

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

Edward W. Miller, Circuit Court Judge

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S.C. Supreme Court

DANNY RAY GILLIAM,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000262

A P P E N D I X

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF PICKENS	)	Case No(s) : 06-GS-39-847,
	)	06-GS-39-849
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Danny Ray Gilliam,	)	
	)	
Defendant.	)	

September 4, 2007
Pickens, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

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

Representing: State
ELIZABETH TILLEY, Esquire

Representing: Defendant
ROBERT NEWTON, Esquire

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P R O C E E D I N G S

1
2 **THE COURT:** Okay. This is State versus
3 Danny Ray Gilliam. I understand that, uh, --
4 first of all, the jury is all out of the
5 courtroom. Is that correct?

6 **MR. NEWTON:** To my knowledge, that is
7 correct, Judge.

8 **THE COURT:** All right. So I understand
9 the jail has some concerns about security. And
10 I will hear those concerns now. He stepped out,
11 I believe, to see if he could arrange the, uh,--

12 **SPEAKER:** I'm Captain Smith of the Sheriff's
13 Office. We were involved in a week-long case
14 involving Mr. Gilliam in several lynchings that
15 happened. Anyway, he fled from us for about a
16 week involving helicopters and dogs. It took
17 some time to catch him.

18 **THE COURT:** All right. He was going to
19 check on the possibility of using the stun belt.

20 **SPEAKER:** Yes, sir. Either the leg and arm
21 bar or the stun belt.

22 **THE COURT:** Well, the thing about the leg
23 irons, and we've done this before in this
24 courtroom, we set up a little barrier there
25 where the jury can't see under the table over

1 there. It's kind of awkward and it's awkward
2 looking. If we can use the stun belt and if
3 that will satisfy the sheriff's department's
4 concerns, let's do that.

5 **SPEAKER:** That will be fine, sir.

6 **THE COURT:** And Mr. Gilliam, uh, we will
7 take, we're going to make whatever
8 accommodations we can to make sure that you are
9 able to participate fully in the trial,
10 communicate with your attorney at all times and
11 not appear to the jury to be restrained in any
12 way. But we must have your cooperation. Any
13 attempt on your part to create any type of
14 disruption, certainly any attempt to try to, uh,
15 flee the courtroom or anything like that is
16 going to be dealt with severely. It will also
17 compromise your ability to participate in the
18 trial. You understand that?

19 **MR. GILLIAM:** Yes, sir.

20 **THE COURT:** The trial will go forward
21 under all circumstances. It's really in your
22 hands as to whether or not you want to
23 cooperate. You have any questions?

24 **MR. GILLIAM:** No, sir.

25 **THE COURT:** All right. He is

1 unrestrained right now, correct?

2 MR. NEWTON: That's correct.

3 THE COURT: All right. Well, we have --
4 how long until they get up here with the stun
5 belt? Somebody find out. Anything further?
6 When they get up here, they will put the stun
7 belt on. And just so you know, that is basically
8 a taser that you wear. And there will be a law
9 enforcement officer here in the courtroom who
10 has the control of that. If that officer feels
11 that you have become disruptive or that you have
12 become dangerous or a flight risk, you will be
13 zapped with quite a lot of electricity that will
14 basically disable you and prevent you from doing
15 anything other than falling on the floor. You
16 understand?

17 MR. GILLIAM: Yes, sir.

18 THE COURT: All right. Any concerns
19 about that, Mr. Newton?

20 MR. NEWTON: One moment, Judge. (Pause.)
21 No, Your Honor.

22 THE COURT: All right. Then we'll --
23 anything else before we begin with jury
24 selection?

25 MRS. TILLEY: Your Honor, there are some

1 pretrial motions to be made.

2 THE COURT: Okay. What are they?

3 MRS. TILLEY: The State intends to
4 introduce statements made by the Defendant to
5 law enforcement.

6 THE COURT: Okay. Uh, so you need a
7 Jackson v. Deno hearing? Do you concede that
8 the statements were made and that they were made
9 voluntarily?

10 MR. NEWTON: No.

11 THE COURT: How long will it take you to
12 put up your evidence on the Deno hearing?

13 MRS. TILLEY: In regards to just the Deno
14 hearing, I could probably do that in about 30 to
15 40 minutes, if that. I hate to say less.

16 THE COURT: Okay. Then what we will do
17 is probably go ahead and select a jury, then do
18 the Deno hearing. Does that suit everybody?

19 All right. I'm ready to proceed. If, I
20 guess, the piece of information we're waiting on
21 is the stun belt.

22 MRS. TILLEY: May I have five minutes, Your
23 Honor?

24 THE COURT: Yes.

25 MRS. TILLEY: Thank you.

1 **THE COURT:** Now, when they get here, you
2 can take him back in the back and put it on,
3 right? All right. So let's go ahead and take
4 him back in the back. We'll take a break until
5 the belt gets here. They will put it on him.
6 We'll go ahead and let the jury panel back in
7 here. He can walk out from back there. He will
8 be unrestrained and he can sit down.

9 **MR. NEWTON:** He will walk out while the
10 jury is in here, Judge?

11 **THE COURT:** Just like they do every time.
12 I mean, we'll walk him from out there. Whatever
13 you want.

14 **MR. NEWTON:** I prefer that he be in the
15 courtroom already sitting here before the jury
16 comes in. I think it would be prejudicial.
17 They may surmise that he is being held back
18 there if they see him coming from back there.

19 **THE COURT:** What if he's walking through
20 that door over there?

21 **MR. NEWTON:** That will be fine.

22 **THE COURT:** Any problem with that? Okay.
23 You've got plenty of officers here. He's not
24 going anywhere. You understand now if you try
25 something and I don't think you are going to --

1 MR. GILLIAM: I'm not.

2 THE COURT: I just want the record to be
3 clear. If you try something, it's not going to
4 stop the trial. It's going to happen in front
5 of the jury. It has the potential to prejudice
6 you in front of the jury. The jury will then
7 see that you are in custody because from that
8 point forward, you will be wearing chains. It's
9 your choice now as to whether or not the jury
10 ever sees you in custody, I mean, ever sees that
11 you are restrained in custody. Understand?

12 MR. GILLIAM: Yes, sir.

13 THE COURT: As it stands now, the jury is
14 not going to know that you are in custody.
15 Okay. Any questions?

16 MR. GILLIAM: No.

17 THE COURT: All right. You can let the
18 jury panel back in. He can stay there if he
19 wants to or whatever. All right.

20 (WHEREUPON, the jury panel enters at
21 approximately 10:12 a.m.)

22 THE COURT: Are we now ready to proceed
23 in the State versus Danny Ray Gilliam?

24 MRS. TILLEY: Yes, Your Honor.

25 THE COURT: Ladies and Gentlemen of the

1 jury panel, we are now ready to begin with jury
2 selection in the case of the State of South
3 Carolina versus Danny Ray Gilliam. Mr. Gilliam
4 has been indicted in three indictments. The
5 first of those is 2006-GS-39-847 for Burglary in
6 the First Degree. And in that indictment, it is
7 alleged that Danny Ray Gilliam did in Pickens
8 County on or about the 11th day of January 2006
9 willfully and unlawfully enter the dwelling of
10 Roger Dale Gant, located at
11 in Pickens without consent and with the intent
12 to commit a crime therein.

13 And it is alleged that Danny Ray Gilliam
14 has two prior convictions for Burglary or
15 Housebreaking or a combination of both. This is
16 in violation of Section 16-11-311 of the South
17 Carolina Code of Laws.

18 In indictment number 2006-GS-39-849, Mr.
19 Gilliam has been indicted for Petty Larceny. In
20 that indictment, it is alleged that Danny Ray
21 Gilliam did in Pickens County on or about the
22 11th day of January 2006 feloniously take and
23 carry away the personal property of Roger Dale
24 Gant, to wit: two .22 caliber rifles with a
25 total value less than \$1000 with the intent to

1 deprive the owner permanently of such property.
2 This is in violation of Section 16-13-30 of the
3 South Carolina Code of Laws.

4 And finally, in indictment number 2006-GS-
5 39-867, Mr. Gilliam has been indicted for
6 Possession of a Stolen Vehicle. In that
7 indictment, it is alleged that Danny Ray Gilliam
8 did in Pickens County on or about the 11th day
9 of January 2006 willfully and unlawfully
10 receive, possess, conceal, sell or dispose of a
11 motor vehicle belonging to James Walter Hilton
12 described as a 2003 Jeep Grand Cherokee valued
13 at more than \$5000. Danny Ray Gilliam not being
14 entitled to possession of the vehicle and
15 knowing the vehicle to be stolen or converted
16 under circumstances constituting a crime. This
17 is in violation of section 16-21-80 of the South
18 Carolina Code of Laws.

19 Ladies and Gentlemen, for those of you who
20 are selected to serve on the jury in this case,
21 I will give you detailed instructions about a
22 variety of things including the indictments that
23 I just read to you. I will talk to you in more
24 detail about what the indictment is and what it
25 is not.

1 But let me go ahead and tell you that the
2 indictments that I just read to you are not in
3 any sense evidence of the allegations that are
4 contained within those indictments. The
5 indictments are simply the formal documents that
6 contain the allegations against the Defendant.
7 And they serve to process this case and bring it
8 into this court for trial.

9 The Defendant has pled not guilty to each
10 of those three indictments. The plea of not
11 guilty cast the burden on the State to prove the
12 Defendant guilty beyond a reasonable doubt. For
13 those of you who are selected to serve on the
14 jury in this case, that will be your job to
15 determine whether or not the State has met that
16 burden of proof.

17 Ladies and Gentlemen, I'm about to ask you
18 a series of questions similar in format to those
19 questions that I asked you this morning. Please
20 listen very carefully to these questions. If
21 you have any information that is responsive to a
22 question that I ask, then I would like for you
23 to stand and tell me your name and tell me your
24 information.

25 Now, just like I told you earlier this

1 morning, if you have any reason why you don't
2 want to stand and give your information out loud
3 in front of the other members of the jury panel,
4 you can just tell me that you would like to
5 speak to me privately and I will get you down
6 front. And you can answer it privately with me
7 and with the attorneys.

8 Now, if you know something about this case
9 or if you know some of the people who are going
10 to be involved in this case-and you think that
11 giving your information out loud in front of the
12 other members of the jury might expose those
13 other jurors to information that they should not
14 be exposed to, then in that event, you must come
15 down front and answer the questions privately
16 with me and with the attorneys.

17 We'll start by introducing the lawyers and
18 the Defendant in the case. Mrs. Tilley, would
19 you please introduce yourself to the jury panel.

20 **MRS. TILLEY:** Hi. My name is Elizabeth
21 Tilley. I'm a prosecutor here with the 13th
22 Circuit.

23 **THE COURT:** Hold on. Let me just take of
24 this first. Then I will let you introduce
25 yourself. Is there any member of the jury panel

1 who is related by blood or marriage to Mrs.
2 Tilley or do you know her in any way? If so,
3 please stand. (No response).

4 Mrs. Tilley, as she said, is an employee
5 of the 13th Circuit Solicitor's office. The
6 elected Solicitor of this Circuit is Bob Ariail.
7 Mr. Ariail has the responsibility of
8 prosecuting criminal cases here in Pickens
9 County and also over in Greenville County. Mr.
10 Ariail has a staff of lawyers and also non-
11 lawyers who assist him in doing that. Is there
12 any member of the jury panel who is related by
13 blood or marriage to Mr. or to Solicitor Bob
14 Ariail or to anyone who works for him or do you
15 know Solicitor Ariail or anyone who works for
16 him? If so, please stand.

17 Tell me your name, ma'am.

18 **THE JUROR:** Amy Kelley.

19 **THE COURT:** Mrs. Kelley?

20 **THE JUROR:** Yes.

21 **THE COURT:** Who do you know?

22 **THE JUROR:** Brittany Robinson.

23 **THE COURT:** Brittany Robinson. And she
24 works here?

25 **THE JUROR:** Yes.

1 **THE COURT:** How do you know Mrs.
2 Robinson?

3 **THE JUROR:** She's my niece.

4 **THE COURT:** She is your niece?

5 **THE JUROR:** Yes.

6 **THE COURT:** She works as an
7 investigator, is that correct, Mrs. Tilley?
8 What does she do?

9 **MRS. TILLEY:** She is our Victim Advocate.

10 **THE COURT:** All right. Does Mrs.
11 Robinson have any involvement in this case?

12 **MRS. TILLEY:** No, Your Honor. She is not
13 the Victim witness on this case.

14 **THE COURT:** All right. All right. Mrs.
15 Kelley, do you talk to Mrs. Robinson about the
16 cases that she works on here?

17 **THE JUROR:** No.

18 **THE COURT:** All right. Do you have any
19 knowledge about this case that comes from Mrs.
20 Robinson or any other source?

21 **THE JUROR:** No.

22 **THE COURT:** Would the fact that you are
23 related to Mrs. Robinson as you described,
24 would that interfere in any way with either your
25 willingness or your ability to give both the

1 State and the Defendant and fair and impartial
2 trial?

3 THE JUROR: No, sir.

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

6 Yes, ma'am. Your name please.

7 THE JUROR: Heather Miller and Elizabeth
8 Brock.

9 THE COURT: Heather Miller and Elizabeth
10 Brock?

11 THE JUROR: Yes.

12 THE COURT: Okay. How do you know them?

13 THE CLERK: Her name is Miller.

14 THE COURT: Okay. I'm sorry. Your name
15 is Heather Miller. You know Elizabeth Brock.

16 THE JUROR: Yes.

17 THE COURT: How do you know her?

18 THE JUROR: I go to church with her. And
19 I grew up with her.

20 THE COURT: You grew up with her?

21 THE JUROR: Yes.

22 THE COURT: So you've known her for
23 several years?

24 THE JUROR: Uh-huh.

25 THE COURT: Other than seeing her at

1 church, do you see her in other settings?

2 THE JUROR: No.

3 THE COURT: Would you describe your
4 relationship as particularly close?

5 THE JUROR: No.

6 THE COURT: Would the fact that you know
7 Mrs. Brock interfere in any way with either
8 your willingness or your ability to give both
9 the State and the Defendant a fair and impartial
10 trial?

11 THE JUROR: Uh-huh.

12 THE COURT: All right. Thank you, Mrs.
13 Miller.

14 Yes, sir.

15 THE JUROR: I'm also related to Brittany.
16 She's a cousin.

17 THE COURT: And your name is?

18 THE JUROR: Brooks.

19 THE COURT: Mr. Brooks?

20 THE JUROR: Uh-huh.

21 THE COURT: How close of a cousin, it's
22 Mrs. Robinson, right?

23 THE JUROR: Yes.

24 THE COURT: How close of a cousin?

25 THE JUROR: Close.

1 **THE COURT:** First cousin, second cousin?

2 **THE JUROR:** Third cousin.

3 **THE COURT:** Third cousin. Do you see her
4 regularly? Do you ever talk to her about her
5 work at the Solicitor's office?

6 **THE JUROR:** No, sir.

7 **THE COURT:** Are you aware of any of the
8 details from this case from either what she
9 might have told you or from any other source?

10 **THE JUROR:** No, sir.

11 **THE COURT:** Would the fact that you are
12 related to Mrs. Robinson interfere in any way
13 with either your willingness or your ability to
14 give both the State and the Defendant a fair and
15 impartial trial?

16 **THE JUROR:** No.

17 **THE COURT:** All right. Thank you, Mr.
18 Brooks.

19 Mr. Newton, would you please introduce
20 yourself and your client to the jury?

21 **MR. NEWTON:** My name is Robert Newton.
22 I'm the attorney in this case, the Defendant's
23 attorney. I have the pleasure of representing
24 my client Danny Ray Gilliam.

25 **THE COURT:** All right. Thank you.

1 Is there any member of the jury panel who
2 is related by blood or marriage to Mr. Newton
3 or to Mr. Gilliam or do you know either one of
4 these gentlemen in any way? If so, please
5 stand. (No response).

6 Do I have a witness list?

7 **MRS. TILLEY:** Yes, Your Honor.

8 **THE COURT:** All right. Ladies and
9 Gentlemen, I'm going to read to you now a list
10 of potential witnesses. Then after I have done
11 that, I'm going to ask you whether you know or
12 are related to any of these witnesses. If the
13 witness is in the courtroom, when I call your
14 name, please stand.

15 Lane Byers with Pickens County Sheriff's
16 Office; Adam Tomberlin, Pickens County Sheriff's
17 Office, Mr. Tomberlin; Brian Bolding, Pickens
18 County Sheriff's Office; Tony Robinson, Pickens
19 County Sheriff's Office.

20 Hold on just a minute. I will get you and
21 your information in just a few minutes, ma'am.

22 Mike Ferguson with the Pickens County
23 Sheriff's Office; Dewey Smith with the Pickens
24 County Sheriff's Office; Roger Gant. There is
25 Mr. Gant.

1 Thank you, sir.

2 James Hilton, Mr. Hilton and Margaret
3 Hilton. Any additional witnesses from the State?

4 MRS. TILLEY: No, Your Honor.

5 THE COURT: From the defense?

6 MR. NEWTON: No, Your Honor.

7 THE COURT: Is there any member of the
8 jury panel who is related by blood or marriage
9 to any of these potential witnesses or do you
10 know any of them in any way? If so, please
11 stand.

12 All right. Mrs. Kelley.

13 THE JUROR: Mr. Robinson is my brother-
14 in-law's cousin.

15 THE COURT: Mr. Robinson is your
16 brother-in-law's cousin. Do you know how close
17 of a cousin he is to your brother-in-law?

18 THE JUROR: I believe first cousin.

19 THE COURT: First cousin to your brother-
20 in-law. Do you see Mr. Robinson regularly
21 because of this relationship to your brother-in-
22 law?

23 THE JUROR: No.

24 THE COURT: Do you see him at all?

25 THE JUROR: Rarely.

1 **THE COURT:** Rarely. All right. Thank
2 you, Mrs. Kelley.

3 Yes, ma'am.

4 **THE JUROR:** Tony Robinson is my next door
5 neighbor and we go to church together.

6 **THE COURT:** And your name please.

7 **THE JUROR:** Angela Dickard.

8 **THE COURT:** All right. He is your next
9 door neighbor. Do you see him socially in your
10 yards or as next door neighbors?

11 **THE JUROR:** Yes.

12 **THE COURT:** Do y'all ever talk about his
13 cases?

14 **THE JUROR:** No.

15 **THE COURT:** Never?

16 **THE COURT:** Do you believe you have ever
17 heard anything about this case?

18 **THE JUROR:** No.

19 **THE COURT:** And he also goes to church
20 with you?

21 **THE JUROR:** Yes.

22 **THE COURT:** How long have you all gone to
23 the same church?

24 **THE JUROR:** 36 years.

25 **THE COURT:** Would the fact that you go to

1 church with Mr. Robinson and also are his next
2 door neighbor, would that interfere in any way
3 with either your willingness or your ability to
4 give both the State and the Defendant a fair and
5 impartial, Mrs. Dickard?

6 THE JUROR: I don't think so.

7 THE COURT: Do you think that your
8 relationship with him would interfere with your
9 ability to be fair?

10 THE JUROR: No.

11 THE COURT: All right. Thank you.
12 Mrs. Miller.

13 THE JUROR: Uh, my husband worked with
14 the Pickens County. I recognize some of the
15 names.

16 THE COURT: How long has it been since he
17 worked for Pickens County?

18 THE JUROR: A couple of years.

19 THE COURT: Where does he work now?

20 THE JUROR: City of Mauldin.

21 THE COURT: Mauldin. He's still a police
22 officer?

23 THE JUROR: Uh-huh.

24 THE COURT: Okay. You recognize the
25 names but you don't think you have a

1 particularly close relationship with any of
2 them?

3 THE JUROR: No.

4 THE COURT: All right. Thank you, Mrs.
5 Miller.

6 Yes, ma'am.

7 THE JUROR: I'm Judy Smith. Mike Ferguson
8 is my second cousin.

9 THE COURT: Okay. How often do you see
10 Mr. Ferguson?

11 THE JUROR: Not often.

12 THE COURT: Okay. All right. Thank you,
13 Mrs. Smith.

14 Yes, ma'am.

15 THE JUROR: I'm Stephanie Edwards. I
16 recognize Brian Bowen and I recognize him. I've
17 gone to church with him in the past.

18 THE COURT: You recognize the name of
19 Brian Bowen and you recognize him and you've
20 gone to church with him in the past?

21 THE JUROR: Yes.

22 THE COURT: You don't think you go to
23 church with him now?

24 THE JUROR: No.

25 THE COURT: How long do you think it's

1 been since y'all went to the same church?

2 **THE JUROR:** Years.

3 **THE COURT:** Okay. Thank you, Mrs.
4 Edwards.

5 **THE JUROR:** Darlene Petit. I know Lane
6 Byers. He was the officer of my daughter in a
7 case.

8 **THE COURT:** Tell me your name again
9 please.

10 **THE JUROR:** Darlene Petit.

11 **THE COURT:** Mrs. Petit?

12 **THE JUROR:** Yes.

13 **THE COURT:** Now, repeat for me, if you
14 don't mind, how it is that you know Mr. Byers.

15 **THE JUROR:** He was the investigator in a
16 case between my daughter and my son-in-law.

17 **THE COURT:** Was it a domestic violence
18 case?

19 **THE JUROR:** No.

20 **THE COURT:** What kind of case was it?

21 **THE JUROR:** Uh, harassment charges.

22 **THE COURT:** In the course of his
23 investigation of that case, did you work
24 directly with him?

25 **THE JUROR:** Yes.

1 THE COURT: Were you a witness to some of
2 the facts in that case?

3 THE JUROR: One of the cases against my
4 son-in-law involved carrying a concealed --
5 unlawful carrying of a weapon.

6 THE COURT: Okay. How long ago has that
7 been?

8 THE JUROR: A couple of months.

9 THE COURT: Is the case still pending?

10 THE JUROR: Yes.

11 THE COURT: So you still have this
12 working relationship with Mr. Byers in that
13 case?

14 THE JUROR: Yes.

15 THE COURT: Okay. All right. Thank you,
16 Mrs. Petit.

17 Yes, sir.

18 THE JUROR: Avery Anders. I know Adam
19 Tomberlin and Dewey Smith.

20 THE COURT: And how do you know them?

21 THE JUROR: I went to church with Adam
22 and Mr. Smith is a neighbor.

23 THE COURT: You went to church with Adam?

24 THE JUROR: Yes.

25 THE COURT: And Mr. Smith, Investigator

1 Smith is a neighbor of yours?

2 THE JUROR: Yes.

3 THE COURT: How often do you see them?

4 THE JUROR: Every now and then.

5 THE COURT: Every now and then. How
6 close does Mr. Smith live to you, sir?

7 THE JUROR: Two and a half, three miles.

8 THE COURT: Three miles. Okay. Thank
9 you, Mr. Anders.

10 Yes, ma'am.

11 MR. NEWTON: I'm sorry, Judge. I didn't
12 catch the last juror's name.

13 THE COURT: That is Mr. Anders, Avery
14 Ander, Juror Number 7.

15 MR. NEWTON: Thank you, Your Honor.

16 THE COURT: Yes, ma'am.

17 THE JUROR: I know Brian from high
18 school.

19 THE COURT: You know who from high
20 school?

21 THE JUROR: Brian Bowen.

22 THE COURT: Have you seen him since high
23 school?

24 THE JUROR: One time.

25 THE COURT: Ma'am?

1 **THE JUROR:** I believe one time.

2 **THE COURT:** One time?

3 **THE JUROR:** Uh-huh.

4 **THE COURT:** All right. Thank you, Mrs.
5 Durham.

6 Yes, ma'am.

7 **THE JUROR:** I recognize these people. I
8 work at the Post Office. I don't personally
9 know any of them. But I do recognize them from
10 coming in the post office.

11 **THE COURT:** Okay. Thank you, Mrs. Wood.
12 Yes, sir.

13 **THE JUROR:** I recognize Mike Ferguson.
14 My name is George Blake.

15 **THE COURT:** Mr. Blake.

16 **THE JUROR:** Yes. I worked with Mike's
17 dad at one time. It's probably been six or
18 seven years ago. I haven't seen him since.

19 **THE COURT:** So you know his dad?

20 **THE JUROR:** I know his dad and I know
21 Mike.

22 **THE COURT:** You've met him. You worked
23 with him six or seven years ago. But since then
24 have you seen --

25 **THE JUROR:** I haven't seen him.

1 **THE COURT:** Thank you, Mr. Blake.

2 Yes, sir.

3 **THE JUROR:** Thomas Ernest. I know Lane
4 Byers. I've known him for about 19 years. I
5 saw him about two days ago. I spoke with him
6 for about 20 minutes. That's probably the first
7 time I've seen him in about a year and a half to
8 two years. I have never talked with him about
9 any of this.

10 **THE COURT:** Sir?

11 **THE JUROR:** I have never talked with him
12 about any of his cases.

13 **THE COURT:** When you spoke to him two
14 days ago, you did not talk to him about this
15 term of court of this case?

16 **THE JUROR:** No, sir. Just general
17 conversation. How you doing? Where do you live
18 now?

19 **THE COURT:** All right. Thank you. You
20 can be seated.

21 For those of you who know or who are
22 related to some of the potential witnesses in
23 this case, would the fact that you know them or
24 are related to them interfere in any way with
25 either your willingness or your ability to give

1 both the State and the Defendant a fair and
2 impartial trial?

3 Mrs. Kelly?

4 THE JUROR: No, sir.

5 THE COURT: And Mrs. Dickard, I know I
6 already asked you that but let me get you to
7 answer it again please.

8 THE JUROR: No, sir.

9 THE COURT: Mrs. Miller?

10 THE JUROR: No.

11 THE COURT: Mrs. Smith?

12 THE JUROR: No, sir.

13 THE COURT: Mrs. Edwards?

14 THE JUROR: No, sir.

15 THE COURT: Ma'am?

16 THE JUROR: No, sir.

17 THE COURT: Mrs. Petit?

18 THE JUROR: No.

19 THE COURT: Mr. Anders?

20 THE JUROR: No.

21 THE COURT: Mrs. Durham?

22 THE JUROR: No, sir.

23 THE COURT: Mrs. Wood?

24 THE JUROR: No, sir.

25 THE COURT: Mr. Blake?

1 THE JUROR: No, sir.

2 THE COURT: Mr. Earnest?

3 THE JUROR: No.

4 THE COURT: Any special request for voir
5 dire?

6 MR. NEWTON: No, Your Honor.

7 THE COURT: Is there any member of the
8 jury panel who has any particular interest in
9 the outcome of this case? If so, please stand.
10 (No response).

11 Is there any member of the jury panel who
12 has formed or expressed any opinion as to the
13 guilt or innocence of this Defendant? If so,
14 please stand. (No response).

15 Is there any member of the jury panel who
16 has any bias or prejudice either for, either
17 towards or against the State or the Defendant in
18 connection with this case? If so, please stand.
19 (No response).

20 Is there any member of the jury panel who
21 knows of any reason why you could not give both
22 the State and the Defendant a fair and impartial
23 trial in this case? If so, please stand. (No
24 response).

25 Is there any member of the jury panel who

1 believes that they know or have ever heard or
2 been told anything about this case or about this
3 Defendant? If so, please stand. (No response).

4 Any additional voir dire?

5 **MRS. TILLEY:** None from the State, Your
6 Honor.

7 **MR. NEWTON:** None from the defense, Your
8 Honor.

9 **THE COURT:** All right. Then we are ready
10 to strike the jury. Ladies and Gentlemen, your
11 names have been sorted randomly by a computer.
12 They will be called one at a time. When your
13 name is called, please come down here to the
14 front of the courtroom and come right up to the
15 clerk's bench here. There's a microphone right
16 there in the center. Please walk all the way up
17 to the bench and then turn around and face the
18 attorneys.

19 We will hear first from Mrs. Tilley. She
20 will either ask that you be excused in which
21 case you can return to your seat or she will ask
22 that you be presented to the defense. If you
23 are presented to the defense, then Mr. Newton
24 will either ask that you be excused or that you
25 be seated on the jury. We will continue with

1 that process until we have enough jurors and an
2 alternate to begin with the trial. You may
3 proceed.

4 **THE CLERK:** Stephanie P. Edwards, number
5 46.

6 What says the State?

7 **MRS. TILLEY:** Please present Mrs. Edwards.

8 **THE CLERK:** Defense?

9 **MR. NEWTON:** Excuse Mrs. Edwards from
10 this case.

11 **THE CLERK:** Just have a seat. Thank you.
12 Linda H. Bell, number 17.

13 What says the State?

14 **MRS. TILLEY:** Please present Mrs. Bell.

15 **THE CLERK:** Defense?

16 **MR. NEWTON:** Excuse Mrs. Bell.

17 **THE CLERK:** Thank you.

18 James B. Morgan, number 83.

19 What says the State?

20 **MRS. TILLEY:** Please present Mr. Morgan.

21 **THE CLERK:** Defense?

22 **MR. NEWTON:** Seat Mr. Morgan.

23 **THE CLERK:** Sir, just come on around.

24 Have a seat in the jury box.

25 Thomas C. Earnest, Jr., number 43.

1 What says the State?

2 **MRS. TILLEY:** Please present Mr. Earnest.

3 **THE CLERK:** Defense?

4 **MR. NEWTON:** Seat Mr. Earnest.

5 **THE CLERK:** Sir, come on around.

6 Stanley E. Bright, number 26.

7 What says the State?

8 **MRS. TILLEY:** Please present Mr. Bright.

9 **THE CLERK:** Defense?

10 **MR. NEWTON:** Excuse Mr. Bright.

11 **THE CLERK:** Thank you, sir. Have a seat.

12 Jerri J. Durham, number 42.

13 What says the State?

14 **MRS. TILLEY:** Please present Mr. Durham.

15 **THE CLERK:** Defense?

16 **MR. NEWTON:** Present Mrs. Durham.

17 **THE CLERK:** Ma'am, just come on around.

18 Brad E. Dover, number 39.

19 What says the State?

20 **MRS. TILLEY:** Please present Mr. Dover.

21 **THE CLERK:** Defense?

22 **MR. NEWTON:** Present Mr. Dover.

23 **THE CLERK:** Sir, come around.

24 Robert B. Vaughn, number 112.

25 What says the State?

1 MRS. TILLEY: Please present Mr. Vaughn.

2 THE CLERK: Defense?

3 MR. NEWTON: Excuse Mr. Vaughn.

4 THE CLERK: Thank you, sir. You may have
5 a seat.

6 Carolyn E. Chasteen, number 32.

7 What says the State?

8 MRS. TILLEY: Please present Mrs.
9 Chasteen.

10 THE CLERK: Defense?

11 MR. NEWTON: Excuse Mrs. Chasteen.

12 THE CLERK: Okay.

13 Randall Lee Fowler, number 51.

14 THE COURT: Carolyn, come here a second
15 please.

16 (WHEREUPON, a bench conference is held.)

17 THE CLERK: What says the State?

18 MRS. TILLEY: Please present Mr. Fowler.

19 THE CLERK: Defense?

20 MR. NEWTON: Seat Mr. Fowler.

21 THE CLERK: Sir, come on around.

22 Walter F. Whitmire, number 122.

23 What says the State?

24 MRS. TILLEY: Please present Mr. Whitmire.

25 THE CLERK: Defense?

1 MR. NEWTON: Seat Mr. Whitmire.
2 THE CLERK: Sir, come on around
3 Donald E. Black, number 21.
4 What says the State?
5 MRS. TILLEY: Please present Mr. Black.
6 THE CLERK: Defense?
7 MR. NEWTON: Seat Mr. Black.
8 THE CLERK: James N. Smith, number 101.
9 What says the State?
10 MRS. TILLEY: Please present Mr. Smith.
11 THE CLERK: Defense?
12 MR. NEWTON: Seat Mr. Smith.
13 THE CLERK: William T. Aiken, number 2.
14 What says the State?
15 MRS. TILLEY: Please present Mr. Aiken
16 THE CLERK: Defense?
17 MR. NEWTON: Seat Mr. Aiken.
18 THE CLERK: Sir, come on around.
19 Michael P. Edens, number 44.
20 What says the State?
21 MRS. TILLEY: Please present Mr. Edens.
22 THE CLERK: Defense?
23 MR. NEWTON: Excuse Mr. Edens.
24 THE CLERK: Thank you, sir.
25 James M. Lawton, number 68.

1 What says the State?

2 **MRS. TILLEY:** Please present Mr. Lawton.

3 **THE CLERK:** Defense?

4 **MR. NEWTON:** Seat Mr. Lawton.

5 **THE CLERK:** Come on around, sir.

6 David M. Owens, number 87.

7 What says the State?

8 **MRS. TILLEY:** Please present Mr. Owens.

9 **THE CLERK:** Defense?

10 **MR. NEWTON:** Seat Mr. Owens.

11 **THE CLERK:** Come on around, sir.

12 B. Allen Dunn, number 40.

13 What says the State?

14 **MRS. TILLEY:** Please present Mr. Dunn.

15 **THE CLERK:** Defense?

16 **MR. NEWTON:** Excuse Mr. Dunn.

17 **THE CLERK:** Carol V. Stokes, number 107.

18 What says the State?

19 **MRS. TILLEY:** Please present Mrs. Stokes.

20 **THE CLERK:** Defense?

21 **MR. NEWTON:** Seat Mrs. Stokes.

22 **THE CLERK:** Come on around.

23 **THE COURT:** All right. We'll get an

24 alternate. Strikes are one and two.

25 **THE CLERK:** Jimmie M. Smith, number 103.

1 What says the State?

2 **MRS. TILLEY:** Please seat Mrs. Smith.

3 **THE CLERK:** Defense?

4 **MR. NEWTON:** Excuse Mrs. Smith.

5 **THE CLERK:** Thank you.

6 Sue G. Spearman, number 104.

7 What says the State?

8 **MRS. TILLEY:** Please present Mrs.

9 Spearman.

10 **THE CLERK:** Defense?

11 **MR. NEWTON:** Seat Mrs. Spearman.

12 **THE CLERK:** Come on around.

13 **THE COURT:** Any exception to the
14 composition or manner of selection of the jury?

15 **MRS. TILLEY:** None from the State, Your
16 Honor.

17 **MR. NEWTON:** None from the defense, Judge.

18 **THE COURT:** All right. Those of you who
19 were not selected to serve on the jury in this
20 case, I am going to excuse you for the rest of
21 today. Please call back tonight after six
22 o'clock for instructions about what time you
23 might need to report tomorrow. I'm not positive
24 that you will need to report tomorrow. But if
25 you do, we will have an estimated time on that

1 recorded message.

2 I will be trying to minimize the amount of
3 time that you have to spend here waiting on me
4 and to eliminate the amount of time I have to
5 spend waiting on you. Obviously, if I'm going
6 to have an error, I'm going to err on the side
7 of getting you back here a little early.
8 Nevertheless, all of us will be working hard to
9 try to get to you as quickly as we can after you
10 arrive. So you are welcome to stay. You are
11 not required to leave. But if you don't want to
12 stay, you are free to go at this time.

13 (WHEREUPON, the jury panel exit at approximately
14 11:09 p.m.)

15 THE COURT: For those of you who were
16 selected to serve on the jury in this case, let
17 me speak to you for just a few minutes. Then
18 I'm going to have to take a little bit of a
19 break. I have some matters of law that I need to
20 address before we can begin with the opening
21 statements in front of you.

22 When you come back, we will swear you in.
23 I will give you some instructions about what
24 some of your responsibilities are and what some
25 of the rules are that govern your service as

1 jurors. But while you are back there, I want to
2 make sure that you understand that you may not
3 discuss this case in any manner until I have
4 given you permission to begin with your
5 deliberations. So when you go back there, you
6 all can all high-five each other and talk about
7 how great Clemson is and how long it is until
8 next Saturday when the whole picture will be
9 different, I'm quite sure. But don't talk about
10 this case.

11 I think this is probably going to take
12 about a half an hour. I will get it done as
13 quickly as I can and get you back out here to
14 begin with the opening statements. So you all
15 go back into the jury room now. I will have you
16 out here as quickly as possible.

17 (WHEREUPON, the jury exit at approximately
18 11:11 a.m.)

19 THE COURT: All right. Mrs. Tilley.

20 MRS. TILLEY: The State calls Brian Bowen
21 to the stand.

22 BRIAN BOWEN

23 having first being duly sworn testified as
24 follows:

25 THE CLERK: Please state your full name

1 for the record.

2 THE WITNESS: Brian Russell Bowen.

3 DIRECT EXAMINATION

4 BY MRS. TILLEY:

5 Q Mr. Bowen, where do you work?

6 A Pickens County Sheriff's Office.

7 Q And in what capacity do you work there?

8 A Sergeant with the Uniform Patrol Division.

9 Q Did you have a chance to talk to the
10 Defendant after he was in custody?

11 A Yes.

12 Q And how did that occasion come about?

13 A I went to pick him up and speak to him.

14 Q Where did you pick him up from?

15 A The detention center.

16 Q About what time in the morning was that?

17 A I don't recall the exact time.

18 Q Was it in the morning?

19 A I believe it was in the morning.

20 Q Okay. When you went to pick him up, what
21 kind of condition was he?

22 A I believe he had leg shackles on, he had a
23 belly chain and handcuffs.

24 Q Okay. Now where did you take him from the
25 detention center?

1 A Downstairs in the interview room at the
2 Sheriff's Office.

3 Q Okay. Tell me about that room. How big was
4 that room?

5 A Approximately 18 feet long, maybe 12 or 15
6 feet wide. It's a rectangular conference room with a
7 large table in the center of it with chairs and one
8 door.

9 Q Okay. Was the door open or closed during
10 this?

11 A I believe the door was open.

12 Q Who else was in the room with you?

13 A Lieutenant Byars.

14 Q Okay. What were you wearing at this time?
15 Were you in uniform?

16 A No, ma'am. I would have been wearing casual
17 business attire.

18 Q Okay. And Lane Byars, what would he had
19 been wearing?

20 A The same, a shirt and tie.

21 Q Did you have a service weapon on you?

22 A Yes, ma'am.

23 Q Okay. Now, when -- did the Defendant -- how
24 did he stay restrained during this questioning?

25 A He remained in the belly chains and the leg

1 shackles.

2 Q If he had needed to use the restroom or get
3 a drink, would he had been able to do that?

4 A Absolutely.

5 Q Okay. What was the purpose of having him
6 down in the interview room?

7 A To have some privacy with him.

8 Q Okay. Did he want to talk about the case?

9 A Initially, Yes.

10 Q And before any, uh, Defendant or someone in
11 custody wants to talk to you, what do you do?

12 A We read them their Miranda rights and have
13 them sign paperwork to the same.

14 (WHEREUPON, State's Exhibit 1 is marked for
15 identification purposes.)

16 BY MRS. TILLEY:

17 Q I'm going to show you this right here.
18 Before you begin to question someone, how do you go
19 about advising them of their rights?

20 A Either myself or Lieutenant Byars will read
21 line-for-line the rights forms, place a checkmark
22 beside each line and have the Defendant or the person
23 we are speaking with at the time initial each line and
24 also initial the paragraph, sign their signature and
25 then Lieutenant Byars will witness it.

1 Q Okay. Let me back up and go through that
2 procedure again. The first step that he does, that
3 you would do?

4 A Would be to read the form to the person we
5 are speaking with.

6 Q If you could, just briefly read that form
7 that you would have read to the Defendant on that day.

8 MR. NEWTON: Judge, I'd like to have a
9 look at that form first.

10 MRS. TILLEY: Sure.

11 MR. NEWTON: Without objection.

12 BY MRS. TILLEY:

13 Q All right. This has been marked as State's
14 Exhibit 1. If you could, read through that briefly
15 please.

16 A Before we ask you any questions, you must
17 understand your rights. You have the right to remain
18 silent. Anything you say can be used against you in
19 court. You have the right to talk to a lawyer for
20 advice before we ask you any questions and to have him
21 or her with you during questions. If you have no
22 money to pay a lawyer's fee, the Court will appoint
23 one to represent you without cost if you wish.

24 If you decide to answer questions without a
25 lawyer present, you will still have the right to stop

1 answering at any time. You also have the right to
2 stop answering at any time until you talked to a
3 lawyer. Waiver of Rights. I have read this statement
4 of my rights. I understand what my rights are. I am
5 willing to make a statement and answer questions. I
6 do not want a lawyer at this time. I understand and
7 know what I am doing. No promises or threats have
8 been made to me and no pressure or coercion of any
9 kind has been used against me.

10 Q And after you read that to the Defendant,
11 what is the next step?

12 A They will initial each line and then sign
13 their signature.

14 Q What is the marking next to each of these
15 lines?

16 A Those are the checkmarks indicating that we
17 read each line.

18 Q How do you know that the Defendant made
19 those checkmarks?

20 A These are his initials beside each one them.

21 Q Okay. How did he appear at that time? Did
22 he appear as if he understood what was going on?

23 A Yes, he appeared to understand.

24 Q After you read him his rights, what happened
25 after that?

1 A We begin speaking with him.

2 Q Okay. And what did he tell you as a result,
3 in particular to this case, burglary on Cove Creek
4 Road, what did he tell you in regards to that?

5 A He verbally admitted to being in the Jeep
6 Cherokee the day that we saw him on Cove Creek Road.

7 Q Now, did -- what happened after that?

8 A After that, he requested to end the
9 interview.

10 Q When he requested to end the interview, what
11 happened then?

12 A We immediately placed him back up in the
13 detention center.

14 Q At any time during that questioning, did he
15 ask for a break or anything of that nature?

16 A No.

17 MRS. TILLEY: That's all I have, Your
18 Honor.

19 **CROSS-EXAMINATION**

20 **BY MR. NEWTON:**

21 Q Mr. Bowen, how are you?

22 A Very well, sir.

23 Q Isn't it true that after Danny signed this
24 statement that he then asked for a lawyer, after that,
25 didn't he change his mind?

1 A After we spoke for a while, he did.

2 Q So he did ask for an attorney before he gave
3 any statements at all, correct?

4 A No. That's not correct.

5 Q You sure about that?

6 A Yes.

7 Q You recall him asking for an attorney at any
8 point during the interview?

9 A Yes, right before we ended the interview.

10 Q But it's your position that he made the
11 statement regarding the red Jeep Cherokee before he
12 asked for an attorney?

13 A Yes.

14 Q Was that statement, that alleged statement
15 in response to a question on your part?

16 A It was after we asked him if he wanted to
17 provide a written statement.

18 Q And what did he say specifically in answer
19 to that question?

20 A I don't want to put anything in writing.
21 I'd like to speak to a lawyer. I don't know if those
22 were his exact words. But that's basically what he
23 said.

24 Q Perhaps you misunderstood my question,
25 Officer, but in regards to the alleged statement that

1 he made regarding being in the red Jeep Cherokee, was
2 that statement of his in response to a specific
3 question?

4 A I don't remember if it was in response or
5 not. We were talking about the case. He admitted
6 being in the Jeep that day.

7 Q What were you talking about precisely?

8 A I don't remember the specific words.

9 Q Were you asking him questions?

10 A Yes.

11 Q He told you he did not want to give a
12 written statement, he wanted to talk to an attorney
13 first.

14 A As soon as he said that, that's when the
15 interview ended.

16 Q Okay. Did he make any other admissions to
17 you at all?

18 A No, not at that time.

19 Q That's it? Just to being in the red Jeep
20 Cherokee?

21 MRS. TILLEY: Your Honor, at this time, if
22 he would be able to answer the question in full.
23 There were many other admissions made in that
24 statement. None of them pertained exactly to
25 this charge. However, he made several other

1 admissions in regards to several other burglaries
2 he committed.

3 THE COURT: Well --

4 MR. NEWTON: If I could rephrase the
5 question. She's correct.

6 THE COURT: I don't think that was an
7 objection. Just go ahead and restate the
8 question and let him answer it.

9 BY MR. NEWTON:

10 Q Did he make any other admissions in regards
11 to the case that we are here for trial on today?

12 A He said he wanted to admit to the things
13 that he'd done after that day.

14 Q So is that a no? Other than being in the
15 red Jeep Cherokee, he had no other admissions?

16 A I don't believe so.

17 Q Okay. No other questions.

18 THE COURT: Any redirect?

19 REDIRECT EXAMINATION

20 BY MRS. TILLEY:

21 Q When he asked for an attorney, what did you
22 do at that point?

23 A We immediately took him back up to the
24 detention center. I did tell him if he wished to
25 speak with us again, he would have to put it in

1 writing and let us know that he wanted to speak with
2 us after we left him alone that day.

3 Q When you were taking him back to detention,
4 did he attempt to talk to you again?

5 A No. Small talk. We didn't discuss the
6 case.

7 MRS. TILLEY: That's all.

8 THE COURT: All right, sir. You can step
9 down.

10 Call your next witness.

11 MRS. TILLEY: Your Honor, that is my only
12 witness in regards to the Jackson v. Deno.

13 THE COURT: Okay. Any evidence from the
14 defense?

15 MR. NEWTON: No, Your Honor.

16 THE COURT: Any argument from the
17 defense?

18 MR. NEWTON: No, Your Honor. I will
19 preserve my argument for the jury.

20 THE COURT: Well, if you have an argument
21 that would help me rule on whether or not he made
22 the statement and whether or not the statement
23 was made voluntarily, then making it now is going
24 to be the only time you can make it when it's
25 going to help me decide.

1 **MR. NEWTON:** I understand, Your Honor.
2 I'm not going to object as far as the rule of law
3 goes, Judge.

4 **THE COURT:** You are not going to object
5 as far as the rule of law goes?

6 **MR. NEWTON:** Yeah. I concede.

7 **THE COURT:** Well, it's not necessary that
8 you concede. Uh, but I think that the State has
9 proven by preponderance of the evidence that the
10 Defendant made the statement. I believe the
11 State has also proven by preponderance of the
12 evidence that the Defendant made the statement
13 voluntarily after having been given his Miranda
14 rights and after having understood his Miranda
15 rights and after waiving his Miranda rights. I
16 find that the State has proven all those things
17 by the preponderance of the evidence. So now,
18 the statement will be admissible. Is there
19 anything further that we need to do pretrial?

20 **MRS. TILLEY:** None from the State, Your
21 Honor.

22 **MR. NEWTON:** None from the defense, Judge.

23 **THE COURT:** Okay. Well, we will take a
24 short break and come back to begin with opening
25 statements. About five minutes.

1 (WHEREUPON, a short recess is taken at
2 approximately 11:25 a.m.)

3 (WHEREUPON, the Court resumes at approximately
4 11:31 a.m.)

5 MRS. TILLEY: I noticed in the Jackson v.
6 Deno hearing, it was asked about --

7 MR. NEWTON: My client is not in here.

8 MRS. TILLEY: Excuse me, Your Honor.

9 (WHEREUPON, the Defendant enters the courtroom.)

10 THE COURT: All right.

11 MRS. TILLEY: Yes, Your Honor. I noticed
12 during the Jackson v. Deno hearing that it was
13 bought up by the defense about the Defendant
14 asking for his attorney and the statement ending
15 at that point. I did not go into that out of
16 abundance of caution. I did not want to in any
17 way implicate that the Defendant asking for an
18 attorney indicates that sort of issue. I don't
19 know if you kind of see where I'm going with
20 that. But if he is going to do that, I would
21 like to address that on direct and avoid any
22 possible mistrial issues for talking about the
23 Defendant invoking his right to counsel.

24 THE COURT: I don't think you should go
25 into that.

1 MRS. TILLEY: Okay.

2 THE COURT: If they bring it up, then you
3 can respond.

4 MRS. TILLEY: Okay.

5 THE COURT: But you are probably not --
6 you're not going to bring that up, are you?

7 MR. NEWTON: We had no intentions of doing
8 so.

9 MRS. TILLEY: I just want to make sure --

10 THE COURT: Officer, you know they are
11 not going to ask you about anything that happens
12 after the point in time when he first invoked his
13 right to counsel. So you don't talk about that.
14 You know that, I know.

15 Just so that everybody is clear, you are only
16 going to ask him about the circumstances that led
17 up to that one statement and then, uh, stop.
18 Okay. Anything further?

19 MRS. TILLEY: One more question. If I
20 could have the Court's indulgence in making sure
21 that, uh, I guess I want a little direction on
22 this. There were several other crimes that were
23 committed. That is how my officers were able to
24 ID the Defendant. The questions that I intend to
25 ask him were specifically and the officer and I

1 have gone over this. Have you ever talked with
2 the Defendant before? Yes. On how many
3 occasions? A few. I just wanted to apprise Your
4 Honor of that situation and run those questions
5 by you. It is a situation where because of the
6 amount of crimes the Defendant committed, they
7 knew him because of those other crimes. I just
8 wanted to --

9 THE COURT: What's the purpose of, what's
10 the purpose of getting into that at all?

11 MRS. TILLEY: Because I need to positively
12 identify how the officers knew that the Defendant
13 was in the car. The Defendant after that got out
14 and ran. My only identification of the Defendant
15 in that car --

16 THE COURT: You've got officers who saw
17 him in the car?

18 MRS. TILLEY: Yes.

19 THE COURT: And were able to identify
20 him?

21 MRS. TILLEY: Yes. And my officer knew
22 immediately when he saw him that that was Danny
23 Gilliam.

24 THE COURT: Okay.

25 MRS. TILLEY: He knew that because --

1 **THE COURT:** I mean, that's fine. You
2 approached it correctly. You are entitled to lay
3 the foundation as to how they knew who it is that
4 they were seeing. But you want to do so in a way
5 that does not reveal any prior bad acts or any
6 prior convictions or anything that would be
7 inadmissible as bad character evidence or
8 anything like that. So I think you approached it
9 correctly.

10 **MRS. TILLEY:** I appreciate that, Your
11 Honor.

12 **THE COURT:** All right. Anything further?

13 **MRS. TILLEY:** Nothing from the State, Your
14 Honor.

15 **THE COURT:** Okay.

16 **MR. NEWTON:** Nothing from the defense.

17 **THE COURT:** Then let's bring in the jury.

18 Let me ask a question now. You alleged in
19 the indictment the aggravating circumstance of
20 having two or more prior convictions for
21 burglary. But you did not allege in the burglary
22 indictment possession of a firearm at any point
23 during the commission of the crime. You are not
24 intending to proceed on that aggravating
25 circumstance of the burglary?

1 **MRS. TILLEY:** No, Your Honor, but I am
2 going to talk about it in regards to the petty
3 larceny.

4 **THE COURT:** Okay. All right.

5 (WHEREUPON, the jury enter at approximately
6 11:34 a.m.)

7 **THE COURT:** Swear the jury please.

8 **THE CLERK:** If you will all please stand
9 and raise your right hand. After the oath is
10 administered, if you will, please say "I will".
11 You shall well and truly try the issue joined in
12 this case of the State versus Danny Ray Gilliam
13 and a true verdict render according to law and
14 evidence so help you God.

15 (WHEREUPON, each juror respond affirmatively.)

16 **THE COURT:** Ladies and Gentlemen, we are
17 now ready to begin with the trial in the case of
18 the State of South Carolina versus Danny Ray
19 Gilliam. As I told you during jury selection,
20 Mr. Gilliam has been indicted in three
21 indictments. The first of which is 2006-GS-39-
22 847 for Burglary in the first Degree. And in
23 that indictment, it is alleged that Danny Ray
24 Gilliam did in Pickens County on or about the
25 11th day of January 2006 willfully and unlawfully

1 enter the dwelling of Roger Dale Gant located at
2 in Pickens with consent and
3 with the intent to commit a crime therein. Danny
4 Ray Gilliam has two prior convictions for
5 Burglary or Housebreaking or a combination of
6 both. This is in violation of Section 16-11-311
7 of the South Carolina Code of Laws.

8 In indictment number 2006-GS-39-849, Mr.
9 Gilliam has been indicted for Petty Larceny. And
10 in that indictment, it is alleged that Danny Ray
11 Gilliam did in Pickens County on or about the
12 11th day of January 2006 feloniously take and
13 carry away the personal property of Roger Dale
14 Gant, to wit: two .22 caliber rifles with a total
15 value less than \$1000 with the intent to deprive
16 the owner permanently of such property. This is
17 in violation of Section 16-13-30 of the South
18 Carolina Code of Laws.

19 And thirdly, in indictment number 2006-39-
20 867, Mr. Gilliam has been indicted for
21 Possession of a Stolen Motor Vehicle. And in
22 that indictment, it is alleged that Danny Ray
23 Gilliam did in Pickens County on or about the
24 11th day of January 2006 willfully and unlawfully
25 receive, possess, conceal, sell or dispose of a

1 motor vehicle belonging to James Walter Hilton
2 described as a 2003 Jeep Grand Cherokee valued at
3 more than \$5000. Danny Ray Gilliam not being
4 entitled to possession of the vehicle and knowing
5 the vehicle to be stolen or converted under the
6 circumstances constituting a crime. This is in
7 violation of Section 16-21-80 of the South
8 Carolina Code of Laws.

9 Now, Ladies and Gentlemen, as I mentioned to
10 you just a few minutes ago, the indictments that
11 I just read to you are not in any sense evidence.
12 They are not evidence of the allegations that are
13 contained within the indictments. The
14 indictments are simply the formal documents that
15 contain the allegations that have been made
16 against the Defendant. And they serve to process
17 this case and bring it into this court for trial.

18 The Defendant has pled not guilty to each of
19 those three indictments. The plea of not guilty
20 casts the burden on the State to prove the
21 Defendant guilty beyond a reasonable doubt. That
22 will be your job, Ladies and Gentlemen, to
23 determine whether or not the State has met that
24 burden of proof.

25 Now, it is a very important rule of law in

1 our country that a Defendant in a criminal trial
2 will always be presumed to be innocent to the
3 crimes with which he has been charged unless and
4 until his guilt has been proven by evidence that
5 satisfies you of that guilt beyond a reasonable
6 doubt. Of course, this is what we call the
7 presumption of innocence.

8 The presumption of innocence is not just a
9 legal theory. It's not just a legal phrase that
10 we use. It is a substantial constitutional right
11 to which every Defendant is entitled. The
12 presumption of innocence accompanies the
13 Defendant from the time he is charged throughout
14 the trial and into the jury room until you reach
15 a verdict of guilt that is based on evidence that
16 satisfies you of that guilt beyond a reasonable
17 doubt.

18 The trial of this case can be divided up into
19 five basic phases. I'm going to go over those
20 phases with you now. The first phase is the
21 opening statements when the lawyers will stand
22 before you and they will explain to you what the
23 case is about. They will tell you what the
24 issues are in this case and how each side stands
25 on those issues. And they will also go over for

1 you some of the evidence that you can expect to
2 see that will relate to those issues.

3 Then the second phase is the evidentiary
4 phase when witnesses will come here to this
5 witness stand. You will hear their testimony.
6 And you probably will also see some physical
7 evidence as well in addition to the testimony.
8 Then after all the evidence has been presented,
9 we will enter the third phase which is called the
10 closing arguments when the lawyers will stand
11 before you and they will argue to you as to
12 whether or not the State has met that burden of
13 proof.

14 The fourth phase is the jury charge when I
15 will explain to you the law that is applicable to
16 this case. Then the fifth phase is when you will
17 go back into the jury room and you will
18 deliberate. Now, it's very important that you
19 not being to make up your mind as to whether or
20 not the State has met its burden of proof until
21 you have been through all five of those phases
22 including at least the first portion of that
23 fifth phase when you will have a chance to listen
24 to each other discuss the evidence and discuss
25 whether or not the State has met its burden.

1 It's also very important that you remember my
2 instruction that I gave you a little earlier.
3 That is that you may not discuss this case in any
4 manner until I have given you permission to begin
5 your deliberations during that fifth phase.

6 As members of the jury, you are the exclusive
7 judges of the facts. I am not permitted to
8 indicate to you how I might feel about the facts.
9 So if I say anything or do anything that might
10 lead you to believe that I have an opinion about
11 the facts, then you should disregard that. But
12 on the other hand, I am the exclusive judge of
13 the law. If you have some idea as to what the
14 law is or what the law should be and if that
15 differs from what I will tell you the law is, you
16 are obligated under the oath that you have just
17 taken as jurors to set your notion of the law
18 aside and to accept and apply the law precisely
19 as I will explain it.

20 One other role that I play is to decide on
21 the admissibility of evidence. From time to
22 time, I am quite sure that their will be
23 objections made. When one lawyer feels that
24 evidence has been offered that does not comply
25 with our rules of evidence. When an objection is

1 made, that is not an attempt on the part of a
2 lawyer to hide anything from you. That is the
3 way our system of evidence works. And then, it
4 becomes my responsibility to rule on the
5 objection. If I sustain the objection, that
6 means I believe the evidence is not admissible
7 and I will not allow it in for you to consider.
8 If I overrule the objection, that means I believe
9 the evidence is admissible and I will allow it in
10 and you may consider it.

11 Most of the time, I will be able to do that
12 just as I sit here. You will hear one of the
13 lawyers say objection. They might briefly state
14 the grounds for their objection, then you will me
15 say either "sustained" or "overruled". It might
16 be necessary for me sometimes to ask the lawyers
17 to come up here to the bench so that I can
18 briefly discuss the evidence question with them
19 before I rule.

20 On some occasions, it might even be necessary
21 for me to send you all back into the jury room as
22 I did a few minutes ago so that I can openly
23 discuss the evidence question. Sometimes I
24 actually have to listen to the testimony before I
25 can decide whether or not you can listen to it.

1 Now, Ladies and Gentlemen, our court system,
2 like any other business, has become dependent on
3 the use of computers. And I use my computer a
4 lot during the course of the trial to do my work
5 that is related to the trial. I will be using it
6 particularly a lot today. This is my first day
7 back in court after having been given a new
8 computer. And one of the things I have to do is
9 to download all my files from Columbia so that
10 I'll have them here on my computer so that I can
11 use them for my work.

12 Don't let that be a distraction to you.
13 Sometimes jurors wonder if I'm up here playing
14 Pac-man or some other computer game. And I
15 assure you that I don't even have anything like
16 that loaded on my computer. If I'm using my
17 computer, I'm working. I am also listening to
18 the testimony just as you are. I don't want that
19 to be a distraction to you as you listen and
20 observe the witnesses in their testimony.

21 Mrs. Tilley.

22 **MRS. TILLEY:** Ladies and Gentlemen, we are
23 here today on this Tuesday morning because the
24 Defendant committed a crime. As Your Honor has
25 told you, in our judicial system, he walks in

1 here today, sits at that table presumed innocent.
2 At the end of this trial, this Defendant will
3 stand before you guilty. The evidence will show
4 that he is guilty of breaking into someone's
5 home. He's guilty of stealing guns and he is
6 guilty of being in possession of a stolen
7 vehicle. He is guilty of shredding the idea that
8 home is a safe place to sleep at night. He is
9 guilty of shredding the idea that one's items and
10 belongings are safe.

11 Ladies and Gentlemen, my name is Elizabeth
12 Tilley. I introduced myself before. I'm a
13 prosecutor here in this office. My job is to
14 prosecute criminal offenses committed against
15 people of Pickens County. My job is to seek
16 justice.

17 In this trial, the Defendant is charged with
18 Burglary First Degree, Petty Larceny and being in
19 possession of stolen vehicle. In my opening, I'd
20 like to talk about, again, what the Defendant is
21 charged with, what I have to prove to you today
22 in order for you to convict the Defendant and how
23 the State intends to do that. Before I do that,
24 I want to thank you very much for your service
25 here today. As we've all kind of alluded to,

1 last night might have been a long night. But we
2 are very glad to have you here.

3 You are very important to me because you
4 bring life experiences and common sense into this
5 judicial system. That is very important. That's
6 what you use to make your decisions. Something
7 you do every day. That's what you will do in
8 this case, make your decision of guilt or
9 innocence.

10 Also, what I have to prove you to, I have to
11 prove to you beyond a reasonable doubt and I take
12 that burden on gladly in this case. I take that
13 burden very seriously. I would not bring this
14 case before you if the State was not prepared to
15 meet that burden.

16 Now, the Defendant, as I mentioned earlier is
17 charged with Burglary First Degree, Possession of
18 a Stolen Vehicle and Petty Larceny. Burglary
19 First Degree is the elements that are, I have to
20 prove to you that he broke into a dwelling, that
21 he did so with the intent to commit a crime. And
22 it's Burglary First Degree, that he has two or
23 more prior convictions for burglary.

24 Now, what is a dwelling? Dwelling is where
25 someone lives. Intent to commit a crime is when

1 you enter that dwelling, you intend to commit a
2 crime. For example, steal guns out of the house.
3 And petty larceny is simply a fancy word for
4 saying you're stealing somebody else's stuff.
5 Lots of times, you hear grand larceny. That's
6 when you steal over \$1000 worth of items. In
7 this case, the Defendant stole under \$1000 worth
8 of items out of the house. It was a gun.

9 The way that I intend to prove this to you
10 today is I'm going to call several witnesses.
11 They are going to tell you a story about what
12 happened in regards to this case. The victim
13 James Hilton was over at his grandson's birthday
14 party. His three-year's birthday party. As he
15 was leaving this house -- his grandson lives
16 right next to his house. He walks out of his
17 driveway. And he sees someone else driving his
18 car out of the driveway. Of course, he reports
19 the car stolen. He's given no one permission to
20 use this car.

21 A few days later, officers with the sheriff's
22 department are up on Cove Creek Road. They have
23 had a call that there's possibly that stolen
24 vehicle up on Cove Creek Road. When they go to
25 Cove Creek Road, as they are driving down the

1 road, they see that stolen car and the Defendant,
2 Danny Ray Gilliam, driving out of the driveway of
3 victim Roger Gant's house.

4 The evidence will show at this point, there
5 are two officers in the car. One of the officers
6 positively ID'd Danny Ray Gilliam. He sees them.
7 They turn around to pursue Danny Ray Gilliam.
8 And when they do that, the Defendant jumps out of
9 the car and runs away. They don't apprehend him
10 on that day.

11 At the same time that this is going on, Roger
12 Gant, who lived at that driveway where the
13 Defendant was coming out had called the police.
14 Someone had broken into my home. So another
15 officer comes out to make that report. Someone
16 has pried in the doors. They had gone in and
17 they had stolen two guns and CD's. That victim
18 comes up to the car that the Defendant was
19 driving out of that driveway and he identifies
20 those guns as the guns that were in his house.

21 Now, you will hear from our ID officers.
22 They processed the scene. And they do a great
23 job. But at the same time, I know we all watched
24 CSI. It's a great show. It's real interesting
25 but it is completely unrealistic. They test

1 things that can't be tested. They lift prints
2 that can't be lifted. It's very interesting and
3 they finish it in an hour. That's not the way
4 that things are done here. Just keep that mind.
5 Whenever a jury comes in, I just like to kind of
6 touch on that just a little bit.

7 Also, evidence that you will hear, one of the
8 most important pieces of evidence is that the
9 Defendant admits to being in that stolen vehicle
10 to the officers. And also to prove Burglary
11 First Degree, a lot of times, we do Burglary
12 First Degree, Burglary Second Degree, Burglary
13 Third Degree. This is first degree because there
14 are two prior burglary convictions. I will prove
15 those to you today by entering certified
16 convictions of those two prior convictions for
17 burglary. Once again, I appreciate your time.
18 I've very thankful to have you here. Thank you
19 again.

20 MR. NEWTON: Please the Court, Your Honor?

21 THE COURT: Yes, sir.

22 MR. NEWTON: Ladies and Gentlemen, I'm
23 going to keep my remarks very short because what
24 I have to say and what the prosecutor has told
25 you is not evidence at all. The only evidence in

1 this case is what you are going to hear from the
2 witness stand from the sworn testimony. What I
3 have to say to you now is not from the witness
4 stand under sworn testimony and everything the
5 prosecutor just told you is not from the witness
6 stand under sworn testimony.

7 I will simply not waste your time any
8 further. I would only point out that my client
9 is innocent until proven guilty. The burden of
10 proof is on the State. That burden of proof is
11 beyond a reasonable doubt. We are not going to
12 sit here and tell you that the burglary did not
13 happen or that the petty larceny did not happen
14 or that a car was not stolen. Our position is
15 simply that they've got the wrong person. These
16 crimes did happen but they've got the wrong
17 person.

18 **MRS. TILLEY:** The State calls James Hilton
19 to the stand.

20 **JAMES HILTON**
21 having first being duly sworn testified as
22 follows:

23 **THE CLERK:** Please state your full name
24 for the record.

25 **THE WITNESS:** James Walter Hilton.

DIRECT EXAMINATION

BY MRS. TILLEY:

Q Mr. Hilton, where do you live?

A In Grover, North Carolina.

Q And where do you work for a living?

A I work for Premier Finishing Company in Hickory, North Carolina.

Q And where did you work before that?

A I'm a retired fire captain from San Francisco Bay area.

Q Okay. And how many children do you have?

A I have three and my wife has two. So a total of five children.

Q And grandchildren?

A 14.

Q On January 7th of '06, what special occasion were you celebrating?

A My grandson's birthday.

Q And where were you celebrating?

A At his house.

Q And where is that in relation to your house?

A It's immediately next door within about 150 feet.

Q And what time did you leave your grandson's house to go to your house?

1 A We left approximately nine o'clock.

2 Q Had your car been parked at your house?

3 A Both cars were in the carport.

4 Q And what did your car look like?

5 A I have a red PT Cruiser and the red Jeep
6 Cherokee.

7 Q And what is the approximate value of the
8 Jeep Cherokee?

9 A I think it was somewhere around 18,000 at
10 that point.

11 Q Okay. What was the license plate on it?

12 A It actually had two licenses on it. On the
13 rear which is the legal license, Just Do it,
14 "JSTDOOIT", North Carolina plate.

15 Q Okay. And I'm sorry, what time did you
16 leave to go to your grandson's?

17 A Approximately 9 p.m.

18 Q Now, as you were leaving, what did you see?

19 A I saw a vehicle leaving my driveway. My
20 driveway is about 170 feet long.

21 Q What vehicle was that?

22 A The red Cherokee.

23 Q Now, had you given anyone permission to use
24 this car?

25 A No, I had not.

1 Q Had you left the keys in that car?

2 A No, they were not.

3 Q Where were your keys?

4 A They were inside the house.

5 Q Now, what did you do when you saw someone
6 driving away in your vehicle?

7 A At first, I was incredulous. I couldn't
8 believe that it was my car. Then I immediately called
9 911 to report a stolen vehicle. I seen it leave the
10 driveway. I told them which direction it was
11 traveling.

12 Q Did the police respond?

13 A Yes.

14 Q That is all I have. Thank you.

15 CROSS-EXAMINATION

16 BY MR. NEWTON:

17 Q You said the keys were inside your house?

18 A Correct.

19 Q Were your doors locked to the house?

20 A No.

21 Q Were you inside the house at the time?

22 A No.

23 Q Who was inside the house at the time?

24 A No one.

25 Q You just left your doors unlocked being away

1 from your house?

2 A I walked next door.

3 Q Okay. Did you, uh, see who was inside that
4 vehicle?

5 A I didn't.

6 Q You did not? No more questions.

7 MRS. TILLEY: Thank you. May this witness
8 be excused, Your Honor?

9 THE COURT: He may.

10 MRS. TILLEY: The state calls Roger Gant.

11 ROGER GANT

12 having first being duly sworn testified as
13 follows:

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

16 THE WITNESS: Roger Dale Gant.

17 DIRECT EXAMINATION

18 BY MRS. TILLEY:

19 Q Mr. Gant, where do you live?

20 A Pickens, South
21 Carolina.

22 Q Is that in Pickens County?

23 A Yes, ma'am.

24 Q And how long have you lived there?

25 A Since '91.

1 Q Were you living there on the date of the
2 incident, January 11th of '06?

3 A Yes, ma'am.

4 Q On the morning of January 11th, '06, did you
5 leave the house?

6 A Yes.

7 Q And how long were you gone from your house?

8 A Maybe a couple of hours.

9 Q When did you leave your job to come back to
10 your house?

11 A About 10:30 or so.

12 Q Why did you come back to your house?

13 A I needed to get another drill.

14 Q Okay. What did you notice about the door to
15 house?

16 A It had been broken into, pried open.

17 Q And what did you notice about the guns about
18 the guns that you had at your house?

19 A They was missing.

20 Q What did you notice about the CDs that were
21 in the house?

22 A I didn't notice the CDs at the time.

23 Q Okay. When did you initially learn about
24 the CDs?

25 A When the officers left and they were out in

1 the woods area, they was in my laundry basket.

2 Q Okay. Now, had you given anyone permission
3 to break into your house?

4 A No, ma'am.

5 Q Had you given anyone permission to take your
6 guns?

7 A No, ma'am.

8 Q What did you do when you found out about
9 this?

10 A I went back to NAPA and called the police.

11 Q Okay.

12 (WHEREUPON, State's Exhibits 2 through 7 were
13 marked for identification purposes.)

14 BY MRS. TILLEY:

15 Q What is this a picture of?

16 A My back door.

17 Q What is that a picture of?

18 A My back door.

19 Q What is it that you noticed about this back
20 door that was different from when you had left to go
21 to work that morning?

22 A It's sort of tore up a little bit.

23 Q Was it like that when you left that morning?

24 A No, ma'am.

25 Q What is this?

1 A A picture of my bedroom.

2 Q And what is this right here?

3 A That's my gun rack.

4 Q What did you notice is different about that?

5 A Two guns are missing.

6 Q Were they there when you left for work that
7 morning?

8 A Yes, ma'am.

9 Q What is this?

10 A My living room.

11 Q What do you notice is different about that?

12 A My CDs are missing.

13 Q Were those CDs here?

14 A Yes, ma'am.

15 Q In this picture, what was recovered, what is
16 that right there?

17 A One of my rifles.

18 Q What is that right there?

19 A Same rifle.

20 **MRS. TILLEY:** That's all I have of this
21 witness, Your Honor.

22 **CROSS-EXAMINATION**

23 **BY MR. NEWTON:**

24 Q Mr. Gant, what time did you say you left
25 for work that morning?

1 A Uh, it was about eight o'clock or so.

2 Q Eight o'clock and you got back around 10:30?

3 A 10:30 or so, yes, sir.

4 Q You sure about that?

5 A I'm not exactly sure about the time exactly

6 but it's in that range, yes, sir.

7 Q That's 10:30 in the morning, right?

8 A Yes, sir.

9 Q So we're talking about three and a half

10 hours, two and a half hours?

11 A About two, two and a half hours, Yes.

12 Q And the burglary could not have happened at

13 any other time?

14 A I don't see how it could have, No.

15 Q You sure it was between 8:00 and 10:30 that

16 morning?

17 A When I was gone, Yes.

18 Q And that occurred when you were not there?

19 A I wasn't there, No.

20 Q And you did not get a look at whoever it

21 was, did you?

22 A No, I didn't.

23 MR. NEWTON: No more questions.

24 MRS. TILLEY: Thank you. Your Honor, may

25 this witness be excused?

1 **THE COURT:** He may.

2 **MRS. TILLEY:** The State calls Brian Bowen to
3 the stand.

4 **BRIAN BOWEN**

5 having first being duly sworn testified as
6 follows:

7 **THE CLERK:** State your full name for the
8 record.

9 **THE WITNESS:** Brian Russell Bowen.

10 **DIRECT EXAMINATION**

11 **BY MRS. TILLEY:**

12 **Q** Mr. Bowen, where did you grow up?

13 **A** I grew up in Liberty, here in Pickens
14 County.

15 **Q** Where did you go to high school?

16 **A** Liberty High School.

17 **Q** And how long have you lived here?

18 **A** My entire life.

19 **Q** And where do you work?

20 **A** I work for the Pickens County Sheriff's
21 Office.

22 **Q** How long have you worked there?

23 **A** 14 years.

24 **Q** What are some of your responsibilities?

25 **A** Currently, I'm a Sergeant with the Uniform

1 Patrol Division. I supervise a team that patrol the
2 county, deter crime, protect the county, respond to
3 calls for service, traffic enforcement, patrol duties.

4 Q Were you working at the Sheriff's Office on
5 January 11th of '06?

6 A Yes, I was.

7 Q Did you respond to Cove Creek Road area that
8 day?

9 A Yes, I did.

10 Q Why did you respond to that area?

11 A To look for a possible vehicle that was
12 possibly stolen from North Carolina.

13 Q And what was the description of that car
14 that was stolen?

15 A It was a red Jeep Cherokee.

16 Q When you went up to the Cove Creek Road
17 area, who was with you?

18 A Captain Dewey Smith.

19 Q And who was driving?

20 A I was driving.

21 Q And as you came up on the house that Mr.
22 Gant lived in what type of car
23 was pulling out of the drive?

24 A Captain Smith said he saw the red Jeep
25 Cherokee.

1 Q That residence, is that in Pickens County?

2 A It is.

3 Q Did you recognize anyone in the car?

4 A Not initially, not until I turned around.

5 Q And when you turned around, your vehicle,
6 what did you observe at that point?

7 A The red Jeep Cherokee passed me coming in
8 the opposite direction.

9 Q Who did you recognize it to be?

10 A Danny Ray Gilliam.

11 Q And have you had on occasion to talk with
12 the Defendant before?

13 A Yes.

14 Q Approximately how many times?

15 A A few times.

16 Q Did you get a clear look at the Defendant in
17 that car?

18 A Yes.

19 Q And how do you know you saw the Defendant?

20 A He was no more than a few feet away in the
21 car. I recognized him instantly.

22 Q Did you make eye contact?

23 A Yes.

24 Q Can you identify the Defendant in the
25 courtroom here today?

1 A Yes, 'ma'am.

2 Q And where is he?

3 A Seated at the defense table in the blue
4 shirt.

5 Q Now, was it foggy out, was there anything to
6 get in the way of you identifying the Defendant?

7 A No.

8 Q After you saw the Defendant, what did you
9 see the Defendant doing?

10 A I turned around and initiated my blue lights
11 in my car to try to stop the car, he exited the car
12 and then ran.

13 Q What did you see the Defendant, after he
14 ran, what happened -- how did you leave his car?

15 A It was actually still rolling. It rolled to
16 a stop on Cove Creek Road as he ran away.

17 Q What did you do at that point?

18 A Backed the car up. Captain Smith got out
19 and pursued on foot. I backed up just a little bit to
20 see if I could be of assistance in the pursuit.

21 Q Okay. What was found in the Jeep?

22 A Property that was found on Cove Creek Road.

23 Q How did you know what those items were?

24 A They were reported stolen.

25 Q Okay. And what did the Sheriff's Office do

1 in particular with the guns?

2 A We called out a crime scene technician to
3 come out and secure the vehicle and the property
4 inside.

5 Q Did you actually go to the house that was
6 broken into?

7 A I did not. I initially began to attempt to
8 persist with the pursuit but I didn't want to leave
9 the vehicle. So I returned back there to the car and
10 wait on the patrol Deputy.

11 Q I'm going to show you brief pictures, if I
12 may.

13 (WHEREUPON, State's Exhibit 8 through 10 are
14 marked for identification purposes.)

15 BY MRS. TILLEY:

16 Q What is that in this picture? What is this
17 right here?

18 A That is the driveway at
19 That's the direction we were traveling when we
20 initially went to the residence.

21 Q Was the Defendant's car coming out this way?

22 A Yes, it's coming down that driveway from the
23 right.

24 Q At that point, I know you've already gone
25 over this. What did the cars do? Your car and this

1 car?

2 A We had actually passed the driveway. I
3 turned around. The red Jeep exited that driveway and
4 turned right in the direction that the picture is
5 facing. I then was coming the opposite direction to
6 turn around. That's when we passed the red Jeep.

7 Q All right. What is this?

8 A That's the area the red Jeep came to a stop.
9 The suspect ran from the vehicle.

10 Q And what area is this?

11 A That's the area that he ran into.

12 Q He ran off in this direction?

13 A Yes.

14 MRS. TILLEY: At this time, Your Honor, the
15 State would like to introduce into evidence
16 exhibits 1 through 7, excuse me, Your Honor,
17 Exhibits 1 through 10.

18 MR. NEWTON: If those are the pictures we
19 just saw, there's no objection.

20 MRS. TILLEY: Yes.

21 THE COURT: They are admitted.

22 (WHEREUPON, State's Exhibit 1 through 10 are
23 admitted into the record.)

24 BY MRS. TILLEY:

25 Q Now, did you have an occasion to -- was the

1 Defendant eventually apprehended?

2 A Yes, he was eventually apprehended.

3 Q And what did you -- did you have an occasion
4 to speak with him?

5 A Yes, I did.

6 Q And how did that come about?

7 A I went to the detention center to speak with
8 him.

9 Q And at the detention center, tell me how was
10 he constrained.

11 A Pursuant to the policy of the Sheriff's
12 Office, he would have been in leg shackles and a belly
13 chain and hands cuffed in the front for comfort sake.

14 Q Okay. And at that point, where did you take
15 him?

16 A Brought him down to the conference room
17 downstairs at the Sheriff's Office.

18 Q At the conference room, tell me what that
19 conference room is like.

20 A The conference room is 18 to 20 feet long,
21 15 feet wide. It's a large table in the center of it
22 with several chairs around it for meetings and so
23 forth.

24 Q Was the door open or close?

25 A I believe it was open.

1 Q Who all was in the room with you?

2 A Myself, Mr. Gilliam and Lane Byars.

3 Q Were you wearing your service weapon?

4 A I think I might have.

5 Q Were you in uniform?

6 A At the time, I would have been in khakis and
7 a shirt and tie.

8 Q Now, if the Defendant had wanted to go to
9 the restroom, get something to drink, take a smoke,
10 would he had been able to do that?

11 A Yes, we would have accommodated in any way
12 needed.

13 Q And what time of the day did this statement
14 occur?

15 A This was around, before lunch time in the
16 morning time.

17 Q Would he had been offered breakfast that
18 morning?

19 A Yes. He would have been served breakfast
20 before we got to him.

21 Q Okay. Now when you are interviewing a
22 Defendant, what is the first thing you do?

23 A We always read them their Miranda rights and
24 have them sign a waiver of rights that they understand
25 that they don't have to talk to us at that time.

1 Q This State's Exhibit 1, what is that right
2 there?

3 A This is the Pickens County Sheriff's Office
4 waiver of rights form.

5 Q And how do you use that when you are
6 questioning a Defendant?

7 A We will read it, have them go over it and
8 have them place initials beside each line and have
9 them initial the paragraph at the bottom of it and
10 then sign their signature. We would place the date
11 and the time on it.

12 Q Can you read that statement there as you
13 read it to the Defendant that day?

14 A I will. Before we ask you any questions,
15 you must understand your rights. You have the right to
16 remain silent. Anything you say can be used against
17 you in court. You have the right to talk to a lawyer
18 for advice before we ask you any questions and to have
19 him or her with you during questions. If you have no
20 money to pay a lawyer's fee, the Court will appoint
21 one to represent you without cost if you wish. If you
22 decide to answer questions without a lawyer present,
23 you will still have the right to stop answering at any
24 time. You also have the right to stop answering at
25 any time until you talked to a lawyer.

1 Waiver of Rights. I have read this statement
2 of my rights. I understand what my rights are. I am
3 willing to make a statement and answer questions. I
4 do not want a lawyer at this time. I understand and
5 know what I am doing. No promises or threats have
6 been made to me and no pressure or coercion of any
7 kind has been used against me.

8 Q Now, how did the Defendant appear? Did he
9 appear as if he understood those?

10 A Yes, he understood.

11 Q What are some of the indicators to let you
12 know that he understood this statement?

13 A We had him place his initials beside each
14 line, place his initials beside the paragraph and sign
15 the signature at the bottom.

16 Q How do you know that these are his initials?

17 A I witnessed him initial it.

18 **MRS. TILLEY:** The State moves Exhibit 1 into
19 evidence, the waiver.

20 **MR. NEWTON:** No objection.

21 **MRS. TILLEY:** Thank you.

22 **THE COURT:** It's admitted.

23 **(WHEREUPON, State's Exhibit 1 is admitted into**
24 **the record.)**

25 **BY MRS. TILLEY:**

1 Q Now, after this was read to the Defendant,
2 did he speak with you?

3 A Yes.

4 Q And what did he tell you in regards to this
5 statement?

6 A He verbally admitted to us that he was in a
7 red Jeep that day on Cove Creek Road.

8 Q And what did you, what happened after that?

9 A We asked him if he wanted to give us a
10 written statement about the incident.

11 Q Did the interview end at that point?

12 A Yes. He request --

13 Q Thank you.

14 MRS. TILLEY: Your Honor, I have no more
15 questions of this witness.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION

18 BY MR. NEWTON:

19 Q You said you have no written statement from
20 my client?

21 A No, we do not have a written statement.

22 Q He did not give you a written statement?

23 A No, he did not give us a written statement.

24 Q You said he was later apprehended. You saw
25 a red Jeep Cherokee and somebody fled from it. You

1 said he was apprehended after that. How much longer
2 after that?

3 A I believe it was approximately two weeks
4 afterwards.

5 Q So an arrest was not made in this case until
6 two weeks after the incident in question, correct?

7 A That's correct.

8 Q And that's because at the time, whoever was
9 in that vehicle got away, right?

10 MRS. TILLEY: Objection, Your Honor.

11 I'll withdraw my objection at this time.

12 THE WITNESS: Can you repeat the
13 question? I'm sorry.

14 BY MR. NEWTON:

15 Q He did not make an arrest right after this
16 incident because whoever was in the vehicle got away,
17 right?

18 A Yes, he got away.

19 Q And this statement that you say my client
20 made, what day was that?

21 A I would have to refer to the suspect's
22 rights form to see the date. The date was January
23 23rd, '06.

24 Q And the incident date in question is January
25 11th, right?

1 A I believe it is, Yes.

2 Q Do you know if this house in question or the
3 Cherokee in question, were fingerprints taken?

4 A We called out the Crime Scene Technician to
5 process the vehicle and the house.

6 Q Were any fingerprints found?

7 A I'm not sure.

8 Q Who would know that?

9 A The Crime Scene Technicians would know that.

10 Q Did you see any of them here today?

11 A I believe he is listed as a potential
12 witness.

13 Q You don't know if any fingerprints were
14 found?

15 A I don't recall.

16 Q You know if any fingerprints of my client
17 were found?

18 A I don't know that either.

19 Q Mr. Bowen, you keep what is called incident
20 reports for incidents like this, right? You make a
21 report of it in writing?

22 A They are kept on file, Yes.

23 Q Did you make incident reports in this case?

24 A An incident report was made and I believe I
25 made one concerning a Jeep Cherokee.

1 Q When you were driving down Cove Creek Road,
2 who saw the red Jeep Cherokee in the driveway of
3 , who saw that?

4 A Captain Smith saw it.

5 Q You didn't see it?

6 A I saw it after he pointed it out to me.

7 Q Who was driving it?

8 A Who was driving my car?

9 Q Yes, your car.

10 A I was driving my car.

11 Q And where was Captain Smith seated?

12 A He was in the front passenger seat.

13 Q Were you, was your driver's side on the side
14 of the road where the Jeep Cherokee or was Captain
15 Smith closer?

16 A Captain Smith was closer to the Jeep
17 Cherokee.

18 Q Okay. But at the time, you did not see a
19 red Jeep Cherokee?

20 A Not until he pointed it out to me.

21 Q How far down the driveway was it?

22 A No more than a few yards.

23 Q Was it in motion?

24 A Yes.

25 Q Which way was it going?

1 A It was coming down the driveway to exit and
2 then turn on to Cove Creek Road.

3 Q A few yards off the highway?

4 A Yes.

5 Q Did you see anything else suspicious about
6 this vehicle at this time or its surroundings?
7 Anything at all?

8 A No.

9 Q You didn't?

10 A No.

11 Q How fast were you going as you passed by
12 that driveway in your vehicle?

13 A Maybe 25, 30 miles an hour.

14 Q Okay. And how far down the road did you go
15 before you turned around?

16 A Just a few more yards to safely turn around.

17 Q So it was your intention to stop
18 immediately?

19 A Yes.

20 Q You said just a few yards pass the driveway?

21 A Yes.

22 Q How did you turn around in the road? Did
23 you do a three-point turn?

24 A As best I could, I did a three-point turn,
25 Yes.

1 Q Okay. Didn't you testify earlier that you
2 went further down the road and turned around and the
3 red Jeep Cherokee pulled out of that driveway and
4 passed you head on on the road?

5 A Yes.

6 Q How is that possible if you only pulled a
7 few more yards down the road?

8 A He had time to get out of the driveway and
9 pass me before I got to him.

10 Q You said he was just a few yards from the
11 edge of the roadway coming down the driveway. Just a
12 few yards away from the road as you were going by at
13 25 or 30 miles an hour, right?

14 A Yes.

15 Q And you only went a few yards and did a
16 three-point turn in the middle of the highway?

17 A Yes.

18 Q Officer, wouldn't he be right there at the
19 road, wouldn't you be blocking him at the middle of
20 the road if you are doing a three-point turn in the
21 middle of the highway?

22 A He had time to get out of the driveway
23 before I had a chance to turn around and get hitched
24 back up with him.

25 Q This is a copy of your incident report. Look

4 | A Yes.

9 (WHEREUPON, Defendant's Exhibits 1 and 2 are
10 marked for identification.)

12 Q Officer, I'm going to hand you what has been
13 marked as Defendant's Exhibit number 1. In this
14 statement, did you not say that you were traveling
15 down Cove Creek Road. You observed a red Jeep in the
16 driveway of [REDACTED] You also saw a
17 basket in the woods just beside the Jeep with some
18 type items in it. Is that what you wrote in your
19 report?

20 | A Yes.

24 A I apologize. I thought the question was was
25 there anything suspicious about the Jeep.

1 Q Do you stand by that report?

2 A Yes.

3 Q What was this basket thing beside the Jeep
4 in the driveway?

5 A I didn't know at the time, but I believe it
6 turned out to be some stolen property from the
7 burglary.

8 Q Okay. And was not the Jeep Cherokee parked
9 right there beside of it?

10 A I believe it was in motion coming down the
11 driveway.

12 Q Could you read the next sentence after that
13 part we talked about starting with "we".

14 A We turned around and saw the Jeep pull onto
15 Cove Creek Road traveling toward us from the driveway
16 of

17 Q Okay. Officer, doesn't it make it sound
18 like you went on down the road a bit instead of doing
19 a turn right there?

20 A We turned around and saw the Jeep pull onto
21 Cove Creek Road traveling toward us from the driveway
22 of

23 Q Officer, have you ever been mistaken in
24 somebody's identification before in your whole career?
25 That ever happen?

1 A I'm sure it's happened before.

2 Q You are not perfect, are you?

3 A No one is.

4 Q You do make mistakes, don't you?

5 A Everyone does.

6 Q It's possible you made a mistake in this
7 case, is it not? Is that not possible?

8 A Absolutely not.

9 Q Why not?

10 A Because I'm familiar with Mr. Gilliam and I
11 recognized him in the Jeep that day.

12 Q Right. But haven't you ever had a situation
13 where you think you know -- you see somebody and you
14 think it's somebody you know. And you find out it's
15 not really that person. Has that ever happened to
16 you?

17 A That's happened before, sure.

18 Q It has happened to you before?

19 A I'm sure.

20 Q I'm sure it's happened to all of us. No
21 more questions at this time.

22 THE COURT: Redirect.

23 MRS. TILLEY: No redirect, Your Honor.

24 THE COURT: All right. You can step down,
25 sir.

1 MRS. TILLEY: May this witness be excused?

2 THE COURT: He may.

3 MRS. TILLEY: The State calls Captain Smith.

4 DEWEY SMITH

5 having first being duly sworn testified as
6 follows:

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

9 THE WITNESS: Dewey Franklin Smith.

10 DIRECT EXAMINATION

11 BY MRS. TILLEY:

12 Q Where do you work?

13 A Pickens County Sheriff's Office.

14 Q And how long have you worked there?

15 A 30 years.

16 Q In what capacity do you work?

17 A I'm the captain over criminal
18 investigations.

19 Q What are some of your responsibilities?

20 A To investigate reported crimes and maintain
21 active informers and supervise my fellow investigators
22 to include ID. Excuse me.

23 Q Would you like some water?

24 A Yeah, please.

25 Q On January 11th, did you have an occasion to

1 go to Cove Creek Road?

2 A I certainly did.

3 Q And who was with you when you did that?

4 A Detective Bowen, Brian Bowen.

5 Q And why were you going up to that area?

6 A Why?

7 Q Yes, sir.

8 A I had an informant call me and --

9 MR. NEWTON: Objection. Hearsay.

10 BY MRS. TILLEY:

11 Q When you and Sergeant Bowen went out on Cove
12 Creek Road, what did you observe when you were on Cove
13 Creek Road?

14 A A red Jeep Cherokee.

15 Q What did you know about that red Jeep
16 Cherokee?

17 A It was reported to me to be stolen.

18 MR. NEWTON: Objection. Hearsay.

19 THE COURT: Overruled.

20 BY MRS. TILLEY:

21 Q Why again were you over on Cove Creek Road
22 area?

23 A I was looking for a red Jeep Cherokee that
24 had been reported stolen by the State of North
25 Carolina.

1 Q And back to the answer you just gave, when
2 did you see that car that had been reported stolen?

3 A Some time after 10:00, I guess. I'm not
4 exactly sure of the time.

5 Q Where did you see it?

6 A What I now know is

7 Q Is that in Pickens County?

8 A Yes, it is.

9 Q Who was with you in the car?

10 A Detective Bowen.

11 Q When the Defendant was driving out of the
12 driveway, how did you know Sergeant Bowen was able to
13 identify the vehicle?

14 A First, I saw the vehicle coming out of the
15 driveway down a hill at The
16 vehicle was proceeding slowly down. I was watching
17 the lefthand, right hand side of the road because I
18 wasn't driving. I saw the vehicle coming. It was a
19 red Jeep Cherokee. I said there it is right there, a
20 red Jeep Cherokee.

21 I don't know how far. We went down far
22 enough to turn around and come back. But in the
23 meantime, I was keeping my eye on the Cherokee. And
24 he came to almost to a stop. As soon as it saw us
25 turn and come this way, it made a right turn toward us

1 instead of turning left where we would be right behind
2 it forcing us to make another turn.

3 MR. NEWTON: Objection, Judge. It's all
4 speculation as to what the driver of that
5 vehicle, whoever it was, may or may not have
6 thought.

7 THE COURT: Overruled.

8 BY MRS. TILLEY:

9 Q Now, when you saw this, what did Brian Bowen
10 do to indicate to you that he knew the Defendant? Did
11 he point him out?

12 A He more or less screamed out that's Danny
13 Ray right there.

14 Q At that point, what happened?

15 A At that point, we turned around and I guess
16 you can say the chase was on for a few minutes or
17 maybe a quarter of a mile.

18 Q And what did the Defendant do?

19 A He stopped or attempted to stop. The
20 vehicle was still rolling. He, we called it bailing
21 out, on the driver's side. He landed in front of the
22 vehicle across the road in front of us into a wooded
23 area.

24 Q Okay. I'm going to show you State's Exhibit
25 number 10. Is that the area here?

1 A Yes, that's the area right there where we
2 stopped.

3 Q And what did the Defendant do at this point?

4 A He ran up the road maybe 50 yards. I'm not
5 sure. 50 feet. But anyway, he went to the right into
6 the woods.

7 Q Okay. That's all the questions I have of
8 this witness.

9 **CROSS-EXAMINATION**

10 **BY MR. NEWTON:**

11 Q Did I hear you correctly you said you saw
12 the red Cherokee around ten o'clock in the morning?

13 A I'm not exactly sure what time it was. It
14 was about 10:00 or ten after.

15 Q 10:00 or some time after 10:00?

16 A Yeah. Some time, I imagine.

17 Q Did you ever meet with Mr. Gant that day?

18 A I'm not sure if I did or not. I saw him
19 earlier, or later I'm sure.

20 Q Do you know what time?

21 A No, I don't.

22 Q What did you do after whoever was in that
23 vehicle ran away into the woods, what did you do?

24 A I chased him.

25 Q How far?

1 A Well, until I give up. It was about -- we
2 crossed the creek, went through the woods. That man
3 right there went up the woods, up the hill on the
4 other side. He could hardly make it up the hill. I
5 knew I had enough. I set up a perimeter right there
6 and called in the bloodhounds to come take over.

7 Q How far behind him were you in running
8 through the woods?

9 A Probably maybe 150 feet.

10 Q What kind of woods were these? Was it
11 decked with trees? Lots of trees?

12 A The first part was, getting across the
13 creek. Q Okay. And what did you do after you
14 gave up the foot chase?

15 A Radioed for bloodhounds. Then I was
16 informed that they found weapons in the vehicle. So I
17 stopped immediately right there. I called in the
18 bloodhounds. Q Do you recall if you met with
19 Mr. Gant at time?

20 A I think I did. I don't think I saw him
21 where I was at. I stayed at the perimeter at the
22 time.

23 MR. NEWTON: No further questions.

24 MRS. TILLEY: May this witness be excused?

25 THE COURT: He may.

1 **MRS. TILLEY:** The State calls Deputy
2 Tomberlin.

3 **JEFFREY TOMBERLIN**
4 having first being duly sworn testified as
5 follows:

6 **THE CLERK:** State your full name for the
7 record.

8 **THE WITNESS:** Jeffrey Adam Tomberlin.

9 **DIRECT EXAMINATION**

10 **BY MRS. TILLEY:**

11 **Q** Where do you work?

12 **A** Pickens County Sheriff's Office.

13 **Q** And where do you live?

14 **A** In the Pumpkintown community of Pickens
15 County.

16 **Q** And how long have you lived there?

17 **A** 18, 19 years.

18 **Q** And in what capacity do you work in the
19 sheriff's department?

20 **A** I'm a deputy on uniform road patrol.

21 **Q** What are some of your responsibilities?

22 **A** I answer calls for service, traffic
23 enforcement.

24 **Q** On January 11th of '06, did you have an
25 occasion to respond to Cove Creek Road?

1 A I did.

2 Q And why?

3 A Deputy Bowen and Captain Smith had requested
4 assistance in road patrol. They were turning around
5 on a suspect vehicle. They felt as if a pursuit might
6 have ensued.

7 Q Now, did you have any other information
8 about

9 A Not at that time.

10 Q Did you go to the actual residence of Cove
11 Creek Road?

12 A I did.

13 Q Why did you do that?

14 A After having been on the scene a little
15 while, setting up a perimeter with a foot pursuit,
16 dispatch came across and advised that there was call
17 of a burglary there in our immediate area. And I rode
18 up to the house.

19 Q And when you got to the house, who owns that
20 house?

21 A Mr. Gant.

22 Q And when you got to that house, what did you
23 observe about the house?

24 A The doors had been pried only with some sort
25 of tools.

1 Q And what did you find was missing?

2 A Mr. Gant and I walked through and did a
3 brief look around. He noticed immediately there was
4 guns missing from the gun rack.

5 Q And did Mr. Gant see those guns again that
6 day?

7 A He did.

8 Q And once he saw those guns, what did you do?

9 A He knew they were his.

10 Q At that point in time, did you receive those
11 back?

12 A No, I believe they were collected into
13 evidence and returned to him later.

14 Q Okay. That's all the questions I have of
15 this witness.

16 CROSS-EXAMINATION

17 BY MR. NEWTON:

18 Q What time did you meet with Mr. Gant? Do
19 you recall?

20 A I don't recall. It was after eleven
21 o'clock.

22 Q After eleven o'clock?

23 A Yes, sir.

24 Q Do you know what time he had reported his
25 house had been burglarized?

1 **A** I'd have to refer to my report.

2 **Q** Do you have that with you today?

3 **A** I have a copy over there on my seat there.

4 **Q** I believe I have a copy. Can you tell us

5 what time the house was reported burglarized?

6 **A** The incoming time would have been 11:31.

7 **Q** 11:31?

8 **A** Yes, sir.

9 **Q** Officer, do you know if fingerprints were

10 taken from the house?

11 **A** I do not.

12 **Q** How about from the Jeep Cherokee?

13 **A** I don't know that either.

14 **Q** No further questions.

15 **THE COURT:** Any redirect?

16 **MRS. TILLEY:** No, Your Honor.

17 **THE COURT:** All right. You can step down,

18 sir.

19 **MRS. TILLEY:** May he be excused?

20 **THE COURT:** He may. How many more

21 witnesses do you have?

22 **MRS. TILLEY:** Two, Your Honor.

23 **THE COURT:** We'll go ahead and take a

24 lunch break. I'm going to ask you all to be back

25 in your jury room at two o'clock. Remember my

1 instructions from earlier that you may not
2 discuss this case. Enjoy your lunch. We'll see
3 you back at two o'clock.

4 (WHEREUPON, the jury exit at approximately
5 12:40 p.m.)

6 THE COURT: All right. We'll see y'all at
7 two o'clock. You will be 15, 20 minutes at the
8 most?

9 MRS. TILLEY: At the most.

10 THE COURT: You are going to be ready to
11 proceed?

12 MR. NEWTON: We're going to be done today,
13 Judge.

14 THE COURT: All right.

15 (WHEREUPON, a lunch recess is taken at
16 approximately 12:41 p.m.)

17 (WHEREUPON, the Court resumes at approximately
18 1:57 p.m.)

19 THE COURT: Any special request for
20 charge?

21 MRS. TILLEY: No, Your Honor.

22 MR. NEWTON: Your Honor, can we address
23 that at the conclusion of the State's case?

24 THE COURT: Yeah. But if you know of any
25 now, you can go ahead and tell me about it.

1 MR. NEWTON: What I might suggest depends
2 upon what happens in the State's case.

3 THE COURT: Okay.

4 All right. Bring them in.

5 (WHEREUPON, the jury enter at approximately
6 1:59 p.m.)

7 THE COURT: Call your next witness.

8 MRS. TILLEY: The State calls Mike Ferguson.

9 MICHAEL FERGUSON

10 having first being duly sworn testified as
11 follows:

12 THE CLERK: State your full name for the
13 record.

14 THE WITNESS: Michael Hugh Ferguson.

15 DIRECT EXAMINATION

16 BY MRS. TILLEY:

17 Q Mr. Ferguson, where do you work?

18 A I work with the Pickens County Sheriff's
19 Office.

20 Q And how long have you worked there?

21 A A little over 20 years.

22 Q And what position do you currently hold?

23 A I'm the Accreditation and Special Projects
24 Manager.

25 Q And what positions did you hold before that?

1 A I was in the ID Division for 13 years.

2 Q And what is the ID Division?

3 A We process the crime scenes.

4 Q And when you process the scene, what are
5 some of the things that you do?

6 A We photograph and collect evidence and
7 fingerprint.

8 Q Okay. Were you called out to Cove Creek
9 Road on January the 11th of '06?

10 A Yes, ma'am.

11 Q And why were you called out?

12 A To process a stolen vehicle.

13 Q And what did you observe when you got to
14 Cove Creek Road?

15 A I observed a red Jeep Cherokee on the
16 shoulder of the road. There was a uniform officer
17 standing nearby.

18 Q What did you know about the vehicle?

19 A I was called there to process it because it
20 was stolen.

21 Q What was the first thing that you did?

22 A Initially, I knew there were bloodhounds on
23 the way because the Defendant had fled on foot. So I
24 asked the officers that were in the vicinity of the
25 vehicle to move back so when they both the dog there,

1 just having experienced that in the past 20 years of
2 my career, allow the dog to come in and scent the
3 potential person who might be in the woods. So I
4 asked the officers to move back and wait. Once the
5 dogs had been there and done their part, I started
6 processing the vehicle by photographing it.

7 Q Okay.

8 (WHEREUPON, State's Exhibits 11 through 13 are
9 marked for identification purposes.)

10 BY MRS. TILLEY:

11 Q Are these the initial pictures that you
12 took?

13 A Yes, ma'am.

14 Q And what is that a picture of?

15 A The red Jeep Cherokee had been reported
16 stolen.

17 Q Okay. Did you take pictures inside the car?

18 A Yes, ma'am. I took pictures of the interior
19 of the Jeep.

20 Q What is that a picture of?

21 A That's the console area between the driver
22 and the passenger seat and the little storage
23 compartment there. The top of it is an armrest.
24 That's a pair of leather gloves inside there.

25 Q Okay. And what is this a picture of?

1 **A** That's the rear, behind the hatchback of the
2 truck, if you will. Those are some clothing and a
3 pair of bolt cutters that were in the back of the
4 vehicle.

5 **MRS. TILLEY:** Your Honor, at this time, the
6 State moves exhibits 11, 12 and 13 into evidence.

7 **MR. NEWTON:** No objection.

8 **THE COURT:** They are admitted.

9 (WHEREUPON, State's Exhibits 11 through 13 are
10 admitted into the record.)

11 **BY MRS. TILLEY:**

12 **Q** After you took pictures of the scene, what
13 did you do next?

14 **A** I began to process the vehicle for
15 fingerprints.

16 **Q** Okay. And what was the first place that you
17 fingerprinted?

18 **A** I processed the interior of the vehicle.
19 There had been some light rain. The vehicle was wet
20 on the exterior.

21 **Q** Why would a vehicle being wet on the
22 exterior prevent fingerprints on the exterior?

23 **A** It would hinder -- the powder that you use,
24 usually, it's a black powder and a brush. And you
25 brush it on there. The fingerprint itself is 99 to 99

1 and a half percent water. Therefore, if it's been
2 rained on, that would hinder the latent that might be
3 developed. A latent fingerprint being a invisible
4 fingerprint that you can't see with the naked eye
5 versus a patent fingerprint that you could see with
6 the naked eye that you could photograph. If you can't
7 see it, you have to develop it in some way. In this
8 case, we used powder.

9 Q Were you able to develop a latent
10 fingerprint in the car?

11 A Yes, ma'am. I did.

12 Q Where was that?

13 A It was on a control panel that was on the
14 roof between the seats of this vehicle. Some type of
15 buttons there. I'm not sure what they control. But
16 the fingerprint was in that area.

17 Q What did you do with that fingerprint?

18 A I lifted it and collected it as evidence.

19 Q Did you compare it to the Defendant?

20 A Yes, I did.

21 Q What were the results?

22 A They were negative. They did not match the
23 Defendant.

24 Q And knowing what you know about the car,
25 what are some of the possible explanations for that?

1 **A** Explanations to why they didn't match him?
2 It wasn't his vehicle. It could have been a
3 passenger. It could have been the victim who owned the
4 vehicle who reported it stolen. Any passenger that
5 could have been in the car. It could have been maybe
6 a mechanic that worked on the car. It could have been
7 their fingerprint.

8 **Q** And were you able to develop any other
9 prints say on the steering wheel or the side of the
10 door?

11 **A** I processed the area around the driver's
12 seat and the driver's area of the vehicle, the door,
13 the driver's door window.

14 **Q** Were any prints elicited from there?

15 **A** There were no prints developed there.

16 **Q** Why would prints not be able to be lifted
17 there?

18 **A** For instance, the steering wheel might be
19 some type of fabric whether it's vinyl or leather,
20 it's a porous material. It would be hard to develop
21 over my experience of 13 years that I did it,
22 developing a print off some type of fabric like that.
23 It's difficult. The door panel being the same way.
24 It could be vinyl or leather or cloth. It's not a
25 smooth, non-porous surface like glass for instance.

1 The window, did process that. There were no prints
2 there that were developed on that glass.

3 Q Okay. After that, what was the next thing
4 that you did?

5 A I began to do a basic, just going through
6 the vehicle, collecting the items that were in there.
7 I collected several items from there.

8 Q This box right here, what is in this big
9 white box?

10 A This is the evidence that I collected from
11 the vehicle in this case.

12 Q And did you bring that with you here today?

13 A Yes, ma'am.

14 (WHEREUPON, State's Exhibit 14 is marked for
15 identification purposes.)

16 BY MRS. TILLEY:

17 Q Deputy Ferguson, what are those?

18 A These are the leather gloves that were in
19 that compartment, the console that you saw in the
20 photograph.

21 Q And why would you not be able to get prints
22 off of those?

23 A Again, these are some type of leather type
24 fabric. It's very porous. Developing a fingerprint
25 on those would be very difficult.

1 Q Okay. Is this in the same condition you saw
2 it on the day you collected it?

3 A Yes, ma'am.

4 MRS. TILLEY: Your Honor, at this time, the
5 State moves Exhibit number 14 into evidence.

6 MR. NEWTON: No objection.

7 THE COURT: It's admitted.

8 (WHEREUPON, State's Exhibit 14 is admitted into
9 the record.)

10 (WHEREUPON, State's Exhibit 15 is marked for
11 identification purposes.)

12 BY MRS. TILLEY:

13 Q What is, what is State's Exhibit 15? What
14 is that?

15 A It's a pair of bolt cutters, the bolt
16 cutters that you saw in the photograph that were in
17 the back of the Jeep.

18 Q And what is that black stuff on it?

19 A Fingerprint powder.

20 Q Okay. Were you able to develop any
21 fingerprints off of that?

22 A No, ma'am. I didn't develop any
23 identifiable fingerprints on this.

24 Q Was that in the same condition that you
25 collected it that day?

1 **A** With the exception of the fingerprint
2 powder, yes, ma'am.

3 **MRS. TILLEY:** Your Honor, at this time, the
4 State moves Exhibit number 15 into evidence.

5 **MR. NEWTON:** No objection, Your Honor.

6 **THE COURT:** It's admitted.

7 **(WHEREUPON, State's Exhibit 15 is admitted into**
8 **the record.)**

9 **(WHEREUPON, State's Exhibit 16 is marked for**
10 **identification purposes.)**

11 **BY MRS. TILLEY:**

12 **Q** What is that item right there?

13 **A** This item is a screwdriver-like tool that I
14 collected from the vehicle.

15 **Q** What do you notice about that screwdriver?

16 **A** Whatever type of tip was on there appears to
17 be broken.

18 **Q** Okay. Now why would you not be able to get
19 fingerprints off the tools?

20 **A** It's not impossible. But if you have
21 processed tools, hand tools like this, when you, a
22 person uses a tool like this, of course, they're going
23 to grab it with their fist, not their fingertip. I've
24 processed thousands of screwdrivers in my career in
25 ID. It's very difficult to get prints off of

1 something like that.

2 Q Is this in the same condition as you
3 collected it that day?

4 A Yes, ma'am.

5 MRS. TILLEY: Your Honor, at this time, the
6 State moves State's Exhibit number 16 into
7 evidence.

8 MR. NEWTON: No objection.

9 THE COURT: It's admitted.

10 (WHEREUPON, State's Exhibit 16 is admitted into
11 the record.)

12 (WHEREUPON, State's Exhibits 17 and 18 are marked
13 for identification purposes.)

14 BY MRS. TILLEY:

15 Q What is this?

16 A That is the screwdriver I collected again
17 from the vehicle.

18 Q What do you notice about that particular
19 screwdriver?

20 A I documented that this screwdriver was bent
21 as well as the previous one.

22 Q Okay. And for the same reasons you stated
23 about the last screwdriver, does that apply to that as
24 to why you would not be able to get fingerprints?

25 A Right. It wouldn't be impossible but it

1 would be very difficult.

2 Q Okay. Is that in the same condition as you
3 saw it on that day?

4 A Yes, ma'am.

5 MRS. TILLEY: Your Honor, at this time, the
6 State moves State's Exhibit 17 into evidence.

7 MR. NEWTON: No objection.

8 BY MRS. TILLEY:

9 Q These items --

10 THE COURT: It's admitted.

11 (WHEREUPON, State's Exhibit 17 is admitted into
12 the record.)

13 BY MRS. TILLEY:

14 Q Were any of them returned to anyone?

15 A I collected a total of nine items there on
16 Cove Creek Road. Yes, ma'am. There were some of
17 those items returned to Mr. Gant.

18 Q Okay. Did anyone else make a statement that
19 their items were there?

20 A No, ma'am. None of the other items were
21 claimed.

22 Q What is that right there?

23 A This is a chisel type tool that was also
24 collected from that red Jeep Cherokee.

25 Q Okay. What are chisels typically used for?

1 A If I were using it, breaking things, prying
2 things.

3 Q Is this in the same condition as when you
4 collected it that day?

5 A Yes, ma'am. It is.

6 MRS. TILLEY: At this time, State moves
7 State's Exhibit 18 into evidence.

8 MR. NEWTON: No objection.

9 THE COURT: It's admitted.

10 (WHEREUPON, State's Exhibit 18 is admitted into
11 the record.)

12 BY MRS. TILLEY:

13 Q On to your property and evidence report.
14 What were the first two items that you took into
15 evidence?

16 A Item number 1 is a Marlon model 60 .22
17 caliber rifle. Serial number 06225037.

18 Q And item number 2.

19 A Item number 2 is a Winchester model 250 .22
20 caliber rifle. Serial number 389092.

21 Q Okay. And why were those items not
22 fingerprinted?

23 A Why were they not fingerprinted?

24 Q Were they or were they not?

25 A Uh, the items, the rifle, my understanding

1 is that the Defendant was in the woods and they didn't
2 know if he was armed or not. So these rifles could
3 possibly had been handled by officers prior to my
4 arrival on the scene.

5 Q Okay. And what eventually happened those
6 items?

7 A They were returned to the victim of the
8 burglary, Mr. Gant, the next, the following day, I
9 believe. Yes, ma'am.

10 MRS. TILLEY: That's all the questions I
11 have of this witness.

12 CROSS-EXAMINATION

13 BY MR. NEWTON:

14 Q Officer, you said it was a rainy day?

15 A There had been some light rain that morning.

16 Q What do you mean exactly by light rain?

17 A There were droplets of water on the vehicle
18 that I could see, I could observe.

19 Q On just the red Jeep Cherokee or on all the
20 vehicles out there?

21 A I could imagine it would be on all of them.

22 Q All of them including on the windshield?

23 A Possibly, yes, sir.

24 Q It was by no means a clear day, was it?

25 A It wasn't foggy or pouring down rain. It

1 was just a light rain and misty rain.

2 Q Those leather gloves you found in the
3 vehicle, obviously, whoever was driving that vehicle
4 was not wearing those leather gloves, was he? When he
5 got out and ran away, the gloves were left in the
6 vehicle, right?

7 A He wasn't wearing them at the time he exited
8 the vehicle, No.

9 Q You did find a fingerprint, did you not?

10 A I developed a fingerprint, yes, sir.

11 Q Whose fingerprint was it?

12 A I don't know.

13 Q It was not Mr. Gilliam's, was it?

14 A That's correct.

15 Q No further questions.

16 MRS. TILLEY: No redirect. Can he be
17 excused.

18 THE COURT: All right. You can step down,
19 sir. You are excused.

20 THE WITNESS: Thank you.

21 MRS. TILLEY: The State calls Tony Robinson.

22 TONY ROBINSON

23 having first being duly sworn testified as
24 follows:

25 THE CLERK: Please state your full name

1 for the record.

2 THE WITNESS: Tony Dale Robinson.

3 DIRECT EXAMINATION

4 BY MRS. TILLEY:

5 Q Mr. Robinson, where do you work?

6 A I'm with the Pickens County Sheriff's
7 Office.

8 Q How long have you worked there?

9 A 18 years.

10 Q And in what capacity do you currently work?

11 A I'm a Lieutenant over the ID Division.

12 Q And what are some of the responsibilities of
13 being a Lieutenant over the ID Division?

14 A As Officer Ferguson stated, we process crime
15 scenes, photographs, collect evidence, fingerprints.

16 Q Did you have an occasion to respond to Cove
17 Creek Road on January 11th?

18 A I did.

19 Q And why did you?

20 A I responded to assist Officer Ferguson when
21 he got the call about some stolen vehicles. While I
22 was on my way, we got a report that a house had been
23 broken into. I did stop and speak with Officer
24 Ferguson but I went on to the house.

25 Q Okay. And when you got to the house, what

1 was the first thing that you did?

2 **A** I got out of the car. I noticed that the
3 door was opened, had been pried open going into the
4 back door. It's a mobile home.

5 **Q** I'm going to show you State's Exhibit 3 and
6 2 that have been admitted into evidence. What are
7 these pictures of?

8 **A** That's the back door.

9 **Q** Okay. And what is this area here?

10 **A** State's Exhibit 3, that's a closet shot of
11 the door, the door latch, the door knob and the dead
12 bolt.

13 **Q** Okay. What else did you notice? With Mr.
14 Gant, what did y'all do?

15 **A** Mr. Gant took me, we went inside together.
16 He showed me some areas where some items were stolen
17 from.

18 **Q** Okay. All right. Tell me about what you
19 learned about this area here.

20 **A** That's a gun rack where I think two guns had
21 been taken from.

22 **Q** Okay. What about this?

23 **A** That's the entertainment center in the
24 living room. Some movies, DVD or video-type things
25 were missing from that cabinet.

1 Q And I just showed you two pictures a minute
2 ago. I asked you to describe what they were. I'm
3 going to ask you again now that I have them up here.
4 What's this again?

5 A That's a close up shot of the door showing
6 it had been pried open.

7 Q Look at the other picture that I showed you.
8 What did you say that was again?

9 A That's just a wider shot of looking down
10 inside of the mobile home at the door.

11 MRS. TILLEY: That's all the questions I
12 have of this witness.

13 MR. NEWTON: No questions.

14 THE COURT: Step down, sir.

15 MRS. TILLEY: Your Honor, the State rests.

16 THE COURT: All right. Ladies and
17 Gentlemen, I have some matters of law that I will
18 need to take up. I will send you back into the
19 jury room for just a few minutes.

20 (WHEREUPON, the jury exit at approximately
21 2:18 p.m.)

22 THE COURT: Okay.

23 MR. NEWTON: I have some motions, Judge, at
24 the appropriate time.

25 THE COURT: I'm ready.

1 **MR. NEWTON:** Move for directed verdict on
2 the possession of stolen vehicle on the grounds
3 of their has been testimony on the North Carolina
4 and that a vehicle has been stolen. There's been
5 no testimony whatsoever connecting that
6 particular vehicle to the vehicle we've been
7 talking about. The proper thing to do would be
8 to introduce the vehicle identification number or
9 the tag number on that vehicle. There's been no
10 such evidence offered. In short, there is
11 nothing to connect that red Jeep Cherokee that
12 we've been hearing about or that the officers
13 found before chase with the vehicle that was
14 stolen from North Carolina several days prior.
15 No evidence whatsoever offered to connect those
16 two.

17 I also have a directed verdict on the
18 burglary first degree. The indictment alleges
19 two prior convictions for burglary. That's the
20 basis of the burglary first. We have heard
21 nothing offered into evidence about two prior
22 convictions for burglary. I admit it would just
23 bump the burglary first to burglary second. But
24 I do have a directed verdict, I believe, on the
25 burglary first. If it goes to the jury, it would

1 be burglary second. Pending Your Honor's ruling
2 on that, there's another issue that may arise
3 after your ruling on that.

4 THE COURT: Mrs. Tilley.

5 MRS. TILLEY: Your Honor, I have nothing to
6 say in that regard. I simply closed my case. I
7 do have the prior convictions for the Defendant.
8 But I can tell you that I did not put them into
9 evidence. I am not quite sure, Your Honor, if
10 there is a way for me to enter those into
11 evidence. To be honest with you, I really don't
12 know.

13 MR. NEWTON: I would strongly oppose since
14 she's already closed her case, Judge.

15 MRS. TILLEY: My understanding is that it is
16 permissible to allow the State to reopen in a
17 case. It is in your discretion.

18 THE COURT: How were you intending to
19 prove the convictions?

20 MRS. TILLEY: Simply enter them into
21 evidence.

22 THE COURT: They are certified copies?

23 MRS. TILLEY: Correct, Your Honor.
24 Certified copies.

25 (WHEREUPON, there is a pause.)

1 **THE COURT:** If I were to allow the State
2 to reopen their case to introduce the two
3 convictions, is there any argument that you have
4 that you are unfairly prejudiced by the late
5 introduction of these convictions as opposed to
6 them introducing them during the, uh, before she
7 rested?

8 **MR. NEWTON:** No. However, addressing the
9 whole issue, the reopening the case is something
10 to be exercised in very rear, exceptional
11 circumstances, Judge. All we have here is the
12 State knew what it had in the indictment and told
13 the jury it was going to present a certain piece
14 of evidence and it didn't.

15 **THE COURT:** I'm going to allow it. This
16 is the kind of situation where in my opinion
17 warrants it. This is not unlike the situation
18 that I have seen before where the State simply
19 neglects to prove the somewhat obvious fact that
20 the crime occurred in the county in which the
21 case is being tried. There appears to be no real
22 dispute as to whether he has the two prior
23 convictions. It's simply an oversight. And I
24 routinely afford counsel the courtesy on both
25 sides of the aisle of having those types of

1 errors corrected. So I will allow her to reopen
2 the case to introduce the two convictions.

3 MR. NEWTON: Judge, I have not seen those.
4 I did not ask her for those during the trial
5 because I was aware she had not presented them.
6 I did not want to remind her of that. At this
7 time, I would like to see them if she plans to
8 introduce. And I also would object to the
9 Solicitor simply offering these up without
10 anybody on the witness stand testifying as to
11 what they are. I object to that.

12 THE COURT: If they are certified, then
13 they are simply authenticated under Rule 901, I
14 believe. Perhaps it's 902. (Pause.)

15 It's 902 subparagraph 1. Let me see the
16 document please. The document. (Pause.)

17 Okay. All right. Uh, do you -- she offers
18 them as not needing extrinsic evidence of
19 authenticity under 902 subparagraph 1.

20 MR. NEWTON: Your Honor, I still think the
21 Solicitor is standing on her own to the jury
22 about what those are. She needs to have somebody
23 on the witness stand to give a rough
24 identification of what they are.

25 THE COURT: That's a good argument. But

1 the argument probably should have been made when
2 the Supreme Court was drafting the Rules of
3 Evidence rather than before me. That's exactly
4 what that rule is all about.

5 MR. NEWTON: I have a further objection to
6 introducing it at this time. Both of these
7 burglaries as I see from the dates were, the
8 guilty pleas were on the same date.

9 MRS. TILLEY: The incidents were on
10 different dates.

11 MR. NEWTON: Still submit that what the
12 legislature had in mind when it said two prior
13 burglary convictions meant a conviction on one
14 day and then the Defendant goes out and does
15 another crime later after that conviction and
16 gets conviction a second time. It does not refer
17 to one or more convictions that happened at the
18 same time.

19 THE COURT: What are the incident dates
20 and are they separate addresses?

21 MRS. TILLEY: Yes, Your Honor. They are
22 separate addresses. They are close in time but
23 not on the same date. One of them occurred
24 September 20th of '96 and September 21st. They
25 are different residences, different victims.

1 **THE COURT:** All right. Your, uh, you made
2 an additional motion for directed verdict on the
3 grounds that the State has failed to prove two
4 prior convictions.

5 **MR. NEWTON:** Yes.

6 **THE COURT:** I deny that motion.

7 **MR. NEWTON:** Regarding the motion on
8 possession of stolen vehicle? Again, Your Honor,
9 there's not even been any testimony that the
10 vehicle was found in --

11 **THE COURT:** I haven't even got to that. I
12 was focusing on the burglary motion.

13 **MR. NEWTON:** Okay.

14 **THE COURT:** So the burglary motions have
15 all been dealt with. Do you wish to offer it in
16 front of the jury, the two exhibits?

17 **MRS. TILLEY:** Yes, Your Honor. It's my
18 understanding that I was simply intending on --

19 **THE COURT:** You are going to mark them and
20 offer them in front of the jury?

21 **MRS. TILLEY:** Yes, Your Honor.

22 **THE COURT:** All right. So now, your
23 argument on possession of a stolen vehicle is
24 that there is no, the only evidence in this case
25 is that there was a -- the officer testified in

1 response to this question why were you looking
2 for a red Jeep Grand Cherokee?

3 MRS. TILLEY: Correct, Your Honor.

4 THE COURT: Why were you looking for a red
5 Jeep Cherokee? And the answer was because I had
6 been told or informed that it was stolen out of
7 North Carolina.

8 MR. NEWTON: That much is true.

9 THE COURT: Okay. Then the owner of the
10 vehicle was here. He testified that the vehicle
11 had been stolen.

12 MR. NEWTON: He did.

13 THE COURT: That his vehicle had been
14 stolen.

15 MR. NEWTON: He did.

16 THE COURT: And he testified as to what
17 the license tag on the vehicle was, correct?

18 MR. NEWTON: He testified to what was on
19 the back license plate.

20 THE COURT: Do you have photographs of the
21 vehicle?

22 MR. NEWTON: The only photographs of the
23 vehicle, Your Honor, is the front license plate.
24 It shows an Oregon license tag.

25 MRS. TILLEY: The front tag does have an

1 Oregon license tag. The one in evidence.

2 MR. NEWTON: Further, Your Honor, not only
3 has there been no connection with this Jeep
4 Cherokee found with the one stolen from North
5 Carolina, there's been no testimony at all that
6 the Jeep Cherokee in Pickens County was stolen.
7 There's been no testimony about that.

8 THE COURT: No testimony that it was what?

9 MR. NEWTON: That it was even stolen, the
10 one they found. Sure, they said they were
11 looking for a stolen vehicle. But there was no
12 testimony that the one they found --

13 THE COURT: Did the vehicle of the owner
14 of the car, did he testify that the one recovered
15 was his car?

16 MR. NEWTON: Not to my memory, he did not.

17 MRS. TILLEY: My understanding is that the
18 officers testified that that was the car that was
19 stolen. When they were there to process the
20 scene, when the Defendant ran off, they had done
21 a hit. I believe Brian Bowen testified to their
22 being a hit on that car. It was either after the
23 pursuit or not. I apologize I'm not more
24 specific. I believe it was Brian Bowen's
25 testimony.

1 **THE COURT:** All right. He basically says
2 you have not proven that the car that this
3 Defendant was in was in fact stolen and that you
4 haven't proven that he knew it was stolen. So I
5 will hear your response.

6 **MRS. TILLEY:** From reading about what
7 Captain Smith said, excuse me, Brian Bowen on the
8 stand said that the license plate said

9 When the victim the stand, he said the
10 license plate said They both have
11 the same license plate on them. Both of them
12 gave the same exact description of the make of
13 the car, the color of the car, the year of the
14 car. That those two would be evidence ever so
15 slight to get pass directed verdict motion on
16 whether or not this vehicle was stolen.

17 I have evidence from the officers identifying
18 various things about the vehicle, the license
19 plate with the signature tag, color, make, model,
20 year. Any evidence that goes to show to prove
21 that was a stolen car, I believe, would survive a
22 directed verdict motion.

23 **MR. NEWTON:** Your Honor, this is getting
24 into a memory thing but I do not recall Brian
25 Bowen saying what was on the tag of that vehicle

1 at all. Maybe we should review his testimony.

2 THE COURT: Without regards to the license
3 plate, let me see any photographs that there are
4 of the stolen vehicle.

5 MRS. TILLEY: The ones that are in evidence?

6 THE COURT: Yes.

7 MRS. TILLEY: There are pictures of inside
8 the car. These are pictures of it.

9 THE COURT: There is no other picture of
10 it?

11 MR. NEWTON: Not of the exterior of the
12 car.

13 MRS. TILLEY: There are pictures of the
14 interior.

15 THE COURT: All right. You can leave it
16 right there. Y'all can step back. The owner was
17 here, the very first witness, and he testified
18 that he had a red Jeep Grand Cherokee that had
19 been stolen from North Carolina.

20 MRS. TILLEY: Correct, Your Honor.

21 THE COURT: Did he testify specifically
22 about recovering it from this case down here in
23 Pickens?

24 MR. NEWTON: He did not.

25 MRS. TILLEY: No, Your Honor. He did not.

1 He testified to the description of the car, so
2 did the other officers but not that he had
3 recovered it here in Pickens County, as well as
4 his signature license plate.

5 MR. NEWTON: I certainly agree that he told
6 us about his signature license plate. My point
7 is that there was no testimony matching that up.
8 I do not believe the officer testified as to the
9 license plate. All we know is that there is a
10 Jeep Cherokee here in Pickens County but not
11 testimony that it was even stolen at all.

12 THE COURT: Can you pull that back up?

13 COURT REPORTER: I'm looking for it.

14 THE COURT: How long after this vehicle
15 was stolen did this burglary occur?

16 MRS. TILLEY: Four days.

17 THE COURT: So the vehicle was, it's
18 whereabouts was unknown for four days?

19 MRS. TILLEY: Yes. It was reported stolen
20 in North Carolina. They put a hit on that car.

21 (WHEREUPON, there is a pause.)

22 THE COURT: Just articulate for me how it
23 is that the jury can infer, what is the evidence
24 upon which the jury can infer that this is in
25 fact the vehicle that was stolen from North

1 Carolina.

2 MRS. TILLEY: How they infer that it was
3 stolen from North Carolina is that we had the
4 testimony beginning with the vehicle who
5 described the car and its detail, make, model,
6 year as well as the signature license plate which
7 was spelled out for the jury. Throughout that, I
8 believe, with both testimony from Captain Smith
9 as well as Brian Bowen testified they were in
10 that area looking for a stolen vehicle reported
11 stolen out of North Carolina where this car was
12 stolen. And they had the same description, the
13 description that the victim gave for it.

14 It's my understanding that Brian Bowen gave
15 the description of the signature license plate
16 on the back of it. Then we have the
17 picture of the vehicle that was processed at the
18 scene which matches the testimony, the chain of
19 testimony that has come throughout this trial
20 about this Jeep. And every testimony has been
21 the same description of this Jeep. Officers were
22 up there because of a car that was stolen out of
23 North Carolina matching that exact description.

24 Also, Your Honor, the fact that he took
25 flight is evidence of guilt in this case. He

1 comes up on a car rolling down the road. He gets
2 out and he fleas. I think with regards to what's
3 alleged in the indictment, he's in possession of
4 the stolen vehicle. Flight be alleged an
5 inference for the jury to make that when he fleas
6 from that car, that's an inference that's it's
7 stolen.

8 What's in the indictment is that he's in
9 possession of that stolen vehicle. I believe,
10 you know, with a directed verdict motion in
11 regards to the testimony from the witnesses that
12 were the same throughout regarding the
13 description of his car as well as the description
14 that two officers had that it was stolen out of
15 North Carolina goes with what's in the
16 indictment. And that would be the existence of
17 evidence to survive the motion for directed
18 verdict.

19 **MR. NEWTON:** To answer the last point here,
20 Judge, the Solicitor and I know very well that
21 there are cases all the time with Failure to Stop
22 for Blue Light type of cases where people will
23 get out of the car and run for reason other than
24 that the car is stolen. It's simply not true
25 that the vehicle was stolen. It could be for any

1 number of other reasons that a person gets out of
2 the car and runs from the police. We see that
3 happen all the time.

4 **MRS. TILLEY:** That would be an argument that
5 he could make to the jury. However, I do believe
6 that the existence of evidence, flight, which is
7 the existence of evidence that he knew he was in
8 possession of a stolen vehicle. I'm not trying
9 to prove that he stole, just that he was in
10 possession of it.

11 **MR. NEWTON:** Legal arguments aside, Judge,
12 this comes out to a factual issue here as to what
13 exactly was testified to. I'm sure either the
14 Solicitor or myself is going to be embarrassed
15 when one or the other is proven wrong about what
16 we recall about the testimony. But I do think it
17 comes down to that.

18 **THE COURT:** All right. I, uh, --

19 **MR. NEWTON:** Judge, could we take a short
20 bathroom break.

21 **THE COURT:** Who authenticated State's
22 Exhibit 11?

23 **MRS. TILLEY:** Mr. Ferguson.

24 **THE COURT:** And who is that?

25 **MRS. TILLEY:** Deputy Ferguson is the one who

1 processed the scene.

2 THE COURT: He did not testify regarding
3 any tags or identification numbers on the
4 vehicle.

5 MRS. TILLEY: All the other officers did
6 testify as to the identification, as to the
7 description of the vehicle. And I have conferred
8 with the defense attorney. We might have a
9 different recollection of it. One of us, of
10 course, is wrong and the other is right. But
11 it's my understanding that Brian Bowen described
12 the tag, the signature tag. But beyond that, the
13 witnesses on the stand beginning with the
14 vehicles as well as the two officers as well as
15 the statement, Your Honor. There is a statement
16 from the Defendant where he says that he was in
17 the car stolen out of North Carolina. That in
18 itself is evidence.

19 MR. NEWTON: That is not a statement that
20 was introduced. It was a comment in that
21 statement about being in a red Jeep Cherokee on
22 Cove Creek Road. No reference to it being stolen
23 at all.

24 THE COURT: Do you intend to put up any
25 evidence other than the Defendant?

1 MR. NEWTON: He's not going to testify,
2 Your Honor. There's no other evidence.

3 THE COURT: That's not what I asked you.

4 MR. NEWTON: No, there's no other evidence.

5 THE COURT: Okay. If he chooses to
6 testify, that would be your only evidence?

7 MR. NEWTON: That is true.

8 THE COURT: All right. We'll take a short
9 break.

10 (WHEREUPON, a short recess is taken.)

11 THE COURT: Uh, I have reviewed as best I
12 could the rough transcript of the victim of the
13 auto theft's testimony. It's not in its final
14 form so it is hard to read it exactly. But
15 basically all he testified is that the car was
16 stolen and the circumstances of it being stolen.
17 There is no -- I do recall him testifying about
18 some of the distinctive characteristics of the
19 car such as the license plate on the back. Maybe
20 it was a bumper sticker. I'm not sure that it
21 was a license plate. But whatever it was.

22 In order for the Defendant to be guilty of
23 possessing a stolen car, the underlying fact is
24 that the car has to be stolen. The car has to
25 have been stolen. The simple fact that a car was

1 stolen matching the same description in a
2 neighboring state four days before does not mean
3 that the car that he was in is a stolen car.

4 The only way -- on the facts of this case,
5 the only way that this car that is shown in
6 Exhibit 11 could be a stolen car is if it is that
7 car, the car from North Carolina. I just -- you
8 know, I think perhaps you can make some sort of
9 elaborate argument that the jury can draw all of
10 these speculative inferences that when matched
11 together, give rise to the possibility of a
12 finding of fact that that is the stolen car. But
13 I am going to -- as I am sitting here right not
14 having the transcript in front of me, not really
15 having contemplated the fact as I was listening
16 to testimony that I might have to be parching
17 through this testimony to see whether or not it
18 was proven to be the same car, I can't put it
19 together. So I'm granting the motion for
20 directed verdict on the Possession of Stolen
21 Vehicle.

22 Now, we will bring the jury out. I will allow
23 you to introduce the two convictions. Then we
24 are going to break for the day and do closing
25 arguments at nine o'clock tomorrow morning. We

1 will have a brief discussion about the jury
2 charge as soon as we dismiss the jury. Then if
3 there is nothing else we do today, we will break.
4 At this hour, given the, uh, -- I've still got to
5 talk to the Defendant. I think we will just go
6 ahead and break for the day instead of getting
7 into the possibility of a late argument and
8 charge. Unless there is something further right
9 now?

10 MR. NEWTON: Nothing from the defense.

11 THE COURT: Bring in the jury.

12 (WHEREUPON, the jury enter at approximately
13 2:57 p.m.)

14 THE COURT: Ladies and gentlemen, --

15 MR. TILLEY: Your Honor, the State would like
16 to reopen its case.

17 THE COURT: You have additional evidence to
18 offer?

19 MRS. TILLEY: I do, Your Honor.

20 MRS. TILLEY: If I may mark these.

21 (WHEREUPON, State's Exhibits 19 and 20 are marked
22 for identification purposes.)

23 MRS. TILLEY: Your Honor, at this time, we
24 would like to move into evidence State's 19 and
25 20 which are certified convictions of prior

1 burglaries of Danny Ray Gilliam.

2 THE COURT: Over objection, they are
3 admitted.

4 Now, Ladies and Gentlemen, I'm still working
5 on some nonjury issues. Because it is three
6 o'clock and if we proceed today, then we would
7 perhaps be getting into a very late hour. So I'm
8 going to go ahead and let you break. We have
9 some more work to do here, not only in this case
10 but also in some other cases. I'm going to ask
11 you to return to your jury room tomorrow morning
12 at nine o'clock. We will resume with the case at
13 that time.

14 Please remember my instructions that you may
15 not discuss this case. That, of course, means
16 that you may not discuss it among yourselves. But
17 it also means that you may not discuss it with
18 family and friends who might be interested.

19 It is inevitable that some of you may go home
20 tonight and somebody's going to say tell me about
21 what is going on up at the courthouse. You are
22 going to say I can't talk about it. They're
23 going to say nobody is going to know about it.
24 Be very careful not to discuss the case with
25 anyone. We will see tomorrow morning at nine

1 o'clock. Have a nice night.

2 (WHEREUPON, the jury exit at approximately
3 2:59 p.m.)

4 THE COURT: Okay. Mr. Newton, you have, I
5 assume, discussed with your client his right to
6 remain silent and also his right to testify?

7 MR. NEWTON: I have, Your Honor.

8 THE COURT: You have done that before today I
9 am sure. But have you had a chance to do that
10 today?

11 MR. NEWTON: I have. We have discussed that
12 several times, Judge.

13 THE COURT: Now that the evidence is all
14 closed, I think you should take another
15 opportunity to discuss it with him and make sure
16 he understands the scenario that the case is in
17 right now and here is your advice on whether he
18 should or should not testify. Then give him a
19 chance to actually make his decision.

20 But now, Mr. Gilliam, I am going to come
21 back and talk to you about this again in a few
22 minutes. But I want make sure you understand
23 that you are the one who must make this decision
24 as to whether or not you are going to testify.
25 Mr. Newton cannot make that decision for you. Do

1 you understand that?

2 MR. GILLIAM: Yes, sir.

3 THE COURT: When you've talked to him about
4 this in the past, he has talked to you about your
5 right to remain silent and your right to testify.
6 Is that true?

7 MR. GILLIAM: That's true.

8 THE COURT: Have you understood those
9 conversations?

10 MR. GILLIAM: Yes, sir.

11 THE COURT: Do you feel you understand
12 your right to remain silent and your right to
13 testify?

14 MR. GILLIAM: Yes, sir. I do.

15 THE COURT: We are going to take a short
16 break in order to give you a chance to discuss
17 this with him again and then we will come back
18 and see what your decision is.

19 (WHEREUPON, a short recess is taken.)

20 THE COURT: Have you had enough time to
21 discuss this with your client?

22 MR. NEWTON: I have, Your Honor.

23 THE COURT: Are you satisfied now that he
24 understands both his right to remain silent and
25 also his right to testify?

1 MR. NEWTON: I am so satisfied, Your Honor.

2 THE COURT: Mr. Gilliam, please raise your
3 right hand.

4 You swear the testimony you about to give
5 will be the truth so help you God.

6 MR. GILLIAM: I do.

7 THE COURT: All right. Sir, you can put
8 your hand down. Now, I didn't swear you in
9 before when I was asking you those other
10 questions. But now that you're sworn, is
11 everything you told me before true?

12 MR. NEWTON: Yes, sir.

13 THE COURT: Now, in this break that we just
14 took, did you get an ample chance to discuss with
15 Mr. Newton your right to testify and also your
16 right to remain silent?

17 MR. NEWTON: Yes, I did.

18 THE COURT: Do you now feel that you
19 understand both those rights?

20 MR. NEWTON: Yes, sir.

21 THE COURT: I'm going to go over it with you
22 so that I can make sure that you understand. I
23 want to just explain them both to you. You have
24 the right to remain silent. That right comes to
25 you by way of the Fifth Amendment of the United

1 States Constitution. It means no one can make
2 you or no one can compel you to testify in the
3 trial of this case. That is a constitutional
4 right that you have.

5 If you choose to exercise that right, I will
6 explain it to the jury in very clear terms. And
7 I will not allow the jury to discuss the fact
8 that you did not testify. On the other hand, you
9 do have the right to testify if you choose to do
10 that. If you testify, then you are subject to
11 cross-examination on any subject that might be
12 relevant to this case. You should listen very
13 carefully to the advice that Mr. Newton gives
14 you. In the end, you are the one who has to make
15 this decision. Do you understand everything I
16 just explained to you?

17 MR. GILLIAM: Yes, sir. I have.

18 THE COURT: You have any questions you
19 want to ask me?

20 MR. GILLIAM: No, sir.

21 THE COURT: Do you need any more time to talk
22 to Mr. Newton about this?

23 MR. GILLIAM: No, sir.

24 THE COURT: Are you ready to make your
25 decision?

1 MR. GILLIAM: Yes, sir.

2 THE COURT: What is your decision?

3 MR. GILLIAM: I decided not to take the
4 stand.

5 THE COURT: You are not going to testify?

6 MR. GILLIAM: No, sir.

7 THE COURT: All right. You can be seated.
8 Does the defense intend to offer any
9 evidence?

10 MR. NEWTON: No.

11 THE COURT: So you rest?

12 MR. NEWTON: Yes.

13 THE COURT: All right. Let's discuss the
14 jury charge. We will break unless you have
15 something else to do.

16 MRS. TILLEY: No, sir.

17 THE COURT: Any special requests for
18 charge?

19 MR. NEWTON: Judge, your standard burglary
20 charges and charge about reasonable doubt and
21 that sort of thing are all fine. My one concern
22 is I would request a limited instruction on the
23 jury use of the two prior burglary convictions.

24 THE COURT: I have got one in there.

25 MR. NEWTON: Okay. I have no other specific

1 charge.

2 THE COURT: Okay.

3 MRS. TILLEY: None from the State, Your
4 Honor.

5 THE COURT: All right. We will be ready for
6 closing arguments at nine o'clock tomorrow
7 morning. I will see y'all then.

8 (WHEREUPON, the Court recesses at approximately
9 3:15 p.m.)

10 (WHEREUPON, the Court resumes on September 5,
11 2007 at approximately 9:00 a.m.)

12 THE COURT: Are we ready? You ready?

13 MRS. TILLEY: I do have one question as to
14 directed verdict on the possession of stolen
15 vehicle is one to be presented to the jury.

16 THE COURT: I will just -- I can handle it
17 anyway you want me to. I can tell them now if
18 you'd like or y'all can tell them. I'll probably
19 just tell them. I'll tell them that we're
20 finished with all the evidence. It's time for
21 closing arguments. The case now will go before
22 them only on the charge of burglary and petty
23 larceny, that for reasons that don't concern
24 them, the charge of possession of stolen vehicle
25 is no longer before them. All right.

1 Mr. Newton?

2 MR. NEWTON: Could we also address that in
3 closing argument as well?

4 THE COURT: In what way do you mean?

5 MR. NEWTON: For example, the State
6 promised in opening argument that by the time the
7 case was done, she would prove beyond any doubt
8 that my client --

9 THE COURT: No. It would not -- I don't
10 think it would be appropriate for you to refer to
11 the fact that I granted directed verdict. That's
12 no longer an issue. You can talk to them about
13 the petty larceny charge. You can talk to them
14 about the burglary charge. The car relates to
15 those. You can talk about the facts of that
16 case. But I don't think it's appropriate for you
17 to say they promised you they were going to prove
18 him guilty of receiving stolen goods or
19 receiving, possession of a stolen car and they
20 didn't do it. I don't think that's appropriate.

21 MR. NEWTON: Your Honor, also, I move to,
22 for directed verdict on the Burglary First again.
23 I move to reopen the issue of allowing the
24 Solicitor to reopen her case. You asked me
25 yesterday how it would prejudice my case and my

1 client. That question caught me off guard. I
2 thought about it last night. I have an answer for
3 you today.

4 We are highly prejudiced by allowing the
5 State to reopen that case. The reason why is
6 before I made the directed verdict motion, the
7 State was unaware of the oversight they had made.
8 I could have just not made that motion at all.
9 At that point, we would have argued to the jury
10 and she would not have been able to prove to them
11 that -- there would have been no legal basis
12 whatsoever at that time for them to return a
13 verdict of guilt on the Burglary First. At most,
14 they could legally return a verdict for Burglary
15 Second.

16 So when you say there is no prejudice
17 involved, that means that a party is not put in a
18 worst position after a ruling than they otherwise
19 would be. And we clearly are in a worse position
20 after allowed them to reopen the case than we
21 would have been if that issue had not been brought
22 before the Court in the first place. Because
23 again, instead of moving for directed verdict, we
24 could have just allowed the case to go to the
25 jury and I could have argued that in front the

1 jury. By the Court's ruling, the cat is out of
2 the bag. The Court allowed the State to reopen
3 the case. We are clearly in a much worse
4 position than we otherwise.

5 THE COURT: I understand the argument. I
6 think that that is -- you were required as a
7 matter of procedure to make the arguments that
8 you made and I think that -- you are saying you
9 could have made a strategic decision to just not
10 bring the legal defect up and approach it as a
11 factual issue before the jury. You could have
12 done that. But you would have -- in my opinion,
13 your duty to your client requires you to make the
14 motion that you made. That is not prejudice in
15 the sense that I was talking about.

16 I knew the answer to the question when I
17 asked you yesterday. There is no way that their
18 could have been any unfair prejudice in allowing
19 her to reopen the case four minutes after she
20 would have made that presentation of evidence
21 anyway. So I hear your argument. I understand
22 it. I deny it.

23 MR. NEWTON: Thank you, Your Honor.

24 THE COURT: Anything further?

25 MRS. TILLEY: Nothing from the State.

1 **THE COURT:** The State will argue first.
2 The defense will have the last argument.
3 Bring in the jury.

4 I assume there were no further special
5 request for charge.

6 **MR. NEWTON:** No, Your Honor, nothing from the
7 Defendant.

8 **(WHEREUPON,** the jury enter at approximately
9 9:08 a.m.)

10 **THE COURT:** Good morning, Ladies and
11 Gentlemen. You have now heard all the testimony
12 and evidence that you will hear in this case.
13 The case proceeds to closing argument. You will
14 have before you shortly on the indictments for
15 Burglary in the First Degree and Petty Larceny.
16 For reasons that don't concern you, the
17 indictment for Possession of a Stolen Vehicle has
18 been resolved. And it is not an issue that you
19 will need to concern yourself with.

20 Mrs. Tilley.

21 **MRS. TILLEY:** May it please the Court.

22 Ladies and Gentlemen, there is one thing the
23 defense said in his opening statement that I
24 agree with. That is, a burglary did occur. That
25 is where the agreement ends. The Defendant did

1 commit this burglary. Also in my opening, I
2 talked about how wonderful it is to have the jury
3 that I have because you bring common sense into
4 this courtroom.

5 Rendering a verdict is nothing to be
6 intimidated by. It is what you do all the time.
7 You make decisions all the time. You look at
8 facts. You use common sense. Then you make a
9 decision. That is a verdict. A verdict is a
10 decision that speaks the truth. The truth in
11 this case is the Defendant committed this
12 burglary.

13 In regards to the elements, also I talked in
14 the opening about what I need to prove to you. I
15 will briefly talk about the burglary. First, the
16 dwelling. Roger Gant testified that that is
17 where he lived. Also, the intent to commit a
18 crime. We have that there were guns, two .22
19 rifles that were taken from Mr. Gant's house. We
20 have that those guns were found in the car the
21 Defendant had been seen running from. Those guns
22 being removed from the house, that crime is petty
23 larceny. Also, that the Defendant fled the scene
24 is an inference that you can take to infer the
25 Defendant's guilt. Also, the victim comes and

1 identifies those guns.

2 Also, in proving that a burglary occurred,
3 when we talk about those guns that were found in
4 that car, we also talk about the other things
5 that were found in the car.. This is the picture
6 of the car, of Mr. Gant's door as it was broken
7 into. One can logically conclude from the
8 evidence that a screwdriver that has the top
9 broken off of it, another screwdriver that is
10 slightly bent and a chisel used to pry things
11 open, break things, all found in the car that the
12 Defendant was in when he went running when the
13 police were spotted are items used in the
14 burglary of Mr. Gant's house to steal those two
15 .22 rifles.

16 Also, another element that I have to prove to
17 you in order to prove to you a burglary in the
18 first degree is that the Defendant has two or
19 more prior burglaries. Entered into evidence is
20 a guilty verdict for Danny Ray Gilliam that
21 occurred September 20th of '96. Also back there,
22 you will have another certified conviction of a
23 burglary on Danny Ray Gilliam. This is one of
24 those elements in addition to the other two I
25 just mentioned that prove to you in order to you

1 to find the Defendant guilty. Also, once again,
2 something the defense attorney and I agree on
3 that a burglary did occur, once again, remember
4 these tools were found in the car that the
5 Defendant was in right before he got out of the
6 car and went running.

7 Issues that I think probably as a jury that
8 you are thinking about, let's talk about
9 identification. Sergeant Bowen took the stand
10 and he talked to you about his witnessing the
11 Defendant. I also heard the question from the
12 defense how do we know he is the one who ran off
13 into the woods. Once again, I go back to common
14 sense. Bowen took the stand and he said 100
15 percent that it was him. I saw him. We made eye
16 contact. You saw a picture of the road. If they
17 were so far apart, one of these cars would have
18 to be in the woods. It is a small road to have
19 both cars side-by-side or near each other. They
20 made eye contact.

21 Common sense tells you when you are walking
22 down the road and you look at somebody and you
23 see them eye-to-eye, you are going to recognize
24 them if you know them. That is what the Sergeant
25 Bowen did. He saw him and he recognized him. He

1 said -- Captain Smith said Sergeant Bowen
2 practically yelled out that is Danny Ray. That's
3 Danny Ray. And then Captain Smith took the stand
4 and said that is the man that we chased up that
5 mountain.

6 I also asked him about fog. Fog, he said no.
7 It was clear. Defense attorney talked about
8 rain. We see a light mist here. We can also see
9 where a clear picture was taken. Once again,
10 Bowen, Sergeant Bowen and Captain Smith
11 identified this man. Bowen says one hundred
12 present absolutely, that is the man that I saw.

13 Also, in addition to Sergeant Bowen's
14 testimony and in addition to Captain Smith's
15 testimony, we have a confession from the
16 Defendant that he was on Cove Creek Road in the
17 red Jeep. A confession, Ladies and Gentlemen,
18 that he was in the car. He was in the car that
19 the police had just seen coming out of a driveway
20 where a burglary was reported. He takes and runs
21 off into the woods. In the car are found the two
22 items along the CDs and such that were taken from
23 the house, the two rifles.

24 Interesting thing taken from the house, two
25 .22 rifles were taken. They were left in the car

1 along with two screwdrivers, one bent, one top
2 broken off and a chisel were found. He confesses
3 that he was in that Jeep. He saw the police and
4 he fled off into the woods. The bloodhounds were
5 called out to find him. He confessed, Ladies and
6 Gentlemen, that he was in the car. Bowen told
7 you 100 percent eye-to-eye contact that is who I
8 saw coming out of that house that had just been
9 broken into.

10 Let's talk about fingerprints. Of course, I
11 would love to have them. It makes my case a lot
12 easier. It is not necessarily about easy in this
13 case. They don't have a strip to follow as they
14 might do on TV. They told you what they did to
15 process the scene.

16 They told you about we have a print and it
17 does not match Danny Ray Gilliam, the one taken
18 on the control board. He testifies that could
19 have been a mechanic who worked on the car. It
20 could have been a passenger in the car. If you
21 were to think about your own car and think about
22 everybody else who is in the car, you are going
23 to think about the other prints that were in that
24 car.

25 Mike Ferguson talked to you about the prints

1 he tried to retrieve. It took me a while. I am
2 learning about processing the vehicle. I'm like
3 why can't you get a print off of this, why can't
4 you get a print off that. The easiest way for me
5 to explain it is to think about a doorknob. If
6 you were to grab a doorknob, you don't grab a
7 doorknob and turn it like this. When you grab a
8 doorknob, you turn it like this. It smears the
9 print. You can't get a print off of that. Same
10 thing with a steering wheel. You are not
11 gripping it like this. Chances are you are
12 smearing the prints.

13 Also another reason why there might not be
14 prints, there are gloves in the car. A logical
15 conclusion could be that while he is up there
16 breaking into the house, he is wearing gloves.
17 We also talk about tools. Kind of the same thing
18 with a doorknob. You are going to hold it like
19 this. You are going to be turning it like this.
20 You're going to have smeared prints on that
21 thing.

22 You will have this back in the jury room. Be
23 careful because you will get this print stuff on
24 you and it doesn't really come out that well. No
25 prints are left from this. Mike Ferguson talked

1 about a lot of grease that is used and hand sweat
2 when you take prints off an item that makes it
3 difficult.

4 The guns, they didn't know, the police didn't
5 know this Defendant who went run off into the
6 woods evading police, knowing that he stole guns
7 out of the house, weren't quite sure how many
8 guns this guy had. That is what Captain Smith
9 was talking about on the stand. They go in and
10 security the guns.

11 The victim comes down and says those were the
12 guns that were in my house. They were taken from
13 my house. Eventually, they will returned to the
14 victim. Luckily, due to good police work that
15 was done, we don't have two extra guns out there
16 where we are not quite sure where they are or
17 what they is about to be done with them.

18 **MR. NEWTON:** Objection, Judge. It is
19 appealing to the prejudice of the jury.

20 **THE COURT:** I sustain the objection. Ladies
21 and Gentlemen, let me just take this opportunity
22 to tell you that in a few minutes I will charge
23 you on the law that is applicable to this case
24 including the elements of the crimes that have
25 been charged against the Defendant. Your job is

1 to determine whether or not the State has proven
2 beyond a reasonable doubt each of the elements of
3 the crime charged. And your job does not go
4 beyond that.

5 I will give you the law in a few minutes.
6 The arguments should be limited to the evidence
7 that's been presented before you and also the
8 elements of the charges that I will be giving you
9 in a few minutes.

10 You may proceed.

11 **MRS. TILLEY:** Thank you, Your Honor.

12 Ladies and Gentlemen, I will go back to
13 common sense. We see officers are up there.
14 They are on Cove Creek Road. They see the car
15 come out of the house. It is been burglarized.
16 They make eye contact with the Defendant. They
17 see the Defendant in the car.

18 He immediately realizes he has got to get out
19 of there, get out of that situation. He gets out
20 of that car, he flees and runs away. In that car
21 were the two guns that he stole and tools that
22 you can logically conclude were taken and used to
23 pry open Mr. Gant's door. Logical to conclude
24 that that burglary was committed by the
25 Defendant.

1 One's home is a sanctity. One's home is
2 where we work, we give up time with our family
3 and our relatives because we work hard and we
4 provide for ourselves. We have obligations such
5 as jury duty. Inconvenient but we do them. We
6 do them out of integrity.

7 Others, others take. They act out of
8 integrity. They take from others who do act out
9 of integrity. They do so thinking that there's
10 no consequences. There is a consequence in this
11 case, Ladies and Gentlemen. You have the ability
12 to give it to this Defendant. That consequence
13 is a guilty verdict. I appreciate your time.
14 Thank you.

15 **MR. NEWTON:** May it please the Court, Your
16 Honor.

17 Ladies and Gentlemen, I appreciate your
18 attention throughout this trial. I'm sure I
19 don't have to remind you that in your hands rests
20 a very weighty and important decision. You have
21 to find my client, Danny Ray Gilliam, guilty
22 beyond any reasonable doubt. It is in your
23 hands, your hands alone. Not my hands, not the
24 prosecutor's hands, not the judge's hands. Your
25 hands and your hands alone.

1 The prosecutor said some things I do agree
2 with. I do not dispute that a burglary occurred.
3 I do not dispute that some items were taken from
4 the house on Cove Creek Road. My position is the
5 police arrested the wrong man. Wasn't Mr. Danny
6 Ray Gilliam. This case is mistaken identity.

7 You heard a lot of testimony in this case. A
8 lot of evidence was presented. The prosecutor
9 stood here and introduced item after item, none
10 of which goes to the central issue in this case
11 which is did they get the right guy or not.
12 Prosecutor told you that Captain Smith identified
13 my client, Danny Ray Gilliam, as he was running
14 through the woods at about, Mr. Smith said 150
15 feet or so ahead of him in a thickly wood area.
16 Mr. Smith did not get my client.

17 His only believe that it was Danny Ray
18 Gilliam is that that's what Officer Bowen told
19 him. It all goes down to the ID of officer
20 Bowen. That's it. That's it. Nothing else.
21 Officer Bowen testified originally, when he
22 recalled, it was a clear day, no obstructions.
23 He got a clear look at Mr. Gilliam. He had been
24 familiar with him before. He recognized him on
25 sight.

1 Then, the ID officer takes the stand and
2 admits, as the state is trying to explain away
3 why they don't have fingerprints of my client in
4 the vehicle in question but only the fingerprints
5 of somebody else, as he is trying to explain that
6 fact away, he says it had been raining, it was
7 raining and that affects how well you can get
8 fingerprints prints or not.

9 The State can't have it both ways. They
10 can't on the one hand use rain as an excuse on
11 why they did not have fingerprints on Danny Ray
12 Gilliam but somebody else's fingerprint. At the
13 same time, they explain it was a clear day. So
14 clear, it was no obstruction at all and I got a
15 clear view. You know your view is not as good as
16 it is on a totally clear day. Rain running down
17 the windshield, you got your wipers on but it
18 still affects you.

19 Officer Bowen himself admitted on the stand
20 under cross-examination that he has made mistakes
21 in identity before. We all have. I am sure
22 everyone of us has saw someone in a crowd or
23 walking down the street and say hey that is so-
24 and-so. Only, if you take the time to walk up to
25 them and you find out that it is actually

1 somebody else. It just looked a lot like them.
2 Mistaken identification do happen. Officer
3 Bolding admitted that he has had mistaken
4 identification before.

5 Who is the guy who had the fingerprint in the
6 car? Whose fingerprint was it? The police don't
7 know. They said they don't know who's
8 fingerprint was. Who's fingerprint it was was
9 the person who was really in the car and they
10 haven't found him. That is whose it was.

11 Much has been made out of a supposed
12 confession my client made. I ask you if Officer
13 Bowen was so sure of the identification that he
14 made in that vehicle on that day, why does he
15 even need to ask Mr. Gilliam if he was in that
16 car if he was so sure of that? Why would he even
17 ask that question? Why would he say was that you
18 in that car if he was so sure that it was?

19 The State can't have it both ways. The State
20 is contradicting itself. The story does not add
21 up. It does not make sense. That is all
22 reasonable doubt as to the state case.

23 Reasonable doubt is a doubt that causes a
24 reasonable person to hesitate to act when making
25 a decision. If you were not absolutely sure Mr.

1 Gilliam was guilty, you have the duty to return a
2 verdict of not guilty. In this country, we don't
3 have a system where we just say maybe he did it.
4 Maybe it is 50-50. We'll find him guilty. It
5 does not look that way, Ladies and Gentlemen. It
6 does not work that way. Thank God that it
7 doesn't. The State is to prove the guilt of the
8 Defendant beyond a reasonable doubt.

9 Why would Officer Bolding ask that question?
10 Why would he say were you in the vehicle if he
11 was so sure of that answer? The very fact that
12 he gets in here and admits to asking that
13 question is doubt as to his ID on that day, a
14 reasonable doubt.

15 I know Officer Bowen. In my opinion, he is a
16 pretty good officer. I would never accuse him of
17 intentionally lying. However, officers are human
18 beings. They are not perfect. They do make
19 mistakes. Sometimes, in their zeal to make a
20 case, they are not being objective. Instead,
21 they are simply believing what they are wanting
22 to find.

23 People can make mistakes in testimony of what
24 they say. It happens all the time. Maybe they
25 exaggerate a little bit. But Officer Bowen's

1 testimony is not believable. It is contradictory
2 to himself, contradictory itself. You saw how he
3 originally said he passed by the residence on
4 Cove Creek Road, went down the road a little bit,
5 then turned around and passed the red Jeep
6 Cherokee. When I started asking how far down the
7 driveway the red Jeep Cherokee was, he said it
8 was just a few yards off the driveway, off the
9 road about to hit the road.

10 I asked him how far he went down the road.
11 He said just a few yards. He said he was going
12 25 or 30 miles an hour. After that, he said he
13 went a few yards further and did a three-point
14 turn in the road. Somehow, the Jeep Cherokee
15 passed him by.

16 That does not make sense if you think about
17 it. The red Jeep Cherokee is right there about
18 to turn on the road. Officer Bowen stopped there
19 and went a few yards past the driveway. His
20 three-point turn would be blocking the other car.
21 It doesn't make sense.

22 Let's examine this supposed confession some
23 more. It happened in two weeks later. Two weeks
24 after this incident. No arrests were made at the
25 time. Whoever was in the vehicle got away. All

1 the suppose confession is, if listen carefully to
2 what the Officer says, if you believe every word
3 of it, it is simply that Danny Gilliam may have
4 been in a red Jeep Cherokee at some point in his
5 life on Cove Creek Road. That is all the
6 statement says. That's all it says.

7 It does not say, yeah, I was the one who was
8 in that Jeep Cherokee that day you blue lighted
9 it and I ran away into the woods. That is not
10 it. That's not it. The most Officer Bowen can
11 say is that Danny Gilliam apparently said that he
12 had been in a red Jeep Cherokee at some point on
13 Cove Creek Road at some time in his life. That
14 is all the statement says. That is all it says.

15 How many red Jeep Cherokees are there in
16 Pickens County? How many have come down Cove
17 Creek Road? I'll wager quite a lot. You see
18 them all the time.

19 You have before you evidence of two prior
20 burglary convictions for Danny Ray Gilliam. Yes,
21 he did have two prior burglary convictions in the
22 past. You have it before you. That does not
23 prove that he is guilty of this crime today. The
24 judge is going to instruct you that it will be
25 highly improper for you to convict him today on

1 the basis of what he may have done in the past.
2 That is not what we are here for today. He has
3 already been punished for that. He has already
4 paid his duty to society for that. What we are
5 here for today is something else.

6 And I will point out to you that when Mr.
7 Gilliam was charged with those two prior
8 burglaries, he admitted to it. He pled guilty to
9 it. When he was guilty, he admitted his guilt.

10 No fingerprints except for somebody other my
11 client. No fingerprints on the rifle that were
12 taking. The officer said he did not even test
13 them for fingerprints. The police have to be
14 held to a minimum amount of police work in this
15 case, we don't have that. We have sloppy police
16 work. The officer did not even try to take
17 fingerprints. The most critical part of this
18 whole case as to whose fingerprints were on that
19 rifle, he did not even try.

20 My client is not a wealthy man. He is a poor
21 man. He can't afford to hire all kinds of
22 experts to take fingerprints off of this or that
23 on items that the police has possession of
24 anyway. That is the job of the police. It is
25 their job to solve crimes beyond a reasonable

1 doubt. They have to be held to their job.

2 Why didn't they take fingerprints off of the
3 rifle? Why didn't they? Basic common sense.
4 The most critical, crucial evidence in this case,
5 they don't do it. Sloppy police work. Don't
6 reward them for sloppy police work. It is not
7 your job to do their job for them. It is your
8 job to hold them to their case beyond a
9 reasonable doubt.

10 In closing, again, this entire case comes
11 down to very shameful ID made by one officer
12 while passing another vehicle on a rainy day.
13 Someone who he says he had known in the pass, the
14 same officer that admitted on the stand that he
15 made mistaken identity before. It is not enough
16 to convict a man. That is not proof beyond a
17 reasonable doubt. Hold the police to arresting
18 the right person please. Thank you.

19 **THE COURT:** Ladies and Gentlemen, now that
20 you have heard the evidence and the arguments of
21 the attorneys, it becomes my responsibility to
22 explain to you the law that is applicable in this
23 case. As I told you in the beginning under our
24 Constitution and Code of Laws here in South
25 Carolina, only the jury can determine the facts

1 in this case. I am not permitted to indicate to
2 you how I feel about the facts. If I have said
3 anything or done anything during the course of
4 the trial that might lead you to believe that I
5 have opinion about the facts in this case, then
6 you should disregard that.

7 To determine the facts in the case, you will
8 have to evaluate the credibility which, of
9 course, means the believability of the witnesses
10 who have been called on to testify. Some of the
11 things that you might wish to consider as you
12 decide whether to believe a witness' testimony
13 about a particular matter include the following:
14 the manner and appearance of the witness who
15 testified; was he or she straightforward or
16 hesitant in answering questions; how did the
17 witness come to know the facts that he or she is
18 testifying to and what is the witness' ability to
19 know the facts; is the testimony of the witness
20 consistent or inconsistent; is there some reason
21 that a witness might want to give testimony that
22 would help or hurt one side or the other; in
23 other words, is the witness biased either towards
24 or against one side or the other; is testimony of
25 a witness strengthened or weakened by other

1 testimony and evidence.

2 As members of the jury, you can believe as
3 much or as little of each witness' testimony as
4 you believe it is appropriate to do. You can
5 believe the testimony of one witness against all
6 of the rest of them or you can do just the
7 opposite. You're not required to accept
8 testimony as true even if it is uncontradicted.

9 The same Constitution and Code of Laws that
10 makes you the exclusive judges of the facts also
11 makes me the exclusive judge of the law. If you
12 have some idea of what the law is or what the law
13 should be and if that now differs from that I
14 should tell you the law should be, you are
15 obligated under the oath that you have taken as
16 jurors to set your notion of the law aside and to
17 accept and apply the law precisely as I now
18 explain it to you.

19 The fact that the Defendant was arrested and
20 charged and indicted in this case is not evidence
21 and cannot be considered by you in any manner as
22 evidence of the Defendant's guilt. Nor does it
23 create any presumption or inference of guilt.
24 The indictment is simply the formal document that
25 contains the allegations that have been against

1 the Defendant and it serves to process the case
2 and bring it into this court for trial.

3 The Defendant has pled not guilty to both of
4 these two indictments. The plea of not guilty
5 casts the burden on the State to prove the
6 Defendant guilty beyond a reasonable doubt. A
7 person charged with committing a crime in South
8 Carolina is never required to prove themselves
9 innocent.

10 It is a very important rule of law in our
11 country that a Defendant in a criminal trial will
12 always be presumed to be innocent of the crimes
13 with which he has been charged unless and until
14 his guilt has been proven by evidence that
15 satisfies you of that guilt beyond a reasonable
16 doubt. As I told you before, of course, this is
17 the presumption of innocence.

18 The presumption of innocence is not merely a
19 legal theory. It is not just a legal phrase that
20 we use. It is a substantial constitutional right
21 to which every Defendant is entitled. The
22 presumption of innocence accompanies the
23 Defendant from the time he is charged, throughout
24 the trial and into the jury room until you reach
25 a verdict of guilt that is based on evidence that

1 has satisfied you of that guilt beyond a
2 reasonable doubt.

3 Ladies and Gentlemen, I instruct you now and
4 I emphasize to you that the fact that the
5 Defendant did not testify in this trial cannot be
6 considered by you in any manner during your
7 deliberations. The Defendant has a
8 constitutional right to remain silent. The
9 exercise of that right cannot and must not be
10 used against the Defendant. Under the oath that
11 you have taken as jurors, you are to draw no
12 inference and no conclusion whatsoever from the
13 fact that the Defendant did not testify. Do not
14 even discuss this in the jury room. The
15 Defendant is not required to prove anything. The
16 burden of proof remains upon the State.

17 A reasonable doubt is a doubt which makes an
18 honest, sincere conscientious juror in search of
19 the truth in the case to hesitate to act. Proof
20 beyond a reasonable doubt must therefore be proof
21 of such a convincing character that a reasonable
22 person would not hesitate to rely on it and act
23 on it in the most important of his or her own
24 affairs. Proof beyond a reasonable doubt can
25 also be described as proof that leaves you firmly

1 convinced of the Defendant's guilt.

2 There very few things in this world that we
3 know with absolute certainty. In criminal cases,
4 the law does not require proof that overcomes
5 every possible doubt. If, based on your
6 consideration of the evidence, you are firmly
7 convinced that the Defendant is guilty of the
8 crimes charged, then you must find him guilty.
9 On the other hand, you think there is a real
10 possibility that he is not guilty, you must give
11 him the benefit of the doubt and find him not
12 guilty.

13 I have admitted into evidence in this case
14 statements alleged to have been made by the
15 Defendant. Before you can consider these
16 statements as evidence for any purpose, you must
17 first find the State has proven beyond a
18 reasonable doubt that the answer to both of these
19 two following questions is yes. The questions
20 are, Did the Defendant make the statement?
21 Secondly, Was the statement made voluntarily?

22 The word "voluntarily", of course, means that
23 he freely chose to make the statement. It was
24 not induced by pressure, force or intimidation.
25 If the statement was voluntarily given, then it

1 may be used against him. If the statement was
2 not given voluntarily, it may not be used against
3 him.

4 In determining whether or not the statement
5 of the Defendant was voluntary, you should
6 consider all the facts and circumstances
7 surrounding the statement including the
8 Defendant's age, maturity, his level of education
9 and intelligence, his physical and mental health,
10 his background and environment, the nature of any
11 questioning and any other evidence that you
12 believe bears on the voluntariness of the
13 Defendant's statement.

14 If the Defendant was in custody at the time
15 the statement was made, you should also consider
16 the place and length of his custody and whether
17 or not he was given and whether or not he
18 understood his constitutional rights or what are
19 commonly referred to as Miranda rights. These
20 rights are that he has the right to remain
21 silent, that any statement that he does make can
22 and will be used against him in the court of law,
23 that he has a right to consult a lawyer before
24 and during any questioning, that if he cannot
25 afford a lawyer, the court will appoint one to

1 represent him at no cost to him and that he has
2 the right to exercise this rights at any time and
3 terminate questioning or not answer any questions
4 or not make any statement. Ladies and gentlemen,
5 I find as a matter of law that the Defendant was
6 in custody at the time he allegedly made the
7 statement.

8 Before you may convict the Defendant of
9 either of the crimes charged, you must find that
10 the State has proven beyond a reasonable doubt
11 that this Defendant is the person who committed
12 the crime. In this regard, you heard the
13 testimony of witnesses who have identified the
14 Defendant. Identification testimony is
15 expression of belief or impression by a witness.
16 You must evaluate the credibility of each
17 identification witness in the same way that you
18 would for any other witness. You must determine
19 not only whether or not, the witness' testimony
20 is truthful, but you must also determine whether
21 or not the witness' identification is accurate.

22 In considering the accuracy of the
23 identification, you should consider whether the
24 witness had an adequate opportunity to observe
25 the offender at the time of the offense. This

1 will be affected by factors such as the length of
2 time available for observation, the distance from
3 the witness to the Defendant, the lighting
4 conditions and whether or not the witness had the
5 chance to see or know the Defendant in the past.

6 You should also determine whether the later
7 identification made by the witness was the
8 product of his own recollection. This will be
9 affected by the factors listed above and also the
10 time that lapsed between the witness,
11 identification of the Defendant and his later
12 identification. Whether there were any occasions
13 on which the witness failed to make an accurate
14 identification, the strength of the
15 identification, the circumstances under which it
16 was made and any other factors that you deem to
17 be important.

18 I emphasize to you that the State must prove
19 every element of the crime charged and this
20 specifically includes the burden of proving
21 beyond a reasonable doubt the identity of this
22 Defendant as the person who committed these
23 crimes. If, after examining all the evidence in
24 this case, you have reasonable doubt as to
25 whether it was this Defendant who committed the

1 crimes, then you must find the Defendant not
2 guilty.

3 The Defendant is charged with burglary in a
4 first-degree. In order to convict the Defendant
5 guilty of this crime, the State must prove four
6 essential elements each beyond a reasonable
7 doubt. First, the State must prove that the
8 Defendant entered a dwelling. Second, the State
9 must prove the Defendant did not have permission
10 to enter the dwelling. Third, the State must
11 prove that the Defendant entered the dwelling
12 with the intent to commit a crime while inside.
13 Fourth, the State must prove that the Defendant
14 has a prior record for two more convictions for
15 burglary or housebreaking.

16 With regard to the first element, the term
17 "dwelling" means any house in which an owner or a
18 tenant sleeps. With regard to the third element,
19 the intent to commit a crime, the mere entry into
20 a dwelling without consent is not burglary. If
21 the intent is formed after the entry, it is not
22 burglary. But on the other hand, if the
23 Defendant intended to commit at the time of the
24 entry, it is burglary even if the intent was
25 abandoned after the entry. It does not matter

1 that the intended crime might not have been
2 completed. Intent may be shown by conduct of the
3 Defendant and any other circumstances from which
4 you may naturally and reasonably infer intent.

5 Regarding the fourth element, evidence of
6 prior offenses committed by the Defendant were
7 not offered to prove the Defendant had a bad
8 character and therefore committed the burglary on
9 this occasion. You may draw not draw from this
10 evidence the inference that because the Defendant
11 committed these prior crimes, then he is the type
12 of person who would have committed these crimes.
13 That is an absolutely impermissible inference.

14 The Defendant's prior convictions may be
15 considered by you only for the purpose of
16 determining whether or not the State has met it's
17 burden of proof on the fourth element that I
18 charged you on just a few moments ago. Before
19 you can even consider the evidence of the
20 Defendant's prior burglary or housebreaking
21 convictions, you must find that the State has
22 proven each of the other three elements beyond a
23 reasonable doubt.

24 The Defendant is also charged with petty
25 larceny. In order to convict the Defendant of

1 petty larceny, the State must prove three
2 essential elements each beyond a reasonable
3 doubt. First, the State must prove that the
4 Defendant took and carried away the property of
5 another person. Second, the State must prove
6 that the Defendant did so against the will of or
7 without the consent of the owner of the property.
8 Third, the State must prove that the Defendant
9 intended to permanently deprive the owner of the
10 property taken. Regarding the first element, the
11 slightest removal of the property or complete
12 possession of the property even for an instance
13 by the Defendant is enough to show a taking and a
14 carrying away of the property.

15 Ladies and Gentlemen, your verdict in this
16 case must be unanimous. All twelve of you must
17 agree before you can write a verdict. In just a
18 second, I'm going to send you back to the jury
19 room but I'm going to ask you not yet to begin
20 your deliberations because I will have some
21 matters of law that I need to take up with the
22 attorneys.

23 While I do that, I would like for you all to
24 select a foreperson to serve the jury. The job
25 of the foreperson is to preside over the

1 deliberations and then when it becomes necessary
2 to do so, to communicate with me. Those
3 communications will have to be in writing.

4 One of the times when you will have to
5 communicate with me is when you have reached a
6 verdict. You will have with you in the jury room
7 the indictment. On the back of the indictment in
8 the lower left-hand corner, you will see the word
9 "verdict". Below that, there are four blank
10 lines.

11 On one of those four blank lines, the
12 foreperson would write out the unanimous verdict
13 of the jury, then sign it and date it and notify
14 the bailiff that you have reached a verdict. We
15 will get you back out here into the courtroom to
16 receive the verdict.

17 On both of these charges, you have two
18 verdict options. I'm going to list them in no
19 particular order. But for both indictments, your
20 verdict options are guilty or not guilty.

21 Ladies and Gentlemen, what goes on in the
22 jury room is private and should not be disclosed
23 to anyone. Particularly, you should never
24 disclose to anyone what the vote of the jury
25 might be regarding the convictions or anything.

1 That information just stays within the jury room.
2 If you have any type of question, you can write
3 it out on a separate sheet of paper get it out to
4 me and I will do my best answer the question.

5 Mrs. Spearman, you please remain in your
6 seat.

7 The rest of you, please go back in the jury
8 room. Do not began your deliberations until I
9 have sent back to you the evidence and the
10 indictments. At that time, the bailiff will
11 instruct you that you may began your
12 deliberations. As soon as you pick a foreperson,
13 let us know through the bailiff who that is.

14 (WHEREUPON, the jury exit at approximately
15 9:51 a.m.)

16 THE COURT: Can you take Mrs. Spearman back
17 and sit her in the jury room for just a few
18 minutes please?

19 THE BAILIFF: Yes, I will.

20 THE COURT: Any exceptions to the charge?

21 MRS. TILLEY: None from the state, Your
22 Honor.

23 MR. NEWTON: None from the defense.

24 THE COURT: I would like for you all to come
25 up here and make sure that you agree that on the

1 proper set of exhibits to go back to the jury.
2 Once you have done that and you find out who the
3 foreperson would be, send it back with the
4 indictment.

5 MRS. TILLEY: We agree, Your Honor, these
6 items up here up front.

7 (WHEREUPON, deliberation begins at approximately
8 9:51 a.m.)

9 (WHEREUPON, the Court resumes at approximately
10 10:13 a.m.)

11 THE COURT: Mr. Dover, I don't think you
12 were in here. But Brad Dover, Juror Number 39 is
13 the foreperson of the jury.

14 (WHEREUPON, Court Exhibit 1 is marked for
15 identification purposes.)

16 (WHEREUPON, deliberation continues.)

17 (WHEREUPON, the Court at approximately
18 12:03 p.m.)

19 (WHEREUPON, the jury enter at approximately
20 12:04 p.m.)

21 THE COURT: Has the jury reached a verdict?

22 THE FOREPERSON: Yes, sir.

23 THE COURT: Pass it to the bailiff please.

24 THE CLERK: In that case of 2006-GS-39-847,
25 State versus Danny Gilliam indicted for Burglary

1 First Degree, verdict guilty. Brad Dover,
2 Foreperson. 2006-39-849, indictment for Petty
3 Larceny, verdict guilty. Brad Dover, Foreperson.
4 This being your verdict and still being your
5 verdict, please signify by raising your right
6 hand.

7 (WHEREUPON, each juror raises right hand.)

8 THE COURT: Anything before we move into
9 sentencing?

10 MR. NEWTON: We ask to have the jury polled
11 please.

12 THE COURT: Poll the jury please.

13 THE CLERK: The names are in no particular
14 order.

15 THE COURT: That's fine.

16 THE CLERK: James B. Morgan.

17 THE JUROR: Guilty.

18 THE CLERK: Thomas C. Earnest Jr.

19 THE JUROR: Guilty.

20 THE CLERK: Jerri Durham.

21 THE JUROR: Guilty.

22 THE CLERK: Brad Dover.

23 THE JUROR: Guilty.

24 THE COURT: Randall Fowler.

25 THE JUROR: Guilty.

1 THE COURT: Walter Whitmire.
2 THE JUROR: Guilty.
3 THE CLERK: Ronald brought black.
4 THE JUROR: Guilty.
5 THE COURT: James Smith.
6 THE JUROR: Guilty.
7 THE CLERK: William Aiken.
8 THE JUROR: Guilty.
9 THE CLERK: James Lawton.
10 THE JUROR: Guilty.
11 THE CLERK: David Owens.
12 THE JUROR: Guilty.
13 THE CLERK: Carol Stokes.
14 THE JUROR: Guilty.
15 THE CLERK: Thank you.
16 THE COURT: Ladies and Gentlemen, let me ask
17 you a follow-up question to that. I am going to
18 ask you if as to both indictments now if your
19 verdict in the jury room was guilty as to both
20 indictments and if your verdict still as you sit
21 here in the jury box now is guilty as to both
22 indictments, please raise your right hand.
23 (WHEREUPON, each juror raises right hand.)
24 THE COURT: All right. The right hand of
25 each juror is raised in response to my question.

1 Anything further before we move into sentencing?

2 MR. NEWTON: I renew my motions.

3 THE COURT: Motions are denied.

4 Bring him around please.

5 All right. Let me hear his prior record.

6 MRS. TILLEY: Yes, Your Honor. 1990, two
7 counts of Grand Larceny. 1991, Grand Larceny.

8 THE COURT: Hold on. All right.

9 MRS. TILLEY: 1992, Probation Violation.
10 Also in '92, Resisting Arrest. '95, Simple
11 Possession of Marijuana, 1997, Possession of a
12 Stolen Vehicle, Strong-arm Robbery, four counts
13 of Burglary Third, two counts of Burglary Second,
14 four counts of Forgery.

15 THE COURT: Hold on. Two counts of Burglary
16 Second?

17 MRS. TILLEY: Yes, Your Honor.

18 THE COURT: Go ahead.

19 MRS. TILLEY: Three counts of Grand Larceny.

20 THE COURT: This is all '97.

21 MRS. TILLEY: Yes, Your Honor.

22 MRS. TILLEY: Seven counts of Petty Larceny.
23 Autobreaking, Possession of Stolen Goods. 1998,
24 Burglary Second, six counts of Petty Larceny,
25 Autobreaking, three counts of Burglary Third,

1 Grand Larceny, Possession of Stolen Goods. 2006,
2 Probation Violation, three years for Grand
3 Larceny, three years for Burglary third, two
4 counts Autobreaking, Possession of Stolen Goods.
5 In regards to a North Carolina record --

6 THE COURT: Hold on. In '06, you said he got
7 a three-year sentence for Grand Larceny, three
8 Burglary Thirds and the Autobreaking and
9 Possession of Stolen Goods.

10 MRS. TILLEY: Yes, Your Honor. And then in
11 '86 from that North Carolina record --

12 MR. NEWTON: Your Honor, that was the
13 probation violation.

14 THE COURT: Does he have --

15 MR. NEWTON: He has been in jail every since
16 January 22 of '06.

17 THE COURT: He has no convictions from '06.

18 MR. NEWTON: Probation violation.

19 MRS. TILLEY: That is when he began his
20 probation violation at that point.

21 THE COURT: You have listed no convictions
22 between '98 and '06 which is unlikely.

23 MRS. TILLEY: He received 10 years on a
24 Burglary second.

25 THE COURT: In '98?

1 **MRS. TILLEY:** Yes.

2 **THE COURT:** 10 years active with probation
3 to follow?

4 **MRS. TILLEY:** Yes, Your Honor.

5 **MR. GILLIAM:** Yes, I had probation to follow.

6 **MRS. TILLEY:** '96, Possession of Stolen
7 Vehicle, Strong Arm Robbery, Burglary three --
8 Third degree, Burglary Second Degree. Also, in
9 '96, two Grand Larcenies -- 1, 2, 3 --

10 **THE COURT:** He is in the Department of
11 Corrections right now?

12 **MR. NEWTON:** He just finished that sentence,
13 Judge. He is being held in the Pickens County
14 jail.

15 **THE COURT:** He finished that. He is not
16 listed on the website. All right.

17 **MRS. TILLEY:** And then North Carolina record,
18 '86, Autobreaking and Larceny, '88, Larceny of
19 Firearm and Felony in Possession of a Firearm.
20 The State also has an additional position on
21 sentencing when the Court is ready to hear that.

22 **THE COURT:** Okay.

23 **MRS. TILLEY:** In regards to this Defendant,
24 Danny Gilliam, I believe before the trial
25 started, you heard about the other cases that are

1 associated with that. I understand that is not
2 the cases that are before you. There are
3 several, several other cases --

4 THE COURT: Wait a minute. If you want to
5 make an argument as to what the sentence should
6 be, I will hear that in a few minutes.

7 MRS. TILLEY: Yes, Your Honor.

8 THE COURT: Anything else in the way of
9 evidence or factual presentation? Anybody from
10 the victims who want to speak?

11 MRS. TILLEY: No, other than the victims being
12 present during the trial, that was their interest
13 and they are very interested in the outcome.

14 THE COURT: All right. Go ahead then. I will
15 hear from you.

16 MRS. TILLEY: We believe that due to the
17 Defendant's prior record, he has shown that he
18 knows nothing other than to commit crimes. He
19 has crimes that are breaking into other people's
20 homes which I think especially that our country
21 have seen in this past year that can have very
22 devastating outcomes when people enter other
23 people's homes. This Defendant is a threat to
24 society because he knows nothing other than
25 committing crimes especially those involving

1 people's homes.

2 Also, Your Honor, he had a chance to turn
3 himself in to police. He was on the run for at
4 least two weeks. They had bloodhounds. They had
5 helicopters. They had to close down three
6 schools while they were searching for this
7 Defendant. A lot of manpower was spent trying to
8 find this Defendant.

9 That unwillingness to accept his
10 responsibility in this as well as his prior
11 record, Your Honor, I cannot say too much about
12 his prior record, I would ask there be a
13 significant sentence given to this Defendant.
14 Because obviously, he has not learned his lesson
15 and he will not learn his lesson. It is my job
16 to protect citizens of Pickens County. He should
17 be sentenced to the fullest extent of the law.
18 He needs a significant sentence.

19 **THE COURT:** Do you have sentencing sheets?

20 **MRS. TILLEY:** I do, Your Honor.

21 **THE COURT:** Hand them to Mr. Newton.

22 Review the information above the signature
23 lines for accuracy please. And if they are
24 accurate, sign them. Your client can also review
25 it. And if he wishes to sign it, he may do so

1 too.

2 (WHEREUPON, there is a pause.)

3 THE COURT: All right, pass it up.

4 Anything else from the State?

5 Officer, you want to speak?

6 SPEAKER: No, sir.

7 THE COURT: Mr. Newton.

8 MR. NEWTON: Your Honor, my client does have a
9 very long criminal record. There is no denying
10 of that. The Solicitor asked for you to give him
11 a very significant sentence. The minimum he can
12 get on this charge is 15 years and 85 percent.
13 He would have to do at least twelve and a half
14 from my calculations or 13 and a half. Anyway,
15 that in itself is a very significant sentence.

16 Danny is 38 years old. Even if you gave him
17 the minimum of 15 years, he will be almost 50
18 years old when he gets out of prison. His whole
19 problem as been a meth addiction. That's why
20 he's been on this spree that he's been on. He's
21 never had any drug treatment for it whatsoever.
22 A very lengthy prison sentence of twelve or 13 is
23 going to get him off the meth and give him a
24 chance to make something of his life.

25 I ask the Court not to throw this man's life

1 away. I understand you to give him life, the
2 rest of his life. I understand that. I ask the
3 Court to have some recognition of human failing.
4 This man's problem has been an uncontrollable
5 addiction to meth which is going to be
6 surmounted. It's going to be overcome because he
7 will not have access to meth in prison.

8 When he gets out, he will not have that
9 problem anymore. He will be past the age that
10 men are often in when they commit the most
11 crimes. Most men commit crimes when they are
12 between 20 and 40 years old. That is just
13 statistically true. For whatever reason, once
14 they get past the age of 40, they simply don't
15 commit so many crimes anymore. It's very
16 unlikely that they will.

17 Even if you give him the minimum sentence, he
18 will be almost 50 years old or will be 50 years
19 old by the time he gets out of prison. I ask the
20 Court not to throw this man's life away. I beg
21 the Court not to do that. That is all that I
22 have to say on that, Judge.

23 **THE COURT:** Mr. Gilliam, is there anything
24 you want to say?

25 **MR. GILLIAM:** Your Honor, I know what I did

1 was wrong. I am sorry for what I did. I had a
2 real bad drug problem out there on the street.
3 Basically, I really didn't even know what I was
4 doing at the time I was doing all of this because
5 I was so strung out on drugs. I feel like I need
6 some kind of drug treatment for the addiction
7 that I have because I am an addict, a drug
8 addict.

9 I just ask you to please go as lenient as you
10 could on me, Your Honor. I'm going to be an old
11 man when I get out of prison, if I ever get out
12 of prison. All of my criminal history and drug
13 problems will be over by the time I get out, if I
14 get out.

15 **THE COURT:** The maximum penalty for the grand
16 larceny, I mean, for the petty larceny by virtue
17 of the two or more prior convictions for property
18 crimes is 10 years, right?

19 **MRS. TILLEY:** Correct, Your Honor.

20 **MR. NEWTON:** I disagree with that, Your
21 Honor. I think it is 30 days being a petty
22 larceny.

23 **THE COURT:** What is the statute number?
24 16-1-56 or 57?

25 **MRS. TILLEY:** Yes.

1 MR. NEWTON: In addition, on that point, I
2 would point out that the indictment that he was
3 indicted for the petty larceny did not make any
4 allegations regarding any priors or that it was
5 going to be treated as such.

6 THE COURT: 16-1-57 is a statute that changes
7 the maximum penalty. It does not change the
8 elements of the crime. It does not affect the
9 indictment or the indictment does not affect the
10 applicability of that section. In my opinion,
11 the maximum penalty for that crime is ten years.

12 Where are you from?

13 MR. GILLIAM: I am from North Carolina.

14 THE COURT: Where?

15 MR. GILLIAM: Kings Mountain, North Carolina.

16 THE COURT: Have you lived here in Pickens?

17 MR. GILLIAM: Yes, sir. I live right here in
18 Pickens.

19 THE COURT: When you were convicted in '97
20 for all those burglaries and strong arm robbery
21 and grand larcenies and autobreakings, what was
22 your sentence?

23 MR. GILLIAM: Ten years.

24 THE COURT: Ten years active?

25 MR. GILLIAM: I mean, I maxed the ten out.

1 **THE COURT:** You got out in '02? About '02?

2 **MR. GILLIAM:** Yes, sir.

3 **THE COURT:** That was the one where you had 10
4 years active with probation to follow?

5 **MRS. TILLEY:** Yes, Your Honor.

6 **MR. GILLIAM:** My probation, I was violated on
7 my probation because of these charges I'm here
8 before today. It was not like I violated my
9 probation by committing any crimes. My probation
10 officer just went ahead and violated me because I
11 had all of these other charges on me.

12 **THE COURT:** How far did you go in school?

13 **MR. GILLIAM:** To about the 10th grade.

14 **THE COURT:** Do you have any children?

15 **MR. GILLIAM:** No, sir.

16 **THE COURT:** What kind of jobs have you had?
17 What kind of work have you done?

18 **MR. GILLIAM:** I was working for Table Rock
19 Tree Service before I back slid and got on drugs.
20 I was doing real good. I was working everyday
21 and reporting and paying my probation and doing
22 everything I was supposed to be doing. And then
23 just one day, I got with some friends. The next
24 thing you know I was on drugs and then it was all
25 back downhill again. I went years without doing

1 any drugs and doing good, working everyday.

2 MRS. TILLEY: Your Honor, if I may? Your
3 Honor, the officer just notified me that they
4 were also going up to Cove Creek Road, they had
5 probation violation warrants on him at the time.
6 I'm not quite sure. There are 15 other pending
7 burglaries. I don't think -- I think they also
8 had arrest warrants on him at that point as well.
9 They were serving the additional probation
10 violation warrants on him at the time. I don't
11 know necessarily how this relates to that but
12 just for Your Honor's information.

13 THE COURT: Anything else you want to say?

14 MR. GILLIAM: I just pray that you going
15 lenient on me, Your Honor, and give me a chance
16 back at my freedom. And hopefully when I get
17 out, I will still be able to make something out
18 of my life. I just pray that you don't sentence
19 me for the rest of my life in prison. I hope I
20 get another chance at my freedom.

21 I am 38 now. I mean, who knows how old I
22 will be when I get out, if I get out. I just
23 pray that I get a chance to get back on get my
24 freedom and maybe live the rest of my life out
25 here in the street. I don't want to die in,

1 prison.

2 THE COURT: Mr. Newton, anything else you
3 want to say?

4 MR. NEWTON: Nothing further, Judge.

5 (WHEREUPON, there is a pause.)

6 THE COURT: Anything further?

7 MRS. TILLEY: Nothing further from the State.

8 THE COURT: Mr. Newton?

9 MR. NEWTON: No, Your Honor.

10 THE COURT: The sentence on the Petty Larceny
11 is ten years. The sentence on the First Degree
12 Burglary is life.

13 Good luck to you, sir.

14 (WHEREUPON, the Defendant exits the courtroom.)

15 THE COURT: Ladies and Gentlemen, because it
16 is a short week for us, we're not really able to
17 start another trial. Your week as jurors is
18 complete. I'm going to ask you to step in the
19 jury room for just a few minutes. I will come
20 back there and speak to you. I will dismiss to
21 you from there.

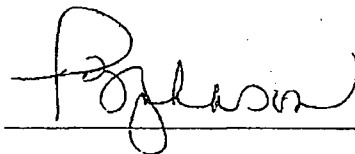
22 (WHEREUPON, the jury exit at approximately
23 12:26 p.m.)

24 (END OF PROCEEDING)

25

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of General
8 Sessions for Pickens, South Carolina, on the 21st day
9 of January, 2008.

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

12
13
14
15
16 

17 Teresa B. Johnson

18 Official Court Reporter
19
20

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINACounty of Pickens)

2011 OCT 28 P 2:25

Danny Ray Gilliam 183100)

Full name and prison number, if any, of applicant.)

2011-CP-30-1574

APPLICATION FOR

v.)

POST-CONVICTION RELIEF

The State of South Carolina)

Name of Respondent)

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 it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Pickens County detention Center
2. Name and location of Court which imposed sentence Pickens County Court of general session
Pickens County Courthouse 214 E. Main Street, B120, Pickens S.C. 29671
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2006-GS-39-847 Burglary first degree § 16-11-311
 - (b) 2006-GS-39-849 petit larceny § 16-13-30(A)
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 5, 2007, Life Sentence
 - (b) September 5, 2007, 10 years
 - (c) _____

5. Check whether a finding of guilty was made
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty ☒ However, the defendant never make a plea
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
 - i. In The Court of Appeal of South Carolina
 - ii. In The Supreme Court of South Carolina
 - iii. In The Court of Appeal of South Carolina
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed
 - ii. Petition for writ of Certiorari denied
 - iii. petition for rehearing denied
 - (c) the date of each such result:
 - i. March 10, 2010
 - ii. January 20, 2011
 - iii. April 23, 2010
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. unpublished opinion No. 2010-up-197
 - ii. Order
 - iii. Order denying petition for rehearing
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
 - (b) N/A
 - (c) N/A
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attach page
 - (b) _____
 - (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) _____

See Attach Pages

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

Yes

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) NO

(d) any other petitions, motions or applications in this or any other Court?

NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

Appeal

ii.

Petition for ~~rehearing~~ rehearing

iii.

petition for Writ of certiorari

iv.

(b) the name and location of the Court in which each was filed:

i. The Court of Appeal of South Carolina

ii. The Court of Appeal of South Carolina

iii. The Supreme Court of South Carolina, P.O. Box 11330, Columbia, S.C. 29

iv.

(c) the disposition thereof:

i.

See Attach pages

ii.

iii.

iv.

(d) the date of each such disposition:

i. March 10, 2010

ii. April 23, 2010

iii. January 20, 2011

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Unpublished opinion No. 2010-UP-197

ii. order denying petition for rehearing

iii. Order

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) because issues is unpreserved on direct appeal because defendant

(b) not raised to the trial court nor ruled on by the trial court and ineff

(c) assistance of counsel would not be considered on direct appeal.

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? No, I was not arraigned nor I did plea whether I was

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? yes

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Robert L Newton, P.O. Box 1123, Pickens S.C. 29671

ii. Wanda H. Carter, deputy chief Appellate defender P.O. Box 11589, Columbia.

iii. 29211-1589

(b) the proceedings at which each such attorney represented you:

i. trial and sentencing

ii. Appeal, petition for rehearing, and petition for Writ of Certiora

iii. _____

18. State clearly the relief you seek in filing this application. directed verdict of acquittal

~~or reversed~~ or reversed of Sentence of Life and 10 year or
a new trial

19. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of Pickens.2011-CP-39 1574

VERIFICATION

I, Danny R. Williams #183100, 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.

Danny R. Williams #183100

SWORN to and subscribed before me this 18th
day of October, 2011

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 OCT 28 P 2:25

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

2011-CP-39 1574

Danny A. Gilliam #183100
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.

Danny A. Gilliam #183100
Applicant

SWORN or affirmed to and subscribed before me this
18th day of October, 2011

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 OCT 28 P 2:25

Issue 9 (a)

Where the defendant was not afforded an arraignment or represented by counsel during arraignment, which is a critical stage in a criminal proceeding, violated defendant's right to due process pursuant to fourteenth Amendment of the United States Constitution.

FACTS

The defendant was arrested January 22, 2006, for Burglary first degree, Petit larceny, and Possession of Stolen Vehicle. The defendant received notice of right to Preliminary hearing and request a preliminary hearing. On March 7, 2006, Danny Ray Gilliam, sent to the S.C. Department of Corrections for violated probation. The Preliminary hearing was scheduled for April 4, 2006, however, it was "continued" because defendant was not present and was not represented by Counsel at that time. The Pickens County Grand Jurors indicted defendant on April 18, 2006, of the above crimes. On September 1, 2007, the defendant was released from S.C. Department of Corrections to Pickens County Detention Center. On September 4, 2007, the defendant was brought from Pickens County Detention Center to Pickens County Courthouse to begin his trial. The defendant was never arraigned nor did he plea whether he was "guilty" or "not guilty". Therefore, the question is, who made this plea of "not guilty" for the defendant. See Transcript of Record (Trial) pg 6 to pg 64

In South Carolina, arraignment consists of the following procedure: first, the calling of the prisoner to the bar by his name and commanding him to hold up his right hand, ...; and he owns himself of that name; second, reading the indictment to him in English that he may understand his charge; third, demanding of him whether he be guilty or not guilty.

State v. Brock, 39 S.E. 359 (1901). Historically, arraignment, although an essential and necessary part of trial, was subject to waiver. State v. Davis, 227 S.E. 2d 662 (1976). Arraignment was necessary for those felonies listed in S.C. Code § 38-211 (1962). Moreover, in 1976 the arraignment statute was recodified to render formal arraignment unnecessary S.C. Code Ann. § 14-7-1110 (1976). Peremptory challenges in criminal cases. Any person who shall be arraigned for the crime of murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, or breach of trust when it shall be punishable as for grand larceny, perjury or forgery shall be entitled to peremptory challenges not exceeding ten and the state in such cases shall be entitled to peremptory challenges not exceeding five.

Arraignment is only required in the cases here enumerated, and has never been necessary in cases of misdemeanors where defendant may be tried in his absence. State v. Meyers, 18 S.E. 892 (1894); State v. Brock, 39 S.E. 359 (1901).

- 9(a) Where the defendant was not afforded an arraignment or represented by counsel during arraignment, which is a critical stage in a criminal proceeding, violated defendant's right to due process pursuant to Fourteenth Amendment of the United States Constitution?
- 9(b) Was state witnesses, officer Brian Bowen and Captain Dewey Smith, in court identification of defendant reliable when both witnesses never give a description of defendant nor was there a crime committed by defendant?
- 9(c) Did defendant two prior burglary convictions in question, occurred so close in time that they were a part of a continuous course of conduct and should have been presented only as one burglary conviction?
- 9(d) Was defendant convicted on insufficient evidence presented by the state of South Carolina to establish his guilt beyond a reasonable doubt on first degree burglary and petit larceny?

The defendant was never arraigned nor did he plea whether he was "guilty" or "not guilty." Therefore, the question is, who made this plea of "not guilty" for the defendant. The decision to plea "guilty" or "not guilty" is a decision reserved solely for the accused based on his intelligent and voluntary choice. *Boykin v. Alabama*, 89 S.Ct. 1709 (1969).

The Sixth Amendment guarantee to apply to "critical" stages of the proceedings. The guarantee reads: "In all criminal prosecutions, the accused shall enjoy the right... to have the assistance of Counsel for his defence." (Emphasis supplied) The plain wording of this guarantee thus encompasses Counsel's assistance whenever necessary to assure a meaningful "defence."

As early as *Powell v. State of Alabama*, supra, we recognized that the period from arraignment to trial was "perhaps the most critical period of the proceedings..." *id.*, 47 S.Ct. 53 at 59, during which the accused "requires the guiding hand of Counsel..." *id.*, at 69, 53 S.Ct. at 64 if the guarantee is not to prove an empty right. That principle has since been applied to require the assistance of Counsel at the type of arraignment — for example, that provided by Alabama where certain rights might be sacrificed or lost: "What happens there may affect the whole trial. Available defenses may be irretrievably lost, if not then and there asserted..." *Hamilton v. State of Alabama* 82 S.Ct. 157, 159. See *White v. State of Maryland* 83 S.Ct. 1050.

Further, the United States Supreme Court has held that arraignment is a "mere formality" so that the failure to arraign does not result in a due process violation "So long as it appears that the accused had sufficient notice of the accusation and an adequate opportunity to defend himself in the prosecution." *Garland v. Washington* 34 S.Ct. 456, 457 (1913).

An indictment are notice document which is needed to give notice to the defendant of the charges against him. *State v. Gentry*, 610 S.E.2d 494 (2005). Due process of law requires that indictment put defendants on notice of crimes with which he is charged and against which he must defend. U.S.C.A. Const. Amend. 14; *Heggs v. State*, 540 S.E.2d 643 (2000). The defendant was never given notice of the charges against him. A safely guarded embodiment of the Sixth Amendment and the fourteenth Amendment rights to due process is the right of a criminal defendant to have notice of the charges pending against him. *Cole v. Arkansas* 333 U.S. 196, 68 S.Ct. 514, 92 L.Ed. 644 (1948) ("no principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of issues raised by that charge, if desired, are among the Constitutional rights of every accused in a criminal proceeding in all Courts, State and federal.") See e.g. *Hunter v. State of New Mexico*, 916 F.2d 595-600 (10th Cir. 1990) cert. denied 111 S.Ct. 1693 (1991).

See 22A C.J.S. § 446 Service of Copy of Indictment or Information which States:

the copy of the accusation must be served or furnished within a specified time before trial, or arraignment, or after filing. Under the Rules, accused shall be given a copy of the indictment or information before being called upon to plead. Fed. Rules of Crim. Proc. Rule 10, 18 U.S.C.A.; Nor did the defendant waive either expressly or by the conduct of himself by not demanding it, as by appearing in court and answering the indictment and announcing ready for trial. Criminal law key 627 (1-7), 897(2). See Transcript of Record (Trial) pg 6 to pg 64, line . The defendant did not receive a copy of the accusation before trial, nor was he arraigned or after filing. The purposes served by requirement of having copy of indictment or charge provided to defendant is to put him on notice of what he is called upon to defend by characterizing and describing crime and conduct, to protect him from future prosecution for same offense, to enable him to prepare for trial, to provide basis for court to consider legal sufficiency of charging document and to inform court of specific crime charged so that, if required, sentence may be pronounced in accordance with right of case.

Rights of an accused under state and federal Constitutions to be informed of nature and cause of accusations and to be confronted with witnesses against him are personal to accused and it is accused, not his counsel, who must be informed of those rights. Const. Art. I § 14; U.S.C.A. Const. Amend. 6, 14, State v. Green, 239 S.E. 2d 485 (1997).

The Security of that right is as much the aim of the right to counsel as it of the other guarantees of the Sixth Amendment — the right of the accused to a speedy and public trial by an impartial jury, his right to be informed of the nature and cause of the accusation, and his right to be confronted with the witnesses against him and to have compulsory process for obtaining witnesses in his favor.

Under this section [Code 1962 § 17-408] the defendant in order to be entitled to a copy of the indictment, must tender the usual fees for such copy. State v. Wright, 138 S.E. 828. He is under the usual constitutional or statutory provision, entitled to receive a copy of the indictment or information, and a failure to comply with such a request is reversible error. Criminal law key 627 (1-7), 897(2) of 22A C. J. S. § 446. The deprivation of the right allowed by this section [Code 1962 § 17-408] is a defect entitling the defendant to a new trial. State v. Weldon, 74 S.E. 43 Am. Ann. Cas. 1913.

See State v. McCotter, 210 S.E. 2d 91 (N.C. 1974). Defendant's first assignment of error presents the question of whether a defendant who was never arraigned and entered no plea at trial is entitled to a new trial. Defendant relies on State v. Lueders, 214 N.C. 558, 200 S.E. 22 (1938), where a unanimous court, speaking through Chief Justice Stacy, said:

... In the absence of a plea to the indictment or charge, there was nothing for the jury to determine. See State v. Camby, 209 N.C. 50, 182 S.E. 715.

Speaking to a similar situation in State v. Cunningham, 94 N.C. 824, Ashe, J., deliverin

the opinion of the Court, said: "There is manifest error in the judgment of the Superior Court. First, for the reason that there was no plea filed by the defendant, and therefore no issue to be submitted to the jury, and consequently the verdict returned by them was a nullity; and it must follow, as a necessary consequence, that no judgment could be pronounced upon such a verdict." See *State v. Beal*, 199 N.C. 278, 154 S.E. 604; *State v. Walters*, 208 N.C. 391, 180 S.E. 664; *State v. Stewart*, 89 N.C. 563."

An analysis of the cases to which the Court refers reveals that the Stewart and Walters Cases involved a situation where the defendant, upon a plea of not guilty, waived a trial by jury and was tried by the Court, in one instance upon an agreed statement of facts. This the Court said, constituted error. In *Beal* the defendants entered pleas of not guilty to the principal bill of indictment charging murder. Counts were added to the bill, without objection from defendant, all of which related to the same transaction. Defendants did not plead to the added counts, and the Court refused to find error. In the *Lueders* Case, it does not appear that any circumstances were present except a failure to arraign and the absence of a plea.

We are aware of *Garland v. Washington*, 232 U.S. 642, 34 S.Ct. 456, 58 L.Ed. 772 (1914). There defendant was charged with larceny of "one thousand dollars (\$1,000) in lawful money of the United States." Upon that information he was arraigned, entered a plea of not guilty, was tried and convicted. Thereafter, he was awarded a new trial, and a new information filed, making the same charges. To that information defendant directed certain motions, all of which were denied. No arraignment was had or plea entered on that information. After the jury was impanelled, defendant objected to the introduction of evidence on the general ground that the state had no right to try defendant on that information. The objection was overruled, the trial proceeded, and the jury convicted defendant. He appealed. The Supreme Court of Washington held that he was not entitled to a new trial for failure to have arraignment and plea. Upon appeal, the Supreme Court of United States affirmed, saying: "Due process of law, this court has held, does not require the state to adopt any particular form of procedure, so long as it appears that the accused has had sufficient notice of the accusation and an adequate opportunity to defend himself in the prosecution."

The Court noted that in affirming the Supreme Court of Washington it was overruling its own holding in *Crain v. United States*, 162 U.S. 625, 16 S.Ct. 952, 40 L.Ed. 1097, that in a federal court no valid trial could be had without the requisite arraignment and plea, and approving a number of earlier cases in the state courts which had held that such form of arraignment entered of record was essential to a valid trial. The *Garland* Court adopted the view of the minority in *Crain* which had said: "... A waiver ought to be conclusively implied where the parties had proceeded as if defendant had been duly arraigned, and a formal plea of not guilty had been interposed, and where there was no objection made on account of its absence until, as in this case, the record was brought to this court for review. It would be inconsistent with the due administration of justice to permit a defendant under such circumstances to lie by, say nothing as to such an objection, and then for the first time urge it in this Court."

Garland v. Washington, Supra, 232 U.S. at 646, 34 S. Ct. at 457, 58 L. Ed. at 775.

Thus it appears that in Crain, the defendant had entered a plea of not guilty but had not been arraigned and in Garland, the defendant had once pled to the same charge and upon a second trial entered motions with respect to the information and even a general objection to the introduction of evidence. There can be no doubt but that in these two cases, the defendants were completely aware of the charges against them. In *Beatty v. United States*, 203 F.2d 652 (U.S. Ct. App. 4th Cir. 1953) Chief Judge Parker writing for the Court said: "The first ground urged is that the court proceeded with the trial without a formal arraignment and without a plea to the bill of indictment. This contention seems to be based upon the fact that the arraignment and plea do not appear in the stenographer's notes of the trial. The District Judge has specifically found, however, that plea of not guilty was duly entered by defendant upon his arraignment in open court, that such plea was entered by the clerk upon his original record and was referred to by the judge in his charge to the jury. We are bound by this finding; but even if this were not so, it is well settled that arraignment and plea were waived by going to trial. *Garland v. State of Washington*, 232 U.S. 642, 34 S. Ct. 456, 58 L. Ed. 772, *Rulovitch v. United States*, 3 Cir., 286 F. 315; *Williams v. United States*, 6 Cir. 3 F.2d 933; *King v. United States* 6 Cir., 25 F.2d 242."

In the case before us, defendant, at trial and in open court, moved to quash the indictment and moved for a continuance for the appointment of additional counsel. The record indicates that the indictment was read out of the presence of the jury but in the presence of defendant. The record further shows that immediately thereafter the defendant, in propria persona, carried on a conversation with the trial judge and informed the judge that he simply did not want to be tried at that time until he could "get some help from somebody." The record is silent as to arraignment and plea with the exception that the court in its charge to the jury stated that defendant had entered a plea of not guilty to the charge. Despite the fact that the record is replete with indications that defendant was well aware of and understood the charges against him, that the jury was aware of the charges and understood them, that the entry of a formal arraignment and plea of not guilty would not have affected the outcome of the case, and further that object to the procedure appears for the first time on appeal, we are bound by the prior decisions of the supreme court of this state, and particularly by *State v. Lueders*, Supra. For the reasons stated defendant must be granted a New trial.

Issue 9(b)

Was State witnesses, Officer Brian Bowen and Captain Dewey Smith, in-court identification of defendant reliable when ~~both~~ witnesses never give a description of defendant nor was there a crime committed by defendant.

FACTS

See Incident report of Brian R. Bolding, Incident type: Stolen property offenses,

Case Number: 2006-797, incident date: 01/11/2006, Time arrived: 10:55 Am, Depart time: 15

Complainant's name: James Walter Hilton, Address: 105 Honeycutt dr. Grover, N.C. 28073.

On 01-11-2006. Myself, Detective Bolding, along with Capt. Dewey Smith were checking the area of Cove Creek Road for suspect, Danny Ray Gilliam, who had active warrants pending for his arrest. Capt. Smith had informed me he had received information that Gilliam was in the area in a red Jeep Cherokee. While we traveled on Cove Creek Road, in Pickens County, we observed what appeared to be a red Jeep Cherokee pulling out of the driveway of

----- I turned around and the red Jeep passed me going in the opposite direction. I observed the driver to be Danny Ray Gilliam. I have dealt with Gilliam before and know him positively on site. I turned my car around and initiated my blue lights signaling Gilliam to pull the vehicle over.

Gilliam sped down Cove Creek Road approx 1/2 mile, got out of the vehicle while it was still rolling, and fled on foot to a wooded area. Gilliam could not be located after searching for several hours. The red Jeep displayed a personalized N.C. Tag, ----- The Tag was checked

and we were advised by communications that the vehicle was confirmed stolen from North Carolina. The Jeep was towed by Grants body shop. While we were searching for Gilliam a call came in for a Burglary at active.

(Case #06-796) Case

Now See Transcript of Record (Trial) Witness Brian Bowen direct examination, by Mrs. Tilley, Pg 80, lines 4-25

4 Q. Were you working at the Sheriff's office on

5 January 11th of '06?

6 A. Yes, I was.

7 Q. Did you respond to Cove Creek Road area that

8 day?

9 A. Yes, I did.

10 Q. Why did you respond to that area?

11 A. To look for a possible vehicle that was

12 possibly stolen from North Carolina.

13 Q. And what was the description of that car

14 that was stolen?

15 A. It was a red Jeep Cherokee.

16 Q. When you went up to the Cove Creek Road

17 area, who was with you?

18 A. Captain Dewey Smith.

19 Q. And who was driving?

20 A. I was driving.

21 Q. And as you came upon the

22 ~~Garrett~~ lived in

What Mr.

1, What type of car

AGENCY I.D.		INCIDENT REPORT		Case Number		NCIC																																																																																				
SC0390000		PICKENS CO SHERIFF		2006- 797		INQ. ENTO																																																																																				
EVENT	INCIDENT TYPE			COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM																																																																																		
	1. STOLEN PROPERTY OFFENSES			☒ Yes ☐ No	☐ Yes ☒ No	HIGHWAY/ROAD/	1	☒ Individual ☐ Business ☐ Financial Inst ☐ Government ☐ Relig. Orga. ☐ Soc/Public ☐ Other ☐ Unknown ☐ Police Off																																																																																		
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	COVE CREEK RD PICKENS SC					29671	UNKNOWN																																																																																			
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Added by: BRIANB 01/12/2006 15:55;																																																																																										
ON 01-11-2006 MYSELF, DETECTIVE BOLDING, ALONG WITH CAPT. DEWEY SMITH WERE CHECKING THE AREA OF COVE CREEK ROAD FOR SUSPECT, DANNY RAY GILLIAM, WHO HAD ACTIVE WARRANTS PENDING FOR HIS ARREST. CAPT. SMITH HAD INFORMED ME HE HAD RECEIVED INFORMATION THAT GILLIAM WAS IN THE AREA IN A RED JEEP CHEROKEE. WHILE WE TRAVELED ON COVE CREEK ROAD, IN PICKENS COUNTY, WE OBSERVED WHAT APPEARED TO BE A RED JEEP CHEROKEE PULLING OUT OF THE DRIVEWAY OF CREEK ROAD. I TURNED AROUND AND THE RED JEEP PASSED ME GOING IN THE OPPOSITE DIRECTION. I OBSERVED THE DRIVER TO BE DANNY RAY GILLIAM. I HAVE DEALT WITH GILLIAM BEFORE AND KNOW HIM POSITIVELY ON SITE. I TURNED MY CAR AROUND AND																																																																																										
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AGENCY I.D.

SUPPLEMENTAL INCIDENT REPORT

Case Number

NCIC

SC0390000

PICKENS CO SHERIFF

2006 - 797

INQ. - INTD

PAGE 2 of 2 PAGES

☒ ORIGINAL REPORT ☐ MODIFIES ORIGINAL		☐ SUPPLEMENTAL REPORT ☐ CASE STATUS		☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS		☐ ADDITIONAL STOLEN PROPERTY ☒ ADDITIONAL RECOVERED PROPERTY					
☐ COMPLAINTANT ☐ VICTIM # ☐ SUBJECT # ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☐ ARREST ☐ JAIL ☐ SUMMONS		NAME (LAST, FIRST, MIDDLE)		VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB	E
		HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
		ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE	EVENING PHO	
		☐ VICTIM NO. ☐ VISIBLE INJURY ☐ YES ☐ NO		COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☐ NO		VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		☐ TWO-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ ALG			
		EXPLAIN				DRUGS ☐ YES ☐ NO ☐ UNK		☐ ONE-MAN VEH. ☐ OTHER ☐ ASSIST			
		☐ SUBJECT NO. ☐ USING ALCOHOL ☐ YES ☐ NO									
		USING DRUGS ☐ YES ☐ NO TYPE									
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INITIATED MY BLUE LIGHTS SIGNALING GILLIAM TO PULL THE VEHICLE OVER. GILLIAM SPED DOWN COVE CREEK ROAD APPROX 1/2 MILE, GOT OUT OF THE VEHICLE WHILE IT WAS STILL ROLLING, AND FLED ON FOOT TO A WOODED AREA. GILLIAM COULD NOT BE LOCATED AFTER SEARCHING FOR SEVERAL HOURS. THE RED JEEP DISPLAYED A PERSONALIZED N.C. TAG, THE TAG WAS CHECKED AND WE WERE ADVISED BY COMMUNICATIONS THAT THE VEHICLE WAS CONFIRMED STOLEN FROM NORTH CAROLINA. THE JEEP WAS TOWED BY GRANTS BODY SHOP. WHILE WE WERE SEARCHING FOR GILLIAM A CALL CAME IN FOR A BURGLARY AT (CASE # 06-796). CASE ACTIVE.											
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY						JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY SC0390000					
STATUS		TYPE		VIN AND/OR LICENSE NO				BOAT HULL NO AND/OR REG NO			
☐ STOLEN ☒ RECOVERED ☐ FOUND ☐ TOWED ☐ SUSPECT ☐ VICTIM		☒ VEHICLE ☐ GUN ☐ BOAT ☐ LICENSE PLATE ☐ SECURITIES/BONDS/STOCKS ☐ ARTICLE		SERIAL AND/OR OWNER APPLIED NO 1J8GW68253C31235				STATE			
				YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR		MAKE	
				MODEL		STYLE		COLOR		JEEP CHEROKE	
				NIC NO		DENOTATION		ISSUER		BRAND NAME	
								SECURITIES DATE		CALIBER	
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						FOLLOW UP INVESTIGATION ☐ YES ☐ NO				01/11/2007	

23 Was pulling out of the drive?

24 A. Captain Smith said he saw the red Jeep
25 Cherokee.

Pg 81, lines 1-25

1 Q. That residence, is that in Pickens County?

2 A. It is.

3 Q. Did you recognize anyone in the car?

4 A. Not initially, not until I turned around.

5 Q. And when you turned around, your vehicle,

6 what did you observe at that point?

7 A. The red Jeep Cherokee passed me coming in
8 the opposite direction.

9 Q. Who did you recognize it to be?

10 A. Danny Ray Gilliam.

11 Q. And have you had on occasion to talk with
12 the defendant before?

13 A. Yes.

14 Q. Approximately how many times?

15 A. A few times.

16 Q. Did you get a clear look at the defendant in
17 that car?

18 A. Yes.

19 Q. And how do you know you saw the defendant?

20 A. He was no more than a few feet away in the
21 car. I recognized him instantly.

22 Q. Did you make eye contact?

23 A. Yes.

24 Q. Can you identify the defendant in the
25 courtroom here today?

Pg 82, lines 1-20

1 A. Yes, ma'am.

2 Q. And where is he?

3 A. Seated at the defense table in the blue
4 shirt.

5 Q. Now, was it foggy out, was there anything to
6 get in the way of you identifying the defendant?

7 A. No.

8 Q. After you saw the defendant, what did you
9 see the defendant doing?

10 A. I turned around and initiated my blue lights

11 in my car to try to stop the car, he exited the car
12 and then ran.

13 Q. What did you see the defendant, after he
14 ran, what happened -- how did you leave his car?

15 A. It was actually still rolling. It rolled to
16 a stop on Cove Creek road as he ran away.

17 Q. What did you do at that point?

18 A. Backed the car up. Captain Smith got out
19 and pursued on foot. I backed up just a little bit to
20 see if I could be of assistance in the pursuit.

Pg 83, lines 5-10

5 Q. Did you actually go to the house that was
6 broken into?

7 A. I did not. I initially began to attempt to
8 persist with the pursuit but I didn't want to leave
9 the vehicle. So I returned back there to the car and
10 wait on the patrol deputy.

Pg 84, line 25

25 Q. Now, did you have an occasion to -- was the

Pg 85, lines 1-8 and lines 14-17

1 defendant eventually apprehended?

2 A. Yes, he was eventually apprehended.

3 Q. And what did you -- did you have an occasion
4 to speak with him?

5 A. Yes, I did.

6 Q. And how did that come about?

7 A. I went to the detention center to speak with
8 him.

14 Q. Okay. And at that point, where did you take
15 him?

16 A. Brought him down to the conference room
17 down stairs at the Sheriff's office.

See also Transcript of Record (Trial) Witness Brian Bowen, cross-examination, by Mr.
Newton, pg 89, lines 24-25

24 Q. You said he was later apprehended. You saw
25 a red Jeep Cherokee and somebody fled from it. You

Pg 90, lines 1-7 and lines 15-18

1 said he was apprehended after that. How much longer
2 after that?

3 A. I believe it was approximately two weeks
4 afterwards.

5 Q. So an arrest was not made in this case until
6 two weeks after the incident in question, correct?

7 A. That's correct.

15 Q. He did not make an arrest right after this
16 incident because whoever was in the vehicle got away
17 right?

18 A. Yes, he got away.

pg. 96, lines 23-25

23 Q. Officer, have you ever been mistaken in
24 somebody's identification before in your whole career?
25 That ever happen?

pg. 97, lines 1-19

1 A. I'm sure it's happened before.

2 Q. You are not perfect, are you?

3 A. No one is.

4 Q. You do make mistakes, don't you?

5 A. Everyone does.

6 Q. It's possible you made a mistake in this

7 case, is it not? Is that not possible?

8 A. Absolutely not.

9 Q. Why not?

10 A. Because I'm familiar with Mr. Gilliam and I
11 recognized him in the Jeep that day.

12 Q. Right. But haven't you ever had a situation

13 where you think you know -- you see somebody and you

14 think it's somebody you know. And you find out it's

15 not really that person. Has that ever happened to

16 you?

17 A. That's happen before, sure.

18 Q. It has happened to you before?

19 A. I'm sure.

See also Transcript of Record (Trial) witness captain Dewey Smith, direct examination, by
Mrs. Tilley pg. 98, line 25

25 Q. On January 11th, did you have an occasion to

pg. 99 lines 1-25

1 go to Cove Creek road?

2 A. I certainly did.

3 Q. And who was with you when you did that?

4A. Detective Bowen, Brian Bowen.
 5Q. And why were you going up to that area?
 6A. Why?
 7Q. Yes, Sir.
 8A. I had an informant call me and --
 9 Mr. Newton: objection. Hearsay.
 10 By Mrs. Tilley:
 11 Q. When you and Sergeant Bowen went out on Cove
 12 creek road, what did you observe when you were on cove
 13 creek road?
 14 A. A red Jeep Cherokee.
 15 Q. What did you know about that red Jeep
 16 Cherokee?
 17 A. It was reported to me to be stolen.
 18 Mr. Newton: objection. Hearsay.
 19 The Court: overruled.
 20 By Mrs. Tilley:
 21 Q. Why again were you over on cove creek road
 22 area?
 23 A. I was looking for a red Jeep Cherokee that
 24 had been reported stolen by the state of North
 25 Carolina.

Pg. 100, lines 1-25

1 Q. And back to the answer you just gave, when
 2 did you see that car that had been reported stolen?
 3 A. Sometime after 10:00, I guess. I'm not
 4 exactly sure of the time.
 5 Q. Where did you see it?
 6 A. What I now know is 503 Cove creek road.
 7 Q. Is that in Pickens County?
 8 A. Yes, it is.
 9 Q. Who was with you in the car?
 10 A. Detective Bowen.
 11 Q. When the defendant was driving out of the
 12 driveway, how did you know Sergeant Bowen was able to
 13 identify the vehicle?
 14 A. First, I saw the vehicle coming out of the
 15 driveway down a hill at 5 e. creek road. The
 16 vehicle was proceeding slowly down. I was watching
 17 the left hand, right hand side of the road because I
 18 wasn't driving. I saw the vehicle coming. It was a
 19 red Jeep Cherokee. I said there it is right there, a
 20 red Jeep Cherokee.
 21 I don't know how far we went down far
 22 enough to turn around and come back. But in the
 23 meantime, I was keeping my eye on the Cherokee. And

24 he came to almost to a stop. As soon as it saw us
25 turn and come this way, it made a right turn toward us

Pg. 101 lines 1-25

1 instead of turning left where we would be right behind
2 it forcing us to make another turn.

3 Mr. Newton: objection, Judge. It's all

4 speculation as to what the driver of that

5 vehicle, whoever it was, may or may not have

6 thought.

7 The Court: overruled.

8 By Mrs. Tilley:

9 Q. Now, when you saw this, what did Brian Bowen

10 do to indicate to you that he knew the defendant? Did

11 he point him out?

12 A. He more or less screamed out that's Danny

13 Ray right there.

14 Q. At that point, what happened?

15 A. At that point, we turned around and I guess

16 you can say the chase was on for a few minutes or

17 maybe a quarter of a mile.

18 Q. And what did the defendant do?

19 A. He stopped or attempted to stop. The

20 vehicle was still rolling. He, we called it bailing

21 out, on the driver's side. He landed in front of the

22 vehicle across the road in front of us into a wooded

23 area.

24 Q. Okay. I'm going to show you State's Exhibit

25 number 10. Is that the area here?

Pg. 102, lines 1-6

1 A. Yes, that's the area right there where we

2 stopped.

3 Q. And what did the defendant do at this point?

4 A. He ran up the road maybe 50 yards. I'm not

5 sure 50 feet. But anyway, he went to the right into

6 the woods.

See also Transcript of Record (Trial) witness Captain Dewey Smith, Cross-Examination, by
Mr. Newton Pg. 102, lines 11-25

11 Q. Did I hear you correctly you said you saw

12 the red Cherokee around ten o'clock in the morning?

13 A. I'm not exactly sure what time it was. It

14 was about 10:00 or ten after.

15 Q. 10:00 or some time after 10:00?

16 A. Yeah. Sometime, I imagine.

17 Q. Did you ever meet with Mr. Gant that day?

18 A. I'm not sure if I did or not. I saw him

19 earlier, or later I'm sure.

20 Q. Do you know what time?

21 A. No, I don't.

22 Q. What did you do after whoever was in that

23 vehicle ran away into the woods, what did you do?

24 A. I chased him.

25 Q. How far?

Pg. 103, lines 1-9

1 A. Well, until I give up. It was about -- We

2 crossed the creek, went through the woods. That man

3 right there went up the woods, up the hill on the

4 other side. He could hardly make it up the hill. I

5 knew I had enough. I set up a perimeter right there

6 and called in the bloodhounds to come take over.

7 Q. How far behind him were you in running

8 through the woods?

9 A. Probably maybe 150 feet.

But see Supplemental incident report, Case number: 2006-197, Page 4 of 6 pages, by Reporting officers Sgt. T. Gilstrap, which give a different story and what happen that day. On 01-11-2006, a call was made to Lt. Lane Byers, of the Pickens County Sheriff's office that Danny Ray Gilliam was parked on the side of the road on Cave Creek Road, Pickens, and was driving a red Jeep Cherokee. He apparently had allowed this vehicle to run out of gasoline and was seeking assistance in getting more gasoline to leave this area. Captain Dewey Smith and Detective Brian Bolding responded. When they approached this red Jeep Cherokee, Danny Ray Gilliam ran from this vehicle into a wooded area across the street. Detective Bolding who recognized him as he ran knows Danny Gilliam. A check of the Jeep Cherokee's tag and VIN shows this to be a stolen vehicle from Grover, North Carolina on 01-07-2006. See Supplemental incident report, attach to this page.

Both witnesses officer Brian Bowen and Captain Dewey Smith, never give a description of defendant. It was two week after this incident when officer Brian Bowen, confrontation defendant at the detention center to talk and observed him by bring him to Sheriff's office. See Transcript of Record (Trial) pg. 42, lines 9-15 and lines 20-25. ~~_____~~

9 Q. Did you have a chance to talk to the
10 defendant after he was in custody?

11 A. Yes.

12 Q. And how did that occasion come about?

13 A. I went to pick him up and speak to him.

14 Q. Where did you pick him up from?

15 A. The detention center.

20 Q. Okay. When you went to pick him up, what

21 kind of condition was he?

AGENCY I.D.

SUPPLEMENTAL INCIDENT REPORT

Case Number

NCIC

SC0390000

PICKENS CO SHERIFF

2006- 197

INQ. ENTD

☒ ORIGINAL REPORT ☐ MODIFIES ORIGINAL		☐ SUPPLEMENTAL REPORT ☐ CASE STATUS		☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS		☐ ADDITIONAL STOLEN PROPERTY ☒ ADDITIONAL RECOVERED PROPERTY		PAGE 1 of 6 PAGES			

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB
	☐ VICTIM #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ SUBJECT #	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE	EVENING PH	
	☐ RUNAWAY	☐ VICTIM NO. ☐ VISIBLE INJURY ☐ YES ☐ NO		COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☐ NO		VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		TWO-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ A				
	☐ WANTED	EXPLAIN				DRUGS ☐ YES ☐ NO ☐ UNK		ONE-MAN VEH. ☐ OTHER ☐ ASS				
	☐ WARRANT	☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ YES ☐ NO ☐ USING DRUGS: ☐ YES ☐ NO TYPE ☐ UNK										

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB
	☐ VICTIM #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ SUBJECT #	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE	EVENING PH	
	☐ RUNAWAY	☐ VICTIM NO. ☐ VISIBLE INJURY ☐ YES ☐ NO		COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☐ NO		VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		TWO-MAN VEH. ☐ DETECTIVE/PLASMT. ☐ A				
	☐ WANTED	EXPLAIN				DRUGS ☐ YES ☐ NO ☐ UNK		ONE-MAN VEH. ☐ OTHER ☐ ASS				
	☐ WARRANT	☐ SUBJECT NO. ☐ USING ALCOHOL: ☐ YES ☐ NO ☐ USING DRUGS: ☐ YES ☐ NO TYPE ☐ UNK										

NARRATIVE	02/22/2006 9 : 09 LANE B											
	On 01-03-2006 Kim Clothier reports that her 2001 Windstar Ford van was stolen from the parking area at the 1st Choice Chiropractic Office located at 2525 Gentry Memorial Highway, Pickens. This occurred at the times of 1837 hours to 1937 hours on this date while Ms. Clothier was inside this business working.											
	On 01-03-2006 at 1600 to 1630 hrs. Karen Bryant called from her home located at _____, Pickens, to the Pickens County Sheriff's Office with the complaint of a Criminal Domestic Violence and named Danny Ray Gilliam as the suspect. She reported that Danny ran from this address just prior to law enforcement's arrival on the scene. She stated Danny ran in the direction of _____.											
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY						JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY 0230600					

VEH/GUN/ETC 1	STATUS		TYPE		VIN AND/OR LICENSE NO				BOAT HULL NO AND/OR REG NO			
	☐ STOLEN	☒ RECOVERED	☒ VEHICLE	☐ GUN	SERIAL AND/OR OWNER APPLIED NO 2FMDA52411BA24377				STATE			
	☐ FOUND	☐ TOWED	☐ BOAT	☐ LICENSE PLATE	YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR	MAKE	TYPE	
	☐ SUSPECT	☐ VICTIM	☐ SECURITIES/BONDS /STOCKS	☐ ARTICLE	MODEL		STYLE		COLOR	BRAND NAME	CALIBER	
					NIC NO		DENOTATION		ISSUER	SECURITIES DATE		
	MISCELLANEOUS											

PROPERTY EST.	TYPE GROUP										
	STOLEN	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	DAMAGED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	BURNED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	RECOVERED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	SEIZED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0

ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE	☐ ADM CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
	☐ YES ☐ NO	☐ YES ☐ NO	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER			
	REASON FOR EXCEPTIONAL		☐ OFFENDER	☐ NO PROSECUTOR	☐ EXTRADITION DENIE	☐ VICTIM DECLINES COOPERATION	☐ JUVENILE NO CUS	
	REPORTING OFFICER(S)		DATE	UNIT	APPROVING OFFICER		DATE	UNIT
	SGT. T. GILSTRAP		01/03/2006	97	GILSTRAP, T.		01/03/2007	97
					FOLLOW UP INVESTIGATION ☐ YES ☐ NO			

AGENCY I.D. SC0390000		SUPPLEMENTAL INCIDENT REPORT PICKENS CO SHERIFF		Case Number 2006-197		NCIC INQ. ENTD					
☒ ORIGINAL REPORT ☐ MODIFIES ORIGINAL		☐ SUPPLEMENTAL REPORT ☐ CASE STATUS		☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS		☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY					
PAGE 2 of 6 PAGES											
VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)			VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB
	☐ VICTIM #										
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
	☐ RUNAWAY	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE	EVENING PHO	
	☐ WANTED										
	☐ WARRANT										
	☐ ARREST	☐ VICTIM NO. ☐ VISIBLE INJURY ☐ YES ☐ NO			COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☐ NO		VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		☐ TWO-MAN VER. ☐ DETECTIVE/PLASMT. ☐ AL		
	☐ JAIL	EXPLAIN					DRUGS ☐ YES ☐ NO ☐ UNK		☐ ONE-MAN VER. ☐ OTHER ☐ ASST		
	☐ SUMMONS	☐ SUBJECT NO. ☐ USING ALCOHOL ☐ YES ☐ NO									
	☐	USING DRUGS: ☐ YES ☐ NO TYPE									
VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)			VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB
	☐ VICTIM #										
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
	☐ RUNAWAY	ADDRESS			CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE	EVENING PHO	
	☐ WANTED										
	☐ WARRANT										
	☐ ARREST	☐ VICTIM NO. ☐ VISIBLE INJURY ☐ YES ☐ NO			COMPLAINT OF ANY NON-VISIBLE INJURIES ☐ YES ☐ NO		VICTIM USING ALCOHOL ☐ YES ☐ NO ☐ UNK		☐ TWO-MAN VER. ☐ DETECTIVE/PLASMT. ☐ AL		
	☐ JAIL	EXPLAIN					DRUGS ☐ YES ☐ NO ☐ UNK		☐ ONE-MAN VER. ☐ OTHER ☐ ASST		
	☐ SUMMONS	☐ SUBJECT NO. ☐ USING ALCOHOL ☐ YES ☐ NO									
	☐	USING DRUGS: ☐ YES ☐ NO TYPE									
NARRATIVE	gasoline to leave this area. Captain Dewey Smith and Detective Brian Bolding responded. When they approached this red Jeep Cherokee, Danny Ray Gilliam ran from this vehicle into a wooded area across the street. Detective Bolding who recognized him as he ran knows Danny Gilliam. A check of the Jeep Cherokee's tag and VIN shows this to be a stolen vehicle from Grover, North Carolina on 01-07-2006. According to addresses listed at the SC Probations Department where Danny Gilliam is listed as on probation, he has family in King's Mountain, North Carolina that is approximately seven (7) miles from Grover, N.C. according to Officer Davis of this jurisdiction. A further check of this area in Grover N.C. resulted in the locating of this 2001 Windsor Ford van										
						JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY			JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY 0230600		
						VIN AND/OR LICENSE NO			BOAT HULL NO AND/OR REG NO		
						SERIAL AND/OR OWNER APPLIED NO			STATE		
	YEAR OF REGISTRATION		YEAR OF EXPIRATION		YEAR		MAKE		TYPE		
	MODEL		STYLE		COLOR		BRAND NAME		CALIBER		
	NIC NO		DENOTATION		ISSUER		SECURITIES DATE				
	MISCELLANEOUS										
VEH/GUN/ETC1	STATUS		TYPE								
	☐ STOLEN	☐ VEHICLE									
	☐ RECOVERED	☐ GUN									
	☐ FOUND	☐ BOAT									
	☐ TOWED	☐ LICENSE PLATE									
	☐ SUSPECT	☐ SECURITIES/BONDS/STOCKS									
	☐ VICTIM	☐ ARTICLE									
PROPERTY EST.	TYPE GROUP										
	STOLEN	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	DAMAGED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	BURNED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	RECOVERED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	SEIZED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM CLOSED		☐ ARRESTED UNDER 18		☐ EX-CLEAR UNDER 18		
	☐ YES ☐ NO		☐ YES ☐ NO		☐ UNFOUNDED		☐ ARRESTED 18 AND OVER		☐ EX-CLEAR 18 AND OVER		
	REASON FOR EXCEPTIONAL		☐ OFFENDER		☐ NO PROSECUTIO		☐ EXTRADITION DENIE		☐ VICTIM DECLINES COOPERATH		
									☐ JUVENILE NO CUST		
	REPORTING OFFICER(S)		DATE		UNIT		APPROVING OFFICER		DATE		UNIT
	SGT. T. GILSTRAP		01/03/2006		97		GILSTRAP, T.		0/0/0		97
							FOLLOW UP INVESTIGATION ☐ YES ☐ NO		01/03/2007		

AGENCY I.D.

SUPPLEMENTAL INCIDENT REPORT

Case Number

NCIC

SC0390000

PICKENS CO SHERIFF

2006 - 197

INQ. ENTD

☒ ORIGINAL REPORT ☐ MODIFIES ORIGINAL		☐ SUPPLEMENTAL REPORT ☐ CASE STATUS		☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS		☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY		PAGE 6 of 6 PAGES	

VICTIM I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB
	☐ VICTIM #											
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ RUNAWAY	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE	EVENING PHO	
	☐ WANTED											
	☐ WARRANT											
	☐ ARREST											
	☐ JAIL											
	☐ SUMMONS											
	☐											

VICTIM I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	DOB
	☐ VICTIM #											
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.						
	☐ RUNAWAY	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO	DAY PHONE	EVENING PHO	
	☐ WANTED											
	☐ WARRANT											
	☐ ARREST											
	☐ JAIL											
	☐ SUMMONS											
	☐											

that was stolen from Kim Clothier on 01-03-2006. This van was located											

VEH/UNVEH/ETC I	STATUS		TYPE		VIN AND/OR LICENSE NO				BOAT HULL NO AND/OR REG NO			
	☐ STOLEN	☐ VEHICLE										
	☐ RECOVERED	☐ GUN										
	☐ FOUND	☐ BOAT										
	☐ TOWED	☐ LICENSE PLATE										
	☐ SUSPECT	☐ SECURITIES/BONDS/STOCKS										
	☐ VICTIM	☐ ARTICLE										

PROPERTY EST.	TYPE GROUP								
	STOLEN	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	DAMAGED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	BURNED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	RECOVERED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0
	SEIZED	\$0.00	0	\$0.00	0	\$0.00	0	\$0.00	0

ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE	☐ ADM CLOSED	☐ ARRESTED UNDER 18	☐ EX-CLEAR UNDER 18
	☐ YES	☐ NO	☐ YES	☐ NO	☐ UNFOUNDED	☐ ARRESTED 18 AND OVER	☐ EX-CLEAR 18 AND OVER	
	REASON FOR EXCEPTIONAL		☐ OFFENDER		☐ NO PROSECUTIO		☐ EXTRADITION DENIE	
					☐ VICTIM DECLINES COOPERATI		☐ JUVENILE NO CUST	

REPORTING OFFICER(S)	DATE	UNIT	APPROVING OFFICER	DATE	UNIT
SGT. T. GILSTRAP	01/03/2006	97	GILSTRAP, T.	01/03/2007	97
			FOLLOW UP INVESTIGATION ☐ YES ☐ NO		

22 A. I believe he had leg shackles on, he had a
23 belly chain and handcuffs.

24 Q. Okay. Now where did you take him from the
25 detention center?

Pg. 43 lines 1-2, lines 12-13

1 A. Downstairs in the interview room at the
2 sheriff's office.

12 Q. Who else was in the room with you?

13 A. Lieutenant Byars.

A criminal defendant may be deprived of due process of law by an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification. *Stovall v. Denno*, 87 S. Ct. 1967 (1967). Single person show-ups are disfavored because they are suggestive by their nature. See *State v. Johnson*, 427 S.E.2d 718 (Ct. App. 1993). See also *State v. Brown*, 356 S.C. at 502, 589 S.E.2d at 784. A criminal defendant may be deprived of due process of law through an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification. The in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a significantly substantial likelihood of irreparable misidentification.

Furthermore, when officer Brian Bowen was asked "was it foggy out, was there anything to get in the way of you identifying the defendant?" His reply was no. However see *Michael Ferguson*, Cross-Examination by Mr. Newton, Transcript of Record (Trial) pg. 12 lines 14-25 and pg. 122, line 1.

14 Q. Officer, you said it was a rainy day?

15 A. There had been some light rain that morning.

16 Q. What do you mean exactly by light rain?

17 A. There were droplets of water on the vehicle
18 that I could see, I could observe.

19 Q. On just the red Jeep Cherokee or on all the
20 vehicles out there?

21 A. I could imagine it would be on all of them.

22 Q. All of them including on the windshield?

23 A. Possibly, yes, sir.

24 Q. It was by no means a clear day, was it?

25 A. It wasn't foggy or pouring down rain. It
I was just a light rain and misty rain.

In determining the reliability of an identification, the following factors are considered: 1) the opportunity of the witness to view the criminals at the time of the crime; 2) the witness's degree of attention; 3) the accuracy of the witness's prior description; 4) the level of certainty demonstrated by the witness at the confrontation; and 5) the amount of time between the crime and the confrontation. See *Neil*, 409 U.S. at 199, 93 S.Ct. 375; *State v. Stewart*, 272 S.E.2d 628 (1980). After the trial court determines the witness's identification is reliable, the witness is permitted to testify before the jury.

See *United States v. Wade*, 87 S.Ct. at 1937. 26. one commentator proposes a model statute providing not only for Counsel, but other safeguards as well: "most if not all, of the attacks on the the lineup process could be averted by a uniform statute modeled upon the best features of the civilian codes. Any proposed statute should provide for the right to Counsel during any lineup or during any confrontation provision should be made that any person, whether a victim or a witness, must give a description of the suspect before he views any arrested person. A written record of this description should be required, and the witness should be made to sign it. This written record would be available for inspection by defense counsel for copying before the trial and for use at the trial in testing the accuracy of the identification made during the lineup and during the trial.

Mr. Justice White, whom Mr. Justice Harlan and Mr. Justice Stewart join, dissenting in part and concurring in part. The Court's opinion is far-reaching. It proceeds first by creating a new per se rule of constitutional law: a criminal suspect cannot be subjected to a pretrial identification process in the absence of his counsel without violating the Sixth Amendment. If he is, the state may buttress a later courtroom identification of the witness by any reference to the previous identification. Furthermore, the courtroom identification is not admissible at all unless the state can establish by clear and convincing proof that the testimony is not the fruit of the earlier identification, made in the absence of defendant's counsel—admittedly a heavy burden for the state and probably an impossible one. To all intents and purposes, courtroom identifications are barred if pretrial identifications have occurred without counsel being present.

The rule applies to any lineup, to any other techniques employed to produce an identification and a fortiori to a face-to-face encounter between the witness and the suspect alone, regardless of when the identification occurs, in time or place, and whether before or after indictment or information. It matters not how well the witness knows the suspect, whether the witness is the suspect's mother, brother, or long-time associate, no matter how long or well the witness observed the perpetrator at the scene of the crime. The kidnap victim who has lived for days with his abductor is in the same category as the witness who has had only a fleeting glimpse of the criminal. Neither may identify the suspect without defendant's counsel being present. The same strictures apply regardless of the number of other witnesses who positively identify the defendant and regardless of the corroborative evidence showing that it was the defendant who had committed the crime. *United States v. Wade* 87 S.Ct. at 1944-45.

Error in admission of witness identification testimony without prior determination as to reliability of identification required reversal. The court charge the jury "Before you may convict the defendant of either of the crimes charged, you must find the state has proven beyond a reasonable doubt that this defendant is the person who committed the crime. In this regard, you heard the testimony of witnesses who have identified the defendant. Identification testimony is expression of belief or impression by a witness. You must evaluate the credibility of each identification witness in the same way that you would for any other witness. You must determine not only whether or not, the

Witness testimony is truthful, but you must also determine whether or not the witness identification is accurate. In considering the accuracy of the identification, you should consider whether the witness had an adequate opportunity to observe the offender at the time of the offense. This will be affected by factors such as the length of time available for observation, the distance from the witness to the defendant, the light conditions and whether or not witness had the chance to see or know the defendant in the past. You should also determine whether the later identification made by the witness was the product of his own recollection. This will be affected by the factors listed above and also the time that lapsed between the witness identification of the defendant and his later identification. Whether there were any occasions on which the witness failed to make an accurate identification, the strength of the identification, the circumstances under which it was made and any other factors that you deem to be important. I emphasize to you that the State must prove every element of the crime charged and this specifically includes the burden of proving beyond a reasonable doubt the identity of this defendant as the person who committed these crimes. If, after examining all the evidence in this case, you have reasonable doubt as to whether it was this defendant who committed the crimes, then you must find the defendant not guilty. See Transcript of record (Trial) pg. 178, lines 8-25, pg. 179, lines 1-25 and pg. 180, lines 1-

Although, the Court grant the motion for directed verdict on the possession of Stolen Vehicle. See Transcript of record (Trial) pg. 142, lines 19-21. The jury is confused because the court told jury "Good morning, Ladies and Gentlemen. You have now heard all the testimony and evidence that you will hear in this case. The case proceeds to closing arguments. You will have before you shortly on the indictments for Burglary in the first degree and petty larceny. For reasons that don't concern you, the indictment for possession of a stolen vehicle has been resolved. And it is not an issue that you will need to concern yourself with. See Transcript of record (Trial) pg. 154, lines 10-19.

Under the circumstance of this case, the Jury's mind was focused upon the issue of identification of officer Brian Bowen, identified the defendant as being the person driving a red Jeep Cherokee, got out of vehicle while it was still rolling, ran up the road maybe 50 yards or 50 feet fled on foot to a wood area and Captain Smith, chased him. That man right there went up the woods, up the hill on the other side. The jury still have been confused because officer Bowen and Captain Smith, did not identified the defendant for Burglary in the first degree or petty larceny, neither any other witness. However, there was never a description of the defendant or what the suspect was wearing. The defendant was violated of his fourteenth Amendment of United States Constitution to a fair trial and due process of law.

"Reliability is the linchpin in determining the admissibility of identification testimony. . . ." *Manson v. Brathwaite* 97 S. Ct. 2243 (1977).

ISSUE 9(c)

Did defendant two prior burglary convictions in question, occurred so close in time that they were a part of a continuous course of conduct and should have been presented only as one burglary conviction?

FACTS

Prosecutor Mss. Tilley, admitted that the two burglaries are "close in time," but not on the same date. One of them occurred September 20th of '96 and September 21st. See Transcript of record (trial) pg. 130, lines 22-24. However, the defendant guilty pleas to both burglaries were on the same date, which consider one offense because he was sentenced to concurrent sentenced of eight years on September 4, 1997.

In State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003), this court interpreted 17-25-50 to mean that under LWOP, the court shall treat as one offense any number of offenses which were committed at times so closely connected in point of time that they may be considered one offense. In Gordon, the two offenses occurred within a one week period. The continuous course of conduct theory is applicable in parole case as well. State v. McKay, 386 S.E. 2d 623.

A person is guilty of burglary in the first degree if he enters a dwelling with the consent and with intent to commit a crime in the dwelling, and at least one of three aggravating factors is proven. S.C. Code Ann. §16-11-311 (Supp. 1999) Section 16-11-311 (A)(2) lists one of the aggravating factors as burglary committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both.

The State failed to prove all the elements of the offense of first degree burglary as charged because S.C. Code Ann § 17-25-50, states "the court shall treat as one offense any number of offenses which were committed at times so closely connected in point of time that they may be considered one offense." The defendant only had one prior conviction for burglary and not two because they were run concurrently due to a guilty plea of eight year and occurred close in time, which is consider one offense. See Jackson v. Virginia, 99 S.Ct. 2781.

ISSUE 9(d)

Was defendant convicted on insufficient evidence presented by the State of South Carolina to establish his guilt beyond a reasonable doubt on first degree burglary and petit larceny

FACTS

On January 11, 2006, Roger Dale Gant, leave the house. He was gone from his house maybe a couple of hours. He leave his job to come back to his house about 10:30 or so to get another drill. He notice the door to his house had been broken in to, pried open and that the guns was missing. He went back to NAPA and called the police. Officer Brian Bowen and Captain Dewey Smith were over on cove creek road area looking for a red Jeep Cherokee that had been reported stolen by the State of North Carolina sometime after 10:00 I guess. Captain Smith, first saw the vehicle coming out of the driveway down a hill at

The vehicle was proceeding slowly down. He was watching the left hand, right hand side of the road because he wasn't driving. He saw the vehicle coming. It was a red Jeep Cherokee. He said there it is right there, a red Jeep Cherokee. He don't know how far. We went down far enough to turn around and come back. But in the meantime, he was keeping his eye on the Cherokee. And he came to almost to a stop. As soon as it saw us turn and come this way, it made a right turn toward us instead of turning left where we would be right behind it forcing us to make another turn. Officer Brian Bowen, more or less screamed out that's Danny Ray right there. At that point, we turned around and I guess you can say the chase was on for a few minutes or maybe a quarter of a mile. The suspect stopped or attempted to stop. The vehicle was still rolling. We called it bailing out on the driver's side. He landed in front of the vehicle across the road in front of us into a wooded area. He ran up the road maybe 50 yards. I'm not sure. 50 feet. But anyway, he went to the right into the woods. Captain Smith chased him until he give up. We crossed the creek, went through the woods. That man right there went up the woods, up the hill on the other side. He could hardly make it up the hill. I knew I had enough, I set up a perimeter right there and called in the blood hounds to come take over. I was probably maybe 150 feet behind the suspect. Officer Bowen, initially began to attempt to persist with the pursuit but he didn't want to leave the vehicle. So, he returned back there to the car and wait on the patrol deputy. Captain Smith was informed that they found weapons in the vehicle. We called out a crime scene technician to come out and secure the vehicle and the property inside. Deputy Jeffrey Tomberlin, respond to cove creek road because deputy Bowen and Captain Smith had requested assistance in road patrol. They were turning around on a suspect vehicle. They felt as if a pursuit might have ensued. After having been on the scene a little while, setting up a perimeter with a foot pursuit, dispatch came across and advised that there was call of a burglary there in our immediate area. And he rode up to the house. The house was reported burglarized 11:31 by own of the house Mr. Gant. When he got to that house, he observe the doors had been pried only with some sort of tools. Mr. Gant and him walked through and did a brief look around noticed immediately there was guns missing from the gun rack. Michael Ferguson, was called out to cove creek road to process a stolen vehicle. He started processing the vehicle by photographing it. The initial pictures that he took was a picture of red Jeep Cherokee had been reported stolen. He took pictures of the interior of the Jeep by photograph the

Console area between the driver and the passenger seat and the little storage compartment, there. The top of it is an armrest. That's a pair of leather gloves inside there. This a picture of the rear, behind the hatchback of the truck, if you will. Those are some clothing and a pair of bolt cutters that were in the back of the vehicle. Next, he began to process the vehicle for fingerprints by processed the interior of the vehicle. There had been some light rain. The vehicle was wet on the exterior. He was able to develop a latent finger print on a control panel that was on the roof between the seats of this vehicle. The finger print was lifted and collected it as evidence. He compare it to the defendant. The results were negative. They did not match the defendant. He processed the area around the driver's seat and the driver's area of the vehicle, the door the driver's door window. There were no prints developed there. The next thing he did was do a basic, just going through the vehicle, collecting the items that were in there. He collected several items from there. He put the evidence that he collected from the vehicle in this case in big white box and bring it with him here today at trial. Leather gloves that were in that compartment, the console that you saw in the photograph. Pair of bolt cutters, the bolt cutters that you saw in the photograph that were in the back of the jeep. No finger prints were develop off it. A screwdriver - like tool that he collected from the vehicle. Screw driver he collected again from the vehicle. A chisel type tool that was also collected from that red jeep Cherokee.

Michael Ferguson, property and evidence report was not admitted into the record. He took into evidence item number 1 a marlon model 60. 22 caliber rifle. Serial number 06225037. Item number 2 a winchester model 250. 22 caliber rifle. Serial number 389092. They were returned to the victim of the burglary, Mr. Gant, the next, the following day, he believe. Tony Robinson, respond to Cove creek road to assist officer Ferguson when he got the call about some stolen vehicles. While he was on his way, we got a report that a house had been broken into. He did stop and speak with officer Ferguson but he went on to the house. He got out of the car. He notice that the door was opened, had been pried open going into the back door. It's a mobile home. Mr. Gant took him, they went inside together. He showed him some areas where some items were stolen from. An arrest was not make after this incident because whoever was in the vehicle, he got away. The defendant was arrest two week later on out standing warrants for his arrest, for violated his probation and was served an arrest warrant and charged for the first degree burglary and petit larceny at 503 Cove creek road. See Transcript of Record (Trial) pg. 75, lines 4-19, pg. 76, line 10; pg. 79 lines 3-4, lines 21-25, pg. 100, line 3, lines 14-25, pg. 101, lines 1-2, lines 9-23, pg. 102, lines 4-6, line 24; pg. 103, lines 1-9, pg. 83, lines 7-10, pg. 103, lines 15-16, pg. 83, lines 2-4, pg. 104, lines 1-3, lines 24-25, pg. 105, lines 1-6, lines 14-18, pg. 107, lines 4-6, pg. 105, lines 19-25, pg. 106, lines 2-4, pg. 109, lines 8-9, pg. 110, lines 8-12, pg. 111, lines 5-6, lines 11-25, pg. 112, lines 1-4, lines 12-20, pg. 113, lines 9-14, lines 17-23, pg. 114, lines 11-15, pg. 115, lines 3-13, lines 18-20, pg. 116, lines 15-17, lines 20-23, pg. 117, lines 13-14, pg. 118, lines 16-17, pg. 119, lines 23-24, pg. 120, lines 13-20, pg. 121, lines 7-9, pg. 122, lines 21-22, pg. 123, lines 16-17, lines 20-24, pg. 124, lines 2-4,

lines 15-17, pg. 90, lines 15-18, lines 1-4.

In the burglary for first degree and petit larceny case, the State called Witness Roger Gant, Jeffrey Tomberlin and Tony Robinson. See Transcript of record (trial) state witness Roger Gant, direct examination by Mrs. Tilley, pg. 74, lines 19-25

19 Q. Mr. Gant, where do you live?

20 A. pickens, south

21 Carolina.

22 Q. Is that in pickens county?

23 A. Yes, ma'am.

24 Q. And how long have you lived there?

25 A. Since '91.

pg. 75, lines 1-25

1 Q. Were you living there on the date of the
2 incident, January 11th of '06?

3 A. Yes, Ma'am.

4 Q. On the morning of January 11th '06, did you
5 leave the house?

6 A. Yes.

7 Q. And how long were you gone from your house?

8 A. Maybe a couple of hours.

9 Q. When did you leave your job to come back to
10 your house?

11 A. About 10:30 or so.

12 Q. Why did you come back to your house?

13 A. I needed to get another drill.

14 Q. Okay. What did you notice about the door to
15 house?

16 A. It had been broken into, pried open.

17 Q. And what did you notice about the guns about
18 the guns that you had at your house?

19 A. They was missing.

20 Q. What did you notice about the CDs that were
21 in the house?

22 A. I didn't notice the CDs at the time.

23 Q. Okay. When did you initially learn about
24 the CDs?

25 A. When the officers left and they were out in

pg. 76, lines 1-25

1 the woods area, they was in my laundry basket.

- 2 Q. Okay. Now, had you given anyone permission
3 to break into your house?
4 A. No, Ma'am.
5 Q. Had you given anyone permission to take your
6 guns?
7 A. No, Ma'am.
8 Q. What did you do when you found out about
9 this?
10 A. I went back to NAPA and called the police.
11 Q. Okay.
12 (Whereupon, State's Exhibits 2 through 7 were
13 marked for identification purposes.)
14 By Mrs. Tilley.
15 Q. What is this a picture of?
16 A. My back door.
17 Q. What is that a picture of?
18 A. My back door.
19 Q. What is it that you noticed about this back
20 door that was different from when you had left to go
21 to work that morning?
22 A. It's sort of tore up a little bit.
23 Q. Was it like that when you left that morning?
24 A. No, Ma'am.
25 Q. What is this?

Pg. 77, lines 1-19

- 1 A. A picture of my bedroom.
2 Q. And what is this right here?
3 A. That's my gun rack.
4 Q. What did you notice is different about that?
5 A. Two guns are missing.
6 Q. Were they there when you left for work that
7 morning?
8 A. Yes, Ma'am.
9 Q. What is this?
10 A. My living room.
11 Q. What do you notice is different about that?
12 A. My CDs are missing.
13 Q. Were those CDs here?
14 A. Yes, Ma'am.
15 Q. In this picture, what was recovered, what is
16 that right there?
17 A. One of my rifles.
18 Q. What is that right there?
19 A. Same rifle.

See Transcript of record (trial) State Witness Roger Gant, cross examination by Mr. Newton, Pg. 77, lines 24-25

24 Q. Mr. Gant, what time did you say you left
25 for work that morning?

Pg. 78, lines 1-22

1 A. Uh, it was about eight o'clock or so.

2 Q. Eight o'clock and you got back around 10:30?

3 A. 10:30 or so, yes, sir.

4 Q. You sure about that?

5 A. I'm not exactly sure about the time exactly

6 but it's in that range, yes, sir.

7 Q. That's 10:30 in the morning, right?

8 A. Yes, sir.

9 Q. So we're talking about three and a half

10 hours, two and a half hours?

11 A. About two, two and a half hours, yes.

12 Q. And the burglary could not have happened at

13 any other time?

14 A. I don't see how it could have, no.

15 Q. You sure it was between 8:00 and 10:30 that

16 morning?

17 A. When I was gone, yes.

18 Q. And that occurred when you were not there?

19 A. I wasn't there, no.

20 Q. And you did not get a look at whoever it

21 was, did you?

22 A. No, I didn't.

See Transcript of record (trial) State Witness Officer Jeffrey Tomberlin, direct examination by Mrs. Tilley, Pg. 104, lines 24-25

24 Q. On January 11th of '06, did you have an
25 occasion to respond to Cove creek road?

Pg. 105, lines 1-25

1 A. I did.

2 Q. And why?

3 A. Deputy Bowen and Captain Smith had requested
4 assistance in road patrol. They were turning around
5 on a suspect vehicle. They felt as if a pursuit might
6 have ensued.

7 Q. Now, did you have any other information
8 about ?

9 A. Not at that time.

10 Q. Did you go to the actual residence of Cove

11 creek road?

12 A. I did.

13 Q. Why did you do that?

14 A. After having been on the scene a little

15 while, setting up a perimeter with a foot pursuit,

16 dispatch came across and advised that there was call

17 of a burglary there in our immediate area. And I rode

18 up to the house.

19 Q. And when you got to the house, who owns that

20 house?

21 A. Mr. Gant.

22 Q. And when you got to that house, what did you

23 observe about the house?

24 A. The doors had been pried only with some sort

25 of tools.

pg. 106, lines 1-13

1 Q. And what did you find was missing?

2 A. Mr. Gant and I walked through and did a

3 brief look around. He noticed immediately there was

4 guns missing from the gun rack.

5 Q. And did Mr. Gant see those guns again that

6 day?

7 A. He did.

8 Q. And once he saw those guns, what did you do?

9 A. He knew they were his.

10 Q. At that point in time, did you receive those

11 back?

12 A. No, I believe they were collected into

13 evidence and returned to him later.

See Transcript of record (trial) State Witness Officer Jeffrey Tomberlin, cross-examination, by Mr. Newton, pg. 107, lines 4-8.

4 Q. Can you tell us

5 what time the house was reported burglarized?

6 A. The incoming time would have been 11:31

7 Q. 11:31?

8 A. Yes, Sir.

See Transcript of record (trial) State witness Lt. Tony Robinson, direct-examination by Mrs. Tilley pg. 123, lines 16-25

16 Q. Did you have an occasion to respond to Cove

17 creek road on January 11th?

18 A. I did.

19 Q. And why did you?

20A. I responded to assist officer Ferguson when
 21 he got the call about some stolen vehicles. While I
 22 was on my way, we got a report that a house had been
 23 broken into. I did stop and speak with officer
 24 Ferguson but I went on to the house.
 25 Q. okay. And when you got to the house, what

Pg. 124, lines 1-25

1 Was the first thing that you did?

2 A. I got out of the car. I noticed that the
 3 door was opened, had been pried open going into the
 4 back door. It's a mobile home.

5 Q. I'm going to show you state's Exhibit 3 and
 6 2 that have been admitted into evidence. What are
 7 these pictures of?

8 A. That's the back door.

9 Q. okay. And what is this area here?

10 A. State's Exhibit 3, that's a closet shot of
 11 the door, the door latch, the door knob and the dead
 12 bolt.

13 Q. okay. What else did you notice? With Mr.

14 Gant, what did y'all do?

15 A. Mr. Gant took me, we went inside together.

16 He showed me some areas where some items were stolen
 17 from.

18 Q. okay. All right. Tell me about what you
 19 learned about this area here.

20 A. That's a gun rack where I think two guns had
 21 been taken from.

22 Q. okay. What about this?

23 A. That's the entertainment center in the
 24 living room. Some movies, DVD or video-type things
 25 were missing from that cabinet.

Pg. 125, lines 1-10

1 Q. And I just showed you two pictures a minute
 2 ago. I asked you to describe what they were. I'm
 3 going to ask you again now that I have them up here.
 4 What's this again?

5 A. That's a close up shot of the door showing
 6 it had been pried open.

7 Q. Look at the other picture that I showed you.
 8 What did you say that was again?

9 A. That's just a wider shot of looking down
 10 inside of the mobile home at the door.

See also Supplemental Incident Narratives by Lt. Tony Robinson, Incident Number:

2006-000796, attach to this page.

Lt. Tony Robinson, Supplemental date 01/13/06: on 01/11/06 I responded to 503 cove creek road in reference to a burglary. Upon arrival I observe that the back door had been pried open. The master bedroom door is directly to the right once you enter this door. Two long guns had been removed from the wall. Some DVD's had also been taken from the living room. I photographed the damage and processed the scene for latent prints. No latent prints were developed. Items belonging to this victim were recovered in a stolen vehicle shortly after this incident. A separate report will be filed by Det. Bolding unit 950.

In the possession of a Stolen motor vehicle case, the state called officer Brian Bowen, Captain Dewey Smith and officer Michael Ferguson of pickens County Sheriff's office. See Transcript of record (trial) state witness Brian Bowen, direct-examination, by Mrs. Tilley, pg. 80, lines 4-25.

4 Q. Were you working at the sheriff's office on 5 January 11th of '06?

6 A. Yes, I was.

7 Q. Did you respond to cove creek road area that 8 day?

9 A. Yes, I did.

10 Q. Why did you respond to that area?

11 A. To look for a possible vehicle that was 12 possibly stolen from North Carolina.

13 Q. And what was the description of that car 14 that was stolen?

15 A. It was a red Jeep Cherokee.

16 Q. When you went up to the cove creek road 17 area, who was with you?

18 A. Captain Dewey Smith.

19 Q. And who was driving?

20 A. I was driving.

21 Q. And as you came up on the house that Mr.

22 Gant lived in

23 was pulling out of the drive?

What type of car

24 A. Captain Smith said he saw the red Jeep 25 Cherokee.

Pg. 81, lines 1-25

1 Q. That residence, is that in pickens county?

2 A. It is.

3 Q. Did you recognize anyone in the car?

4 A. Not initially, not until I turned around.

5 Q. And when you turned around your vehicle,

6 what did you observe at that point?

7 A. The red Jeep Cherokee passed me coming in

8 the opposite direction.

9 Q. Who did you recognize it to be?

10 A. Danny Ray Gilliam.

11 Q. And have you had on occasion to talk with
12 the defendant before?

13 A. Yes.

14 Q. Approximately how many times?

15 A. A few times.

16 Q. Did you get a clear look at the defendant in
17 that car?

18 A. Yes.

19 Q. And how do you know you saw the defendant?

20 A. He was no more than a few feet away in the

21 car. I recognized him instantly.

22 Q. Did you make eye contact?

23 A. Yes.

24 Q. Can you identify the defendant in the
25 courtroom here today?

Pg. 82, lines 1-25

1 A. Yes, Ma'am.

2 Q. And where is he?

3 A. Seated at the defense table in the blue
4 shirt.

5 Q. Now, was it foggy out, was there anything to
6 get in the way of you identifying the defendant?

7 A. No.

8 Q. After you saw the defendant, what did you
9 see the defendant doing?

10 A. I turned around and initiated my blue lights
11 in my car to try to stop the car, he exited the car
12 and then ran.

13 Q. What did you see the defendant, after he
14 ran, what happened -- how did you leave his car?

15 A. It was actually still rolling. It rolled to
16 a stop on cove creek road as he ran away.

17 Q. What did you do at that point?

18 A. Backed the car up. Captain Smith got out
19 and pursued on foot. I backed up just a little bit to
20 see if I could be of assistance in the pursuit.

21 Q. Okay. What was found in the Jeep?

22 A. Property that was found on cove creek road.

23 Q. How did you know what those items were?

24 A. They were reported stolen.

25 Q. Okay. And what did the Sheriff's office do

240

SUPPLEMENTAL INCIDENT NARRATIVES

INCIDENT NUMBER: 2006-000796
INCIDENT DATE: 01/11/2006
INCIDENT TIME: 10:58

17-1 SY

*** NARRATIVE BY: TONYR DATE/TIME: 01/13/2006 14:56 PAGE #: 002 **

Lt. Tony Robinson, supplemental date 01/13/06: On 01/11/06 I responded to in reference to a Burglary. Upon arrival I observe that the back door had been pried open. The master bedroom door is directly to the right once you enter this door. Two long guns had been removed from the wall. Some DVD's had also been taken from the living room.

I photographed the damage and processed the scene for latent prints. No latent prints were developed.

Items belonging to this victim were recovered in a stolen vehicle shortly after this incident. A separate report will be filed by Det. Bolding. UNIT 950

Bolding

REPORT PRINTED: 01/13/2006 14:57 BY: TONYR *TR*

Pg. 83, lines 1-25

1 in particular with the guns?

2 A. We called out a crime scene technician to

3 come out and secure the vehicle and the property

4 inside.

5 Q. Did you actually go to the house that was

6 broken into?

7 A. I did not. I initially began to attempt to

8 persist with the pursuit but I didn't want to leave

9 the vehicle. So I returned back there to the car and

10 wait on the patrol deputy.

11 Q. I'm going to show you brief pictures, if I

12 may.

13 (Whereupon, State's Exhibit 8 through 10 are

14 marked for identification purposes.)

15 BY MRS. TILLEY:

16 Q. What is that in this picture? What is this

17 right here?

18 A. That is the driveway at

19 That's the direction we were traveling when we

20 initially went to the residence.

21 Q. Was the defendant's car coming out this way?

22 A. Yes, it's coming down that driveway from the

23 right.

24 Q. At that point, I know you've already gone

25 over this. What did the cars do? Your car and this

1 Car?

Pg. 84, lines 1-25

2 A. We had actually passed the driveway. I

3 turned around. The red jeep exited that driveway and

4 turned right in the direction that the picture is

5 facing. I then was coming the opposite direction to

6 turn around. That's when we passed the red jeep.

7 Q. All right. What is this?

8 A. That's the area the red jeep came to a stop.

9 the suspect ran from the vehicle.

10 Q. And what area is this?

11 A. That's the area that he ran into.

12 Q. He ran off in this direction?

13 A. Yes.

14 Mrs. Tilley: At this time, your Honor, the

15 state would like to introduce into evidence

16 exhibits 1 through 7, excuse me, your Honor,

17 exhibits 1 through 10.

18 Mr. Newton: If those are the pictures we

19 just saw, there's no objection.

20 Mrs. Tilley: Yes.

21 The Court: They are admitted.

22 (Whereupon, State's Exhibit 1 through 10 are
23 admitted into the record.)

24 By Mrs. Tilley:

25 Q. Now, did you have an occasion to -- was the

Pg. 85 lines 1-2

1 defendant eventually apprehended?

2 A. Yes, he was eventually apprehended.

See Transcript of record (trial) State Witness Brian Bowen, cross-examination, by Mr. Newton, Pg. 89, lines 24-25.

24 Q. You said he was later apprehended. You saw

25 a red Jeep Cherokee and somebody fled from it. you

Pg. 90 lines 1-18

1 said he was apprehended after that. How much longer

2 after that?

3 A. I believe it was approximately two weeks
4 afterwards.

5 Q. So an arrest was not made in this case until

6 two weeks after the incident in question, correct?

7 A. That's correct.

8 Q. And that's because at the time, whoever was

9 in that vehicle got away, right?

10 Mrs. Tilley: objection, Your Honor.

11 I'll withdraw my objection at this time.

12 The Witness: Can you repeat the

13 question? I'm sorry.

14 By Mr. Newton:

15 Q. He did not make an arrest right after this

16 incident because whoever was in the vehicle got away,

17 right?

18 A. Yes, he got away.

Pg. 92, lines 1-4

1 Q. When you were driving down Cove Creek road,

2 who saw the red Jeep Cherokee in the driveway of --

3 (who saw that?)

4 A. Captain Smith saw it.

Pg. 93, lines 11-13

11 Q. How fast were you going as you passed by

12 that driveway in your vehicle?

13 A. Maybe 25, 30 miles an hour.

See Transcript of record (trial) State witness Captain Dewey Smith, direct-examination by Mrs. Tilley Pg. 98, line 25.

25 Q. On January 11th, did you have an occasion to

Pg. 99, lines 1-25

1 go to cove creek road?

2 A. I certainly did.

3 Q. And who was with you when you did that?

4 A. Detective Bowen, Brian Bowen.

5 Q. And why were you going up to that area?

6 A. Why?

7 Q. Yes, sir.

8 A. I had an informant call me and --

9 Mr. Newton: objection. Hearsay.

10 By Mrs. Tilley:

11 Q. When you and Sergeant Bowen went out on Cove

12 creek road, what did you observe when you were on Cove

13 creek road?

14 A. A red Jeep Cherokee.

15 Q. What did you know about that red Jeep

16 Cherokee?

17 A. It was reported to me to be stolen.

18 Mr. Newton: objection. Hearsay.

19 The Court: Overruled.

20 By Mrs. Tilley:

21 Q. Why again were you over on Cove creek road

22 area?

23 A. I was looking for a red Jeep Cherokee that

24 had been reported stolen by the state of North

25 Carolina.

Pg. 100, lines 1-25

1 Q. And back to the answer you just gave, when

2 did you see that car that had been reported stolen?

3 A. Some time after 10:00, I guess. I'm not

4 exactly sure of the time.

5 Q. Where did you see it?

6 A. What I now know is 503 Cove Creek Road.

7 Q. Is that in Pickens County?

8 A. Yes, it is.

9 Q. Who was with you in the car?

10 A. Detective Bowen.

11 Q. When the defendant was driving out of the

12 driveway, how did you know Sergeant Bowen was able to

13 identify the vehicle?

14 A. First, I saw the vehicle coming out of the

15 driveway down a hill at 1. The

16 vehicle was proceeding slowly down. I was watching

17 the left hand, right hand side of the road because I

18 wasn't driving, I saw the vehicle coming. It was a

19 red jeep cherokee. I said there it is right there, a
 20 red jeep cherokee.
 21 I don't know how far. We went down far
 22 enough to turn around and come back. But in the
 23 meantime, I was keeping my eye on the cherokee. And
 24 he came to almost to a stop. As soon as it saw us
 25 turn and come this way, it made a right turn toward us

Pg. 101, lines 1-25

1 instead of turning left where we would be right behind
 2 it forcing us to make another turn.

3 Mr. Newton: objection, Judge. It's all
 4 speculation as to what the driver of that
 5 vehicle, whoever it was, may or may not have
 6 thought.

7 The Court: overruled.

8 By Mrs. Tilley:

9 Q. Now, when you saw this, what did Brian Bowen
 10 do to indicate to you that he knew the defendant? Did
 11 he point him out?

12 A. He more or less screamed out that's Danny
 13 Ray right there.

14 Q. At that point, what happened?

15 A. At that point, we turned around and I guess
 16 you can say the chase was on for a few minutes or
 17 maybe a quarter of a mile.

18 Q. And what did the defendant do?

19 A. He stopped or attempted to stop. The
 20 vehicle was still rolling. He, we called it bailing
 21 out, on the driver's side. He landed in front of the
 22 vehicle across the road in front of us into a wooded
 23 area.

24 Q. Okay. I'm going to show you state's Exhibit
 25 number 10. Is that the area here?

Pg. 102, lines 1-6

1 A. Yes, that's the area right there where we
 2 stopped.

3 Q. And what did the defendant do at this point?

4 A. He ran up the road maybe 50 yards. I'm not
 5 sure. 50 feet. But anyway, he went to the right into
 6 the woods.

See Transcript of Record (trial) State Witness Captain Dewey Smith, Cross-examination
 by Mr. Newton Pg. 102, lines 11-25

11 Q. Did I hear you correctly you said you saw

12 the red cherokee around ten o'clock in the morning?

- 13 A. I'm not exactly sure what time it was. It
 14 was about 10:00 or ten after.
 15 Q. 10:00 or some time after 10:00?
 16 A. Yeah. Some time, I imagine.
 17 Q. Did you ever meet with Mr. Gant that day?
 18 A. I'm not sure if I did or not. I saw him
 19 earlier, or later I'm sure.
 20 Q. Do you know what time?
 21 A. No, I don't.
 22 Q. What did you do after whoever was in that
 23 vehicle ran away into the woods, what did you do?
 24 A. I chased him.
 25 Q. How far?

pg. 103, lines 1-18

- 1 A. Well, until I give up. It was about-- we
 2 crossed the creek, went through the woods. That man
 3 right there went up the woods, up the hill on the
 4 other side. He could hardly make it up the hill. I
 5 knew I had enough. I set up a perimeter right there
 6 and called in the bloodhounds to come take over.
 7 Q. How far behind him were you in running
 8 through the woods?
 9 A. Probably maybe 150 feet.
 10 Q. What kind of woods were these? Was it
 11 decked with trees? Lots of trees?
 12 A. The first part was, getting across the
 13 creek. Q. Okay. And what did you do after you
 14 gave up the foot chase?
 15 A. Radioed for bloodhounds. Then I was
 16 informed that they found weapons in the vehicle. So I
 17 stopped immediately right there. I called in the
 18 I called in the bloodhounds.

See Transcript of record (trial) State Witness Michael Ferguson, direct-examination
 by Mrs. Tilley, pg. 110, lines 2-25

- 2 Q. And what is the ID Division?
 3 A. We process the crime scenes.
 4 Q. And when you process the scene, what are
 5 some of the things that you do?
 6 A. We photograph and collect evidence and
 7 fingerprint.
 8 Q. Okay. Were you called out to Cove creek
 9 road on January the 11th of '06?
 10 A. Yes, ma'am.
 11 Q. And why were you called out?

- 12 A. To process a stolen vehicle.
 13 Q. And what did you observe when you got to
 14 Cove Creek road?
 15 A. I observed a red Jeep Cherokee on the
 16 shoulder of the road. There was a uniform officer
 17 standing nearby.
 18 Q. What did you know about the vehicle?
 19 A. I was called there to process it because it
 20 was stolen.
 21 Q. What was the first thing that you did?
 22 A. Initially, I knew there were bloodhounds on
 23 the way because the defendant had fled on foot. So I
 24 asked the officers that were in the vicinity of the
 25 vehicle to move back so when they both the dog there,

pg. 111, lines 1-25

- 1 Just having experienced that in the past 20 years of
 2 my career, allow the dog to come in and scent the
 3 potential person who might be in the woods. So I
 4 asked the officers to move back and wait. Once the
 5 dogs had been there and done their part, I started
 6 processing the vehicle by photographing it.
 7 Q. Okay.

8 (Whereupon, State's Exhibits 11 through 13 are
 9 marked for identification purposes.)

10 By Mrs. Tilley:

- 11 Q. Are these the initial pictures that you
 12 took?

13 A. Yes, ma'am.

- 14 Q. And what is that a picture of?

15 A. The red Jeep Cherokee had been reported
 16 stolen.

- 17 Q. Okay. Did you take pictures inside the car?

18 A. Yes, ma'am. I took pictures of the interior
 19 of the Jeep.

- 20 Q. What is that a picture of?

21 A. That's the console area between the driver
 22 and the passenger seat and the little storage
 23 compartment there. The top of it is an armrest.
 24 That's a pair of leather gloves inside there.

- 25 Q. Okay. And what is this a picture of?

pg. 112, line 1-25

- 1 A. That's the rear, behind the hatchback of the
 2 truck, if you will. Those are some clothing and a
 3 pair of bolt cutters that were in the back of the
 4 vehicle.

5 MRS. Tilley: Your Honor, at this time, the
6 state moves exhibits 11, 12 and 13 into evidence.

7 MR. Newton: No objection.

8 The court: They are admitted.

9 (Whereupon, State's Exhibits 11 through 13 are
10 admitted into the record.)

11 By MRS. Tilley:

12 Q. After you took pictures of the scene, what
13 did you do next?

14 A. I began to process the vehicle for
15 fingerprints.

16 Q. Okay. And what was the first place that you
17 finger printed?

18 A. I processed the interior of the vehicle.

19 there had been some light rain. The vehicle was wet,
20 on the exterior.

21 Q. Why would a vehicle being wet on the
22 exterior prevent fingerprints on the exterior?

23 A. It would hinder -- the powder that you use,
24 usually, it's a black powder and a brush. And you
25 brush it on there. The fingerprint itself is 99 to 99

Pg. 113, lines 1-23

1 and a half percent water. Therefore, if it's been
2 rained on, that would hinder the latent that might be
3 developed. A latent finger print being a invisible
4 finger print that you can't see with the naked eye
5 versus a patent finger print that you could see with
6 the naked eye that you could photograph. If you can't
7 see it, you have to develop it in some way. In this

8 case, we used powder.

9 Q. Were you able to develop a latent
10 fingerprint in the car?

11 A. Yes, ma'am. I did.

12 Q. Where was that?

13 A. It was on a control panel that was on the
14 roof between the seats of this vehicle. Some type of
15 buttons there. I'm not sure what they control. But
16 the fingerprint was in that area.

17 Q. What did you do with that fingerprint?

18 A. I lifted it and collected it as evidence.

19 Q. Did you compare it to the defendant?

20 A. Yes, I did.

21 Q. What were the results?

22 A. They were negative. They did not match the
23 defendant.

Pg. 114, lines 8-15

8 Q. And were you able to develop any other
9 prints say on the steering wheel or the side of the
10 door?

11 A. I processed the area around the driver's
12 seat and the driver's area of the vehicle, the door,
13 the driver's door window.

14 Q. Were any prints elicited from there?

15 A. There were no prints developed there.

Pg. 115, lines 3-25

3 Q. Okay. After that, what was the next thing
4 that you did?

5 A. I began to do a basic, just going through
6 the vehicle, collecting the items that were in there.
7 I collected several items from there.

8 Q. This box right here, what is in this big
9 white box?

10 A. This is the evidence that I collected from
11 the vehicle in this case.

12 Q. And did you bring that with you here today?

13 A. Yes, ma'am.

14 (Whereupon, State's Exhibit 14 is marked for
15 identification purposes.)

16 BY Mrs. Tilley:

17 Q. Deputy Ferguson, what are those?

18 A. These are the leather gloves that were in
19 that compartment, the console that you saw in the
20 photograph.

21 Q. And why would you not be able to get prints
22 off of those?

23 A. Again, these are some type of leather type
24 fabric. It's very porous. Developing a finger print
25 on those would be very difficult.

Pg. 116, lines 1-25

1 Q. Okay. Is this in the same condition you saw
2 it on the day you collected it?

3 A. Yes, ma'am.

4 Mrs. Tilley: Your Honor, at this time, the
5 State moves Exhibit number 14 into evidence.

6 Mr. Newton: No objection.

7 The Court: It's admitted.

8 (Whereupon, State's Exhibit 14 is admitted into
9 the record.)

10 (Whereupon, State's Exhibit 15 is marked for

11 identification purposes.)

12 BY Mrs. Tilley:

13 Q. What is, What is State's Exhibit 15? What

14 is that?

15 A. It's a pair of bolt cutters, the bolt

16 cutters that you saw in the photograph that were in

17 the back of the jeep.

18 Q. And what is that black stuff on it?

19 A. Fingerprint powder.

20 Q. Okay. Were you able to develop any

21 fingerprints off of that?

22 A. No, ma'am. I didn't develop any

23 identifiable fingerprints on this.

24 Q. Was that in the same condition that you

25 collected it that day?

pg. 117, lines 1-25

1 A. With the exception of the finger print

2 powder, yes, ma'am.

3 Mrs. Tilley: Your Honor, at this time, the

4 State moves Exhibit number 15 into evidence.

5 Mr. Newton: No objection, Your Honor.

6 The Court: It's admitted.

7 (Whereupon, State's Exhibit 15 is admitted into

8 the record.)

9 (Whereupon, State's Exhibit 16 is marked for

10 identification purposes.)

11 BY Mrs. Tilley:

12 Q. What is that item right there?

13 A. This item is a screwdriver-like tool that I

14 collected from the vehicle.

15 Q. What do you notice about that screwdriver?

16 A. Whatever type of tip was on there appears to

17 be broken.

18 Q. Okay. Now why would you not be able to get

19 fingerprints off the tools?

20 A. It's not impossible. But if you have

21 processed tools, hand tools like this, when you, a

22 person uses a tool like this, of course, they're going

23 to grab it with their ~~hand~~ fist, not their fingertip. I've

24 processed thousands of screwdrivers in my career in

25 ID. It's very difficult to get prints off of

pg. 118, lines 1-25

1 Something like that.

2 Q. Is this in the same condition as you

3 collected it that day?

4 A. Yes, ma'am.

5 Mrs. Tilley: Your Honor, at this time, the
6 State moves State's Exhibit number 16 into
7 evidence.

8 Mr. Newton: No objection.

9 The Court: It's admitted.

10 (Whereupon, State's Exhibit 16 is admitted into
11 the record.)

12 (Whereupon, State's Exhibits 17 and 18 are marked
13 for identification purposes.)

14 By Mrs. Tilley:

15 Q. What is this?

16 A. That is the screwdriver I collected again
17 from the vehicle.

18 Q. What do you notice about that particular
19 screwdriver?

20 A. I documented that this screwdriver was bent
21 as well as the previous one.

22 Q. Okay. And for the same reasons you stated
23 about the last screwdriver, does that apply to that as
24 to why you would not be able to get fingerprints?

25 A. Right. It wouldn't be impossible but it

Pg. 119, lines 1-25

1 would be very difficult.

2 Q. Okay. Is that in the same condition as you
3 saw it on that day?

4 A. Yes, ma'am.

5 Mrs. Tilley: Your Honor, at this time, the
6 State moves State's Exhibit 17 into evidence.

7 Mr. Newton: No objection.

8 By Mrs. Tilley:

9 Q. These items --

10 The Court: It's admitted.

11 (Whereupon, State's Exhibit 17 is admitted into
12 the record.)

13 By Mrs. Tilley:

14 Q. Were any of them returned to anyone?

15 A. I collected a total of nine items there on
16 Cove Creek Road. Yes, ma'am. There were some of
17 those items returned to Mr. Gant.

18 Q. Okay. Did anyone else make a statement that
19 their items were there?

20 A. No, ma'am. None of the other items were
21 claimed.

22 Q. What is that right there?

23A. This is a chisel type tool that was also
 24 collected from that red Jeep Cherokee.
 25 Q. Okay. What are chisels typically used for?

Pg. 120, lines 1-25

1 A. If I were using it, breaking things, prying
 2 things.

3 Q. Is this in the same condition as when you
 4 collected it that day?

5 A. Yes, ma'am. It is.

6 Mrs. Tilley: At this time, state moves

7 state's Exhibit 18 into evidence.

8 Mr. Newton: No objection.

9 The Court: It's admitted.

10 (Whereupon, State's Exhibit 18 is admitted into
 11 the record.)

12 By Mrs. Tilley:

13 Q. On to your property and evidence report.

14 What were the first two items that you took into
 15 evidence?

16 A. Item number 1 is a Marlon model 60. 22

17 caliber rifle. Serial number 06225037.

18 Q. And item number 2.

19 A. Item number 2 is a Winchester model 250. 22

20 caliber rifle. Serial number 389092.

21 Q. Okay. And why were those items not

22 finger printed?

23 A. Why were they not finger printed?

24 Q. Were they or were they not?

25 A. Uh, the items, the rifle, my understanding

Pg. 121, lines 1-9

1 is that the defendant was in the woods and they didn't

2 know if he was armed or not. So these rifles could

3 possibly had been handled by officers prior to my

4 arrival on the scene.

5 Q. Okay. And what eventually happened those

6 items?

7 A. They were returned to the victim of the

8 burglary, Mr. Gant, the next, the following day, I

9 believe, yes, ma'am.

Although, defendant verbally admitted to officer Bowen and officer Lane Byars that he was in a red Jeep that day on Cove Creek Road after signed a pickens County Sheriff's office waiver of rights form and he did not give them a written statement. See Transcript of record (trial) Pg. 89, lines 6-7, Pg. 87, lines 3-4, Pg. 88, lines 13-15 and pg. 89, line 23. The Court grant the motion for directed verdict on the possession

of stolen vehicle. See Transcript of record (trial) pg. 142, lines 19-21. Officer Brian Bowen, Capt. Dewey Smith and Michael Ferguson of Pickens County Sheriff's office was involve with stolen vehicle case and not the burglary / petit larceny case.

The state offer into evidence Exhibit 1 pickens county sheriff's office waiver of rights form, which was identify by state witness officer Brian Bowen. See Transcript of record (trial) pg. 88, lines 18-24. Picture 2 back door, picture 3 back door, picture 4 bedroom, picture 5 gunrack, picture 6 living room, picture 7 one of rifles, picture 8 same rifle, which was identify by state witness Roger Gant (victim). See Transcript of record (trial) pg. 76, lines 15-25; pg. 77, lines 1-19. Picture 9 driveway at J. That's the direction we were traveling when we initially went to the residence. Picture 10 that's the area the red Jeep came to a stop. The suspect ran from the vehicle. See Transcript of record (trial) pg. 83, lines 16-20; pg. 84, lines 7-9, which was identify by state witness officer Brian Bowen and picture 10 was identify by state witness Captain Dewey Smith that's the area right there where we stopped. See Transcript of record (trial) pg. 101, lines 24-25, pg. 102, lines 1-2. Picture 11 red Jeep Cherokee had been reported stolen. Picture 12 that's the console between the driver and the passenger seat and the little storage compartment there. The top of it is an armrest. That's a pair of leather gloves inside there, picture 13 that's the rear, behind the hatch back of the truck, if you will. Those are some clothing and a pair of bolt cutters that were in the back of the vehicle, Exhibit 14 leather gloves, Exhibit 15 pair of bolt cutters, Exhibit 16 screwdriver-like tool, Exhibit 17 screwdriver, Exhibit 18 chisel type tool, which was identify by state witness Michael Ferguson. See Transcript of record (trial) pg. 111, lines 14-15, lines 20-23, pg. 112, lines 1-4, pg. 115, lines 17-20, pg. 116, lines 13-17, pg. 117, lines 12-14, pg. 118, lines 15-17, pg. 119, lines 23-24. Also state witness Tony Robinson identify Pictures 3 and 2. See Transcript of record (trial) pg. 124 lines 5-12, pg. 125 lines 1-10. Exhibits 19 and 20 which are certified convictions of prior burglaries of Danny Ray Gilliam by Mrs. Tilley. See Transcript of record (trial) pg. 143 lines 23-25, pg. 144, line 1.

A person is guilty of burglary in the first degree if he enters a dwelling without consent and with intent to commit a crime in the dwelling, and at least one of three aggravating factors is proven. S.C. Code Ann. § 16-11-311 (Supp. 1999) Section 16-11-311 (A) (2) lists one of the aggravating factors as burglary committed by a person with a prior record of two or more convictions for burglary or house breaking or a combination of both. It was stipulated at trial that defendant had a prior record of two or more convictions of burglaries. The state was therefore required to prove entry into the dwelling without consent, with the intent to commit a crime.

At trial, there was testimony from Roger Gant (victim) that on January 11, 2006, he leave the house. He was gone from his house maybe a couple of hours. He leave his job to come back to his house about 10:30 or so to get another drill. He notice the door to his house had been broken into, pried open and that the guns was missing. The victim testified he didn't given anyone permission to break into his house nor given anyone permission to take his guns. The victim identify two pictures of his back door testified it's sort of tore up a little bit. The victim testified he wasn't there

nor did he get a look at whoever it was. The victim went back to NAPA and called the police. See Transcript of record (trial) pg. 75, lines 4-19, pg. 76, lines 2-7, lines 15-22, pg. 78, lines 18-22, pg. 76, line 20. Officer Brian Bowen testified he responded to Cove Creek road area that day to look for a possible vehicle that was possibly stolen from North Carolina. It was a red Jeep Cherokee. ~~When~~ he was driving up to the Cove Creek road area Captain Dewey Smith was with him. As they came up on the house that Mr. Gant lived in d, Captain Smith said he saw the red Jeep Cherokee. He did not recognize anyone in the car until he turned around. After turned around his vehicle, he observed the red Jeep Cherokee pass him coming in the opposite direction. He recognized it to be Danny Ray Gilliam. He was no more than a few feet away in the car. He recognized him instantly. He identified the defendant in the courtroom seated at the defense table in the blue shirt. After he saw the defendant, he turned around and initiated his blue lights in his car to try to stop the car, he exited the car and then ran. The car was actually still rolling. It rolled to a stop on Cove Creek road as he ran away. At that point, he backed the car up. Captain Smith got out and pursued on foot. He backed up just a little bit to see if he could be of assistance in the pursuit. Property that was found on Cove Creek road was found in the Jeep. They were reported stolen. An arrest was not made after this incident because whoever was in the vehicle he got away. An arrest was made two weeks afterwards. See Transcript of record (trial) pg. 80, lines 7-25, pg. 81, lines 4-10, lines 20-21, lines 24-25, pg. 82 lines 3-4, lines 8-24, pg. 90 lines 15-18, lines 3-7. Captain Dewey Smith testified he was over on Cove Creek road area looking for a red Jeep Cherokee that had been reported stolen by the state of North Carolina. Sometime after 10:00 I guess Captain Smith, first saw the vehicle coming out of the driveway down a hill at

. The vehicle was proceeding slowly down. He was watching the left hand, right hand side of the road because he wasn't driving. He saw the vehicle coming. It was a red Jeep Cherokee. He said there it is right there, a red Jeep Cherokee. He don't know how far. We went down far enough to turn around and come back. But in the meantime, he was keeping his eye on the Cherokee. And he came to almost to a stop. As soon as it saw us turn and come this way, it made a right turn toward us instead of turning left where we would be right behind it forcing us to make another turn. Officer Brian Bowen, more or less screamed out that's Danny Ray right there. At that point, we turned around and I guess you can say the chase was on for a few minutes or maybe a quarter of a mile. The suspect stopped or attempted to stop. The vehicle was still rolling. We called it bailing out on the driver's side. He landed in front of the vehicle across the road in front of us into a wooded area. He ran up the road maybe 50 yards. I'm not sure. 50 feet. But anyway, he went to the right into the woods. Captain Smith chased him until he gave up. We crossed the creek, went through the woods. That man right there went up the woods, up the hill on the other side. He could hardly make it up the hill. I knew I had enough. I set up a perimeter right there and called in the blood hounds to come take over. I was probably maybe 150 feet behind the suspect. After he gave up the foot chase, he radioed for blood hounds. Then he was informed that they found weapons in the vehicle. So he stopped immediately right there. ~~He~~ called in the blood hounds. Transcript of Record (trial) pg. 99, lines 21-25, pg. 100, lines 1-3, lines 14-25, pg. 101, lines 23, lines 9-23, pg. 102 lines 4-6, pg. 103 lines 1-9, lines 13-18. Deputy Jeffrey Tomberlin,

testified he respond to cove creek road because deputy bowen and captain smith had requested assistance in road patrol. They were turning around on a suspect vehicle. They felt as if a pursuit might have ensued. After having been on the scene a little while, setting up a perimeter with a foot pursuit, dispatch came across and advised that there was call of a burglary there in our immediate area. And he rode up to the house. The house was reported burglarized 11:31 by own of the house Mr. Gant. When he got to that house, he observe the doors had been pried only with some sort of tools. Mr. Gant and him walked through and did a brief look around notice immediately there was guns missing from the gun rack. See Transcript of record (trial) pg. 104, lines 1-3, lines 24-25, pg. 105, lines 1-6, lines 14-18, pg. 107, lines 4-6, pg. 105 lines 14-25, pg. 106, lines 2-4. Michael Ferguson testified he was called out to cove creek road to process a stolen vehicle. He started processing the vehicle by photographing it. The initial pictures that he took was a picture of red Jeep Cherokee had been reported stolen. He took pictures of the interior of the Jeep by photograph the console area between the driver and the passenger seat and the little storage compartment there. The top of it is an armrest. That's a pair of leather gloves inside there. This a picture of the rear, behind the hatchback of the truck, if you will. Those are some clothing and a pair of bolt cutters that were in the back of the vehicle. Next, he began to process the vehicle for fingerprinted by processed the interior of the vehicle. There had been some light rain. The vehicle was wet on the exterior. He was able to develop a latent finger print on a control panel that was on the roof between the seats of this vehicle. The fingerprint was lifted it and collected it as evidence. He compare it to the defendant. The results were negative. They did not match the defendant. He processed the area around the driver's seat and the driver's area of the vehicle, the door, the driver's door window. There were no prints developed there. The next thing he did was do a basic, just going through the vehicle, collecting the items that were in there. He collected several items from there. He put the evidence that he collected from the vehicle in this case in big white box and bring it with him here today at trial. Leather gloves that were in that compartment, the console that you saw in the photograph. Pair of bolt cutters, the bolt cutters that you saw in the photograph that were in the back of the Jeep. No finger prints were develop off it. A screwdriver-like tool that he collected from the vehicle. Screwdriver he collected again from the vehicle. A chisel-type tool that was also collected from that red Jeep Cherokee. He was ask, what are chisels typically used for? He said "If I were using it, breaking things, prying things. See Transcript of record (trial) pg. 109, lines 8-9, pg. 110, lines 8-12, pg. 111, lines 5-6, lines 11-25, pg. 112, lines 1-4, lines 12-20, pg. 113, lines 9-14, lines 17-23, pg. 114, lines 11-15, pg. 115, lines 3-13, lines 18-20, pg. 116, lines 15-17, lines 20-23, pg. 117, lines 13-14, pg. 118, lines 16-17, pg. 119, lines 23-25, pg. 120, lines 1-2. Michael Ferguson, property and evidence report was not admitted into evidence or the record. He testified he took into evidence item number 1 a marlon model 60 .22 caliber rifle. Serial number 06225037. Item number 2 a winchester model 250 .22 caliber rifle. Serial number 389092. They were returned to the victim of the burglary, Mr. Gant, the next, the following day he believe. See Transcript of record (trial) pg. 120 lines 13-20, pg. 121, lines 7-9. Tony Robinson testified he is Lieutenant over the I D Division.

As Officer Ferguson stated, we process crime scenes, photographs, collect evidence, finger-prints. He respond to Cove Creek Road to assist Officer Ferguson when he got the call about some stolen vehicles. While he was on his way, we got a report that a house had been broken into. He did stop and speak with Officer Ferguson but he went on to the house. He got out of the car. He noticed that the door was opened, had been pried open going into the back door. It's a mobile home. Mr. Gant took him, they went inside together. He showed him some areas where some items were stolen from. He identify State's Exhibit 3 and a picture of the back door and State's Exhibit 3 a closet shot of the door, the door latch, the door knob and the dead bolt. See Transcript of record (trial) pg. 123, line 11, lines 14-15, lines 20-24, pg. 124, lines 2-4, lines 15-17, lines 8-12.

In the case at hand, there was no evidence linking defendant to any burglary or petit larceny because one, there was no eye witness or witness who saw the defendant pry open the back door, entered the house of Roger Gant or coming out of Roger Gant house with two rifles. Two, there was no description of the burglary / petit larceny suspect. Three, victim Roger Gant wasn't there when burglary / petit larceny took place between the time of 8:00 and 10:30 nor did he get a look at whoever it was. Four, Officer Brian Bowen and Captain Dewey Smith both said "they were on Cove Creek Road area looking for a red Jeep Cherokee that had been reported stolen from North Carolina." Sometime after 10:00 Captain Smith, first saw the vehicle coming out of the driveway down a hill at the Cove Creek. It was a red Jeep Cherokee. Five, Officer Bowen never give description of person driving a red Jeep Cherokee, who got out of vehicle while it was still rolling, ran up the road maybe 50 yards or 50 feet fled on foot to a wood area and Captain Smith, never give description of person he chased crossed the creek, went through the woods, was 150 feet behind him. Six, While searching for the suspect with bloodhounds the dispatch came across and advised that there was call of a burglary there-in our immediate area. The house was reported burglarized 11:31 by own of the house (victim) Mr. Gant. Seven, the finger print found in the stolen red Jeep Cherokee did not match the defendant. Eight, there was no finger print of defendant on the bolt cutters nor did Michael Ferguson finger print the leather gloves, screw driver-like tool, screw driver, chisel type tool or the two 22. rifles that was found in the stolen red Jeep Cherokee. Nine, Lt. Tony Robinson processed the scene of the burglary for latent prints. There was no latent prints developed. See Supplemental Incident Narratives by Lt. Tony Robinson, Incident Number: 2006-000796 attach page 24. Ten, there was no arrest because the person got away. Eleven, the two .22 caliber rifle were recover and return back to the victim of the burglary, Mr. Gant, the next, the following day he believe.

Although, the victim Roger Gant testified he didn't given anyone permission to break into his house nor given anyone permission to take his guns. He wasn't there nor did he get a look at whoever it was, does not prove entry into the

dwelling without consent, with the intent to commit a crime.

The state relied on the in-court identification of officer Bowen with his testimony that it was defendant driving the stolen red Jeep Cherokee from North Carolina and testimony of Captain Smith, first saw the vehicle coming out of the driveway down a hill at 3. It was red Jeep Cherokee and that he chase the defendant crossed the creek, went through the woods, was 150 feet behind him. The state relied on the identification in possession of stolen motor vehicle case to be used in the burglary / petit larceny case. However, officer Bowen and Captain Smith never give a description of person nor have they been to residence of the (victim) Mr. Gant.

The state did not present any evidence or testimony placing the defendant inside the dwelling of Mr. Gant, there was no description of the defendant, there was no testimony from Tony Robinson of what type of tools was used to pry open back door, what he did at crime scenes of victim Roger Gant house, There was no finger print of defendant found at dwelling of Mr. Gant, there was no testimony of who the tools belong too, there was no finger print of defendant on the bolt cutters. Michael Ferguson did not finger print the leather gloves, screw driver-like tool, screwdriver, chisel type tool or the two .22 caliber rifles that was found in the stolen red Jeep Cherokee. The finger print found in the stolen red Jeep Cherokee did not match the defendant. Nor was there anything connect defendant to this red Jeep Cherokee stolen from North Carolina or to the burglary / petit larceny.

"Burglary" is a crime against possession, not against property, and law of burglary is primarily designed to secure sanctity of one's home, especially at night time when peace, solitude and safety are most desired and expected. State v. Brooks, 283 S.E. 2d 830 (1981). The defendant was not found in possession of two .22 caliber rifles that was report stolen when he was arrest two week later and charged for burglary / petit larceny nor was two .22 caliber rifles fingerprint by Michael Ferguson. The state did not admitted Michael Ferguson property and evidence report into the record of item number 1 a marlon model 60 .22 caliber rifle. Serial number 06225037 and item number 2 a winchester model 250 .22 caliber rifle. Serial number 389092 because the two .22 caliber rifles were return back to victim of the burglary / petit larceny.

Therefore, the state fail to prove it was defendant who enters the dwelling without consent and with intent to commit a crime in the dwelling and the state failed to prove all the elements of the offense of first degree burglary.

It is elementary that in determining whether the lower court should have granted a motion for a directed verdict of acquittal, the evidence must be viewed in the light most favorable to the state. In State v. Chandler, 226 S.E. 2d 553 (1976), we said

"When a motion for a directed verdict is made, the trial judge is concerned with the existence or non existence of evidence, not with its weight and although he should not refuse to grant the motion where the evidence merely raises a suspicion that the accused is guilty, it is his duty to submit the case to the jury if there is evidence, either direct or circumstantial, which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. *State v. Wheeler*, 193 S.E.2d 515 (1972); *State v. Jordan*, 177 S.E.2d 464 (1970)."

See *State v. Halyard*, 264 S.E.2d 841 (1980), or the recently enunciated federal standard of review is used, i.e., whether any rational trier of fact, when viewing the evidence in the light most favorable to the prosecution, could have found the essential elements of the crime present beyond a reasonable doubt. See *Jackson v. Virginia*, 99 S.Ct. 2781.

We have consistently held a case must not be submitted to the jury where the evidence raises mere suspicion of guilt. See cases collected in West's South Carolina Digest, Criminal law law at key nos. 1741 (1) and 1753 (2). "When a motion for a directed verdict is made the trial judge is concerned with the existence or non existence of evidence, not with its weight. It is his duty to submit the case to the jury, if there is any evidence, either direct or circumstantial which reasonably tends to prove the guilt of the accused or from which guilt may be fairly and logically deduced. However, the motion for a directed verdict should be granted where evidence merely raises a suspicion of guilt, or is such as to permit the jury to merely conjecture or to speculate as to the accused's guilt." *State v. Brown*, 227 S.E.2d 674, 677 (1976).

See also *State v. Mitchell* 535 S.E.2d 126 (2000), defendant was entitled to directed verdict on first degree burglary charge fact that defendant's fingerprint was on a screen that was propped up against the house did not prove entry, where defendant was in and around the victim's house at least three times prior to the burglary.

But see also *State v. Woods*, 255 S.E.2d 680 (1979), evidence that residence was broken into between 10:15 a.m. and 12:20 p.m., that property was taken, that during the same time period, defendants parked their automobile along a nearby road, climbed a fence, and entered woods in the direction of the residence, that they walked along the street in front of the residence and that they there after returned to their automobile through the woods they had originally entered and drove away, and that, at 6 p.m. that evening, the majority of the stolen property was found in a dump of undergrowth near the route used by the defendants in returning to their automobile was insufficient to sustain defendant's convictions for house breaking and larceny.

Furthermore, see S.C. Code Ann. § 16-13-30 petit larceny; grand larceny. (A) Simple larceny of any article of goods, choses in action, bank bills, bills receivable, chattel, or other article of personality of which by law larceny may be committed, or of any fixture, part, or product of the soil severed from the soil by an unlawful act, or has a value of one thousand

dollars or less, is petit larceny, a misdemeanor, triable in the Magistrate's court. Upon conviction, the person must be fined or imprisoned not more than is permitted by law without presentment or indictment by the grand jury.

The State must present credible evidence establishing each element of the crime charged. Criminal law key 328.

Although property taken was a marlon model 60 - .22 caliber rifle, Serial number 06225037 and Winchester model 250 - .22 caliber rifle, Serial number 389092, state failed to prove that the value of the article stolen is worth at least one thousand dollars or less to support petit larceny conviction where value of property was left entirely to conjecture and speculation of jury. There was no testimony, circumstantial or direct, that these two .22 caliber rifles had a total value of at least one thousand dollars or less. The defendant did not have possession of or got caught with taking and carry away the personal property of Roger Gant two .22 caliber rifles at the time of his arrest two week later. Nor did Michael Ferguson finger print these two .22 caliber rifles and neither did the state produce these two .22 caliber rifles at trial because the two .22 caliber rifles were returned back to victim Mr. Gant the following day. See State v. Smith 266 S.E.2d 422, 23 (1980).

The defendant is entitled to directed verdict of acquittal because the state failed to prove all the essential elements of the crime of burglary in the first degree / petit larceny beyond a reasonable doubt. Jackson v. Virginia, Supra. and as mandated via the fourteenth Amendment due process clause and article 1 § 14 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing arguments, Applicant conviction and sentence should be directed verdict of acquittal for burglary in the first degree / petit larceny or reversed of sentence of life and 10 year or a new trial.

Respectfully submitted,

Danny Ray Gilliam 183100
Lieber Correctional Institution Smu 2
P.O. Box 205
Ridgeville S.C. 29472

12 (C) the disposition thereof:

- i. Unpublished opinion No. 2010-up-197
- ii. order denying petition for rehearing
- iii. order

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.

Danny Ray Gilliam,

Appellant.

Appeal From Pickens County
John C. Few, Circuit Court Judge

Unpublished Opinion No. 2010-UP-197
Submitted March 1, 2010 – Filed March 10, 2010

AFFIRMED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,

and Assistant Attorney General Deborah R.J. Shupe, all of Columbia; and Solicitor Robert Mills Ariail, of Greenville, for Respondent.

PER CURIAM: Danny Ray Gilliam appeals his conviction and sentence for petit larceny and first-degree burglary, arguing the trial court erred in allowing the State to reopen its case to enter evidence supporting an aggravating circumstance and in denying Gilliam's motion for a directed verdict. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities: State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001) (holding in criminal cases, the appellate court sits to review errors of law only and is bound by the factual findings of the circuit court unless clearly erroneous).

1. As to whether the trial court erred in allowing the State to reopen its case to enter evidence supporting an aggravating circumstance: State v. Humphery, 276 S.C. 42, 43, 274 S.E.2d 918, 918 (1981) (finding the trial court did not abuse its discretion by allowing the State to reopen its case-in-chief to submit evidence of an essential element of the offense charged and specifically permitting reopening of grand larceny case to prove value of stolen goods); State v. Hammond, 270 S.C. 347, 355-56, 242 S.E.2d 411, 415 (1978) (finding no prejudice where additional evidence submitted was merely corroborative of other evidence).²

2. As to whether the trial court erred in denying Gilliam's motion for a directed verdict: Rule 19(a), SCRCrimP (stating the grant of a defense motion for directed verdict of acquittal is proper only "if there is a failure of competent evidence tending to prove the charge"); State v. Venters, 300 S.C. 260, 264, 387 S.E.2d 270, 272-73 (1990) (requiring an appellate court

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

² We decline to address Gilliam's argument that his two prior convictions should be considered as one. This issue is unpreserved because Gilliam did not raise this issue to the trial court. See State v. Hamilton, 333 S.C. 642, 651, 511 S.E.2d 94, 98 (Ct. App. 1999) (holding issues not raised to and ruled on by the circuit court may not be raised for the first time on appeal).

reviewing a denial of a motion for a directed verdict to view the evidence in the light most favorable to the State; finding submission to the jury proper if any evidence, whether direct or circumstantial, reasonably tends to prove the guilt of the accused; and holding a trial court considering a motion for directed verdict is concerned only with the existence of evidence, not with its weight); State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (necessitating submission of the case to the jury if "any substantial evidence" has been presented that reasonably tends to prove the defendant's guilt or from which his guilt may be fairly and logically deduced).

AFFIRMED.

PIEPER and GEATHERS, JJ., and CURETON, A.J., concur.

The South Carolina Court of Appeals

The State,

Respondent,

v.

Danny Ray Gilliam,

Appellant.

The Honorable John C. Few
Pickens County
Trial Court Cases Nos. 2006-GS-39-00847 and 2006-GS-39-00849

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied.

Daniel G. Pieper J.

John D. Satter

Jasper M. Curran A.J.

Columbia, South Carolina

April 23, 2010

cc: Deputy Chief Appellate Defender Wanda H. Carter
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Assistant Attorney General Deborah R.J. Shupe
Robert Mills Ariail, Esquire

07-775



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

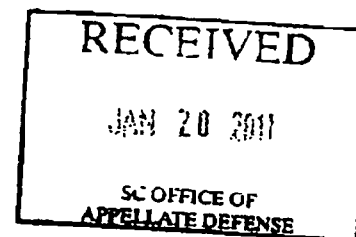
POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1060

FAX (803) 734-1499

January 20, 2011

Deputy Chief Appellate Defender Wanda H. Carter
South Carolina Commission
on Indigent Defense
P O Box 11589
Columbia, SC 29211



Re: The State v. Gilliam, Danny Ray

Dear Counsel:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

"Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.
For the Court

January 20, 2011."

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,

Daniel E. Shearouse
CLERK

The State v. Gilliam, Danny Ray
Page Two
January 20, 2011

DES/lda

cc: Assistant Attorney General Deborah R. J. Shupe
Robert Mills Ariail, Esquire
The Honorable Harold P. Welborn
The Honorable Tanya Gee

Danny Ray Gilliam #183100
Lieber Correctional Institution Smu 249
P.O. Box 205
Ridgeville, S.C. 29472

October 18, 2011

Honorable LeJette H. Gatlin
Clerk of Court, Pickens County

Pickens S.C. 29671

Re: Danny Ray Gilliam v. State (PCR Application)

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
2011 OCT 28 P 2:25

Dear Honorable LeJette H. Gatlin:

Enclosed you will find An PCR Application. Please filed and give it docket number. Also, Could you returned me a copy of PCR Application with the filing date and docket number.

Truly yours,

Danny R. Gilliam #18310
October, 18, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-39-1574
COUNTY OF PICKENS	)	
	)	
Danny Ray Gilliam,	)	
S.C.D.C. No. 183100,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed October 28, 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 Applicant was indicted at the April 2006 term of the Pickens County Grand Jury for first-degree burglary (2006-GS-39-0847) and petit larceny (2006-GS-39-0849). Robert L. Newton, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On September 5, 2007 the Honorable John C. Few sentenced the Applicant to concurrent terms of life imprisonment for first-degree burglary and ten (10) years imprisonment for petit larceny.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Gilliam, Op. No. 2010-UP-197 (S.C. Ct. App. filed March 10, 2010). A Petition for Writ of Certiorari was filed at the

South Carolina Supreme Court and denied by order dated January 20, 2011.

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, 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. The Applicant was not afforded an arraignment or represented by counsel during an arraignment.
2. Unreliable identifications of the Applicant by Officer Brian Bowen and Captain Dewey Smith.
3. The Applicant's two prior burglary convictions "occurred so close in time that they were a part of a continuous course of conduct and should have been presented only as one burglary conviction."
4. Insufficient evidence.

III.

For purposes of this Return, Respondent interprets all allegations as claims of ineffective assistance of counsel.

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

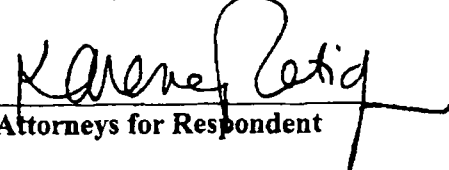
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

May 31, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF PICKENS)

IN THE COURT OF COMMON PLEAS

2011-CP-39-1574

DANNY RAY GILLIAM, 183100)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

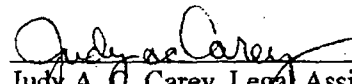
STATE OF SOUTH CAROLINA,)

Respondent.)

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:

**Danny Ray Gilliam, 183100
Lieber Correctional Institution
Post Office Box 205
Ridgeville SC 29472**

DATED this 31st day of May, 2012.


Judy A. O. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	Case No(s): 2011CP3901574
	)	
Danny Ray Gilliam,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

December 17, 2012
Pickens, South Carolina

B E F O R E:

HONORABLE EDWARD W. MILLER, Judge.

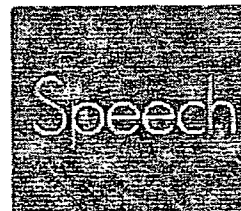
A P P E A R A N C E S:

KAREN RATIGAN, Esquire
Attorney for the State

DAVID R. PRICE, JR., Esquire
Attorney for the Applicant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



CAT 7™

I N D E XDIRECT CROSS REDIRECT RECROSS

Robert Newton

by Mr. Price 5

by Ms. Ratigan 19

Danny Gilliam

by Mr. Price 23

Ruling of the Court 30

Certificate of Reporter 31

EXHIBITS PAGENO.DESCRIPTIONID EV**APPLICANT EXHIBITS**

(No exhibits offered.)

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 17th day of December, 2012 at approximately 10:20 a.m.)

MS. RATIGAN: May it please the Court?

THE COURT: Yeah.

MS. RATIGAN: This is the case of Danny Ray Gilliam versus the State of South Carolina. The docket number is 2011-CP-39-1574. Mr. Gilliam was indicted for First Degree Burglary, Petty Larceny and Possession of a Stolen Motor Vehicle. He was represented on these charges by Mr. Newton. The case was brought to trial. Judge Few granted a directed verdict on the Possession of Stolen Vehicle charge, but Mr. Gilliam was found guilty by the jury of Burglary First and Petty Larceny.

On September 5th of 2000, the judge -- 2007, the judge levied concurrent sentences of life imprisonment for Burglary First and 10 years for Petty Larceny. The case was appealed. The Court of Appeals affirmed his convictions and sentences in March of 2010 while a subsequent petition for writ of certiorari was filed, that was denied by the Supreme Court on January of 2011. This application was timely filed. The State is ready to proceed.

1 **THE COURT:** Okay. Have at it.

2 **MR. PRICE:** Your Honor, David Price on
3 behalf of Mr. Danny Ray Gilliam. Your Honor, if it
4 pleases the Court, I'll call Mr. Robert Newton to
5 the stand.

6 **THE COURT:** Come on around.

7 **THE CLERK:** Place your left hand on the
8 Bible and raise your right hand please.

9 **ROBERT NEWTON**

10 having first been sworn, testifies as follows:

11 **THE CLERK:** State your full name for the
12 record.

13 **THE WITNESS:** Robert Lee Newton, Jr.

14 **DIRECT EXAMINATION**

15 **BY MR. PRICE:**

16 **Q** Mr. Newton, my name is David Price. We met
17 before. Mr. Newton, how long have you been a practicing
18 attorney in South Carolina?

19 **A** Sworn in in 1995.

20 **Q** And you represented Mr. Danny Ray Gilliam in a
21 trial in this matter?

22 **A** I did.

23 **Q** Okay. Uh, do you remember the circumstances
24 whereby you came to represent him?

25 **A** I do. I believe it was an appointed case under

1 the Public Defender contract.

2 Q And what charges exactly did you represent him
3 on?

4 A Well, there were about 30 charges in all.
5 Burglaries and larcenies mostly.

6 Q The charges that are at issue here were a
7 Burglary First and Petty Larceny and Possession of Stolen
8 Vehicle?

9 A Correct.

10 Q And, uh, prior to trial, did Mr. Gilliam
11 receive a plea offer?

12 A He did.

13 Q Did you share that with him?

14 A I did.

15 Q Did Mr. Gilliam -- what did he decision in
16 terms of whether or not to accept it?

17 A He denied to accept it. He said he wanted to
18 take his chances at trial.

19 Q Okay. Do you remember when this trial
20 occurred?

21 A Let me look at my notes.

22 THE COURT: November 4th, 2007.

23 BY MR. PRICE:

24 Q Prior to trial, did you have an opportunity to
25 review the evidence with Mr. Gilliam?

1 **A** Yes.

2 **Q** How many meetings do you remember y'all had?

3 **A** There were several. I don't recall exactly how
4 many but there were at least several meetings. Four or
5 five.

6 **Q** Do you recall the State's evidence against Mr.
7 Gilliam in terms of what your impression was?

8 **A** I did not want to go to trial. I advised him
9 to take the offer. I believe it was 17 years.

10 **Q** All right.

11 **A** I thought he would likely be convicted at
12 trial. At the time, he said, Mr. Newton, if I take that
13 deal, by the time I get out, I'm going to be an old man
14 and my life will be over anyway. So I will just take my
15 chances at trial. That was his attitude at the time.

16 **Q** Did Mr. Gilliam share any evidence with you in
17 terms of what you could present on his behalf at trial?

18 **A** No, I don't recall.

19 **Q** Do you recall whether he called any witnesses
20 on behalf of Mr. Gilliam?

21 **A** I don't.

22 **Q** Do you know whether Mr. Gilliam had or proposed
23 any witnesses for you to offer?

24 **A** Not that I recall.

25 **Q** Prior to trial, do you recall whether Mr.

1 Gilliam had made any sort of incriminating statement to
2 law enforcement?

3 A I believe law enforcement claimed he made some
4 oral statements. But he denied making those statements.

5 Q Do you remember the context or the content of
6 those oral statements?

7 A I don't remember the content.

8 Q Okay. My understanding from reading the
9 transcript is law enforcement testified, uh, that Mr.
10 Gilliam told him that he had been in a red Jeep on the
11 road in which the burglary allegedly occurred. You
12 recall that?

13 A Vaguely.

14 Q All right. You recall whether that statement
15 was offered at trial?

16 A I don't know, sir.

17 Q I will submit to you that it was. My question
18 is whether you recall holding a Jackson v. Deno hearing
19 as to that.

20 A Yes. Yes.

21 Q Okay. Do you recall who testified?

22 A Mr. Gilliam testified.

23 Q At the Jackson v. Deno hearing?

24 A I believe he did.

25 Q I will submit that --

1 **A** And one of the officers did.

2 **Q** You recall Mr. Gilliam testified at the Jackson
3 v. Deno hearing. I believe the only witness that
4 testified was Detective Bowen or Sergeant Bowen. You
5 recall that?

6 **A** I do. Yes.

7 **Q** Okay. The Jackson v. Deno hearing starts on
8 page 42 of your transcript, Mr. Newton. Do you recall if
9 you had an opportunity to cross-examine the State's
10 witness at that hearing?

11 **A** I believe I did.

12 **Q** You recall whether you made any sort of
13 argument to exclude, uh, the statement?

14 **A** I don't recall specifically.

15 **Q** Okay. It may refresh your memory if you look
16 at page 52 of your transcript. Line 1 through 6.

17 **A** (Reading.) I believe at the end of the Jackson
18 v. Deno hearing, I did not think that the judge was going
19 to overturn it. So I did not argue that it should be.

20 **Q** So you don't believe you made any argument that
21 the statement should have been excluded?

22 **A** Apparently not.

23 **Q** Did you make any argument that the statement
24 was involuntary?

25 **A** I don't recall if I did.

1 Q Okay. Did the State present any recording of
2 that statement?

3 A No, there was no recording.

4 Q There was a verbal statement, correct?

5 A Yes.

6 Q Was there a written statement?

7 A No.

8 Q Okay. Do you know whether Mr. Gilliam was
9 shackled when he allegedly made that statement?

10 A I don't recall.

11 Q Okay. You know whether anyone besides
12 Detective Bowen heard the alleged statement or Sergeant
13 Bowen?

14 A I don't recall.

15 Q Okay. I'll refresh your memory by looking at
16 page 43 of the transcript, lines 12 through 13. You may
17 be missing page 43.

18 A I believe I am.

19 Q Okay. I was too. I asked them to give it to
20 me. I'm going to offer you my page 43.

21 MR. PRICE: Your Honor, do you have page 43?

22 THE WITNESS: Mine skips from 42 to --

23 THE COURT: No, I'll look at it after he
24 finishes.

25 BY MR. PRICE:

1 Q Page 43, line 12, Mr. Newton.

2 A I asked who else was in the room with you. The
3 answer was Lieutenant Byers.

4 Q Okay. Did you examine Lieutenant Byers during
5 the Jackson v. Deno hearing?

6 A Actually, that was not my question. That was
7 the prosecutor's. I don't recall if I examined -- if Mr.
8 Byers was called to the stand as well.

9 Q I would submit to you that he was not. He was
10 not called. Do you know why you didn't call him?

11 A I don't recall.

12 Q Okay. Did you not have a right to have those
13 witnesses separated and independently examined as to the
14 contents and the circumstances of the alleged verbal
15 statement?

16 A I could have called Lieutenant Byers to the
17 stand. I could have made a motion for sequestration,
18 yes, it's possible.

19 Q Do you know why you -- do you know why you --

20 A I do not.

21 Q If you don't mind looking at page 48 of your
22 transcript, I'm going to start at line 10, Mr. Newton.
23 You recall asking Sergeant Bowen, it's your position he
24 made the statement regarding the red Jeep Cherokee before
25 he asked for an attorney. You recall what Mr. Bowen --

1 I'm sorry -- Sergeant Bowen said?

2 A The answer to that was yes, according to the
3 transcript.

4 Q Okay. And then you asked was that statement,
5 that alleged statement in response to a question on your
6 part. He said what?

7 A That was after we asked him if he wanted to
8 provide a written statement.

9 Q And then what did you ask?

10 A What did he say specifically in answer to that
11 question.

12 Q And Sergeant Bowen said I don't want to put
13 anything in written. I'd like to speak to a lawyer. I
14 don't know if those are his exact words, but basically,
15 that's what he said. You recall that exchange, Mr.
16 Newton?

17 A I don't have any independent memory of it. But
18 certainly, if that's what the transcript says, then
19 that's what happened.

20 Q Do you not agree that it sounds like Mr.
21 Gilliam may have asked for an attorney before making the
22 alleged statement about the Jeep?

23 A I'm sorry?

24 Q I said do you not agree that based on that
25 exchange from Sergeant Bowen that it sounds like Mr..

1 Gilliam may have made the alleged statement before about
2 the Jeep after he asked for an attorney?

3 A The officer was asked if he made the statement
4 before he asked for an attorney. The officer said yes.

5 Q And then you asked was that statement, that
6 alleged statement in response to a question on your part.
7 Sergeant Bowen said it was after we asked him if he
8 wanted to provide a written statement. Then you said
9 what did he say specifically in answer to that question.
10 I don't want to put anything in writing. I'd like to
11 speak to a lawyer. I don't know if those were exact
12 words but that's basically what he said. So do you not
13 agree that at a minimum, that testimony is inconsistent
14 about whether or not Mr. Gilliam asked for an attorney
15 before he made a statement about a Jeep?

16 A Yes, it would appear to be.

17 Q And would you not agree that Sergeant Bowen
18 didn't even have full memory of what statement about a
19 Jeep that Mr. Gilliam actually made?

20 A That's correct.

21 Q Thank you. If you don't mind, I'm looking at
22 page 48, line 24 now. That's immediately after the last
23 exchange that we read. You asked Sergeant Bowen, perhaps
24 you misunderstood my question, Officer, but in regards to
25 the alleged statement that he made regarding the red Jeep

1 Cherokee, was that statement of his in response to a
2 specific question and what did Sergeant Bowen say?

3 A He said I don't remember if it was in response
4 or not. We were talking about the case. He admitted
5 being in a Jeep that day.

6 Q You asked him what were you talking about
7 precisely. He said what?

8 A I don't remember the specific words.

9 Q And you agree that the statement by Mr. Gilliam
10 that he allegedly made that he was in a red Jeep on the
11 day the officers saw a red Jeep leaving the, uh, scene of
12 the burglary, that was lynchpin evidence for the State,
13 was it not?

14 A That was one piece of evidence.

15 Q And it was an important piece, would you agree?

16 A Sir?

17 Q In terms of your memory of how that trial
18 played out.

19 A I believe so.

20 Q And do you not agree that the statement that
21 was presented by Sergeant Bowen appears to have been
22 incomplete, was not written down and was not corroborated
23 by any other witness besides Sergeant Bowen?

24 A That appears to be the case.

25 Q And would you not agree that there appears to

1 have been at least some inconsistency in the testimony by
2 the State about whether that statement was elicited after
3 the client requested an attorney?

4 A Right. The officer's testimony was very vague.

5 Q Okay.

6 A The gist of it that he was claiming was that
7 Mr. Gilliam admitted to being (inaudible). But as far as
8 other details, he was very vague.

9 Q And despite that vagueness of details, you
10 conceded the voluntariness of the statement, did you not?

11 A I did.

12 Q Did you not realize that by doing so, you
13 failed to preserve the issue for appeal?

14 A I don't believe I was even thinking along those
15 lines at the time.

16 Q Okay. I want to change gears for a minute. I
17 want to ask about the first degree burglary charge
18 itself, okay?

19 A Okay.

20 Q What was the basis for the first degree? I
21 know that it was alleged that Mr. Gilliam entered a
22 dwelling with the purpose of intending a crime. But what
23 was that third element that made it --

24 A Prior record. Prior burglaries.

25 Q Two prior convictions?

1 A At least two priors.

2 Q And the conviction on the first burglary first
3 resulted in the life sentence that Mr. Gilliam is
4 presently serving, correct?

5 A That is correct.

6 Q Okay. And do you recall an issue at trial as
7 to how those convictions were offered into evidence?

8 A I don't recall.

9 Q Okay. Do you recall that, uh, actually when
10 the State closed the case, you moved for directed verdict
11 because those convictions had not been entered into
12 evidence?

13 A That's correct. Then Judge Few allowed the
14 State to reopen the case to put those in.

15 Q And you objected?

16 A I did.

17 Q And you objected how many times? Do you
18 remember?

19 A I don't.

20 Q When I read the transcript, it looked like you
21 raised that argument three times.

22 A Okay.

23 Q Okay. But what I want to ask you about is
24 whether you remember the dates of those two prior
25 burglaries?

1 **A** I do not remember off hand.

2 **Q** Okay. I'll submit to you, for purpose of this,
3 they were September 20th, 1996 and September 21st, 1996.
4 Okay. And so the State failed to enter into evidence.
5 And you moved for directed verdict, correct? And was
6 that motion granted?

7 **A** No, I argued the point for a while. And Judge
8 Few allowed the prosecutor to reopen their case to put
9 those into evidence.

10 **Q** Okay. You remember -- we talked about the
11 dates. Do you remember any of the other circumstances
12 behind those two prior convictions?

13 **A** I don't recall.

14 **Q** Do you know whether they resulted from plea or
15 trial?

16 **A** I don't know.

17 **Q** In the event they resulted from plea, do you
18 know whether it was a plea on the same day?

19 **A** I don't recall.

20 **Q** And do you know whether the sentences were
21 served concurrently?

22 **A** I don't.

23 **Q** Do you know whether you at any time objected or
24 argued that those two prior burglaries should count as
25 one conviction under the statute?

1 A I don't recall if I did in this case. But I
2 have argued that very point in other cases.

3 Q Do you know whether you argued that they should
4 be considered a continuous course of conduct and thus
5 considered as one conviction under the statute?

6 A I don't know whether I did or not.

7 Q Do you agree that if you did not then that
8 failure to make that argument would have failed to
9 preserve the issue for appeal?

10 A True.

11 Q Are you aware that Mr. Gilliam did, in fact,
12 raise that issue?

13 A I have not read it.

14 Q I will submit to you that he did. Since you
15 haven't read it, I would like to show you the order by
16 the Court of Appeals and specifically footnote 2. I
17 would just note -- if you can testify as to how the Court
18 actually -- the Court of Appeals actually addressed his
19 argument that those two convictions should have been
20 treated as one.

21 A We decline to address given argument that his
22 two prior convictions should be considered as one. The
23 issue is unpreserved because Gilliam did not raise this
24 issue to the trial court.

25 Q Thank you, Mr. Newton.

1 A Uh-huh.

2 Q Mr. Newton, uh, hindsight is always 20/20. But
3 when the State failed to present any evidence of the two
4 prior convictions before the close of his case, why did
5 you move for directed verdict at that time?

6 A I moved for directed verdict on the burglary
7 first.

8 Q Yes, sir.

9 A The idea was that if it was going to go
10 forward, it should be a burglary second at most.

11 Q Because of the failure to enter the --

12 A Correct. Correct.

13 Q Why did you not just let the case go to the
14 jury without that evidence?

15 A The State had closed it's case. It's time to
16 make a directed verdict. I thought I had good grounds to
17 make a directed verdict at that time.

18 Q Did you agree that the result of that motion
19 was to call the Court's attention to the error?

20 A Unfortunately, yeah. The judge allowed the
21 prosecutor to correct her error. So --

22 Q Thank you, Mr. Newton. I have no further
23 questions.

24 **CROSS-EXAMINATION**

25 **BY MS. RATIGAN:**

1 Q Very briefly just to make sure we're all on the
2 same page. So you had, uh, -- you got appointed on the
3 Public Defender contract?

4 A No, it was actually through OID.

5 Q Okay.

6 A But it was an appointed case.

7 Q And you filed the usual Brady and Rule 5
8 motions?

9 A Yes.

10 Q And you reviewed all the State's evidence with
11 your client?

12 A Yeah, I had several meetings with him in the
13 jail where we reviewed the evidence and prepared for
14 trial.

15 Q And he told you kind of his version of events?

16 A He did.

17 Q Okay. And you reviewed with him the evidence,
18 well, the items stolen from the house in question were
19 recovered in the red Jeep. Y'all talked about that?

20 A I don't recall discussing that specifically.

21 Q Were you aware prior to trial that Officer
22 Bowen had identified your client driving the Jeep at the
23 time. Did you know about that part of trial?

24 A Yes. Right. I believe he said he knew my
25 client and saw him passing on the road and recognized

1 him.

2 Q And you discussed with Mr. Gilliam the impact
3 that that officer's testimony would have on the case?

4 A Yes.

5 Q Would it be fair to say that this was always
6 going to go to trial based on what your client told you
7 about that plea offer?

8 A I was trying to negotiate the outcome. Again,
9 I did not think it would be a good idea to go to trial.

10 Q And you discussed with him your concerns about
11 taking the case to trial?

12 A Yes.

13 Q And your trial strategy was basically that it
14 wasn't him?

15 A I was just trying to hold the State's evidence
16 -- hold them to the standard of proof beyond a reasonable
17 doubt of every element of their case.

18 Q There were no actual defenses, alibi, nothing
19 of that nature?

20 A Yeah.

21 MS. RATIGAN: Okay. That's all I have, Your
22 Honor.

23 THE COURT: Anything else?

24 MR. PRICE: Uh, nothing further for Mr.
25 Newton, Your Honor.

1 **THE COURT:** You did raise the issue about
2 the, uh, burglaries being one conviction.

3 **MR. PRICE:** Your Honor, uh, my res --

4 **THE COURT:** I'm questioning the witness.

5 **MR. PRICE:** Oh, I'm sorry.

6 **THE COURT:** On page 130 at line 11, those are
7 not the only burglary convictions that this
8 gentleman had, if I'm not mistaken. Those were the
9 ones that were relied on, is that correct? Okay.

10 Yes, sir.

11 **MR. PRICE:** Nothing, Your Honor. I'm sorry
12 for speaking out of turn.

13 **THE COURT:** That's alright. Okay. Anything
14 else?

15 **MS. RATIGAN:** Nothing.

16 **THE COURT:** Step down.

17 **MR. PRICE:** Your Honor, before calling my
18 next witness, I do want to make sure that you have a
19 copy of the Court of Appeals order.

20 **THE COURT:** The decision?

21 **MR. PRICE:** Yes, sir. The decision.

22 **THE COURT:** I got it. I got it.

23 **MR. PRICE:** Footnote 2 that I would like to
24 direct the Court's attention to.

25 **THE COURT:** Well, I see that. I also look at

1 page 130, line 11. But okay, go ahead. Call your
2 next witness.

3 MR. PRICE: Thank you, Your Honor. Uh, Your
4 Honor, we would call Mr. Danny Ray Gilliam.

5 THE CLERK: Place your left hand on the Bible
6 and raise your right hand please.

7 DANNY GILLIAM

8 having first been sworn, testifies as follows:

9 THE CLERK: State your full name for the
10 record.

11 THE WITNESS: Danny Ray Gilliam.

12 THE CLERK: Please be seated.

13 DIRECT EXAMINATION

14 BY MR. PRICE:

15 Q Mr. Gilliam, uh, the prior convictions at
16 issue, you're familiar with which two they are?

17 A Yes, sir.

18 Q Okay. In what county were you convicted in?

19 A Uh, I think Greenville or Pickens. I'm not
20 sure.

21 Q Did you go to trial on those two charges?

22 A No, sir. I was offered a plea. If I pleaded
23 guilty to one, they would run the other one concurrent.

24 Q Okay. So you plead guilty to both of those?

25 A Right.

1 Q And you plead guilty on the same day?

2 A Yeah.

3 Q You served those sentences concurrently?

4 A I sentenced -- I done one sentence and I took
5 care of both of them.

6 Q Did you understand at the time you plead that
7 you were pleading to two separate burglaries or two
8 separate charges?

9 A No, sir. I was just under the impression that
10 if I plead -- they had two charges on me, if I plead
11 guilty to one, that they would run the other one
12 concurrent. It would be like me doing one sentence,
13 doing one charge.

14 Q You recall at trial whether your attorney
15 argued that those two convictions or continuous course of
16 conduct should be treated as one conviction?

17 A I'm really not sure, but I think he did raise
18 the issue that it should have been tried as one. Being
19 that they was so close together, they should have been
20 joined.

21 Q Do you know that there was a ruling on that
22 issue when brought up on appeal?

23 A I'm not sure.

24 Q Okay. Other than the, uh, things that I
25 questioned Mr. Newton on, is there anything else you

1 believe Mr. Newton did in the course of his
2 representation of you that should entitle you to PCR?

3 **A** I felt that Mr. Newton should have asked a few
4 more questions and argued a few more cases in my trial on
5 like, one, maybe the guy who investigated that burglary.
6 I feel like he should have pressed the issue with the
7 fingerprints.

8 **Q** Okay. Stop. You need to tell us specifically
9 Detective Robinson. What is it you would like to have
10 come to about Detective Robinson?

11 **A** I would have liked for him to ask Detective
12 Robinson about the gun that was given back to the people
13 that belonged to the residence. They never even
14 fingerprinted. If you look at the trial transcript, you
15 will see that they was never even fingerprinted. They
16 was just supposedly took out of the vehicle and gave back
17 to the people that they belonged to without them even
18 being fingerprinted. They couldn't get no fingerprints.
19 If they got fingerprints, but they wasn't mind. But I
20 mean out of everything that they fingerprint, why all
21 these guns that was inside of this vehicle that I am
22 supposed to be wanting took out of this residence, why
23 wasn't they fingerprinted? Why was they took out of the
24 vehicle and just given back?

25 **Q** Other than the issue of the fingerprints and

1 the issue about the voluntariness of the statement about
2 the Jeep and the, uh, failure to completely articulate
3 about the two convictions, is there anything else?

4 **A** No, sir.

5 **Q** Okay. Is there anything else that I've asked
6 you that the Court needs to know?

7 **A** No, sir.

8 **Q** Okay. Thank you. I have no further questions.
9 Ms. Ratigan may have some.

10 **MR. PRICE:** I have no questions for Mr.
11 Gilliam, Your Honor.

12 **THE COURT:** All right. How you doing?

13 **THE WITNESS:** I'm doing fine. How you doing,
14 sir?

15 **THE COURT:** Good. Where they got you?

16 **THE WITNESS:** Lieber Correctional
17 Institution.

18 **THE COURT:** Okay. You doing okay?

19 **THE WITNESS:** Yeah. I would be doing a lot
20 better if I could get some relief.

21 **THE COURT:** Okay. Well, you can step down.

22 **MR. PRICE:** Your Honor, that's our case. I
23 have brief argument.

24 **THE COURT:** Okay. You don't want to give the
25 State an opportunity?

1 **MR. PRICE:** Not unless I have to, Your Honor.

2 **THE COURT:** Okay. Well, I'm going to make
3 you give them an opportunity.

4 **MS. RATIGAN:** We have no witness to call. We
5 would just rest on the record, Your Honor.

6 **THE COURT:** Okay. Yes, sir.

7 **MR. PRICE:** Your Honor, uh, the standard for
8 PCR is a two-part test.

9 **THE COURT:** I know it. You don't have to go
10 through it.

11 **MR. PRICE:** Your Honor, basically, there are
12 two issues that we see. The conceding the
13 voluntariness of the statement about the Jeep.
14 There was a very important piece of evidence. As it
15 happened, those officers saw a red Jeep leave the
16 residence that was burglarized. They did not find
17 -- whoever was driving the Jeep was not arrested.
18 The person got away. So the alleged admission that
19 one was in a red Jeep was very important.

20 Sergeant Bowen could not testify to the exact
21 contents of that alleged statement. His testimony
22 was inconsistent as to whether it was offered after
23 Mr. Gilliam requested an attorney, which he
24 undoubtedly did. The statement was not in writing.
25 There was at least one other witness to the

1 statement. That witness was not called, was not
2 cross-examined. Mr. Gilliam's counsel conceded the
3 voluntariness and admissibility without making an
4 argument. Certainly, there was an argument as to
5 whether that statement was made, as to whether it
6 was voluntary and whether it was made after the
7 request for an attorney. That argument was not
8 articulated and the issue was not preserved for
9 appeal.

10 The other thing was the issue with the two
11 prior convictions. It is somewhat an open question
12 in our law as to whether, uh, two incidents so close
13 in time as those are part of a continuous course of
14 conduct and should be treated as one conviction.
15 That has been addressed in the context of the LWOP
16 statute. I was unable to find any case law in the
17 context of the burglary statute.

18 It is undeniable that the Court of Appeals
19 ruled that that issue was not brought at trial. I
20 agree that it was touched on and would submit that
21 it was not properly articulated. According to the
22 ruling of the Court of Appeals, it was not, uh, --
23 it was not adequately raised.

24 **THE COURT:** Yeah, I think he must have been
25 in shock when he found out the judge was going to

1 allow him to reopen the record with something.

2 **MR. PRICE:** I would say that Mr. Newton did
3 an excellent job arguing that point. He raised it
4 over and over again. And my guess having been in
5 his shoes is we lost one argument because of the
6 other being so obvious. But at any rate, I don't
7 think there's any questions based -- that there's
8 some question on the law that Mr. Gilliam was -- he
9 ended up not getting it heard by the Court of
10 Appeals because of it. There was some prejudice to
11 that.

12 **THE COURT:** Yeah. Well, then I guess someone
13 could criticize the prosecutor for not introducing
14 the convictions, the subsequent burglary convictions
15 as well. I mean, they -- how many did you have, Mr.
16 Gilliam? You had a bunch?

17 **THE WITNESS:** Yeah, they said I had a bunch.

18 **THE COURT:** Well, you had more than those
19 six, right?

20 **THE WITNESS:** No, sir.

21 **THE COURT:** That's what they told the court.

22 **THE WITNESS:** That's what I went to trial on
23 in '06. I was locked up in the, uh, -- I was locked
24 up for the charge. That's what I'm in prison for
25 now.

1 **THE COURT:** Yeah, and then you had a burglary
2 -- no, that was a conviction in '06 for Burglary
3 second. Then you had a Burglary third in '98 or
4 something like that.

5 **THE WITNESS:** No, sir.

6 **THE COURT:** The prosecutor didn't introduce
7 all those.

8 **THE WITNESS:** No, sir. I had a -- in '06, I
9 was charged for the burglary that I'm serving time
10 on now. The burglaries that -- that was in '96, '97
11 the last burglaries that I was ever convicted on. I
12 was never convicted on any other burglary since '96
13 or '97 until '06.

14 **THE COURT:** Well, I read that in the
15 transcript. Well, Mr. Gilliam, I'm sorry the way
16 the chips fell with you, but I don't find that you
17 carried your burden of proof and I'm going to deny
18 your application. I wish you the best of luck
19 though. All right.

20 (WHEREUPON, the proceedings conclude at
21 approximately 11:02 a.m.)

22

23

24

25

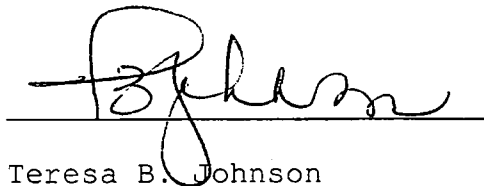
CERTIFICATE

31 303

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Pickens, South Carolina, on this 22nd day of May, 2013.

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

A handwritten signature in black ink, appearing to read "T. Johnson", is written over a horizontal line.

Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

Danny Ray Gilliam,
S.C.D.C. No. 183100,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. No. 2011-CP-39-1574

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2013 JAN 24 2:56

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 28, 2011. The Respondent made its return on May 31, 2012. An evidentiary hearing into the matter was convened on December 17, 2012 at the Pickens County Courthouse. The Applicant was present at the hearing and represented by David R. Price, Jr., 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, Robert L. Newton, Jr., 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.

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 Applicant was indicted at the April 2006 term of the Pickens County Grand Jury for first-degree burglary (2006-GS-39-

0847), petit larceny (2006-GS-39-0849), and possession of a stolen vehicle 92006-GS-39-0867).

Robert L. Newton, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty of first-degree burglary and petit larceny.¹ On September 5, 2007 the Honorable John C. Few sentenced the Applicant to concurrent terms of life imprisonment for first-degree burglary and ten (10) years imprisonment for petit larceny.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Gilliam, Op. No. 2010-UP-197 (S.C. Ct. App. filed March 10, 2010). A Petition for Writ of Certiorari was filed at the South Carolina Supreme Court and denied by order dated January 20, 2011.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. The Applicant was not afforded an arraignment or represented by counsel during an arraignment.
2. Unreliable identifications of the Applicant by Officer Brian Bowen and Captain Dewey Smith.
3. The Applicant's two prior burglary convictions "occurred so close in time that they were a part of a continuous course of conduct and should have been presented only as one burglary conviction."
4. Insufficient evidence.

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

¹ The possession of stolen vehicle charge was dismissed as a result of trial counsel's motion for directed verdict. (Trial transcript, p.142).

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 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).

Trial counsel testified he filed discovery motions, received those materials, and reviewed the evidence with the Applicant. Trial counsel testified they also reviewed the Applicant's version of events and the fact that police officers had identified the Applicant as the driver of the red Jeep. Trial counsel testified the Applicant rejected the State's plea offer and that this case was always going to result in a trial. Trial counsel testified there were no defenses to argue in

this case and the trial strategy was to argue the Applicant was not the perpetrator. Trial counsel testified there was a Jackson v. Denno hearing but could not recall why the other officer present during the Applicant's statement (Byars) did not testify. Trial counsel acknowledged Sergeant Bowen's testimony at the Denno hearing was vague about the point in time the Applicant asked for an attorney but that he believed the judge would find the Applicant's statement was voluntary. Trial counsel objected when the State moved to reopen its case in order to present evidence of the Applicant's prior burglary convictions. Trial counsel stated he did not, however, argue the two prior convictions should have been treated as one.

The Applicant stated trial counsel should have asked more questions at trial. The Applicant also stated he pled guilty to the prior convictions (used by the State for enhancement purposes) on the same day.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly handle the Jackson v. Denno hearing. The Denno hearing was held to determine the voluntariness of the Applicant's admission to police that he was in the red Jeep on the day in question. Sergeant Bowen was the sole witness at the hearing. Trial counsel questioned Bowen about the timing related to when the Applicant made his statement. (Trial transcript, pp.47-49). The trial judge found the Applicant's statement was voluntary. (Trial transcript, p.52). The Applicant failed to prove trial counsel's performance was deficient because he did question Bowen about the timing of the Applicant's statement relative to when he requested an attorney.

Regardless, the Applicant cannot prove any resulting prejudice. The Applicant failed to prove his statement was not voluntary. See State v. Salisbury, 330 S.C. 250, 272, 498 S.E.2d 655, 666 (Ct. App. 1998) (finding that, even where a Denno hearing was not held, the defendant could not prove error because the statements were voluntary and admissible). Further, the State presented overwhelming evidence of guilt. Sergeant Bowen saw a red Jeep pull out of the victim's driveway and identified the Applicant as the driver. (Trial transcript, pp.80-83). After the Applicant bailed out of the Jeep and ran away, Sergeant Bowen stated they found the victim's stolen items in the Jeep (which the victim confirmed were his property). (Trial transcript, p.77; pp.82-84; pp.101-03; p.106). Captain Smith also testified Sergeant Bowen identified the Applicant as the driver of the red Jeep. (Trial transcript, pp.100-01). As such, the Applicant failed to prove prejudice. See Franklin v. Catoe, 346 S.C. 563, 570 n. 3, 552 S.E.2d 718, 722 n. 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial); Geter v. State, 305 S.C. 365, 367, 409 S.E.2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged the two prior convictions the State used to satisfy an element of first-degree burglary. During his motion for directed verdict, trial counsel argued the State had not proven the prior convictions necessary for an element of first-degree burglary in this case. (Trial transcript, pp.126-27). The State then moved to reopen the record in order to present the Applicant's prior convictions and the trial judge allowed it. (Trial transcript, pp.127-28). The State submitted the prior convictions it intended to use and trial counsel objected. Trial counsel argued the legislature did not intend for the two prior convictions to have "happened at the same

time." The State replied the prior convictions were for burglaries on September 20 and 21, 1996 and at different residences with different victims. (Trial transcript, p.130). The trial judge denied trial counsel's motion for directed verdict. (Trial transcript, p.131). This Court finds the Applicant failed to prove trial counsel was deficient because he did challenge the use of two prior convictions for burglaries committed on adjacent days. Regardless, the Applicant cannot prove he was prejudiced by the use of these two particular prior convictions because he had eleven prior convictions for either second- or third-degree burglary. (Trial transcript, p.188).

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 are hereby denied and dismissed.

CONCLUSION

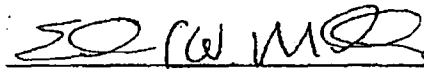
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this 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 17th day of January, 2013.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

WITNESSES

Brian Bolding

Pickens County Sheriff's Office

1/22/2006

DOCKET NO. 2006-GS-39-847

JMM

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

April TERM 2006

THE STATE

VS.

DANNY RAY GILLIAM

ARREST WARRANT NUMBER

1681568

ACTION OF GRAND JURY

TRUE BILL

Date APR 18 2006

Foreperson of Grand Jury

VERDICT

Guilty

0079

Indictment for

BURGLARY FIRST DEGREE

VIOLATION § 16-11-0311

Foreperson of Petit Jury

Date:

9-5-07

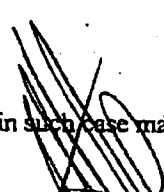
STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
BURGLARY FIRST DEGREE

At a Court of General Sessions, convened on April 18, 2006 the Grand Jurors of Pickens County present upon their oath:

That DANNY RAY GILLIAM did in Pickens County, on or about the 11th day of January, 2006, willfully and unlawfully enter the dwelling of ROGER DALE GANTT located at _____ in Pickens, without consent and with the intent to commit a crime therein. DANNY RAY GILLIAM has 2 prior convictions for burglary or housebreaking or a combination of both. 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

WITNESSES

1/22/2006

DOCKET NO. 2006-GS-39-849

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

April TERM 2006

THE STATE

VS.

DANNY RAY GILLIAM

ARREST WARRANT NUMBER

1681569

ACTION OF GRAND JURY

TRUE BILL

DATE APR 18 2006

Delores Lopez
Foreperson of Grand Jury

VERDICT

Guilty

0480

Indictment for

PETIT LARCENY

VIOLATION § 16-13-0030(A)

Samuel
Foreperson of Petit Jury Date: 9-5-07

vcp

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
PETIT LARCENY

At a Court of General Sessions, convened on April 18, 2006 the Grand Jurors of Pickens
County present upon their oath:

That DANNY RAY GILLIAM did in Pickens County, on or about the 11th day of January, 2006, feloniously take
and carry away the personal property of ROGER DALE GANTT, to wit: Two 22 caliber rifles, with a total value
less than One Thousand Dollars (\$1,000.00) 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