'all fell free to wander the halls of the courthouse.
16 It's almost 11:00, just a few minutes till 11:00. So why
17 don't y'all be back in your chairs just shortly before 11:15.

18 And y'all be back out in the regular panel.

19 Thank you.

20 Everyone else remain seated until the jurors are able to
21 leave the courtroom.

22 (WHEREUPON, a short break was taken.)

23 THE COURT: All right, ladies and gentlemen, I'm talk to
24 you just a minute. Let him find his client and bring him on
25 back before I address you, okay. If y'all just be patient.

1 Okay. All right, ladies and gentlemen, thank for your
2 patience. I think we have got everybody back in this
3 courtroom. I appreciate y'all serving. We're going to start
4 this case shortly. I want to tell you, just make some brief
5 opening remarks to you. First of all, I want to tell you
6 that we've got a dispute about the facts in this case which
7 is while we've asked you all to come up here and serve as
8 jurors in the case. To resolve this dispute about the facts.
9 And that's your job up here today, ladies and gentlemen. I
10 want to emphasize to you, again, that this indictment or
11 these indictments that I've read to you are not evidence.
12 And they shouldn't be considered by any of you in any way as
13 evidence in this case. Evidence will be presented in this
14 courtroom from this witness stand by way of testimony or
15 through any sort of documentation or through a stipulation of
16 the attorneys. Or through judicial notice or something like
17 that. That's evidence in the case. And that's all you can
18 use to consider how to resolve this dispute so please keep
19 that in mind. The indictments are not evidence.

20 And I want to emphasize again, that Mr. Craine's plea of
21 not guilty puts the burden on the State to prove beyond a
22 reasonable doubt each and every element of each offense that
23 they have charged him with. And you must consider each
24 offense separately, not depending -- not letting your
25 consideration of one indictment spill over into the other.

1 Each must be decided on its on merits.

2 I want to tell you that you can divide a trial into as
3 many parts as you'd like. If you read some of these novels
4 or you watch television or some of these movies, they're all
5 very interesting, dramatic and so forth. They slice jury
6 trials up into minute particles. And you can do that if you
7 want to as well but for our purposes I'm going to divide it
8 up into five parts and give you all sort of a road map as to
9 where we're going. The first part we're engaged in right
10 now, that's the opening statements to you. I'm going to make
11 brief remarks to you then I'm going to excuse you to your
12 jury room. We have some matters that we have to discuss
13 outside your presence which I'll explain to you in a minute.
14 Then we'll get you back in and we'll swear you we'll start
15 the case and the attorneys will make their opening statements
16 to you. Once that's concluded we start into the second part
17 of the trial which is the real meat and potatoes of any case.
18 And that's the presentation of the evidence and testimony in
19 the case. That's generally the longest part of a trial. The
20 third part of the case will be at the conclusion of the
21 evidence. The attorneys will make their closing arguments to
22 you and to advocate their various positions. The fourth part
23 of the trial will be my charge to you on what the law is as
24 it applies to this case. And finally, the will fifth part is
25 when you all will be released to deliberate this case and

1 resolve this dispute.

2 Now have, ladies and gentlemen, I'm going to ask you to
3 do several things throughout the course of the trial but
4 there are three main things I want to ask you to do. The
5 first one is to keep an opened mind. That is don't come in
6 here with a preconceived notion about how things are or how
7 things should be. Keep an opened mind. You haven't heard
8 any of the evidence, any of the testimony, seen any of the
9 documentation at this point. So don't -- just come in here
10 with a blank slate. The second thing -- and I ask you not to
11 make up your mind after my remarks or the opening statements
12 or the first witness or even after the last witness. Wait
13 until you've heard the law and you are released to deliberate
14 before you make up your mind in this case. The second thing
15 I'm going to ask you to do is pay close attention. You are
16 the only folks that aer going to hear this evidence. You're
17 in a unique position. And at the close of the trial, if you
18 haven't been paying attention, you're not going to be
19 familiar with some of the facts and circumstances and
20 evidence that was presented and it might put you at a
21 disadvantage when you're in there deliberating as how to
22 resolve the dispute. So please pay attention throughout the
23 course of the trial.

24 Finally, I'm going to ask you not to talk about this case
25 with anyone. The reason for that -- and I mean, with the

1 bailiffs. You've got fine, fine bailiffs. If you need
2 anything let them know, we'll try and help you as best we
3 can. But don't talk about it with them. I know that y'all
4 will be released for lunch. This case may spill over into
5 tomorrow. You will be home tonight. And if you are, don't
6 talk about it with family or friends or an acquaintance.
7 Even though it's human nature to want to do that. And we all
8 know that. But don't do it. You're going to swear an oath
9 not to talk about it so please follow your oath. Why do I
10 ask you to do that? If talk to someone who you trust or
11 someone who you don't even like and they make a comment about
12 the case, that may influence you in some way, even
13 subconsciously, and that would not be fair. It wouldn't be
14 fair for the parties involved in this case. It would not be
15 fair to your fellow jurors and it wouldn't be fair to
16 yourselves to have someone who is not going to be sitting up
17 here, looking at or listening to the evidence that's
18 presented from your unique perspective. To have an influence
19 on the outcome of this case. They shouldn't have anything to
20 do with it. So that's why I ask you to do that. So there's
21 the reason for it, it makes perfect sense. And it makes
22 perfect sense and you're also going to swear an oath to do
23 just that.

24 The other thing I want to tell you that you, the jury,
25 are the sole judges of the facts. Each of you will determine

1 what is true and what is not true. You are the sole judges
2 of the facts. The law officer does not allow me to have an
3 opinion about the facts in this case so don't think by
4 anything that you see me say or do in this case that I have
5 an opinion because I don't. And it's solely up to you to
6 determine what the truth is, what to believe and what not to
7 believe. Which witness to believe and which witness not to
8 believe and so forth. You all make that determination. The
9 same law that makes you the sole judge of the facts in this
10 case makes me the sole Judge of the law. So if you have some
11 idea of what you think the law is or what you the law should
12 be, you are going to swear an oath to set that aside.
13 Because the law requires that I am the sole law giver in this
14 case.

15 Okay. Now, I'm going to ask you to do a couple things.
16 I'm going excuse y'all in just a minute to go back in your
17 jury room. And I want to tell you that we need a foreperson.
18 And it can't be the alternate. I'm sorry, I don't have that
19 right in front of me but anyone else can be the foreperson.
20 Now here you are 12 people, 13 people, meeting maybe for the
21 first time. Maybe you've never seen each other before and
22 you're going to be collectively involved as one body to
23 determine the outcome of this dispute. And we need one of
24 you to serve as the foreperson. Now that is a promotion
25 without a raise in pay. You don't get another cent for doing

1 it. And what do you do? You are the spokesperson for the
2 jury in the courtroom if that becomes necessary. And you are
3 also the moderator of discussions at the end of the case.
4 You don't have a greater vote, you're not more influential
5 than anybody else but we need a foreperson. So I'm going to
6 ask you all when I excuse you to go back and talk about it
7 and decide if there's one among you will be willing to serve
8 as the foreperson. So if y'all can elect a foreperson,
9 that's the first duty I'm going to ask you to engage in. If
10 you can't, then I'll pick somebody out. And while the court
11 system has gotten very scientific with computers and so
12 forth, I generally put the list up on the wall and throw a
13 dart at it. How about that? That's not what I do really and
14 you know that but I'll pick somebody out if you can't decide
15 but I want to give y'all the opportunity to do that.

16 So at this time, ladies and gentlemen, and the other
17 thing I want to tell you is that from time to time throughout
18 the course of the trial I may have to excuse you to your jury
19 room or I may have a bench conference up here with the
20 attorneys. Sometimes called a side-bar. And you all might
21 think well they're trying to deceive us, trying together hide
22 something from us, I don't like it. I don't blame you for
23 that. And let me explain why we do that. It's because you
24 all are to hear only those things in the case which are
25 Constitutionally proper. If the lawyers need to speak with

1 me privately about a matter, they maybe want to talk about
2 something that should not be admitted into evidence. Or some
3 legal issue that may have some impact on the outcome of the
4 case. And if it's not correct and you all shouldn't hear it,
5 then we don't do it in front of you. So that's why we
6 sometimes will send you all out or have a conference up here.
7 We are not trying to hide anything from you, we're trying to
8 present to you the appropriate and correct information and
9 evidence in the case. So at this time I will stop talking.
10 Terminate my opening statement to you, ask y'all to be
11 excused into your jury room and see if you can decide if one
12 among you to serve as the foreperson. Thank you, very much.

13 (WHEREUPON, the jury left the courtroom at
14 approximately 11:50 a.m.)

15 THE COURT: Okay, before we go any further I just want to
16 make sure, we had a bench conference with the attorneys in
17 both cases. In the case of the State vs. Craïne. Is there
18 any objection to the jury as impaneled?

19 MR. HARRISON: None.

20 THE COURT: Under Jebb or Batson?

21 MR. HARRISON: None, Your Honor.

22 MR. MARCHANT: None from the State, Your Honor.

23 THE COURT: With respect to State vs. Whitworth?

24 MR. MARCHANT: None from the State.

25 MR. HAMILTON: None from the defense, Your Honor.

1 THE COURT: All right. The Whitworth case, y'all are
2 excused. I guess you got to call back, you'll know when to
3 stay in touch so you'll know when to be here, okay. All
4 right.

5 Mr. DeLoach, you go work hard on this now.

6 MR. DELOACH: Okay.

7 THE COURT: I know Mr. Hamilton will.

8 All right.

9 MR. HARRISON: If I may, Your Honor?

10 THE COURT: Yeah. Go ahead. I think they're some other
11 matters you want to talk about?

12 MR. HARRISON: Yes, Your Honor. Just for the record,
13 it's a little unusual for me, Your Honor, but in the jury
14 draw, one of the jurors that was in the pool, was a lady who
15 I represented the adverse party to her in a divorce case.
16 And I, just for the record, that I had recommended to my
17 client that we not seat that juror. Even though she had
18 testified she was not disqualified, said she would be fair
19 and impartial. I just want for the record that given those
20 circumstances that I had recommended not seating her and my
21 client thought it was in his best interest to seat her.

22 THE COURT: All right, is that true, Mr. Craine?

23 MR. CRAINE: She's all right. She's all right with me.

24 THE COURT: She's all right with you, okay. But your
25 lawyer told you he thought it would be better not to seat her

1 because she had been an adverse party in a case.

2 MR. CRAINE: Yes, sir.

3 THE COURT: And you still wanted to seat her.

4 MR. CRAINE: She's all right.

5 THE COURT: She's all right. He told you not to seat
6 her?

7 MR. CRAINE: Yeah.

8 THE COURT: But he went along with your wishes to seat
9 the lady, is that correct?

10 MR. CRAINE: Yes, sir.

11 THE COURT: All right. And I would note for the record
12 on -- that both parties had -- well the State had one more
13 strike in that case and the defense had two. All right.

14 All right, Mr. Harrison.

15 MR. HARRISON: One other matter, Your Honor, we had
16 closed yesterday and we've gone over and I think we got
17 judicial notice in the two indictments.

18 THE COURT: How do you want to do it?

19 MR. HARRISON: Well we'll take judicial notice and again,
20 I went over with my client, explaining that they would have
21 to bring officers in here to testify as reference to it and
22 we have agreed to allow the Court to take judicial notice to
23 those two indictments.

24 THE COURT: Okay.

25 MR. HARRISON: And for the record, I would like to,

1 again, reiterate my objection to that amendment. And as an
2 additional ground, in statement of that, I would like to
3 point out that the two indictments, my opinion of it is it's
4 sort of a back door way of the State getting in impeachable
5 evidence as against a client that would not be allowed to be
6 used as impeachment if he took the stand.

7 THE COURT: Okay. I think that may be an ancillary
8 effect of it but I believe that the case law has spoken to
9 that and I'm going overrule that objection.

10 MR. HARRISON: I understand, Your Honor. Thank you, Your
11 Honor.

12 THE COURT: Anything else?

13 MR. MARCHANT: Nothing. Just for the record, Your Honor,
14 those indictments are State's Exhibit No. 4 and No. 3. Two
15 prior indictments prior burglaries.

16 THE COURT: Okay.

17 MR. HARRISON: And one other thing and I think we had a
18 bench conference just as we're covering these things, there
19 are some additional, in the event that my client doesn't take
20 the stand, there are some additional charges that I think are
21 not automatically impeachable and I think before we get in
22 front of the jury with it, I would like to cover whether or
23 not those are impeachable offenses.

24 THE COURT: I don't think we need to do it at this
25 time---

1 MR. HARRISON: I understand but just want to put the
2 Court on notice before we get to that stage.

3 THE COURT: Yeah, we'll talk about it. You want to tell
4 them what you got that's impeachable? What do you want to
5 use..

6 MR. HARRSION: I don't know if they're going to use them
7 or not.

8 MR. MARCHANT: Your Honor, they're the prior burglaries
9 from 1993 as well as some petty larcenies from 1993 as well.
10 I believe the ones that could be let in without any question
11 or objection are some forged checks from 2003. It would be
12 the State's position that those convictions from '93 should
13 be admissible because this crime occurred in 2003 which would
14 put it in the 10 year time frame, Your Honor. It just hasn't
15 come to trial until 2006.

16 THE COURT: Now which ones are you talking about?

17 MR. HARRSION: He's got the prior burglaries that were
18 utilized here for the enhancement, he pled guilty to those in
19 1993. And our position is that that's beyond the 10 year
20 statute. If he wants to go back to when they occurred, then
21 we go back to when those occurred. You see what I'm saying?
22 You know, so we're here today, our position is that the
23 statute doesn't say, it says 10 years. Rule 609.

24 THE COURT: Yeah, it doesn't address -- I got to do a 403
25 analysis. I want to see what the case law is.

1 MR. HARRISON: Well I think that the 609 sort of
2 eliminates---

3 THE COURT: You're talking about 609(a)1.

4 MR. MARCHANT: Your Honor, my response to that would be
5 that he was convicted on 4/25 of 1995 for -- excuse me, Your
6 Honor.

7 MR. HARRISON: '93.

8 MR. MARCHANT: 3/16 of 1993 where he was given a 15 year
9 sentence. So he didn't even finish serving that sentence for
10 several years after that. Whenever he was released it would
11 have been well within the 10 year time frame of 2006. Even
12 if we were to use today's date as oppose to the offense date
13 of 2003.

14 THE COURT: 609(b) clearly delineates what the time limit
15 is.

16 MR. HARRISON: It's 10 years. And it dispenses with the
17 whole determination about the prejudice and all that. It's
18 just a hard line, hard fast rule, 10 years.

19 THE COURT: That's not quite correct but. Question, when
20 was he release from confinement? When was he off parole?

21 MR. MARCHANT: Your Honor, I'll have that information for
22 you---

23 THE COURT: Well it's been---

24 MR. HARRISON: He just finished up his parole but he was
25 released from confinement at the time of the plea.

1 THE COURT: Time of the plea?

2 MR. HARRISON: He entered the plea in '93 and was released
3 from confinement and was on probation.

4 THE COURT: Well, that -- my understanding of the case
5 law is that is not being released from confinement. That
6 he's got to be free of the system. Now this still says --
7 still requires the Court to engage in a 403 analysis. Am I
8 right about that?

9 MR. HARRISON: Yes, Your Honor. And clearly in this
10 instance, I would state that the prejudice effect to a
11 defendant or prior convictions, particular ones that are 10
12 years old, far out weigh the probative value of his
13 impeachment.

14 THE BAILIFF: Foreperson.

15 THE COURT: All right. Amy Cummings.

16 Mr. Mann, would you give that to the court reporter?

17 THE BAILIFF: Yes, sir.

18 (WHEREUPON, Court's Exhibit No. 1 was admitted
19 into evidence.)

20 THE COURT: Amy Cummings is your foreperson. All right.
21 We'll -- let me get you all to do this. You figure out which
22 ones you want to try to use, Mr. Marchant.

23 MR. MARCHANT: Yes, Your Honor.

24 THE COURT: Give him the list and we'll talk about it at
25 a later date. And I commend to you all the State vs. Bryant.

1 633 S.E.2d 152. July '06 case. Talks about this. And also
2 State v. Colf. That's how you pronounce it. 525 S.E.2d 246.

3 MR. HARRISON: In addition, Your Honor, just to be
4 straight, they were not forged checks in terms of bad checks.
5 They were insufficient funds checks.

6 THE COURT: Well, y'all talk about that, we'll take a
7 look at it. I don't know what the conviction is but y'all
8 look at that. Now, is there other business we need to take
9 care of before we start this trial?

10 MR. MARCHANT: No, Your Honor, I was thinking about the
11 trial but there is one plea if you're willing to entertain
12 that.

13 THE COURT: All right. Anything else that y'all need to
14 put on the record? Give me a few minutes to think about it
15 before we bring the jury back.

16 MR. MARCHANT: Just so I'm clear, are State's Exhibit 3
17 and 4 into evidence?

18 THE COURT: I understand over your objection those are
19 the two. He doesn't want -- he's not -- he objects to them
20 being admitted at all. And he objects to the amendment of
21 the indictment. But I am overruling that objection and
22 apparently these are the two that you've decide on?

23 MR. MARCHANT: Yes, Your Honor.

24 THE COURT: I am taking judicial notice of those two.

25 MR. MARCHANT: So they are admitted into evidence?

1 MR. HARRISON: No, no. I think he's talking about --
2 you're talking about the statement, right? Is that what
3 you're talking about now?

4 THE COURT: No, he's talking about two prior convictions.

5 MR. HARRISON: We would allow the Court to take judicial
6 notice of those two indictments.

7 MR. MARCHANT: I'm sorry, Your Honor, I hate to be
8 hard-headed, are they into evidence or not?

9 MR. HARRISON: I object to them being in evidence for the
10 purpose of the jury. But for the purposes of the indictment
11 I don't object to them. I don't object to the Court taking
12 judicial notice of those two for the purposes of the
13 amendment of that indictment.

14 THE COURT: All right, let me just think on whether or
15 not I want to publish those to the jury or if I'm just going
16 to allow somebody to orally -- maybe I'll orally state the
17 convictions. Okay.

18 MR. MARCHANT: Thank you, Your Honor.

19 THE COURT: So at this point don't publish them to the
20 jury.

21 MR. MARCHANT: Thank you, Your Honor.

22 THE COURT: Anything else?

23 MR. MARCHANT: No, Your Honor.

24 MR. HARRISON: No, sir.

25 THE COURT: Okay, let get y'all come --

1 Mr. Them, let's do your plea.

2 (WHEREUPON, a short break was taken.)

3 (WHEREUPON, State's Exhibit 1 through 4 were
4 marked for identification marked.)

5 THE COURT: All right, y'all ready?

6 MR. MARCHANT: State's ready, Your Honor.

7 THE COURT: Okay, let's get them.

8 (WHEREUPON, the jury entered the courtroom at
9 approximately 12:32 p.m.)

10 THE COURT: All right, ladies and gentlemen.

11 Amy I remember was your first name.

12 THE FOREPERSON: Amy Cummings.

13 THE COURT: Yes, ma'am, thank you for agreeing to serve,
14 I appreciate that very much. At this time I'm going to ask
15 y'all to rise and be placed under oath.

16 THE CLERK: Please raise your right hand. After the oath
17 has been administered you say, I will.

18 (WHEREUPON, the jury was sworn.)

19 THE COURT: All right, ladies and gentlemen, at this time
20 we're ready to start the trial of the case. I notice y'all
21 are all a little bundled up, I'm going see if we can get some
22 heat turned on and try to warm this place up. Okay, at this
23 time I'll turn it over to the attorneys for their opening
24 statements.

25 MR. MARCHANT: May it please the Court.

1 Mr. Harrison.

2 MR. HARRISON: Certainly.

3 MR. MARCHANT: Home. A man's house, a woman's house.
4 It's your place of sanctuary. It's your place where you keep
5 your belongings, your safety net. A place where you feel
6 comfortable. Not have to worry about outside intruders or
7 anyone coming in and bothering you. That's what this case is
8 about, ladies and gentlemen. And on or about June 29th,
9 2003, this man, Carl Brian Eugene Craine, entered the home of
10 Roger and Liberty Davis. While he was in there he removed a
11 number of items from them without their permission. The
12 evidence will show that he removed a television, jewelry,
13 VCR's, camcorders, other things of that nature. Evidence
14 will also show that he took a few of those items to Paces
15 Pawn here in Easley within Pickens County. That he pawned or
16 sold some of those items that belonged to Roger and Liberty
17 Davis. The evidence will also show that the co-defendant in
18 this case, a Tonya Tant, who has pled guilty to this crime
19 was with him. She will tell you that Brian went into the
20 house that night, along with his brother Barry and removed
21 those items. She'll tell you that she was with him when all
22 that occurred on the night of June 29th, 2003. You'll also
23 hear testimony from Detective Cartee and Lieutenant Maw, they
24 were formally with the Pickens County Sheriff's Office. They
25 will tell you that they interviewed Mr. Craine. And that

1 Mr. Craine confessed to these crimes.

2 At the end of this trial, ladies and gentlemen, you will
3 have proof beyond a reasonable doubt that, His Honor,
4 mentioned, proof that this man committed a burglary. That he
5 entered the home of Liberty and Roger Davis without
6 permission and that not only did he intend to commit a crime
7 therein, he did commit a crime. And that crime being grand
8 larceny. Not only was it a larceny but it was a larceny of
9 Mr. Davis and Mrs. Davis' property that was over \$1000. That
10 is the evidence that you will have at the end of this trial
11 when you take back to the jury room to deliberate. And I
12 submit to you that at that time you will have no question, it
13 will be no doubt and you will not hesitate to act. In this
14 case you will return a verdict of guilty. And at that time
15 that's what I'll ask for you to do. Thank you.

16 THE COURT: All right, Mr. Harrison.

17 MR. HARRISON: Thank you, Solicitor.

18 May it please the Court.

19 My esteemed colleague.

20 One thing that the Solicitor doesn't tell you about is
21 the hallmark of the American system of justice. And that is
22 called presumption of innocence. What that means is that
23 Mr. Craine here, in spite of what the Solicitor told you this
24 morning, excuse me, this afternoon, comes here with a cloak
25 of innocence that he's not required to prove anything here

1 today. He's not required to get on the witness stand. He's
2 not required to bring a single witness in here today. He's
3 not required to even have his lawyer get up here and make
4 statements. All the burden rests upon the State. That's the
5 beauty of the American justice system. You know, the French
6 -- the French introduced a wonderful thing to the justice
7 system. It's called the presumption of guilt. That's sort
8 of what you get from the Solicitor's opening statement. His
9 presumptive statement of someone's guilt. But that's not
10 what we have here. Again, the burden rest with the State.
11 Not just to establish he may or may not have done it. If we
12 tipped the scale a little bit here, maybe 50/50 so therefore
13 we win and someone's guilty. No. In our Constitution, it
14 establishes that must be beyond a reasonable. Beyond a
15 reasonable doubt. It says the defendant's under no burden
16 whatsoever, it's all for the State to prove.

17 I would tell you and I know that you'll do this but
18 listen to the evidence. You know, what I say up here, I
19 don't care how flowered it is, or how grandiose it sounds,
20 it's not evidence. You know, I'm not a witness here. He's
21 not a witness here. The witnesses will be what you see from
22 the stand. You will view the evidence before you, you listen
23 to witnesses and you weigh those things. I would caution
24 you, don't pre-judge anything. Wait until all the evidence
25 is before you. You'll hear some instructions from the Judge

1 and he'll tell you some things like, you know, you're not to
2 even talk about this case amongst yourselves until the end.
3 Isn't that kind of odd? But that's to ensure that you have
4 the whole plate before you before you begin your
5 deliberations. And it prevents you from making pre-judgments
6 and decisions. You wait for your decisions until it's all
7 before you. You decide the faith of this individual. You
8 decide the facts of what happened from what you hear on the
9 witness stand here today. And it's looking like maybe
10 tomorrow too.

11 The Judge will tell you what the law is. You know, we
12 can have what we think ought to be the law, should be the
13 law, could be the law. What we think the law ought to be.
14 It doesn't matter. His Honor, is a learned man who gets this
15 position because of his skills and his knowledge. He is
16 charged with giving you what the law is. So if during the
17 course of it the Solicitor tell you, I think the law is, you
18 know, the law is this or if I tell you well the law is this.
19 Listen, if that Judge tells you that he doesn't have -- that
20 the State doesn't have the burden of proof, then you follow
21 what the Judge tells you, not what Mr. Harrison told you.
22 Well I got a feeling that he's going to tell you that he's
23 got the presumption of innocence and that the burden that the
24 State's going to have to carry here, and it is their burden,
25 is to have proof beyond a reasonable. That's all we can ask

1 of you. Do your job as good citizens of our community.

2 Listen and listen intently.

3 You know, you're all up here because you're the people we
4 thought would be fair. You know, it may not seem it but it's
5 quite an honor to be able to serve. I mean, you people
6 represent what both the State and the defendant think are
7 fair-minded people. I know you saw what's in there striking
8 people and so forth. And not seating some jurors and that
9 can be for any reason. You know, that could have been for
10 any reason. It could be it could have been because gee, I
11 don't know, didn't like the color of the shoes. Didn't have
12 to be for any reason at all. Or it could be for a reason.
13 But nonetheless you 12 or 13, we got an alternate here, you
14 13 represent what we have determined what we think will be
15 fair and impartial jurors who we trust in to deliver us a
16 true verdict. You know, a verdict literally means to speak
17 the truth. That's what we want you to do for us. Okay?
18 Give my client the benefit of the doubt, wait until all the
19 evidence is in and then make your decisions. That's all we
20 can ask of you. And I thank you for your service.

21 THE COURT: All right. Call your first witness.

22 MR. MARCHANT: The State calls Roger Davis.

23 THE CLERK: Sir, if you would, please, place your left
24 hand on the Bible and raise your right hand.

25 Roger Davis, after being duly sworn, testified

1 as follows:

2 THE CLERK: Thank you, please state your full name for
3 the record.

4 THE WITNESS: Roger Dale Davis.

5 DIRECT EXAMINATION

6 BY MR. MARCHANT:

7 Q Mr. Davis, where are you employed?

8 A Cornell Dubilier in Liberty.

9 Q Could you scoot up to the microphone just a little bit,
10 please sir? I'm sorry, where are you employed?

11 A Cornell Dubilier in Liberty.

12 Q How long have you been employed there?

13 A Be six year in December.

14 Q And presently where do you reside?

15 A Road in Six Mile.

16 Q Where exactly is Six Mile?

17 A I think it's about six miles from Pickens.

18 Q What county is Six Mile?

19 A Pickens County.

20 Q Okay. And how long have you lived at that residence in
21 Six Mile?

22 A It was three years this past June.

23 Q What date did you move into this residence?

24 A It was on Saturday, June 28th.

25 Q Where did you live before then?

1 A On Pelzer Highway in Easley.

2 Q On the 28th of June you said you moved in?

3 A That is correct.

4 Q Okay. Did you stay there that evening?

5 A No, we didn't.

6 Q Where did you stay?

7 A We stayed at my mother's house in Pickens.

8 Q Why is that?

9 A They had turned power off, Duke Power had turned the
10 power off and I didn't know that. So that's why we didn't
11 stay that night.

12 Q Had you moved all of your belongings out of your
13 residence in Easley?

14 A We moved everything out on Saturday, the 28th.

15 Q What did you do on Sunday?

16 A We went out to the house about 1:00 and rearranged some
17 things. We stayed there until about 3:30 p.m.

18 Q Please tell me what type of residence you have?

19 A It's a double-wide mobile home.

20 Q Does it have a front door?

21 A Yes.

22 Q Have a rear door?

23 A Yes, sir.

24 Q Do those doors lock?

25 A They were locked, yes, sir.

1 Q On Sunday, what time did you leave?

2 A About 3:30 in the afternoon.

3 Q Where did you stay Sunday evening?

4 A We stayed at my mother's again.

5 Q Did you have any intention of returning to your house in
6 Easley?

7 A No, sir.

8 Q Had your power been turned on Saturday would you have
9 stayed in your new home?

10 A Yes, sir.

11 Q Okay. You left at 3:30 on Sunday, what time did you
12 return and when was the next time you came to your house?

13 A About 7:00 a.m. on Monday.

14 Q Please tell me what you saw when you arrived that
15 morning?

16 A We were going in through the back door and the back door
17 was opened.

18 Q Had you locked the door the night before?

19 A Yes, sir.

20 Q Who had a key to that door?

21 A Just myself and my wife. My wife and I were the only
22 ones that had keys.

23 Q Did you know of anyone -- did you allow anyone to go into
24 your residence the night of the 29th?

25 A No, sir.

1 Q When you arrived you said the door was opened?

2 A That is correct?

3 Q What else did you see?

4 A We went inside and there were a number of items missing.

5 Q How do you know they were missing?

6 A Well it was obvious when we went in that they were gone.

7 Q What exactly was gone when you arrived that morning?

8 A A number of piece of jewelry, computer, two VCR's,
9 television set, video camera and a number of other things.

10 Q Did you give a list of these items to anyone?

11 A We went to the law enforcement center and gave them the
12 information.

13 Q Did you file any claims with your insurance company?

14 A Yes, sir.

15 Q What did your insurance company have to say about this
16 incident?

17 MR. HARRSION: Objection, Your Honor. Hearsay.

18 THE COURT: Hearsay. Sustained

19 BY MR. MARCHANT:

20 Q Did the insurance cover any of these items that were
21 stolen that evening?

22 A Yes.

23 Q And what was the value of the check that the insurance
24 company cut to you?

25 A It was approximately \$2098, the best I recall.

1 Q What exactly did that \$2098 cover?

2 A It covered most -- well most of the items that was
3 stolen. The value that they placed on each item.

4 Q Okay. You said a computer was stolen, what was the value
5 of that computer?

6 A It was originally about \$1400 but the insurance company
7 valued it at \$500.

8 Q I believe you also said there was some jewelry, was there
9 a wedding ring?

10 A Yes, sir, I believe that's correct.

11 Q What was the value of that?

12 A You talking about the diamond ring?

13 Q Was there an engagement ring or wedding ring from your
14 wife that was stolen?

15 A There was a ring about approximately \$180, I believe.

16 Q Okay. What about a wedding ring?

17 A Yes, sir.

18 Q Do you recall what the value of that one was?

19 A Probable about \$50.

20 Q Okay. Did you, I mean, you, Mr. Davis, did you have any
21 item that were removed that evening from your home?

22 A Yes, sir, a number of items.

23 Q What were those and the value of those items?

24 A Well the computer, as I mentioned earlier, the insurance
25 company valued it at \$500.

1 Q Uh-huh.

2 A Two VCR's.

3 Q What was the value of those if you would?

4 A One over them it -- well it was -- it cost about 249
5 valued at I believe about \$75.

6 Q And the other one?

7 A Dual VCR cost me about 800 and I believe they only paid
8 about 180 on that.

9 Q What else did you personally have stolen that evening?

10 A Video camera.

11 Q And the value of that?

12 A At that time probable about \$50.

13 Q Did you have anything else?

14 A There were a number of diecast model cars.

15 Q Was there a value placed on those?

16 A No, the insurance didn't pay anything on those.

17 Q Okay. What else did the insurance pay for?

18 A (There was not response.)

19 Q Did you have a television that was removed?

20 A There was the television set, yes, sir.

21 Q Do you recall what the insurance company paid you on
22 that?

23 A May have been about \$50, I can't recall.

24 Q But all in all the total check that the insurance company
25 cut you was how much?

1 A As well as I can remember it was about \$298.

2 Q Okay. Now, did -- throughout the investigation, did the
3 sheriff's office return any property to you?

4 A They returned some property that belonged to my wife.
5 And I didn't get any of my things back.

6 Q You didn't receive anything. What of your wife's did
7 they return to y'all?

8 A Three watches, some earrings.

9 Q Okay. Let's talk about those earrings.

10 A Piece of luggage.

11 Q Let's talk about those earrings. Where, if you know,
12 where those earrings end up after they left your house?

13 A At Pace's Pawnshop.

14 Q Okay. And you and your wife had those returned to you?

15 A They were returned to her. I was at work.

16 Q Okay. But they came out of your house?

17 A Yes, sir.

18 Q Okay. Did you have any other items returned to you?

19 A No, all of those items belonged to her. I didn't get
20 anything back.

21 Q Okay. Now, did you give anyone permission to enter your
22 home that evening?

23 A No, sir.

24 Q Did you give anyone permission to take any of your items?

25 A No, sir.

1 MR. MARCHANT: That's all the questions, I have at this
2 time. Please answer any questions Mr. Harrison may have.

3 MR. HARRISON: Thank you, Solicitor.

4 May it please the Court, Your Honor?

5 THE COURT: Yeah.

6 CROSS-EXAMINATION

7 BY MR. HARRISON:

8 Q Mr. Davis, you submitted a list to the sheriff's office
9 of items that were taken from your home, is that correct?

10 A That is correct.

11 Q Okay. And you gave them a list one time, you wrote one
12 list for them, I believe, back in July 2003; does that sound
13 about right July 2003?

14 A (The witness nods.)

15 Q And then you also orally talked to them and they wrote
16 down a list of the items that were missing, is that correct?

17 A Yes, sir.

18 Q Now, you said there were several things returned, do you
19 of your own knowledge know that they came from Pace's
20 Jewelers or is that something someone told you?

21 A No, I know for a fact that some of them were found there.

22 Q Well, I mean, did someone tell you that, is that how you
23 know that?

24 A Well someone from the law enforcement center came to our
25 home and returned them to my wife.

1 Q That's fine. I just wanted to establish that you didn't
2 discover them at Pace's Jewelers -- maybe I should have asked
3 you another way, Mr. Davis, I'm sorry. You didn't go to
4 Pace's Jewelers and discovered them yourself?

5 A No, I did not.

6 Q So someone told you and then they returned those items to
7 you. And the items they returned to you, did you make -- did
8 you make an identification of those items when they returned
9 them to you?

10 A Well my wife did.

11 Q Your wife identified them? So I guess the procedure
12 would have been the sheriff's office brought them to your
13 wife or did your wife go down to the sheriff's office or how
14 did that take place?

15 A I understood that they brought them to her.

16 Q All right. Then she made an identification of them?

17 A (The witness nods.)

18 Q All right. And, of course, you don't know of your own
19 knowledge, you own knowledge, that is you didn't witness who
20 broke into your home; did you?

21 A Well no certainly not I wasn't there.

22 Q All right. And you don't know exactly what time of the
23 day that it took place? Could have been anywhere in that
24 whole 24 hour span, couldn't it?

25 A Well anywhere between 3:30 p.m. Sunday and 7:00 a.m.

1 Monday.

2 Q I got you. So anywhere in between there. Okay.

3 MR. HARRSION: That's all I have. Thank you, Mr. Davis.

4 MR. MARCHANT: That's all I have.

5 The State would call Liberty Davis.

6 THE COURT: All right. Step down. Thank you, sir.

7 Liberty Davis, after being duly sworn,

8 testified as follows:

9 THE CLERK: Have a seat, please. Please state your name
10 for the record.

11 THE WITNESS: Liberty Davis.

12 DIRECT EXAMINATION

13 BY MR. MARCHANT:

14 Q Ms. Davis, who are you married too?

15 A Roger Dale Davis.

16 Q Where you living him back when this happened?

17 A Yes, sir.

18 Q Okay. Now, did you have a set of earrings that was
19 stolen from you?

20 A Yes, sir.

21 Q Did you recover those earrings?

22 A Yes, I did.

23 Q Where did you first see these earrings?

24 A In the pawnshop on Highway 8, Pace's Pawnshop.

25 Q Did you physically go to that pawnshop?

1 A Yes, sir, along with a detective.

2 Q And the earrings that you're talking about, would you
3 please describe them to the jury?

4 A Yeah. I was wearing them the one I recovered. It's
5 anybody can see these closer. It had a hairbow and diamonds
6 in it.

7 Q Are you wearing the one's that were recovered?

8 A Yeah, and the Bulovia watch that I recovered from the
9 pawnshop.

10 Q You also recovered at Bulovia watch?

11 A Yes, sir.

12 Q Did you identify that at the pawnshop?

13 A Yes, I did.

14 Q And the earrings from the pawnshop, are the one's you're
15 wearing?

16 A Yes.

17 Q Is that correct?

18 A Yes.

19 Q Did you have any other property that was returned to you
20 that did not come from that pawnshop?

21 A Yeah, I had recovered my turtle bracelet and my other set
22 of earring in the Liberty pawnshop.

23 Q Okay. Did you give anyone permission to enter your home
24 that evening?

25 A No. Absolutely no.

1 Q Did you give anyone permission to removed any of your
2 personal belongings?

3 A No.

4 MR. MARCHANT: That's all the questions I have, thank
5 you. Please answer any of Mr. Harrison's questions.

6 CROSS-EXAMINATION

7 BY MR. HARRISON:

8 Q Ms. Davis---

9 A Yes.

10 Q Where those earrings that you're wearing, those were the
11 one's that you recovered from Pace's?

12 A Yes, sir.

13 Q Were those listed on initial -- on your property report
14 that y'all give to the sheriff's department?

15 A Yes, sir. We listed the sets of earrings there because
16 when that happened all my jewelry was in one box and several
17 other missing. Only few I recovered.

18 Q Yes, ma'am. So you had listed it as several and not
19 specifically broke it down which ones, you just listed
20 several?

21 A No, the one I specified was a Bulovia watch and the brand
22 of the watch and also the earrings too.

23 Q But that's what I was asking you. On the earrings you
24 just listed several earrings rather than breaking down the
25 particular earrings?

1 A Yes, sir, I believe so.

2 Q In other words, you didn't -- on your list that you
3 provided for the missing property, you didn't put down that I
4 was missing diamond earrings, you just listed that you were
5 missing several earrings, pierced earrings; is that correct?

6 A Yes.

7 MR. HARRSION: That's all I have, thank you.

8 THE COURT: All right, anything else?

9 MR. MARCHANT: Nothing else, Your Honor.

10 THE COURT: All right, thank you, ma'am. You can step
11 down. Thank you, very much.

12 MR. MARCHANT: State would call Susan Pace.

13 THE COURT: Well it's 1:00 and this jury has been very
14 patient.

15 We're going to break for lunch at this time, ladies and
16 gentlemen. I'm going to let y'all, of course, go back about
17 your business, do whatever you need to do. Please remember
18 your instruction not to talk how about the case. Even though
19 I know it's got to be tempting to do that. I'll ask you to
20 be back in the jury room at 2:30. Okay. Thank you so much.
21 Y'all have a pleasant lunch.

22 (WHEREUPON, the jury left the courtroom at
23 approximately 1:00 p.m.)

24 MR. MARCHANT: I just ask that these witnesses be
25 excused.

1 THE COURT: All right, do you have any objection to the
2 witnesses who have already testified being excused?

3 MR. HARRISON: No objections, Your Honor.

4 THE COURT: All right, they're released from subpoena.

5 Go, stay, whatever you'd like to do. Thank y'all for
6 being here.

7 All right, 2:30 for this case.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: All right, ready to go?

10 MR. MARCHANT: State's ready, Your Honor.

11 MR. HARRISON: We're ready, Your Honor.

12 (WHEREUPON, the jury entered the courtroom at
13 approximately 2:40 p.m.)

14 THE COURT: All right, ladies and gentlemen, hope you
15 y'all had a pleasant lunch. Thank you for being patient. We
16 disposed of some other matters while y'all were waiting so I
17 appreciate y'all waiting.

18 MR. MARCHANT: State calls Susan Pace.

19 THE CLERK: Place your left hand on the Bible, raise your
20 right hand.

21 Susan Pace, after being duly sworn, testified
22 as follows:

23 THE CLERK: Please be seated. State your name for the
24 record.

25 THE WITNESS: Susan Pace.

DIRECT EXAMINATION

BY MR. MARCHANT:

Q Good afternoon, Miss Pace. Where are you employed?

A At Pace's gun and pawn.

Q Tell me what does that mean? What does a pawnshop do?

A We loan money out and hold items for collateral that has a value. And they just bring them in, we hold them for 90 day on a pawn. Now we have to ask the person whether they want to sell the items or pawn it. If they want to sell it we purchase it and we're limited to holding it 10 days before it goes out for sale.

Q When someone brings a piece of personal property in to you, what information do you gather from that individual?

A The first thing we have to ascertain is if they're 18 years old or not. Because the state law requires us not to take any items from anyone under 18 years olds. And then we have to ask for a picture identification. It can be a South Carolina identification card or driver's license.

Q Does it have to be South Carolina?

A No, it can be North Carolina or any state. But we have to have a picture ID. It can't be just any form of piece of paper.

Q So I bring in a item to pawn and you take my ID. How do you know that the person I'm giving -- excuse me, identification I've given you is actually me?

1 A Well first thing I do is look at the picture to make sure
2 I am looking at that person. And not someone else. Again,
3 we have to ask for certain types of information directly from
4 them. Social security number, telephone number, different
5 things like that. And you can almost tell when someone is
6 stating something they're not familiar with. A birth date a
7 lot of time I double check to make if what is on the card is
8 what they quoted me.

9 Q Okay. What do you do with that information off of that
10 driver's license?

11 A It is typed into our computer.

12 Q Okay. What purpose does that serve?

13 A Well it saves it and it also will flash up on the screen
14 if when I get to the birthday, if for some reason I haven't
15 calculated it right, it will show me that they are 18. It
16 will tell me I can't take the item if they're under 18.

17 Q Okay. Now, if a person is bringing a piece in for pawn
18 or to sell, how do you document that? Do you have any paper
19 work that you collect?

20 A It's on paper. We go to a whole different screen to do a
21 purchase and then we do a pawn. Pawn it figures, calculates
22 the interest for the 30 day period. Automatically. And on a
23 purchase it's just for the purchase amount. There is no
24 interest at all. And we try -- a lot of people don't know
25 the difference between a pawn, a loan and purchase. So we

1 explain that to them. That if you do not want to pick it
2 back up means we're purchasing. On a loan it means you do
3 want this item back.

4 Q And on this information sheet does it have a common name
5 or what do you call the sheet that you're putting all this
6 information on?

7 A Well it's actually a legal contract that we sign and the
8 person that we're typing up this stuff on is -- it's just
9 called a loan. But it's is three-part contract that we keep
10 one, they get one and the sheriff's department gets one.

11 Q Why does the sheriff's department get one?

12 A They pick up every Monday so that they can actually with
13 stolen reports that they taken, they can flip through them,
14 and they do this with all the pawnshops.

15 Q Is that your policy or is that the sheriff's office?

16 A That's the sheriff's department policy it's not ours. We
17 keep them until they pick them up on Monday mornings. Or
18 when their department normally does that. I think all
19 sheriff's department all across does that. If you can't
20 download directly through to them, some states do that.

21 Q Okay. Specifically on a sell or a purchase that you're
22 making, what information do you take and put on that
23 contract? What personal information from the person selling
24 it to you?

25 A Their name, mailing address, if it's different from their

1 physical address that they get mail because we're required by
2 law to send a late notice on a pawned item that they're
3 fixing to lose it if they have not been in to pay on it.
4 Their height, weight, color of hair, color of eyes, their
5 South Carolina Driver's License or ID number. Their
6 telephone number if it's available, social security number if
7 they're willing to give that. That's another form of telling
8 we've got the right person. Their birth date is also on
9 there.

10 Q Primarily where do you get that information from?

11 A Off the driver's license.

12 Q Okay. Let me show you what's been marked as State's
13 Exhibit No. 5. Would you please tell me what that is?

14 A That is our contract that we have the customer at the
15 time. It is a pawn slip.

16 Q Is that a pawn or purchase?

17 A Well this one is a purchase. It's marked purchase, it
18 has no finance charges at all. So it is a purchase.

19 Q Y'all bought that piece of property from this person?

20 A Yes.

21 Q Okay. What date did this transaction take place?

22 A It is on June 30th, '03.

23 Q Okay. What specifically did you purchase on that date?

24 A It is a pair of diamond cluster earrings. The -- it's a
25 .15 carate which I have to measure the stone in the earrings

1 to determine what carate it is.

2 Q And what individual did you purchase this item from?

3 A This came from Carl Brian Eugene Craine.

4 Q What is his address?

5 A I don't have any glass on I cannot read this.

6 Q Are they in your purse?

7 A Yes, they are. That a Street Road in
8 Easley, South Carolina.

9 Q And what's the date of birth you gathered off of this
10 individual's license?

11 A

12 Q What his driver's license number?

13 A

14 Q Okay. And is that a fair and accurate copy of your
15 original pawn ticket?

16 A Yes, it is.

17 MR. MARCHANT: At this time the State would move Exhibit
18 No. 5 into evidence.

19 THE COURT: Any objection?

20 MR. HARRISON: No objection, Your Honor.

21 THE COURT: All right, without objection.

22 (WHEREUPON, State's Exhibit No. 5 was admitted
23 into evidence.)

24 BY MR. MARCHANT:

25 Q Now assuming a piece of property has been stolen and

1 sheriff's office comes to you, what is your policy of
2 allowing a person who claims that that's their piece of
3 property, to view that item?

4 A They need the describe that to me before I can actually
5 pull anything for them to visually look at.

6 Q Okay, let me stop you right there. When you say they,
7 who are you referring to?

8 A Anybody that's claiming it is their property other than
9 the person that we dealt with initially.

10 Q All right.

11 A Normally I even require the detective or sheriff's
12 department, whoever comes to me, to also describe it because
13 I don't want to give out too much information on what it
14 looks like if they was to by mistake go back and ask certain
15 questions to that person, does it have this on it, does it
16 have that on it? And the person says, Yes. Yes meaning,
17 well that's mine. So I try to get some -- some description
18 before I give out too much on it too. Also to -- if it's a
19 pawned item we're legally bound to respect the privacy of the
20 person that has pawned it. That's the way we have to observe
21 that. You know, we have to observe that it's their's until
22 proven that it's stolen.

23 Q Specifically with this item, this one pair of .15 carat
24 diamond cluster earrings, did someone come to your shop and
25 state that they were missing those earrings?

1 A Yes. The -- I don't know the lady's name but she was
2 here earlier. She came with one of the detectives and said
3 that her earrings had been stolen and that was them. They
4 were not out for sale, they were not visible anywhere in the
5 cases at all.

6 Q Where were they?

7 A They were still in our safe. We had not pulled those.

8 Q Had they every been placed out into a case for sale?

9 A No, never. Never. They were still in the envelope.

10 Q So Ms. Liberty Davis came and saw you at your pawnshop?

11 A Yes.

12 Q What did she describe the item that she was missing? How
13 did she describe it?

14 A At the time it was hard to understand because she did not
15 speak English that well but since I couldn't understand
16 exactly every word she was saying I said, Draw me a picture.
17 And I laid a piece of paper in front of her and I said, Draw
18 the earrings for me. So she drew out the little bows and
19 little diamonds on them coming down. She kept trying to say
20 like this, pears. So she drew that for me. And I went and
21 got the envelope, still not letting her see it or the
22 detective, opened it, looked at them myself and it was
23 exactly what she had drawn. So I knew they were hers by the
24 description. And nobody had ever seen those but me. Placing
25 them in the safe.

1 Q Make sure I'm clear. The items or earrings that she drew
2 a description of were the same ones that were sold to you by
3 this Brian Craine?

4 A Yes.

5 MR. HARRISON: Objection, Your Honor. Calls for
6 conclusion.

7 MR. MARCHANT: I'll rephrase.

8 THE COURT: Well I'm going to overrule it, he's not
9 asking her for her opinion.

10 BY MR. MARCHANT:

11 Q And did you turn those earrings back over to her?

12 A At that time the sheriff's department said that they
13 would collect those and go through the normal process that
14 they usually do. And they did. They turned those back to
15 her. After she came at that time. Because there is process
16 we go through were they purchase those back to retribute us
17 for the money. That we loaned out or bought those for.

18 Q The sheriff's office paid you?

19 A Yes.

20 Q For this item?

21 A Yes.

22 Q Okay. Now, the gentleman that pawned this item to you,
23 have you seen him since?

24 A They have not been in our store since.

25 Q Okay.

1 A I seen him since coming in the courtroom.

2 Q If you see him would you please point him out to the
3 Court?

4 A The gentleman over there sitting beside Mr. Harrison.

5 MR. MARCHANT: Please let the record reflect that she's
6 identified the defendant.

7 That's all the questions I have, please answer any
8 questions Mr. Harrison may have.

9 CROSS-EXAMINATION

10 BY MR. HARRISON:

11 Q Hello, Ms. Pace?

12 A Hello.

13 Q Ms. Pace, do you have with you today the drawing or the
14 picture that Ms. Davis made?

15 A No, I did not keep that. Not thinking I would need it.

16 Q So you no longer have it?

17 A No, it was just from my feeling of knowing that she knew
18 what her earrings actual looked like, you know.

19 Q In the past if someone's made a drawing like, would you
20 normally keep it or?

21 A No, I would not.

22 Q Do you always require a drawing or are people sometimes
23 able to adequately describe it to you orally?

24 A They can supply we with numbers a lot of times on their
25 items if their item has a number. If it's a piece of

1 jewelry, I usually like to have them to describe it depth
2 before I know that they know what they have.

3 MR. HARRISON: All right, that's all have. Thank you.

4 THE COURT: All right.

5 MR. MARCHANT: That's all the questions, Your Honor, I'd
6 ask that this witness be excused.

7 THE COURT: All right, stand down. Released from
8 subpoena.

9 Do you have any objections?

10 MR. HARRISON: No objection, Your Honor.

11 MR. MARCHANT: That State would call Tonya Tant.

12 Tonya Tant, after being duly sworn, testified
13 as follows:

14 THE CLERK: Please state your name for the record.

15 THE WITNESS: Tonya Diane Tant.

16 THE COURT: Need you speak up a little bit, ma'am.

17 THE WITNESS: Tonya Diane Lynette Parris Tant.

18 DIRECT EXAMINATION

19 BY MR. MARCHANT:

20 Q Good afternoon, Ms. Tant.

21 A Good afternoon.

22 Q It's obvious you're dressed in a prison jumpsuit. Please
23 tell the jury where you live right now?

24 A I live at Goodman Correctional Institute, South Carolina
25 Department of Corrections.

1 Q Where is Goodman?

2 A Columbia on Broad River Road.

3 Q Why is that your housed a Goodman right now?

4 A Two counts of third degree burglary, grand larceny, petty
5 simple larceny, possession with intent to distribute
6 methamphetamine.

7 Q One of those burglaries and larcenies the same case we're
8 here today about?

9 A Yes, sir.

10 Q Now, down at Goodman, what are you involved in down
11 there?

12 A I'm currently in ATU.

13 Q Please explain to the jury what ATU is?

14 A It's an addiction treatment unit program for six months.
15 I've gotten my GED. I've taken computer classes, I'm
16 currently getting ready to go into another computer class and
17 I have a landscaping certificate.

18 Q Are any of these things that you've done down there
19 required?

20 A No, sir.

21 Q Was the ATU treatment ordered by a Judge?

22 A No, sir.

23 Q Now, going back to this incident that we're here about
24 today, when did you first have contact with law enforcement
25 regarding this case?

1 A I had talked to Detective Jody Cartee on my own behalf.

2 Q Do you remember the date that you spoke with Detective
3 Cartee?

4 A No, sir, it was in July.

5 Q July of what year?

6 A 2003.

7 Q Okay. Why did you go speak with Detective Cartee in July
8 of 2003?

9 A Because I knew of some burglaries that was going on.

10 Q When you say you knew of some burglaries, specifically
11 this incident that you've already pled guilty on
12 Road, what did you tell Detective Cartee you knew that day?

13 A That I knew who had broken into the house and stolen
14 stuff.

15 Q Who did you tell him had broken into that house?

16 A Brian Craine.

17 Q Who else did you tell him in July had broken into that
18 house?

19 A Nobody else.

20 Q Why did you not tell him that anybody else had broken
21 into the house that day?

22 A I was trying to protect myself and his brother.

23 Q Who is his brother?

24 A Barry Craine.

25 Q Okay. Now, you voluntarily walked into the police

1 station that day?

2 A Yes, sir.

3 Q And everything you spoke with Detective Cartee about, was
4 it at his direction or yours?

5 A It was in mine.

6 Q Is there anything that you told him that day that is
7 incorrect in that statement?

8 A Yes, sir.

9 Q What exactly did you -- is incorrect in that statement?

10 A That Brian wasn't along, that me and his brother was with
11 him.

12 Q Now, did you have an occasion at some future point to
13 speak with Detective Cartee again?

14 A Yes, sir, I did.

15 Q Do you remember the circumstances of that discussion with
16 him?

17 A Yes, sir. I opened up and came honest with him and told
18 him that Brian wasn't along, that me and Barry was involve in
19 it too.

20 Q How or why did you have a second conversation with
21 Detective Cartee?

22 A Because he knew I was lying.

23 Q Were you under arrest for this offense?

24 A Yes. Yes, sir.

25 Q Did you request to speak with him or did he request to

1 speak with you?

2 A I requested to speak with him.

3 Q Okay. And at the second interview what did you tell him?

4 A I told him that Brian wasn't the only one that done it
5 that it was me and his brother too.

6 Q Now, his brother being Barry?

7 A Yes, sir.

8 Q Now, regarding this event specifically, when was the
9 first time you went to the house on ? When
10 was the first trip that you made to that house?

11 A When we drove around me and Barry had dropped Brian off
12 and me and Barry drove around until we seen Brian come back
13 out and he told us everything was okay. And me and Barry
14 went and picked Brian up. And we pulled back up to the house
15 -- and we pulled back up to the house and Brian and Barry had
16 got some things out, I was helping them load everything in.
17 And as we was loading everything in, Brian and Barry was
18 finishing up and I sat in the van and I was waiting on Brian
19 and Barry to come back. Brian and Barry got in the van, by
20 this time it was daylight and we had left. We had left from
21 the trailer.

22 Q Did you ever enter the home?

23 A No, sir.

24 Q Who did enter the home?

25 A Barry and Brian.

1 Q When y'all initially arrived, before entering the house,
2 was it daylight or was it dark?

3 A When we first got there it was dark.

4 Q When you left was it day light or was it dark?

5 A It was day light.

6 Q Okay. And if you recall, what items were taken from the
7 house that evening?

8 A TV, VCR, camera, some jewelry, some shoes, some socks,
9 cars and stuff. That's all I can remember.

10 Q Did you hold on to any of that property yourself, did you
11 keep any of it?

12 A Yes, sir.

13 Q Did you keep any jewelry?

14 A Yes, sir.

15 Q Did you keep any watches?

16 A Yes, sir.

17 Q Specifically do you remember what type of watch you kept?

18 A A New York New York watch.

19 Q Okay. Is that something you removed from the house?

20 A No, sir.

21 Q Do you know who removed that from the house?

22 A I had received a watch from Brian.

23 MR. MARCHANT: That's all the questions I have. Please
24 answer my questions that Mr. Harrison may have for you.

25 THE COURT: All right, cross-examination.

CROSS-EXAMINATION

1

2 BY MR. HARRISON:

3 Q So you committed other burglaries as well, is that
4 correct?

5 A Yes, sir.

6 Q Okay. You've also got a conviction for -- is it
7 manufacturer of methamphetamine or what?

8 A Possession with intend to distribute.

9 Q And were you and Mr. Craine and his brother, were all,
10 for lack of a better expression, were y'all all
11 methamphetamine addicted at that time?

12 A Yes, sir.

13 Q So you gave a statement at one point and then you told
14 detectives that you didn't tell the truth in the first
15 statement -- the first statement you gave, isn't that what
16 you wrote?

17 A Yes, sir.

18 Q And you had kept the majority of these items were with
19 you, weren't they?

20 A No, sir.

21 Q A lot of the jewelry was with you?

22 A Yes, sir.

23 MR. HARRISON: Just a second. That's all I have, Your
24 Honor.

25 THE COURT: All right, any redirect?

1 MR. MARCHANT: If I could just clarify one...

2 REDIRECT EXAMINATION

3 BY MR. MARCHANT:

4 Q Specifically, what was incorrect in the first statement?
5 What did you lie about?

6 A In the first statement I said that it was just Brian.
7 And then I couldn't let Brian go down by himself because it
8 wasn't just Brian. It was me and his brother too.

9 Q Why didn't you not mention his brother at that first
10 statement?

11 A I was on drugs, I had been up for two weeks and I got
12 scared and all I could think about was protecting myself and
13 his brother. I had done told.

14 Q I'm sorry, you had told what?

15 A I had done told that Brian had broken into the houses.
16 They knew that it wasn't just Brian and I had a watch on
17 myself that was on. So I might as well had told the truth.

18 MR. MARCHANT: That's all I have, thank you.

19 MR. HARRISON: No recross.

20 THE COURT: Thank you, you can step down. Release you
21 from subpoena.

22 Or you want to hold her?

23 MR. HARRISON: Release her from subpoena, Your Honor. On
24 objection.

25 THE COURT: All right. No objection.

1 MR. MARCHANT: State would call Detective Jody Cartee.

2 Jody Cartee, after being duly sworn testified
3 as follows:

4 THE CLERK: Please state your name for the record.

5 THE WITNESS: Joel Lee Cartee.

6 DIRECT EXAMINATION

7 BY MR. MARCHANT:

8 Q Where are you presently employed?

9 A 31-W installation, I sell building materials.

10 Q I'm sorry, you sale what?

11 A Building material.

12 Q How long have you been employed there?

13 A Two and a half years.

14 Q Prior to this employment, where were you employed?

15 A With the Pickens County Sheriff's Office.

16 Q What capacity were you employed?

17 A Started out in the jail. Went from the jail to the road.
18 Went from the road to traffic. Traffic to support and arson
19 investigation. And the last four years I was an investigator
20 with the sheriff's office.

21 Q Please tell the jury what an investigator with the
22 sheriff's office does?

23 A Basically the road officers make a report and if there's
24 anything that needs to be investigated we go out develop
25 leads and try to actually solve the case.

1 Q In over that four year time period, how many cases would
2 you say you investigated?

3 A We were on average 300 to 325 a year. I'm not real good
4 with my math so between 1000, 1200, 1400, a little bit more
5 than that. 1200 to 1500.

6 Q While you were involved with the investigator capacity
7 were you also arson investigator at the same time?

8 A Yes, I was.

9 Q Approximately how many cases did you deal with them?
10 Each year as well?

11 A I dealt with -- over 7 years I had over 300, 350 cases
12 with arson.

13 Q Roughly how many cases with the sheriff's office did you
14 investigate in either the arson capacity or your
15 investigation?

16 A Well that 300 -- 325 is included. That does include the
17 arson investigation.

18 Q I believe you said well over 1000 cases?

19 A Well over 1000.

20 Q How did you first become involved in this case?

21 A I became involved in this case on the first of July of
22 2003 when I was assigned the case as the lead investigator.

23 Q And when you're assigned a case, what's this first thing
24 that you do? Or what is your normal procedure when handling
25 a case?

1 A Normal procedure is actually go over the case and from
2 there contact the victims and ask if there was anything that
3 they had left out of the report or if they had anything they
4 had to add only to the report.

5 Q Did you do that in this case?

6 A Yes, I did.

7 Q And did you interview any witnesses involved in this
8 case?

9 A Not at the time. The first contact was with Ms. Tant on
10 7/14/03 at the sheriff's office.

11 Q Okay. And how did you come to have a conversation with
12 Ms. Tant?

13 A Ms. Tant called the sheriff's office or she actually came
14 to the sheriff's office and asked to speak with the
15 investigator who was in charge of the case for some
16 burglaries around the six mile area.

17 Q Okay. The information that you ascertained from Ms.
18 Tant, did that give you enough to seek a warrant?

19 A Yes. That as well as the pawn tickets that were
20 obtained.

21 Q Show you what's been entered into evidence as No. 5,
22 State's Exhibit No. 5, is that the pawn ticket you're
23 referring to?

24 A That is.

25 Q So you went and got a warrant on who?

1 A I went and got a warrant on Carl Brian Eugene Craine.

2 Q Was Mr. Craine arrested?

3 A Yes, he was.

4 Q At some point after his arrest did you have an
5 opportunity to speak with him?

6 A Yes, I did.

7 Q At whose request or directions was that interview?

8 A It was my request.

9 Q Do you do that with every defendant?

10 A Yes, I do.

11 Q How does the interview begin?

12 A Just basically you bring them into the office of the
13 sheriff's office or wherever you're at at the time and just
14 basically, you know, talk to the them a few minutes. Get to
15 know them a little bit. After that is done, you know, of
16 course he knew why he was there, he was told why he was
17 there, from the arrest. After he was---

18 Q I'm sorry, let me stop you. Where specifically was this
19 interview taking place?

20 A This interview took place at the sheriff's office at 216
21 LEC Road, down in the detective division.

22 Q Okay. And, please, just briefly describe the layout of
23 the detective division?

24 A Detective division is downstairs and the jail is
25 upstairs. When you walk into the doors of the detective

1 division there's a little hallway, there's a captain's
2 office, a lieutenant's office, a waiting area or waiting cell
3 then a interviewing room. It actually opens up into a good
4 size room where six cubicles are located. And my cubicle was
5 the back far left-hand corner of the detective division.

6 Q Prior to starting any interview do you give the defendant
7 his Miranda Rights.

8 A Yes, I do.

9 Q Did you do that in this case?

10 A Yes, I did.

11 Q Let me show you what's been marked as State Exhibit No.
12 1, do you recognize that?

13 A Yes, I do.

14 Q What is that?

15 A It is a -- on the top it says, Your Rights. It's a paper
16 from the sheriff's office advising written, actual typed out
17 of your rights.

18 Q Okay. How do you go over that form with the defendant?

19 A Okay. Has a date at the top, I dated it 7/14/03. And it
20 also has a time, this is the time that you actually start
21 reading the rights to him. And then you read the rights to
22 them, read the waiver of rights to them and then if they want
23 to speak to me they sign it and I sign it.

24 Q Okay. Did you sign it in this case?

25 A Yes, I did.

1 Q Did the defendant sign it in this case?

2 A Yes, he did.

3 Q How do you know?

4 A Right here where it says, sign. There's a little mark
5 where I put, he signed, Brian Craine.

6 Q Did you see him sign this paper?

7 A Yes, I did.

8 MR. HARRISON: Your Honor, subject...

9 THE COURT: Subject to previous...

10 MR. MARCHANT: The State would offer Exhibit No. 1 into
11 evidence.

12 (WHEREUPON, State's Exhibit No. 5 was admitted
13 into evidence.)

14 BY MR. MARCHANT:

15 Q After you read Mr. Craine his rights, did he waive those
16 rights?

17 A Yes, he did.

18 Q Did he agree to speak with you?

19 A Yes, he did.

20 Q Okay. Once he agreed to speak with you, what did y'all
21 talk about?

22 A We talked for about an hour and five minutes. I don't
23 know exactly what we talked about. But according to the
24 statement that he give, we talked about the case.

25 Q Now, was this a verbal conversation or did he give you --

1 how did it begin and how did it end? How did the
2 conversation you two have begin and end?

3 A Like I said, it was three years ago, I don't know exactly
4 how long the conversation went. What I usually did, you
5 know, just basically talk to him and then he told me what had
6 happened. The case I'm working on, what happened, if he
7 knows who did it or if he actually did it.

8 Q How long did this interview last?

9 A An hour and five minutes.

10 Q Do you recall if y'all took any breaks?

11 A I don't recall if we took any breaks..

12 Q Do you recall if you let him smoke a cigarette?

13 A I do not recall.

14 Q Let him have a glass of water?

15 A I do not recall.

16 Q Did he ever ask for an attorney at any time during your
17 conversation?

18 A No, he did not.

19 Q Did he ever wish to quit speaking with you?

20 A No, he did not.

21 Q Following the conversation, did you ask him to put down
22 y'all's conversation in writing?

23 A Yes, I did.

24 Q Did he agree to do that?

25 A Yes, he did.

1 Q Did you threaten him?

2 A No, I did not.

3 Q To give a written statement?

4 A No, I did not.

5 Q Did you make any promises to him?

6 A No, I did not.

7 Q Now, do you recall how long it had been from the time of
8 his arrest to the time you spoke with him?

9 A I do not remember the time frame as far as the arrest to
10 the time when I actually talked to him.

11 Q Do you know whether it was the same day?

12 A It was the same day.

13 Q Okay. What was his condition when y'all were speaking?

14 A He was coherent. He was speaking.

15 Q In your opinion was he intoxicated?

16 A In my opinion he was not intoxicated.

17 Q If the defendant was intoxicated would you
18 continue a conversation with him?

19 A No, I would not.

20 Q Did the defendant appear to understand what was going on?

21 A Yes. He did.

22 Q Let me show you what's been marked as State's Exhibit No.
23 2. Would you, please, describe to the jury what that
24 document is?

25 A This is a voluntary statement. It's either done after I

1 read the Miranda rights, after the conversation, I can't
2 remember the conversation, so after the conversation I have,
3 with someone, I ask them if they would be willing to write it
4 down. And on 7/14/03 at 6:30, Carl Brian Eugene Craine wrote
5 down what had happened.

6 Q Okay. Now, there's several lines of information on
7 there, who filled out the top portion of that document?

8 A I filled out the top portion.

9 Q And in the middle portion, what is that space allotted
10 for?

11 A That is allotted for the person who is actually giving
12 the written statement.

13 Q Now there's also some lines on the bottom, what is that
14 information on the bottom of that document show?

15 A Time completed and also witnesses. And also a place for
16 a person who is giving the voluntary statement.

17 Q What time did this interview -- excuse me, what time did
18 this written statement begin?

19 A It began at 6:30 p.m.

20 Q Now did you conclude this particular written statement
21 with the defendant or was it another officer?

22 A It was another officer.

23 Q Why was that?

24 A Well, like I said we carry 300 cases a year. And
25 everything was going on at one time. We had more people down

1 there talking to at that same time. I do not recall the
2 circumstances of why I did not stay around. Like I said,
3 there were several other investigators down there and I had
4 two other people or two other officers actually witness the
5 statement.

6 Q Do you recall what you were doing after you filled out
7 that top portion of that document?

8 A I was speaking with another subject on this case.

9 Q Do you recall who that subject was?

10 A It was Barry Craine.

11 Q Now, the written statement, is that consistent with the
12 conversation you had with Mr. Craine that day?

13 A Like I said, I do not recall the conversation. All I can
14 go on is what he has written down in his statement. Like I
15 said it was an hour and five minutes. Like I said, once we
16 complete the Miranda rights and they speak with me I say,
17 okay would you be willing to write down in your own words
18 what we spoke about. And Barry signed this paper, he wrote
19 down some things that had happened.

20 Q I'm sorry, who signed it?

21 A I'm sorry, Brian Craine.

22 Q Now, the information written down there, did he tell you
23 what his involvement in this alleged house breaking/burglary
24 was?

25 A Yes, he did.

1 Q Now, do you recall, in your verbal conversation, him
2 telling you what involvement he had in this burglary?

3 A Like I said, I don't remember however, if I ask him to
4 write a statement down, then he had told me what he had done,
5 what his involvement was in this case.

6 Q And again, who witnessed his signature on the bottom?

7 A The witness is Earl Maw, Jr. and Brett Barwick.

8 Q Did you have any further dealings in this case after this
9 arrest with Mr. Brian Craine?

10 A After this the only thing I had is when I spoke to Tonya
11 again in November.

12 Q The person who gave you that written, voluntary
13 statement, do you see him present today?

14 A Yes, I do.

15 Q Would you please point him out?

16 A Sitting at the defense wearing a blue over shirt and
17 black t-shirt.

18 MR. MARCHANT: Please let the record reflect that he's
19 identified the defendant.

20 BY MR. MARCHANT:

21 Q Now, moving into the investigation of this case, what, if
22 any, property did you recover through your investigation?

23 A There was several investigators actually working this
24 case. When Tonya came in on the 14th, I noticed she was
25 wearing a watch. And I ask her about the watch. And the

1 watch had New York New York on it and she said that one --
2 she said that I think Brian had given that watch to her.

3 Q And this alleged burglary, do you recall where it took
4 place?

5 A The alleged burglary took place in Six Mile.

6 Q What county is Six Mile in?

7 A It's in Pickens County,

8 MR. MARCHANT: That's all the questions I have at this
9 time, please answer any questions Mr. Harrison may have.

10 MR. HARRISON: Your Honor, may I approach the -- it's a
11 little unusual, may I approach the bench with opposing
12 counsel?

13 THE COURT: Yeah.

14 (WHEREUPON, a bench conference was held.)

15 THE COURT: All right, madam forelady and ladies and
16 gentlemen of the jury, at this time we're going to take a
17 short recess. So if y'all would step to the jury room,
18 please don't discuss the case, we'll be back with you very
19 shortly. Thank you.

20 (WHEREUPON, the jury left the courtroom at
21 approximately 3:24 p.m.)

22 THE COURT: All right, Mr. Harrison.

23 MR. HARRISON: May it please the Court, Your Honor. My
24 client -- my client interrupted me or didn't interrupt me but
25 rather reached at to me during the course of the direct

1 examination of the officer here. And as it began, sa the
2 officer's testimony began, I think one of the things for him
3 was seeing someone that he cared about who is sort of taking
4 in medicine in reference to this thing, he told me he wanted
5 to stop these proceedings and wanted to go ahead and enter a
6 plead of guilt here. And it's late coming to the table, Your
7 Honor, but nonetheless it's still facing up and taking your
8 medicine as opposed to---

9 THE COURT: Raise right hand, Mr. Craine.

10 Carl Craine, after being duly sworn, testified
11 as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Your lawyer's indicated to me that you want to change
15 your plea from guilty to not guilty; is that right? I mean
16 not guilty to guilty?

17 A Yes, sir.

18 Q Okay. Tell me why?

19 A One reason I done lost track of what's going on. I -- I
20 just had a tooth pulled and I've been taking pain pills. And
21 I took quite a few of them today and I can't -- I don't even
22 know what the hell I'm doing right now. That's true.

23 Q Well---

24 A All I know is that it just didn't look, you know---

25 Q No, sir, we're not taking your guilty plea.

1 A I didn't see in wasting no more time.

2 Q No, sir. If you don't know what you're doing then we're
3 not taking your guilty plea.

4 THE COURT: We'll take a 10 minute break.

5 MR. CRAINE: Well I'm telling you---

6 THE COURT: All right.

7 MR. CRAINE: Fuck you. Fuck you.

8 THE COURT: Bring him around. Well we'll deal with it
9 later. We'll deal with it later.

10 MR. CRAINE: No, we'll deal with it now.

11 THE COURT: All right, take a 10 minute break.

12 (WHEREUPON, a short break was taken.)

13 THE COURT: All right, we're back on the record. We've
14 had faxed to us from the jail, from the Pickens Detention
15 Center, a copy of Mr. Craine's medication sheet. Which shows
16 that he's taking Amoxicillin and Motrin 200 milligrams. And
17 also Hydrocodone. Doesn't give us the dosage amount. He
18 takes 1 every 4 to 6 hours. It shows that he had one this
19 morning at 5:00 a.m. The time now is 3:50 p.m. He also had
20 one yesterday at 11:30 a.m. And he had one yesterday at 5:00
21 a.m. Now, we're going to make this a Court's Exhibit and
22 enter it into the record. I am going to state for the record
23 that I've observed Mr. Craine throughout the course of the
24 trial, spoken with him and I find him to be competent. I
25 don't find him to be intoxicated. He's appeared to be lucid

1 to me. I have observed him talking. I observed Mr. Harrison
2 who discussed almost each and every point of the trial with
3 his client. Deferred with him throughout jury selection.
4 And then I discussed the selection of the person who has now
5 been elected foreperson by the jury with him. He at no time
6 appeared to be incompetent or under the influence during
7 those times.

8 Mr. Harrison, anything you want to tell me? I've seen
9 you discussing it with him. Do you think he's competent to
10 go forward.

11 MR. HARRISON: Your Honor, if you would, he appeared to
12 me---

13 MR. CRAINE: I'll just take an overdose.

14 (WHEREUPON, Court's Exhibit No. 2 was admitted
15 into evidence.)

16 THE COURT: For the record, I just want to state that
17 when I was speaking with Mr. Craine he displayed to me in his
18 open palm, appeared to be 2 to 4 white tablets. And then
19 took them, put them in his mouth to try to eat and swallow
20 them. The officers at that time, pursuant to my direction,
21 hit him with the taser and I believe that they recovered some
22 of those items.

23 What I'd like --

24 what are y'all going to do with that? Have it analyzed?

25 THE DEPUTY: We can, Your Honor. I'll take it back now,

1 I just need to confirm with the jail to see how many he's
2 been given and see if we can track down how many he's had.

3 THE COURT: Okay. Y'all go ahead and do that. I'm not
4 sure we can proceed any further with this trial at this time.
5 So I think we'll break for the evening in this case.

6 Mr. Craine, I want to tell you you're in contempt of
7 court. You're in direct contempt of court on two separate
8 occasions and you will be dealt with accordingly.

9 But at this time I think we'll -- I want to point out
10 that I don't -- based on his -- I guess I ought to put on the
11 record that when he was leaving court the first time after
12 the plea, he raised his hand at me and made what I would
13 politely call a unidigital sign of derision. Some other
14 people might say he shot me the bird as he used obscene
15 language on two occasions. Then as he was coming around he
16 attempted to come at the Court as if he were going to attack
17 me. And fortunately the officers were able to restrain him.

18 Mr. Craine, I'm going to tell you this, you have a right
19 to be in court as long as you behave yourself. Because when
20 you misbehave like that we'll go forward with your trial
21 while you're in the lock up cell, do you understand me?

22 (The defendant nods.)

23 THE COURT: He indicated he understand me.

24 We're going to adjourn for the evening at this time.
25 Unless there's some other -- you all need to make any

1 motions? I mean, I'm going to talk to the jury in a minute.
2 I'm going to make sure they didn't hear any of this. But...

3 MR. HARRISON: Your Honor, as Mr. Craine's counsel, I
4 would like to say that Mr. Craine has had some behavioral
5 problems in the past and it has resulted in some delay of his
6 trials. And out of an abundance of concern for Mr. Craine's
7 well-being and for his competency, I had the Court, it might
8 have even been an order from, Your Honor, that we had him
9 examined in Columbia for competency prior to this trial. And
10 the report did come back that he was competent. I'm not sure
11 if that's part of a court record or anything.

12 THE COURT: Do you have a copy of that report
13 Mr. Marchant?

14 MR. MARCHANT: I have a certified copy from the examiner
15 out of Columbia, Your Honor. I will be happy to make that a
16 part of the record.

17 THE COURT: All right. We'll make that a Court's Exhibit
18 as well.

19 MR. MARCHANT: Marlo Dominio on July 18th, of 2006..

20 THE COURT: Okay.

21 MR. HARRISON: And just for the record, Your Honor,
22 Mr. Craine and I today have had what I consider to be very
23 intelligent discussions. We discussed case law, impeachment
24 evidence. I mean, some pretty complex matters and he did
25 appear to have a very good understanding with me. And just

1 for the record it was during the course of the trial, during
2 officer Cartee's testimony, that Mr. Craine reached to me and
3 wanted me to stop the proceedings and indicated that he
4 wanted to stop them and enter a plea of guilt. That's why I
5 approached the Court. So that it wasn't something I
6 directed. So I think he understands what the proceedings and
7 all were going on. I -- but at this point, given his current
8 behavior and everything, I don't see how Mr. Craine can go
9 forward in the trial without perhaps some other examination
10 of him or something. His behavior at this point appears to
11 be completely irrational.

12 THE COURT: I don't know if it's irrational or just mean
13 spirited. But we're going to certainly not go forward any
14 further with this case tonight. And---

15 MR. HARRISON: One other matter, Your Honor.

16 THE COURT: Uh-huh.

17 MR. HARRISON: In order to make some -- and I really do
18 feel pity for Mr. Craine, Your Honor. In some way, perhaps
19 there should be -- I would suggest that perhaps we monitor
20 his intake and so forth while we're down there under some
21 scrutiny because I would like the record to state this, Your
22 Honor. He has a record that has been put in here of his use
23 of narcotics. And they indicate the dates and times that he
24 has taken them. And, obviously, unless -- obviously he has
25 been able to secrete them away from everyone. He had a small

1 little handful of them. It looked to me maybe three to four
2 pills as well that did look like a Lortab. An oblong,
3 white---

4 THE COURT: Let me ask you, Mr. Craine, where did you get
5 those tablets?

6 MR. CRAINE: From the dentist?

7 THE COURT: From what?

8 MR. CRAINE: From the dentist.

9 THE COURT: How did you have them on your person?

10 MR. CRAINE: I just keep them. I haven't and been taking
11 them. I one--

12 THE COURT REPORTER: I'm sorry, I can't hear him.

13 THE COURT: Yeah, I'm sorry, I can't hear him.

14 MR. HARRISON: He indicated that he had taken -- the ones
15 that he had been saving he had taken since lunch time today.

16 Is that correct, Mr. Craine?

17 (The defendant nods.)

18 MR. HARRISON: For the record he is nodding his head in
19 the affirmative.

20 THE COURT: Well they haven't given him any since 5:00
21 this morning. So I don't know if they're ones he secreted or
22 if he's got some kind of source of contraband in the
23 detention center.

24 MR. HARRISON: My only suggestion was I would like---

25 THE COURT: Yeah---

1 MR. HARRISON: --giving those circumstance there should
2 be some intense monitoring of his cell overnight.

3 THE COURT: I'm the jail is going to do that. I don't
4 doubt that a bit. All right.

5 I'm not going to allow him to be in the courtroom when I
6 address this jury. And it's based on his behavior at this
7 time. So I'm going to excuse him to the jail. We'll start
8 back at 9:30 in the morning.

9 And I would suggest to jail that they put him in
10 isolation for tonight.

11 MR. MARCHANT: Your Honor, I've been informed by law
12 enforcement that he'll be placed on suicide watch.

13 THE COURT: Okay.

14 MR. MARCHANT: It's the most intensive supervision they
15 have.

16 MR. HARRISON: He has, for the record, Your Honor, almost
17 the whole time I've been interviewing with him over these
18 months he has been in isolation.

19 THE COURT: Okay.

20 (WHEREUPON, Court's Exhibit No. 3 was admitted
21 into evidence.)

22 (WHEREUPON, the jury entered the courtroom at
23 approximately 3:7 p.m.)

24 THE COURT: Madam forelady, ladies and gentlemen, thank
25 you for your patients. We had a couple of matters come up

1 that's going to require us to suspend this trial until
2 tomorrow morning. So unfortunately we're not going to get a
3 chance -- I thought we were going to get all the testimony in
4 today but we're going to have to wait until tomorrow morning.
5 So, we're going to excuse you all at this time. And again, I
6 would instruct you not to discuss this case with anybody.
7 Don't do any research with the internet. These days you can
8 go on line and find out just about anything. But don't do
9 that. Make sure that the only evidence that influences your
10 decision will be what you hear in this courtroom subject to
11 the Constitutional protections that belong to everyone of us.
12 So with that y'all have a pleasant evening and we'll see you
13 back in the morning at 9:30. Thank you, so much.

14 (WHEREUPON, the jury left the courtroom and was
15 excused at approximately 4:00 p.m. to return
16 Wednesday, October 25, 2006 at approximately
17 9:30 a.m.)

18 THE COURT: All right, get everybody back up here at
19 9:30.

20 MR. HARRISON: See you in the morning, Judge.

21 (WHEREUPON, the proceedings were concluded for
22 the day to reconvene Wednesday, October 25,
23 2006 at approximately 9:30 a.m.)
24
25

1 Wednesday, October 25, 2006

2 THE COURT: Mr. Harrison, it's my understanding you want
3 to speak.

4 MR. HARRSION: Yes, I do, Your Honor. May I?

5 THE COURT: Uh-huh.

6 MR. HARRSION: I would like to make a motion for mistrial
7 only behalf of my client, Your Honor. Due to his, both his
8 condition from yesterday afternoon he indicated that he was
9 intoxicated, he had taken the medication after lunch. And in
10 addition to the scene of the tasing and the outburst that
11 occurred, I would respectfully move the Court for a mistrial
12 on those grounds.

13 THE COURT: All right. Well, the jury was in the jury
14 room during all those proceedings. They were isolated from
15 the courtroom. So there has been no taint with respect to
16 the jury. And as I was saying yesterday before his second
17 outburst, he he had testified the day before, he appeared
18 lucid, he was clearly conferring with his counsel throughout
19 the course of the proceedings. I questioned him about the
20 juror who eventually was elected foreperson. And because of
21 his -- because of Mr. Harrison's prior representation of an
22 adverse party in her proceedings, her domestic proceeding.
23 And he was clear and lucid when I spoke with him. He
24 appeared clear and lucid when he pulled out his contraband.
25 And I believe that probably is contraband and might subject

1 him to more criminal charges. And he was lucid when he
2 engaged in that contemptuous behavior. So I'm going to deny
3 your motion for a mistrial.

4 MR. HARRISON: Thank you, Your Honor.

5 THE COURT: Okay. And I have another matter that has
6 been brought to my attention by Officer Gillespie.

7 Right there, Officer Gillespie, would you raise your
8 right hand for me.

9 Mike Gillespie, after being duly sworn,
10 testified as follows:

11 EXAMINATION

12 BY THE COURT:

13 Q All right. Officer, we had a conversation this morning,
14 is that correct?

15 A Yes, sir, we did.

16 Q What were your duties this morning?

17 A I transported Mr. Craine up to the courthouse, put him
18 into the holding cell waiting on his attorney. Mr. Harrison
19 arrived and we went back to the holding cell and they had a
20 conversation just inside of the holding cell and I was
21 slightly outside the holding cell to the left of the door.

22 Q Was the door opened?

23 A Yes, sir, it was.

24 Q Go ahead.

25 A I over heard a conversation from Mr. Craine to his

1 attorney that would lead me to believe that he plans to act
2 out again today in an effort to have a mistrial.

3 MR. CRAINE: No, sir, I'm not.

4 BY THE COURT:

5 Q Do you remember any specific words that were spoken?

6 A He asked whether or not his conduct yesterday could
7 constitute quote, His mistrial. He asked whether or not he
8 could take to the stand and inform the jury of his conduct
9 yesterday. I believe Mr. Harrison told him that he could
10 tell them pretty much whatever he wanted to.

11 And he said, I want a mistrial.

12 Q All right. But it was clear from your hearing of that
13 conversation that Mr. Craine intended to act out to enhance
14 his chances to get a mistrial; is that correct?

15 A I'm firmly convinced of that, yes, sir.

16 THE COURT: All right.

17 Mr. Craine, raise your right hand.

18 Carl Craine, after being duly sworn, testified
19 as follows:

20 THE COURT: All right, put your hand down. What's your
21 version of this? Well, you know what, I'm not going to ask
22 you anything. But I want to tell you this. That if you
23 misbehave again we're going to hit you with the taser and
24 we'll take you out and you will not be allowed to participate
25 in the remainder of your trial. We'll go forwards with your

1 trial. And that's not the first time that's happened in
2 South Carolina. You're not plowing new ground. In fact, in
3 this courtroom, I believe, some other defendant acted out and
4 he was placed at counsel table, in shackles and gagged so
5 that he couldn't carry on. I see you grin at that and you
6 laugh but I want you to know that that may be a possibility
7 for you.

8 Now, we are -- we've got I understand the trial will be
9 winding down, the State's case will be winding down briefly
10 this morning. Got cross-examination of the officer who was
11 on the stand and I understand one other witness.

12 And you have an absolute Constitutional right to testify
13 unless you waive it by your misbehavior. Which you can do.
14 And you also have a right not to testify. And that's your
15 choice. Have you had an opportunity to talk to your attorney
16 about that?

17 MR. CRAINE: Yeah.

18 THE COURT: You need more time to talk to him about it?

19 MR. CRAINE: Yeah.

20 THE COURT: Well we'll give you a little more time after
21 the close of the State's case. I want to tell you if you
22 decide the testify, I tell you, they're benefits to both.
23 And you're going to have to talk strategy decision with your
24 attorney as to whether or not it benefits you in this case.
25 But if you, I just want you to know that you have those

1 rights and it's your decision and only you can waive it.
2 Only you can give up your right to testify. But you can do
3 it in a couple of ways. One of them is by you saying I don't
4 want to testify and the other is by you misbehaving anymore,
5 at all during this trial. Do you understand that?

6 MR. CRAINE: Yes, sir.

7 THE COURT: All right. At some point we're going to need
8 to talk about his prior convictions. You want to do that now
9 or you want to do it?

10 MR. HARRISON: Since the Court -- since there's been some
11 other advisement of the Court, perhaps this would be a good
12 time to go ahead and discuss those.

13 THE COURT: What do you intend to impeach?

14 MR. MARCHANT: May it please the Court. 2003 he was
15 convicted of fraudulent check charges. I believe under his
16 prior record, pursuant to 609 those are allowable regardless
17 of the 10 year limitation---

18 THE COURT: Well they were '03 any way..

19 MR. MARCHANT: Yes, Your Honor. Additionally, in 1993 he
20 was convicted of those prior burglaries, grand larcenies and
21 petit larceny. It's the State's position that those should
22 be allowed in as well. I probation, parole department here
23 that I believe in 2001 he was released from confinement,
24 either be at the end of his probation or parole or release
25 from prison from those charges stemming 1993. I understand

1 His Honor know would have to do a balancing test realting to
2 those. But pursuant to Jones v. Cunningham which is 371 U.S.
3 236, Supreme Court case says that parole is in custody. It's
4 the State's position that he was still in custody and that
5 because he was still in custody that those charges fall
6 within the 10 year range, be it 2006 today. If his release
7 was in 2001, Your Honor. And that those would not be
8 prejudicial to him.

9 THE COURT: Well they're going to be prejudicial, no
10 question about it. But the probative value may very well out
11 weigh the prejudice. All right, anything else?

12 MR. MARCHANT: That the State's position on those
13 charges, Your Honor.

14 THE COURT: How many burglaries you have?

15 MR. MARCHANT: In 1993 there was burglary, second times
16 6. Burglary, third times two. Grand larceny times seven and
17 a petty larceny. And eight fraudulent checks in 2003.

18 THE COURT: Mr. Harrison.

19 MR. HARRISON: Well, Your Honor, I will agree in research
20 that it does appear to be the confinement is not merely
21 confinement within a jail. That does conform with the
22 research that I've done. However, I would point out that
23 it's not strictly just the 10 year time frame here. There's
24 also a concern -- these nonetheless are remote convictions,
25 Your Honor. The problem with them is that any probative

1 value that they have toward this defendant's credibility,
2 okay. And we don't even know if he's going to take the
3 witness stand or not. But any probative value that they
4 would have as to that is certainly far out weighed by the
5 prejudicial effect to this. I think anyone would have to
6 agree that presenting those, in a sense, is almost relieving
7 the State of the burden of proof in his case. Not that---

8 THE COURT: Well, you know, I think the South Carolina
9 Supreme Court would disagree with you but go ahead.

10 MR. HARRISON: I understand. But my opinion would be
11 that there prejudicial effect would far out ways and
12 probative value that they would have toward this case, Your
13 Honor. As the Court is -- in cases, for example, that the
14 Court had cited to me in the weighing it, you will note that
15 -- that the Court says that when it's a case where -- there's
16 almost a presumption against admissibility of cases, Your
17 Honor.

18 THE COURT: Oh, there is. There is.

19 MR. HARRISON: Where they are so similar as to in a
20 sense, relieve the State of the burden here. So I would just
21 that -- since evidence of a similar offense, and I would just
22 be citing from State vs. Coll, Your Honor. The---

23 THE COURT: Spelled, C-O-L-L.

24 MR. HARRISON: 5 -- C-O-L-L. 525 S.E.2d 246. In that
25 they say that since evidence of any similar offense should be

1 admitted only rarely. A similar conviction or a
2 presumptively barred from admission by 609 should be admitted
3 even more rarely. So I think what they're acknowledging is
4 when you have a sentence that is remote in time like that and
5 so closely aligned to the current event or to the current
6 charge, that I think it's creates an even greater burden on
7 the State as a presumption against such admission. So that
8 would be my argument in terms of the prior burglaries and
9 grand larcenies.

10 THE COURT: Well what I'm going to do is I'm going to
11 limit, I'm going to allow you to impeach him with the fact
12 that he has prior felony convictions, okay. So don't mention
13 that they're burglary. Now if he opens the door, if he takes
14 the stand and he opens the door about those, that's a whole
15 different matter.

16 MR. MARCHANT: Yes, Your Honor.

17 MR. HARRISON: Okay. Secondly, Your Honor, in terms -- I
18 didn't know if you were -- did you want me to address to bad
19 checks?

20 THE COURT: Well I'm going to allow him to impeach with
21 that. I mean, 609(a)2. How do you get around (a)2? It's
22 mandatory.

23 MR. HARRISON: Well I know but it says dishonesty is in
24 there.

25 THE COURT: Okay.

1 MR. HARRISON: In a factual analysis of it, he entered a
2 plea to those I understand. But this was an account that he
3 had that he thought he had the money in there and they were
4 returned for insufficient funds. They weren't forgery, they
5 weren't on closed accounts.

6 THE COURT: Well you can bring that out on your
7 examination if you want to. If he decides to testify. He's
8 got the conviction.

9 MR. HARRISON: I understand.

10 THE COURT: If he wants to argue the circumstances of it
11 and make a big issue out of it in front of the jury that's
12 his prerogative.

13 MR. HARRISON: Again, I would be candid with the Court, I
14 did find some dictums of the fact that they had referred to
15 just bad checks in some of the impeachment evidence. Without
16 a discussion of the underlying nature of how they became bad
17 checks. I want to be candid with the Court about that.
18 Thank you.

19 THE COURT: All right, Mr. Marchant.

20 MR. MARCHANT: I just have one thing. Clarification. I
21 didn't know if we'd ever come to a determination on State's
22 Exhibit 3 and 4 about the indictments and the prior and how
23 or if I was going to be able to address the jury with respect
24 to those.

25 THE COURT: Yeah. Absolutely.

1 MR. MARCHANT: They're in evidence now?

2 MR. MARCHANT: Well over his objection they are -- they
3 are in evidence.

4 MR. MARCHANT: Okay.

5 (WHEREUPON, State's Exhibit No.'s 3 and 4 were
6 admitted into evidence.)

7 MR. MARCHANT: I also have a driving record, State's
8 Exhibit No. 6, that's certified that I'd like to -- for the
9 Court to take judicial notice of and allow into evidence as
10 well.

11 THE COURT: A driving record?

12 MR. MARCHANT: It's a driving record but specifically the
13 driver's license information where he has gone to the DMV and
14 registered his address and his DMV number his driver's
15 license number.

16 THE COURT: Which correlate to the burglary indictment
17 convictions?

18 MR. MARCHANT: No, Your Honor.

19 THE COURT: Why are you doing this?

20 MR. MARCHANT: It correlates to the pawn shop contract
21 loan ticket.

22 THE COURT: Mr. Harrison.

23 MR. HARRSION: Without objection. After conferring with
24 my client it is his certified driving record, Your Honor.

25 (WHEREUPON, State's Exhibit No. 6 was admitted

1 into evidence)

2 MR. MARCHANT: Thank you, Your Honor.

3 THE COURT: All right. And I would be relying on, with
4 respect to restraining Mr. Craine during the trial, on State
5 vs. Tucker 464 S.E.2d 105. It's within the discretion of the
6 Court whether or not the necessity of restraining somebody
7 out weighs the prejudice.

8 MR. HARRSION: Perhaps, Your Honor, I was just a little
9 slow with my ink pen, can I get that cite again? I got State
10 vs. Tucker.

11 THE COURT: 464 S.E.2d 105.

12 MR. HARRISON: Thank you, Your Honor.

13 THE COURT: Okay. All right, anything else before we get
14 the jury in here?

15 MR. MARCHANT: Nothing further from the State, Your
16 Honor.

17 MR. HARRISON: Nothing further, Your Honor.

18 THE COURT: All right. I want to caution you again, Mr.
19 Craine --

20 Whose got the button?

21 You felt it yesterday, did you not?

22 Before we go any further, what has happened with respect
23 to his ingestion of narcotics? Anybody know?

24 What did you take, Mr. Craine?

25 MR. CRAINE: Lortab.

1 THE COURT: When?

2 MR. CRAINE: All day yesterday.

3 THE COURT: When was the last time you had anything?
4 When you were in court?

5 MR. CRAINE: No.

6 THE COURT: Pardon me?

7 MR. CRAINE: Yeah.

8 THE COURT: All right. You going to raise an issue about
9 your level of intoxication at this time or not?

10 MR. CRAINE: No.

11 THE COURT: He indicates no, he appears to be lucid and
12 competent to me.

13 MR. CRAINE: I want to know for the record, later on
14 purposes, in case I get hung today, yesterday during all the
15 testimony, I was so high I didn't hear an entire word of it.
16 I just want to known for the record. On my transcript.

17 THE COURT: You can put that on there. We certainly had
18 talked to you---

19 MR. CRAINE: And I said I was high.

20 THE COURT: --you appeared to be lucid and competent to
21 me. But if you got intoxicated yesterday you did in
22 violation of the law and you did it to yourself.

23 All right.

24 MR. MARCHANT: State's ready, Your Honor.

25 THE COURT: All right, Officer Cartee, if you would come

1 on around.

2 All right, Mr. Mann, let's bring the jury in.

3 THE BAILIFF: Yes, sir.

4 (WHEREUPON, the jury entered the courtroom at
5 approximately 9:57 a.m.)

6 THE COURT: All right, good morning ladies and gentlemen.
7 I hope y'all had a pleasant evening. Turned your heat up,
8 got pretty chilly last night again. Glad to have you back,
9 appreciate your patients in waiting for us. And if you'll
10 remember, we had finished the State's examination of this
11 witness and now we're going to proceed to the
12 cross-examination by the defense counsel.

13 Mr. Harrison.

14 MR. HARRISON: Just one second, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. HARRISON:

17 Q Mr. Cartee?

18 A Yes, sir.

19 Q Isn't it true that major of the items that were recovered
20 were recovered from the other co-defendants in this matter?

21 A Yes, sir, some of the items were recovered, that is
22 correct.

23 Q Well the majority were?

24 A I don't know about the majority but a good bit of it was.

25 Q Did you recover any items in the possession of

1 Mr. Craine?

2 A No, I did not.

3 Q Do you know whether or not any officers, now or former
4 officers, recovered any items from Mr. Craine's possession?

5 A No, I don't. They did not recover anything from
6 Mr. Craine.

7 MR. HARRISON: That's all I would have.

8 MR. MARCHANT: Nothing further, Your Honor. I ask this
9 witness be excused.

10 THE COURT: All right, any objection?

11 MR. HARRISON: No objections, Your Honor.

12 THE COURT: All right. Thank you, Officer, you're
13 excused and released from subpoena.

14 MR. CARTEE: Thank you, Your Honor.

15 MR. MARCHANT: The State would call Lieutenant Earl Maw.

16 THE CLERK: Place your left hand on the Bible, raise your
17 right hand.

18 Earl Maw, after being duly sworn testified as
19 follows:

20 THE CLERK: Have seat. State your full name for the
21 record.

22 THE WITNESS: Jewel Earl Maw, Jr.

23 DIRECT EXAMINATION

24 BY MR. MARCHANT:

25 Q Lieutenant Maw, where are you employed?

1 A I'm retired.

2 Q Where are you retired from?

3 A Pickens County Sheriff's Office.

4 Q How long were you employed with the sheriff's office?

5 A I was employed there for 22 years.

6 Q In those 22 years what was your duties with the sheriff's
7 office?

8 A I started out in uniform patrol division. In the 18 and
9 a half years or so I was in the criminal investigation
10 division, lieutenant.

11 Q And the with the criminal investigation division, what
12 were your duties?

13 A I had six investigators that I coordinated investigations
14 and assisted them with anything they needed. If they needed
15 anything that they needed in their investigation. Plus I had
16 cases that I did myself and I assigned cases that were
17 opened.

18 Q Were you the supervisor of Detective Cartee back in 2003?

19 A Yes, I was.

20 Q So you were a lieutenant in 2003?

21 A Yeah.

22 Q Were you present during the questioning of the defendant
23 in this case?

24 A At the later part of it I was, yes, sir.

25 Q Okay. Please explain to the jury what you mean by the

1 later part of it?

2 A We was at the law enforcement and Detective Cartee was
3 interviewing Mr. Craine and I was there and in performing
4 other duties so I was kind of in and out of the interview at
5 the time. And he asked me if I would take the statement or
6 witness the statements from Mr. Craine.

7 Q Okay. I'm going to show you what's been marked as
8 State's Exhibit No. 2, do you recognize this document?

9 A Yes, I do.

10 Q How is it that you recognize this document?

11 A It is the one that Mr. Craine gave that I have my
12 signature as witness at the bottom.

13 Q And what does that signature of your's represent?

14 A That I witnessed this statement.

15 Q Did Mr. Craine sign this document?

16 A Yes, he did.

17 Q Did you witness his signature?

18 A Yes, I did.

19 Q Okay. And did you witness Mr. Craine writing this
20 document?

21 A Yes, I did.

22 Q What exactly did Mr. Craine write?

23 A You wish me to read?

24 Q If you would, please, sir.

25 A The entire thing or?

1 Q If you would just read the top portion of it?

2 A Barry Craine---

3 MR. HARRISON: Your Honor, I would have an objection. I
4 don't think it's actually been entered into evidence yet.

5 MR. MARCHANT: The State would move to have Exhibit No. 2
6 into evidence.

7 MR. HARRSION: Subject---

8 THE COURT: Subject to all prior objections.

9 (WHEREUPON, State's Exhibit No.3 was admitted
10 into evidence.)

11 BY MR. MARCHANT:

12 Q Please continue, Lieutenant Maw?

13 A Barry Craine dropped me off at the house in Six Mile. I,
14 Barry Craine -- Brian Craine, went into the house and took
15 jewelry, computer, TV. And then there's a section where he
16 had started some writing and he scratched that part out. And
17 it say, I sold a watch at Blue Ridge Pawn.

18 Q Okay. You're saying he scratched something out?

19 A He had started apparently to write something there and he
20 made a correction there and he put his initial over the top
21 of that correction there.

22 Q You made the corrections?

23 A No, sir, he did.

24 Q You witnessed that?

25 A I witnessed that, yes, sir.

1 Q Okay. Following this statement, did you have any other
2 involvement in this case?

3 A No.

4 Q Did you do any further investigation?

5 A No.

6 Q Did you recover any property from Mr. Craine?

7 A No, I did not.

8 MR. MARCHANT: That's all the questions I have. Please
9 answer any questions Mr. Harrison may have.

10 CROSS-EXAMINATION

11 BY MR. HARRISON:

12 Q Mr. Maw, were you right there with him, I believe, that's
13 your testimony, you were right there with him as he was
14 writing it out; you were right there beside him, right?

15 A In the area right there.

16 Q Right there with him?

17 A Yeah.

18 Q Okay. Were you right there were -- were you sort of
19 helping him as he was writing this out here?

20 A No, sir, that's his statement.

21 Q Okay. Did you correct him when you got to this thing
22 where it's scratched out in mid-sentence there, did you help
23 him with that?

24 A The only thing I would have made sure is that he put his
25 initial over the top to show that he made that correction and

1 no one else.

2 Q Well, didn't you provide him the information about where
3 this burglary had taken place?

4 A No, sir.

5 Q When there's a correction there where the word on the
6 statement where the word, Golden Creek is inserted with the
7 word, Church there. Okay, did you see that on that
8 statement?

9 A I do.

10 Q Did you provide that information to him after he had
11 written that statement?

12 A No, I did not.

13 Q Did he appear to be intoxicated to you?

14 A He didn't appear. He appeared coherent to me, yes, sir.

15 Q He didn't appear jittery?

16 A No more than anyone else I would think that would be
17 under questioning or doing something like this. That's
18 normal for people to be maybe jittery.

19 Q But did you see any signs or weren't there signs that he
20 was suffering from an addiction and withdrawal of that
21 addiction?

22 A I can't recall that, no, sir.

23 Q Do you know whether or not immediately after that y'all
24 recommended that he confer with vice and narcotics agents?

25 A It was not uncommon for us to rely any information or

1 have them talk to someone that had been charged that might be
2 connected into some time of narcotics.

3 Q And would it not be uncommon that you would tell the
4 defendant if they would write a statement out like that it
5 would help them get out on bond or get out of jail?

6 A My procedure would -- if they -- not necessarily
7 procedure but what I might say was that any information or
8 cooperation that they give would be passed on to the
9 prosecuting attorney or Judge and they do with it, that
10 information, whatever they see fit to do.

11 Q Do you think that -- could that have happened in this
12 case?

13 A That could have happened, yes, sir.

14 MR. MARCHANT: That's all I have, Your Honor.

15 MR. MARCHANT: Briefly.

16 REDIRECT EXAMINATION

17 BY MR. MARCHANT:

18 Q Do you recall my making any promises to him?

19 A No, sir, I didn't make any promises.

20 Q The man that signed this paper, do you see him today?

21 A Yes, sir.

22 Q Would you point him out for the Court?

23 A Barry (sic) Craine, wearing a blue pullover shirt.

24 MR. MARCHANT: Please let the record reflect that he
25 identified that defendant. And that's all the questions I

1 have. I'd ask that---

2 A Brian. Brian. I said Barry. Brian, I'm sorry.

3 MR. MARCHANT: That's all the questions I have, Your
4 Honor.

5 THE COURT: Anything else?

6 MR. MARCHANT: Ask that this witness be excused.

7 THE COURT: All right, any objection?

8 MR. HARRISON: May I re-cross?

9 THE COURT: Yeah, go ahead.

10 MR. HARRISON: One other matter if I may, Your Honor.

11 THE COURT: All right.

12 MR. HARRISON: That's all, Your Honor.

13 THE COURT: Okay.

14 MR. HARRISON: No objection to being released.

15 THE COURT: All right. Thank you.

16 MR. MARCHANT: With that, Your Honor, that's the State's
17 case.

18 THE COURT: All right. Ladies and gentlemen, I promised
19 you there would be times I'd have to excuse you from the
20 courtroom when we had to discuss legal matters or something
21 like that. We've done it once or twice already. This is
22 another one of those times. If y'all would be excused to
23 your jury room. Please don't discuss the case. Thank you,
24 so much.

25 (WHEREUPON, the jury left the courtroom at

1 approximately 10:07 a.m.

2 THE COURT: All right, do we have any motions?

3 MR. HARRISON: Yes, Your Honor. I would make a motion
4 for directed verdict.

5 THE COURT: And your grounds?

6 MR. HARRISON: Sufficiency of the evidence, Your Honor.

7 THE COURT: I will deny that motion. Okay.

8 All right, I promised your client that he'd have some
9 time to talk with you about this.

10 MR. MANN: Your Honor, I got knock on the door here.

11 THE COURT: All right. I'm going -- we'll take a 15
12 minute break you all go discuss his testimony. All right.

13 (WHEREUPON, a short break was taken.)

14 THE COURT: Let's get Mr. Craine back in here. I
15 emphasize, again, that you need to not misbehave. All right,
16 here we go.

17 MR. HARRISON: Your Honor, he has indicated to me that he
18 does not want to testify until he -- he's now indicated that
19 he wants his brother, Barry Craine, who was a co-defendant
20 who also pled guilty and give a statement in this matter,
21 he's now decided that he wanted him called as a witness.

22 THE COURT: Is this the first you've heard of that?

23 MR. HARRISON: I heard of that this afternoon. We had
24 some discussion about---

25 THE COURT: Well wait a minute.

1 MR. HARRISON: Not this afternoon, this morning.

2 THE COURT: That's the first you heard of it?

3 MR. HARRISON: Well it's not the first I heard of Mr.---

4 THE COURT: Of him wanting his brother as a witness.

5 MR. HARRISON: That is correct, Your Honor. We
6 specifically, if I may, Your Honor. We specifically
7 discussed the co-defendants and calling them as witnesses,
8 that sort of thing. We discussed that prior to this morning.
9 And the decision was made not call.

10 THE COURT: Then you made a decision not call them and
11 now he said he wants to call them this morning.

12 MR. HARRISON: Yes, Your Honor.

13 THE COURT: Where is this guy?

14 MR. HARRISON: His brother is under house arrest here in
15 Pickens County, isn't he?

16 THE COURT: And the first you heard about it is right
17 now?

18 MR. HARRISON: Well I went back just now to talk to him
19 about whether or not to testify, that's when told me he
20 wanted his brother called as witness before he could testify,
21 Your Honor.

22 THE COURT: Well, he's put you behind the 8 ball again.
23 And we're not stopping this trial to bring in some witness
24 that he decides at the last minute he wants to testify.

25 MR. HARRISON: Well for the record, Your Honor, I do want

1 to put on the record, we did have a discussion about it but I
2 understood that his brother gave a confession to this crime
3 and also had entered a plea of guilt and is currently serving
4 under house arrest for this very crime. So just from a---

5 THE COURT: I understand, from your point of view you
6 don't want to call him, is that what you're telling me?

7 MR. HARRISON: Well we had that discussion, Your Honor,
8 that you put up someone who entered a plea of guilt to the
9 crime and implicated you in the crime, that's not an
10 effective witness for an individual.

11 THE COURT: All right. Why do you want to call him,
12 Mr. Craine?

13 MR. CRAINE: Everything we've heard so far about me has
14 been Tonya Tant, Barry Craine, Brian Craine. Y'all brought
15 Tonya Tant in but y'all didn't bring Barry Craine in. And
16 when you brought him in he's going to give a whole different
17 story. I know he will.

18 THE COURT: Why did you wait until this morning to tell
19 your lawyer that you wanted to call him as a witness?

20 MR. CRAINE: We've discussed it before. We discussed it
21 when he came to the jail two weeks ago about who was coming
22 down here. He said that Tonya Tant wasn't going to be down
23 here at all. Period. And, of course, she showed up
24 yesterday.

25 THE COURT: Did he ever tell you to subpoena him as a

1 witness, Mr. Harrison?

2 MR. HARRISON: No, sir, Your Honor. We did have a
3 discussion about the State, whether or not the State was
4 calling them and we weren't sure the State would even bring
5 them. And our position, what he's talking about was, my
6 position in discussing the strategy of the have case with him
7 was that it would be a God send as it were to us if the State
8 didn't call those.

9 THE COURT: What's he going to add to help exonerate you?

10 MR. CRAINE: He's going to say I ain't guilty. That's
11 what he's going to say.

12 THE COURT: You've waited too long.

13 MR. CRAINE: This is my life, Your Honor. I should have
14 a right to a witness on my behalf. Y'all haven't---

15 THE COURT: You had a right to a witness.

16 MR. CRAINE: This is the biggest -- court I've ever seen,
17 man. I'm not getting anything done for me. Nothing. Y'all
18 get -- the State gets all these people to come up here and
19 talk but I can't get nobody. I asked for somebody. I
20 asked---

21 THE COURT: Stand up when you address the Court.

22 MR. CRAINE: I ain't got nothing to say. That's what it
23 is, it's kangaroo. It's kangaroo. This is my life. You
24 hold my life in your hands. You can give me a life sentence
25 if I'm found guilty today. But yet, I can't get a man up

1 here -- my only person I can get up here to say I didn't do
2 something. And y'all won't let me bring him up here. This
3 man told me Tonya Tant, she wasn't even nowhere around, that
4 couldn't find her, that she wasn't even going to be in here.

5 Yes, you did. You told me that two weeks go. Yes, you
6 did.

7 THE COURT: Well---

8 MR. HARRISON: Your Honor, you know, I don't want to
9 argue with my own client.

10 THE COURT: He's home or incarceration?

11 PROBATION AGENT: He's on home incarceration and he's on
12 probation.

13 THE COURT: Where is he?

14 PROBATION AGENT: He lives here in Pickens.

15 THE COURT: Does he work, do you know?

16 PROBATION AGENT: He does not. When he came to see me
17 two weeks ago he was not working.

18 MR. HARRISON: Your Honor, I'll be happy---

19 THE COURT: How long would it take to get him up here?
20 Maybe 30 minutes. I'll get Eagle Eye to call him too. 30
21 minutes at the most.

22 THE COURT: It ain't going to take that long because the
23 sheriff is going to go get him.

24 PROBATION AGENT: You want me to call him?

25 THE COURT: Yeah, go tell him his brother wants him to

1 testify.

2 MR. HARRISON: Thank you, Your Honor.

3 THE COURT: Do you have anything else you want to talk
4 about? Do you have any other witnesses you want to present?

5 MR. CRAINE: No, sir.

6 THE COURT: All right. Let me ask you this, Mr.
7 Harrison. We're trying to accommodate this man, is he going
8 to testify?

9 MR. HARRISON: I don't know that either, Your Honor.

10 THE COURT: Are you going to testify?

11 MR. CRAINE: After him, yes, sir.

12 THE COURT: I'm not going to give you that option. Are
13 you going to testify? We're not going to have this jury sit
14 on its hands because you waited to the last minute to ask for
15 a witness. Are you going the testify? Stand to address the
16 court.

17 MR. CRAINE: Yeah, I'm going to testify.

18 THE COURT: All right. And we're going to go ahead and
19 get his testimony over with. All right. I want whoever's
20 got the button right up here. Well take your badge off.
21 Okay.

22 Mr. Mann, I hate to do it to you but I want...

23 You got the button?

24 THE DEPUTY: Mr. Gillespie's got it but it's got range.

25 THE COURT: You got range? Okay. All right. All right.

1 We're ready to go?

2 MR. MARCHANT: State's ready, Your Honor.

3 MR. HARRISON: We're ready, Your Honor.

4 THE COURT: Okay. Well one more thing. I'm going to
5 admonish you one last time. The least bit of misbehavior up
6 here on this witness stand and you're going to get tazed. Do
7 you understand?

8 MR. CRAINE: Yeah, I got tazed three times yesterday.

9 THE COURT: Yes, sir. Do you understand that it can
10 happen again today? Do you understand?

11 MR. CRAINE: Yeah.

12 THE COURT: All right.

13 (WHEREUPON, the jury enters the courtroom at
14 approximately 10:45 a.m.

15 THE COURT: Ladies and gentlemen, we're ready to proceed
16 with the trial.

17 Mr. Harrison

18 MR. HARRISON: May it please the Court, Your Honor, I
19 would call Mr. Craine.

20 Mr. Craine, if you'll come around.

21 THE CLERK: Place your left hand on the Bible, raise your
22 right hand.

23 Carl Craine, after being duly sworn, testified
24 as follows:

25 THE CLERK: Have a seat, please. State your full name

1 for the record.

2 THE WITNESS: Carl Brian Eugene Craine.

3 DIRECT EXAMINATION

4 BY MR. HARRISON:

5 Q Mr. Craine, how old are you?

6 A 32.

7 Q Mr. Craine, can you remember -- do you know what we've
8 been here today talking about, that is the burglary that was
9 alleged to have taken place back in 2003?

10 A Yes, sir.

11 Q Okay. Now, Mr. Craine, I want you to look at this jury,
12 I want you to tell this jury, did you commit that burglary?

13 A No, sir.

14 Q Okay. Now, absolutely certain now, Mr. Craine, you did
15 not commit them. Tell the jury, you did not commit that
16 burglary?

17 A Do what?

18 Q Did you commit the burglary, Mr. Craine?

19 A I tried yesterday to plead guilty, y'all wouldn't let me.

20 MR. MARCHANT: Your Honor, I object. I'd ask that the
21 witness answer the question before him.

22 THE COURT: Yeah, I'm going to instruct the witness to
23 answer the question that was asked.

24 BY MR. HARRISON:

25 Q Mr. Craine, you know, the statement that was offered

1 earlier by---

2 A I'm guilty, man. I tried to stop you yesterday and y'all
3 wouldn't let me.

4 MR. MARCHANT: Your Honor, I think we're moving into an
5 area that we previously discussed.

6 BY MR. HARRISON:

7 Q Mr. Craine, now you gave a statement here back on -- in
8 -- on back in July. I believe it was actually given on July
9 the 14th, okay. This is what is known as State's Exhibit 2.

10 May I approach the witness, Your Honor?

11 THE COURT: Sure.

12 BY MR. HARRISON:

13 Q Mr. Craine, did they make promises to you to get you make
14 that statement, Mr. Craine?

15 A Yes, sir they did. But---

16 Q What promises were they making to you?

17 A They told me if I wrote this right here and said I was
18 guilty they would give me a bond and they'd let me go.

19 Q And they didn't do that, did they; Mr. Craine?

20 A No, they didn't.

21 Q Mr. Craine, did they tell you what to write in that
22 statement?

23 A Yes.

24 Q When those corrections were made, that was because they
25 told you what to put in there, is that correct?

1 A Yes, sir. I took -- we took the stuff and sold it. They
2 took me to take the we out and put I on there.

3 Q So this scratch through part was that -- it would have
4 read, we took is what was scratched out, right?

5 A Yeah.

6 Q So they told you to scratch that out and just write?

7 A I.

8 Q I. Started with I, is that correct?

9 A Yes, sir.

10 Q Okay. Is this statement true?

11 A Yes, sir.

12 Q It is true?

13 A All except for me saying I did it and all that is true
14 and saying I done all that, that's true. But the only thing
15 that wun't (sic) true is at the bottom part where they told
16 to put that I took Kevin Hawkins and Barry Craine to go steal
17 a four-wheeler Jeep. I had no clue. I didn't take them no
18 where to steal anything. They just told me to put that on
19 there. I didn't do any of that.

20 Q Now ---

21 A I did everything they asked me to do because I thought
22 they was going to release me that evening on bond.

23 Q They didn't and---

24 A No, they sent me down the road for eight months on bad
25 checks.

1 Q Okay. So now you understand that in a minute that -- we
2 had a discussion about this, didn't we, Mr. Craine, that when
3 you take the stand and you make a testimony, you understand
4 that the Solicitor's going to be able to get up here and talk
5 about anything, sort of, that you've done in your past; you
6 do understand that, didn't you, Mr. Craine?

7 A Yeah.

8 Q So we want to tell the jury here, now you've had a
9 checkered past in the past, haven't you; Mr. Craine?

10 A (The witness nods.)

11 Q And in those cases in the past, you've always entered a
12 plea of guilt to those things; haven't you, Mr. Craine?

13 A Yes.

14 Q You've been very honest with the court about your
15 involvement in those. You had some prior felonies; is that
16 correct?

17 A Yes.

18 Q And you recently in 2003 had a string of some bad checks,
19 is that correct?

20 A (The witness nods.)

21 Q Okay. You're not proud of those things, are you,
22 Mr. Craine?

23 A No.

24 Q Okay. But now, Mr. Craine, haven't you told me --

25 THE COURT: Go ahead.

1 BY MR. HARRISON:

2 Q Haven't you told me, Mr. Craine, that you were not guilty
3 of this crime?

4 A Yeah.

5 Q I mean, isn't that what you wanted me to do to defend you
6 and that you weren't guilty?

7 A (The defendant nods.)

8 Q Do you understand that's why the Court appointed me as
9 your lawyer to represent you, to try to help you, prove your
10 innocence?

11 A Yes, sir.

12 Q But you're -- those earrings, Mr. Craine, that were --
13 that were pawned, didn't you tell me, Mr. Craine, that those
14 were not the earrings that were taken that --

15 A Yes, sir. I pawned some earrings, yes, sir. They was
16 probably was hot and probably was stolen. But those earrings
17 didn't come from the house.

18 Q So those earrings that were recovered from Pace's
19 Pawnshop, it is your testimony that those were not the
20 earrings that were taken from that burglary?

21 A Yes, sir.

22 Q Okay. And did you -- did you -- were --

23 MR. HARRISON: I believe, that's all I have, Your Honor.
24 Thank you, Mr. Craine.

25 THE COURT: All right, cross-examination.

1 MR. MARCHANT: State has no questions for the witness,
2 Your Honor.

3 THE COURT: All right, you can stand down.

4 THE COURT: Okay. Ladies and gentlemen, I have another
5 matter that I need to bring up and discuss with the
6 attorneys. So I'm going to ask y'all to step back to your
7 jury room. As you get deeper and farther into a case, it's
8 always got to be more tempting to talk about what you've seen
9 and heard in the courtroom. Don't do it. You swore an oath
10 not to do it, wait until the end of the case. Okay. We'll
11 be back with you very shortly. Thank you, very much.

12 (WHEREUPON, the jury left the courtroom at
13 approximately 10:53 a.m.)

14 THE COURT: All right, thank you, Mr. Mann.

15 All right, in light of what's just transpired, Mr.
16 Craine, do you still want to call your brother as a witness?

17 MR. CRAINE: There was no response.

18 MR. HARRISON: The Judge is speaking to you, sir.

19 MR. CRAINE: I know.

20 THE COURT: Do you want to call your brother as a
21 witness?

22 MR. CRAINE: Yeah.

23 THE COURT: I can't hear you.

24 MR. CRAINE: Yes.

25 THE COURT: All right. Where is -- can you check to see

1 what the status is of that?

2 PROBATION AGENT: Yes, sir.

3 THE COURT: All right.

4 MR. HARRISON: Your Honor, may I have -- step down from a
5 moment?

6 THE COURT: Yeah, just be at ease in the courtroom.

7 MR. HARRISON: I'm not leaving, I'm just --

8 THE COURT: No, sir, we won't let you leave.

9 PROBATION AGENT: He did not answer his phone, we have a
10 deputy going his -- he's right here in town. Like two
11 minutes from him.

12 THE COURT: Okay. Great.

13 (WHEREUPON, a short break was taken.)

14 THE COURT: Let's get Mr. Craine out here.

15 All right, Mr. Harrison, you ready?

16 MR. HARRISON: I'm ready, Your Honor.

17 THE COURT: Okay. All right. Mr. Craine, are you ready,
18 this is what you want to do?

19 MR. CRAINE: (The defendant nods.)

20 THE COURT: He indicates yes.

21 All right, Mr. Mann.

22 (WHEREUPON, the jury entered the courtroom at
23 approximately 11:17 a.m.).

24 THE COURT: All right, ladies and gentlemen of the jury,
25 thank you for your patients.

1 Mr. Harrison.

2 MR. HARRISON: May it please the Court, Your Honor, I
3 would call Barry Jerome Craine.

4 THE COURT: All right, come on around and be sworn,
5 Mr. Craine.

6 THE CLERK: Place your left hand on Bible, raise your
7 right hand.

8 Barry Craine, after being duly sworn, testified
9 as follows:

10 THE CLERK: Have a seat, please. State your full name
11 for the record.

12 THE WITNESS: Barry Jerome Craine.

13 THE COURT: All right, Mr. Harrison.

14 DIRECT EXAMINATION

15 BY MR. HARRISON:

16 Q Good morning, Mr. Craine. Mr. Craine, what is your
17 relationship to Brian Craine?

18 A That's my brother.

19 Q Okay. Now, do you recall some discussions about a
20 burglary that was alleged to have taken place between June
21 29th of 2003 and June 30th, 2003?

22 A Yes, sir.

23 Q Okay. And did you give a -- did you give a statement to
24 the police about that incident?

25 A Yes, sir.

1 Q Mr. Craine?

2 A Yes, sir.

3 Q Okay. And in your statement, Mr. Craine, you indicated
4 that your brother and -- well let me ask you, who is Tonya?

5 A It was my ex-girlfriend.

6 Q And was she your girlfriend at that time?

7 A Yes, sir.

8 Q Did you give a statement to the police at that time that
9 indicated that your brother and Tonya had committed that
10 burglary, that you'd driven them there?

11 A Yes, sir.

12 Q Okay. Why did you give that statement, Mr. Craine?

13 A Well, for one it was my first time I'd ever been in any
14 kind of trouble. And I scared and I was trying to put it off
15 on somebody else.

16 Q Well, is that true, the statement you gave?

17 A No, sir.

18 Q Okay. Did your brother commit that burglary?

19 A No, sir.

20 Q Now do you know -- have you and he discussed or has he
21 told you why he gave a statement to the police that said that
22 he had done that?

23 A I'm not understanding what you're saying.

24 Q Was he given that statement to try to protect someone?

25 A Me.

1 Q Okay. Because who did that burglary?

2 A Me.

3 Q Okay. So you were the one that committed that burglary
4 on June 29th of 2003?

5 A Yes, sir.

6 Q You and Tonya?

7 A I had a part in it, yes, sir.

8 Q You had a part in it but your brother had no involvement
9 in it whatsoever, is that correct?

10 A No. No.

11 MR. HARRISON: That's all I have, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. MARCHANT:

14 Q You're Barry Jerome Craine?

15 A Yes, sir.

16 Q Date of birth ?

17 A Yes, sir.

18 Q Social of ?

19 A Yes, sir.

20 Q And you pled guilty to a burglary in this incident, is
21 that correct?

22 A Yes, sir.

23 Q And a grand larceny?

24 A Yes, sir.

25 Q Have you ever been convicted of anything else?

1 A Yes, sir.

2 Q What is that?

3 A I had two third degree burglaries, recently a drug
4 charge.

5 Q What kind of drugs we talking about?

6 A Methamphetamine.

7 Q When was that?

8 A Last year.

9 Q Okay. What else?

10 A Possession of stolen goods.

11 Q When was that?

12 A Last year.

13 Q So you've been convicted of larcenies, drugs and
14 receiving stolen goods, is that what you're saying?
15 Possession of stolen goods?

16 A Yes, sir.

17 Q Excuse me. And ou did give a statement to Detective Jody
18 Cartee about this incident?

19 A Yes, sir.

20 Q And you're telling the Court, you're telling this jury,
21 here today, that you were lying at that point in time?

22 A Yes, sir.

23 Q That Brian was never with you and Tonya when you went
24 into that house?

25 A No, sir.

1 Q Okay. But you have been convicted of larcenies, stealing
2 from people, is that correct?

3 A Yes, sir.

4 Q Okay.

5 MR. MARCHANT: No further questions, Your Honor.

6 THE COURT: All right, anything on redirect?

7 MR. HARRISON: No redirect, Your Honor.

8 THE COURT: All right, you can stand down. Thank you.
9 Anything else?

10 MR. HARRISON: Nothing further from defense, Your Honor.

11 THE COURT: All right.

12 MR. MARCHANT: No reply, Your Honor.

13 THE COURT: All right. Ladies and gentlemen, you're
14 getting your exercise today. We have completed, if you
15 remember the road map I gave you, I divided the trial into
16 five parts. We have completed the first two portions. The
17 first portion was the opening statements, now the second
18 portion was the presentation of the testimony and evidence is
19 complete. At this time, I hate to make y'all get up again
20 but I have got to discuss legal matters with the attorneys.
21 So if y'all will go back to your jury room, again, please
22 don't discuss it, we'll get back with you and it won't be as
23 long this time. All right. Thank you.

24 (WHEREUPON, the jury left the courtroom at
25 approximately 11:23 a.m.)

1 THE COURT: All right, any motions?

2 MR. HARRISON: I would renew my motion for a directed
3 verdict based upon the insufficiency of the evidence and also
4 upon the testimony of third parties admission of guilt.

5 THE COURT: Well, I'm going to deny those motions. Based
6 on your client's confession of guilt. And all the other
7 evidence that's been introduced.

8 All right?

9 MR. MARCHANT: Nothing from the State, Your Honor.

10 THE COURT: Y'all have any requests to charge?

11 MR. HARRISON: I have no additional, you know, other than
12 the burden of proof, Your Honor. The elements of the crime
13 which I assume will be in the Court's standard charges.

14 MR. MARCHANT: The only question I have is with regard to
15 the burglary charge. You are going to charge the two priors?
16 Nighttime and or the two priors?

17 THE COURT: Yeah.

18 MR. MARCHANT: Thank you, Your Honor.

19 MR. HARRISON: And in reference to that I would renew --
20 I understand it's been overruled but renew my objection to
21 that is prejudicial to the defendant.

22 THE COURT: Okay. All right, y'all ready to go?

23 MR. MARCHANT: State's ready, Your Honor.

24 MR. HARRISON: Defense is ready, Your Honor.

25 THE COURT: Okay.

1 Anything else you want to tell me, Mr. Craine?

2 MR. CRAINE: Nothing.

3 THE COURT: All right.

4 They need a minute?

5 MR. MANN: They need a minute.

6 THE COURT: That's fine.

7 Before we do that, let me show you y'all this proposed
8 verdict form. Any objection to the verdict form?

9 MR. MARCHANT: None from the State, Your Honor.

10 MR. HARRISON: None from the Defense, Your Honor.

11 THE COURT: Yeah, we're doing with him, let's get him out
12 of here.

13 (WHEREUPON, the jury entered the courtroom at
14 approximately 11:25 a.m.)

15 THE COURT: All right, madam forelady, ladies and
16 gentlemen of the jury, at this time we're going to begin the
17 closing arguments of the attorneys. Y'all have paid close
18 attention throughout the course of the trial and I ask that
19 you continue to do that. If you remember that was one of the
20 things I asked you to do. The other thing is to keep an open
21 mind. You do that until you are freed up to do your
22 deliberations after I give you the charge on the law.

23 All right, Mr. Harrison.

24 MR. HARRISON: Ready, Your Honor.

25 THE COURT: Okay, we are ready.

1 MR. HARRISON: May it please the Court, Your Honor.

2 Been doing this a long time. Been a practicing lawyer
3 for approaching 30 years. For several years I was a
4 prosecutor. Right here in this courtroom. I've always tried
5 to be a guy that stood for what was the truth. I've also
6 tried to help those who need our help. This is a very
7 confused young man. He's had a difficult road. Life's given
8 him a lot of dead ends. He's presumed innocent and the
9 burden rests with the State to prove that innocence. I mean,
10 that guilt, his guilt beyond a reasonable doubt. I think
11 he's tried to be honest with us. But I think he's confused.
12 He's -- it's sad. It's just very sad. But you heard his
13 brother and his brother came in here, told you -- his brother
14 told you who did it. He and his girlfriend. They're the
15 one's who did it. His brother came in here and said he did
16 and did it to some risk to himself. The girlfriend has an
17 axe to grind.

18 I want to commend his brother for having the courage to
19 come in here and tell the truth. What they say to be the
20 truth. That the brother did it and that Mr. Craine didn't do
21 it. We try to do what we can to help him. This is a
22 extremely serious matter for Mr. Craine. It carries an
23 extremely heavy burden. An extremely heavy penalty. He's
24 confused. He's had, as I said, a very rough life, a very
25 difficult circumstances. You heard the testimony about --

1 that -- about, you know, they were drug addicts. You know.
2 If any of us learn anything from participating in a thing
3 like this is we all ought to learn what a scourge these drugs
4 are on our society. And what they do to people. And what
5 they can turn people into. You know, his brother did just
6 flat out lie. You know? His initial statement was, to try
7 to protect himself was, that he was even willing to turn on
8 his girlfriend. My girlfriend and my own brother are the
9 ones who did this burglary. But he came here and at some
10 risk, try to do the right thing by his brother. And admit
11 that he and his girlfriend are the ones who did that and not
12 his brother. That does fit with some of the facts.

13 You probably heard me talking to the officers, virtually
14 all of the items that were recovered, were recovered from the
15 other co-defendants. His brother and primarily from the
16 girl. From that Tonya. That's where all the stolen stuff
17 was. Only one item can even be conceivably tied to
18 Mr. Craine. In this whole case. And that was a pair of
19 earrings. Well, you heard Mr. Craine tell you that sure he
20 pawned those but those weren't the earrings from that
21 burglary. So if you believe that, if you believe
22 Mr. Craine's testimony, the only thing that they have here
23 that ties him to this crime is the testimony of a scorned
24 woman who's got some axe to grind in this situation. Who was
25 caught with the vast majority of all the stuff stolen. And a

1 confession, as it were, a statement that he was given that he
2 made after promises. Which were false promises. Made to a
3 man who was a drug addicted who wanted out of a prison. He
4 wanted out. That's what happened.

5 I just ask you to review the evidence that was presented
6 to you on the witness stand here, give Mr. Craine the benefit
7 of the doubt. Give Mr. Craine that presumption of innocence
8 that he is entitled to. And again, I would only ask that you
9 give us a verdict and the verdict literally is just speak to
10 truth. That's all that we can ask. I know you've been very
11 attentive, it's been a difficult trial for you. I know
12 you've been up and down and back and forth and I would hope
13 that you wouldn't hold any of those kind of things that take
14 place, you know, against any of the lawyers here or the Court
15 or my client. These are kind of normal things, these happen
16 in the course of a trial that we have to discuss technical
17 matters. And that's why the jury has to leave. Okay.
18 That's all those are, just some technical matters that the
19 lawyers have to raise. You gave us your undivided attention.
20 I always look at the jury. I always pay attention to what
21 y'all are doing. An I'm pleased to say you all paid
22 attention here. You know, you all I think paid close
23 attention to the witness stand. You know, sometimes we're in
24 here in a particularly long trial and I look over here and I
25 catch some napping. I didn't catch any nappers in this

1 crowd. Y'all did pay attention. I think you served your
2 community well and we want to thank you for that. Not only
3 myself and this Court but Mr. Craine wants to thank you for
4 your attention to this. And I hope that you can kind the
5 mercy in your heart to return a verdict of not guilty for
6 him. Thank you.

7 MR. MARCHANT: May it please the Court.

8 Mr. Harrison.

9 Good morning, ladies and gentlemen of the jury. As I
10 told you before I'd have the opportunity to speak with you.
11 Again. I'd ask that you take this evidence that's been
12 presented up to you up here on the stand. You need to take
13 the witnesses and the weigh their correct. Now let's talk
14 about Mr. Craine's brother. He told you one time he's
15 already lied to an investigator to protect himself. He told
16 you up on the stand that he's been convicted of receiving
17 stolen goods and larceny, two thieving acts. I'd ask you to
18 weigh the credibility and believability of him.

19 Now, the defendant's been charged with burglary first
20 degree. Which consists of entering the home of a person in
21 the nighttime or having been convicted of two prior
22 burglaries. I submit to you the testimony from Tonya Tant,
23 who has already pled guilty, that they entered that house a
24 second time that morning when it was dark. It was dark when
25 they got there but it was light when they left. A set of

1 earrings was removed from that house. You heard Ms. Davis up
2 here testify that she had a pair of earrings that were
3 removed. Those earrings were located at Pace's Pawn. Those
4 earrings were pawned by this defendant.

5 You have Detective Jody Cartee who sat down with
6 Mr. Craine after he had been arrested and asked him if he
7 wanted to speak. He waived his right to counsel, to an
8 attorney, and agreed to speak with Detective Cartee. He gave
9 a statement that was witnessed and signed by Lieutenant Maw.
10 That statement says Barry Craine dropped me often at the
11 house in Six Mile. I, Brian Craine, went into the house and
12 took jewelry, computer and TV. You heard Mr. Davis talk
13 about the items that were removed from his house that night.
14 Jewelry, items, TV and computer. He talked about the value
15 of those items. And I believe when he add up -- we had up
16 what he just briefly mentioned was taken that night, it was
17 over \$1000. He also told you the insurance company cut him a
18 check for over \$2000. That's grand larceny.

19 Mr. Craine went in to Roger Davis and Liberty Davis'
20 home, within Pickens County, and removed items over \$1000.
21 Not only did he intend to enter that house and commit a
22 crime, he did. Because he stole over \$1000 worth of stuff.
23 And you heard Mr. Craine's testimony himself up here on the
24 stand. I did it, I'm guilty.

25 Ladies and gentlemen, His Honor, is going to charge you

1 in a few minutes that the State has to meet a burden. And
2 that highest burden in our system. It's beyond a reasonable.
3 And that doubt, he's probably going to tell you, is going to
4 be any doubt that would cause a reasonable person hesitation
5 to act. I submit to you, ladies and gentlemen, when you take
6 the evidence and the testimony before you back in that jury
7 room, that you will have no hesitation to act. I would ask
8 you to return a verdict that does speak the truth. And that
9 verdict is guilty. Thank you for your time.

10 THE COURT: All right, ladies and gentlemen of the jury,
11 during this trial you and I have certain duties to perform.
12 As the trial Judge it is my responsibility to preside over
13 the trial in the case and to rule on the admissability of the
14 evidence offered during a trial. It is also my duty to
15 charge you the law applicable to the case. And it is your
16 duty as jurors to accept and apply the law as I now state it
17 to you. As I told you in my opening statement, if you think
18 you have any idea as to what the law is or what the law ought
19 to be and it does not agree with what I tell you the law is,
20 you must forgot that idea because you have sworn an oath to
21 accept the law and apply the law precisely as I state it to
22 you.

23 Now, in every case tried in this court before a jury,
24 you, the jury, are the sole and exclusive of judges of the
25 facts. And I remind you that the trial Judge is not allowed

1 to and cannot have an opinion about the facts in a case. I,
2 again, instruct you that the fact that the defendant was
3 arrested, charged and indicted in this case, is not evidence
4 of guilt. Nor does it create any presumption or inference of
5 guilt. These documents are simply the formal written
6 instruments which contain the charge made against a
7 defendant. And they serve as the formal document by which a
8 case is processed and brought into court. And they're two
9 indictments in this case and they allege two separate
10 offenses. Those offenses are burglary in the first degree
11 and grand larceny. Each indictment charges a separate and
12 distinct offense. And you must decide each indictment
13 separately on the evidence and the law applicable to it
14 uninfluenced by your decision as to any other indictment.
15 And the defendant may be convicted or acquitted on any or all
16 of the offenses charged. You will be asked to write a
17 separate verdict of guilty or not guilty for each indictment.

18 Now, necessarily you must determine the credibility or
19 believability of the witnesses who have testified in this
20 case. And it becomes your duty as jurors to evaluate the
21 evidence and determine which evidence convinces you that it
22 is true. And in determining the believability of the
23 witnesses, you may believe one witness over several or
24 several over one. You may believe a part of the testimony of
25 a witness and reject the remaining part. You may believe the

1 testimony of a witness in its entirety or reject that same
2 testimony in its entirety. You may consider whether the
3 witness has a interest in the result of the trial, whether
4 the witness is prejudice toward either the State or the
5 defendant. The opportunity for the witness to have seen the
6 matters and things about which the witness has testified and
7 the way the witness acts on the witness stand.

8 Now you have heard evidence that the defendant was
9 convicted of a crime other than the one for which he is now
10 on trial. This evidence may be considered by you if you
11 conclude it is true, only in deciding whether the defendant's
12 testimony is believable. And for no other purpose. You must
13 not consider the defendant's prior record as any evidence of
14 his guilt of the charge that we are -- or charges that we are
15 trying today. Now, the defendant has pled not guilty to
16 these indictments. And that plea puts the burden on the
17 State to prove the defendant guilty. A person charged with
18 committing a criminal offense in South Carolina is never
19 required to prove themselves innocent. And I charge you that
20 it is a cardinal and a important rule of the law that the
21 defendant in a criminal trial will always be presumed to be
22 innocent of the crime for which the indictment was issued.
23 Unless and until guilt has been proven by evidence,
24 satisfying you of guilt beyond a reasonable.

25 And I will tell you that the presumption of innocence is

1 not mere legal theory, it is not just a legal phrase. It is
2 a substantial right to which every citizen is entitled unless
3 you, the jury, are satisfied from the evidence of guilt
4 beyond a reasonable doubt. What is reasonable doubt? A
5 reasonable doubt is the kind of doubt which would cause a
6 reasonable person to hesitate to act. A reasonable doubt may
7 arise from the evidence which is in a case or the lack or
8 absence of evidence which is in a case. And you, the jury,
9 must determine whether or not reasonable doubt exists as to
10 the guilt of the defendant. I remind you the State has the
11 burden of proving guilt, each and every element of the crime
12 beyond a reasonable doubt.

13 Now, a statement alleged to have been made by the
14 defendant has been admitted into evidence in this case. And
15 while the Court has determined that the statement is
16 admissible, I instruct you that you make the ultimate
17 decision of whether or not the defendant made the statement.
18 If the defendant did make the statement you must determine
19 whether the statement was made by the defendant voluntarily
20 and of his own freewill. This mean that the statement was
21 not caused by pressure, force, fear, threats coercion or
22 intimidation or by hope or promise of leniency or reward of
23 any kind. And in determining whether the statement was
24 voluntarily you should consider both the characteristics of
25 the defendant and the details of the questioning. Some of

1 the factors that you must consider are the age of the
2 defendant, his education or lack of education, his mental
3 ability or capacity, his IQ or intelligence, his background
4 and environment, the place and length of the detention, the
5 nature of the questioning and the advice or lack of advice
6 given to the defendant of his Constitutional rights,
7 including but not limited to the right to remain silent.
8 That any statement could be used against him in a court of
9 law. The right to have a lawyer present. That if he could
10 not afford an attorney a lawyer would be appointed to
11 represent him without cost. That he could stop making a
12 statement at any time. And you must carefully consider all
13 the surrounding circumstances before you give any weight to
14 the alleged statement. The State has the burden of proof
15 beyond a reasonable that the alleged statement was
16 voluntarily. And if you determine it was, you may give the
17 statement any further consideration that you deem proper.
18 You must decide what weight, if any, should be given to the
19 statement. And if you determine the alleged statement was
20 not a free and voluntary statement of the defendant, you
21 should not consider the statement at all.

22 Now in South Carolina I will tell you that voluntary
23 intoxication is not a defense to a crime. And a person who
24 voluntarily becomes intoxicated is just as responsible for
25 the acts committed while intoxicated as when the person is

1 not intoxicated. Now, if a crime is committed by two or more
2 people who are acting together in committing a crime, the act
3 of one is the act of all. A person who joins with another to
4 accomplish an illegal purpose, is criminally responsible for
5 everything done by the other person which occurs as a natural
6 consequence of the acts done in carrying out the common plan
7 and purpose. For example, two people can be guilty of
8 killing another person when only one of those two people has
9 a gun. There was only one bullet and only one of the two
10 fired the shot that caused the death. So if two or more
11 people are acting together, assisting other in committing an
12 offense, the act of one is the act of all. Or as it is
13 sometimes said the hand of one is the hand of all.

14 Now, the defendant is charged with burglary in the first
15 degree. And the State must prove beyond a reasonable doubt
16 that the defendant entered a dwelling without consent. A
17 dwelling is any building or portion of a building in which a
18 person ordinarily sleeps. A building is a dwelling even if
19 the residence aer temporary absent from the building. In
20 order to prove that the defendant entered the dwelling, the
21 State does not have to show that the defendant's entire body
22 entered the dwelling. The smallest entry is sufficient. It
23 may be any part of the body such as a hand or foot or even an
24 instrument. Such as a hook or other instrument. And in
25 addition, the State does not have to prove that force was

1 used to gain entry.

2 Next the State must prove beyond a reasonable doubt that
3 the defendant intended to commit a crime. Either a felony or
4 a misdemeanor at the time of the entry. The mere entry into
5 a dwelling without consent is not burglary. If the intent to
6 commit a crime is formed after the entry it is not burglary.
7 On the other hand, if the defendant intended to commit a
8 crime at the time of the entry, it is a burglary even if the
9 intent was abandoned after the entry. So it does not matter
10 that the intended crime was not completed. Intent may be
11 shown by acts and conduct of a defendant and other
12 circumstances from which you may naturally and reasonably
13 infer intent.

14 Finally, the State must prove beyond a reasonable doubt
15 one of two circumstances. The first is that the defendant
16 had a prior record of two or more convictions for burglary or
17 -- and/or house breaking. Evidence of prior offenses
18 committed by the defendant are not offered to prove to
19 defendant as a bad character or to prove that the defendant
20 committed burglary on this occasion. The prior convictions
21 may be considered by you only for the purposes of determining
22 whether or not it satisfies the element of offense that we're
23 here on, that makes it first degree burglary. If you enter a
24 dwelling without consent to commit a crime and you have two
25 prior convictions for burglary or house breaking, that

1 elevates it to burglary in the first degree. Before you can
2 even consider the evidence of the defendant's prior burglary
3 convictions, you must find that the State has proven beyond a
4 reasonable doubt that a burglary was committed. And if you
5 find beyond a reasonable doubt that the burglary was
6 committed, you may have consider the evidence of the prior
7 convictions as evidence of one of the circumstances which
8 would make the burglary first degree burglary. If you do not
9 find beyond a reasonable doubt that the defendant committed
10 these alleged prior burglaries, then you cannot return a
11 verdict for first degree burglary.

12 Now the other circumstance which the State must prove and
13 they must prove one or the other or both, is that the
14 defendant entered or remained in the dwelling in the
15 nighttime. And nighttime is the period between sunset and
16 sunrise during which there is not enough daylight to
17 recognize a person's face except by artificial light or by
18 moonlight. Now, the defendant is also charged with grand
19 larceny. The State must prove beyond a reasonable doubt that
20 the defendant took and carried away the property of another
21 person against the will or without the consent of that other
22 person. And the slightest removal of the property or the
23 complete possession of property, even for an instant, by the
24 defendant, is enough to show a taking and carrying away of
25 the property. The State must also prove beyond a reasonable

1 doubt this the defendant intended to permanently deprive the
2 owner of the property. Finally, the State must prove that
3 the value of the thing taken was \$1000 or more.

4 Now, there are on each offense two possible verdicts
5 which you may come to. There's no, absolutely no importance
6 in the order in which I state them, one's got to be stated
7 before the other. I have prepared a verdict form which I'll
8 send back to the jury room with you. And when you have
9 concluded, reached you're verdict on each charge,
10 individually, then Madam Forelady, I would ask you to please
11 indicate on the appropriate box, either not guilty or guilty
12 for each offense. Then sign your name and date it.

13 Now, ladies and gentlemen, all 12 of you must agree on
14 your verdict. And your verdict -- in other words, it has to
15 be unanimous. And it cannot be the result of passion,
16 sympathy, prejudice, emotion or any other consideration that
17 is not in evidence in this case. You have no enemies to
18 punish, you have no friends to reward here. So, ladies and
19 gentlemen, I'm going to ask y'all to step back to your jury
20 room in just a second. I'm going to -- I need to go over my
21 charge on the law with the attorneys to make sure that I
22 haven't omitted something or haven't misstated something.
23 Once I've talked to them about this then we will send the
24 verdict form back into the jury room for you, along with all
25 the exhibits which have been admitted into evidence, and then

1 you can begin your deliberations. So hold off for just a few
2 more minutes before you begin talking about the case. Thank
3 you, very much.

4 Ms. Rivers, would you stay in the courtroom, please?

5 (WHEREUPON, the jury left the courtroom at
6 approximately 11:53 a.m.)

7 THE COURT: Ms. Rivers, thank you so much for your
8 service. Seems unfair that you sat through the whole case
9 and you're not allowed to go back in there and help decide
10 the dispute, resolve the dispute. The law only allows 12
11 people. I can't allow you to do that. Your service was just
12 as valuable as theirs. Your opinion, feelings are just as
13 valuable but the law is strict in that regard. So we
14 appreciate your service. You are free to stay, you are free
15 to leave. You are free to talk about this with anybody you
16 want to talk about it with. And you're free not talk about
17 it. If somebody wants to talk to you about and you want to
18 talk, great. If you don't want to talk about it, you tell
19 them that. If they persist you tell us. Found out who they
20 are and you tell the clerk of court and we will resolve that
21 problem. Because we don't want you to suffer any
22 embarrassment or any bother as a result of your service.

23 I hope I was right when I told you you'd feel like you've
24 done something good. I hope you feel that way. You have
25 done something very beneficial to your community. We

1 appreciate your service. I'm also happy to tell you that
2 you're through for the week. So you're all done, stay,
3 leave, whatever you'd like to do.

4 (WHEREUPON, the alternate was excused.)

5 THE COURT: All right, gentlemen, any exception or
6 objection to the charge?

7 MR. MARCHANT: None from State, Your Honor.

8 MR. HARRISON: No objection to the charge, Your Honor.

9 THE COURT: All right. Y'all go through the evidence,
10 make sure both of the attorneys agree, make sure all the
11 exhibits are there and send it back.

12 (WHEREUPON, deliberations began at
13 approximately 11:55 a.m.)

14 THE COURT: Okay. All right. And I want to commend both
15 of the attorneys for their professionalism and advocacy for
16 their client's in this case. This has been a very difficult
17 case. For reasons that we're all familiar with. But any
18 client who is not satisfied with the representation they had
19 just is not looking at it with clear vision. So with that
20 said we'll be at ease. All right.

21 MR. HARRISON: Thank you, Your Honor.

22 MR. MARCHANT: Thank you, Your Honor.

23 (WHEREUPON, deliberations began at
24 approximately 11:55 a.m.)

25 (WHEREUPON, Court was in recess awaiting a

1 verdict.

2 THE COURT: We have a verdict in the Craine case.

3 Wait a minute before you do that.

4 I don't want any outburst from anybody the courtroom when
5 the verdict is read. All right.

6 (WHEREUPON, the jury entered the courtroom at
7 approximately 12:37 p.m.)

8 THE COURT: All right, madam forelady, I understand y'all
9 have reached a verdict?

10 MADAM FORELADY: We, have, Your Honor.

11 THE COURT: All right, if you would hand it to the
12 Bailiff.

13 THE COURT: Okay. If you would publish the verdict,
14 please.

15 THE CLERK: State of South Carolina vs. Carl Brian Eugene
16 Craine, as to the charge of grand larceny, we, the jury, find
17 the defendant --

18 I'm sorry, let me start over, April.

19 As to the charge of burglary, first degree, we, the jury,
20 find the defendant guilty. As to the charge of grand
21 larceny, we, the jury, find the defendant not guilty. Signed
22 Amy Cummings.

23 This being your verdict and still your verdict, would
24 you, please, raise your right hand?

25 (WHEREUPON, the members of the jury panel

1 raised their right hand.

2 THE COURT: All right, thank you, very much. Ladies and
3 gentlemen, thank you, very much for your service. I hope I
4 didn't lie to you when I said that you would find it to be a
5 valuable and rewarding experience at the end of the week.
6 You are at the end of the week. We're going to cut you loose
7 in just a second. As I told you before, you all make this
8 happen. And so we really appreciate your service. Anything
9 else to be asked of this jury ?

10 MR. MARCHANT: Nothing from the State, Your Honor.

11 THE COURT: All right.

12 MR. HARRISON: Nothing further, Your Honor.

13 THE COURT: Okay. Well, then I'm going to excuse y'all
14 to go back to your jury room and y'all have a good week.
15 You're free to talk about the case now all you want. You're
16 also free not to talk about it. If somebody comes up and
17 wants to talk to you about it and you're not interested in
18 talking to them, you just tell them, No. If they persist you
19 find out who they are and you let the clerk of court know and
20 we will resolve that problem. We don't want anybody suffer
21 any embarrassment or any sort of -- we don't want you to be
22 bothered your jury service. Can't think of the word, I must
23 be going brain dead. But y'all have a pleasant weekend and,
24 again, we thank you so much for your service. Thank you,
25 very much.

1 (WHEREUPON, the jury left the courtroom at
2 approximately 12:40 and was excused at
3 approximately 12:40 p.m.)

4 THE COURT: Mr. Craine, come around.

5 MR. MARCHANT: Your Honor, could I have just a minute?

6 THE COURT: Wait a minute, grab Ms. Cummings.

7 Ms. Cummings, we're going to ask you to sign the
8 indictments, if you would. Thank you, so much. I'm sorry, I
9 forgot to ask you to do that.

10 All right, come on around.

11 All right, well let me ask you, what's his prior criminal
12 history?

13 MR. MARCHANT: May it please the Court. 1993, burglary
14 second degree, times 6. Burglary third degree times 2.
15 Grand larceny time 7. Petit larceny. 2003, fraudulent check
16 times 8.

17 THE COURT: All right.

18 All right, what you want to tell me, Mr. Harrison.

19 MR. HARRISON: May it please the Court, Your Honor. I
20 just want to tell the Court that I did have Mr. Craine have
21 an evaluation and I think that it would be pretty altruistic
22 of the what Mr. Craine has faced during the course of his
23 life. And it's not to excuse behavior, Your Honor, but
24 nonetheless he has had a very tough life, Your Honor. I
25 would hope that the Court could find some leniency for this

1 individual.

2 THE COURT: What do you want to tell me, Mr. Craine?

3 MR. CRAINE: Nothing.

4 THE COURT: I'm sorry?

5 MR. CRAINE: I ain't got nothing to say.

6 THE COURT: All right, I've read the report from the
7 state hospital, examiners report.

8 Anything else from the State?

9 MR. MARCHANT: Nothing further, Your Honor.

10 THE COURT: All right, I'm going to give him 25 years on
11 the burglary first. Now, with respect to the two incidents
12 of direct contempt in my presence yesterday, I'm going to
13 give him six months on each of them. They're both
14 consecutive to this case and to each other. All right, good
15 luck to you.

16 MR. HARRSION: Thank you, Your Honor.

17

18 (WHEREUPON, the proceedings were concluded.)

19

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21

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23

24

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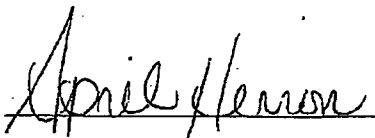
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, April Herron, Official Court Reporter for the 13th.
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 Pickens County,
South Carolina, on the 23rd-25th day of October, 2006.

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

March 31, 2007



April Herron, Court Reporter

My Commission Expires:11-17-07

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Carl Craine, Appellant.

Appeal From Pickens County
Edward W. Miller, Circuit Court Judge

Unpublished Opinion No. 2010-UP-499
Heard September 14, 2010 – Filed November 10, 2010

AFFIRMED

Deputy Chief Attorney Wanda H. Carter, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy Attorney
General Salley W. Elliott, Senior Assistant Attorney General
Norman Mark Rapoport and Assistant Attorney General Mark
R. Farthing, all of Columbia; and Solicitor Robert Mills Ariail, of
Greenville, for Respondent.

PER CURIAM: Carl Craine appeals his first-degree burglary conviction and twenty-five year sentence. Craine's indictment for first-degree burglary was based on an allegation that he entered or remained in the dwelling during the nighttime. However, before the jury was sworn, the State requested to amend Craine's first-degree burglary indictment to include two or more prior burglary convictions as an additional aggravating circumstance. Craine opposed the State's motion to amend the indictment, arguing the proposed amendment prejudiced him because the prior convictions were for burglary second and occurred ten years prior to the current charge. On appeal, Craine argues the trial court erred in allowing the State to amend its first-burglary indictment because it changed the nature of the offense by alleging two or more prior burglaries as an aggravating circumstance when the original indictment listed the nighttime element as the aggravating circumstance. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (holding an issue must have been raised to and ruled upon by the trial judge to be preserved for appellate review, and issues not raised and ruled upon in the trial court will not be considered on appeal); State v. Benton, 338 S.C. 151, 157, 526 S.E.2d 228, 231 (2000) (finding an issue is not preserved if the defendant argues one ground for objection at trial and a different ground on appeal).

AFFIRMED.

SHORT, THOMAS, and LOCKEMY, JJ., concur.



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 29, 2010

REMITTITUR

The Honorable Harold P. Welborn
214 E. Main Street
PO Box 215
Pickens, SC 29671

Re: The State v. Craine, Carl
2003-GS-39-01866 2003-GS-39-01867

Dear Mr. Welborn:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

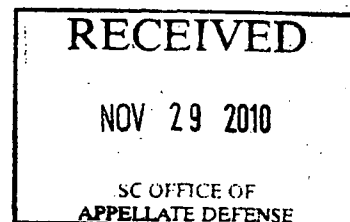
Sincerely,

A handwritten signature in black ink, appearing to read "Renee S. Johnson".

Renee S. Johnson
Administrative Specialist

VAG/rj

cc: Deputy Chief Attorney Wanda H. Carter
Mark R. Farthing, Assistant Attorney General
Robert Mills Ariail, Esquire



2011-CP-39-58

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF PickensCarl Brian F. Craine #220381

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - 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 clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application 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 the applicant was convicted.

1. Place of detention Lieber Corr Inst
2. Name and location of Court which imposed sentence Pickens Co.
3. Name(s) of co-defendant(s) (if any) Barry Craine, Tonya Tent
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2003-GS-39-01866 (Burglary 1st)
 - (b) 2003-GS-39-01867 (Grand Larceny)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Oct. 23 - 25 2006
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SC Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) uneffective Assistance of Counsel. (X 2)
- (b) I never got indictment For Contempt OF Court but recieved
- (c) 2 6 Month Sentences. (See back of pg 3-4)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See back of pg (3-4)
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

Cont. From Pg 2 Q.10

(A)

Council at trial David Harrison was ineffective for not raising an Issue Before, or during trial about Grand Jury Indictment of Burglary 1st When both Co-defendants were Indicted for 3rd degree Burglary. To the Grand Jury the Night time element was Presented, But No "Night time" was presented for Co-defendants. Three people was charged with burglary but I recieved Burglary 1st alone. Council Should have brought this to the Court attention.

State should look at my signature on "Right to a preliminary hearing" Application which was mailed in to Court. Council could have argued 1st degree issue in (Jackson v. Denno) hearing.

(B)

Also I would bring to P.C.R Courts attention I would like the trial to be vacated because during talk of strategy between me & Council I was informed that Co-defendants would not be put on stand to testify. I did not find out untill trial started that there was going to be testimony from Co defendant. I did bring this to Courts attention (See Tr. Pg 175, LN 20-24) Mr. Harrison "Council" admitted in trial that "I" did not know Before trial that they would be a witness against me. (See Tr. Pg 176 LN 2-8) (Also See Pg 177 LN 3-9)

Council was ineffective in telling me what I was to expect in my trial.

(Cont. on back of Pg 4)

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- Yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. Each ground in this form was presented to
- ii. the SC court of Appeals
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) 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) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

(G)

I received 2 Contempt of Court charges, but was never Indicted. I received 6 month a piece for those but Never got to enter a plea.

(Question 19 Pg 5,)

I would request the Court to Vacate trial based on (Councils) ineffectiveness of Stratgy at or preparing for trial. (See Question 10 (B))

I would also like to exercise my right to attack Indictment for Burglary 1st in Court.

(A) Co-defendants did not get * ~~Filed In any Court to burglary 1st Night time element.~~

(B) On indictment, it reads that I intended to commit a crime after entry into dwelling but I was Found "Not Guilty" by Jury on Stealing anything therein.

* Be it Known to all parties Trial transcript will be Present at PCR hearing For reference's and Possible attack For Vacating sentence.

- (a) your arraignment and plea? _____
 - (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 applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. David Harrison ESG, Po Box 412, Pickens SC 29671
 - ii. _____
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
See back of pg 4
20. Are you now under sentence from any other court that you have not challenged?

2011-CP-39-58

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, _____, 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.

Carl Brian Greene

SWORN to and subscribed before me this 4th
day of January, 2011.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2012

CLERK OF COURT
SOUTH CAROLINA
2011 JAN 18 AM 11:12

2011-CP-39-58

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, _____, 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 said proceeding or give security thereof.

Paul B. Haine
Applicant

SWORN or affirmed to and subscribed before me this
4th day of January, 2011.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

FILED
CLERK OF COURT
SOUTH CAROLINA
2011 JAN 18 A 11:13

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS C.A. No. 2011-CP-39-0058

2011 MAY 26 P 2:18

Carl Brian Eugene Craine,
S.C.D.C. No. 220381,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

In response to the post-conviction relief application filed January 18, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the November 2003 term of General Sessions for first-degree burglary (2003-GS-39-1866) and grand larceny (2003-GS-39-1867). David R. Harrison, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty of first-degree burglary. On October 25, 2006, the Honorable Edward W. Miller sentenced the Applicant to twenty-five (25) years imprisonment.¹

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter,

¹ In an order dated and filed October 26, 2006, Judge Miller also found the Applicant guilty of two (2) counts of contempt of court. Judge Miller levied a six (6) month sentence on each count – to be served consecutive to each other and consecutive to the twenty-five (25) year sentence.

Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Craine, Op. No. 2010-UP-499 (S.C. Ct. App. filed Nov. 10, 2010).

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failed to challenge that the Applicant was indicted for first-degree burglary while the co-defendants were indicted for third-degree burglary.
 - b. Failed to make the argument in a Jackson v. Denno hearing.
 - c. Failed to advise a co-defendant would testify at trial.
2. "I never got indictment for contempt of court but received 2, 6 month sentences."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441,

442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

May 25, 2011

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

2011 MAY 26 P 2:18

2011-CP-39-0058

CARL BRIAN EUGENE CRAINE, 220381

Applicant,

vs

STATE OF SOUTH CAROLINA,

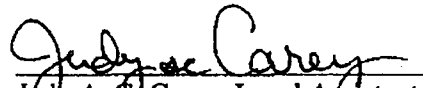
Respondent.

AFFIDAVIT OF SERVICE BY MAIL

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 by depositing same in the United States mail, postage prepaid:

**Carl Brian Eugene Craine, 220381
Lieber Correctional Institution
Post Office Box 205
Ridgeville SC 29472**

DATED this 25th day of May, 2011.


Judy A. C. Carey, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
2 COUNTY OF PICKENS) 2011-CP-39-0058
3)
4 Carl B. Craine) TRANSCRIPT OF RECORD
5)
6 -vs-)
7 State of South Carolina)

8 October 29, 2012
9 Pickens, South Carolina

10 B E F O R E:

11 THE HONORABLE R. MARKLEY DENNIS, Judge.

12 A P P E A R A N C E S

13 Caroline Horlbeck, Esquire
14 Attorney for the Applicant

15 Karen Ratigan, Esquire
16 Assistant Attorney General
17 Attorney for the Defendant

18 CAROLINE HISKELL
19 Thirteenth Circuit Court Reporter
20
21
22
23
24
25

I N D E X

WITNESSES

DIR

CROSS

Carl B. Craine

4

11

David Harrison

12

16

E X H I B I T S

ID

Applicant's 1

Court of Appeals Opinion

17

Carl Craine versus State of South Carolina

P R O C E E D I N G S

THE COURT: Ms. Attorney General.

MS. RATIGAN: If it please the Court, this is the case of Carl B. Craine versus the State, Docket No. 2011-CP-39-00058. Mr. Craine was indicted for first degree burglary and grand larceny. He was represented on those charges by Mr. Harrison who is seated to my right.

The case was brought to trial before Judge Miller in October of 2006. The jury found Mr. Craine guilty of first degree burglary and not guilty of grand larceny.

On October 25th, Judge Miller sentenced him to 25 years. A notice of appeal was filed and perfected at the Court of Appeals. The Court affirmed his conviction and sentence in November 2010 and the State is very to proceed.

THE COURT: Thank you.

You are Carl Craine?

APPLICANT CRAINE: Yes, sir.

THE COURT: Mr. Craine, you discussed with your lawyer your application, is that correct?

APPLICANT CRAINE: Yes, sir.

THE COURT: She advised you of the nature of this application and what the potential outcomes could be?

APPLICANT CRAINE: Yes, sir.

Carl Craine versus State of South Carolina

1 THE COURT: And you understand the best deal
2 I could give you is to return you and start over and
3 that's what you wish to do?

4 APPLICANT CRAINE: Yes, sir.

5 THE COURT: Are you ready to proceed,
6 Ms. Horlbeck?

7 MS. HORLBECK: I am, sir.

8 THE COURT: Call your first witness.

9 MS. HORLBECK: Your Honor, we would call
10 Mr. Craine to the stand.

11 THE COURT: Very well.

12 THE CLERK: Place your left hand on the Bible
13 and raise your right hand, please.

14 CARL B. CRAINE, having been duly sworn,
15 testified as follows:

16 Thank you. You may be seated. Please state
17 your full name the record.

18 THE WITNESS: Carl Bryan Craine.

19 THE CLERK: Thank you. You may be seated.

20 DIRECT EXAMINATION

21 BY MS. HORLBECK:

22 Q. Mr. Craine, who represented you in your trial for
23 burglary first and grand larceny?

24 A. David Harrison.

25 Q. And is Mr. Harrison seated here today?

Carl Craine versus State of South Carolina

1 A. Yes.

2 Q. After your conviction, did you file a petition
3 for post-conviction relief?

4 A. I filed an appeal.

5 Q. That was the first thing you filed is your
6 appeal?

7 A. Yes.

8 Q. And then after your appeal is that when you filed
9 your petition for post conviction relief?

10 A. Yes.

11 MS. RATIGAN: Could you speak up just a tiny
12 bit?

13 THE COURT: Speak more directly into the mic.

14 BY MS. HORLBECK:

15 Q. You might want to sit up so everybody can hear
16 you.

17 Now, in your petition, Mr. Craine, you
18 alleged that one of your first issues the State moved to
19 amend the indictment. Is that one your first issue that
20 you were concerned about in your petition?

21 A. Yes, ma'am.

22 Q. And specifically do you recall exactly what the
23 State said when they wanted to amend your indictment?

24 A. No, ma'am.

25 Q. You're originally indictment, were you indicted

Carl Craine versus State of South Carolina

1 on the ground that the burglary happened at night?

2 A. I was indicted for burglary that in the night
3 time.

4 Q. Do you recall what exactly the State wanted to
5 change about the indictment?

6 A. They wanted to add a burglary which is a person
7 may be convicted of first degree burglary if they have two
8 priors.

9 Q. Okay. Did you have two priors on your record?

10 A. I had one conviction.

11 Q. In other words -- did you plead guilty to
12 multiple burglaries in the past?

13 A. I pled one time.

14 Q. And correct me if I'm wrong, did you plead to all
15 your prior burglaries on the same day?

16 A. Yes, at the same time.

17 Q. Did your attorney object to the State amending
18 the indictment?

19 A. Not on the grounds that I was told it should have
20 been.

21 Q. On what grounds do you think do you believe your
22 attorney should have objected?

23 A. They should have objected that they couldn't
24 amend an indictment to something with aggravating
25 circumstances.

Carl Craine versus State of South Carolina

1 Q. Did your attorney object on the basis that the
2 amendment changed the nature of the offense?

3 A. No.

4 Q. And you discussed your appeal with your appellate
5 attorney?

6 A. Yes.

7 Q. Is that the ground that your appellate attorney
8 argued?

9 A. She said -- they said they couldn't do it because
10 it was only the first time at trial.

11 Q. So Mr. Harrison did not object on the grounds
12 that the amendment would change the nature of the offense?

13 A. Yes.

14 Q. And because he didn't make that objection, that
15 was no reserved for your appeal?

16 A. Yes, ma'am.

17 Q. And what happened to your appeal?

18 A. I was affirmed.

19 Q. Your conviction was affirmed?

20 A. Yes.

21 Q. And was your appeal dismissed then?

22 A. Yes.

23 Q. And did you know that the State was going to try
24 to amend the indictment?

25 A. No.

Carl Craine versus State of South Carolina

1 Q. When did you find out about that?

2 A. I guess that day, that morning when we was here.

3 Q. Did your attorney discuss it with you before the
4 State made that motion to amend?

5 A. Yes, we discussed it that morning.

6 Q. That's when the attorney discussed the amendment
7 with you?

8 A. Yes.

9 Q. Your prior burglaries, did your attention let the
10 Court know that all of your prior burglaries were all
11 consolidated into one guilty plea?

12 A. No.

13 Q. And did you ask him to make that objection?

14 A. At the time I didn't know about this law. I just
15 found out about this later.

16 Q. And since your attorney did not make that
17 objection, that was not preserved for appeal, correct?

18 A. Yes, ma'am.

19 Q. Did you also have in your petition a subject
20 matter jurisdiction issue? Would you like to discuss
21 that?

22 A. Yes, that was in the change of my indictment.
23 That was something that was aggravating.

24 Q. And changing that indictment what affect does
25 that have on the Court's jurisdiction?

Carl Craine versus State of South Carolina

1 A. Because instead of arguing the night time
2 element, now all they've got to prove is that I have a
3 prior record which is still first degree burglary. I was
4 never indicted for that. I was never called to answer for
5 that.

6 Q. Now, you brought up the night time element, was
7 that your defense at trial that this didn't happen at
8 night?

9 A. It would have been (inaudible) added the element,
10 do you know what I mean.

11 Q. Do you recall what your co-defendants were
12 indicted for, what offense your co-defendants were
13 indicted for?

14 A. Third degree.

15 Q. Were you ever indicted for third degree burglary?

16 A. No, ma'am.

17 Q. Did your attorney discuss with you potential
18 testimony of co-defendants or other witnesses?

19 A. We talked prior to coming to trial and we was
20 talking about whether to go to trial or to plead out. He
21 told me there wasn't going to be any witnesses.

22 Q. And when your trial progressed, who took the
23 stand to testify against you?

24 A. My co-defendants.

25 Q. Specifically, which co-defendants?

Carl Craine versus State of South Carolina

1 A. A female in the case, Tonya Tant.

2 Q. Alright. If your attorney had advised you that
3 Ms. Tant was going to testify, would you have done
4 anything different?

5 A. I probably would have tried to plea because they
6 was offering of plea that morning.

7 Q. What was the recommendation of plea that morning?

8 A. They said 15 years.

9 Q. Okay. What do you think would have been
10 different if your counsel had not made these mistakes?

11 A. I would probably got less time.

12 Q. Do you think you still would have been convicted?

13 A. Only if I had pled. I wouldn't have been
14 convicted of the first degree burglary of the night time.

15 Q. Do you understand that Judge Dennis today can not
16 change your sentence?

17 A. Yes.

18 Q. The only thing that he can do is grant your
19 petition?

20 A. Yes.

21 Q. Or deny your petition which means you would
22 continue serving out your sentence, do you understand
23 that?

24 A. Yes.

25 Q. Do you understand that if he grants your petition

Carl Craine versus State of South Carolina

1 then just like he said the whole thing can start all over
2 again from square one?

3 A. That's what I would like.

4 Q. Please answer any questions the Attorney General
5 may have for you.

6 CROSS-EXAMINATION

7 BY MS. RATIGAN:

8 Q. Quick question, Mr. Craine, during your meeting
9 with Mr. Harrison did he talk about the State's evidence
10 against you?

11 A. Yes.

12 Q. So you knew your co-defendants would probably
13 testify against you?

14 A. No, he said that they didn't know where they was
15 at and that they wasn't going to be there.

16 Q. Did you review the statement you gave to police?

17 A. Yes.

18 Q. And did you tell Mr. Harrison the version of what
19 happened on the day in question?

20 A. Yes.

21 Q. And did you and Mr. Harrison go over your rap
22 sheet, your prior history?

23 A. Yes.

24 Q. Was that before trial or was that during trial
25 when you were trying to decide whether or not you were

Carl Craine versus State of South Carolina

1 going to testify?

2 A. Who was going to testify? Me.

3 Q. When did y'all talk about your rap sheet? Was
4 that prior to going to trial or was it during the trial?

5 A. We talked about it that morning.

6 MS. RATIGAN: That's all I have.

7 THE COURT: Redirect.

8 MS. HORLBECK: No redirect.

9 THE COURT: Call your next witness.

10 MS. HORLBECK: Judge that's all I have.

11 THE COURT: Will the State present any
12 testimony?

13 MS. RATIGAN: Yes, sir. The State will call
14 Mr. Harrison.

15 THE CLERK: Place your left hand on the Bible
16 and raise your right hand, please.

17 DAVID R. HARRISON, having been duly sworn,
18 testified as follows:

19 Thank you. State your full name for the
20 record.

21 THE WITNESS: David R. Harrison.

22 DIRECT EXAMINATION

23 BY MS. RATIGAN:

24 Q. Mr. Harrison, do you recall representing
25 Mr. Craine on these charges?

Carl Craine versus State of South Carolina

1 A. Yes, I do.

2 Q. And were appointed in this case or were you
3 retained?

4 A. Appointed counsel.

5 Q. Did you file the usual Brady Rule 5 motions?

6 A. Yes, Brady and a Rule 5.

7 Q. Did you receive discovery materials from the
8 State?

9 A. Yes, I did.

10 Q. Did you review those with your client?

11 A. Yes, I did. It's been a while back but my policy
12 is always been to provide them with copies of those
13 materials when I go to see them at the jail. I think I
14 had seen him about a dozen times down at the jail.

15 Q. And am I correct that your client gave a
16 statement in this case, a confession?

17 A. Yes, he did.

18 Q. Did you review that with him?

19 A. Yes, I did.

20 Q. Did you review with him the impact that would
21 have on your case?

22 A. Yes, I reviewed the impact of all of that, the
23 witness statements, his prior record and all that stuff.

24 Q. When you said prior record, did you have a rap
25 sheet?

Carl Craine versus State of South Carolina

1 A. Yes.

2 Q. Did you review his prior record with him?

3 A. Yes. Certainly I said this is your rap sheet
4 provided in discovery and we certainly would have gone
5 over it.

6 Q. And did he, in fact, have prior convictions for
7 burglary offenses?

8 A. Yes, he did.

9 Q. When were you put on notice that the State was
10 going to move to amend?

11 A. It seems to me like it was like a day before. It
12 was just immediately prior. There had been some email
13 threats about enhancing him and the possibility of a life
14 imprisonment and so forth. We had these discussions and
15 that's one of the reasons we had discussed a potential for
16 a plea and they had an offer of 15 years without any
17 further enhancements.

18 Q. Did the State's decision to move to amend the
19 indictment change your defense strategy for trial?

20 A. I don't think so. I just sat here and I think I
21 did object to the amendment on the record. When the State
22 moved to amend it before the trial Court, I think I made
23 an objection and talked about prejudicing my client. But,
24 of course, they would have been entitled to that amendment
25 over my objection. It's a factual thing.

Carl Craine versus State of South Carolina

1 Q. Mr. Craine testified that his co-defendants were
2 indicted for third degree burglary, does that sound
3 accurate?

4 A. I don't have their indictments but I believe they
5 pled guilty if I'm not mistaken. I think the State
6 allowed a reduction in both of his co-defendants. They
7 had pled guilty and given statements. One of the
8 co-defendants being his brother and the other being the
9 girlfriend of the brother. They were all in it together.

10 Q. Did you explain to Mr. Craine that the
11 co-defendants had pled guilty and could potentially
12 testify against him at trial?

13 A. Yes, we did. I do think I had a conversation
14 with him. I was talking to the solicitor and I think they
15 were having some difficulty in locating one of the other
16 of them, I think it might have been his brother. I think
17 as it turns out, I think he's in the transcript, we
18 discovered his brother was under house arrest for the
19 crime and we were able to bring him to court. I believe
20 she was doing time for some other crime. I don't think
21 she was doing crime for this crime, but she wind up in the
22 Department of Corrections and that's where they found her.

23 MS. RATIGAN: That's all I have, Your Honor.

24 THE COURT: Cross.
25

Carl Craine versus State of South Carolina

CROSS-EXAMINATION

BY MS. HORLBECK:

Q. Mr. Harrison, you filed an appeal in this case?

A. I filed a notice of intent to appeal and then I transferred it over to the Department of Indigent Defense.

Q. During the trial you objected to the State's motion to amend the indictment; is that correct?

A. That is correct.

Q. Do you recall the grounds that you argued?

A. I don't. It was something along the lines that it was prejudicial to my client. I think some mention about the fact that this would remove from them of having the burden of night time.

Q. Would you surprise you if you argued prejudice and also the fact that prior convictions for burglary second, does that sound correct?

A. If that's what's in the transcript then, yes. I trust you on that. Yes, I probably would have argued that too.

Q. And also the offense occurred 10 years prior to the current charge?

A. Yes, yes. That sound familiar to me.

Q. I am going to hand you a copy of that. Maybe I need to have it marked.

(Opinion marked as Applicant's 1 for

Carl Craine versus State of South Carolina

1 identification.)

2 BY MS. HORLBECK:

3 Q. Mr. Harrison, I'm going to hand you Applicant's 1
4 and ask you if you look over that and tell us what it is?

5 A. It looks to me an appeal from Pickens County. An
6 opinion from the Court of Appeals. I have not been privy
7 to this. Do you want me to read it?

8 Q. Just to yourself, if you don't mind.

9 A. Okay.

10 Q. And did you argue that the amendment to the
11 indictment changed the nature of the offense at trial?

12 A. I'm not sure. My memory is it was prejudice but
13 maybe I missed it. Maybe I should have made my objection
14 on a different ground. It would have been success.

15 Q. Was that the ground that you argued according to
16 the appeal?

17 A. This is my second time reading it and I'm having
18 a hard time understanding what they're saying here.
19 Apparently if I'm reading this correctly, they said it was
20 an issue that should have been raised and I'm not sure
21 exactly what.

22 Q. Let me tell you what line I'm looking at.

23 A. Yeah, that will help me.

24 Q. Starting on Line 9. I'm asking you what grounds
25 you argued according to that appeal.

Carl Craine versus State of South Carolina

1 A. Well, apparently from reading this my argue must
2 not have been about changing the nature of the offense. I
3 was arguing about that his prior burglaries I don't think
4 were firsts. I was also arguing about something else --
5 general prejudice and the indictment, I think. I think I
6 made some arguments about relieving of the burden of proof
7 to night time.

8 Q. Did you argue and object on the grounds that the
9 amendment changed the nature of the offense?

10 A. No, I did not.

11 Q. And that was not preserved for appeal?

12 A. If it isn't argued at trial court than that's the
13 issue about being preserved so I would agree with you.

14 Q. The conviction was affirmed?

15 A. Yes.

16 THE COURT: The Court acknowledges that is
17 the opinion for what it's worth.

18 BY MS. HORLBECK:

19 Q. Did you object to the use of Mr. Craine's prior
20 convictions on the basis that they were so closely
21 connected and should be considered as one offense?

22 A. No, I don't think I did.

23 MS. HORLBECK: That's all I have. Thank you.

24 MS. RATIGAN: Nothing on redirect, Your
25 Honor, and the State would rest.

Carl Craine versus State of South Carolina

1 THE COURT: Do you wish to present any reply
2 testimony?

3 MS. HORLBECK: No, but I would like to argue
4 extreme briefly.

5 THE COURT: Sure.

6 MS. HORLBECK: I would just direct Your
7 Honor's attention to Statute 17-25-50 that the Court shall
8 treat as one offense any number of offenses which have
9 been committed in time so closely connected at a point in
10 time. After just reading the transcript I do think,
11 although he had a number of prior burglaries, I'm just
12 thinking that maybe they should have been consolidated
13 into one offense. I think his argument is that if they
14 were treated as one offense, then they couldn't be used to
15 enhance to burglary first and that's the argument the
16 petitioner has.

17 MS. RATIGAN: Also, very briefly, Your Honor,
18 first of all, the issue about the amendment and the
19 indictment Mr. Harrison raised one issue and for some
20 reason appellate defense decided to raise a different
21 issue. That can't be impeded back to Mr. Harrison that
22 they chose to brief an unreserved issue.

23 And as to whether or not Mr. Harrison should
24 have objected to the priors, I would note his priors were
25 listed on Page 212 of the record. It's burglary second

Carl Craine versus State of South Carolina

1 times six and burglary third times two. There's been not
2 evidence of the time frame of those priors and whether or
3 not they could be considered close enough in time -- there
4 has been no evidence before today, therefore we would
5 argue he hasn't met his burden of proof.

6 MS. HORLBECK: Judge, I believe in the
7 transcript ---

8 THE COURT: Let me ask you a question. I
9 understand that the, let's take for purposes of
10 discussion, he should have argued and I'm not sure I
11 understand and I ought to keep this to myself, but how in
12 the world does changing the different aggravating
13 circumstances change the nature of the offense? It's just
14 an additional aggravating circumstance. It changed the
15 aggravating circumstance but it didn't change the nature.
16 Burg first is night time or multiple burglaries.

17 MS. HORLBECK: Judge, that's a fair question.
18 I think what Mr. Craine's issue that he was relying on the
19 night time ---

20 THE COURT: I understand that but he doesn't
21 control what the Court is going to do. His lawyer
22 objected to it saying he would be prejudiced. First of
23 all the objection does preserve it for review. I find it
24 interesting that they don't use it sometimes but they use
25 it sometimes because they said if there are other reasons

Carl Craine versus State of South Carolina

1 to sustain the appeal, they'll affirm it.

2 Be that as it may, it's an unpublished
3 opinion and when you say that it has no value I don't know
4 what that says from me from the stand point of applying
5 that decision. If they wanted to make a statement about
6 it, I think they were, but it doesn't appear to me that's
7 what they were doing. I really don't know what the
8 opinion says. They really don't say that he was wrong.
9 They don't even get into the fact of what you're arguing
10 that it was too close together because he preserved that.
11 He said the burglaries were past 10 years. I don't know
12 if that affects redundant for arguing, it may or may not,
13 I don't think it does, but that being said.

14 The problem that we have here is there's
15 another aspect of it. He testified as to what really is
16 the motivating is he should have taken the offer and he
17 didn't take the offer and that's the bad part because
18 hindsight is always 20/20. He passed up a deal but
19 there's nothing or I don't know of anything that says an
20 applicant is entitled to the best deal. He's entitled to
21 be aware of it and he was aware of it and he rejected it.
22 Probably not a prudent thing to do and I bet his lawyer
23 told him that, too, but he made the call.

24 The next thing is he went to trial. Isn't
25 there an aspect of this ineffective assistance that the

Carl Craine versus State of South Carolina

1 outcome would be changed? How is the outcome changed? It
2 goes back to square one. They either re-indict him or
3 they'll move and they'll amend it and they'll try him for
4 multiple burglaries. He's not said anything other than
5 the fact that the amendment was improper. Well, that
6 doesn't change the outcome. We got back and he's tried
7 and he gets the same result.

8 No, sir, you don't get the speak now. You
9 had your chance.

10 If he thinks well, if I get a chance to do a
11 plea, the statement has been made and I'm not casting any
12 kind of critical statements towards anyone but lawyers are
13 lawyers. You were offered a deal and I'll bet you that
14 deal doesn't come back. It would shock me because they
15 convicted you once on that same evidence. If I were the
16 solicitor, I would take my chances with that again to
17 without any hesitation. No question it would be double
18 jeopardy with the other one which you got the benefit of,
19 but if you go back to square one and now you're facing
20 life. That's what you're potentially facing. That's what
21 you want, that's what you asked. Give me a chance to get
22 life.

23 I'm going to save you from yourself. I don't
24 think he's met the prongs. Even if it was ineffective to
25 argue, there's still the second part, the outcome would be

Carl Craine versus State of South Carolina

1 different. There's no testimony to suggest that and it
2 goes back. There's nothing to prevent the State -- you're
3 not arguing the State would be prohibited from amending
4 the indictment, are you?

5 MS. HORLBECK: No.

6 THE COURT: I don't think there's any
7 jeopardy. Clearly, he goes back to square one, State
8 amends the indictment, puts in their multiple burglaries,
9 goes back and we have the same argument. For whatever
10 reason they chose not to address that. I don't think
11 there's any question that he has an issue about that, an
12 issue in the sense that he's got multiple burglaries and
13 whether or not they're going to choose to apply it, I
14 don't know, but that part of the sentence --

15 Let me ask you this, is the sentence from the
16 stand point assuming for the sake of discussion -- let's
17 go down the legality of the sentence because now we're
18 getting down to whether or not to impose because they went
19 forward on multiple burglaries, now, why does the Court
20 has to pass on that as to whether or not that was a proper
21 aggravating circumstances that he can't be sentenced to
22 burg first because they're not multiple burglaries? I'm
23 just asking. That moves in from a different avenue was
24 the sentence proper under the law? It doesn't have
25 anything to do with effective assistance of counsel.

Carl Craine versus State of South Carolina

1 What's the position there? You said that it
2 doesn't support it.

3 MS. HORLBECK: Yes, sir. The State in the
4 transcript on Page 47, Line 9, 10 ---

5 THE COURT: Uh-hum.

6 MS. HORLBECK: Page 46, Line 4 through 46
7 Line 5 the State admits that the convictions are from a
8 series of transactions, if you will.

9 THE COURT: What's the State's position
10 concerning that?

11 MS. RATIGAN: Your Honor, Page 46 and 47 it
12 says August 11, September 11 and October 9th, we argue
13 that that's not within the -- I'm blanking on the name of
14 the case -- it says it needs to be a part of a very
15 discreet period like a spree type of a situation. We
16 would argue that August 11, September 11, October 9th does
17 not satisfy so closely related in time. The fact that
18 they were all pled to on the same days as Your Honor knows
19 is not ---

20 THE COURT: The clearly can be separate even
21 though they pled on the same day. The question is the
22 time. I think the time separates them and establishes
23 they were multiple burglaries.

24 MS. HORLBECK: Judge, I may have misspoken.
25 I think what the State is referring to that's when the

Carl Craine versus State of South Carolina

1 solicitor told the Court that he had discussed the
2 amendment with defense counsel.

3 THE COURT: Where's the record? The Court
4 takes judicial notice I need to have the record I think.
5 There's been no proof of the record. How can I rule on
6 whether or not it violates that part of the statute.
7 There's no proof other than the statement. Again, let me
8 read it. You say 46?

9 MS. HORLBECK: Judge, it's 46 and 47.

10 THE COURT: Let me just read it. It starts
11 at Page 45. Just give me a moment, please.

12 The Court also notes and again I'm not trying
13 to argue with the Court of Appeals decision but I don't
14 know how you preserve it other than what Mr. Harrison
15 said. The Court says to him, "Alright, Mr. Harrison."
16 And he says, "I've had that communication and I've shared
17 that communication with my client. I do believe would
18 prejudice my client." I understand everything is always
19 going to be prejudicial but I think that's a significant
20 statement. It shouldn't be glossed over.

21 "And additionally I would argue that burglary
22 convictions that they are seeking to allege are burglary
23 second. Also they took place more than 10 years ago. So
24 my argument would be that they are not sufficient
25 statutorily to burglary first in lieu of the night time

Carl Craine versus State of South Carolina

1 charges."

2 I think he's arguing the totally of
3 everything there that simply says I don't think they meet
4 the statute is what he's saying. He gives other reasons
5 but he's arguing that statutorily they can't rise but I
6 don't have the burglaries to look at. I don't see them as
7 part of the record. Clearly a certified copy was handed
8 up so I assume that got to be in the file somewhere, I
9 guess. I don't know. He's handed certified copies for
10 the Court so.

11 MS. HORLBECK: Judge, if I could just have a
12 little time to check on that?

13 THE COURT: I'll need to supplement it
14 because the argument needs to address both issues, I
15 think. In order to pass on that, I'll need copies that
16 the Court could consider.

17 MS. HORLBECK: I think I can find that today.

18 THE COURT: That will be fine. We'll keep
19 the record open for that. When the Court receives that --
20 I've announced my ruling as to the ineffective assistance.
21 I don't think he did anything, but if he did there is
22 certainly no indication that the outcome would be
23 different. Whether or not it's a legal sentence, I need
24 to look at the burglary sentences and then I'll advise you
25 both as to my position on this.

Carl Craine versus State of South Carolina

1 MS. HORLBECK: Thank you, Judge.

2 THE COURT: Thank you so much.

3 ---END OF TRANSCRIPT RECORD---

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Carl Craine versus State of South Carolina

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the Court of Common Pleas, Greenville, South Carolina on
8 the 29th day of October, 2012.

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

11
12
13 

14 Caroline Hiskell
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COURT'S
EXHIBIT
1
10-24-06

Amy Cummings

TRUE COPY

Handed P. W. Williams
CLERK OF COURT
FICKENS COUNTY, S.C.

DOCKET NO. 93-08-34-25

MB

The State of South Carolina,

County of PICKENS

Lane Byers, PCSD

Date of Offense: 9-2-92

Date of Arrest: 9-22-92

COURT OF GENERAL SESSIONS

JAN 07 1993 TERM

THE STATE

vs.

BRIAN EUGENE CRAINE

ARREST WARRANT NO. D 495983

ACTION OF GRAND JURY

TRUE BILL

Date 1-7-93

Foreman of Grand Jury

VERDICT

**Indictment for Burglary
(Building)**

(080)

STV / ADV: _____
DCP: _____
SS#: _____
DI#: _____
ATTORNEY: _____

TRUE COPY

Harold P. Williams
CLERK OF COURT
PICKENS COUNTY, S.C.

FORM 2 (12/87)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF PICKENS)

INDICTMENT FOR BURGLARY
 (BUILDING)

JAN 07 1993

At a Court of General Sessions, convened on _____,
 the Grand Jurors of Pickens County present upon their oath:

COUNT ONE — BURGLARY IN THE SECOND DEGREE

(BUILDING)

That BRIAN EUGENE CRAINE
 did in Pickens County on or about September 2, 1992,
 willfully and unlawfully enter without consent and with the intent to commit a crime therein, a building,
 to wit: Moose Lodge #2219

and the defendant did commit the offense of Grand Larceny and
Malicious Damage to Real Property

~~COUNT TWO — BURGLARY IN THE THIRD DEGREE~~

(BUILDING)

That _____
 did in _____ County on or about _____
 willfully and unlawfully enter without consent and with intent to commit a crime therein a building
 to wit: _____

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

SOLICITOR

CLERK OF COURT
 PICKENS COUNTY, S.C.

93 - GS-39 - 25

NOW COMES THE DEFENDANT

Brian Eugene CraineNON-VIOLENT
(HMF)

Who in open Court pleads guilty to the within indictment; AND

waives the finding of a true bill by the grand jury and consents to sentence

this 16 day of March 19 93

ATTEST:

Oliver A. Neely
Clerk of CourtBrian Craine
Defendant

SENTENCE

The defendant Brian Eugene Craine iscommitted to the State Dept. of Corrections/County for a term of 15

months/years and/or to pay a fine \$ _____; provided upon the service of

_____ months/years and/or payment of \$ _____, plus pay/waive

costs and assessments as applicable*, the balance suspended with probation for

_____ months/years.

Restitution

For physical injury

\$

Yes/No

Property damage

\$

to be paid _____

to clerk for _____ **

Other conditions _____

Date

3/16/93Henry D. Reed
Presiding Judge

*Costs and Assessments

Non-Waivable

\$

Not waived

\$

Total

\$

NEGOTIATED

PLEA

Clerk of Court

CHARGE

SENTENCE

BOTH

*Pay to Victim's Compensation Fund if subrogated.

TRUE COPY

Deborah H. Dathan
CLERK OF COURT
PICKENS COUNTY, S.C.

Lane Byers, PCSD

Date of Offense: 9-10-92

Date of Arrest: 9-22-92

ARREST WARRANT NO. D 495989

ACTION OF GRAND JURY

TRUE BILL

Date 1-5-93

Foreman of Grand Jury

VERDICT

Foreman of Petit Jury

Date: _____

DOCKET NO. 72-1305-24

MB

The State of South Carolina,

County of PICKENS

COURT OF GENERAL SESSIONS

JAN 07 1993

TERM

THE STATE

VS.

BRIAN EUGENE CRAINE

Indictment for Burglary (Building)

(081)

SEX/RACE:

DOF:

SS#:

DI.#:

ATTENTION:

TRUE COPY

Harold P. W. Brown
CLERK OF COURT

ORDER OF COURT

FORM 2 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)INDICTMENT FOR BURGLARY
(BUILDING)

JAN 07 1993

At a Court of General Sessions, convened on _____,
the Grand Jurors of Pickens County present upon their oath:~~COUNT ONE BURGLARY IN THE SECOND DEGREE~~

(BUILDING)

That _____
did in _____ County on or about _____,
willfully and unlawfully enter without consent and with the intent to commit a crime therein, a building,
to wit: _____
_____ and the defendant _____

COUNT TWO — BURGLARY IN THE THIRD DEGREE

(BUILDING)

That BRIAN EUGENE CRAINE
did in Pickens County on or about September 10, 1992
willfully and unlawfully enter without consent and with intent to commit a crime therein a building
to wit: VFW Club, Old Liberty Road, Easley, SCAgainst the peace and dignity of the State, and contrary to the statute in such case made
provided.

SOLICITOR

RUE COPY

CLERK OF COURT
PICKENS COUNTY, S.C.

93 - GS-39 - 26

NOW COMES THE DEFENDANT

Brian Eugene Crainenonresident
1844

Who in open Court pleads guilty to the within indictment; AND
 waives the finding of a true bill by the grand jury and consents to sentence
 this 16 day of March 19 93

ATTEST:

Oliver A. Neely
 Clerk of Court

Brian Eugene Craine
 Defendant

SENTENCE

The defendant Brian Eugene Craine is
 committed to the State Dept. of Corrections/County for a term of 5 ~~YRS~~ YRS
 months/years and/or to pay a fine \$ _____; provided upon the service of
 _____ months/years and/or payment of \$ _____, plus pay/waive
 costs and assessments as applicable*, the balance suspended with probation for
 _____ months/years.

AFF

conser

Restitution For physical injury \$ _____
 Yes/No Property damage \$ _____
 to be paid _____

to clerk for _____ **
 Other conditions _____

Date

3/16/93

Derry J. [Signature]
 Presiding Judge

*Costs and Assessments

Non-Waivable \$ _____
 Not waived \$ _____
 Total \$ _____

NEGOTIATED

PLEA

Oliver A. Neely
 Clerk of Court

CHARGE

SENTENCE

*Pay to Victim's Compensation Fund if subrogated.

☐
☒
☐

TRUE COPY

Deborah H. Dathan
 CLERK OF COURT
 PICKENS COUNTY, S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

Carl Brian Eugene Craine,
S.C.D.C. No. 220381,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

C.A. No. 2011-CP-39-0058

ORDER OF DISMISSAL

2012 NOV 19 A 10:18

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 18, 2011. The Respondent made its return on May 25, 2011. An evidentiary hearing into the matter was convened on October 29, 2012 at the Pickens County Courthouse. The Applicant was present and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, David R. Harrison, Esquire. The Court had before it the trial transcript, the records of the Pickens County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.¹

¹ At the conclusion of the hearing, this Court left the record open for PCR counsel to obtain copies of the Applicant's prior burglary indictments to determine if trial counsel should have challenged whether the first-degree burglary charge in this case was properly enhanced using prior convictions. These indictments – entered as Court's Exhibit 1 – indicate the prior burglary convictions occurred far enough apart in time that they were properly used to enhance the instant charge.

AMDTM

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Pickens County Clerk of Court. The Pickens County Grand Jury indicted the Applicant at the November 2003 term of General Sessions for first-degree burglary (2003-GS-39-1866) and grand larceny (2003-GS-39-1867). David R. Harrison, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty of first-degree burglary. On October 25, 2006, the Honorable Edward W. Miller sentenced the Applicant to twenty-five (25) years imprisonment.²

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Craine, Op. No. 2010-UP-499 (S.C. Ct. App. filed Nov. 10, 2010).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failed to challenge that the Applicant was indicted for first-degree burglary while the co-defendants were indicted for third-degree burglary.
 - b. Failed to make the argument in a Jackson v. Denno hearing.
 - c. Failed to advise a co-defendant would testify at trial.
2. "I never got indictment for contempt of court but received 2, 6 month sentences."

² In an order dated and filed October 26, 2006, Judge Miller also found the Applicant guilty of two (2) counts of contempt of court. Judge Miller levied a six (6) month sentence on each count – to be served consecutive to each other and consecutive to the twenty-five (25) year sentence.

RMJ/TJ/2

In a pro se amendment to the PCR application filed September 6, 2012, the Applicant made the following additional allegations:

1. Should have been indicted for third-degree burglary.
2. Lack of subject matter jurisdiction because the first-degree burglary indictment was amended.
3. Ineffective assistance of trial counsel:
 - a. Misinformed the Applicant that the State had no witnesses against him.

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).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386

RM 10/13

S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had discussions with trial counsel about the State's evidence, his confession, his version of events, and his prior criminal record. The Applicant stated, however, that trial counsel should have objected when the State moved to amend the first-degree burglary indictment. The Applicant stated that changing the aggravating circumstance from the offense happening in the nighttime to two prior burglary convictions changed the nature of the offense.

Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified they also reviewed the Applicant's confession and the fact that the co-defendants had pled guilty and given statements. Trial counsel testified the Applicant had numerous prior burglary convictions and that he had reviewed his criminal record with him. Trial counsel testified he knew the day before trial that the State would move to amend the indictment. Trial counsel testified he objected to the amendment at trial and argued it was prejudicial. Trial counsel testified, however, that the amendment did not change the defense strategy at trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have argued the amendment of the indictment changed the nature of the offense. Trial counsel objected to the amendment of the indictment, arguing it prejudiced the Applicant. (Trial transcript, p.46). Amendments to an indictment are permissible if: (1) they do not change the nature of the offense; (2) the charge is a lesser included offense of the crime charged in the indictment; or (3) the defendant waives presentment to the grand jury and pleads guilty. State v. Fonseca, 383 S.C. 640, 646, 681 S.E.2d 1, 4 (Ct. App. 2009). This Court finds trial counsel

ampy/14

made a proper objection when he argued the amendment on the day of trial was prejudicial to the Applicant. This potential prejudice was even acknowledged by the trial judge. (Trial transcript, p.46). Regardless, even assuming arguendo that trial counsel should have made a more specific objection about the amendment potentially changing the nature of the offense, this Court finds the Applicant cannot prove any resulting prejudice. The amendment was permissible because the change in aggravating circumstance did not change the nature of the offense. See id. Further, trial counsel testified he was on notice of this amendment and that it did not change the defense strategy at trial.³

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they

³ This Court also notes, as discussed supra in footnote 1, that the State properly used two prior convictions to enhance the instant charge to first-degree burglary.

RMPT/15

are hereby denied and dismissed.

CONCLUSION

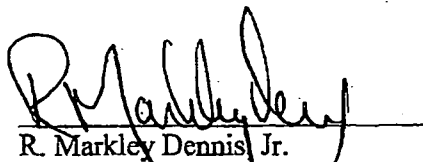
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also 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 be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8th day of November, 2012.


R. Markley Dennis Jr.
Presiding Judge

Charleston, South Carolina.

Amprile

WITNESSES

JODY CARTEE

PCSO

07/14/03

ARREST WARRANT NUMBER

H 336447

ACTION OF GRAND JURY

TRUE BILL
NOV 11 2003

Donnie L. Fung
Foreperson of Grand Jury

VERDICT

Guilty

Donna K. Cunningham
Foreperson of Petit Jury

10-25-06
Date:

DOCKET NO. 2003-GS-39-1866

JMM

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 11 2003

THE STATE

VS.

CARL BRIAN EUGENE CRAINE

0079

Indictment for

BURGLARY
FIRST DEGREE

VIOLATION S 16-11-311
8/11 received 8/12/04

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY
FIRST DEGREE

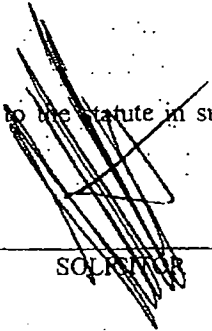
At a Court of General Sessions, convened on NOV 11 2003 the Grand Jurors of

Pickens County present upon their oath:

That CARL BRIAN EUGENE CRAINE did in Pickens County between the 29th day of June, 2003 and the 30th day of June, 2003 willfully and unlawfully enter the dwelling of Roger Dale Davis located at

, Six Mile, South Carolina, without consent with the intent to commit a crime therein, and the entering and/or remaining did occur in the nighttime. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

274

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.

CARL CRAINE

AKA:

Race: W Sex: M Age: 32

DOB: SS#:

Address:

LIBERTY, SC 29657

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2003GS3901866

A/W#: H336447

Date of Offense: 07-14-2003

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Burglary, First Degree (gs)

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st 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:

Solicitor:

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §7-25-135

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)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

	\$
	\$
\$100	\$ 100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$ 2500
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$ 375
\$	\$ 12875

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2111310

Sentence Date: 10-25-06

SCCA/217 (9/2006)

Clerk of Court/ Deputy Clerk

Court Reporter: April Herron

WITNESSES

JODY CARTEE

PCSO

07/14/03

ARREST WARRANT NUMBER

H 336448

ACTION OF GRAND JURY

TRUE BILL

NOV 11 2003

Alvin L. King
Foreperson of Grand Jury

VERDICT

Not Guilty

David K. Lawrence
Foreperson of Petit Jury
Date: 10-25-06

DOCKET NO. 2003-GS-39-1867

JMM

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

NOV 11 2003

THE STATE

VS.

CARL BRIAN EUGENE CRAINE

Indictment for
0478

GRAND LARCENY

VIOLATION § 16-13-30

2/14 waived 8/12/04

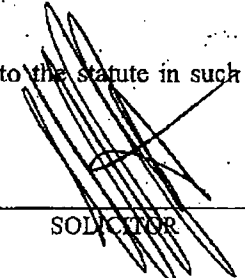
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
GRAND LARCENY

At a Court of General Sessions, convened on NOV 11 2003 the Grand Jurors of Pickens County present upon their oath:

That CARL BRIAN EUGENE CRAINE did in Pickens County between the 29th day of June, 2003 and the 30th day of June, 2003 feloniously take and carry away the personal property of Roger Dale Davis of the value of more than One Thousand dollars, described as follows: jewelry, electronics, model cars and other items, with intent to deprive the owner permanently of such property. This is in violation of §16-13-30 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR