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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN The Supreme Court

pro se. Appeal from Cherokee, Co.
J. Deham Cole. Circuit Court Judge.

The STATE

Respondent

vs.

Ricky BRANNON

pro se. Appellant

pro se Response of Appellant.

Pro se. Appellant Ricky BRANNON, Do hereby
Timely submits his pro se Response, To The
JOHNSON vs STATE 364 S.E.2d 201 (1988) "Petition"
Filed by Appellate Counsel, And dated JUNE 6, 2011.
And recieved by Appellant ON JUNE 9, 2011. At
The Broad River Corr. INST. MAIL Room.

Dated September 6, 2011,

S/ Ricky Brannon

Procedural History Concured, but partially
Amended.

Appellant Concurs with the General Statement
AND/OR procedural history of the case. Except to
Amend. And state, That His Notice of Appeal was
timely filed on Appellants behalf, And That an Appeal
was perfected by Appellate Counsel. But That The
S.C. Court of Appeals, Affirmed Appellants Conviction.
And Sentence. ON The basis, That Appellants Issue ON
Appeal was not preserved for Appellate review AS
pursuant to Rule 220. (b). SCA CR. under The authority
of State v. Schumpert 312 S.C. 502, 507, 435 S.E.2d 857
(1993) (Unless an objection is made at the time the evidence
is offered and a final ruling made, the issue is not preserved
for review. Citing also, State v. Wood 362 S.C. 520, 526, 608
S.E. 2d 435. (CT App 2004). (Holding a party opposing the
admission of Evidence must object to the evidence when it
is introduced because, "A motion in Limine is not a final
determination") cert denied August 15 2006).

ISSUE 1.

SUBJECT MATTER JURISDICTION OF THE TRIAL COURT, FAILURE OF PCR COURT, TO PROPERLY ADJUDICATE THE ISSUE BASED ON FACTS IN RECORD.

Subject matter Jurisdiction of The Circuit Court maybe raised at any time. KOON v. STATE 358. S.C. 359. 2004 STATE v. CAROLL 30. S.C. 85. 8. S.E. 433 (1889).

The Court has held. That ISSUE is related To Subject Matter Jurisdiction, maybe raised at any Time. STATE v. Funderburk 259. S.C. 256. 191. S.E. 2d. 520. (1972).

Applicant, raised (3) Three Claims, under Subject matter Jurisdiction of The Trial Court in violation of his 5th Amendment Right. And will show. That The Trial Court Lost Subject matter Jurisdiction over his indicted charge of 1st degree burglary. And That The PCR Court failed To properly adjudicate This issue based on facts in The Record.

CLAIM NO. 1

Prosecution in There Closing Argument Constructively Amended. The Aggravating element of Applicants, first degree burglary Indictment. Thus suprising Applicant And exposing him to The dangers of a second prosecution For The same offense. See. STATE v. Fletcher 74. F.3d 49.53. (4th Cir.).

Applicant, was indicted of Burglary in The 1st degree. IN violation of SECTION §16-11-311.(A)(2). OF The S.C. Code of Law's 1976. Which states :

- :(A). person is guilty of burglary in the first degree if:
The person enters a dwelling and either
- (2). Burglary is committed by a person with a prior record of two or more conviction for Burglary or house breaking or a combination of both.

But. in Applicant Trial. The prosecution in their closing arguments. stated The Following:

"The Gun. he could get to was even placed under a pillow in one of The room's. Well. Why is That? Why were there knives placed on The bed? The Gallmans said they don't keep knives around the bedroom. Mr. Gallman doesn't leave his Gun under the pillow. The person who broke in, I submit to you placed those knives there for a reason, placed That Gun there for a reason" T.T. pg. 275. lines 5-11.

The Court has held. That one of The elements of first degree burglary is The aggravating circumstance which is the essence of first degree burglary. Sawell. 85 S.C. at 284, 67. S.E. 2d at 318.

Thus. When The prosecution in their closing argument stated:

"I submit to You. He placed those knives there for a reason, placed That Gun there for a reason". This language implies

some sort of Threat to The burglary victim, By display of these deadly weapons.

Therefore The aggravating circumstance charged in the indictment of Applicants, first degree charges, was changed from a violation of §16-11-311 (A)(2). To a violation of §16-11-311 (A)(2)(C) AND (d). S.C. Code 1976. which states.

"A person is guilty of burglary in the first degree if The person enters a dwelling and either.

(1)(c). Uses or Threaten The use of a dangerous instrument or.

(d). Display's what is or appears to be a knife, pistol revolver, rifle, shot Gun, Machin Gun, or other fire arms.

Further, Not only did The prosecution improperly amend The aggravating circumstance in this instance. But they further amended the aggravating circumstance of The charged indictment by also alleging in their closing argument That.

"The Gun he could get to was even placed under a pillow in one of the rooms. T.T. pg. lines 5-6.

Therefore The aggravating element was further amended from a violation of §16-11-311 (A)(2). To a violation of §16-11-311 (A)(2)(A). S.C. Code, 1976. Which states :

(A) person is guilty of burglary in the first degree if:
The person enters a dwelling and either
(A)(2) is armed with a deadly weapon or explosive."
Code 1976. §16-11-311 (A)(2)(A).

The Court has held. That one only needs to be armed with a deadly weapon, in effecting entry or while in the dwelling within the meaning of §16-11-311 (A)(2)(A).
State v. McCaskill 468 S.E. 2d 81 (S.C. App, 1996).

Here, these improper amendments of the aggravating element, was never alleged in the indictment or submitted to the Grand Jury. And therefore surprised Applicant. For proof required for each aggravating circumstance was materially different from one another, and these improper amendment for which Applicant's conviction was based, was never presented to a Grand Jury. Code ANN. 1976. §16-11-311 (A)(2)(b), (A)(3) 17-19-100, State v. Lynch 545 S.E. 511 (S.C. 2001.), And even though the penalty did not change because of the amendment, the Court may still be deprived of its jurisdiction. Weinhauer v. State 334 S.C. 327, 333, 513 S.E. 2d 840. (1999) citing State v. Sowell 85 S.C. 278, 67 S.E. 3d 6. (1910) State v. Lynch 545 S.E. 2d 511 S.C. 2001 Code 1976 §17-19-100.

It is widely held. That when the Government through its presentation of evidence and for argument, or the District

Court through its instructions to The Jury or both broadens the basis for a conviction beyond those charged in the indictment. A constructive amendment occurs constituting fatal variance and violating The 5th Amendment Right to be indicted by Grand Jury U.S.C.A. Const Amend 5th. U.S. v. Randle 171. F.3d 195 (4th Cir 1997).

In this instance its a failure of The indictment to sufficiently allege all of the necessary essential elements of the crime charged. which had robbed the Trial Court of its Jurisdiction over the case. See Charter v. State, 495 S.E.2d 773. (1998) and Brown v. State, 40 S.E.2d 846 (2001). (Holding (That when an indictment does not contain essential element of the charged offense. The indictment is invalid and a Circuit Court then has NO subject matter Jurisdiction over The Criminal matter in which to enter a conviction or impose a sentence upon such an indictment For they Are void).....

Here Applicant contend. That his complete Trial Record was before The PCR. Court Thus This subject Matter claim should have been properly adjudicated on The merits.

CLAIM NO. 2.

The prosecution in its opening statement improperly amended Applicant's first degree Burglary indictment, to charge that Applicant committed Burglary and Grand Larceny of the Home of Ira, Joe Gallman. When Applicant was only indicted for Burglarizing the Home of, Kenneth Gallman.

Applicant was only charged and indicted in the indictment for Burglary in the first degree and Grand Larceny of the Home of Kenneth Gallman.
§16-11-311 (A)(2).

In Applicant's Trial, the prosecution in its opening statement stated the following:

"..... That the case was about burglary. That they will prove beyond a reasonable doubt. That the Defendant (Ricky Brannon), on November, 20, two thousand and Three, (2003), committed Grand Larceny, when Burglarized the Home of Kenneth and Ira, Jo Gallman", T.T. pg 61, 3-11.

This amendment also constitutes fatal variance. Because the indictment specifically alleges that Appellant burglarized the home of Kenneth Gallman, thus the

STATE was required to prove. That Kenneth Gallman was The Lawful owner of The home. That Applicant WAS indicted for Burglarizing. In stead. The State improperly Amended The indictment in alleging an additional victim of The burglary. Then what was alleged in The indictment. And further offered proof through evidence. That showed. That. Ira Jo Gallman. also resided in the home and was infact a victim of The alleged Burglary charged to Appellant.

This Court has held in STATE. V. ALFORD 140 S.E. 261, 142. S.C. 43. (S.C. 1927). (That variance between house breaking indictment alleging ownership in one and proof of ownership in another And occupancy in Third held Fatal,

In This instance. The state failed to prove. That Kenneth Gallman, was the owner of The home. But rather he resided at The Home With. Ira Jo Gallman, T.T. PG 136, 13-19. And further presented evidence. That even a SON also resided in The home as well. T.T. PG, 137, 20-23. The Appellant asserts. That he ^{was} not indicted for committing Burglary of The Home of Ira, Jo. Gallman. as The state alleged through out his trial. Thus she constitutes a second victim to The same offense. And Therefore exposes Applicant to the dangers of a potential Second prosecution For The same crime. Thus Fatal variance.

has occurred. UNITED STATE V. Fletcher 74. F.3d 49.53.
4th Cir. Cert denied — US — 117 S.C.T. 157.136. L.Ed 2d 101
101.

Here The PCR. Court erroneously misconstrued ... This
Fatal Variance claim. To mean. That Applicant was
Alleging variance. between his indictment and The
crime. he was charged with.

CLAIM. NO: 3.

The Trial Court. Lost Subject Matter Jurisdiction over
Applicants 1st. degree burglary CASE NO. 2004-GS-11-202
When it constructively Amended The indictment. By giving
Jury charge of second degree burglary. Absent. The
existence of any aggravating circumstance. Because
Court permitted aggravating circumstance to be stipulated
to in Lieu of informing The Jury.

1. Applicant. asserts. That The Trial Court erred pursuant to
In Re Winship 397. U.S. 358. 90 S.C.T. 1068. (1970). in its failure
To submit to the Jury. Certified copies of his prior Burglary
and/or house breaking convictions or give limited instructions
concerning The use of the prior convictions in its Jury
charge. When prior convictions was clearly an element of
The crime charged. But the Court permitted the parties to
stipulate to those prior convictions element. In Lieu of
informing or instructing The Jury of any aggravating element -

- For which it could find Appellant Guilty of Burglary in The first degree §16-11-311 (A) (2). Therefore The Court improperly charged The Jury To allow Applicant To be convicted on second degree burglar instructions §16-11-312 (A).

Applicant, was indicted of Burglary in The first degree. Because He had (2). two or more prior convictions for Burglary and/or house breaking pursuant to The S.C. Code of Laws, Code 1976. §16-11-311 (A) (2). Thus The prior convictions, were clearly elements of The indicted charge STATE v. James 551 S.E.2d 591 (S.C. App 2001) Id in STATE v. Hamilton 327 S.C. 440 S.E.2d 512 (CT. App 1997) AT 446. 486. S.E. 2d At 515.

a. ON Trial Transcript pg. 37. lines 21-25. The Court, with The Applicant's, Defense Attorney, and The prosecution held an in chambers discussion concerning Applicant's prior Burglary convictions. The Court then permitted The parties to agree to stipulate to Applicant's prior burglary conviction. Without The Court informing The Jury of Those prior convictions T.T. pg 40 lines 1-9.

The Trial Court failed to make a determination, pursuant to Rule 403, ON The prejudice or probative aspects of informing The Jury of The prior convictions, or inquiring of Applicant of, If he agreed to The stipulations.

Here The prior convictions, were entered in to evidence But Not submitted to The Jury pursuant to The earlier stipulations. T.T. pg. 251. lines 5-11.

The Due process clause and The sixth Amendment Right to Jury Trial requires a criminal conviction to rest upon a Jury determination. That a criminal Defendant is guilty of every element of the crime with which he is charged beyond a reasonable doubt, Const Amend. 5, 6, 14, U.S. v. Gaudin, 115. S.Ct. 2310. (1995).

Further.

This Court has held in STATE V. SIMMONS 573 S.E. 2d 856, "That because two prior burglary and/or house breaking convictions are elements of first degree burglary a defendant charged with first degree burglary cannot require The state to stipulate to the prior convictions in Lieu of informing The Jury." Code 1976. § 16-11-311 - (A). (2).

IN Applicants Trial. The Trial Court Charged The Jury as Follows :

: IN two of The indictments. He is charged with first degree burglary. IN order to prove that. The state must prove beyond a reasonable doubt. That the Defendant entered a dwelling without consent, must prove beyond a reasonable doubt. That The Defendant entered a dwelling without consent." T.T. pg. 295, lines 5-9.

So all you have to consider is whether or not the STATE has proven beyond a reasonable doubt, That the Defendant entered a dwelling without consent with the intent to commit a crime therein. Those are the two main elements that you have to consider." T.I. pg. 296, lines 21-25.

Here clearly the Trial Court improperly charged the Jury under the second degree burglary statute of Sec. §16-11-312.(A). See

S.C. Acts 603 Codified at Code ANN 16-11-310, To 16-11-313. Supp. 987. Holding(That first degree burglary is now defined as "Entry of a dwelling without consent and with the intent to commit a crime therein and the existence of an "aggravating circumstance." And Second degree burglary, is Entry of a dwelling without consent, with the intent to commit a crime therein, absent any aggravating circumstance. §16-11-312 (A)).
STATE v. Goldenbaum 365 S.E.2d 731 (1988).

Therefore without the existence of an "aggravating circumstance" as it pertains to the Burglary statute of §16-11-311. The crime committed would be second degree burglary. STATE v. LYNCH 545 S.E.2d 511.(S.C. 2001).

INI. This case The Applicant was indicted under a specific provision of the burglary statute. Section §16-11-311 (A) (2)

But the Trial Court charged the Jury to allow a conviction under the second degree burglary statute § 16-11-312 (A). Absent the required aggravation element, See. U.S. v. Floresca 38, F.3d 706, 710. (4th Cir 1998). Hold. (Constructive amendment. Because indictment charged defendant with violation of specific provision of witness tampering statute and Court instructions to Jury, allowed conviction under separate provision of witness tampering statute).

The Respondents may argue. That Applicant's Attorney stipulated to the 4, prior burglary conviction. Therefore the Trial Court did not error in failing to submit the prior convictions To The Jury. But This Court should find such an argument in error. For The Trial Court was still required to inform the Jury of the prior burglary convictions. And Further, The Trial Court also failed to submit to The Jury. The additional prior convictions for which the state moved to add to Applicant's, 4, Four prior burglary convictions. T.T. pg. 255 lines 4-18. In This instance. No such stipulation was had... concerning these additional prior conviction. Therefore they should have been submitted To The Jury.

CONCLUSION

1. Based upon The above stated facts, as alleged by The -

Applicant in these three challenges to The
subject matter jurisdiction of The Trial Court,
Applicant Ask this Court to vacate his conviction
and sentence. Based upon The improper amendments,
and variances as presented herein, And even though
Not timely objection was made to The Constructive
Amendments and variances. as shown in The Trial
Record, This Court still may review these challenges
and render a decision. See

U.S. v. Randall 171 F.3d 195. (4th Cir 1999) Holding
(That Constructive Amendments per se reversible
error and must be converted on appeal even if
defendant did not preserve the issue by objecting).

2. Or IN The Alternative remand These claims back To The PCR
Court For a proper Denova review of these claims
based upon facts in Trial Record.

ISSUE 2.

The PCR Court Errored in denying Applicants Continuence and Compelled Discovery Motions, of critical Material documents. Including the testing of DNA, evidence. But Then held hearing of Application, And Then dismissed Applicant Application with prejudice ON grounds, That, he failed to present evidence and meet his burden of proof.

At PCR hearing, Applicants PCR Attorney Motion For An continuence, So That he could obtain relevant discover of Material documents and DNA results. For which Applicant had requested for, To be presented as evidence to prove his allegations. of ineffective assistance of original counsel and substitute Trial Counsels. in addition, PCR Counsel also sought from The PCR A Motion to Compel The discovery of The relevant documents. such as. Copies of with held Traffic Tickets. Search Warrants Affidavit, For Taken of DNA, Waiver of Rights forms and any statements pertaining to an undisclosed interrogation of Applicant, by police. And a order For The testing of The DNA, evidence seized and collected in the case, But remained untested.

Applicant contends. That The PCR. Court denied him a fair and just opportunity to prove his allegations of ineffective assistance of Counsel. By denying him an Continuance and his Discovery Motions. When the Materials sought was critical to The Applicant to prove his allegations. within his Application.

The Court has held. That The burden of proof is on The Applicant, in his post conviction relief proceedings to prove The allegations in his application. Butler v. STATE. 286 S.C. 441, 334 S.E. 2d 813 (S.C. 1985). Thompson v. STATE. 340 S.C. 112, 531 S.E. 294, Also,

Its been held under The 14. Amendment and Due process of Art. 1 § 3. of The S.C. Constitution. That granting a Continuance is one measure. The Court may use to protect an accused due process Right. STATE v. OWENS S.C. 261 552. S.E. 2d 745. rehearing denied.

Here The Applicant, will outline The relevant Discovery sought and how it relates to his allegation of ineffective assistance of both Original and Substitute Trial Counsel s.

1. Testing of "DNA" evidence

First, Applicant sought the testing of his DNA. . . .

... towards the physical evidence collected from the crime scene of the burglarized home, where The state had obtained an authorized search warrant for The seizure of 1. val of Applicant DNA. (blood sample) alleging that it would match the physical evidence collected, Thus they sought a comparisons analysis of This evidence.

Here the state failed to conduct any comparisons of The DNA, evidence of Applicants "blood" and The physical evidence from the burglarized home of a Mr. Kenneth Callman. But instead conducted an unauthorized, illegal comparison analysis of Applicants "blood" sample, toward an unrelated, uncharged burglary assault crime, without anybody's knowledge. This information, was however, in the hands of both of Applicants former counsels, stashed within his discovery file. See herein for this Courts review. Exhibits E/F COPY of SLED. Law enforcement Lab report, of The unlawful Testing.

This Applicant Further contends, That although The state illegally tested his DNA, towards and unrelated crime, that they still was obligated by virtue of the search warrant they obtained to seize Applicants blood. To do a comparison test towards the physical evidence found at the burglary crime scene, for which Applicant was charged. Because they inphactically alleged That whoever committed The burglary left The physical evidence, Therefore both of Applicants former counsel, was....

... ineffective. For not insuring That the Applicants DNA. whether his blood or either hair sample was tested for comparisons against the physical evidence found at burglary crime scene. When The results of the test. IF shown not to be Applicants. would constitute exculpatory evidence. which would have shown. That althou h Applicant had knowledge of the whereabouts of a few items from burglarized home. He didn't commit The burglary himself.

Second. Not only would the actual test results of an Court ordered testing of the DNA, evidence. either by new samples or existing sample of The Applicant DNA. Lend substantial credibility towards his PCR. Allegation of ineffective assistance of Counsel, IF proven to be exculpatory. But it would also constitute Newly discovered evidence. intitling Applicant to a New Trial. As pursuant to S.C. Code ANN § 17-28-10 to 100. "Access" To Justice Post Conviction. DNA Testing Act.

2. Support Affidavit For seizure OF blood

second. Applicant sought discovery of a copy of The search Warrant support Affidavit for the seizure of his DNA (blood). To simply show (3) Thing in support of his PCR. Allegations. of ineffective Assistance of ..

First That Counsel was ineffective, For Not obtaining through discovery and reviewing the validity of The search Warrant affidavit.

second Had counsel obtained the search warrant affidavit. He would have discovered. That The state had illegally used the Applicant DNA (blood). As a discovery tool for other unrelated burglaries and Not For the reasons as was alleged in The support Affidavit.

Third The support affidavit would clearly establish. That The police believed whom ever committed The burglary of The Gallman's home. Left physical evidence at the entry point of a broken out window. Therefore it was critical. That counsel seek to obtain The results of The DNA Testing before Trial. Where if favorable to Applicant. He could move to dismiss Applicants burglary Indictment of The Gallmans residents.

3.

Copy of Traffic Tickets

Third The Applicant sought The actual True Copies of The Traffic Tickets. through discovery from PCR. Court. To establish. That his Substitute Trial Counsel was prejudice ineffective. For:

1. Failing To first obtain a copy of The Tickets To

reviews The validity of Them. In light of The fact That Applicant, although Was arrested For a Traffic violation. He has steadily maintain That he was never issued any Tickets upon his arrest. There-
-For without the actual existance of a Traffic Ticket. Applicant arrest was an illegal seizure, and all evidence seized and/or obtained as a result of The Traffic stop and arrest. should have been suppressed from his burglary Trial.

SECOND. The Tickets held The potential of impeachment evidence. That could have impeached The Testimony of a key states witness, Officer Richard Turner. Who gave sworn testimony in Applicants burglary Trial, To arresting Applicant for his Traffic violations under issuance of a courtesy summons. T.T. PG. 177. lines 3-15. But yet The officer Turner or The state could not produce any Actual Copies of The Traffic Tickets during The Trial. T.T. PG. 181. lines 1-2. Had Applicants Trial counsel actually obtained a copy of The Tickets, which officer Turner, testified To arresting under The issuance of a summons. He could have attacked The validity of The officer to make such an arrest and moved to suppress The state's evidence. and all in custody statements That resulted from This unauthorized arrest. From The Applicant burglary Trial.

4. Pre-Interrogation of Waiver of Right Form and any Statements Pertain To The Undisclosed Interrogation of Applicant by The Police.
-

Fourth. The Applicant also sought The discovery of an interrogation waiver of Right form and statements. That was withheld and undisclosed from The Applicant Trial Counsel despite his Rules 5, Brady request for all interrogation notes and statements. This information was needed by The Applicant to support his PCR. allegations. of Newly discovered evidence of perjury Testimony, 6th Amendment violation, Discovery violation, and involuntary statement. See herein for This Courts review, Exhibit #5. Documents constituting Newly discovered evidence. Which was amended to The Applicants PCR, Application on November 20, 2009. But is missing from The record herein. This exhibit, is a civil action complaint, Filed by Applicant on June 11, 2008. In regard, To The police obtaining Applicants DNA by fraud, In their answers to Applicants Complaint several Detectives from The Cherokee Sheriffs Dept. in particular Detective Mike Fowlkes. Who was a key witness in Applicant burglary Trial, Did...

.... Readily admitted to re-approaching Applicant and conducting a second interview and/or interrogation of The Applicant, concerning and unrelated, uncharged burglary and assault crime. Even though The Applicant had informed The Detectives in his first interrogation, That "he didnt want to talk to them any more."

The Answer's. To Applicant Complaint by Detective. Mike Fowlkes, is new evidence. Constitutin Newly discovered evidence. Showing That Detective Fowlkes Not only with held, The disclosure and substance of This interrogation From Applicants Defense Attorney. But he also intentionally Gave false misleading perjury Testimony, uncorrected by The prosecution, By Falsly, testifying in both Applicants Pre-Trial Denno. hearing, and in The Trial itself, That it was Applicant who re-initiated contact with The Detective and Asked to speak with them a second time and Thus Gave an ORAL statement, See T.T. pg 46. Lines 7-20. Where Detective Mike Fowlkes, Gave sworn Testimony, in Applicants. Jackson v. Denno hearing, Falsly testifying That it was The Applicant who re-initiated the Contact with The Detectives, For a second interview. See Also...

..... T.T. pg 247, Lines 12. To pg. 249, line 24. Where Detective Fowlkes. Falsely testified to interrogating Applicant only (3) Three times. and submitting all of his Notes or any statements of his interrogations of the Applicant, to his defense Attorney, per, his Rules 5, Brady request.

This Applicant contends. That The PCR. Court erred in NOT granting him his Motions for an Continuance and Discovery. For The materials sought. was highly relevant to The Applicant to prove his allegations. Plus The Court had power to grant Discovery in PCR, s ACTIONS Code ANN 1976. §. 17-27-150 (A). Further one of The For The Appointment of a PCR. Counsel is To help and Applicant Perfect and present his Allegations Rule 71.1, SC RCP.

CONCLUSION

1. The Applicant believes he had shown The relevance of The Discovery he sought. And The error of The PCR, Court, To, grant an Continuance so That discovery could be obtain. For it is on The Applicant to prove his PCR. allegations. There The Applicant believes he's entitle to remand of his Application To The PCR Court. With an order for Discovery.

ISSUE 3.

The PCR. Court Errored IN dismissing The Applicant's Allegations of Ineffective Assistance of Substitute Trial Counsel. Based upon its irroneous determination, OF Counsel's effectiveness. unsupported by Trial Record, PCR. Testimony or Facts. And in light of The Fact. That The PCR Court. Failed to consider and Rule on all The Allegations.

To establish a claim of ineffective assistance of counsel, a post conviction relief Applicant must prove. That (1) counsel failed to render reasonably effective assistance under the prevailing professional Norm, and (2). The deficient performance prejudiced The Applicant's case. Thompson v. State 340 S.C. 112. 531. S.E. 2d. 294. (S.C. 2000).

First. The Applicant would respectfully have This Court (Note). That he was improperly hindered. From offering sufficient proof of his allegations when The PCR. Court denied his discovery Motion For relevant Documents.

This. Applicant contends. That The PCR. Court improperly dismissed his claim of Ineffective assistance of substitute Trial Counsel. IN light That it failed To consider and rule ON all of The Applicant's specific...

allegations. raised both in The PCR. proceeding and in The Applicant Application and Amended Applications. in violation of Code 1976 §17-27-80, U.S.C.A. Court Amend 6. see McCray v. State 408 S.C.2d 291 305. S.C. 329.

Here. For This Court reviews The Applicant will submit a summary list of his allegations of Ineffective Assistance of Substitute Trial Counsel. For which the PCR. Court failed to consider and rule on:

1. Whether Substitute Counsel, was a Conflict interest because he met with, Discussed and relied on information and advise on Applicants case. from The Applicants Original Trial Counsel whom was dismissed from Applicant case due to an Actual Conflict of interest.
2. Failure to move for a suppression hearing to exclude shoe evidence, and all in custody statements base upon several 4th Amendment violations. resulting from an illegal Traffic stop arrest, an illegal warrantless search of The Applicant vehicle, and personal property. And where The validity of Applicants arrest for Traffic violation was based upon The arresting officer's erroneous understand of The Law.
3. Failure To conduct any cross examination of Detective Mike Fowlkes during Denno hearing Thus allowing The Detective to give undisputed perjury Testimony.

4. Also Substitute Counsel failed To inform The Applicant of his Right to testify at Denno hearing, precluding The the Applicant from offering testimony in his on defense.
5. Failure to obtain through Discovery. The personal information, name, address, of Applicant alibi witness so as he could contact interview and call to testify in Applicant defense.
6. Failure to sufficiently review discovery file documents which held potential impeachment evidence and showed That the Applicant DNA, (blood), had been illegally tested.
7. Failure of substitute Counsel, To object at introduction of shoe print expert witness, testimony, And preserve issue for appellate review.
8. Failure to request Jury charge for receiving stolen goods After, arguing in his closing arguments. That The evidence could only possibly show, That The Applicant possess stolen goods. And in light of The fact The state failed to conclusively prove "Entry" against Applicant.
9. Failure to moved to exclude the identification of The Gun evidence by burglary victim. When The evidence was held in The possession of The victim until The date of The Trial And Not in police custody.

10. Counsel failed to object to the in Court identification of Applicant and request for a hearing on the issue.
11. Failure to object to the introduction of the prejudice photographs showing the burglarized home in disarray when photographs was irrelevant to the issue and was only meant to arouse the sympathy of the Jurors following an emotional testimony by burglary victim.
12. Failure to object to prosecution's closing arguments in which the state was vouching for the credibility of its witnesses. Attacking Applicant's character, mentioning other crimes evidence. Constructive Amending the aggravating circumstance in the indictment.
13. Failure to object to the Trial Court sentencing of the Applicant to life without parole under § 17-25-45. Where Ninth Counsel or Applicant had been properly, timely served "A Life without Parole Notice" as required by statute by the A. G. Office.
14. Failure to move for a severance of Applicant's two (2) separate burglary charges for Trial. Where each burglary could not be proven by the same evidence and they occurred on two separate dates.
15. Failure to object to the prosecution repeated mentioning of the Applicant failure to give a "written statement" and request for an Attorney

16. Failure to seek a mis Trial Where The 7th Circuit Solicitors office violated The order of disqualification and intentionally represented a states witness in The Applicants Traffic Court Trial (Deputy Richard Turner). So as to delay the Trial until Applicant was Tried for his burglary charges. Where evidence in burglary case resulted from illegal Traffic stop Thus The solicitors office interference precluded Applicant from establishing a 4th, Amendment violation.

17. Counsel's Failure to argue at Applicants sentencing hearing And thus object to The Trial Courts determination, That Applicants prior 1st, degree, burglary's guilty Plea Conviction, Constituted separate convictions For The purpose of sentencing Applicant under Sec. § 17-25-45. When prior burglaries was of same nature, And was close in time, was consolidated for sentencing at guilty Plea proceedings. before The same Judge on same date, And where Applicant recieved concurrent 20, year sentences on each count. Thus These conviction should have been treated as one conviction. Instead Counsel erroneously argued STATE v Woody.

The Above 17 specific allegations have Not been considered or ruled upon By The PCR. Court for it to make an accurate determination of The Applicants Ineffective of Substitute Counsel claims. Further there is no record or facts to support The PCR Courts ...

... determinations. For The PCR. Court, first found That. Substitute Counsel's testimony was more credible than Applicants. ON what basis did The PCR. Court determine this. For substitute Counsel, admitted to several allegations in his testimony which should have at least made Applicants testimony just as credible. second. The PCR, Court, erroneously found. That Trial believable, knowledgeable and well prepared. That Counsel thoroughly investigated The case researched legal issues, and prepared legal arguments.

This Applicant contends That these findings by The PCR. Court are baseless. For The Facts are. That Trial Counsel, did very little investigation in to The case, had he done so. he would have found. That.

The Police had No probable Cause or evidence to arrest The Applicant, in absent of The illegal Traffic stop, That, The stop was pretextual and a complete fabrication by The Police to Lawfully seize Applicant and The vehicle. So they could detain him while they investigated him in connection with the burglary crimes.

That an unconsented, warrantless, search of The vehicle at The Traffic scene also took place, as well as a show up identification by a burglary victim. even though there were no witnesses to any of The burglaries.

Counsel would have also found That Applicant was

- Not issued any ticket at all for the Traffic offense. That, he was discovered. That Applicant's personal property was searched by Detective, Mike Fowlkes. Some 12 days after Applicant's incarceration for Traffic offense. In the Detention Center without a Warrant and the shoe evidence was seized from that search. See Exhibit #14 chain of custody of shoes. Counsel would have also discovered. That the Detective intentionally withheld Applicant from either seeing the Magistrate Judge for the Traffic offense or from using the phone to try on bail out. Until Applicant agreed to talk to the Detectives about the burglaries. See Exhibit #1. Applicant's "Booking sheet", where it was written by the officer's at the top. Hold, No Phone Calls.

Given all of the above stated facts. Counsel thus Failed To.

1. Obtain the video of the Traffic stop to investigate and determine if it was lawful.
2. He failed to even visit the location of the stop. To determine if an actual stop sign existed on the street.
3. He failed to obtain through Discovery, any copies of the Traffic Ticket to determine if any existed or to review the validity of them.

4. Counsel failed to request for the actual reports on the unconsented, warrantless search of the Applicant's vehicle and persons. Including the report on the show up identification.

5. Counsel failed to investigate how Applicant's D.N.A. (blood) was seized pursuant to search warrant, by the police under the probable cause, in relation to his burglary charges, But yet was only tested illegally on an unrelated uncharged burglary crime.

Counsel never obtain through discovery the name and address of the female passenger that was with the Applicant on the day of the burglaries and when he was stopped and arrested for traffic offense. For she was a potential witness.

Facts

The Record of Applicant's Trial clearly reflects these Facts.

A. That Trial Counsel, never move for a suppression hearing on the shoe evidence or any statements on 4th Amendment grounds. in light of the fact, that all of the evidence against the Applicant, was obtained through his illegal arrest on the traffic charges and numerous warrantless searches.

B. Trial Counsel never requested for a hearing to exclude any in court identifications. In light of the fact, that no one witnessed the Applicant committing any of the alleged burglaries. Plus there was a show up identification conducted and numerous opportunities to view Applicant by witness, at his bond hearings and preliminary hearings.

C. That Trial Counsel failed to object to the shoe print experts testimony to preserve the issue for Appellate.

D. That contrary to the PCR Courts findings, Trial Counsel never attempted any negotiation on Applicant behalf. But negotiations was offered to the Applicant original conflicting attorney, who failed to inform Applicant of the plea offer, and thus steered Applicant towards a Jury Trial, of his burglary charges, facing a life sentence.

The Applicant ask this Court to consider, that despite the other numerous errors, that both his original Counsel and substitute Trial Counsel committed. The failure of either one of them to attack the police seizure and collection of evidence in the case on numerous 4th, Amendment grounds was without a doubt the most prejudice to the Applicant.....

For without The illegally obtained evidence. The state had No evidence, for which to Try and convict The Applicant on these bur lary charges. Therefore it was irroneous for The PCR. Court to dismiss Applicants claims of Ineffective Assistance of Substitute Trial Counsel, When Counsel failed to amount any kind of attack to the illegal seizure of evidence based upon 4th Amendment grounds.

Finally, Counsels. ON testimony At Applicant PCR. hearing is evidence That he Never investigated The Applicants Traffic stop arrest. For When he was asked by PCR. Counsel whether he believed The stop was improper... and could have suppressed some of The evidence. That was brought against Applicant --- The statements. The shoes. Counsel responded. It could But i have No way of knowing one way or The other. PCR. Tron PJ 63. lines 17-22. Earlier. Counsel Also Testified. That he didnt even focus ON The nature of The Traffic stop. PJ 63. lines 14-16.

CONCLUSION

1. Applicant Ask This Court to reverse The PCR Court dismissal of his claims of Ineffective Assistance of Substitute Trial Counsel. And either remand The claim back to The PCR. Court, for a hearing of his remaining allegations.

ISSUE 4.

Error OF The PCR Court in denying and dismissing Applicants allegation OF Ineffective Assistance of Appellate Counsel. For Frivolous Appeal. And Prejudice Late Notice of decision of Court of Appeals. When Substantial proof in The record supports the allegations.

This Applicant contend. That The PCR Court Errored in dismissing his allegations of Ineffective Assistance of Appellate Counsel. By Finding That The Applicant Failed To present any evidence or Testimony To support his allegations.

This Applicant, Appeals.

1. First Applicant asserts. That Due process requires effective assistance of counsel during first Appeal As a Right Evitt v. Lucy 469. U.S. 387 396 (1985).

Here Appellate, Counsel, LAnelle C. Durant, Was Appointed Appellate Counsel over Applicants direct Appeal

- of his first degree Burglary Conviction, Appellate Counsel had over 15 months to review The Trial record and to perfect an Appeal. But here Appellate Counsel Failed to raise and argue any Appellable issues in Applicant's Initial Brief of Appellant. For which could be reviewed by The S.C. Court of Appeals. For The sole issue presented by Appellate Counsel in Applicant's Initial Brief. Was: "Error OF The Trial Court in admitting The Testimony of The Footprint Analysis expert, Because his testimony WAS more prejudice than probative due to The Nature OF The Testimony."

This Appellant issue was frivolous, For Appellate Counsel, knew or should have known. That The Court of Appeals. could not consider it. Where The issue had Not been preserved for review, pursuant To The Contemporaneous objection rule.

See S.C. App. 1997. Holding Making Motion in Limine to exclude evidence at beginning of Trial does not preserve issue for review because Motion in Limine is not a final determination. And moving party must therefore make contemporaneous objection when evidence is introduced. Shamles v. Mitchell 495 S.E. 2d 213, 329 S.C. 105.

Here Applicants, Trial Transcript clearly reflect The...

... Error of Applicant's substitute Trial Counsel Mr. Roger poole. to make an contemporaneous objection at the outset of the shoe print experts testimony. Although Trial Counsel had moved with a pre-Trial Motion to exclude the experts testimony. See T.T. PG. 38-39,

Therefore the Court of Appeals declined to consider Applicant issue on Appeal and thus affirmed his conviction. See Appeals Court, decision herein as Exhibit #12 which was also included in the record before the PCR. Court.

IN, Delgado v. Lewis 181, F.3d 1087-94 . (9th Cir 1999).

That Court held, (Failure of Counsel to raise any arguable issue in appellate brief deprive defendant of Right to Counsel on Appeal and created a presumption of prejudice). see also.

Bankers Trust Co v. Publisher Indus 641, F.2d, 1361, (2d. Cir 1981). (A "frivolous" appeal is one that is brought without the slightest chance of success).

Applicant also alleged that Appellate Counsel never sought a petition for a rehearing as pursuant to Rule 221. To argue that the Court erred. In finding. That Applicant, Brief of Appellant issue was not....

... preserved for review.

3. Finally Applicant raised The issue of his Appellate Counsel ineffectiveness, For her failure to Timely inform or Notify Applicant of The Court of Appeals Affirmance of his Conviction For almost (6) month after The Court decision, and therefore costing Applicant at least (6) months off his statutory one year to file on post conviction Application and even more Time Than That to File a Fed. habeas Corpus. as pursuant to 28, USC. § 2244 (d) or otherwise be barred by The Statute of Limitations, See Exhibit, #1A, Copy of Appellate Counsels Late Notice.

The Record before The PCR Court is evidence which clearly establishes, That Appellate Counsel raised an unreviewable frivolous issue in Applicants Initial Brief of Appellant, which directly operated in denying Applicant any Appellate review of his conviction and sentence. See, within the Appendix record. Volume II, Pg 671-672. For a review of The S.C. Court of Appeals Percuriam response to The Applicants Issue raised in his Initial Brief. This record was also before The PCR Court. for its review. And Further no record or evidence was presented showing That Appellate Counsel Timely filed any...

... Motion to reconsider the refusal of The Court of Appeals to entertain Applicant's appellate issue in his Initial Brief. Here, because of the evidence within the record before the PCR Court. There was no genuine need for Appellate Counsel, to offer any testimony at Applicant's PCR hearing although it was no fault of Applicant's making that Ms. Durant, was not subpoenaed to the hearing, when PCR Counsel, and Appellate Counsel, agreed at first PCR hearing held on February 11, 2010, in which The Honorable Roger Couch, Recused himself. to take deposition, though no depositions has been found within the record. But here still The Applicant contends that upon further review of The record of testimony given by Applicant, at his PCR, proceeding The Court will find, that Applicant, did in fact address The issue that his conviction was affirmed by The Court of Appeals. Because The issue presented on his direct Appeal, was not preserved for appellate review, due to his substitute Trial Counsel's failure, to make a contemporaneous objection to the evidence when it was introduced. PCR Transcript PG 56 line 18 To PG 57, lines 6. In this light The Applicant also argues, that The state also failed to present any

... evidence or testimony to refute Applicants allegations of "Ineffective assistance of Appellate Counsel." For they also had the power to subpoena Appellate Counsel to The PCR, hearing. Therefore it is error of The PCR, Court, to act as an agent for The state and Dismiss Applicants allegations of Ineffective Assistance of Appellate Counsel, when the state it self never opposed The allegation.

CONCLUSION

1. This Applicant. Prays. That This Court, Find. That The PCR. Court erred in its determination, That Appellate was ineffective for presenting an unreviewable, frivolous issue in Applicants Initial Brief. which, Counsel, knew, could not be considered by The Court of Appeals. And as a result Applicant conviction was affirmed And Therefore denied a Direct Appeal. And effective Assistance of Counsel on Appeal.
2. This Court should also find That Appellate Counsels Late Notification to the Applicant about The Court of Appeals decision some (6) six Months After it was rendered is prejudice to The Applicant. where Applicant was only left 6. month to file his PCR. Applicant and even less time left from the 6. months. To seek relief...

.. OF his conviction and sentence through Fed.
habeas Corpus,

Therefore The Applicant is entitle to a New direct
Appeal with counsel appointed, or a New Trial.
Applicant is also entitle to The 6 months back
of his 1, year statute of Limitations. Lost, Due
to The Neglagence of his Appellate Counsel,
And Any other reliefs This Court deems Just.

ISSUE 5.

It was Reversible Error of The Trial Court.
And Prejudice ineffective Assistance of
Substitute Trial Counsel. IN allowing The
Identification Evidence of Applicant to be
entered in The Trial, without a hearing of
The issue, or objection.

Applicant contend. That The Trial Court Errored
in allowing in The identification of Applicant,
And That his Trial Counsel Was ineffective for
Not objecting to The identification of The
Applicant during The Trial. Where No pre-
Trial hearing on The relevance and reliability
of The identification, including a determination
ON The Prejudice verses The probative pursuant
to Rule 403. WAS held.

see Neil v. Biggers 409 U.S. 188. 198. (1972).
(misidentification violates a defendant Due
process Right).

Further This Applicant contend. That The record and ...
Facts reflect That:

... 1. That No alleged burglary victim or witness ever observed The Applicant himself. either committing The burglaries, or being any where near or around the burglarized home, ON the actual day of The burglaries. Thus The identification was prejudice to Applicant. Because NO ONE witness a crime.

2. A. show up identification was conducted on the Applicant during his Arrest of Traffic offense. Further, The Applicant was featured in the Local, News papers and ON News stations. before his Trial. as a result of The Burglaries and his charges involving The Arson of The Court house. And finally. All victims of The burglaries. were present at Applicants bond hearings. And preliminary hearings. Thus had chance to view him.

The United States Supreme Court has recognized a defendants. Due process Right to exclude identification testimony. That results from unnecessarily suggestive procedures. That may lead to an irreparably mistaken identification. Stovall v. Denno 388. U.S. 293. (1967).

CONCLUSION

Accordingly Applicant is entitled to a New Trial.

ISSUE 6.

Error of The PCR, Court in finding. That The Notice of intent to seek life without parole WAS Timely served, §17-25-45 (H), Without Also determining The validity and Constitutionality of The Service, Code ANN §17-27-80, (S.C. 1976).

1. The Applicant, alleged in his Application. And At his PCR. hearing. That his Substitute Trial Counsel was prejudice ineffective during his Trial. For his failure to object to The sentencing of Applicant to Life without parole, by The A. G. office, when Applicant had Not Actually recieved The required Notice from The A. G. office. And The prior Notice served by The disqualified 7th Circuit solicitor's were both insufficient and invalid because it was also served upon Applicant original conflicting Trial Counsel, whom was dismissed from The Applicants representation. Due to an Actual Conflict of interest.

S.C. Code ANN §17-25-45 (H). Holds That

... Where The Solicitor is required to seek or determines To seek sentencing of a defendant under This section, a Written Notice must be given by The Solicitor to The defendant and The defendants counsel not less than ten days before Trial § 17-25-45 (H)...

2. ON T.T. PG. 308. The STATE moved To sentence Applicant To Life without The possibility of parole, pursuant to sec. § 17-25-45. (H), lines 1-2, The Trial Court, Then noted. That section (H), of The Code statute required That a Notice of The states intention. must be served on The defendant and his Lawyer. PG. 308, lines 24. To. PG. 309. Line 4. Mr. Paulin, of The states A. G. office, Responded That it had been done. That he had an Affidavit of service. That was actually served back in August 2, 2004. by The seventh circuit solicitor's office. That a Notice was also given back in November of 2005 by The A. G. office as well. T.T. PG, 309. lines 5-10.

No, objection was made by Mr. Poole, Applicants Trial attorney in challenging The states assertions, That Applicant and his Trial Counsel was actually served with The states intention To seek life without parole on Applicant, or any challenge to The validity of The service...

... AT. PCR. hearing Applicant testified. That he was served only with a Notice To seek "life". But Not life without parole. By The 7th, Circuit Solicitor's office, That, the 7th circuit solicitors office was a conflict of interest. Therefore, The Notice, was invalid. Because For one. The Notice served by The 7th Circuit Solicitor's office failed to properly inform The Applicant. That he was facing "life without parole", And second, Because. The 7th circuit solicitor's office was disqualified from prosecuting Applicants burglary case due to AN Actual Conflict of interest. PCR. Tran. PG. 30. lines 1-18. Further, Applicant testified. That he didnt have any discussion with his Trial Counsel, Mr. Poole, concerning getting served any Type of Notices For a life Sentence PG. 30. lines 19-25.

Under cross exam. by Ms. White. For The STATE,

The Applicant ALSO testified That he sat in The County Jail from 2004, until. He went to Court And That The A. G. office Never served him with a Notice to seek life without parole, PG 52 lines 10-14. That The only Notice he ever

received was from The 7th Circuit Solicitors Office And it was Just a Notice for 'Life.' Therefore The Applicant disputes The states claim in The Trial Transcript. That they had an affidavit of Service indicating, That The Notice was served on Applicant and his attorney, For The Affidavit The A. G. office was refering to was faxed from The Attorney General's office to The clerk of Court. But Nobody from The A. G. office ever came down to The County Jail and served Applicant with a Notice to seek life without parole Pg. 52. To Pg. 53. line 2.

3. Also under cross, exam. by Ms. White, Substitute Trial Counsel, Mr. Roger Poole, Testified That, he thought Applicants Original Counsel, Mr. Don Thompson, was served with a Notice by The A. G. office, although he didnt recall if he was served, But he wanted to say he was. But he knew, Don Thompson was. PCR, Tran, Pg. 67, lines 21. To Pg. 22. line 4.

Here. Applicant contends. That Not only did The PCR. Court, error in its determination That a Timely Notice To seek life without parole was served

... in light of Trial Counsel's Testimony at PCR, hearing, That he didn't know if he was served with a Notice. although he believed Applicant's original Counsel Mr. Don Thompson was, Further Counsel only testified to discussing The burglary enhancement, and why The state was seeking Life without parole, PCR. Tran. Pg. 67. lines 15-20. But Nowhere did Trial Counsel testify to discussing The Notice requirement with Applicant as pursuant to § 17-25-45 (H). or finding out if The Applicant was Actually served with a Notice himself. The PCR Court. Also failed to make a determination of The Validity of The "Notice of intent" served by The 7th Circuit Solicitor's office, whom was disqualified from any involvement. in Applicant burglary prosecution. Due to an Actual conflict of interest. See incorporated herein Exhibits #10 And #11, which was also within The record before The PCR. Court and can be found in Volume 1. of The Appendix listed under "Exhibits Evidence For PCR." Pg 425. Shown on Pg. 457. And 458. This evidence is proof, That The 7th Circuit Solicitor's office. moved as early as July 19, 2004. to excuse itself from The prosecution of Applicant's Burglary prosecution. Further, Not only was The 7th circuit, disqualified from Applicant's burglary case..

... But so also was Applicants original Trial Counsel Mr. Don Thompson, whose dismissal was also due to on conflict of interest. See Exhibit #2 which also can be found within the record of Appendix Volume 1, ON PG. 433. Which shows that that Applicant was appointed his New Counsel Mr. Roger Poole. Because his original Counsel was a conflict.

Also incorporated herein is Exhibit #12(c). A copy of the Affidavit of service of the "Notice" served by the 7th Circuit Solicitor's office. Dated August 2, 2004, which only states, "Affidavit of Service Notice of Life Sentence."

4. So, the issue raised before the PCR Court was not only was Trial Counsel ineffective, for his failure to object to the sentencing of Applicant, to Life without parole. Because he was not served with a Notice of Intent by the A. G. office. But also was the Notice served by the conflicting 7th Circuit solicitor's office, on Applicant and his conflicting original Trial Counsel, constitute a valid Notice. When both conflicts of interests by the 7th Circuit Solicitors office and Applicants original Counsel, would....

.... Constitute a violation of The 6th Amendment under The holdings of Strickland v. Washington 466 U.S. 668 (1984). And Cuyler v. Sullivan 466 U.S. 335 (1980). And Therefore be in violation of Applicant 6th and 14teenth, Amendment Right To a Fair Trial free from conflicts. Further This Applicant also Notes before This Court. That any Notices of intent To seek life without parole in accordance to § 17-25-45 (H) served by The 7th Circuit Solicitor's office, would be in violation of The statute requiring That The discretion To seek such a sentence is in The hands of The Solicitor § 17-25-45 (G) (H). In This instance only The Attorney General office had "Jurisdiction" To seek such sentencing of Applicant. For they were The prosecutors of Applicant burglary case Not The 7th Circuit Solicitor's office. And likewise. any Notices served upon Applicant's original Counsel, in accordance to S.C. code ANN. § 17-25-45 (H) would be in violation of The statute, Because original Counsel was removed from Applicant representation of his burglary...

... CASE. Thus he was not Applicant's Counsel over his burglary charges. And second, a Counsel with an actual conflict, is a 6th Amendment violation and constitutes a denial of Counsel.

The findings of The PCR Court, That a Timely Notice To seek life without parole was served, does not express any factual basis The Court relied on in making its determination. For The PCR Court does not even address The validity of The Notice served on Applicant. By The 7th Circuit Solicitor's office whom were conflicts of interest. § 17-27-80.

5.

CONCLUSION

1. That This Court should find That The PCR Court Errored in its determination. That The Testimony of The PCR hearing reflects. That Trial Counsel could not recall being served with a Notice. That he failed to even inquire of the Applicant, before Trial to see if he had been served with a Notice. That Trial Counsel therefore erroneously relied upon an alleged Notice of intent, served upon The Applicant's original conflicting Attorney, by The conflicting 7th circuit solicitors office, which was clearly in error.

... For both The 7th Circuit and Applicants original Counsel was dismissed from The Applicant burglary Trial or prosecution. Due to the Actual Conflict. Therefore The 7th circuit solicitors office, Did Not have the Jurisdiction to seek to sentence the Applicant to Life without parole. As pursuant to §17-25-45. (G) For They were not The prosecution over The Applicants burglary charges. And likewise. Original Counsel was not Applicants Trial Attorney at the time of his burglary Trial. Therefore a Notice served on Original Counsel would violate The statute §17-25-45 (H). Plus a Conflicting Attorney is a 6th Amendment violation. Constituting a denial of Counsel. Finally The state failed to produce the actual Certificate of Service show. That The A.G. office in fact served both Applicant and his Trial Counsel independently. For The Notices sent out by The A.G. office undisputedly shows That they were actually Faxed to The clerk of Court for filing but not actual served, as provided by statute. upon the Applicant or his Trial Counsel.

CONCLUSION

Therefore The PCR Court, erred. And Trial Counsel was ineffective For his failure to object to The sentencing of The Applicant to Life without parole, Where no timely Notice was served, Therefore Applicant is entitle to Resentencing under original burglary statute, or Remand to PCR Court for ruling on The merits.

ISSUE 7.

The PCR. Court, Errored in dismissing The Applicant Newly Discovered Evidence Claims by erroneously finding That Applicant failed to produce any evidence. That meet The Requirements of After discovered evidence.

1. This Applicant contends. That he raised several Claims. of Newly discovered evidence. Which he believed intitles him to a New Trial. in his Application.

First Applicant alleged. That, He had Newly discovered evidence. Which proved. That The prosecution. Allowed, Detective Mike Fowlkes to give, false misleading, perjury testimony in both. Applicants Pre-Trial Denno hearing and in the burglary Trial itself. By falsly testifxing, That Applicant, Re-initiated the Contact with Detectives for a second interrogation. By contacting The Detention Center and and requesting to speak With The Detectives a gain. After Applicant had informed the Detectives. IN The first, interview,

... That he was done talking and didn't want to talk to them anymore. Thus they ended the interview and returned Applicant back to the Detention Center. Sec. Detective Mike Fowlkes, sworn testimony in pre-Trial Denno Hearing T. T. PG 46. lines 7-16.

The Applicant alleged. That such perjury testimony substantially contributed to the Trial Court concluding that his alleged oral statements were voluntary and therefore was admitted in his burglary Trial; and became a key piece of evidence, that contributed to his conviction. When in fact, The Detectives themselves, re-initiated the contact with Applicant in violation of his 5th Amendment Right to remain silent under the holdings in *Maranda*. And re-interrogated him not only of his burglary charges. But also about and unrelated, uncharged burglary and assault crime of a Mr. James Spencer's home. That the true facts and statements ~~to~~ resulting from this illegal interrogation, was withheld, and never disclosed to the Applicant's Trial Attorney, despite, Counsel numerous requests... pursuant to *Brady v. Maryland* and Rules 5. Disclosure. Thus. The undisclosed facts and ...

... statements made at this second interrogation and any additional undisclosed interrogations, constituted a violation of "Brady". For Applicants Trial Counsel sufficiently sought on several different occasions to obtain all facts, notes and statements from Detective, Mike Fowlkes, concerning any and all interrogations of The Applicant during his interviews. Detective Fowlkes re-assured Applicants Trial Attorney during his cross examination, in Burglary Trial, that he given Trial Counsel every thing. See T.T. Pg. 247 lines 12-21.

ON JUNE 11, 2008 The Applicant filed a "Civil Action," Against The Cherokee County Sheriff's Dept. For fraudulently obtaining his D.N.A. (blood). For the sole purpose to use as discovery tool for other crimes, which occurred, under the disguise that the D.N.A. was needed so it could be tested, in regard, to some physical evidence found at a burglary crime scene, for which Applicant was being investigated for. Two of The Defendants was Detective Mike Fowlkes, And Detective Tim Clark as well, as crime scene Investigator, Jimmy Henson.

... All Three, played a Major roll in The Applicant's Burglary Trial, in fact. Investigator Henson, was allowed to testify as an expert witness, in The Trial, for The State.

In The Defendants Responsive Answer's to The Complaint. They admitted. That it was them who re-initiated contact with Applicant, so they could, interrogate him about and unrelated, uncharged Burglary Assault crime. See incorporated herein, Exhibits. Titled, "Newly Discovered Evidence Documents". Exhibit A1, The Applicant, Complaint, And The Defendants Answer's, to paragraphs 4.5.6.7.8.9.10. And 12. Which was Amended to Applicant's PCR. Application, Filed in The clerk of Courts office, on November 20, 2009. by PCR. Counsel, Rodney Richey, Esquire. But as Noted by This Applicant, Missing from The record of This Appeal.

But see. PCR. hearing Transcript PG 27, lines 18. To, PG 28, line, 11. Where Applicant, offered relevant testimony, concerning his newly discovered evidence claim, That Detective Mike Fowlkes gave false testimony in his Jackson v. Denno hearing and during The Trial. That Applicant initiated The second contact with. ~~Detectives~~, When.

... it was them, who re-initiated contact with Applicant. After he had told them during The first interrogation. That he did not want to speak with them again. So as they could interrogate about an unrelated burglary assault crime. And That they failed to make any notes. or statements about this interrogation at all. And Thus never turn these facts over.

This Applicant, contends. That any and all. Facts or statements introduced in his criminal Burglary Trial. in relation's to any statements or confessions. Beyond his first interrogation with The police. should have been. or could have been found involuntary. If Detective Fowlkes had Not been allowed to give perjury testimony. And Therefore testified to The Truth of The matter. That they re-approached The applicant, for a second interview. ~~in~~ in violation of his 5th Amendment, and The holding in "Miranda". The Court has held. That a defendant in criminal cases is deprived of Due process of Law, if his conviction is founded, in whole or in part upon an involuntary Confession without regards of The Truth or falsity of The Confession. even though There is ample evidence aside from The Confession to support...

... a conviction. Jackson v. Denno 84. S.Ct. 1974 (1964).

Further, it is clear. That the prosecution allowed its witness, Detective Fowlkes, to testify falsely without correction. see. U.S. v. Agurs 96. S.Ct. 239. (1976) (When prosecution should be aware that it is presenting perjury testimony, A strict standard of materiality will be applied. And for conviction will be set aside if there is reasonable likelihood, That the false testimony could have effected the Jury). see also U.S. v. Kelly 35. F.3d 929 (4th Cir 1994). Conviction must be reversed if there is any reasonable likelihood that false testimony could have effected Judgment of Jury. Even if the testimony related only to the credibility of Government witness.

Here, there is no doubt. That the perjury Testimony effected the Applicants burglary Trial. For it directly contributed to the Trial Courts determination. That Applicant oral statement as was alleged was voluntary. Thus the Jury was allowed to hear it see. The Trial Courts determination on the voluntary of Applicants alleged statement. T.T. pg. 52 lines 16-22. This Applicant believes He's entitle to ...

... Relief of his Application. Based upon his Newly discovered evidence, claim, of perjury testimony. 5th Amendment violation. Brady violation. And involuntary statement, which tainted his Trial. And denied him The Right to a fair Trial. see. C.A. 4. (S.C. 1962) (Knowing use of perjury testimony by prosecution Authority, if sufficiently alleged, taints a conviction obtained therefrom and is good grounds for Post conviction Relief.

Hammon v. U.S. 309 F.2d 935., Mooney v. Holohan 294 U.S. 103. 55. 340. Whitley v. Steiner 293 F.2d 895:896. (4th Cir 1961).

II.

Second Allegation of Newly Discovered Evidence. 4th Amendment violation

This Applicant also sought a New Trial, in his Post Conviction Relief Application. Base upon Altered discovered evidence, showing That his arrest, on The initiation of a false Traffic violation.

... which led to a Unconsented, Warrantless search, of his vehicle, a seizure of evidence and a show-up identification and interrogation statements, which directly led to the Applicant Burglary charges. Were all obtain as a result of his illegal Traffic stop and arrest on Trumped up Traffic violation. In violation of The 4th Amendment.

The Applicant contend. That although evidence obtained as a direct result of his traffic stop arrest, which led to his Burglary charges. Was introduced in his criminal Burglary Trial. And played a key roll in his conviction. That at the same time of his Burglary Trial. He still had a pending Trial in The Cherokee County Magistrates Court, For which he sought contest the Legality of his Traffic stop. See incorporated herein Exhibit #9. A Copy of The Court ordered New Trial in The Magistrates Court of Applicants Traffic stop charge. Resulting from an appeal of The original Trial, in which Applicant was Tried, without being afforded, The Representation of Counsel, upon his request....

Applicant. further asserts. That his Traffic stop was pre-Textual, intentional, orchestrated by The Cherokee County Sheriffs Dept. Who had sought to seize Applicant, and his vehicle. So as to investigate information they had received concerning The vehicle Applicant was in ~~possession~~ possession of and a description of a Black male. reportedly suspicious... behavior around a home. That was burglarized The following day. Therefore. Cherokee County Sheriffs. Deputy. Richard Turner. was given a description of The vehicle, and Applicants Location. and instructed by his superiors to track down Applicants vehicle. But it is here. That This Applicant contends. That once his vehicle was spotted by Deputy. Turner. In order to stop Applicant Legally and arrest him and seize The vehicle. Where The police dept. lack sufficient grounds. to arrest Applicant on burglary charges. Where there was no direct evidence That he was involved in The crime at The Time. That Therefore Deputy Turner. intentionall stopped The Applicant...

... ON a trumped up. fabricated Traffic violation. For. Deputy, Turner, stoped Applicant for running a stop signe. That did not exist at the Time. See. Deputy, Richard Turners, Sworn testimony in Applicants Trial. T.T. Pg 174. To, Pg. 182.

ON November 12, 2007, Applicant Traffic violation charge of Failure to STOP For a stop Signe was dismissed. By The charging officer. And The 7th Circuit Solicitor's office Signed off by The chief Magistrate Judge, Cherokee Co.

That Therefore This dismissal constitutes. Newly discovered evidence. See, incorporated herein Exhibit A2. A. Copy of The said dismissed Traffic charge. Which was Amended to The Applicants PCR. Application, along with all of his other Newly discovered evidence documents. Therefore it was part of the record before The PCR Court.

Further relevant testimony given by Applicant before The PCR. Court was. That a day before the actual burglary a lady recognized a vehicle similar to The vehicle Applicant had in his

.... possession. That she took down The tag number, because The person in The car was acting suspicious, That The police Track The Tag number down, and found That The car belong to Applicants girl friend. That The girl friend told The police Applicant had possession of The vehicle. That The police came to The Applicants home. And Orgistrated a Traffic stop on Applicant. For failing to stop for a stop signe That didnt exist at the time. And The Applicant pointed This out to The police. PCR. Tran. PG 22. line 24. To PG 23 line 19., And on ON PCR. Tran. PG 37. line 23. To PG. 38. line 5. The Applicant also testified. That his Traffic stop was illegal. That ~~he~~ There was no stop signe. That existed, That he emphatically wanted to go to court and prove That point. But The Solicitor's office and The accusing officer as well as The Magistrate, elected to drop The charge in 2008. Well after Applicant was convicted.

That The Solicitor's officer. at Applicants. Traffic stop Trial, Continued all The up to 2008. when they dismissed The charge. So Applicant Never had The Traffic stop Trial. Because The Solicitor's office delayed The Trial To prevent Applicant from attacking it on 4th Amendment violation.
Lines 17-25.

This Applicant contends. That both Exhibit evidence and testimonial evidence was presented before The P.C.R. Court. For it to Rule on whether. The dismissal of The Applicants, Traffic stop charge. by The accusing officer., and The Solicitor's office some two years after his burglary conviction. and 5, years after The alleged incident. constitutes Newly discovered evidence. entitling The Applicant to a New Trial. For This Applicant asserts, That The police lack probable Cause to stop his vehicle absent the fabricated Traffic violation which The stopping officer never observed. Further Even if The officer's had some suspicion to stop The Applicant vehicle. For investigative purposes. as pursuant to Terry v. Ohio. still, without The made up Traffic violation. They lack sufficient facts, or any direct evidence. To conclude That The Applicant himself was involved in The burglaries to make an arrest. Therefore had The Applicants Traffic violation charge. been dismissed or if had been found Not guilty in his Trial of The Traffic violation. Then he could have contested The shoe. evidence. and any in-custody statements obtained directly as a result of his

illegal arrest for the Traffic offense on 4th, Amend-
grounds at his burglary Trial.

See. Fruit of The poisonous Tree doctrine. Holding.
(That where evidence would not have come to light
but for the illegal actions of the police, and
evidence had been obtained by the exploitation
of that illegality. The evidence must be excluded).

WON SUN V. UNITED STATES. 371 U.S. 471, ~~88~~.
83. S.C.T. 407 (1963). Further.

Evidence obtained by search and seizures in
violation of the 4th Amendment is inadmissible
in state and Federal Trials. Mapp v. Ohio,
367. U.S. 643. 81. S.C.T. 1684 (1961).

Also in challenging stop of vehicle a defendant
is objecting to the seizure of his persons as
a violation of the Fourth Amendment
Arrest key 63. 5(1). U.S.C.A. Const Amend 4th.

This Applicant also could have moved to exclude
any interrogation statements, from his burglary Trial.

"Confession obtained through custodial interrogation
after an illegal arrest should be inadmissible
unless confession is sufficiently an act of free will
to purge the taint of the illegal arrest."

Taylor v. Alabama 457. U.S. 687 102 S.C.T. 2664.
(1982).

This Applicant contend that The PCR Court failed To Rule upon This Newly discovered evidence claim in violation of § 17-27-80 of The Post Conviction Relief Act. There for The Applicant Application should be granted. And This Applicant Prays, for relief on This claim. or a New PCR, hearing ON. The issue should be held.

III.

Third, Allegation of Newly Discovered Evidence.

The Applicants. Third allegation of Newly discovered Evidence. For which The PCR, Court failed to ruled upon in accordance, to § 17-27-80. of The Post Conviction Act. although The Applicant Amended This claim to his Application. with Photo graphic Evidence. Newly discovered. After his Trial and Conviction. For Applicants Newly discovered evidence... of two News paper clippin photo's and articles...

... taken out of The Gaffney Ledger. showing Cherokee County Crime scene, Investigator. Jimmy Henson. accepting an reward from The 7th Circuit Solicitor's. Office. head Trey Gowdy. For among other things. Helping to gain a conviction against Applicant in is burglary Trial. See incorporated herein. Exhibit A3. The said Newly discovered photo's and News paper article.

This Applicant contends. That The said New evidence is in support of several of his PCR, allegations, First. being That The Trial Court committed reversible error. in Not recognizing several potential conflicts of states witnesses. That involved in Applicants Trial. Namely. Investigator Jimmy Henson. And Detective Mike Fowlkes. in light of The fact. That Applicant had been accused of Arson. of The Cherokee County Court house. in particular. The office of The 7th Circuit Solicitor's. office. Thus he had recieved National and local News coverage. That as a result. The 7th Circuit Solicitor's was disqualified from prosecuting The Applicants burglary charges. And likewise. Applicant original ...

... Trial Counsel was also removed from Applicant's representation, Due to an Actual Conflict of interest That also as a result of The Applicants, orson charge of The Court house. The Cherokee County, sheriff himself, went into the News media and Local News papers. expressing his outrage toward Applicant, because of the fire damage to the Court house, and therefore vowed to make sure that the Applicant received as much Jail time as possible Therefore. The Trial Court should have been aware of the existence of a potential Conflict in the Applicant burglary Trial. See Cuyler v. Sullivan 446. U.S. 335. 100S. S. CT. 1708. Holding (The Sullivan Court mandates a reversal when The Court has failed to make inquiry, when it reasonable knows a Conflict exists).

Second. The New evidence. also lends credibility to Applicant PCR. Allegation. That his substitute Trial Counsel was ineffective for his failure to inform the Trial Court of The potential Conflicts of The two states witnesses. Investigator, Henison, and Detective, Mike Fowkes. Whom was both employees of The Cherokee County Sheriff's Dept. which was under the Command of The sheriff, And That both witnesses, held both, professional and personal relationships, with the dis unified 9th...

... circuit solicitor's office. And in fact it was originally at the recommendation of Detective, Mike Fowlkes, To The Solicitors office. That the Applicant, was charged as a "career criminal", and a life sentence sought. See herein exhibit (B), Document showing Detective, Fowlkes, input, recommendation to charge Applicant, under the "career criminal status.

Therefore Trial Counsel failure to inform the Trial Court and moved to exclude these conflicting witnesses. Constituted ineffective assistance of Counsel. For it potential Tainted his Trial.

But here, The Newly Discovered evidence emphatically shows that Investigator, Jimmy Henson, whom was allowed to testify as an expert witness. As a shoe impression expert, in the Applicant burglary Trial. Was in fact an Actual Conflicting witness. For instead of being a neutral uninfluenced expert, He was secretly and deliberately conforming his testimony and opinion of the underlying facts. To specifically to gain a conviction against the Applicant on behalf of the disqualified Solicitor's office. To...

... support this claim. Besides the newly discovered evidence, showing the 7th Circuit Solicitor's office giving the expert witness a reward for his assistance in helping gaining a conviction against Applicant. This Court need only to look at expert, Henson's, opinion of the evidence, which directly contradicts his own analysis. see T.T. PG 220. lines 2-20. And then see, testimony given by Investigator, Henson, in regards, to whether he knew the results, of the testing of the DNA evidence collected in the case. T.T. PG 224. lines 5-12. It was here Investigator Henson, gave misleading perjury testimony. By testifying, under cross exam by Applicant's Trial Counsel, to not knowing if the physical evidence was linked to the Applicant, through DNA testing, because he had^{nt} seen all the reports on it, when in fact, Investigator Henson, being the crime scene evidence Tech. for the Sheriff's Dept, knew, that no analysis for comparisons, of the physical evidence collected by himself from the burglarized home of the Gallmans. (Hair particles) and blood seized from Applicant had ever been done. But that instead Applicant's blood sample, was illegally used as a discovery tool, to try an ...

... connect Applicant to an unrelated burglary assault crime of a Mr. James Spencer home. See. incorporated herein Exhibit (F). A copy of The sted. Law enforcement Forensic Service Request, of The above said illegal DNA comparison in The unrelated said burglary and assault crime.

That, The above said Report. Was in possession of Investigator Henson. Some two years before, Applicants burglary Trial. Therefore. He knew he was giving misleading testimony before the Trial Court. But it was all intentional. to try on insure. That The Trial Court wouldn't find out Applicant D.N.A. was illegally tested. And to insure a conviction.

IN, The Applicants, PCR hearing He did testify to The Conflict of Investigator, Henson, And how he was a hostile witness toward Applicant. How due to The News media coverage of The Court house arson. That The ~~sted~~ sheriffs dept. was going to convict Applicant ^{and} get the most sentence for him. That Therefore Applicant Trial Counsel should have objected to Investigator Henson being qualified as an expert due to...

- his being a potential conflict of interest.
PCR. Tran. PG. 31 lines 5-21.

CONCLUSION

1. The Applicant, believes his above 3 claims of Newly Discovered evidence. was properly presented within the record of his PCR, Application. Supported both by Exhibits evidence, Trial Record, and Relevant PCR Testimony. Therefore the PCR Court erred in dismissing his Newly discovered evidence claims. on the erroneous conclusion. That Applicant failed to present any evidence to support his claims. Therefore Applicant believes he's entitled to relief on these claims. Or,
2. In the alternative, remand these claims, back to the PCR Court for a hearing on the claims, for a determination. as pursuant to § 17-27-80. If the Court finds - The issue was not sufficiently raised as pursuant to § 17-27-90 of the Post Conviction Act.

ISSUE 8.

Error OF The PCR. Court in dismissing
The Applicant Application. Without
First. hearing Applicants Additional
Amendments to his Application. And
without also hearing his Motion to
Dismiss PCR Counsel.

1. This Applicant appeals. The PCR. Courts
rulings and dismissal of his Application,
without hearing and ruling ON The
Applicants amendments to his Application
and without hearing Applicants Motion
to dismiss PCR Counsel. Where both, The
amendment to his application and his Motion
to dismiss PCR. Counsel were filed, after
Applicant April 6, 2010. PCR. hearing. But
were proper in light of The fact That The PCR.
Court. Left the record of the PCR. proceedings
"open" see PCR Tron. PS 74. lines 8-20.
Also see incorporated herein Exhibits #4,
Copy of stamped filed amendment to Application
Dated September 21 2010. And Exhibit #6, A...

... stamped filed copy of The said Motion to Dismiss PCR. Counsel. Dated May 26 2010. See Also. Letter by Applicants PCR. Counsel. Dated September 23, 2010, Informing Applicant of The filing of his Amendments To his Application. See Exhibit #8. And Finally See, Applicants attempt to File a Pro Se Motion. To stay The Judgment of The PCR. Court. Because it Failed To hear Applicants Motion To Dismiss PCR. Counsel, And his New Amendments to his Application. But The Supreme Court would Not consider The Motion Because, Applicant was represented by Appellate Counsel. Exhibit #16

CONCLUSION

1. This Applicant prays. That This Court, in The alternative of any direct relief on any of his standing issues in this Appeal. Remand his Application For a hearing of his Amended Allegations. And for a hearing on his Motion to Dismiss PCR Counsel. And stay The Judgment of The PCR. Court, dismissal of his Application. Until these Amendments, And Motions have been heard and adjudicated.

ISSUE 9.

Failure of PCR Counsel To Timely File
Rule 59(e) SCRPC. Motion. To Alter or Amend,
Where PCR Court failed to rule on specific
allegations raised in The Application And in PCR
hearing in accordance To Marlar v STATE. 375
S.C. 407. 653 S.E.2d 266.

1. IN, Marlar 653. S.E. 2d. 266. This Court held That
opposing counsels should call any omissions to
The attention of The PCR Judge prior to issuance
of The order and Even after an order is filed,
Counsel has an obligation to review the order
and file a Rule 59(e) Motion to alter or Amend
if order fails to set forth the findings and The
reason for those findings as required by §17-27-80
and Rule 52(a). SCRPC. For, a failure to obtain
a ruling on specific issues presented, precludes
Appellate review of That issue Pruitt v. STATE
310. S.C. 254. 423. S.E. 2d 127. (1992).

2. The Applicant contends. That The PCR. Court failed To
Rule on The Numerous issues raised in The ...

in The Applicant Application and Amended Applications.
As well as in The Applicant PCR. proceedings.
That The PCR. Court, also failed hear and Rule upon
The Applicants Motion to dismiss his PCR. Counsel
before it ruled to dismiss The Applicant Application.
Finally The PCR. Court made numerous erroneous
conclusions of facts that was not supported by
any evidence in its conclusions on numerous of The
Applicant allegation. For which PCR. Counsel
should have brought to the attention of The PCR
Court, see incorporated herein Exhibit (J) A copy
of a letter address to PCR. Counsel, Directing
him to time file a Rule 59(e) Motion.

3. CONCLUSION
Applicant seek a New PCR. hearing to adjudicate
all his Allegations. And to clear up errors in
The PCR Courts, findings, Applicant also seek a
New PCR. Counsel

ISSUE 10.

The PCR Court, erred in denying Applicant claim That The Trial Court abused its discretion in allowing Shoe's impression Expert witness. Testimony. When Trial Court Failed to conduct its "Gate keeping" obligations. proffer experts testimony, Hold relevant 403, hearing before allowing prejudice experts testimony.

Applicant contend. That The PCR. Court Errored in dismissing ~~under~~^{his} claim under The Abuse of Discretion of The Trial Court in allowing The testimony of The shoe, print expert witness. Without conducting its "Gate keeping" obligations, proffering The testimony, or conducting a 403. hearing on probative or prejudice.

1. The PCR Court, erroneously concluded That Applicant Failed to meet his burden of proof and That further, The record clearly reflects. That The issue of The shoe print experts testimony Was reviewed and ruled upon by The South Carolina Court of Appeals. Therefore The claim should be denied. See, PCR Court Finding of Facts and Conclusion of Law.

Here The record is clearly undisputable. That although. The issue of abuse of discretion of the Trial Court in allowing The shoe print expert witness testimony. Was raised in The Applicant's "Initial Brief of Appellant" The record is also clear. That this issue was not heard or rule on by The South Carolina Court of Appeals. Due to The fact That The issue was not preserved for Appellate review pursuant to The contemporaneous objection rule. See incorporated here Exhibit #11 The opinion and per curiam. from The S.C. Court of Appeals, which Affirmed Applicant conviction without oral arguments.

Therefore The PCR Court, errored in its conclusion That This issue was raised and ruled upon by The Court of Appeals.

2.

This issue is of great merits Because, The STATE, solely relied upon The shoe print evidence to try an establish "entry" against Applicant in a circumstantial evidence case.

3. Applicants. Trial Counsel made two pre-Trial Motions. To exclude the testimony of the shoe print expert witness. First on the basis that the foot wear (Fila Tennis shoes), was so common of a tennis shoe. That the expert's testimony would be more prejudicial than probative pursuant to Rule 403 analysis. T.T. PG 36 to PG 37 line 24. In addition Trial Counsel's second Motion was to exclude the expert's testimony. Based upon the fact that the expert would be testifying to things such as smudge marks, on a broken piece of glass was caused by a motion of the turning and twisting of the foot. Thus Trial Counsel did not believe the expert would be qualified to testify in such an area. For it would be getting into some field of real physics. T.T. PG 37. To PG 38., The Trial Court stated at least (3) Three Times. That it did not know what the expert would testify to. That it doubted that it would exclude the expert's testimony under Rule 403. "For the testimony in all cases. Crime scene evidence: a pair of shoes, tire marks, fingerprints and ect. That it normally goes to the Jury after any type of an analysis including Rule 403." T.T. PG 38 lines 12-20. Further The Court

STATED. That it thought it goes more to The weight of the testimony as opposed to the admissibility. And as far as the opinion on smudge marks on glass being made by These shoes, That the Court, would have to hear what he (The expert) ~~has~~ ^{has} to say For it may be for afield. T.T. PG 38 line 21. To PG 39 line 2.

During The Trial at The introduction of The shoe print experts testimony. The Trial Court informed the Jury That it had to rule on the experts testimony before they hear it as a matter of Law. To see if it comes into the rules of evidence. So it could make a determination if it permissible. T.T. PG 191. lines 8-19.

4. This Applicant contends. That The Trial Court never proffered The expert witness testimony. Never conducted any analysis under rule 403. Failed to conduct any of The "Gate keeping" obligations. before allowing The shoe print expert witness testimony, Where expert witness. testified to The twisting and turning of The foot For which he had No qualifications. T.T. PG 215. To PG. 217. Line 23. And could not conclusive say based upon his analysis. That Applicants shoes made The shoe print in The burglarized home. And then contradicted his analysis and stated That in his own personal ... opinion he thought they did. T.T. PG. 214. lines 17.

... To PG 215. lines 1-4. And see where expert witness contradicted his analysis, ~~he~~ with his own personal opinion. T.T. PG 219. lines 21-24.

The Court has held in Oglesby v. General Motors 190 F.3d 244. (4th Cir 1999) (That a reliable expert testimony must be based upon scientific technical, or other specialized knowledge, and not on belief or speculation. And inferences must be derived using scientific or other valid methods).

Further, "Dauberts" "Gate Keeping" obligation requires an inquiry into both Relevance and reliability. And it applies not only to scientific testimony but to All expert testimony. Kumho Tire Co. 119 S.Ct 1174. See also Westberry v Gisleaved Gummi - AB 178 F.3d 257. (4th Cir 1999). State v. Slocumb 521 S.E.2d 507. (S.C. 1999).

Here The question is Did The Trial Court Error in permitting the expert witness testimony with out holding a hearing proffering The experts testimony For relevance and reliability and conducting some sort of on The record analysis on The prejudice verses The probative as pursuant to Rule 403.

For The answer. This Court has held in State v. Slocumb 521 S.E.2d 507. (S.C. 1999). (That. Even if admissible under Rule 403 or 405, However. The determination...

... of whether an expert may testify to the fact underlying an opinion must include an analysis under Rule 403 SCRE. United States v. Gillis 772 F.2d 549, 554 (4th Cir 1985) See 28. Charles Alan Wright and Victor James Gold, Federal Practice and procedure § 6293, At 418 (1997). Holding where examination of an expert may delve into matters that may be confusing, unfairly prejudicial, or a waste of time, Ammissibility may be governed by rule 403.

(Note) That The expert witness in Applicants burglary Trial, was The, Cherokee County Sheriffs Dept, Investigator Jimmy Henson. Whom Applicant alleges was a conflict of interest. Thus should not have been ruled an expert witness in Applicants burglary Trial.

CONCLUSION

1. Applicant Ask This Court to find. That The Trial Court Errored in allowing The shoe print experts testimony without conducting its Gate keeping obligation. Proffer, the testimony, For relevance and reliability. Making an on The record determination of prejudice verses, probative Pursuant to Rule 403. Where The Trial Courts Error, permitted The expert witness. to Give conflicting opinions, Contrary to his own analysis. of the evidence.

That Therefore The Applicant conviction and sentence
be reversed and remanded For a New Trial. Or.

2. That This issue be remanded to the PCR. Court For a
sufficient hearing of The issue and adjudication
ON the merits
3. or any relief This Court deem necessary and Just.

Issue #11

INEFFECTIVE ASSISTANCE OF PCR, APPELLATE COUNSEL FAILURE TO RAISE ANY REVIEWABLE ISSUES, ON THE APPEAL OF THE DENIAL OF APPLICANT PCR APPLICATION.

1. This Applicant simply contends. That, PCR, Appellate Counsel, Abandon his Appeal of The denial of his Application, despite Numerous meritorious Allegations, That he raised, And several Errors, in The rulings of The PCR Court. Including issue's related To The Applicant Right To obtain Relevant Discovery Documents. To support his Allegations. Further, PCR, Appellate Counsel, in her, Johnson petition, raised a Frivolous, issue. For which This Applicant Never Alleged in his Application or AT The PCR hearing, For The issue Appellate Counsel raised was. more To do with his Substitute Trial counsels. Ineffective Representation. in his. Failure To Investigate alibi witness and...

...contact her. Therefore To present an alibi defense.
The PCR. Court. denied PCR. relief. ON This issue, Ruling
That The Applicant failed To meet his burden of
proof. Because Applicant failed to present the alibi
witness At The PCR. proceedings. Based upon The
Rule That a Applicant "must" produce The testimony
of a favorable witness. in order To establish prejudice.
From a witness failure to testify At Trial, App. 623-
-637.

Clearly The Record reflects. That Applicant never
raised such an allegation. Therefore, The issue
presented /or raised by PCR. Appellate Counsel, And
The Ruling of The PCR. Court Are both Mute to
The real Allegation raised by The Applicant. For
Applicant Allegation raised was:

(Ineffective Assistance of Substitute Trial Counsel
For his Failure to obtain Through Discovery The
personal information, "Full Name, Address ect" of The
Applicants alibi witness. Whom Applicant only
knew by her first Name. So as Trial Counsel Could
contact her and call her as a witness For The defense).

See PCR Tran. P9 21. lines 8. To P9 22. lines 8. Here This ...

... Court will clearly find, That The Applicant's issue, was without a doubt related To his Trial Counsel's failure to get The personal information of his potential Alibi, witness, from The prosecution when The police infact had the information, and testified to That fact in The Applicant burglary Trial. See, Deputy Richard Turner's sworn testimony in Trial concerning That fact. T.T. Pg. 179. line 25. To Pg 180. lines 1-4.

Given The above stated facts. It is evident, That The Applicant could not present a witness to The PCR. Court whom he doesn't have The information needed to contact her with. For This was one of Applicant's. Discovery requests made To his PCR. Counsel. See incorporated herein Exhibit # 2, A Letter from PCR. Counsel, Acknowledging The Discovery Request.

This Applicant contends once, again That, Just like his direct Appeal, He's been denied any Appellate review of his Conviction. Because of Appellat Counsel's Ineffective representation.

Due Process requires effective Assistance of Counsel during First Appeal as of Right. Evett v. Lucy 469. U.S. 389. (1985).

ISSUE #12

Error of The PCR. Court, in it failure To Find. That The Trial Court Abused its Discretion. Thus Committed Reversible error When it allowed stipulations. To The prior burglary convictions. element. in Lieu of informing The Jury

IN. STATE V. SIMMONS. 573 S.E. 2d 856.. The Court held. Because two prior burglaries And/or house breaking convictions are elements of first degree burglary, A defendant charged with first degree burglary cannot require The state to stipulate to The prior convictions in Lieu of informing The Jury Code 1976 §16-11-311 (A)(2).

Here in This case. Applicants Trial Attorney and The state stipulated to The Applicants prior convictions. which were elements of his indicted burglary charges. These stipulations were held in chambers without The Applicant knowledge or Consent. The Trial Court Agreed To allow The parties To stipulate to The prior burglary convictions. without informing The Jury of The stipulations. - T.T. P9, 39 lines 19, To. P9 40. line 14.

This Applicant contend. That The Trial Court erred in allowing the stipulations. Because.

1. First. The Applicant himself never agreed to the stipulations of his prior convictions. And The Trial Court never inquired if he agreed to stipulate. Criminal Law Key 1203.10 (6).
2. Second. The Trial Court made NO ON The record determination of The admissibility of other crime evidence and whether The prejudice factor out weigh probative factor. As pursuant to Rule 404. And 403. S.C. Rules of Evidence.
3. IN absent of The stipulated aggravating element of The prior burglaries convictions. The Trial Court erroneously instructed the Jury on The second degree burglary statute. Thus permitting The Applicant to be convicted of 1st degree burglary under The second degree burglary statute. Absent of any... aggravating Circumstance For which was needed to convict Applicant of 1st degree burglary. Code 1976 §16-11-312. STATE v. LYNCH 545 S.E. 2d. 511. (S.C. 2001)
4. Fourth. Due process clause and The sixth Amendment, Right to Jury Trial requires a criminal conviction to rest upon a Jury determination. That a defendant is...

guilty of every element of the crime with which he is charged beyond a reasonable doubt. Const Amend 5.6.14. U.S. v. Gaudin 115 S.Ct. 2310 (1995).

(Note) The prosecution, on T.T. PG 255, lines 1-18, added more of the Applicant's prior convictions to the Record, which was also not submitted to the Jury. Though no stipulations to these additional prior convictions were held or agreed upon.

This, Applicant finally contends, that his entire Trial Record was before the PCR Court to properly adjudicate the issue. Plus the Applicant sufficiently briefed this issue in his attached Amendment to his PCR Application.

Conclusion.

1. Applicant is entitled to a reversal of his conviction and sentence. (Relief of his PCR Application).

Nothing Follows

RB.

Additional Exhibits

Documents

- Exhibit B. Officer Input Form
- Exhibit E. SLED Lab, Service Request.
- Exhibit F. SLED, Forensic Service Request
- Exhibit G. SLED, Evidence Description
- Exhibit J. Letter To PCR. Counsel. To File 59(e)
- Exhibit #1 Cherokee County, Booking sheet.
- Exhibit #2 Letter from PCR. Counsel, Acknowledging Applicants Discovery requests.
- Exhibit #1A. Late Notice by Appellate Counsel of Court of Appeal decision.
- Exhibit #4. Amendment to Application. Dated, Sept. 21 2010. Which PCR. Court Failed To hear.
- Exhibit #6. Motion To Dismiss PCR. Counsel.
- Exhibit #8. Letter from PCR. Counsel informing Applicant That he file Amendments.
- Exhibit #9. Order from an Appeal, Granting Applicant a New Trial of his Traffic charges.
- Exhibits #10 + #11. Letter From Y. Circuit solicitors office, To A.G. office Concerning Applicants Conflict.
- Exhibit #12. Decision by S.C. Court OF Appeals of Direct Appeal issue

- Exhibit #12(c) The Affidavit of Service from The 7th,
Circuit Solicitors office of Notice To seek life
- Exhibit #14. Chain of Custody. of shoe evidence. Taken
from Applicants. person property. 12. days
After arrest on Traffic offense,
- Exhibit #16. The Pro se, Motion To stay The PCR. Courts
Jud ment. Filed by Applicant to The S.C.
Supreme Court.

(Note) All Exhibits Documents are
relevant To The Applicants issues
in This Response Appeal, And
most are already included in The PCR.
record on Appeal.

S/ Kisty Brannon

Exhibit (B)

Office of the Solicitor 7th Circuit

OFFICER INPUT FORM

FROM: INVESTIGATOR GREG PHILLIPS

DATE: 1-20-04
REF: STATE VS Ricky Brannon
CHARGE: Burglary 2nd Degree x2
CASE NO.: Grand Larceny

Deputy solicitor Donnie Willingham has been assigned the above case for prosecution. I need your input in deciding how best to proceed. Please complete this memo and return it to me within 10 days. Please feel free to contact me at 487-2586 should you have any questions. You may fax your response to me at 487-2753.

- ☒ I wish to be present for any plea.
☐ I recommend you use your own discretion in the disposition of these charges.
☐ Please contact me if you intend to reduce the charge as part of a plea arrangement.
☐ I recommend or have no opposition to the following:
 Dismissal ☐
 PTI ☐
 Probation ☐

☒ I recommend incarceration because:

THREE STRIKES, Career Criminal

SAYS HE WILL GET OFF ON TECHNICALITY IF POSSIBLE

☒ I want to be notified upon disposition of this case.

Please list any co-defendants in this case.

Detective
Mike Folks signature -?

[Signature]
Officer Signature

Exhibit (E)



SLED LABORATORY FORENSIC SERVICES REQUEST

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

See Note on
next page



FORM: LAB-003
JAN 1992
5 Editions
Be Used

Name of Investigating Officer MIKE FOWLKES Rank DETECTIVE CAPT.
Department CHEROKEE CO. S.D. Telephone Number 489-4722
Street Address or Post Office Box 312 E. FREDERICK ST.
City GAFFNEY, S.C. State 29340 Zip Code 29340
Incident Date 11/20/03
Related Lab No. LO402029

Subject # 1 Victim # 1 Sex: M ☒ F ☐ SID/FBI
Last Name BRANNON First Name RICKY Middle Name DOB 01/19/67
Race: Cau ☒ Blk ☐ Other ☐

Subject # 2 Victim # 2 Sex: M ☒ F ☐ SID/FBI
Last Name GALLMAN First Name KENNETH Middle Name W. DOB AGE 69
Race: Cau ☒ Blk ☐ Other ☐

Subject # 3 Victim # 3 Sex: M ☐ F ☐ SID/FBI
Last Name First Name Middle Name DOB
Race: Cau ☐ Blk ☐ Other ☐

Subject # 4 Victim # 4 Sex: M ☐ F ☐ SID/FBI
Last Name First Name Middle Name DOB
Race: Cau ☐ Blk ☐ Other ☐

* Could any subjects or victims have the following: (circle) AIDS VD Hepatitis Tetanus TB Lice

Comments:

COMPLETE THIS SECTION ON ALL CASES: (Circle Appropriately)

Homicide Suicide Accidental Death Natural Death Child Fatality Autopsy Performed: Yes No
(A) Gunshot (B) Stabbing (C) Beating (D) Strangulation (E) Drug/Poison (F) Alcohol (G) Carbon Monoxide (H) Fire (I) Hanging (J) Electrocution
(K) Heart Related (L) Disease (M) Other
Accident Fatality Victim (A) Driver (B) Pedestrian (C) Motorcyclist (D) Bicyclist (E) Passenger (F) Swimming/Boating
TYPE OF CASE (IF NOT DEATH) (A) Drugs (B) CSC (C) Burglary (D) Larceny (E) Other

FOR TOXICOLOGY CASES: (Circle Appropriately)

DUI Felony DUI Was a Breath Test given? Yes No If Yes, Reading
Number of Specimens Enclosed: Blood Urine Ocular Fluid Other
Examination Requested: Blood Alcohol Drug Screen CO Blood Type Other
Drugs Suspected: Yes No List Drugs

FOR SEROLOGY/DNA/HAIR/FIBER CASES: (Circle Appropriately)

Was the subject(s) bleeding? Yes No Unknown Have any of the victims / subjects been transfused in the last 120 days? Yes No Unknown
Crime occurred: Suspect's residence Victim's residence Suspect's vehicle Victim's vehicle Other
Was a weapon involved? Yes No Unknown Type of weapon?
Have standards from all possible bleeders or body fluid donors been submitted? Yes No Unknown Comments:

Submission of victim and suspect standards is necessary before complete analysis can be performed.

THE ITEMS SUBMITTED WILL BE EXAMINED WITH YOUR ASSURANCE THAT THE SUBMITTED SPECIMENS HAVE NOT NOR WILL BE SUBMITTED TO ANY OTHER LABORATORY FOR TECHNICAL OR SCIENTIFIC EXAMINATION. THIS STATEMENT WAS READ BY OFFICER

Jimmy Henson

Jimmy Henson

Exhibit (F) 2 sheet



SLED LABORATORY FORENSIC SERVICES REQUEST

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

See note on related No!

FORM: LAB-003
NOVEMBER 1993
Previous Editions
May Be Used

Name of Investigating Officer MARK VANDERBURG Rank DETECTIVE
Department CHEROKEE CO. SHERIFF'S OFFICE Telephone Number 489-4722
Street Address or Post Office Box 312 E. FREDERICK ST.
City GAFFNEY State S.C. Zip Code 29340
Incident Date 11/13/03
Related Lab No. 10402025

Subject # 1 Victim # 1 Sex: M ☒ F ☐ SID/FBI
Last Name SPENCER First Name JAMES Middle Name DOB AGE 67
Race: Cau ☒ Blk ☐ Other ☐

Subject # 1 Victim # 1 Sex: M ☒ F ☐ SID/FBI
Last Name BRANNON First Name RICKY Middle Name DOB 9/19/1967
Race: Cau ☒ Blk ☐ Other ☐

Subject # Victim # Sex: M ☐ F ☐ SID/FBI
Last Name First Name Middle Name DOB
Race: Cau ☐ Blk ☐ Other ☐

Subject # Victim # Sex: M ☐ F ☐ SID/FBI
Last Name First Name Middle Name DOB
Race: Cau ☐ Blk ☐ Other ☐

* Could any subjects or victims have the following. (circle) AIDS VD Hepatitis Tetanus TB Lice

Comments:

COMPLETE THIS SECTION ON ALL CASES: (Circle Appropriately)

Homicide Suicide Accidental Death Natural Death Child Fatality Autopsy Performed Yes No
(A) Gunshot (B) Stabbing (C) Beating (D) Strangulation (E) Drug/Poison (F) Alcohol (G) Carbon Monoxide (H) Fire (I) Hanging (J) Electrocution
(K) Heart Related (L) Disease (M) Other
Accident/Fatality/Victim (A) Driver (B) Pedestrian (C) Motorcyclist (D) Bicyclist (E) Passenger (F) Swimming/Boating
TYPE OF CASE: (IF NOT DEATH) (A) Drugs (B) CSC (C) Burglary (D) Larceny (E) Other

FOR TOXICOLOGY CASES: (Circle Appropriately)

DUI Felony DUI Was a Breath Test given? Yes No If Yes, Reading
Number of Specimens Enclosed: Blood Urine Ocular Fluid Other
Examination Requested: Blood Alcohol Drug Screen CO Blood Type Other
Drugs Suspected: Yes No List Drugs

FOR SEROLOGY/ DNA/HAIR/FIBER CASES: (Circle Appropriately)

Was the subject(s) bleeding? Yes No Unknown Have any of the victims / subjects been transfused in the last 120 days? Yes No Unknown
Crime occurred: Suspect's residence Victim's residence Suspect's vehicle Victim's vehicle Other (Victim Bleeding)
Was a weapon involved? Yes No Unknown Type of weapon? Chisel PAK (Suspect Bleeding we don't know)
Have standards from all possible bleeders or body fluid donors been submitted? Yes No Unknown Comments

Submission of victim and suspect standards is necessary before complete analysis can be performed.

THE ITEMS SUBMITTED WILL BE EXAMINED WITH YOUR ASSURANCE THAT THE SUBMITTED SPECIMENS HAVE NOT NOR WILL BE SUBMITTED TO ANY OTHER LABORATORY FOR TECHNICAL OR SCIENTIFIC EXAMINATION. THIS STATEMENT WAS READ BY OFFICER

Jimmy Henson
Print Name of Delivering Officer

Jimmy Henson
Signature of Delivering Officer

SLED LABORATORY EVIDENCE INVENTORY SHEET

(Use ballpoint pen and press firmly. Print all information except where signature is required.)

Exhibit (G)

FORM: LAB-00-
NOVEMBER 19:
Previous Edition
May Be Used

Lab Number L 04102029 Sheet Number _____ of _____

(Use more than one sheet if necessary.)

ITEM #	DESCRIPTION OF EVIDENCE: I.E. SUBJECT OR VICTIM'S (EVIDENCE TO INCLUDE SPECIFIC ARTICLES AS TO COLOR, ETC., IF DRUGS THEY ARE TO BE COUNTED, ETC.)	EXAMINATIONS REQUESTED
1	CONTROL SWAB (#1)	DNA
2	SWAB FROM CARPORT FLOOR - BLOOD (#2)	
3	SWAB FROM STORM DOOR - BLOOD (#3)	
4	SWAB FROM KITCHEN FLOOR - BLOOD (#4)	
5	SWAB FROM KITCHEN FLOOR - BLOOD (#5)	
6	SWAB FROM DISHWASHER IN KITCHEN - BLOOD (#6)	
7	SWAB FROM BOTTOM OF OVEN - BLOOD (#7)	
8	SWAB FROM TOP OF OVEN - BLOOD (#8)	
9	SWAB FROM CABINET IN TV ROOM - BLOOD (#9)	
10	SWAB FROM TROPHY IN TV ROOM - BLOOD (#10)	
11	ONE DARK COLORED HAIR APPROX 1 1/2" LONG (#11)	Storage
12	ONE WHITE HAIR APPROX 1 1/2" LONG (#12)	
13	ONE DARK COLORED HAIR APPROX 3/4" LONG (#13)	
14	ONE DARK COLORED HAIR APPROX 1" LONG (#14)	
15	POSSIBLE BLOOD SCRAPINGS - BOTTOM OF DRIVE (#15)	DNA
16	POSSIBLE BLOOD SCRAPINGS - TOP OF DRIVE (#16)	
17	POSSIBLE BLOOD SCRAPINGS - ROADWAY (#17)	
18	SWAB POSSIBLE BLOOD ROADWAY (#18)	
19	ONE (CR.) BAL W/ BLOOD ON SAME (#19)	TRACE / DNA
→ 20	BLOOD STANDARD FROM JAMES SPENCER	DNA
→ 21	BLOOD STANDARD FROM RICKY BRANNON	E 209066 (21)

(#10, 15, 21) E 209063 DNA, E 209062 Storage, E 209064 Proc, E 209065 (20)
EVIDENCE SUBMITTED IN SEALED CONTAINER IS PROVISIONALLY ACCEPTED AS BEING CORRECTLY DESCRIBED
AS LISTED ABOVE. CONTRIBUTORS AGREE THAT THE ACTUAL INVENTORY OF EVIDENCE CONDUCTED BY THE
SLED EXAMINER WILL BE THE CORRECT INVENTORY.

Delivered By (Print)

1-11-15-21 DNA Box 2-24-04

Item # Received By Date

Delivered By (Sign)

11-14 EVIDENCE 2-24-04

Item # Received By Date

Exhibit #
(J)

Ricky Brennan #179051
Broad River Corr. INST.
4460. Broad River Rd.
Columbia S.C. 29210.

Mr. Rodney W. Richey, PA.
Attorney At Law
P.O. Box 10916.
Greenville S.C. 29603.

Please File 59 (e) Motion
ON Dismissal of MY
PCR Application. So That
All of my Allegations May be
heard and Rule ON. As pursuant To
S.C. Code ANN § 17-27-80

Re. Ricky Brennan -vs- The STATE of South Carolina, CASE NO.
2009-CP-11-0555.

: Requesting For The immediate filing of Motion. pursuant to Rule
59 (e), S.C. Rules of Civ. proc. (1) Motion For The PCR Court, To hear
and Rule ON All specific Allegation in Application and Amended
Application. (2) To correct all inaccurate ~~etc~~ conclusions of Fact in
The Record. (3) To hear and Rule ON pending Motions. To Alter or
Amend Judgment. Based upon sufficient facts and evidence, Not
previously considered by The Court.

Dear Sir I have Just received, an order by The PCR Court, Dated
November 15, 2010. And received by me ON November 30th 2010.
Dismissing MY PCR Application. First, Sir I am very suprized
and some what confussed, That The PCR Court Dismissed MY PCR
application. Especially in light of The fact. That At The April 6, 2010
PCR hearing The Court left The PCR proceedings open, For further
hearing of The issues. And because, it (The Court) never held a hearing
ON The rest of my Allegations within MY Application. For The PCR
Court only conducted ONE hearing ON a single issue. Ineffective

... Assistance of Substitute Counsel. And even all of my specifically alleged allegations of counsel ineffectiveness. Wasn't even presented to The Court. Because for starter's you, wasn't prepared to present them due to the fact. That you have never once visited me. and reviewed the merits of my allegations. And review my Exhibits evidence. And second. Because The PCR Court some what forced you to proceed with the hearing even though you didn't have all the evidence and facts. For The Court just arbitrarily denied all of our Motions For "Discovery." "Continuance." And even a order to Test D.N.A in This case. Further The PCR. Court even refused to recuse it self. even though it had vast knowledge of a pending charge against me. which involves The 7th Circuit Solicitor's office. and The Cherokee County Court house. Sir. It is beyond me, given all of these factors, of why i even have to write you and request That you file a 59(c) Motion. ON my behalf. Sir. Just to let you know. I Filed a Motion with clerk of Court, Cherokee County, To dismiss your representation back in May 24, 2010. For some reason, That Motion has never been heard by The PCR Court. So, Sir, besides filing This 59(c). Please also File what ever Motion is necessary. To stay The PCR. Courts order of Dismissal. ON The grounds. That The Court failed to hear my Motion to dismiss and be assigned a new P.C.R. attorney. See A. stamped Filed copy of That Motion hearing as Exhibit (A). But in The mean time being That i have no other Counsel or choice but to request you file a Timely 59(c) Motion in This matter please See Exhibits. And some allegation i specifically Request be ruled upon. and or reconsidered in This Motion.

Certificate of Service

The undersigned do hereby certify. That he has mailed the attached correspondent letter. To his PCR. Attorney, Mr. Rodney W. Richey
P.A. At. P.O. Box 10916. Greenville S.C. 29603. Along with 5
Exhibits. Requesting The Filing of an 59(c) Motion, To Alter or
amend, Reconsider, ect. By placing said correspondent, in an
envelope properly addressed with U.S. postage, prepaid, Silled and
deposited in The United States Mail, on This 3rd day of December
2010

Type of Document mailed:

Request For PCR. Attorney To Timely
File 59(c) Motion. To Alter or Amend
Judgment / For Rehearing / To hear all
allegations / To correct mistake and inaccurate
Facts. (2) 5 Exhibits. inside

Respectfully Submitted

S/ Ricky Brannon
Ricky Brannon #179051
Broad River Corr INST.
4460. Broad River Rd.
Columbia S.C. 29210.

Also Mailed To:

C.C. The Honorable S.C. Supreme Court clerk
Daniel E. Shearouse
P.O. Box 11330
Columbia S.C. 29211

Sworn before me This
3rd day of December 2010

Eugene Smith
Notary Public for South Carolina

My Commission Expires April 4, 2018
My Commission Expires

The Honorable J. Derham Cole
Judge 7th Judicial Circuit
P.O. Drawer, 2289
Gaffney S.C. 29342

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

February 22, 2010

Ricky Brannon, SCDC # 179051
Broad River Correctional Institute
4460 Broad River Road
Columbia, SC 29210

RE: Ricky Brannon, SCDC # 179051 vs. The State of South Carolina
Case No: 2009-CP-23-555

Dear Mr. Brannon:

This letter is in response to a letter I received from you which was not dated. In your letter, you requested that I obtain certain relevant discovery material. As you recalled at the last hearing I made a motion for discovery. However, Judge Couch would not rule on that motion and recused himself. Therefore, I have no legal basis to assert discovery until a judge rule on the motion for discovery. Therefore I cannot compel people to provide information at this time.

You specifically asked for things in this letter and I am going to go over those things by the number that appears on the letter.

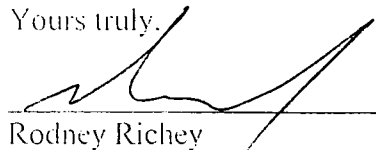
1. You requested a affidavit of probable cause for which the Cherokee County police obtained search warrant for the vial of DNA. Please be advised that this is precisely the type of information I was referring to in the preceding paragraph. This information I should be able to receive through discovery. At this time, I have no discovery order.
2. You requested the name and address of the passenger who was with you on the day of the incident. In your previous letter you have stated that you do not know the person's name or address. Please be advised if you are unable to give me the name and address of the person that was in the car with you, it is very difficult for me to identify this person. Also, this is another issued that could be resolved with the discovery.

3. You said that you needed a copy of the traffic tickets. In your letter it is correct that I did go to the magistrate court to try to obtain a copy of the tickets. I was not able to get a copy from the Spartanburg Magistrate Court. This is the only manner that I know to obtain a copy of these tickets.
4. You requested a transcript of the magistrate court hearing. As I discussed with you previously, that hearing was tape recorded and those recordings last only thirty days. I am not able to provide you with a copy of this transcript. This is an issue that may be taken up through discovery.

Lastly, you requested that I visit with you at the Department of Corrections. Please be advised that I normally visit with applicants at the time I receive all the information. I believe that is the proper way to do it so that the discussion can be meaningful. However, if you insist I will come to the Department of Corrections to meet with you prior to receiving any additional information. Please contact me and let me know which route you would like for me to take. Thank you and if you should have any questions, please feel free to write me.

RICHEY AND RICHEY, P.A.

Yours truly,



Rodney Richey

RWR/ktr



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332

Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1343
Facsimile: (803) 734-1397

Joseph L. Savitz, III, Chief Attorney
Wanda H. Carter, Deputy Chief Attorney

Exhibit # 1A.

January 22, 2009

Ricky Brannon, #179051
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Your case

Dear Mr. Brannon:

Enclosed please find a copy of the S.C. Court of Appeals' decision in your case. If you want to pursue your case, you can elect to go into post-conviction relief. However, it should be done by **June 20, 2009**, due to a statute of limitations which has been enacted on PCRs.

Feel free to contact me if you have any questions.

Sincerely,

LaNelle Cantey DuRant
Appellate Defender

LCD/kde

Enclosure

State of South Carolina
County of Cherokee

IN The Court of Common pleas
7th Judicial Circuit

Ricky Brannon #179051

CHSC NO 2009-CP-11-555

Applicant

AMENDMENT To post

- vs -

Conviction Relief Application

The State of South Carolina

Questions #9. AND #10.

Respondent.

Applicant Ricky Brannon #179051. Do hereby Amend his
past Conviction Relief Application. And Do submit additional
grounds for Relief pursuant to question #9 of (p.c.R)
Application. And further. Do also hereby Amend Application to
answer question #10 of Application. to submit specific
allegations in support of claims for Relief as alleged in #9.

Applicant amends. And continues to answer (p.c.R) Application
Question #9. which states:

"State concisely. The grounds on which you base your allegations"
That you are being held in custody unlawfully.

(J). That pursuant to sec. § 17-27-45 (b) of The S.C. post
conviction procedure Act. That the United States Supreme
Court has recently established in its holdings in The case
of ARIZONA - vs - Gant. No. 07-542. Cited at 129. S.Ct.

State of South Carolina
County of Cherokee

Ricky Brannon #179051

Applicant

- vs -

The State of South Carolina
Respondent.

IN The Court of Common pleas
7th Judicial Circuit

CASE NO 2009-CP-11-555

AMENDMENT To post

Conviction Relief Application

Questions #9. AND #10.

BRADY W. MOORE

2009 SEP 21 10:02

CLERK OF COURT

Applicant Ricky Brannon #179051. Do hereby Amend his
past Conviction Relief Application. And Do submit additional
grounds for Relief pursuant to question #9 of (p.c.R)
Application. And further. Do also hereby Amend Application to
Answer question #10 of Application. to submit specific
allegations in support of claims for Relief as alleged in #9.
Applicant amends. And continues to Answer (p.c.R) Application
Question #9. which states:

"State concisely. The grounds on which you base your allegations"
That you are being held in custody unlawfully.

(J). That pursuant to sec. § 17-27-45 (b) of The S.C. post
conviction procedure Act. That the United States Supreme
Court has recently established in its holdings in The case
of ARIZONA - vs - Grant. No. 07-542. Cited at 129. S.Ct.

R.B.

1710 (2009), Ruled ON April 21, 2009. Holding, That:

"Searches in absence of an authorize
warrant. Following a persons arrest ON
A traffic violation. Violates The 4th Amen-
dment and are unreasonable.

Applicant asserts. That his Trial Conviction was founded in
whole or in part on evidence obtained in violation of his
4th Amendment Right. That a pair of FILA shoes and other
evidence was illegally seized or obtained from Applicant,
Following the initiation of an illegal Traffic stop violation,
which resulted in his arrest, and was followed by an unconsented,
warrantless search of his vehicle and personal property. That
such evidence was introduced into Applicant's Trial, and
played a part in his conviction. Applicant is entitle to a rev-
ersal of his conviction and sentence base upon The above stated
holding or do request an evidentiary hearing ON The issue.

(K). Applicants was denied his due process Rights to a
Fair Trial. Because The prosecution withheld relevant
impeachment evidence. Of its witness. Deputy Richard Turner,
who had given a previous sworn testimony in Applicants
"Trial" in The Cherokee County Magistrate Court, concerning
his stop and arrest of Applicant ON Traffic violations, which
led to Applicants burglary charges. and The seizure of evidence.
And Then gave contrary testimony concerning Traffic stop, in
Applicants burglary Trial. The Applicant was precluded from-

R.B.

- impeaching Deputy Turner's testimony at burglary Trial which would have shown, He had altered his testimony from previous sworn testimony in Magistrates Court. Where the prosecution, although timely served with Applicant's Brady - vs - Maryland and Rules 5. Discovery Requests, intentionally allowed the destruction of the Magistrates Court transcript of the Applicant Trial and testimony of Deputy Richard Turner.

(L). That Applicant is entitled to a reversal of his conviction and sentence, where the Trial Record is silent as to whether or not, all of the Jurors was sworn for the Applicant's trial, as pursuant to Howard v. State 1917, 80 Tex. Cr. R. 588 192, S.W. 770. in L.R.A. 1917 at p. 400. See also State v. Hollman 102 S.E. 2d 83.

(M). The Trial Court error in its failure to Grant Applicant's Motion For a directed verdict of Acquittal of his 1st degree burglary charges, where the states evidence was insufficient to prove "Entry" which is an essential element of the crime of burglary, in violation of In Re Winship 397 U.S. 358, 364, 90, S.Ct. 1068, (1970). see also State v. Jackson 527, S.E. 2d 367, S.C. App 2000. (State is required to prove every element of charged offense to obtain conviction.).

R.B.

Amendment to ANSWER question # 10. of (p. c. R.)
Application. Which states:

10. STATE Concisely AND IN The SAME order The Facts which
support each of the grounds set out in #(9).

See Attached Sheets, For Brief of Allegations
IN support question #(9). Allegations A-I.

See. Brief IN Support Next Sheets.

R.B.

Issue. B.

INEffective Assistance of original Counsel. IN violation of Applicant's Rights To Due process AND due to A conflict of interest.

Here is a summary of The Applicant Allegations of The Above stated issue. With full brief of The issue attached.

1. 6th Amendment denial of Counsel, For original Counsel's Failure to show up and represent Applicant on his traffic charges in a Trial in The Cherokee County Magistrate Court, where Traffic charges were directly connected to Applicant's burglary charges, and traffic stop was illegal and illegal search was conducted, and evidence was illegally obtained.
2. Failure of original Counsel to inform Applicant of plea negotiations on burglary charges. And rejected Negotiations on his own. Without Applicant's knowledge.
3. Original Counsel was laboring under an Actual Conflict of interest while representing Applicant causing his failure to give The Applicant the full force of his representation. while allowing so many prejudice procedures and numerous constitutional violations of Applicant's Rights, To go uncontested.

See Full Brief of Issue. Attached.

Issue. C.

INEFFECTIVE ASSISTANCE OF SUBSTITUTE TRIAL COUNSEL
Mr. Roger J. POOLE. INVIOLATION OF APPLICANTS RIGHT
TO DUE PROCESS.

Here The applicant submits This summary list of his
allegations of ineffective assistance of Substitute Trial
Counsel. with a full brief on The issue Attached.

1. Failure to inform applicant of his potential conflict in
representing applicant, And having current personal interest
in dealing with The 7th Circuit Solicitor's office. Whom was
a victim of applicants. and Thus was disqualified from
prosecuting applicants burglary charges Due to an Conflict.
2. Actual Conflict because Counsel met with, Discussed and
relied on information and advice from. Applicants origin-
al Trial Counsel Mr. Don, Thompson, whom was dismissed
from Applicants representation For being an Actual Conflict
of interest.
3. Failure to move for a suppression hearing to exclude, shoe
print evidence and all in-custody statements based upon
two 4th Amendment violations. resulting from a illegal
Traffic stop Arrest, and a illegal search. Trial Counsel also
could have challenged The validity of The arrest on erroneous
understanding of The Law by arresting officer. And The failure of
police to obtain a warrant to conduct a search.

4. prejudice lack of representation at "DENNO" hearing⁽²⁾ counsel conducted no cross examination of witness.⁽²⁾ Allowed perjury, misleading testimony by states witness.⁽³⁾ permitted prejudice hearsay testimony.⁽⁴⁾ Failed to inform the Court of the true facts involving applicants incustody interrogations and⁽⁵⁾ failed to inform applicant that he had a right to testify at JACKSON -vs- DENNO. hearing.

5. Trial Counsel failed to move before The Trial Court for a "Continuence." So as he could obtain relevant withheld discovery Material. of copies of two Traffic Tickets, which applicant was arrested on, and his personal property and vehicle was illegally searched, And where, Officer gave testimony which was conflicting about The Traffic Tickets and circumstances of Traffic stop. But Failed to produce a copy of The Tickets at trial.

6. Trial Counsel failed to sufficiently review applicants Discovery file, which held impeachment evidence, Conflict of interest evidence. Evidence showing potential constitution violation of applicants Rights. and denial of Due process.

7. Trial Counsel failed to seek out an interview potential witness who was with applicant on The day of The alleged burglary and was with him when he was arrested For Traffic violation witness could have testified concerning The gun evidence found in applicants Aunts home. where she some times visited.

8. Trial Counsel failed to represent Applicant in a Court ordered New Trial, of his traffic Court charges in the ~~Cherokee County Magistrate Court~~, when it was related to burglary case.
9. Trial Counsel failed to move to exclude identification of Gun evidence by victim of burglary, when the evidence was held in the possession of the victim all the way up to the day of the Trial and Not in police custody.
10. Trial Counsel failed to Request Jury charge for receiving stolen goods, after arguing that the evidence could only possibly show that Applicant possess stolen goods.
11. Trial Counsel continuous failure to assist Applicant's Appellate Counsel in Applicant's Direct Appeal, upon Appellate Counsel's request.
12. Trial Counsel failed to object at outset of expert witness testimony and preserve issue for Appellate review.
13. Trial Counsel failed to object to introduction of prejudice photographs which was irrelevant to the issue and was only meant to arouse the sympathy of the Juror's following emotional testimony of burglary victim. Rule 403.
14. Trial Counsel failed to object to in court identification of Applicant and request a hearing on the issue, where Applicant had been seen by victims at bond and preliminary hearing and had been featured on T.V. and local News paper's.
15. Trial Counsel failed to object to prosecution's closing comments. That was prejudice to Applicant in his Trial.

16. Trial Counsel. Failed to object to The prosecution's comments on Applicant's failure to give a written statement.
17. Trial Counsel Failed to object and seek dismissal of burglary indictment. Whair prosecution in both their opening and closing comments, amended The indictment. And where The Trial Court constructively amended the indictment by charging The Jury on second degree burglary elements instead on 1st degree burglary elements.
18. Failure to object and Request For Trial Court to instruct The jury on what purpose it is to consider other crimes evidence submitted in The Trial against Applicant. Rule 404.
19. Trial Counsel. Failed To seek D.N.A. Testing of states physical evidence against Applicants, D.N.A. When state alleged burglary suspect left physical evidence at crime scene And State sought and obtained Applicants D.N.A. by search Warrant but never tested The D.N.A. evidence.
20. Trial Counsel stipulated to Applicants prior burglary convictions. With out consulting With Applicant or reviewing The validity of prior conviction's which was being use for enhancement by state and were also an element of indictment.
21. Failure To object To state adding of The Applicants additional prior convictions to The records where The prior convictions were cumulative evidence unneeded, And No, stipulations were held concerning them. And No Notice were given to Applicants defense concerning there use before Trial.

see back →

22. Trial Counsel Failed to object to The prosecutions continuous attack on Applicants character and comments on other crimes evidence. For which The Trial Court hadnt ruled admissible.
23. Trial Counsel Failed to move for a severance of Applicants two (2) burglary charges For Trial, where each burglary could not be proven by same evidence. and They occurred on two separate dates.
24. Trial Counsel failed to object to erroneous jury instructions by Trial Court. And seek proper instructions. When Trial Court erred in instructing Jury. That it may consider whether or not Applicant made the statement voluntarily. But Failed to inform Jury. That it must first determine if Applicant recieved and understood his "Miranda Rights"
25. Trial Counsel Failed to object to The Trial Court sentencing of Applicant to Life without parole. under sec. § 17-25-45 Because neither himself or The Applicant had been properly and timely served, "A Life Notice". By the Atty Generals office as is required by The statute at the time.

Issue. D.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. MS.
LANELLE C. DURANT. INVIOLATION OF APPLICANTS DUE
PROCESS RIGHT.

Here is a summary of applicants allegation of ineffective assistance of appellate counsel. With Brief attached.

1. Failure to raise and argue any appealable issue's in Applicants initial Brief of Appellant. And raising a frivolous issue. For which Appellate Counsel knew that the South Carolina Court of Appeals would not hear.
2. Failure to raise and argue. That Trial Court failed to conduct its "Gatekeeping" obligation in admitting expert witness testimony.
3. Failure to raise The properly preserved issue of The Trial Court Failure to grant a directed verdict on Applicants burglary charges. When The states evidence failed to prove "entry." which is a essential element of The crime of burglary
4. Failure To file and seek a Motion For rehearing After The South Carolina Court of Appeals Affirmed Applicants conviction without considering his issue on Direct Appeal.
5. Appellate Counsel prejudice Applicant. By her. failure to inform Applicant of The Court of Appeals Dismissal of his Direct Appeal until 6 months After the decision. costing Applicant 6 month

Certificate of Service

Please Take Notice, That The undersigned. Do hereby Certify. That he has mailed The herein attached "AMENDMENTS To his P.C.R Application - 10N, Amending question #9. And #10." of Application. To his (PCR) Attorney, Mr. Rodney Richey Esquire, at post office Box 10916 Greenville S.C. 29603. By Placing said Amendment in an envelope properly addressed, as above stated. With U.S. postage. Sill and deposited in The United States Mail. at The B.R.C.I Mail room ON This 13th day of September 2010.

TYPE OF Document Mailed:

AMENDMENT to PCR Application.

93, Pgs.

MAILED TO PCR Attorney

Rodney Richey Esquire

Respectfully Submitted.

S/ Ricky Brannon

Ricky BRANNON #179051

Broad River Corr. INST.

4460 Broad River Rd

Columbia S.C. 29210

Sworn before me This 13th
day of September 2010.

Oral J. C. Inslee

Notary Public for South Carolina

My Commission Expires

August 25, 2015

My Commission Expires.

BRANDY W. MOORE

2009 SEP 21 10:10:02

NOTARY PUBLIC
SOUTH CAROLINA
COMMISSION EXPIRES
AUGUST 25, 2015

Ricky Brannon #179051
Broad River Court. INST.
4460. Broad River Rd.
Columbia S.C. 29210.

New Evidence shown as
Exhibits (A1), (A2), and
(A3).

Mr. Rodney W. Richey, PA.
Post office Box 10916.
Greenville S.C. 29603.

Re: Ricky Brannon #179051 vs. The State of South Carolina
Case No. 2009-CP-23-555.

: Filing Amendment To P.C.R. Application. To include Documents
constituting Newly discovered evidence. IN support. of my
Newly discovered evidence claim

Dear Sir.

please find inclosed herein Exhibit documents which Applicant
Alleges. are material evidence constituting Newly discovered
evidence. Applicant requests That These relevant documents be
Amended to his p.c. R. Application in support of his Newly
discovered evidence claim. Please Note. These documents are in
support of (3) Three separate claims of Newly discovered evidence.
Please Amend Applicant. Thank you for your cooperation.

Respectfully Submitted.

Dated October 2, 2009

/s/ Ricky Brannon
Ricky Brannon #179051.

Exhibits Documents Constituting Newly Discovered Evidence. Exhibits A1, A2, A3.

2009 NOV 20 A 11: 25
 Applicant, submits. The following documents which constitute
 Newly discovered evidence. See Exhibit:

(A.1) "Transcript of Complaint and Response" from a civil action.
 Tort claim filed by applicant. The case of, Ricky Brannon
 vs. Bill, Danton, Sheriff of Cherokee Co. ETAL. CASE NO.
008-CP-11-556. Filed on or about April 14, 2008. And Responded
 to December 2, 2008.

Applicant submits. That The Response and/or Answers ~~has~~ he
 received in Response to his Allegations in paragraphs, 4, 5, 6, 7, 8,
9, 10, and 12. of Complaint. constitutes New evidence. showing That
 Detective Mike Fowlkes, with support of Detective Tim Clark, and
 Mark Vanderburg, intentionally Lied under oath in Applicants "Denno
hearing" and in The Trial, concerning The voluntariness of an Alleged
oral statement. By falsely Testifying on Tri. Tran pg. 46, That Applica-
 nt re-initiated contact with The Detectives, By contacting The Jail
 and informing them That Applicant wanted to Talk, , This was perjury
 testimony. For The Detective new That they re-approached Applicant
 with questions about an unrelated burglary. In addition To The
 perjury Testimony, It also constitute a violation of "Brady", Because
 The True facts and statements, From These interviews, were suppressed
 intentionally resulting in The Courts finding The alleged oral statements.

— Voluntary. And Thus presented to The jury, when otherwise. The could have been found involuntary if not for The Brady violations and perjury Testimony permitted by The prosecution.

Second Exhibit, In support of second claim of Newly Discovered Evidence. Exhibit:

(A2). A Copy of The Dismissal of The Applicants initial Traffic violation charge. For, Failure To stop for a stop sign. Ticket No. 26822 CR. This New. evidence. shows That. The Applicant 4th Amendment Right was violated. At The initiation of The November 20, 2003. Traffic ~~violation~~^{stop} conducted on The Applicant by Deputy Richard Turner. Based upon a false, made up. violation. which resulted in Applicants. arrest. An Unconsented search of The vehicle. A show up identification. The seizure of The shoe. evidence. Tri. Tran. pg. 36. lines. 3-11., was illegally obtained as a result of The Traffic stop. Statements of an alleged oral statement. was The Direct result of Applicants arrest for Traffic stop violation. The Applicant suffered more prejudice. by The prosecution. who submitted testimonial evidence. That Applicant Ran a stop sign. Tri. Trans pg. 175. LN. 12-24 And in There closing arguments. To The Jury. falsely asserting. That Applicant, "blew on intersection" see closing arguments by prosecution Tri. Tran. pg. 272. lines 5-10. This false Allegation of other crimes evidence. was prejudicial To Applicant. And denied him his due process right to a fair Trial,

Third, Exhibit, Insupport of Third claim of Newly Discovered Evidence. Exhibit:

(A3). Two photo's and articles. Showing Crime scene Investigator of The Cherokee County sheriffs dept. Jimmy Henson accepting an "Award" in part because of his help in gaining a conviction against Applicant. From The 7th Circuit Solicitor's Office. Whom was disqualified from prosecuting Applicant of his first degree burglary charges. Due to a Actual Conflict of interest. see Exhibit #10.

Investigator, Henson. was deemed an expert witness in Applicants Trial. As a shoe print expert by The Court. Applicant. contend. That Investigator Henson held close, both, working and personal ties, with The disqualified Solicitors office. plus he was ~~was~~ employed by The Sheriff, And The County. An should not have been ruled an expert witness.

This Exhibit evidence shows That. investigator, Henson, should have not been qualified as a expert in Applicants Trial. Due to a conflict of interest. And That investigator Henson intentionally curbed his opinion of The evidence, contrary of his own analysis. Simple to help convict Applicant. For. The Solicitors office, The sheriff, and The County. Further, he was not suppose to collect or ^{be} given an reward For his opinion Testimony see Testimony of investigator / expert witness, Henson. Tr. Trn. pg

See Herein
Newly Discovered Evidence
Documents., Filed And Amended
To PCR. Application. ON November
20, 2009.

(3) Three sets OF Exhibits.

1. Exhibits. A1. Civil Complaint. And
Answers to complaint.
2. Exhibit A2. Dismissal of Traffic
stop charged.
3. Exhibit. A3 two photo's. Showing
state expert witness. accepting an
reward. From The Disqualified 7th Circuit
Solicitor's Office. For helping to obtaining
a conviction of Applicant in his Burglary
Trial. Expert witness Jimmy Henson.

S/ Jacky
Brannon

State of South Carolina
County of Cherokee

Ricky Brannon #179051
prose. plaintiff.

—VS—

Bill Blanton, Sheriff
of Cherokee County

Mike Fowlkes, Captain
Cherokee County Sheriff Dept

Mark Vanderburg, Detective,
Cherokee County Sheriff Dept

Jimmy Henson, CSI,
Cherokee County Sheriff Dept

Defendants

In The Court of Common Pleas
of The 7th Judicial Circuit

Civil CASE NO 008 CP-11556

Complaint
"Jury Trial Requested"

BRANDY W. MCBEE

2008 JUN 11 A 10:35

CLERK OF COURT
CHEROKEE COUNTY, S.C.

I, Ricky Brannon #179051, The plaintiff. In The above Civil Action
CASE. Do make the following claims:

(A) That, I believe That the Defendants Bill Blanton, sheriff, Mike Fowlkes C.P.T., Mark Vanderburg Det. And Jimmy Henson CSI.
Are residents of Cherokee County At 312 E. Frederick St.
Gaffney S.C. 29340 which is within this Honorable Court
Jurisdiction.

(B) That The Defendant Bill Blanton was and is. The sheriff of

- Cherokee County At the time of the herein Allegations as Alleged in this complaint. And That The Defendants. Mike Fowlkes, Mark Vanderburgs, Jimmy Henson, Were duly Appointed officers by Sheriff Bill Blanton, Acting As his Agents, in The SAID county of Cherokee.

(C.) That All of The Above named Defendants, WAS through out this Complaint, Acting under their official titles At their official Duties, Under the Colors of State Laws, AS officers of The Cherokee County Sheriffs Dept.

(D) That plaintiff, makes this Complaint. And Alleges and SAYS unto this Honorable Court.

1. plaintiff Avers. That on November 21, 2003, plaintiff was in custody in the Cherokee County Detention Center, In The County of Cherokee. On two misdemeanors traffic charges. Disregarding a stop sign Ticket NO: 26822 CR And. Not possessing licens while opperating a motor vehicle. Ticket No: 26821 CR.

(2.) That plaintiff had been Arrest for the said traffic charges on the previous night of November 20, 2003. By Cherokee County Sheriffs Deputy Richard Turner.

(3.) That on November 21, 2003. The next morning After plaintiff had been Arrested on the herein said traffic violations, That The Defendant Mike Fowlkes Captain of the Cherokee County Sheriff's Dept. Along with Detective Tim Clark of the same said Sheriff's Dept.

(4.) That The above named Defendant and Det. Tim Clark did escort plaintiff from holding cell NO#5. To be questioned concerning (2) two uncharged burglaries. of a Mr. Kenneth Gallman And a Mrs Joy Sherrick residence. in The County of Cherokee.

5. That plaintiff was being investigated concerning the herein stated burglaries.

(6.) That After plaintiff was interviewed / questioned by the herein named Defendant And Det. Tim Clark. That plaintiff was escorted back to his cell. in the Cherokee County Detention Center.

(7.) plaintiff Avers. That on November 21, 2003. The Defendants, Cpt. Mike Fowlkes, And Detective Mark Vanderburg, Did show up. at plaintiff's said cell. And stated that they had another matter that they needed to talk with plaintiff about. Thus plaintiff was escorted to be interviewed / questioned A second time.

(8.) That At the said second interview, The defendant Mike Fowlkes stated to plaintiff that they (Fowlkes and Vanderburg) wanted to ask plaintiff some questions concerning a unrelated burglary of a Mr. James Spencer Residence.

(9.) That the defendant Detective Mark Vanderburg along with Defendant Mike Fowlkes. Did tell plaintiff that the above named burglary victim, had also been assaulted. And that they (The defendants, Fowlkes and Vanderburg) wanted to know if plaintiff knew anything about this burglary and assault.

(10.) That plaintiff did state to the defendants at the herein said second interview, "That he did not know anything about this burglary or about anybody being assaulted.

(11.) That the Defendant Cpt. Mike Fowlkes then proceeded to inform plaintiff. That the burglary and assault of the victim of this unrelated burglary, Did not happened in Gaffney S.C., But occurred in another Town or City, plaintiff cannot remember the name of the Town or City That the defendants told him. The defendants then asked plaintiff had he ever been to This location.

(12.) That plaintiff, once again informed both of The defendants That he knew nothing about this burglary or anything About An Assault of a Mr James Spencer. plaintiff then proceeded to request to see a Judge. But was refused,

(13.) plaintiff asserts. That he was charged on November 24, 2003 with (2) two counts of second degree burglary Grand Larceny and possession of burglary tools. By The defendant Mike Fowlkes Cpt. of Detectives Cherokee County sheriffs dept.

(14.) That the Above said burglary charges. charged to plaintiff was for the burglaries of the residence of Mr Kenneth W. GALLMAN And the residence of Ms. Joyce Sherrick, both resides in the County of Cherokee in the City of Gaffney S.C.

(15.) That plaintiff did request for a preliminary hearing within 40. Ten days.

(16.) That At the herein requested preliminary hearing the defendant Mike Fowlkes did testify under oath. that among other Alleged evidence Against plaintiff. That physical evidence (hair particles) had been found At the crime scene of the burglarized home of Mr. Kenneth -

NOMINAL DAMAGES 008 CP-11556

plaintiff, does believe he's entitle to seek and does request a Judgement for Nominal damages AGAINST each, herein named defendant, For there illegal constitutional violations of plaintiffs Rights, Alleged herein This complaint. And For ANY AND ALL misconducts committed AGAINST plaintiff AS IS Alleged herein, For which violates S.C. Laws and statutes.

I, pro se plaintiff, Do believe, Because of The information above, That I AM entitle to and do ReQuest The Judgements, As is stated herein For the Amounts Requested Above, And Any other Reliefs The Courts deems necessary and Just Including The Cost Resulting from This Action

I, swear under the penalty of perjury That the above information is true and correct to the best of my knowledge.

Dated 4/24/08

Respectfully Submitted

S/ Ricky Brannon

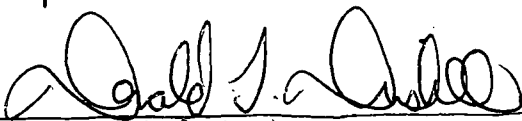
Ricky Brannon #179051

Broad River Corr. Inst.

4460 Broad River Rd.

Columbia S.C. 29210.

Sworn before me This 24TH Day of
April 2008



Notary Public for South Carolina

My Commission Expires
August 25, 2015

my commission expires

BRANDY W. MCBEE

2008 JUN 11 A 10:36

CLERK OF COURT
RICHEL COUNTY, S.C.

CLERK OF COURT

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHEROKEE)	CIVIL ACTION NO.: 2008-CP-11-556
Ricky Brannon, #179051)	
Plaintiff,)	
vs.)	
Bill Blanton, Sheriff of Cherokee)	DEFENDANTS' ANSWER TO COMPLAINT
County; Mike Fowlkes, Captain)	(Jury Trial Demanded)
Cherokee County Sheriff Dept.;)	
Mark Vanderburg, Detective)	
Cherokee County Sheriff Dept.;)	
and Jimmy Henson, CSI)	
Cherokee County Sheriff Dept.,)	
Defendants.)	

The Defendants, answering the Plaintiff's Complaint, hereby allege the following:

FIRST DEFENSE

1. All allegations of the Complaint which are not hereinafter admitted, qualified or explained are denied.
2. In responding to the allegations of paragraph A, it is admitted that Defendants are residents of Cherokee County.
3. In responding to the allegations of paragraph B, the Defendants admit that at the time of their interactions with Plaintiff they were employed by the Cherokee County Sheriff's Office. The remaining allegations of said paragraph call for legal conclusions to which no response is necessary.
4. The allegations of paragraph C call for legal conclusions to which no response is necessary.

5. The allegations of paragraph D are gibberish and require no response from Defendants.

✓ 6. In responding to the allegations of paragraph 1, Defendants admit that Plaintiff was incarcerated at the Cherokee County Detention Center on November 21, 2003. The Defendants crave reference to the records for the specifics surrounding Plaintiff's detention.

7. In responding to the allegations of paragraph 2, Defendants crave reference to the records for the specifics surrounding Plaintiff's arrest and subsequent detention.

8. Paragraph 3 is an incomplete sentence and makes no sense nor does it set forth any allegations against the Defendants. To the extent it might be construed to assert allegations against any or all of the Defendants, it is denied.

9. In responding to the allegations of paragraph 4, Defendants admit that the Plaintiff was questioned about several burglaries in Cherokee.

✓ 10. The allegations of paragraphs 5, 6, and 7 are admitted upon information and belief.

* 11. The allegations of paragraph 8 are denied as written. The Defendants admit that they questioned Plaintiff about the burglary and assault which occurred at Mr. James Spencer's residence on November 13, 2003.

12. The allegations of paragraphs 9 and 10 are admitted upon information and belief.

13. The allegations of paragraph 11 are denied.

14. In responding to the allegations of paragraph 12, Defendants admit that Plaintiff again refused to tell them the truth about his involvement in the burglary and

assault of Mr. Spencer. The remaining allegations of said paragraph are denied.

15. In responding to the allegations of paragraphs 13 and 14, it is admitted that Plaintiff was charged with various crimes as a result of the investigation conducted by the Cherokee County Sheriff's Office. Defendants crave reference to the documents for a complete and accurate depiction of the charges against Plaintiff.

16. The allegations of paragraphs 15 and 16 call for legal conclusions to which no response is necessary.

17. Paragraph 17 is an incomplete sentence and makes no sense nor does it set forth any allegations against the Defendants. To the extent it might be construed to assert allegations against any or all of the Defendants, it is denied.

18. The allegations of paragraph 18 are admitted.

19. In responding to the allegations of paragraph 19, it is admitted that the Plaintiff was allowed to read the documents being served on him on January 16, 2004. In further responding to said paragraph, the Defendants would crave reference to the specific documents referred to therein.

20. The allegations of paragraphs 20 and 21 are denied.

21. In responding to the allegations of paragraph 22, it is admitted that the Plaintiff was required to provide one (1) vial of blood pursuant to the warrant issued by Cherokee County Magistrate Judge. Defendants deny any wrongdoing which may be alleged by Plaintiff in connection with having his blood drawn.

22. The allegations of paragraph 23 are admitted.

23. The allegations of paragraph 24 are denied as written. However, at the time of this Answer, the undersigned attorney for Defendants did not have access to the trial

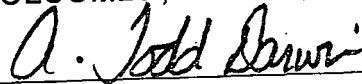
71. Plaintiff's claims are barred by the provisions of S.C. Code Ann. § 15-78-110.

TWENTY-FIRST DEFENSE

72. The above defenses are realleged to the extent they are consistent with this defense.

73. Defendants plead waiver, estoppel, and laches as complete defenses to the Plaintiff's claims.

HOLCOMBE, BOMAR, P.A.



A. Todd Darwin
Post Office Drawer 1897
Spartanburg, South Carolina 29304
(864) 594-5300

Attorneys for Defendants

December 2, 2008

Exhibit (A2)

2 pages

Wade S. Weatherford, III
Attorney at Law
915 N. Limestone Street
Gaffney, South Carolina

Mailing Address:
P.O. Box 2207
Gaffney, SC 29342-2207

Office: 864-489-1500
Fax: 864-488-2590

November 12, 2007

Ricky Brannon #179051
Broad River Correctional Inst.
4450 Broad River Rd.
Columbia, SC 29210

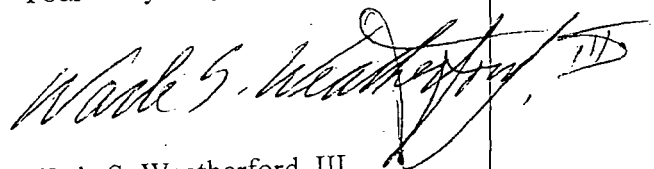
→ Re: Ticket No.: 26822CR - Disregarding Stop Sign

Dear Mr. Brannon:

Enclosed is a copy of Order dismissing the above referenced case.

This ends the case that I was appointed to represent you.

Yours very truly,



Wade S. Weatherford, III

WSW,III:vw

Enclosure

Exhibit 5

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE COURT

COUNTY OF CHEROKEE)

County of Cherokee)

ORDER

VS.)

RICKEY BRANNON)

Re: 26822CR

Ticket Number

Defendant.)

DISREGARDING STOP SIGN

0011676432 SC)

Type of Violation

S. C. Driver's License Number)

It appears that the above described traffic ticket should be returned to the Clerk of Court of Cherokee County and the case reopened based upon the following information:

1/6/04

1. This case was initially disposed of on _____.
2. Defendant received notice of the disposition of the case on or about 10/30/07.
3. A request to reopen the case was made on 10/30/07 and the said request was timely.
4. The case should be reopened for the following reason(s):
SIGNED OFF IN ERROR, SOLICITORS OFFICE AND ARRESTING OFFICER AGREED TO
DISMISSAL, PER JUDGE ROBERT B HOWELL. STATE WAS REPRESENTED BY
DEPUTY RW TURNER.
5. The prosecuting authority was notified of this request as is indicated by the signature affixed below.

This Order is issued in accordance with the requirements established by Ishmell v. South Carolina State Highway Department, 264 S.C. 340, 215 S.E. 2d 201 (1975).

AND IT IS SO ORDERED.

Gaffney, South Carolina

Magistrate, Cherokee County, SC

Dated: 10/30/07

I have been notified of this request.

DEPUTY RW TURNER

Signature
DEPUTY

Title

RECEIVED
11/5/07

Previous Cherokee County
Law Enforcement Excellence
award recipients include:

**Detective Capt.
Mike Fowlkes**
Cherokee County
Sheriff's Department

Sgt. Steve Mueller
S.C. Highway Patrol

Cpl. John McCraw
S.C. Department
of Natural Resources

Deputy Todd Parker
Cherokee County
Sheriff's Department

Agent Kevin Wilson
Cherokee County
Metro Narcotics Unit



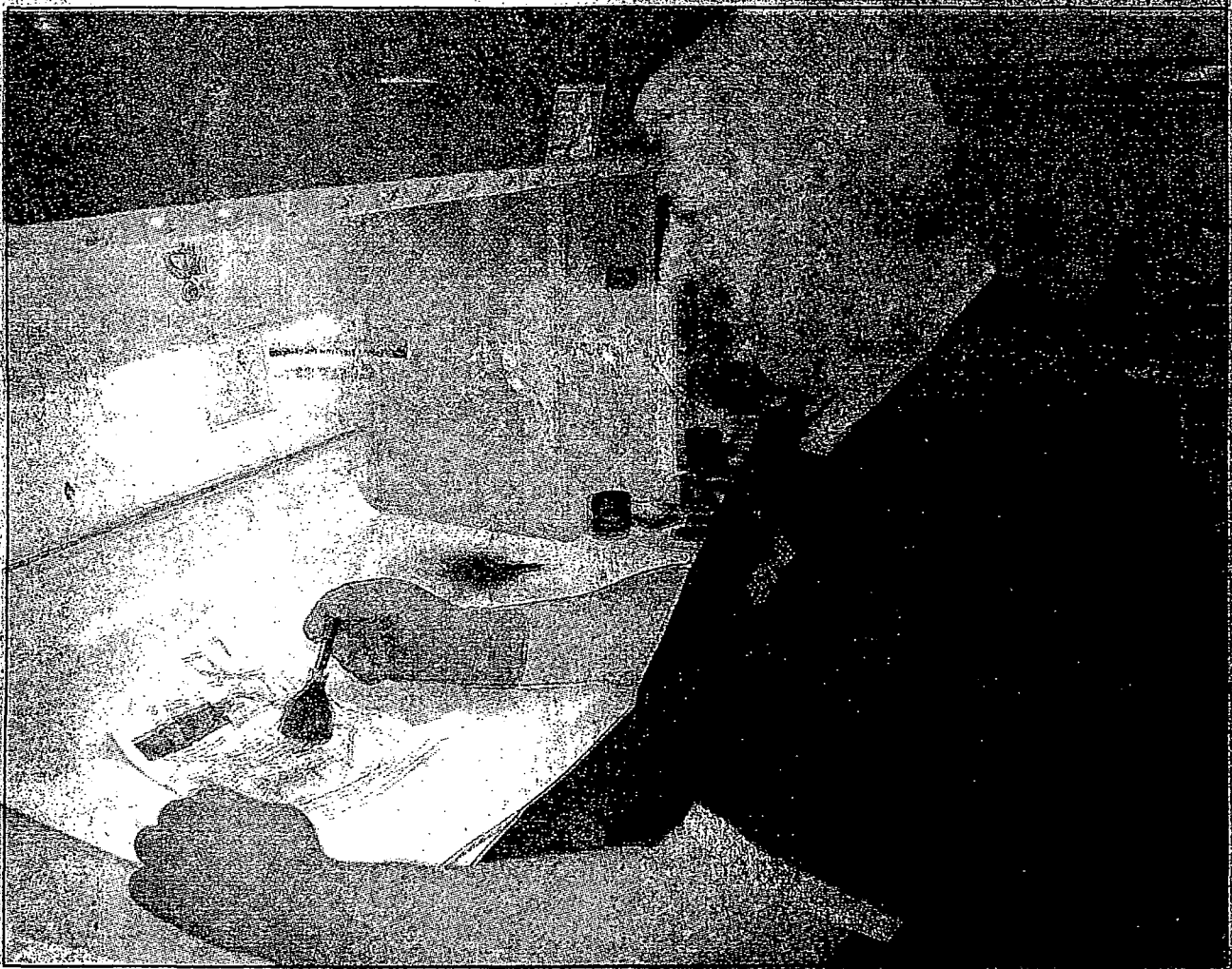
expert
witness
Jimmy Henson

Mr. Gowdy
7th circuit solicitor's office

Seventh Circuit Solicitor Trey Gowdy awarded Cherokee County Sheriff's Office Crime Scene Investigator Jimmy Henson the 2006 Solicitor's Award for Cherokee County Law Enforcement Excellence. Also honored during a law enforcement appreciation dinner Thursday were (from left) Gaffney Police Officer Sgt. Mike Segina, Blacksburg Police Officer Al Phillips, (Henson, Gowdy), S.C. Law Enforcement Division Agent Lt. Dewitt "Spike" McCraw, and S.C. Highway Patrol Cpl. B.J. Albert.

expert witness. Jimmy Henson. was rewarded by
The 7th circuit solicitor's office in part because he help convict applicant.

This photo shows the close ties that the
Disqualified 7th circuit solicitor's office
has with The Cherokee county sheriff Dept.



LEDGER PHOTO BY TARA JENNINGS

Cherokee County Sheriff's Office Crime Scene Investigator Jimmy Henson, shown here dusting a piece of evidence, was presented with the 2006 Solicitor's Award for Cherokee County Law Enforcement Excellence on Thursday. Seventh Circuit Solicitor Trey Gowdy said the award was long overdue for Henson, who has one of the most important jobs in law enforcement. Henson was chosen unanimously for the award by a committee of law enforcement officers.

Sheriff's department crime scene technician earns Solicitor's Award for Law Enforcement Excellence

By TARA JENNINGS
Ledger Staff Writer
tara@gaffneyledger.com

Henson's job duties include collecting fingerprints, foot sole impressions, photography and other evidence to build cases for crimes ranging from armed robberies to murder. He successfully lifted a tread print from a piece of glass and helped prosecutors gain a

conviction and life sentence against Ricky Brannon, who is also accused of setting fire to the Cherokee County Courthouse.

Also honored at Thursday's event

Sgt. Mike Segina
Gaffney Police Department

sted. should have been used in Appellant's case and Trial.
not the Cherokee County, Crime Scene Investigator/Expert witness.
Due to an conflict, which has influence on his testimony as an advers party.
to Appellant.
... agreed given his 7th circuit.

Exhibit #6

STATE OF South Carolina
County of Cherokee

In The Court of Common Pleas
7th Judicial Circuit.

Ricky Brannon #179051.

CASE NO. 009-CP-11-555

Applicant.

Motion To Dismiss. p.c.R.

vs.

Attorney.

STATE OF South Carolina.

Respondent.

Please Notice. That The Above named Applicant. Do hereby move before
This Honorable Court, with a Motion To Dismiss his p.c.R. Attorney
Rodney W. Richey, of Richey and Richey. PA. p. O. Box, 10916,
Greenville S.C. 29603. ,

This Motion is put before This
Court by The Applicant: Ricky Brannon #179051, who is currently
confined at The Broad River Corr. INST. 4460. Broad River Rd
Columbia S.C. 29210. And is pursuant to The requirement as
set out in Rule 71.1 (d). and other applicable Laws.

The Applicant do herein as follows, Set forth The grounds in
support of This Motion:

1. That appointed p.c.R. Attorney. has failed to visit and/or
adequately meet with The Applicant. For which to sufficiently
review, and discuss. issues to be presented and acquire a
full understanding of The Applicants Allegation. So That he
may sufficiently and accurately put forth The Allegation before
The p.c.R. Court.

Here. Applicants. p.c.R. Attorney has only corresponded by mail
and has repeatedly assured Applicant, That he will visit him
but has failed to do so. even Though Applicant has had two
hearing before The p.c.R. Court. In which his Attorney
only spoke to Applicant only a minute or two, before being called
to The hearing.

2. p.c.R. Counsel. has failed to challenge The States return. Where The state has sought to have all of The applicants p.c.R. Allegations. dismissed, Including ⁽¹⁾ subject matter jurisdiction issues, ⁽²⁾ Newly Discovered evidence issues, ⁽³⁾ Denial of Counsel issue, ⁽⁴⁾ Ineffective of Original Counsel and ⁽⁵⁾ Appellate Counsel issues, as well as numerous Trial Court errors. and prejudice prosecutors misconduct issues.

Here The state. Only wanted The p.c.R. Court to hear. Just one of applicants issues. For Ineffective assistance of substitute Trial Counsel. And p.c.R. attorney has failed to challenge The state. and seek to have all of The applicants issues heard.

3. Failure to seek out witnesses. Interview witnesses and to present them to testify at applicants p.c.R. proceedings on The relevant issues as material witnesses.
4. Failure to request for a evidentiary hearing, on The applicants Newly discovered evidence claims. and New United States Supreme Court Ruling which establishes grounds for which The Applicant can assert That his Trial was unfair and unconstitutional. Based upon evidence admitted in violation of his 4th Amendment Rights.
5. That applicants p.c.R. attorney has prejudiced The Applicant. By his inadequate presentation and failure to sufficiently raise all of The applicants Allegation of ineffective assistance of substitute Trial Counsel claims at The p.c.R. Hearing held on April 6, 2010, Due to his failure to meet with me, and review those claims and to call relevant witnesses before The p.c.R. Hearing proceedings, Instead, p.c.R. Attorney assured Applicant, That. He was only going to ask The p.c.R. Judge, To Recuse himself, and for seek a continuance and seek a compel order for discovery, and To have The Applicant D.N.A Tested. But The p.c.R.

Judge, J. Derham Cole. Denied all of The p.c.R. Attorney's Motion's and order him to proceed with The p.c.R. hearing. For Ineffective assistance of Substitute Counsel. For which. he was unprepared to proceed on. Because he had never met with Applicant to sufficiently review his claims. And he had not interviewed and had any of The relevant witnesses available to testify before The p.c.R. Court. plus he failed to submit any of The Applicant Exhibits. Documents as evidence. During The p.c.R. proceedings.

6. Wherefore base on The above information. The Applicant does prays. That This Court dismisses his p.c.R. Attorney Mr. Rodney Richey and appoint him a New p.c.R. Attorney.

Dated May 24, 2010

S/ Ricky Brannon
Ricky BRANNON #179051

Certificate of Service.

Please Take Notice That The undersigned Applicant. Do hereby Certify. That A Motion to Dismiss his (p. c. R) Attorney. Mr. Rodney W. Richer. Has been served on The below named clerk of Court of The 7th Judicial Circuit. By placing said Motion in an envelope with U. S. postage prepaid properly addressed, sealed and deposited in The United States MAIL, at The Broad River Corr. INST. Columbia S.C. on This 24 Day of MAY 2010.

Motion Mailed To:

Mrs. BRANDY W. McBee, Clerk
clerk of Court, Cherokee Co.
post office Drawer 2289.
Gaffney S.C. 29342.

Respectfully Submitted

S / Ricky Brannon
Ricky BRANNON #179051
Broad River Corr. INST
4460. Broad River Rd
Columbia S.C. 29210

Sworn before Me This 29th Day
of April 2010.

Susan D. Johnson
Notary public for South Carolina

My Commission Expires
March 5, 2018

my commission expires.

BRANDY W. MCBEE

2010 MAY 26 AM 10:30

CLERK OF

CHEROKEE CO.

Exhibit # 8.

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

September 23, 2010

Ricky Brannon, SCDC # 179051
Broad River Correctional Institute
4460 Broad River Road
Columbia, SC 29210

RE: Ricky Brannon, SCDC # 179051 vs. The State of South Carolina
Case No: 2009-CP-23-555

Dear Mr. Brannon:

Please find enclosed the filed September 2010 Amendments to PCR Application.

Thank you and if you should have any questions, please feel free to write me.

RICHEY AND RICHEY, P.A.

Yours truly,


Rodney Richey

RWR/tlg
enclosures

COPY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMONS PLEAS
CASE NO: 2009-CP-11-0555

RICKY BRANNON,)
)
SCDC# 179051)

AFFIDAVIT OF SERVICE

vs.)

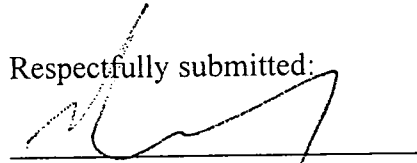
THE STATE OF SOUTH CAROLINA)

BRAIDY W. MCBEE

2010 SEP 21 AM 11:02

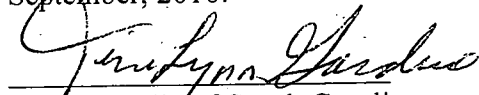
I certify that I have served the Amendment to PCR Application dated September 13, 2010 on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on September 17, 2010, addressed to their attorney of record, Suzanne H. White, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:



Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

Sworn to before me this 17 day of
September, 2010.



Notary Public of South Carolina

My Commission Expires: 12-21-11

Exhibit #9

Order granting a new trial

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

JUDGMENT IN A CIVIL CASE

JR 50305

IN THE COURT OF COMMON PLEAS

CASE NO. 04-CP-11-079

Ricky Brannon,

vs.

State of South Carolina,

APPELLANT/PLAINTIFF (S)

RESPONDENT/DEFENDANT (S)

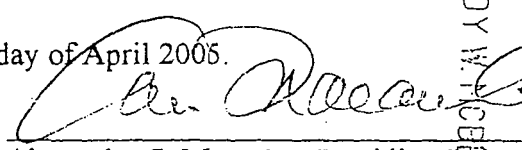
CHECK ONE

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore, to confirm, vacate or modify arbitration award; ☐ Other _____

IT IS ORDERED AND ADJUDGED: ☐ See attached Verdict; ☒ Statement of Judgment by the Court:

Appeal of the Plaintiff/Appellant is GRANTED and is remanded to the Magistrate Court for a new trial. Appellant shall have counsel appointed. See *Alabama v. Shelton*, 535 U.S. 654 (2002).

Dated at Gaffney, South Carolina, this 25th day of April 2005.


Alexander S. Macaulay, Presiding Judge

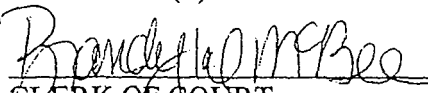
This order was entered on the 25 day of April, 2005, and a copy mailed first class this 25 day of April, 2005, to attorneys of record or to parties (when appearing pro se) as follows:

Ricky Brannon, pro se

Robert B. Howell, Magistrate

ATTORNEY(S) FOR THE PLAINTIFF

ATTORNEY(S) FOR THE DEFENDANT


CLERK OF COURT

CLERK OF COURT
CHEROKEE COUNTY, S.C.
APR 25 PM 2:05
GRANDY WILCOX

Exhibit
10

see other side
For Exhibit 11



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

October 25, 2004

Barry J. Barnette
Principal Deputy Solicitor
Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia St.
Spartanburg, SC 29306

RE: State v Ricky Brannon
Indictment Nos.: 04-GS-42-200, 201, 202, 203
Warrant Nos.: H519030, H519031, H519034, H519035
Charges: Burglary 1st, Burglary 1st, Grand Larceny \$1,000-5,000, Poss. Of
Burglary Tools

Dear Mr. Barnette:

This is to acknowledge receipt of your letter dated October 21, 2004, requesting that this Office handle the prosecution of the above referenced matter due to a conflict. I will have Jennifer Evans, Chief of the Prosecution Section, assign an attorney within her division to handle this case. We will be in touch with your office to discuss a mutually agreeable time to schedule this matter in Court, if appropriate.

If we can assist you in the future, please let me know.

Yours very truly,

John W. McIntosh
Chief Deputy Attorney General

JWM: ds

CC: Jennifer D. Evans, ADAG

Exhibit
(11)



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

October 26, 2004

Barry J. Barnette, Esquire
Principal Deputy Solicitor, Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street, Third Floor
Spartanburg, South Carolina 29306

RE: *State v. Ricky Brannon*
Indictment Nos.: 04-GS-42-200, 201, 202, 203
Warrant Nos.: H519030, H519031, H519034, H519035
Charges: Burglary 1st, Burglary 1st, Grand Larceny \$1,000-5,000, Poss. Of
Burglary Tools

Dear Deputy Solicitor Barnette:

A letter were sent July 19, 2004, informing your office that Dwayne Pearson would be handling this matter. However, this matter has been transferred to Curtis Pauling, please feel free to contact him at (803) 734-2816.

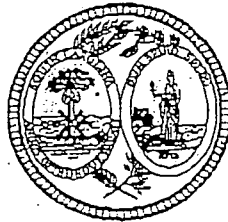
With warm regards, I am

Very truly yours,

Jennifer D. Evans
Assistant Deputy Attorney General

JDE/mlly

Exhibit
(11)



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OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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With warm regards, I am

Very truly yours,

Jennifer D. Evans
Assistant Deputy Attorney General

JDE/mlly

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Exhibit # ~~12~~
12

The State, Respondent,

v.

Ricky Brannon, Appellant.

Appeal From Cherokee County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2008-UP-313
Submitted June 1, 2008 – Filed June 20, 2008

AFFIRMED

Appellate Defender Lanelle C. Durant, South Carolina Commission on Indigent Defense, Division of Appellate Defense, 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 Harold W. Gowdy, III, of Spartanburg, for Respondent.

PER CURIAM: Ricky Brannon appeals his convictions for burglary in the first degree and grand larceny, arguing the trial court erred in admitting the testimony of a footprint analysis expert. We affirm^[1] pursuant to Rule 220(b), SCACR, and the following authorities: State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) ("Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review."); State v. Wood, 362 S.C. 520, 526, 608 S.E.2d 435, 438 (Ct. App. 2004) (holding a party opposing the admission of evidence must object to the evidence when it is introduced because "a motion in limine is not a final determination"), cert. denied (Aug. 15, 2006); State v. Burton, 326 S.C. 605, 611, 486 S.E.2d 762, 765 (Ct. App. 1997) ("Unless an objection is made

at the time the evidence is offered and a final ruling made, the issue is not preserved for review.").

AFFIRMED.

WILLIAMS, THOMAS, and PIEPER, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)
THE STATE)
v.)
RICKY BRANNON,)
DEFENDANT)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

**AFFIDAVIT OF SERVICE
NOTICE OF LIFE SENTENCE**

H519031 / 2004-GS-11-201
H519030 / 2004-GS-11-202

Exhibit
#12 (C)

PERSONALLY appeared before me the undersigned deponent, who being duly sworn, says that he/she served the Petition and Summons in this action on:

RICKY BRANNON, DEFENDANT

- (x) by delivering to Ricky Brannon personally
- () by delivering to _____, a person of age and discretion residing at the residence of the respondent and being at said residence at the time of service
- () by delivering to _____ at the place of business and leaving with him/her copies of the same at Court House, Gaffney, SC on the 2nd day of August, 2004 and that the deponent is not a party to this action, and has no interest therein or connection therewith.

Greg Phillips
Greg Phillips, Investigator
Seventh Circuit Solicitor's Office
Cherokee County

SWORN TO AND SUBSCRIBED before me
this 2nd day of August, 2004.

Jamie C. Beall
Notary Public for South Carolina
My Commission Expires: 02-10-2010

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE)

THE STATE)

v.)

RICKY BRANNON,
DEFENDANT)

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

**AFFIDAVIT OF SERVICE
NOTICE OF LIFE SENTENCE**

H519031 / 2004-GS-11-201

H519030 / 2004-GS-11-202

PERSONALLY appeared before me the undersigned deponent, who being duly sworn,
says that he/she served the Petition and Summons in this action on:

DON THOMPSON Attorney for the Defendant
310 B-1 N. Limestone Street Gaffney, SC 29340

Dismissed
Attorney/client
Conflict

- (4) by delivering to Don Thompson personally
- () by delivering to _____, a person of age and
discretion residing at the residence of the respondent and being at said residence
at the time of service
- () by delivering to _____ at the place of
business and leaving with him/her copies of the same at Court House, Gaffney
_____, SC on the 2nd day of August, 2004 and that the
deponent is not a party to this action, and has no interest therein or connection
therewith.

Greg Phillips
Greg Phillips, Investigator
Seventh Circuit Solicitor's Office
Cherokee County

SWORN TO AND SUBSCRIBED before me
this 2nd day of August, 2004.

Jamie C. Beale
Notary Public for South Carolina

My Commission Expires: 02-10-2010



Kenneth Callahan
224 Canfield Ln.
Caffney, S.C.

Exhibit 14
CHEROKEE COUNTY SHERIFF'S OFFICE

CHAIN OF CUSTODY

ADDITIONAL

MIKE FOWLKES

CASE # 2003 - 003773

CONTAINER # (s) OR ITEM # (s)

NOTES / DESCRIPTIONS

1 SET FILA SHOES

WHITE (EVIDENCE # 21)

THE ABOVE EVIDENCE WAS TRANSFERRED

FROM:

TO:

DATE/TIME:

CHEROKEE Co. DETENTION CAPT Mike Fowlkes 12-2-03 1105

CAPT M. A Fowlkes DET. J. HENSON 12-2-03 1115

Jimmy Henson EVIDENCE VAULT 04/02/04

/

/

/

/

/

/

/



Exhibit 16[#]

See Attached Motion
Next sheets.

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) 734-1080

FAX (803) 734-1499

December 30, 2010

Ricky Brannon #179051
Broad River Correctional Institution
4460 Broad River Road
Columbia, SC 29210

Re: Brannon, Ricky v. The State

Dear Mr. Brannon:

This responds to your letter dated December 15, 2010. Since you are represented by counsel in this matter, no action will be taken on your pro se letter. Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

Any concerns you have about this matter should be raised to the Division of Appellate Defense. The address for that Office is P.O. Box 11589, Columbia, SC 29211, and their phone number is 803-734-1343.

Very truly yours,

Daniel E. Shearouse
35

CLERK

DES/jj

cc: Appellate Defense
Assistant Attorney General Suzanne H. White

Ricky Brannon #179051
Broad River Corr INST
4460 Broad River Rd.
Columbia S.C. 29210.

The Honorable. DANIEL E. Shegious, Clerk.
South Carolina Supreme Court
P. O. Box. 11330,
Columbia S.C. 29211.

Re. Ricky Brannon #179051. v. The State of South Carolina.
(PCR). CASE NO. 2009-CP-11-0555

: SEEKING Order To STAY The Judgment IN The
above CASE. For The Following Reasons.:

To The South Carolina Supreme Court. The Applicant in The
above stated Action. Which WAS Dismissed with prejudice, ON
November 15 2010 By The (PCR) Court. The Honorable Judge
J. Derham Cole. 7th Judicial Circuit. Spartanburg S.C., and
received by The Applicant ON November 30th 2010.

Do hereby moves before This Court for an Order. To stay and/or
void The Judgment of The above said Action. ON The Following
meritorious grounds.

1. Failure of The PCR Court To hear Timely Submitted....

• • • Motion For The Dismissal of (PCR). Counsel And For The Appointment of a New Attorney.

Sec. Incorporated herein a Copy of The above stated Motion. Filed in The Cherokee County, Clerk of Courts office ON May 24, 2010, Exhibit (1).

The Above stated Motion, WAS Timely filed. Following, Applicants April 6 2010 PCR. hearing presided over by The Honorable. J. Derham Cole. whom decided to leave Applicants PCR proceedings "Open". After denying Applicants PCR. Attorney several Motion Requests, including a compel Order to obtain Discovery Material documents, which was being withheld by The Cherokee Co. Magistrate Court, And The State. And an Order To test D.N.A evidence, obtained from Applicant in connection with physical evidence collected from burglary crime scene, in which a search warrant was issued to seize one (1) vial of Applicant blood for comparison testing. But, although Applicants (blood) D.N.A WAS seized, It was never tested toward burglary crime, even though The State alluded To The fact, That it had been in The Applicants 1st, degree burglary Trial. The Motion To dismiss was never heard, by The PCR, Court, Before it rendered its decision.

(2). The Applicant Also Move For a stay, Because his PCR. Counsel Intentionally withheld and refused to file The Applicants Amendment to his Application of Question #10. of Application which states:

... STATE concisely and in the same order the facts which support each of the grounds set out in # (9).

Here Applicant did do a complete brief of facts with (25) Exhibits documents as evidence. To support each of his allegations raised in question NO. (9) of Application. And timely submitted it to his (PCR) Attorney, Mr Rodney W. Richey on October 2, 2009, To be Amended To his PCR Application, Due To the fact that when Applicant submitted his Application, Question No. # (10). WAS the only question of the Application. That was left unanswered. Therefore the Amendment was necessary to complete the Application. See herein Exhibits *2 and *3 with proof of Service. Showing Applicant served his Amendment on his (PCR) Attorney. For filing and See. PCR. Attorneys response Dated November 18, 2009 acknowledging receipt of the Amendment. and that he had filed it.

"Please Note." PCR. Attorney. Mr. Rodney Richey. Never filed my amendment to my Application. of Question No. #10. As he alleged to have done in Exhibit *(3). But only submitted the Amendment. on September 17, 2010. Well after my April 6, 2010 PCR. hearing and after, I filed a Motion to dismiss his representation on May 24, 2010, as shown in Exhibit *(9). See also herein. Exhibit *(4). A letter from Applicants PCR. Counsel finally acknowledging the filing of Applicants Amendment.

(3). That Applicants, Amendments To his Application filed September 23, 2010 and served on The Respondents, as shown in Exhibit #(4) herein. Has not been heard or ruled upon by The PCR Court prior to its ruling on Applicants Application. Thus Applicant has not had a sufficient hearing on all of his Allegations within his Application and amended application. Further, applicant does believe he had standing to further amend his Application with additional grounds for relief and to continue answer question No #10 of the Application. To show specific facts to support his Allegations. Where at, Applicants April 6, 2010. PCR hearing The PCR Court ordered For the applicant PCR. hearing proceedings To remain "Open".

Here. The Applicant ask This Court to review his ^{Transcript} ~~Transcript~~ of The PCR, hearing proceedings. The record of The proceedings will substantiate his claims That his PCR, proceedings was left open by The PCR Court. Therefore his Amendment Filed after the proceedings was proper and should have been heard. Before The PCR Court ruled on The application. Also.

(4). That The PCR Court. Judge J. Derham Cole, Erroneously rendered a ruling on numerous allegations, Applicant raised in his Application. But only conducted a hearing at Applicant April 6 2010. (PCR). proceedings on one allegation. "Ineffective Assistance of Substitute Counsel." No hearing was conducted on Applicants Allegations of

... Ineffective Assistance of Original Counsel. Whom also was a conflict of interest. And denied Applicant his representation at a bench Trial proceedings in The Magistrate Court, which Applicant contested because The Traffic stop was unlawful and items was unlawfully seized and ultimately led to Applicants criminal charges. And That Original Counsel, intentionally withheld the knowledge of a plea negotiation, of Applicants, 1st, degree, burglary charge and steered Applicant toward a Trial, facing a life sentence.

Ineffective Assistance of Appellate Counsel. Who denied Applicant a direct appeal. By giving Applicant a frivolous appellate brief on an issue which The Court of Appeals refuse to consider because The issue was not preserved for appellate review see herein. The Court of Appeals decision. Exhibit #(6). Then Appellate Counsel erroneously informed Applicant of The Court of Appeals Decision. (6). six months after they had rendered it, thus costing Applicant six months of his statutory (1) one year period to file his PCR Application and even less time to file a Habeas Corpus, if necessary. See herein. Exhibit #(7). The said Notice from Appellate Counsel Dated January 22, 2009.

Informing Applicant of The Court of Appeal decision and The date for which Applicant needed to file his PCR Application.

The PCR. Court also never heard Applicants Newly discovered evidence claim. And falsely concluded in The order of Dismissal, That Applicant failed to submit any evidence to show newly discovered evidence.

The PCR. Court held No hearing on The above allegations at The PCR, proceedings. But yet has rendered a decision on each of

— The Above reference Allegations with No testimony, documents or facts. To support its findings. There was also ~~the~~ other allegations. That The PCR Court has ruled on, But was not heard at The proceedings.

(5). Because (PCR). Judge. The Honorable J. Derham Cole abused his discretion And/or Errored in Not recusing himself from Applicants (PCR) Action. After Applicants PCR Counsel moved to have Judge Cole, recuse himself at The Applicants April 6, 2010, PCR Hearing. Judge Cole. was a conflict, and very bias towards Applicant, in That he had vast personal knowledge of facts, of a pending criminal charge of Applicant, which involved The Cherokee County Court house. The Cherokee County Sheriffs Dept. And The 7th Circuit Solicitor's office (Trey Gowdy). Whom all were victims of The crime charged To Applicant. Thus Applicant believed it would be in conflict with The potential of outside influences. That would deny him a fair hearing of his PCR Application. For Any Judge, of The 7th Judicial Circuit in Spartanburg County to preside over his PCR Application. Further Applicant asserts. The Honorable Judge Cole. Had already previously presided over a civil matter of Applicant involving The same D.N.A. (blood) evidence. For which he denied Applicants Motion for testing at The April 6, 2010, PCR proceedings. See herein Exhibit #(5). Judge Coles ruling over Applicants civil Action case. In which he also dismissed with prejudice. Please also note, That Judge Cole has also

— SAT over portions of Applicants previous appeal of The same Traffic Court conviction which was directly related to his, 1st degree burglary case and conviction. For it was an unlawful traffic violation arrest and seizure. which resulted in Applicant being criminally charged with burglary crime. It is also of this traffic stop arrest. For which Applicant was never issued any actual Tickets. And For which The State offered testimony about the tickets at Applicants burglary Trial. But failed upon request, to produce any copies of The tickets during The Trial. These were the same relevant tickets in which the Applicants PCR attorney, attempted to obtain a compel order for discovery of the ticket. from Judge Cole, at The PCR hearing for which Judge, Cole, denied the Motion. Incorporated herein is The relevant case Number of The above referenced appeal of Traffic Conviction. For which Judge Cole, participated in. CASE NO. 09-CP-11-0005.

CONCLUSION

Applicant. Has shown This Court with The above information That he's been prejudiced and denied a fair PCR Hearing as provided by The statute. Applicant Prays That This Court finds That numerous substantial errors did in fact render Applicants PCR proceedings unjust and insufficient. Thus and Order To stay The Judgment of The PCR Court should be Granted with a New (PCR) hearing held and previous Motions Motions Heard.

Dated _____

S/ Ricky Brannon
Ricky Brannon #179051

Certificate OF Service

Please Notice. That The undersigned Applicant DO hereby Certify That he has mailed the herein attached Motion and/or Request To. The South Carolina Supreme Court. Requesting For a STAY of Judgment of The (PCR) Court. IN his post Conviction Relief Action on Relevant Grounds, with support Exhibits evidence. By Placing said stay Motion and Exhibits in an envelope properly addressed with U.S. Postage, sealed and deposited in The United STATES MAIL. AT The Broad River Corr. INST. ON This 15th day of December 2010.

Mailed To :

The Honorable S.C. Supreme Court clerk.
DANIEL E. SHEGOWS
P.O. Box 11330
Columbia S.C. 29211.

Respectfully Submitted

Sl. Ricky Brunnon
Ricky BRUNNON #179051
Broad River Corr INST
4460. Broad River Rd
Columbia S.C. 29210

Suborn before Me This 15TH day
of December 2010

Donald J. Jink
Notary Public for South Carolina

My Commission Expires
August 23, 2015

My Commission Expires