

ORIGINAL

**VOLUME I OF II**

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

RECEIVED

JUN - 6 2011

S.C. Supreme Court

RICKY BRANNON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

**APPENDIX**

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**VOLUME I OF II**  
**PAGES 1-500**

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## INDEX

|                                                           |     |
|-----------------------------------------------------------|-----|
| INDEX.....                                                | i   |
| TRIAL TRANSCRIPT.....                                     | 1   |
| APPLICATION FOR POST-CONVICTION RELIEF AND EXHIBITS ..... | 317 |
| AMENDMENTS TO POST-CONVICTION RELIEF APPLICATION .....    | 518 |
| RETURN .....                                              | 523 |
| ORDER OF CONTINUANCE (DATED FEBRUARY 9, 2010) .....       | 544 |
| POST-CONVICTION RELIEF HEARING TRANSCRIPT .....           | 546 |
| ORDER OF DISMISSAL .....                                  | 623 |
| CLERK OF COURT RECORDS .....                              | 638 |
| FINAL BRIEF OF APPELLANT.....                             | 646 |
| FINAL BRIEF OF RESPONDENT .....                           | 657 |
| OPINION (NO. 2008-UP-313, FILED JUNE 20, 2008) .....      | 671 |
| REMITTITUR.....                                           | 673 |
| SOUTH CAROLINA DEPARTMENT OF CORRECTIONS RECORDS.....     | 674 |
| ORDER (DATED JUNE 15, 2007).....                          | 678 |

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF CHEROKEE

2004-GS-11-201, -202, -203

THE STATE of SOUTH CAROLINA

-vs-

RICKY BRANNON,

Defendant.

TRANSCRIPT OF RECORD

April 12 and 13, 2006  
Gaffney, South Carolina

Ordered: May 18, 2006  
Delivered: November 5, 2006

B E F O R E:

THE HONORABLE A. DOYET EARLY, III, Presiding Judge.

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

MR. DEWAYNE PEARSON, Esquire  
MR. CURTIS H. PAULING, III, Esquire  
Assistant Attorney Generals for the State

MR. J. ROGER POOLE, Esquire  
Appearing on behalf of the Defendant

Pamela Faucette  
Circuit Court Reporter

I N D E X

| Motions & Matters:                         | Page:     |
|--------------------------------------------|-----------|
| Voir Dire:.....                            | 8         |
| Jury Selection:.....                       | 24        |
| Pre-Trial Motions:.....                    | 35        |
| <u>Jackson v. Denno</u> .....              | 41        |
| Initial Instructions by the Court.....     | 54        |
| Motion/Matters at end of State's Case..... | 251 & 261 |

| Opening Statements: | Page: |
|---------------------|-------|
| Mr. Pearson.....    | 60    |
| Mr. Poole.....      | 63    |

W I T N E S S E S

| State's Witnesses:                      | Page: |
|-----------------------------------------|-------|
| Captain Mike Fowlkes (Jury Not Present) |       |

|                            |    |
|----------------------------|----|
| Direct by Mr. Pauling..... | 41 |
|----------------------------|----|

**Ms. Andrea Randolph**

|                            |    |
|----------------------------|----|
| Direct by Mr. Pauling..... | 66 |
| Cross by Mr. Poole.....    | 82 |

**Ms. Joy Sherrick**

|                              |     |
|------------------------------|-----|
| Direct by Mr. Pauling.....   | 85  |
| Cross by Mr. Poole.....      | 104 |
| Redirect by Mr. Pauling..... | 106 |

**Ms. Ira Jo Gallman**

|                              |     |
|------------------------------|-----|
| Direct by Mr. Pauling.....   | 109 |
| Cross by Mr. Poole.....      | 130 |
| Redirect by Mr. Pauling..... | 134 |



W I T N E S S E S

## State's Witnesses:

Page:

## Mr. Kenneth Gallman

Direct by Mr. Pauling.....136  
 Cross by Mr. Poole.....147

## Ms. Tarsha Littlejohn

Direct by Mr. Pauling.....149  
 Cross by Mr. Poole.....164  
 Redirect by Mr. Pauling.....169

## Deputy Richard Turner

Direct by Mr. Pauling.....172  
 Cross by Mr. Poole.....179  
 Redirect by Mr. Pauling.....182

## Detective Tim Clark

Direct by Mr. Pauling.....187

## Investigator Jimmy Henson

Direct by Mr. Pauling.....192  
 Cross by Mr. Poole.....204  
 Redirect by Mr. Pauling.....205  
 Recross by Mr. Poole.....220  
 Redirect by Mr. Pauling.....224

## Captain Mike Fowlkes

Direct by Mr. Pauling.....228  
 Cross by Mr. Poole.....247

## Defendant's Witness:

Page:

(None)

E X H I B I T S

| State's Exhibits:             | Marked: | Received: |
|-------------------------------|---------|-----------|
| 1 - (Pre-Interrogation Form)  | 7       | 233       |
| 2 - (Mr. Brannon's Statement) | 7       | 233       |
| 3 - (Pre-Interrogation Form)  | 7       | 233       |
| 4 - (Photograph)              | 7       | 76        |
| 5 - (Photograph)              | 7       | 76        |
| 6 - (Photograph)              | 7       | 76        |
| 7 - (Photograph)              | 7       | 76        |
| 8 - (Photograph)              | 7       | 76        |
| 9 - (Photograph)              | 7       | 76        |
| 10 - (Photograph)             | 7       | 76        |
| 11 - (Photograph)             | 7       | 127       |
| 12 - (Photograph)             | 7       | 127       |
| 13 - (Photograph)             | 7       | 127       |
| 14 - (Photograph)             | 7       | 127       |
| 15 - (Photograph)             | 7       | 127       |
| 16 - (Photograph)             | 7       | 127       |
| 17 - (Photograph)             | 7       | 127       |
| 18 - (Photograph)             | 7       | 127       |
| 19 - (Photograph)             | 7       | 127       |
| 20 - (Photograph)             | 7       | 127       |
| 21 - (Photograph)             | 7       | 127       |

## THE STATE V. RICKY BRANNON

Page 5

E X H I B I T S (Continued)

| State's Exhibits:            | Marked: | Received:      |
|------------------------------|---------|----------------|
| 22 - (Photograph)            | 7       | 127            |
| 23 - (Photograph)            | 7       | 127            |
| 24 - (Photograph)            | 7       | 127            |
| 25 - (Photograph)            | 7       | 127            |
| 26 - (Photograph)            | 7       | 127            |
| 27 - (Photograph)            | 7       | 127            |
| 28 - (Blow up of Shoe Print) | 7       | 211            |
| 29 - (Gun)                   | 135     | (Not Admitted) |
| 30 - (Gun)                   | 135     | (Not Admitted) |
| 31 - (Gun)                   | 135     | (Not Admitted) |
| 32 - (Piece of Broken Glass) | 197     | 208            |
| 33 - (Piece of Broken Glass) | 197     | 208            |
| 34 - (Piece of Glass)        | 197     | 208            |
| 35 - (Fila Tennis Shoes)     | 206     | 208            |
| 36 - (Transparency)          | 209     | 211            |

**Defendants' Exhibits:**

(None)

| Court's Exhibits:                         | Marked: | Received: |
|-------------------------------------------|---------|-----------|
| 1 - (Copy of Defendant's<br>Prior Record) | 254     | 254       |
| 2 - (Copy of Indictments)                 | 255     | 255       |
| 3 - (Copy of Indictments)                 | 255     | 255       |

## THE STATE V. RICKY BRANNON

Page 6

| Court's Exhibits:                                     | Marked: | Received: |
|-------------------------------------------------------|---------|-----------|
| 4 - (Affidavit of Service)                            | 255     | 255       |
| 5 - (Notice of Life Sentence)                         | 255     | 255       |
| 6 - (Notice of Intent to<br>Seek Life without Parole) | 255     | 255       |

| Closing Arguments:                  | Page: |
|-------------------------------------|-------|
| Mr. Pauling.....                    | 264   |
| Mr. Poole.....                      | 278   |
| Jury Charge.....                    | 286   |
| Verdict.....                        | 302   |
| Post-Trial Motions.....             | 306   |
| Sentencing.....                     | 314   |
| Court Reporter's Certification..... | 316   |

Reporter's Note: This transcript contains quoted material. Such material is reproduced as read or quoted by the speaker.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 April 12, 2006

9:33 A.M.

2 (State's Exhibit Numbers 1 through 28 were marked for  
3 identification prior to the proceeding commencing.)

4 (Jury panel present in the courtroom.)

5 THE COURT: Thank you and good morning. Please, be  
6 seated.

7 (Off-the-Record Comments)

8 THE COURT: Good morning.

9 (Replies of "good morning" heard.)

10 (Off-the-Record Discussion)

11 THE COURT: I hope everyone had a nice evening. Let me  
12 tell you where we're going. I guess I got some good news and  
13 bad news. The bad news is, that we're -- we're going to draw a  
14 jury this morning for one case. The good news is, those of you  
15 who are not drawn, I will excuse you not only for the balance  
16 of the day but for the balance of the week.

17 This is the only other -- the only other trial we have.  
18 We have a lot of business we're going to have to do, but it  
19 won't require a jury's presence.

20 So, what we'll do this morning is we will draw this jury  
21 and then, after I'll release the rest of you for the balance of  
22 the week. And I suspect that we may finish this trial today,  
23 if not, certainly the first thing in the morning.

24 So, your Friday will be -- you won't have jury duty Friday  
25 and perhaps not even tomorrow afternoon. So, we'll move along

## VOIR DIRE

Page 8

1 just as efficiently as we can. So, you can get out of here and  
2 enjoy your Easter weekend.

3 All right, Mr. Attorney General, you may call your case.

4 MR. PAULING: Thank you, Your Honor. The State calls the  
5 case of The State v. Ricky Brannon. It's indictment 2004-GS-  
6 11-201, 202, and 203. It's two counts of burglary in the first  
7 degree and grand larceny.

8 THE COURT: Thank you. Ladies and gentlemen, yesterday I  
9 asked you a -- a number of questions concerning your  
10 qualifications to serve. We've been through all of that, and  
11 this morning I'm going to ask you some specific questions about  
12 the case we're about to try. And, once again, if it applies to  
13 you, I would ask that you stand.

14 And, in most of the cases, you -- you can answer right  
15 there from the -- from your seat. Others it may re -- it may  
16 require that you come down. I remind you that you were put  
17 under oath yesterday, so, your questions and your answers --  
18 your answers and -- my questions and your answers will be under  
19 oath, so, please, keep that in mind.

20 So, is the Defense ready?

21 MR. POOLE: Yes, sir.

## 22 VOIR DIRE

23 THE COURT: Okay. Ladies and gentlemen of the jury, as  
24 you've heard, this case is being prosecuted by the Attorney  
25 General's representatives, or lawyers from the South Carolina

## VOIR DIRE

Page 9

1 Attorney General's Office, and I'll introduce those lawyers to  
2 you in just a few minutes.

3 But this is the case of The State of South Carolina v.  
4 Ricky Brannon on three indictments. Mr. Brannon, good  
5 morning. How are you?

6 THE DEFENDANT: Fine.

7 THE COURT: Would you be so kind as to stand and face  
8 the jury?

9 (Mr. Brannon stood and faced the jury as requested.)

10 THE COURT: Thank you. Please, be seated.

11 (Mr. Brannon sits as requested.)

12 THE COURT: Any member of the jury panel ever been  
13 related, by blood or marriage, to Ricky Brannon? If so,  
14 please, stand.

15 (No Response)

16 THE COURT: Has any member of the jury panel ever had a  
17 close personal or social relationship with Mr. Ricky Brannon?  
18 If so, please, stand.

19 (No Response)

20 THE COURT: Please, listen carefully to the following of  
21 potential witnesses of the trial of the case. I'm going to  
22 read those out and listen carefully. At the end of reading  
23 the list -- the list of witnesses out, I will ask you the same  
24 questions I just asked you about the defendant. The potential  
25 or proposed or perhaps potential witnesses or the potential

## VOIR DIRE

Page 10

1 witnesses are: Andrea Randolph. Is she in court?

2 MS. RANDOLPH: I am.

3 THE COURT: Would you, please, stand?

4 (Ms. Randolph stands as requested.)

5 THE COURT: Thank you, ma'am. Joy Sherrick?

6 (Ms. Sherrick stands.)

7 THE COURT: Thank you. Ira Jo Gallman?

8 (Ms. Gallman stands.)

9 THE COURT: Thank you. Kenneth Gallman?

10 (Mr. Gallman stands.)

11 THE COURT: Thank you. Tarsha Littlejohn?

12 (Ms. Littlejohn stands.)

13 THE COURT: Thank you. Deputy Richard Turner with the  
14 Cherokee County Sheriff's Office?

15 MR. PAULING: He's not here.

16 THE COURT: Deputy Tim Clark with the Cherokee County  
17 Sheriff's Office?

18 (Deputy Clark stands.)

19 THE COURT: Thank you, sir. Jimmy Henson with the  
20 Cherokee County Sheriff's Office.

21 (Officer Henson stands.)

22 THE COURT: Thank you, sir. Captain Mike Fowlkes -- is  
23 that how you say it, Fowlkes? How do you pronounce that?

24 CAPTAIN FOWLKES: Fowlkes.

25 THE COURT: Fowlkes.



## VOIR DIRE

Page 11

1 CAPTAIN FOWLKES: Yes, sir.

2 THE COURT: Okay.

3 (Captain Fowlkes stands.)

4 THE COURT: He's also with the Cherokee County Sheriff's  
5 Office. Has any member of the jury panel ever been related,  
6 by blood or marriage, or has anyone ever had a close personal  
7 or social relationship with any of the witnesses that I have  
8 just called out? If so, please, stand for me.

9 (Potential jurors stand in response.)

10 (Potential juror raises hand in response.)

11 THE COURT: Please, stand for me.

12 (No Response)

13 THE COURT: Ma'am, you want to stand?

14 (Potential juror stands in response.)

15 THE COURT: All right. Starting with my -- the young  
16 lady on the front. Your name, please?

17 POTENTIAL JUROR: My name is Marie Annas, juror number  
18 5. I go to church with Mr. Fowlkes and I know Mr. Henson.

19 THE COURT: You go to church with Mr. Fowlkes and you  
20 know one of the witnesses. You're not related by blood or  
21 marriage or anything, just happen to know them in the  
22 community; is that correct?

23 POTENTIAL JUROR: That's correct.

24 THE COURT: Would the fact that you know these people,  
25 ma'am, would that, in any way, preclude or keep you from being

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 12

1 a fair ---

2 (Off-the-Record Comments)

3 THE COURT: --- a fair and impartial juror in the trial  
4 of this case?

5 POTENTIAL JUROR: No, sir.

6 THE COURT: Thank you, ma'am. You may be seated. Yes,  
7 sir, in the black golf shirt.

8 POTENTIAL JUROR: Juror number 97. I'm a State Farm  
9 Insurance Agent and I have had dealings in the past with and I  
10 know Mr. Fowlkes and possibly a few of the some other ----

11 THE COURT: Okay.

12 POTENTIAL JUROR: --- people you read.

13 THE COURT: You're a local business man and in your  
14 business from time-to-time you have dealt with some of the  
15 potential witnesses in this case on a business level; is that  
16 correct?

17 POTENTIAL JUROR: That's correct.

18 THE COURT: Not related by blood or marriage?

19 POTENTIAL JUROR: No.

20 THE COURT: Sir, would that, in any way, preclude or  
21 keep you from being a fair and impartial juror, in the trial  
22 of this case, simply deciding this case based on what we hear  
23 from the witness stand and applying that to the law as I  
24 charge it to you and being fair to both the State and to the  
25 Defendant? Can you do that?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## VOIR DIRE

Page 13

1           POTENTIAL JUROR:    I sure can.

2           THE COURT:    Yes, sir, in the grey shirt, please.

3           POTENTIAL JUROR:   Juror Number 23, Robert Crawford.  I  
4 know the witness and I know some of these guys up there too.

5           THE COURT:    You know them?

6           POTENTIAL JUROR:   Well, just working in a convenience  
7 store in town and I know the Captain there.

8           THE COURT:    You're sort of in the same situation as my  
9 Farm Bureau agent, you know them through business and live, in  
10 a small community, and obviously, you get to know people.  
11 Sir, would that, in any way, preclude or keep you from being a  
12 fair and impartial juror in the trial of this case?

13          POTENTIAL JUROR:   No, sir.

14          THE COURT:    Thank you.  You may be seated.

15          MR. PAULING:   Your Honor, what number was he, please?

16          THE COURT:    I'm sorry.  Your number?

17          POTENTIAL JUROR:   Twenty-three (23) or twenty-five (25)  
18 the best I recall.

19          MADAM CLERK:   Your Honor, he's 25.

20          THE COURT:    Twenty-five (25).  Yes, ma'am?

21          POTENTIAL JUROR:   Alice Whisenant, 95, I know Andrea  
22 Randolph.

23          THE COURT:    Okay.  And the fact that you know her,  
24 ma'am, Ms. Randolph, just know her, friends, not family or  
25 anything; is that correct?

## VOIR DIRE

Page 14

1 POTENTIAL JUROR: That's correct.

2 THE COURT: Would that, in any way, preclude or keep you  
3 from being fair and impartial?

4 POTENTIAL JUROR: (Shakes head negatively.)

5 THE COURT: Thank you, ma'am. You may be seated. As I  
6 said, the State in this case will be represented by two  
7 members from the Attorney General's Office, and I assume you  
8 gentlemen live in Columbia?

9 MR. PAULING: Yes, sir.

10 THE COURT: Mr. Curtis Pauling, would you stand and face  
11 the jury?

12 (Mr. Pauling stands as requested.)

13 THE COURT: And Dewayne Pearson.

14 (Mr. Pearson stands as requested.)

15 THE COURT: Thank you. You may be seated. The  
16 defendant is represented by Mr. Roger Poole of the Spartanburg  
17 County Bar. Mr. Poole, are you by yourself, or do you have a  
18 firm?

19 (Mr. Poole stands.)

20 MR. POOLE: Sole practitioner, Your Honor.

21 THE COURT: Sole practitioner? Thank you. Has any  
22 member of the jury panel ever been represented by any of the  
23 lawyers involved in this case? If so, please, stand.

24 (No Response)

25 THE COURT: Any member of the jury panel ever been

VOIR DIRE

Page 15

1 related by blood or marriage to or have you ever had a close  
2 personal or social relationship with any of the lawyers  
3 involved in this case? If so, please, stand.

4 (No Response)

5 THE COURT: Has any member of the jury panel or your  
6 family ever been prosecuted by the South Carolina Attorney  
7 General's Office? If so, please, stand.

8 (No Response)

9 THE COURT: Any member of the jury panel, or your  
10 immediate family, ever been involved in any legal matter -- in  
11 a legal matter that involved the South Carolina Attorney  
12 General's Office? If so, please, stand.

13 (Potential jurors stand in response.)

14 THE COURT: Yes, sir, my Farm Bureau agent, Mr. ---

15 POTENTIAL JUROR: That's State Farm.

16 THE COURT: State Farm? I'm ---

17 (Laughter)

18 THE COURT: I have State Farm Insurance.

19 POTENTIAL JUROR: Judge, I'm not sure if it was the  
20 State Attorney General's office, but I do have a daughter that  
21 spent at Lee Correctional Center. She was convicted in the  
22 lower part of the state.

23 THE COURT: All right, sir. Would that, in any way,  
24 preclude or keep you from being a fair and impartial juror?

25 POTENTIAL JUROR: No, sir.

## VOIR DIRE

Page 16

1 THE COURT: Yes, ma'am?

2 POTENTIAL JUROR: I have a son who's in prison.

3 THE COURT: And your name, please?

4 POTENTIAL JUROR: Mary Jenkins.

5 THE COURT: And the fact that you have a son who is  
6 incarcerated, ma'am, would that, in any way, preclude or keep  
7 you from being a fair and impartial juror?

8 POTENTIAL JUROR: (Shakes head negatively.)

9 THE COURT: Thank you, ma'am. Ladies and gentlemen, in  
10 this case, there have been three indictments that have been  
11 handed down by the Cherokee County grand jury. Let me remind  
12 you that indictments number one, are simply a charging  
13 document. It is not, in any sense, evidence in the case; it  
14 is simply allegations.

15 The Defendant as pled not guilty to each of these  
16 indictments, and that puts the burden of proof on the State of  
17 South Carolina to prove each and every element of each and  
18 every indictment, beyond a reasonable doubt, before he can be  
19 convicted. So, he's pled not guilty, and he's presumed to be  
20 innocent. And these are simply allegations.

21 But let me tell you a little about - a little bit about  
22 what the allegations say because I'm going to ask you if you  
23 know anything about it. It is alleged that on November 19,  
24 two thousand, three (2003), that he allegedly entered a  
25 residence belonging to one Joy Sherry on Green Valley in

VOIR DIRE

Page 17

1 Gaffney.

2 Also, it is alleged that on November 20, two thousand,  
3 three (2003), that he allegedly entered the residence of Mr.  
4 Gallman, Kent Gallman, at [redacted] in Gaffney. And  
5 it is further alleged that, on that same date, November 20,  
6 two thousand and three (2003), that he took away goods  
7 belonging to Mr. Gallman, which constituted grand larceny.

8 Like I said, those are simply allegations. That is not  
9 evidence. It's just what the State alleges. And my question  
10 to you is, does anybody, on the jury panel, know anything  
11 about these facts; have you read anything in the newspaper or  
12 heard anything on the radio or seen anything on television  
13 concerning these facts -- these allegations, alleged facts,  
14 that I've just read to you, or know anything about the  
15 Defendant in the case, Mr. Ricky Brannon? If so, please,  
16 stand.

17 (No Response)

18 THE COURT: Any member of the jury panel, or immediate  
19 family, ever been a victim of a violent crime or perhaps an  
20 alleged break in or anyone stolen anything from you? If so,  
21 please, stand.

22 (Potential jurors stand in response.)

23 THE COURT: My State Farm Agent?

24 POTENTIAL JUROR: Judge, I've had three different  
25 burglaries at my residence in the last fifteen (15) years.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## VOIR DIRE

Page 18

1 THE COURT: All right, sir. The fact that you have been  
2 a victim, over the years, sir, would that in any way keep you  
3 from being a fair and impartial juror the trial of this case?

4 POTENTIAL JUROR: No.

5 THE COURT: Thank you. Yes, ma'am, in the yellow  
6 blouse. And your name, please.

7 POTENTIAL JUROR: Sandra Petty, juror number 71.

8 THE COURT: Petty?

9 POTENTIAL JUROR: Petty, P-e-t-t-y. My home was broken  
10 into. The people was in the house when I came home. And I  
11 changed.

12 THE COURT: The fact that you have experienced that,  
13 ma'am, would that in any way preclude or keep you from being a  
14 fair and impartial -

15 POTENTIAL JUROR: What?

16 THE COURT: Would that keep you from being fair and  
17 impartial?

18 POTENTIAL JUROR: No.

19 THE COURT: Thank you. Yes, sir, in the red? Your  
20 name?

21 POTENTIAL JUROR: My name is Keith Wade, juror number 90  
22 I have a loss probably ten years ago in my home.

23 THE COURT: And would that - the fact that you  
24 experienced that some ten years ago, sir, would that, in any  
25 way, preclude or keep you from a being a fair and impartial



VOIR DIRE

Page 19

1 juror?

2 POTENTIAL JUROR: No.

3 THE COURT: Thank you. Ma'am, in the white blouse, your  
4 name?

5 POTENTIAL JUROR: Patty Sherhold, and my home was broken  
6 into about two (2) years ago.

7 THE COURT: And your number, please?

8 POTENTIAL JUROR: Seventy-three (73).

9 THE COURT: And, ma'am, the fact that your home was  
10 broken into a couple of years ago, would that, in any way,  
11 preclude or keep you from being a fair and impartial juror in  
12 the trial of this case?

13 POTENTIAL JUROR: (Shakes head negatively.)

14 THE COURT: That's a "no"?

15 POTENTIAL JUROR: No, sir.

16 THE COURT: We have to take all this down, the court  
17 reporter has to take it all down.

18 (Off-the-Record Comments)

19 THE COURT: Yes, ma'am?

20 POTENTIAL JUROR: Heather \*, number 53. I was just a  
21 victim of a violent crime, but no breaking and entering. And  
22 I didn't know if it applied to your ---

23 THE COURT: It does. The fact that you were victim of a  
24 violent crime at one time, ma'am, would that preclude or keep  
25 you from being fair and impartial?

## VOIR DIRE

Page 20

1 POTENTIAL JUROR: No, sir.

2 THE COURT: Thank you so much. What was your number?

3 POTENTIAL JUROR: Fifty-three (53).

4 THE COURT: Fifty-three, Mr. Poole. Any member of the  
5 jury panel, or any close family, employed with any law  
6 enforcement -- I apologize. Ma'am, in the green -- aqua, I  
7 guess.

8 POTENTIAL JUROR: Yes, Your Honor, approximately twenty  
9 years I was the victim of a crime, and you said a break in,  
10 so, I ---

11 THE COURT: Well, or a crime, yes, ma'am. And your  
12 name, please?

13 POTENTIAL JUROR: Juror number 9 -- not 9, juror number  
14 8, Kristen Atkinson (phonetic).

15 THE COURT: Ms. Atkinson, the fact that you were a  
16 victim of a violent crime years ago, would that, in any way,  
17 keep you from being a fair and impartial juror?

18 POTENTIAL JUROR: No.

19 THE COURT: Thank you so very much. Is any member of  
20 the jury panel, or a close family member, employed with law  
21 enforcement; that is, with the Cherokee County Sheriff's  
22 Office, the Gaffney City Police, the Blacksburg -- Blacksburg  
23 City Police, any police agency, highway patrol, SLED, federal  
24 police, federal marshal or whatever, any law enforcement,  
25 anybody or a family member in law enforcement? If so, please

VOIR DIRE

Page 21

1 stand.

2 (Potential jurors stand in response.)

3 THE COURT: Yes, ma'am, number 8?

4 POTENTIAL JUROR: Number 8, I just retired from the  
5 United States Postal Inspection Services as a sergeant.

6 THE COURT: The Postal Inspection Services?

7 POTENTIAL JUROR: Uh-huh (affirmative).

8 THE COURT: And would that, in any way, ma'am, preclude  
9 or keep you from being fair and impartial?

10 POTENTIAL JUROR: No, I've served several times before.

11 THE COURT: Thank you, ma'am. Yes, sir, in the red  
12 shirt?

13 POTENTIAL JUROR: Juror number sixty-four (64), David  
14 Live (phonetic). My wife's nephew works for the Gaffney  
15 County Police. We're not blood related, but I ---

16 THE COURT: Okay. You've got your wife's nephew works  
17 for the Gaffney City Police; is that correct?

18 POTENTIAL JUROR: I'm sorry, Gaffney -- Cherokee County,  
19 in the sheriff's department.

20 THE COURT: The sheriff's department? So, your wife's  
21 nephew, so, that would be your nephew-in-law I guess? Is that  
22 what you call it?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Since this case is investigated by the  
25 Sheriff's Office for Cherokee County, I'm going to excuse you

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864.

## VOIR DIRE

Page 22

1 from the trial of this case. Please, take his name out,  
2 please.

3 (Whereupon, Juror Number 64 was excused.)

4 THE COURT: Yes, ma'am, your name?

5 POTENTIAL JUROR: Kim Wester.

6 THE COURT: I'm sorry?

7 POTENTIAL JUROR: Kim -

8 THE COURT: The lady with the blue jacket on.

9 POTENTIAL JUROR: Juror Number 5, Mary Addison. My  
10 brother-in-law is a sheriff's deputy.

11 THE COURT: With Cherokee County?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: Your brother-in-law?

14 POTENTIAL JUROR: Yes, sir.

15 THE COURT: All right, ma'am, I'm going to excuse you  
16 from the trial of this case.

17 (Whereupon, Juror number 5 was excused.)

18 THE COURT: Yes, ma'am, in the powder blue, baby blue  
19 jacket?

20 POTENTIAL JUROR: Juror number 35, Sherry Randolph, and  
21 I have two cousins that work in North Carolina. One is a  
22 Cleveland County Sheriff's Deputy and one is a Kings Mountain  
23 police officer.

24 THE COURT: The fact that you have relatives employed  
25 with the sheriff's offices in North Carolina, ma'am, would

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

VOIR DIRE

Page 23

1 that preclude or keep you from being a fair and impartial  
2 juror?

3 POTENTIAL JUROR: No, sir.

4 THE COURT: Thank you. Ma'am, now you can speak your  
5 name.

6 POTENTIAL JUROR: Kim Wester, juror -- juror 94. I have  
7 a first cousin at SLED.

8 THE COURT: At what?

9 POTENTIAL JUROR: SLED.

10 THE COURT: Mr. Pauling, have we got SLED involved?

11 MR. PAULING: There -- there are no officers with SLED  
12 who will be testifying, Your Honor.

13 THE COURT: The fact that you have a relative with the  
14 South Carolina Law Enforcement Division, ma'am, would that, in  
15 any way, preclude or keep you from being fair and impartial in  
16 the trial of this case?

17 POTENTIAL JUROR: No, sir.

18 THE COURT: Thank you, ma'am. You may be seated. Yes,  
19 sir?

20 POTENTIAL JUROR: Danny Riley, Juror 76. My  
21 granddaughter's dad is a sheriff for Cherokee County.

22 THE COURT: Granddaughter's dad?

23 POTENTIAL JUROR: Her father.

24 THE COURT: Is a what?

25 POTENTIAL JUROR: Is a deputy with the Cherokee County

VOIR DIRE

Page 24

1 Sheriff's Department.

2 THE COURT: Okay. I'm going to excuse you from the  
3 trial of this case. You're excused. Be seated, please.

4 (Whereupon, Juror number 76 was excused.)

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

8 (No Response)

9 THE COURT: Any member of the jury panel a member of the  
10 Cherokee County Grand Jury that returned the true bills of  
11 indictments on February 19, '04? If so, please, stand.

12 (No Response)

13 THE COURT: Does any member of the jury panel know of  
14 any reason, whatsoever, why he or she should not serve as a  
15 juror in this case, with particular emphasis being placed on  
16 your ability, to be fair and impartial, both to the State and  
17 to the Defendant? If so, please, stand.

18 (No Response)

19 THE COURT: Any additional questions, Mr. Pauling?

20 MR. PAULING: None for the State, Your Honor.

21 THE COURT: Any additional questions, Mr. Poole?

22 POTENTIAL JUROR: None here, Your Honor.

23 (Voir Dire concluded at 9:54 a.m.)

24 THE COURT: Okay. Five and ten; is that correct,  
25 gentlemen?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## JURY SELECTION

Page 25

1 MR. POOLE: Yes, sir.

2 MR. PAULING: That's correct, Your Honor.

3 THE COURT: Ladies and gentlemen of the jury panel, what  
4 -- the way we draw juries in criminal cases is different than  
5 how we do it in civil cases. Just for a car wreck case or a  
6 medical malpractice or breach of contract or those types of  
7 cases, I would have the clerk draw twenty (20) names out of  
8 the box, and she would put them on a sheet of paper.

9 And one side would strike four (4) and the other side  
10 would strike four (4), leaving me with twelve (12), and then,  
11 we would call out those twelve people and they would come and  
12 sit in the jury box.

13 The way we do it, in a criminal case, your name is  
14 called. As your name is called, or when your name is called,  
15 you would come down, walk through the little gate and stand  
16 right there in front of our clerk and turn around and face the  
17 lawyers. They can either strike you or seat you.

18 The State has five (5) strikes. They can basically  
19 strike for any reason or no reason at all. There's some  
20 matters that preclude all kinds of strikes, but basically,  
21 they have five (5) strikes to do with what they want to.

22 In this case, the Defendant has ten (10). So, you'll  
23 come down and the State goes first. And they'll either swear  
24 the juror or strike them or excuse them. Likewise, with the  
25 Defendant. If neither one of you -- neither one of them

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## JURY SELECTION

Page 26

1 excuse you or strike you, then, you would be my first, second,  
2 or third juror, depending on where we are.

3 We go through that process until twelve jurors and I will  
4 probably select a couple of alternates. So, as your name is  
5 called, would you, please, come down.

6 MADAM CLERK: When you come down, if you'll, please,  
7 bring all your personal belongings with you. Juror 68, Viola  
8 Palmer?

9 THE COURT: Hold on one second.

10 (Off-the-Record Comments)

11 THE COURT: Sixty-eight?

12 MADAM CLERK: Yes, sir.

13 THE COURT: The name?

14 MADAM CLERK: Viola Palmer.

15 (Potential juror steps forward.)

16 MADAM CLERK: What says the State?

17 MR. PAULING: Please, swear the juror.

18 MADAM CLERK: Say the Defense?

19 POTENTIAL JUROR: Seat the juror.

20 MADAM CLERK: Please, have a seat in the jury box.

21 Juror 59, Ashley Mathis.

22 (Potential juror steps forward.)

23 THE COURT: Mathias?

24 MADAM CLERK: Yes, sir. What says the State?

25 MR. PAULING: Please, swear the juror.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864



## JURY SELECTION

Page 27

1 MADAM CLERK: What says the Defense?

2 MR. POOLE: Seat the juror.

3 MADAM CLERK: Please, have a seat in the jury box.

4 Juror 73, Sharon Poole?

5 (Potential juror steps forward.)

6 MADAM CLERK: What says the State?

7 MR. PAULING: Please, swear the juror.

8 MADAM CLERK: What says the Defense?

9 MR. POOLE: Please, excuse Ms. Poole.

10 MADAM CLERK: You have been excused. Juror 25, Robert  
11 Crawford.

12 (Potential juror steps forward.)

13 MADAM CLERK: What says the State?

14 MR. PAULING: Please, excuse the juror.

15 MADAM CLERK: You have been excused. Juror 78, Barbara  
16 Scruggs.

17 (Potential juror steps forward.)

18 MADAM CLERK: What says the State?

19 MR. PAULING: Please, swear the juror.

20 MADAM CLERK: What says the Defense?

21 MR. POOLE: Seat the juror.

22 MADAM CLERK: Please, have a seat in the jury box.

23 Juror 95, Alice Whisnet.

24 (Potential juror steps forward.)

25 MADAM CLERK: What says the State?

## JURY SELECTION

Page 28

1 MR. PAULING: Please, swear the juror.

2 MADAM CLERK: What says the Defense?

3 MR. POOLE: Excuse the juror.

4 MADAM CLERK: You have been excused. Juror 103, Jerry  
5 Gellar.

6 (Potential juror steps forward.)

7 MADAM CLERK: What says the State?

8 (Brief Pause)

9 MR. PAULING: Please, swear the juror.

10 MADAM CLERK: What says the Defense?

11 MR. POOLE: Seat the juror.

12 MADAM CLERK: Please, have a seat in the jury box.

13 Juror 105, Jean Whiteside.

14 (Potential juror steps forward.)

15 MADAM CLERK: What says the State?

16 MR. PAULING: Please, swear the juror.

17 MADAM CLERK: Says the Defense?

18 MR. POOLE: Seat the juror.

19 MADAM CLERK: Please, have a seat in the jury box.

20 Juror 94, Kim Webster.

21 (Potential juror steps forward.)

22 POTENTIAL JUROR: May I say something to you? I forgot  
23 that my stepdaughter's uncle is a Cherokee County Sheriff's  
24 Deputy.

25 THE COURT: Your stepdaughter, your husband's daughter?

## JURY SELECTION

Page 29

1 POTENTIAL JUROR: Yes, sir.

2 THE COURT: Is a Cherokee County Sheriff's Deputy?

3 POTENTIAL JUROR: Yes, sir.

4 THE COURT: I'll excuse you from the case. Thank you  
5 for telling me that, ma'am.

6 (Whereupon, Juror 94 was excused by the Court.)

7 MADAM CLERK: Juror 86, Debbie Stokes.

8 (Potential juror steps forward.)

9 MADAM CLERK: What says the State?

10 MR. PAULING: Please, swear the juror.

11 MADAM CLERK: What says the Defense?

12 MR. POOLE: Seat the juror.

13 MADAM CLERK: Please, have a seat in the jury box.

14 Juror 57, Mary Linder.

15 (Potential juror steps forward.)

16 MADAM CLERK: What says the State?

17 MR. PAULING: Please, swear the juror.

18 MADAM CLERK: What says the Defense?

19 MR. POOLE: Seat the juror.

20 MADAM CLERK: Please, have a seat in the jury box.

21 Juror 50, Joanne Humphry.

22 (Potential juror steps forward.)

23 MADAM CLERK: What says the State?

24 MR. PAULING: Please, swear the juror.

25 MADAM CLERK: What says the Defense?

## JURY SELECTION

Page 30

1 MR. POOLE: Seat the juror.

2 MADAM CLERK: Please, have a seat in the jury box.

3 Juror 11, Sandy Bell.

4 (Potential juror steps forward.)

5 MADAM CLERK: What says the State?

6 MR. PAULING: Please, swear the juror.

7 MADAM CLERK: What says the Defense?

8 MR. POOLE: Seat the juror.

9 MADAM CLERK: Please, have a seat in the jury box.

10 Juror 47, Janelle Holmes.

11 (Potential juror steps forward.)

12 MADAM CLERK: What says the State?

13 MR. PAULING: Please, swear the juror.

14 MADAM CLERK: Says the Defense?

15 MR. POOLE: Seat the juror.

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

17 Juror 60, Angela McDonald.

18 (Potential juror steps forward.)

19 MADAM CLERK: What says the State?

20 MR. PAULING: Please, swear the juror.

21 MADAM CLERK: Says the Defense?

22 MR. POOLE: Seat the juror.

23 MADAM CLERK: Please, have a seat in the jury box.

24 Juror 97, Terry White.

25 (Potential juror steps forward.)

## JURY SELECTION

Page 31

1 MADAM CLERK: What says the State?

2 MR. PAULING: Please, swear the juror.

3 MADAM CLERK: Says the Defense?

4 MR. POOLE: Excuse Mr. White.

5 MADAM CLERK: You have been excused. Juror 75, Shannon  
6 Randolph.

7 (Potential juror steps forward.)

8 MADAM CLERK: What says the State?

9 MR. PAULING: Please, excuse the juror.

10 MADAM CLERK: You have been excused. Juror 53, Heather  
11 Thompson.

12 (Potential juror steps forward.)

13 MR. POOLE: What juror number, Brandy?

14 MADAM CLERK: Fifty-three (53).

15 MR. POOLE: And the name?

16 MADAM CLERK: You probably have her name as Thompson, H.  
17 Isner D (phonetic). Her correct name should be Heather  
18 Thompson. What says the State?

19 MR. PAULING: Please, swear the juror.

20 MADAM CLERK: What says the Defense?

21 MR. POOLE: Excuse Ms. Thompson.

22 MADAM CLERK: You have been excused. Juror 100,  
23 Christina Wright.

24 (Potential juror steps forward.)

25 MADAM CLERK: What says the State?

## JURY SELECTION

Page 32

1 MR. PAULING: I'm sorry, what was the number again?

2 MADAM CLERK: One hundred (100).

3 (Brief Pause)

4 MR. PAULING: Please, swear the juror.

5 MADAM CLERK: What says the Defense?

6 MR. POOLE: Seat the juror.

7 MADAM CLERK: Please, have a seat in the jury box.

8 THE COURT: All right, Gentlemen, let me have -- let's  
9 seat two alternates I guess.

10 (Off-the-Record Comments).

11 THE COURT: All right, two and one, gentlemen.

12 MADAM CLERK: Juror 92, John Watkins.

13 (Potential juror steps forward.)

14 MADAM CLERK: What says the State?

15 (Brief Pause)

16 MR. PAULING: Please, excuse the juror.

17 MADAM CLERK: You have been excused. Juror 14, Betty  
18 Blackwood.

19 (Potential juror steps forward.)

20 MADAM CLERK: What says the State?

21 MR. PAULING: Please, swear the juror.

22 MADAM CLERK: Says Defense?

23 MR. POOLE: Seat the juror.

24 MADAM CLERK: Please, have a seat in the jury box.

25 Juror 96, Jamie Whisnet.

## JURY SELECTION

Page 33

1 THE COURT: All right, lawyers, Ms. Whisnet was not here  
2 for the full voir dire, so, I'm going -- I'm going to excuse  
3 her. Any problems?

4 MR. POOLE: No, sir.

5 THE COURT: Mr. Attorney General?

6 MR. PAULING: None for the State, Your Honor.

7 THE COURT: She walked in after we got about halfway  
8 through the voir dire. I put her on my right and your left.

9 (Whereupon, Juror 96 was excused by the Court.)

10 MADAM CLERK: Juror 70, Stephen Peterson.

11 (Potential juror steps forward.)

12 MADAM CLERK: What says the State?

13 MR. PAULING: Please, seat the juror.

14 MADAM CLERK: What says the Defense?

15 MR. POOLE: Seat the juror.

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

17 THE COURT: All right. Let me see you gentlemen up  
18 here.

19 (Jury selection concluded at 10:07 a.m.)

20 (Whereupon, a bench conference was had.)

21 THE COURT: All right. Mr. Bailiff, if you would, I'm  
22 going to ask my alternates to always have -- you all need some  
23 chairs over here. You all sit there. And I'll let you all  
24 sit back over there.

25 I'm going to let you go to your jury room right now and

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## JURY SELECTION

Page 34

1 the bailiffs will show you back where they are. And you can  
2 stretch out, and we'll get started here in just a few minutes.  
3 Go right this way here (indicating).

4 (The jury exited the courtroom at 10:08 a.m.)

5 THE COURT: Those of you who were not chosen, I want to  
6 thank you for your willingness to serve this week. We got a  
7 lot done yesterday after you left. I don't think we left  
8 until about five o'clock (5:00).

9 We got through a number of matters to be disposed of, and  
10 we've got this trial today and we still have a number of other  
11 matters and on Friday morning we have a morning full of  
12 probation violations. So, we'll be working through Friday  
13 afternoon.

14 But we cannot do business without jurors, so, I want to  
15 thank you for doing your civic duty and showing up. The  
16 criminal system would bog completely down if we didn't have  
17 you all there to help us. The sad part about it is we'll move  
18 a number of cases this week, and next week we'll have just  
19 that many more that we have to do.

20 No matter where I hold court, all over the state, and  
21 we'll -- we'll move a hundred, a hundred and fifty cases, but  
22 it doesn't take long to cycle right back around. We're going  
23 to excuse you now. Your clerk will ---

24 (Off-the-Record Discussion)

25 THE COURT: The way that -- each county does it



## MOTIONS &amp; MATTERS

Page 35

1 different. Cherokee County will give you a pay voucher and a  
2 work excuse, and they will be ready after ---

3 (Off-the-Record Discussion)

4 THE COURT: Afternoon, after twelve (12:00) or after you  
5 can pick it up and take it to the treasurer's office and  
6 they'll give you cash. It'll be ready any time after twelve  
7 (12:00) but you don't have to come back today. You can come  
8 back tomorrow or next week or, if you don't want it, just  
9 leave it down there. I'll take it with me back home.

10 No, seriously, you know, if it's inconvenient to come  
11 back today, you can come back tomorrow or whenever and it'll  
12 be ready. She has to get them all done, and it'll be ready  
13 after about twelve o'clock (12:00).

14 So, having said that, it was a pleasure being with you.  
15 Thank you so very much and you are excused to go. Everybody  
16 else, please, remain seated. You all are excused.

17 (The jury panel was excused and exited the courtroom at  
18 10:11 a.m.)

19 (Off-the-Record Comments)

20 THE COURT: Okay. Let the record reflect, subsequent to  
21 drawing the jury, I inquired both of the State and the Defense  
22 as to whether or not they had any motions concerning the jury  
23 draw; i.e., Batson motions. Both advised me that they did  
24 not. Is that correct, Mr. Pauling?

25 MR. PAULING: That's correct, Your Honor.

## MOTIONS &amp; MATTERS

Page 36

1 THE COURT: Mr. Poole?

2 MR. POOLE: Yes, sir.

3 THE COURT: All right. We have a quick motion, as I  
4 understand, we need to dispose of before we get started.

5 MR. POOLE: Yes, sir.

6 THE COURT: Mr. Poole, I'll be glad to hear from you.

7 MR. POOLE: May it please the Court. Your Honor, in  
8 this case, later on in the day of November 20<sup>th</sup>, it's my  
9 understanding -- and please correct me if I'm wrong factually  
10 or otherwise -- Mr. Brannon was stopped on a traffic violation  
11 and some shoes were obtained that he was wearing.

12 THE COURT: What was obtained?

13 MR. POOLE: Shoes. They were Fila -- I think that's F-  
14 I-l-a -- tennis shoes that were obtained. And they were  
15 inspected. And through Mr. Jimmy Henson they were compared to  
16 some shards of glass that were found in the residence of Mr.  
17 Gallman.

18 Mr. Henson compared -- made an impression of these tennis  
19 shoes, compared them to the glass, and came to the conclusion  
20 that they are, in fact, the same type of shoes that made the  
21 impression on the glass.

22 Now, Mr. Henson has been qualified, I believe, in 1999 in  
23 court as a foot impression expert by Judge Clary as I recall  
24 his resume, and my objection to his testimony and this motion  
25 to exclude it, is based upon -- and I don't have figures, but

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## MOTIONS &amp; MATTERS

Page 37

1 I do know enough about Fila tennis shoes to know that they  
2 share a large market share throughout this country with  
3 Adidas, Nike ---

4 THE COURT: Reebok.

5 MR. POOLE: --- Reebok, any other types of athletic foot  
6 -- footwear that is so numerous as to be probably beyond my  
7 comprehension.

8 In fact, I would submit it is so common that this  
9 testimony would probably be more prejudicial than it is  
10 probative and I would seek to exclude his testimony on the  
11 basis of that because ---

12 THE COURT: On the basis of a 403 analysis it's more  
13 prejudicial than probative, or on the basis that he's not  
14 qualified to give an opinion or based that it's not something  
15 that is subject to expert opinion?

16 MR. POOLE: Well, it's ---

17 THE COURT: What's the basis for the exclusion?

18 MR. POOLE: Four oh three (403) analysis, Your Honor,  
19 based upon the fact that it is such a common athletic shoe.  
20 And I do have -- if the Court decides to allow his testimony,  
21 I think he is qualified. He has been qualified in this area  
22 before, but there's another aspect of his testimony that I  
23 would ask to be excluded if the Court does allow him to  
24 testify.

25 THE COURT: What is that?

## MOTIONS &amp; MATTERS

Page 38

1           MR. POOLE:   He -- he will testify that, based on these  
2           impressions, that there are some smudge marks on the glass.  
3           And these -- these smudge marks were caused by a motion or a  
4           turning of the foot.

5           Now, I believe that, in that area, he would not be an  
6           expert to testify because that is the type of thing you would  
7           start getting into some -- you know, some real basic physics  
8           like pressure, torque, angle of impression, and types of  
9           things that, if he were to go that far, would certainly  
10          mislead the jury as to the smudge marks matching these shoes  
11          that were worn by the defendant.

12          THE COURT:   Well, I don't know is he going to testify  
13          that the smudge marks matched the shoes, or is he just going  
14          to testify that there was a turning of the -- of the foot. I  
15          don't know what he's going to testify to.

16          Here's what I'm going to do: This is a motion in limine.  
17          I doubt that I'm going to exclude it under 403, the testimony.  
18          As in all cases, crime scene evidence; a pair of shoes, tire  
19          marks, fingerprints, and et cetera, that normally goes to the  
20          jury after any type of analysis, including 403.

21          I think it goes more to the weight of the testimony as  
22          opposed to the admissibility. And, obviously, you can cross  
23          examine him on that opinion to Kingdom come on that. As far  
24          as opinion on smudge marks on the glass being made by these  
25          particular shoes, I'll just have to hear what he's got to say.

## MOTIONS &amp; MATTERS

Page 39

1 That may be a little -- may be far afield, but I don't  
2 know what he's going to say.

3 MR. POOLE: Yes, sir.

4 THE COURT: But, when we get to that point, Mr. Pauling,  
5 -- when you get to that point where he talks about smudge  
6 marks on the glass, don't go into that in front the jurors.  
7 We'll proffer outside their presence, and I will listen to it  
8 before deciding whether it's going to be admitted or not.

9 MR. PAULING: Okay. Your Honor, and understanding that,  
10 then, Mr. Pearson isn't even going to go into that as far as  
11 opening, as far as what the State may show.

12 THE COURT: Well ---

13 MR. PAULING: Or ---

14 THE COURT: I'm more than likely is going to let the  
15 footprints in and all that, but I -- don't go into the smudge  
16 on the glass or the twisting on that before you have an  
17 opportunity to proffer it.

18 MR. PAULING: We understand, Your Honor.

19 THE COURT: And once, again, is there anything else?

20 MR. POOLE: No, sir.

21 THE COURT: Let me put on the record we had a in-  
22 chambers discussion concerning the definition of burglary  
23 first. And, as I understand, this case arises to burglary one  
24 because of the Defendant's prior convictions or guilty pleas  
25 of two or more burglaries.

## MOTIONS &amp; MATTERS

Page 40

1           The State will introduce into the evidence, outside the  
2           presence of the jury, certified copies of the record to  
3           establish that particular element, and I will -- when I  
4           instruct the jury, will instruct them in such a manner that  
5           two prior convictions will not prejudice the Defendant.

6           I will simply state that the other elements have been met  
7           and both parties stipulate to that. Is that basically what  
8           our agreement was, Mr. Pauling? I keep saying Mr. Pauling.  
9           Who is lead counsel?

10          MR. PAULING: I'm -- I'm lead counsel.

11          THE COURT: All right. Go ahead.

12          MR. PAULING: Yes, that's correct, Your Honor.

13          THE COURT: Mr. Poole?

14          MR. POOLE: Yes, sir.

15          THE COURT: Okay. And I guess we will cross the bridge  
16               as to whether or not you can use his prior convictions for  
17               impeachment purposes if and when he decides to take the stand.

18          MR. PAULING: That's fine, Your Honor.

19          THE COURT: So, don't mention that in your opening.  
20               Anything else you all would like some help with? Mr. Pauling?

21          MR. PAULING: Well, Your Honor -- well, I guess it would  
22               be his motion, but there were statements. I thought we were  
23               going to have a Denno hearing. But ---

24          THE COURT: I got to have a Denno hearing if there's  
25               statements. Mr. Poole, anything else, sir, besides the Denno?

MIKE FOWLKES - DIRECT by MR. PAULING

Page 41

1 MR. POOLE: I'm sorry, Your Honor?

2 THE COURT: Anything else from the Defendant before we  
3 move forward?

4 MR. POOLE: No, sir.

5 THE COURT: All right. How about proffering your Denno  
6 testimony real quick. Call your witnesses.

7 MR. PAULING: The State would call Detective Mike  
8 Fowlkes.

9 (Detective Fowlkes steps forward to be sworn.)

10 (Whereupon,

11 MIKE FOWLKES

12 having been first duly sworn, testified as follows:)

13 THE COURT: Go ahead.

14 MR. PAULING: Okay.

15 DIRECT EXAMINATION by MR. PAULING:

10:14 A.M.

16 Q. Investigator Fowlkes ---

17 A. Yes, sir.

18 Q. --- were you involved in a burglary investigation back in  
19 November of two thousand, three (2003)?

20 A. Yes, sir, I was.

21 Q. And was that involving a burglary at \_\_\_\_\_?

22 A. Yes, sir.

23 Q. On November 19<sup>th</sup>?

24 A. It was.

25 Q. And November 20<sup>th</sup> a burglary at \_\_\_\_\_, also

1 -- both being here in Gaffney, inside of town.

2 A. In Cherokee County.

3 Q. In Cherokee County?

4 A. Yes, sir.

5 Q. And as -- throughout your investigation, were you able to  
6 develop a suspect?

7 A. I was, yes, sir.

8 Q. And who was that?

9 A. The Defendant, Ricky Brannon.

10 Q. Okay. And, during your investigation, did you have an  
11 opportunity to speak with Ricky Brannon?

12 A. I did on November 21<sup>st</sup>, two thousand, three (2003), the  
13 following day of the 20<sup>th</sup>.

14 Q. Okay. Would you relay to this Court how that  
15 conversation came about?

16 A. Mr. Brannon was in the County Detention Center at the  
17 time, Cherokee County Detention Center. He was brought to my  
18 office at 9:45 a.m. that morning, and I did a pre-  
19 interrogation waiver with Mr. Brannon and --

20 THE COURT: And I assume that is the Miranda warning?

21 A. Yes, sir, and his waiver of rights, yes.

22 THE COURT: Did he sign it?

23 A. He did, yes, sir, on both accords.

24 THE COURT: All right. Have you got that with you?

25 MR. PAULING: Yes, Your Honor.



MIKE FOWLKES - DIRECT by MR. PAULING

Page 43

1 THE COURT: Can I see it?

2 MR. PAULING: Your Honor, we haven't actually marked it.  
3 It's just court's exhibits that have been marked State's  
4 Exhibit 1. They're actually pre-waiver forms; Your Honor,  
5 State's 1 through 3, we'll be talking ---

6 THE COURT: Have you shown them to Mr. Poole?

7 MR. PAULING: He's seen -- these are all the originals.  
8 I know he's seen copies, Your Honor.

9 (Documents handed up to the Court.)

10 THE COURT: All right, sir.

11 (Brief Pause)

12 THE COURT: Is that the Defendant's signature?

13 A. Yes, sir, it is.

14 Q. (By Mr. Pauling) And who was present this particular  
15 interview, this first interview that you spoke of?

16 A. Myself and Detective Tim Clark.

17 Q. Okay. And, again, where did this take place? I'm sorry.

18 A. In my office at the Law Enforcement Center.

19 Q. Was anyone else present other than you and Detective Tim  
20 Clark and Mr. Brannon?

21 A. Not during the interview, no, sir.

22 Q. And, again, he was read his Miranda Rights?

23 A. He was, yes, sir.

24 Q. And he did sign the waiver form?

25 A. He did.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 Q. And did he appear to understand his rights?

2 A. He did.

3 Q. Did he have -- and did he appear have trouble reading the  
4 waiver form or understanding the waiver form?

5 A. No, sir, he did not appear.

6 Q. And, at the time, did he appear to be under the influence  
7 of any drugs or alcohol or anything that may impair his  
8 ability to understand what he was doing?

9 A. No, sir.

10 Q. Okay. Did he appear to have any -- any physical  
11 disability that would impair his ability to understand what  
12 was going on?

13 A. No, sir.

14 Q. Okay. And this particular interview that you did, what  
15 time did that occur?

16 A. Nine, forty-five (9:45) a.m. on the 21<sup>st</sup>.

17 Q. And how long did that interview actually last?

18 A. It's indicated on the pre-interrogation form.

19 (Brief pause while witness reviews document.)

20 A. Twenty (20) minutes, from 9:45 to 10:05.

21 Q. Okay. And, during that time, did Mr. Brannon ever ask to  
22 -- to stop the particular interview or ask to take a break  
23 during that -- that time frame?

24 A. No, he did not.

25 Q. Was he ever threatened or forced to give a particular

MIKE FOWLKES - DIRECT by MR. PAULING

Page 45

1 statement?

2 A. No, he was not.

3 Q. Did he ever ask for an attorney at that particular time?

4 A. No, he did not.

5 Q. Did you or Detective Clark ever promise him anything or  
6 offer him anything to give a statement regarding these  
7 burglaries?

8 A. No, sir, we did not.

9 Q. And, so, was this statement freely and voluntarily given?

10 A. It was, yes, sir.

11 Q. Okay. What was his statement to you at that particular  
12 time?

13 A. We began the interview after the pre-interrogation waiver  
14 and the Miranda warnings, indicating to Mr. Brannon what  
15 information and what -- and what evidence that we had against  
16 him at the time in reference to 2000 Daewoo that he was  
17 operating. And he indicated to us that it belonged to his  
18 girlfriend, Tarsha Littlejohn.

19 And he was asked, if he was operating the vehicle on  
20 November the 19<sup>th</sup> of two thousand and three (2003) in the

21 C. , and he stated that he had the vehicle on  
22 that date, but was not the only person who drove the vehicle  
23 and that he had never been in the Grassy Pond area -- area  
24 ever in his life.

25 We also -- we went on to ask him was he operating the

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 vehicle on November the 20<sup>th</sup>, of two thousand, three (2003),  
2 the day before. And he stated that he was. We advised Mr.  
3 Brannon that we had gotten the tag number from a witness, also  
4 being a victim, that gave us on November the 19<sup>th</sup>, and she --  
5 she had indicated that there was one black male operating the  
6 vehicle. And she was able to give us the tag number.

7 And Mr. Brannon went on to say, "Well, you might be able  
8 to put the car there, but you can't put me there." And he  
9 said he was done; he didn't want to talk to us.

10 Q. What was it that he actually said?

11 A. "I'm done talking. You might be able to put the car  
12 there, but you can't put me there."

13 Q. Okay. And, so, what did you do at the time? You ended  
14 the interview?

15 A. Ended the interview and had the deputy take him back to  
16 the detention center.

17 Q. Okay. Did you have an opportunity to speak to him again  
18 that day?

19 A. I was contacted by the detention center that Mr. Brannon  
20 wanted to talk to us again. So, on -- at 1430, 2:30 that  
21 afternoon, myself and Detective Tim Clark went to the  
22 detention center and did another pre-interrogation waiver and  
23 Miranda warnings with him and sat down with him at the  
24 detention center.

25 Q. Okay. And you went through the warnings just like you

MIKE FOWLKES - DIRECT by MR. PAULING

Page 47

1 had done previously?

2 A. Yes, sir.

3 Q. And did he check off each time that he understood his  
4 rights?

5 A. Yes, sir, he did.

6 Q. And understood that he was waiving his rights?

7 A. He did, yes, sir.

8 Q. Did he ask for an attorney on that particular occasion?

9 A. He did not.

10 Q. And, again, was he threatened or forced to talk with you,  
11 to give up his rights to -- to provide a statement?

12 A. He was not.

13 Q. Did you promise him anything?

14 A. We did not.

15 Q. Okay. And, if you could explain to the Court that  
16 particular interview, how that went about?

17 A. We -- we got done with the pre-interrogation waiver at  
18 the detention center, and Mr. Brannon was asked what he wanted  
19 to talk to the detective about. And Mr. Brannon went on to  
20 state that, if he may have an idea of where this -- where the  
21 man's property was at, that got broke into yesterday, eleven,  
22 twenty, two thousand, three (11/20/2003), he asked, if he got  
23 the property back, what we could do for him.

24 Q. And what, if anything, did you say in response to that?

25 A. I went on to the tell Mr. Brannon that Mr. Gallman had

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 48

1 lost several items that he could not replace, that were  
2 irreplaceable; bonds and deeds and antique watches and some  
3 antique guns that he had had in a lock box.

4 And he asked me if I would talk to the man. And I said,  
5 "Well, I'll -- I'll talk to the man, and it will -- it will be  
6 understood that you got the property back for him." And Mr.  
7 Brannon sat quietly for a little bit and dropped his head and  
8 then, he said, "I can take you to some of the property."

9 Q. Okay. And, before we go further, when you said you would  
10 talk to the man, who were you referring to?

11 A. Mr. Gallman.

12 Q. Okay.

13 A. Which I would be talking to him anyway, as -- as a victim  
14 working -- myself working his case. I did not indicate what I  
15 would talk to him about; he would be made aware that the  
16 property had been recovered.

17 Q. Okay. But did you indicate to Mr. Brannon that -- that  
18 you could work something out for him or -- or anything like  
19 that?

20 A. No, sir.

21 Q. You never promised him anything?

22 A. No, sir.

23 Q. And, again, it was you, Detective Clark, and Mr. Brannon?

24 A. It was.

25 Q. Was anyone else present at the time?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 49

1 A. No, sir.

2 Q. Okay. And this was down at the detention center?

3 A. It was.

4 Q. Was he handcuffed at the time? Can you recall -- do you  
5 recall?

6 A. We were in the detention center. I'm not sure if he  
7 actually had handcuffs on or not at that time.

8 Q. Okay. And what happened after -- after he said he could  
9 take you ---

10 A. After he was quiet for a -- for a little bit, Mr. Brannon  
11 took us to [redacted], where he had been living with  
12 his aunt. And he indicated he had been living there.

13 We asked him, prior to leaving the detention center, if  
14 there someone there at that residence that would be able to  
15 let us in, and he said he had keys to the residence in his  
16 property. We got his keys out of his property, and he took us  
17 to [redacted] and we retrieved three handguns, two  
18 thirty-eight (38) caliber and a I believe it was a thirty-two  
19 (32) caliber from a head rail on -- on a bedroom that he  
20 indicated was his in a bag. And he let us into -- into the  
21 back bedroom and showed us where the guns were at.

22 Q. Okay. And, just to clarify, did he simply -- what did he  
23 say? Was it that the guns were in the room, or how did you  
24 actually find the location of the guns?

25 A. We -- we went to [redacted] 3162. He said we needed

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 50

1 to take him to his house on A Street. We went to Kelly  
2 Street and exited the car. We went to the door with him.  
3 He's handcuffed at the time I believe in front.

4 He's got the keys. He opens the door, leads us into the  
5 house. We go to a rear bedroom, back to the -- back to the  
6 right, and on the headboard -- he walks in the room, and it  
7 appears like he's going to reach toward the handbag -- towards  
8 the guns, and was told, "just hold up," and he said, "They're  
9 in the bag on the headboard. And I got -- I got the handbag  
10 off the headboard and there were three guns wrapped in  
11 cellophane in the bag.

12 Q. And, after you recovered the guns, did he make any other  
13 statement to you or provide any other information?

14 A. He said that the lock box and the papers that -- that he  
15 couldn't do anything with, he threw in a dumpster in  
16 Providence -- off Providence Road, which is a trailer park.  
17 We went to the dumpster and it was probably maybe half a mile  
18 from the Z Street residence. When we got there, the  
19 dumpster had been emptied by the trash collector and the  
20 property was gone.

21 Q. Was there just one dumpster out there?

22 A. No. There -- there are several driveways throughout the  
23 trailer park, and there's one dumpster on this particular road  
24 at the end of -- of the driveway.

25 There's -- there's a dumpster on the end of every



MIKE FOWLKES - DIRECT by MR. PAULING

Page 51

1 driveway, which each driveway is probably about a hundred  
2 (100) yards off, that goes into the trailer park.

3 Q. And did he direct you to one particular dumpster?

4 A. He did, yes, sir.

5 Q. Okay. And upon -- well, after not recovering anything,  
6 did he make any statement to you, seeing that there wasn't  
7 anything in the dumpster?

8 A. No. We transported him back to the detention center, and  
9 -- and left there to the detention center.

10 Q. Okay. And did you interview him a third time in relation  
11 to these ----

12 A. I did.

13 Q. --- these burglaries investigation?

14 A. I did.

15 Q. Okay. And explain to the Court where that took place  
16 and, you know, how that came about.

17 A. We concluded the interview with Mr. Brannon because we  
18 wanted to get the guns in question ID'ed by Mr. Gallman. And  
19 we -- on the 24<sup>th</sup> of -- November the 24<sup>th</sup> of '03, we went back  
20 to Mr. Brannon in an attempt to get a statement. And he said  
21 he had done enough and he wanted his attorney.

22 Q. And when you say attempt to -- to get a statement, the  
23 statements he had given before, were they reduced to writing?

24 A. No, they were not; they were verbal.

25 Q. Okay. And so, you said you were attempting to get a

## MOTIONS &amp; MATTERS

Page 52

1 statement. What kind of statement were you trying to get?

2 A. A written statement.

3 Q. A written statement? And, at that point, again, you  
4 said ---

5 A. He said he had done enough, and did not make any  
6 statement and wanted his attorney.

7 Q. Okay. And, now, just to be sure. Is that the first time  
8 he requested an attorney?

9 A. That is.

10 Q. That's the only time he requested an attorney?

11 A. It is.

12 MR. PAULING: Nothing further.

13 THE COURT: Cross?

14 MR. POOLE: Your Honor, no questions of this witness at  
15 this point in time.

16 THE COURT: Yes, sir. All right. I find by the Jackson  
17 v. Denno hearing that the State has shown, by the  
18 preponderance of evidence, that the professionals complied  
19 with Miranda, or the alleged confession with Miranda, and  
20 that, by the preponderance of the evidence, it was voluntary,  
21 and I will allow it to be introduced into the trial of the  
22 case.

23 And, the jury has to find, beyond a reasonable doubt,  
24 that it was voluntary and give it whatever weight, if any,  
25 that they choose to do so. They make the determination of the

## MOTIONS &amp; MATTERS

Page 53

1 voluntariness of the statement at that point by that standard.  
2 Thank you. You may step down. All right, Gentlemen, anything  
3 else for the record before we proceed?

4 MR. POOLE: (Shakes head negatively.)

5 MR. PAULING: No, sir.

6 THE COURT: Bring the jury in, please.

7 (The jury entered the courtroom at 10:33 a.m.)

8 THE COURT: All right. Ms. Blackwood and Mr. Peterson,  
9 you all, please, always sit in these two chair, okay? Is that  
10 right, Ms. Blackwood?

11 MS. BLACKWOOD: Yes, sir.

12 THE COURT: And Peterson, right?

13 MR. PETERSON: Yes, sir.

14 THE COURT: You all, please, take those seats. You're  
15 going to be my alternates. Jerry Kelly -- Keller?

16 MR. KELLER: Yes, sir.

17 THE COURT: K-e-l-l-e-r?

18 MR. KELLER: Yes, sir.

19 THE COURT: Mr. Keller, would you, please, serve as my  
20 foreperson? It's a very simple task. I will guide you  
21 through your duties. If you'll switch with this young lady on  
22 the end, and ma'am, will you switch with him, please.

23 (Off-the-Record Comments)

24 THE COURT: Now, Mr. Keller, I would ask that you always  
25 take that seat.

## INITIAL INSTRUCTION by the COURT

Page 54

1 MR. KELLER: Yes, sir. Thank you, sir.

2 THE COURT: You may be seated. Now, ladies and  
3 gentlemen -- now ladies. You're the only guy besides my  
4 alternate? Are you going to be okay?

5 MR. KELLER: I'll be fine.

6 (Further Off-the-Record Comments)

7 THE COURT: You ladies may sit anywhere you would like  
8 during the trial of the case. Mr. Keller, I guess with all  
9 these ladies, I should have made a lady -- you can handle it,  
10 can't you?

11 MR. KELLER: Yes, sir.

12 (Further Off-the-Record Comments)

13 THE COURT: In all seriousness, would you, please, stand  
14 now and our clerk will swear you in for this particular case.  
15 Raise your right hands.

16 (The jury was impaneled at 10:35 a.m.)

17 INITIAL INSTRUCTION

18 THE COURT: Mr. Foreman, ladies and gentlemen of the  
19 jury, let me make a little short opening remarks in the case  
20 and tell you a little bit about what you can expect and what  
21 your duties are, what my duties are and general information.

22 Let me, once again, remind you that, in this case, the  
23 Defendant has been indicted, and there are three indictments;  
24 one for grand larceny and the other two for burglary. I will  
25 explain to you the elements of each of those criminal offenses

## INITIAL INSTRUCTION by the COURT

Page 55

1 at the conclusion of the case when I charge you the law. And  
2 "charge" simply means I instruct you on what the law is.

3 I remind you, once again, that the indictments are simply  
4 the formal charging documents by which these cases are brought  
5 into court. It is not evidence in the case. The Defendant  
6 has pled not guilty.

7 He is, therefore, presumed to be innocent and that puts  
8 the burden on the State of South Carolina to prove his guilt  
9 and to prove each and every element of each indictment beyond  
10 a reasonable doubt. And it will, of course, be up to you to  
11 determine whether or not the State has met that burden at the  
12 conclusion of the case.

13 You twelve people act collectively as one. You have, as  
14 your sole purpose, is to find and determine what the true  
15 facts are in the case. You are the sole judges of the facts  
16 in the case.

17 You are to determine, from the testimony, the sworn  
18 testimony, that you hear from the witness stand, and from any  
19 exhibits that may be entered, what the true facts are in the  
20 case.

21 On the other hand, and with equal emphasis, the same law  
22 that makes you the judges of the fact makes me the judge of  
23 the law. So, if you come into court with some preconceived  
24 idea as to what the law is, or what it should be, and it  
25 doesn't agree with what I tell you the law is, you have sworn

## INITIAL INSTRUCTION by the COURT

Page 56

1 to set aside your preconceived ideas and accept the law as I  
2 give it to you at the end of the case.

3 I can't tell you what the facts are, and you can't tell  
4 me what the law is. You tell me what the facts are, and I  
5 tell you what the facts -- what the law is. So, my job is to  
6 rule on the law, and your job is to determine what the facts  
7 are in the case.

8 Now, a couple of points let me make briefly. Mr.  
9 Foreman, I will tell you every time that we break, do not  
10 start your deliberations; don't talk about the case. It's not  
11 fair until all the evidence is in for you all to start  
12 deliberating. So, I'll remind you of that every time.

13 And that's one of your functions is to make sure that is  
14 enforced. If anybody tries to talk about the case, simply  
15 just say, "The judge has told us not to."

16 And, when everything is in; that is, all the testimony is  
17 in, and the exhibits that are going to be introduced and the  
18 lawyers have made their final arguments and I charge you on  
19 the law, then, I will instruct you, at that time, to start  
20 your deliberations.

21 I suspect we're going to finish today. But, should we go  
22 into tomorrow, I'd ask that you not read anything in the  
23 newspapers. It may be in the newspaper about this case. I  
24 don't know if there'll be anything on t.v., but just don't  
25 listen to anything on the outside. What we want to do, and

## INITIAL INSTRUCTION by the COURT

Page 57

1 what you've sworn to do, is decide this case based solely on  
2 what you hear in the courtroom.

3 And what you will hear will come from witnesses from that  
4 witness stand who will be sworn to tell the truth and from any  
5 exhibits that might be introduced during the trial of the  
6 case. I ask that you keep an open mind and listen to  
7 everyone, so, at the end, you'll be in a position to make that  
8 decision based on the facts as you determine them to be.

9 Now, in a few minutes, the lawyers will make opening  
10 statements. And the Solicitor, representing the State, goes  
11 first. And he'll make his opening statement, followed by Mr.  
12 Poole.

13 Please, bear in mind, that opening statements are not  
14 facts to be considered by you in the trial of the case. That  
15 is simply what the lawyers contend they will show, what they  
16 will prove, some basic propositions of the law, sort of a road  
17 map as to what they're going to do.

18 That is not evidence in the case. So, don't consider it  
19 as evidence. As I said, the only evidence will be presented  
20 from the witness stand.

21 Now, since you are the judges of the facts, you must  
22 determine the true facts, in the case, and you must decide  
23 whether or not the testimony of witnesses is believable. Now,  
24 it is my responsibility to rule, as a matter of law, as to  
25 whether or not testimony and/or exhibits are admissible.

## INITIAL INSTRUCTION by the COURT

Page 58

1 In other words, they have to comply with the rules of  
2 evidence and our rules of criminal procedure. Ninety-nine  
3 (99), ninety-five (95) percent of what is testified to will be  
4 admitted into the trial of the case. Every now and then you  
5 may hear an objection, and I will tell you to disregard that;  
6 that it was not asked in a proper way or it was something that  
7 is not relevant or something that violates a rule, and I will  
8 tell you to disregard it.

9 If I don't tell you to disregard it, then, everything  
10 else is into evidence; in other words, it's into the trial of  
11 the case. And, then, once it is admitted, it is up to you,  
12 acting collectively as one, to determine whether or not you  
13 believe it. It's up -- it's your duty to decide who you  
14 believe and what you believe.

15 And in doing that, you have the right to consider any  
16 interest the witness may have, any bias of a witness, any  
17 prejudice of a witness, the opportunity for the witness to  
18 have seen or have knowledge about which he or she testifies  
19 and even the way the witness acts on the stand.

20 So, that's up to you all, once it's admitted into  
21 evidence, you determine what and who you believe, and I will  
22 give you further instructions on that at the close of the  
23 case.

24 So, I ask that you pay close attention, so, you'll be in  
25 a position to determine what the true facts are in the case.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864



## INITIAL INSTRUCTION by the COURT

Page 59

1 and apply those facts to the law as I give it to you. And  
2 then, you'll be in a position to render a true and just  
3 verdict.

4 Mr. Keller, as the foreperson, you will be my  
5 spokesperson. If any person on the jury has any particular  
6 concern or has a problem or has to ask a question, write it  
7 out and give it to me and I will address it.

8 You will also be in charge of the deliberations once they  
9 start the deliberations, which is not a difficult task. And,  
10 obviously, you will be the person who signs the verdict form.  
11 And I'll go over all that with you.

12 Now, if at any time, during the trial of the case, any of  
13 you need to go to the bathroom, just need to stretch, if you  
14 need anything personally, raise your hand and we'll take a  
15 break right then and there, so, your needs can be met. If you  
16 get tired of sitting in that chair and you need to stand up  
17 and stretch, like I do from time-to-time, stand up. That  
18 doesn't bother me.

19 I just ask one thing, that you pay close attention. It's  
20 a very important case, both to the State and obviously, to the  
21 Defendant. And we will be as efficient as we can with our  
22 time and move right along. We'll take a break for lunch,  
23 depending on where we are, and then, I'll confer with the  
24 lawyers to see about how long it'll run into the afternoon.

25 If I see we can finish today, we may work a little later.

## OPENING STATEMENT - MR. PEARSON

Page 60

1 If I see that we can't finish today, I will ask you all about  
2 how long you all want to go this afternoon. So, you'll have a  
3 lot of input into how I run the trial because I'm dealing with  
4 your time and you're the ones who are making the personal  
5 sacrifices.

6 So, I ask you now to pay close attention to the opening  
7 remarks of counsel. And, in this case, the State goes first;  
8 they have the burden of proof, followed by the Defendant.  
9 After the opening statements are made, then, the State will  
10 call their witnesses and then, followed by the Defense.

11 So, any objections to my opening remarks by the State?

12 MR. PAULING: None for the State, Your Honor.

13 MR. POOLE: None here, Your Honor.

14 THE COURT: Okay. Madam -- Mr. Forelady -- Mr.  
15 Foreperson, I had a lady foreperson last week in six days of a  
16 trial. If I call you Madam Foreperson -- Mr. Foreman, ladies  
17 and gentlemen -- ladies of the jury, if you'll give your  
18 attention to one of these young gentlemen from the AG's  
19 office. Mr. Pearson?

20 MR. PEARSON: Yes, Your Honor.

21 (Mr. Pearson's opening statement began at 10:44 a.m.)

22 MR. PEARSON: May it please the Court?

23 THE COURT: Yes, sir.

24 MR. PEARSON: Counsel, members of the jury, my name is  
25 Dewayne Pearson. And, along with my co-counsel, Mr. Curtis

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## OPENING STATEMENT - MR. PEARSON

Page 61

1 Pauling, we represent the people of the State of South  
2 Carolina in this matter.

3 Members of the jury, this is a case about burglary. By  
4 the end of this trial, we will prove to you, beyond a  
5 reasonable doubt, that on November 19<sup>th</sup>, two thousand and three  
6 (2003), the Defendant, Ricky Brannon, burglarized the home of  
7 Joy Sherrick.

8 We will also prove, beyond a reasonable doubt, that on  
9 November 20<sup>th</sup>, two thousand and three (2003), the Defendant  
10 committed a grand larceny when he burglarized the home of  
11 Kenneth and Ira Jo Gallman.

12 At the conclusion of this trial, the judge will instruct  
13 you as to the law. He will explain to you the burden of  
14 reasonable doubt, and he will also explain to you the elements  
15 of the charge of burglary and grand larceny.

16 We are confident that, after you hear the evidence we  
17 will present to you today, and apply it to the law, as the  
18 judge gives it to you, you will find the Defendant guilty on  
19 all charges.

20 The evidence will show that on November 19<sup>th</sup>, two thousand  
21 and three (2003), the Defendant dropped off his girlfriend at  
22 work early in the morning. He, then, had the use of her two  
23 thousand, one (2001) metallic in color, Daewoo automobile for  
24 the remainder of the day.

25 The evidence will show that he took that vehicle to the

## OPENING STATEMENT - MR. PEARSON

Page 62

1 residence of Joy Sherrick, broke in, and ransacked her home.  
2 Ms. Sherrick returned home early, surprising the Defendant,  
3 and though she did not see this person in her home, she did  
4 witness the Defendant's vehicle leaving her house.

5 The evidence will also show that, after leaving the home  
6 of Ms. Sherrick, the Defendant went to the home of Kenneth and  
7 Ira Jo Gallman. Ms. Gallman was at home at the time, and  
8 although the Defendant persisted, by repeatedly banging on her  
9 door, she did not answer.

10 The Defendant's behavior -- the evidence will show that  
11 the Defendant's behavior did cause her to get a good look at  
12 the Defendant, as well as the metallic in color two thousand  
13 and one (2001) Daewoo automobile that he was driving.

14 The evidence will further show that the Defendant hastily  
15 ran and parked his car, in the driveway of one of Ms.  
16 Gallman's neighbors, when he heard the sound of an approaching  
17 vehicle.

18 At this point, the evidence will show that he continued  
19 to act suspiciously around the home of both Ms. Gallman's  
20 neighbor and the Gallman's home. This behavior prompted Ms.  
21 Gallman to write down the license tag and number of the  
22 metallic in color two thousand and one (2001) Daewoo  
23 automobile.

24 The evidence will, then, show that on the following day,  
25 November 20<sup>th</sup>, two thousand, three (2003), the home of Mr. and

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## OPENING STATEMENT - MR. POOLE

Page 63

1 Mrs. Gallman was burglarized. Numerous items were stolen,  
2 including a safe and several firearms.

3 The evidence will show that left at the scene of this  
4 crime was a shoe print; a shoe print that matched the pattern  
5 of the shoes that the Defendant was wearing that same day.

6 The evidence will also show that, when confronted by the  
7 police, about these burglaries, the Defendant led the  
8 investigators to his own home and retrieved the stolen  
9 firearms from his own bedroom.

10 Furthermore, the evidence will show that another witness,  
11 Ms. Andrea Randolph, saw the Defendant driving the same  
12 metallic in color Daewoo automobile on the morning of the Joy  
13 Sherrick burglary.

14 Members of the jury, the State will present witnesses  
15 that will testify and support these facts as I have given them  
16 to you. And we are confident that, at the end of the trial,  
17 when you apply the facts, as heard by the witnesses, to the  
18 law that the judge will instruct you on, you will find the  
19 Defendant guilty of two counts of burglary in the first degree  
20 and one count of grand larceny. Thank you.

21 MR. POOLE: May it please the Court?

22 THE COURT: Yes, Mr. Poole?

23 (Mr. Poole's opening statement began at 10:49 a.m.)

24 MR. POOLE: Ladies and gentlemen of the jury, there's  
25 nothing like starting your work week on Wednesday, is it? I

## OPENING STATEMENT - MR. POOLE

Page 64

1 was over here Monday, for some part of the jury qualification,  
2 so, your faces are a little more familiar to me. I remember  
3 some of you, and as you gave that information to the Court, I  
4 was seated over here (indicating) making notes because I knew  
5 that this trial was going to come up this week and  
6 anticipated that it was going to be today, as yesterday there  
7 was no trial as I understand it; I wasn't here.

8 But thank you for being here today. It's a beautiful  
9 spring day. I would say that it's not as nice as it was  
10 Monday and Tuesday, so, it may be some small consolation that  
11 you're stuck inside on a day that is not quite as beautiful as  
12 it was Monday and Tuesday.

13 And what you're here today about is something that is  
14 important, to not only the State of South Carolina, and not  
15 only to Ricky Brannon, who I represent, but according to the  
16 basic types of democratic issues that keep a system like this  
17 going.

18 Judge Early told you a little about the dynamics of this  
19 case -- a trial, how a case proceeds, and as a result of the  
20 fact that the State has the burden of proof, the State has to  
21 show that Ricky Brannon is guilty of these crimes and the  
22 State has to show that he is guilty beyond a reasonable doubt.

23 Judge Early will tell you what that means at the end of  
24 the case. But, what we're getting ready to do is the State  
25 will start presenting evidence to show you their position that

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## OPENING STATEMENT - MR. POOLE

Page 65

1 Ricky Brannon is, in fact, guilty of these crimes.

2 Now, there's different types of evidence. And the Court  
3 I anticipate will tell you about that at the end of the case.  
4 And the evidence in this case is going to be hugely and  
5 largely circumstantial.

6 Now, it's our position that the State is not able to meet  
7 its burden of proof. And, when all is said and done, that's  
8 just another way of saying that the State will not be able to  
9 show that Ricky Brannon is guilty beyond a reasonable doubt  
10 because each and every element of a crime must be proven  
11 beyond a reasonable doubt to the extent that a reasonable  
12 doubt is defined as a doubt that would cause a reasonable,  
13 prudent person to hesitate to act.

14 I want to thank you for being here and giving the State  
15 and Ricky Brannon due process, an opportunity to work itself  
16 out, and for a way to have justice done in this case.

17 The judge mentioned the word, "verdict" a moment ago, and  
18 verdict means -- comes from a Latin word "verdicto" which  
19 means to speak the truth. And his realm is to give you the  
20 law that applies to the facts. And your realm is to give to  
21 us what you find those true facts to be.

22 And, when you apply the law that he instructs you, to the  
23 facts that you find them to be true, then, you'll render the  
24 verdict of guilty or not guilty on each one of these  
25 indictments.

ANDREA RANDOLPH - DIRECT by MR. PAULING

Page 66

1 It's our position that, at the end of the day, or at the  
2 end of this case, that the verdict that speaks the truth is  
3 not guilty because the State will have failed to meet the  
4 requisite burden of proof that's required in this court in  
5 this state and in this country and has been so for over two  
6 hundred (200) years.

7 Thank you for being here. Thank you for your time, and I  
8 look forward to the opportunity of talking to you again a  
9 little later on.

10 (Mr. Poole's opening statement concluded at 10:53 a.m.)

11 THE COURT: You may call your first witness.

12 MR. PAULING: Yes, Your Honor. The State calls Andrea  
13 Randolph to the stand.

14 (Ms. Randolph steps forward to be sworn.)

15 (Off-the-Record Comments)

16 (Whereupon,

17 ANDREA RANDOLPH

18 having been first duly sworn, testified as follows:)

19 THE COURT: Your witness.

20 DIRECT EXAMINATION by MR. PAULING:

10:54 A.M.

21 Q. Ms. Randolph, would you, please, state your full name?

22 A. My name is Andrea Bridges Randolph (phonetic).

23 Q. And, Ms. Randolph, where do you live?

24 A. I live at 1045 Long Road in Gaffney.

25 Q. Is that within Cherokee County?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864



ANDREA RANDOLPH - DIRECT by MR. PAULING

Page 67

1 A. Yes, it is.

2 Q. And how long have you lived at that address?

3 A. I've been there about twenty-five (25) years

4 Q. How long -- I'm sorry. Are you married?

5 A. I am.

6 Q. Do you have any children?

7 A. I have two grown children, yes.

8 Q. Do they live in the home with you?

9 A. No.

10 Q. You -- you mentioned a moment ago that you were married.

11 What is your husband's name?

12 A. Charles.

13 Q. And what kind of work does Charles do?

14 A. He is in the trucking business, Randolph Trucking.

15 Q. And is that the kind of business that he runs from an

16 office or the home or...?

17 A. He has an office.

18 Q. Okay. And what is your occupation?

19 A. I'm a retired teacher. I do not work at the present  
20 time..

21 Q. How long have you been retired?

22 A. About five (5) years.

23 Q. Now, let's talk a little bit about the morning of

24 November 19, two thousand and three (2003). Do you remember  
25 that day?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. I do.

2 Q. Now, that was more than two years ago. Why do you -- how  
3 do you remember that day?

4 A. I remember that day because it sort of changed my life.  
5 I get -- I became a little bit fearful after that day, a  
6 little bit more aware of things that I never really thought  
7 about before. And, since that day, I just have a different  
8 perspective on things now.

9 Q. Well, you testified that you remember some of the events  
10 of that day. Do you remember the -- the weather?

11 A. I do. I remember it being a cloudy day, drizzly, wet,  
12 damp, cold.

13 Q. So, was it -- was it raining that morning specifically?

14 A. There was a light rain as I recall, yes, sir.

15 Q. On that particular day, November 19<sup>th</sup>, two thousand and  
16 three (2003), do you remember, if you or your husband, had any  
17 special plans for that morning, anything out of the ordinary?

18 A. We did in fact. We were up early that morning. We had  
19 -- we got up very early to exercise. My husband had a  
20 business appointment that morning that was going to be in our  
21 home, a person was flying in from out of state to meet us, and  
22 that's why it was at such an early hour.

23 As best as I can recall, it was 7:30 or eight o'clock  
24 (8:00) the person was supposed to be there; it was very early.  
25 So, my husband was preparing for the meeting, and I was still,

ANDREA RANDOLPH - DIRECT by MR. PAULING

Page 69

1 you know, just walking around the house in shorts and a tee  
2 shirt. But that was -- that's what we were doing that  
3 morning.

4 Q. All right. It is unusual for your husband to meet  
5 business clients or associates in your home?

6 A. He has on occasion had people there. But usually most  
7 meetings take place in the office, but this particular person  
8 requested to come to our home, so...

9 Q. Well, let's talk a little bit about your home. You said  
10 it was in Cherokee County?

11 A. That's correct.

12 Q. But is it -- is it in a more closely packed development  
13 or is it kind of more out in the woods or rural?

14 A. Our home is on a road that has maybe six or eight houses  
15 on it. But our particular house is well off the highway,  
16 several hundred feet off the highway. In fact, our house  
17 cannot be seen from the road.

18 Maybe in the dead of winter, when there are no leaves on  
19 the trees, you can get a glimpse of the house back in there,  
20 but just driving past our driveway, you cannot see the house.  
21 And it is back in a secluded wooded area.

22 Q. Now, you said ---

23 A. It's the only house back there.

24 Q. Okay. I'm sorry. You said it was back off the road.  
25 What road is that?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. That's Grassy Pond Road.

2 Q. Grassy Pond Road. Now, you mentioned just a second ago  
3 that you've got a lot of trees. Is there anything else on  
4 your property other than trees; fields, anything else?

5 A. We have a lot of wooded area. We have several acres of  
6 pasture land, open pasture land, and we have two ponds.

7 Q. Are the ponds visible from the road?

8 A. Actually, one is very visible from Grassy Pond Road. The  
9 other is visible if you look in the right direction. But the  
10 one is very prominent.

11 Q. Now, you also testified just a moment ago that your house  
12 sits back from the road a bit.

13 A. Correct.

14 Q. About -- if you had to guess, about how far back from the  
15 road would you say it was?

16 A. Oh, my goodness. It's ah, maybe two thousand (2,000)  
17 feet back.

18 Q. So ---

19 A. It's a long way.

20 Q. --- would you -- I guess, you would characterize your  
21 house as being pretty secluded off the ---

22 A. We think it's very secluded, yes.

23 Q. Is there a path or another road that actually leads to  
24 your house?

25 A. We have our main driveway that goes into the house, and

ANDREA RANDOLPH - DIRECT by MR. PAULING

Page 71

1 there are no other ways in or out.

2 Q. Do you and your husband own any vehicles?

3 A. We do.

4 Q. What kind?

5 A. I have a car, he has a car, and we have a truck that -- a  
6 pick up truck.

7 Q. And does your house have a garage?

8 A. It does.

9 Q. Do you typically park your vehicles in your garage, or do  
10 you leave them out on the driveway?

11 A. I park my car in the garage. My husband usually parks  
12 behind me or in the driveway. The pick-up truck is usually at  
13 the lower end of the driveway.

14 Q. All right. Now, you testified earlier that there was  
15 kind of your main driveway that leads down to your house. If  
16 someone were coming down that driveway, and you were parked  
17 where you normally park your cars, would they be able to tell  
18 that your car was in the driveway or that your husband's truck  
19 was there?

20 A. They could not. Our garage -- the front of our garage is  
21 windows. So, where you actually park is you pull around to  
22 the back of the house and pull in from the back side of the  
23 house.

24 So, looking at the front of our house, coming from the  
25 driveway, you could not see cars in the drive or in the

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 garage.

2 Q. So, would there be a way for, say, an unannounced visitor  
3 to know you were home by seeing your cars?

4 A. No.

5 Q. All right. Now, you testified that your husband was  
6 expecting business company on November 19<sup>th</sup>, two thousand,  
7 three (2003)?

8 A. Correct.

9 Q. Did anyone actually ever come to your house on that day?

10 A. The business person you mean, or anyone in ---

11 Q. Well, did -- did anyone other than the business --

12 A. Yes.

13 Q. --- the expected business person come?

14 A. Yes, they did.

15 Q. Do you see that person here in the courtroom today?

16 A. I do.

17 Q. Would you, please, point that person out for the jury and  
18 describe an article of his clothing?

19 A. That's Mr. Brannon, who is sitting up here in the striped  
20 shirt (indicating).

21 MR. PEARSON: Thank you. Please, let the record reflect  
22 that the witness did identify the Defendant, Ricky Brannon.

23 Q. (By Mr. Pauling) Now, if you would, Ms. Randolph, please,  
24 explain to the jury the circumstances surrounding how you came  
25 in contact with the Defendant, Ricky Brannon, on November 19<sup>th</sup>

1 of two thousand, three (2003).

2 A. As I stated, we were preparing for our visitor to arrive.  
3 The doorbell rang, our front doorbell. My first reaction was,  
4 the person was early, the one we were expecting is early.  
5 They shouldn't be here yet.

6 My husband was in the shower. So, I told him to hurry;  
7 they're here. I'll go down and get the door. And so, that is  
8 how I happened to just automatically open the door because I  
9 was expecting someone.

10 I do have two doors. I have a solid wood door, and I  
11 have a glass French door that covers the wood door. And I did  
12 open both doors, so, that I was able to hear what the person  
13 said.

14 Q. Okay. Now, I guess when -- when you opened the door, is  
15 that when you saw the Defendant?

16 A. Correct.

17 Q. Okay. Did he say anything to you? Was there any  
18 exchange between the two of you?

19 A. When I opened the wooden door, I saw him, then, I opened  
20 the glass door. And Mr. Brannon had a question. His -- his  
21 question was, "Do you let anyone fish in those ponds?" And my  
22 answer to him was, "No, we usually do not."

23 Q. Now, prior to this meeting that you just described, had  
24 you ever met the Defendant prior to this date?

25 A. No.

ANDREA RANDOLPH - DIRECT by MR. PAULING

Page 74

1 Q. To your knowledge, have you ever encountered him in any  
2 way before that morning?

3 A. Not -- no, not that I know of.

4 Q. So, have you allowed him to fish in the pond before or  
5 since?

6 A. No.

7 Q. Now, you said that that day you remember that it was  
8 raining. Do you recall ever seeing anyone fishing out in  
9 those -- in your two ponds when it was raining that way?

10 A. No. That was very unusual.

11 Q. All right. Not friends or family?

12 A. No.

13 Q. Okay. Have you ever allowed strangers, or people that  
14 you didn't know, to come on your property and fish in that  
15 pond?

16 A. We've never allowed people to do that, no.

17 Q. All right. And you said that you didn't allow the  
18 Defendant to fish that day?

19 A. That is correct.

20 Q. So, after you told him that you wouldn't allow that, what  
21 happened?

22 A. He asked the question, and I told him, "No, not usually,"  
23 and he said, "You don't allow nobody to fish in those ponds?"  
24 And I said no, and he turned and walked away.

25 Q. So, did you actually see him leave?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864



ANDREA RANDOLPH - DIRECT by MR. PAULING

Page 75

1 A. Yes.

2 Q. Now, did he walk away? Was he on a bike? How did he...?

3 A. He walked out our driveway, out our walkway, excuse me,  
4 to his car that was parked in our drive.

5 (Brief Pause)

6 MR. PEARSON: Permission to approach, Your Honor.

7 THE COURT: (Nods head affirmatively.)

8 Q. (By Mr. Pearson) I'd like to take -- I'd like you to take  
9 a look at what's been marked as -- for identification purposes  
10 only as State's Exhibits 4 through 10. Take your time to look  
11 at those.

12 (Brief pause while witness reviews exhibits.)

13 Q. (By Mr. Pauling) Do you recognize those photos?

14 A. I do.

15 Q. How do you recognize those photos?

16 A. They appear to be exactly the type of car that Mr.  
17 Brannon was driving that morning.

18 Q. Are those photos a fair and accurate representation of  
19 what the car looked like?

20 A. They are. My best recollection, not really paying very,  
21 you know, detailed attention, but I did look at the car. I  
22 have a -- a recollection of it being a silvery light blue  
23 metallic color. And I have a recollection of it being exactly  
24 the type and shape of car or car body.

25 Q. All right. So, to your knowledge, is that the same car

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 that you saw at your house?

2 A. I believe it is, yes.

3 MR. PEARSON: All right. Your Honor, the State would  
4 like to move what has been marked for identification purposes  
5 as State's 4 through 10 into evidence.

6 THE COURT: You obviously have no objection?

7 MR. POOLE: No objection, Your Honor.

8 (Whereupon, State's Exhibit Numbers 4 through 10 were  
9 admitted into evidence without objection.)

10 Q. (By Mr. Pauling) Now, after the Defendant drove away in  
11 this car, do you remember what you did next?

12 A. Yes. I immediately went upstairs and told my husband  
13 that that was not the person we were expecting; that it was a  
14 stranger at the door; that I did not feel comfortable about  
15 it. I felt something was wrong.

16 As I said, he was just getting dressed, and about that  
17 time, I walked over to the windows in hopes of getting another  
18 look at the car. Mr. Brannon had already driven off at that  
19 point.

20 So, I did tell my husband that I felt that this person  
21 might be up to no good; that I didn't know any reason why he  
22 would be there and I thought it was very suspicious that he  
23 would be inquiring about fishing, number one, because it was  
24 cold and winter time. Most people who have requested fishing  
25 in our pond ---

ANDREA RANDOLPH - DIRECT by MR. PAULING

Page 77

1 MR. POOLE: Your Honor, I have to object ---

2 A. -- was in the summer or ---

3 THE COURT: Hold on.

4 MR. POOLE: --- on a couple of grounds. That was  
5 getting ready to become hearsay I do believe, and we object to  
6 any opinion or speculation by the witness.

7 THE COURT: Sustained. Don't speculate, ma'am.  
8 Disregard her speculation as to what the guy was about.  
9 Speculation is not proper evidence. She's not doing anything  
10 wrong, but our rules of evidence just don't allow people to  
11 speculate.

12 You have to see something or observe it to be able to  
13 testify about it. But speculation is not proper. Please,  
14 disregard it. All right. Move along.

15 MR. PAULING: Yes, Your Honor.

16 Q. (By Mr. Pauling) So, your testimony is that you told your  
17 husband about what happened?

18 A. Yes, I did.

19 Q. And you felt a little ---

20 A. I felt uneasy.

21 Q. Now, at that point, did you call the police or anything  
22 like that?

23 A. Well, I wanted to, and my husband said, you know,  
24 basically ---

25 MR. POOLE: Objection, Your Honor.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 THE COURT: All right. You can't testify about what  
2 other people say. That's called hearsay under our rules of  
3 evidence. So, I sustain. Just tell me what you did, please.

4 A. I did want to call the police, but we did not.

5 THE COURT: Thank you.

6 A. We proceeded to get ready for our visitor that we were  
7 expecting.

8 Q. Okay. And did this expected visitor, did he actually  
9 come to your home?

10 A. He did.

11 Q. Please, explain to the jury the series of events that  
12 happened once that -- I guess the expected visitor came to  
13 your -- to your property?

14 A. I'm sorry. I didn't -- I didn't hear all the question.

15 Q. Yes. Could you explain to the jury what happened when  
16 your expected visitor showed up, your husband's business  
17 associate.

18 A. Okay. My -- we went downstairs and waited for our  
19 visitor, the business person. He did arrive. We saw his car  
20 pulling into the driveway.

21 My husband opened the door to go meet him outside. He  
22 actually pulled around to the back of our home, which a lot of  
23 people do. As he pulled -- and I was with him at the same  
24 time. As he pulled in, a law enforcement officer was pulling  
25 in behind him. So, actually, the two cars were pulling in at

ANDREA RANDOLPH - DIRECT by MR. PAULING

Page 79

1 the same time.

2 So, our visitor pulled up and proceeded to get out of the  
3 car. My husband greeted him and the law enforcement officer  
4 got out also. And, at that point, I told the law enforcement  
5 officer about the previous incident with Mr. Brannon at our  
6 door, the one that caused my discomfort.

7 Q. So, you gave a -- you gave the officer that showed up at  
8 your home a statement about what happened?

9 A. Yeah, a verbal statement, yes.

10 Q. All right. Do you have any -- do you know why the police  
11 I guess followed your visitor in?

12 A. I think there was a ---

13 THE COURT: No, ma'am, you can't think. You know or you  
14 don't know.

15 Q. If you know, that's fine. If not ---

16 A. I do not know.

17 Q. All right. But they did follow your visitor in and  
18 you had ---

19 A. They did.

20 Q. --- the opportunity to speak with them?

21 A. Yes, sir.

22 Q. All right. After you gave the police the statement, the  
23 verbal statement, did they stay around your house? Did they  
24 leave? What happened after that?

25 A. They left.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 Q. Were you at home the remainder of the day?

2 A. Yes.

3 Q. Was your home burglarized that day?

4 A. No.

5 Q. Now, Ms. Randolph, were you ever contacted again about  
6 just the events that happened at your home on November 19<sup>th</sup>,  
7 two thousand, three (2003)?

8 A. I was.

9 Q. Do you recall when that was?

10 A. I do not recall the exact day. It was a few days later I  
11 believe later. I'm not sure when it was.

12 Q. Okay. So, it was a couple of days after this?

13 A. Yes.

14 Q. Could you, please, explain to the jury I guess the  
15 circumstances as to why you were contacted again about this --  
16 this incident?

17 MR. POOLE: Your Honor ---

18 THE COURT: Sustained.

19 MR. PAULING: Well, what was the objection?

20 THE COURT: Speculation as to why she was contacted.  
21 You can ask the officer why he contacted her.

22 Q. (By Mr. Pauling) Well, What did you do when you were  
23 contacted?

24 MR. PAULING: I'm sorry, Your Honor.

25 A. What did I do?

ANDREA RANDOLPH - DIRECT by MR. PAULING

Page 81

1 Q. Yes. Yes, what did you do?

2 A. I was contacted by the law enforcement officer from the  
3 county. He came to my home and wanted to talk with me about  
4 the incident of the person at my door that morning. He  
5 brought several pictures for me to look at to see if I could  
6 possibly pick out the person that -- that rang my doorbell  
7 that day.

8 MR. POOLE: Your Honor, I'm going to have to object  
9 again right here because we're talking about a -- a -- an  
10 episode with a -- with an officer that's replete with hearsay  
11 and assumptions.

12 THE COURT: She hasn't testified about any hearsay yet.  
13 Overruled. Ma'am, let me just tell you what the rules are.  
14 Hearsay is when you testify about what I told you and I'm not  
15 here to answer what I told you. That's hearsay.

16 You can testify, as a result of what I told you, you did  
17 so and so. But don't testify about what the officer said.  
18 But you can say -- you can tell us what you did.

19 THE WITNESS: Okay.

20 THE COURT: Is that fair?

21 THE WITNESS: Yes, sir.

22 THE COURT: That's our rules of evidence, and there all  
23 in this book (indicating) and I have to read them every day to  
24 make sure I follow them. Go ahead.

25 Q. (By Mr. Pauling) Did one of the officers show you

1 anything?

2 A. He did. He showed me several pictures to look at.

3 THE COURT: All right. Hold on right there. Let me see  
4 the two of you up here.

5 (Whereupon, a bench conference was had with all counsel  
6 present.)

7 Q. (By Mr. Pauling) Ms. Randolph, the individual that you  
8 identified in court today ---

9 THE COURT: No, sir. Move along.

10 MR. PAULING: Thank you, Ms. Randolph. Please, answer  
11 any questions that the Defense may have of you.

12 THE COURT: Mr. Poole?

13 MR. POOLE: Just a few questions of Ms. Randolph,  
14 please.

15 CROSS EXAMINATION by MR. POOLE:

11:13 A.M.

16 Q. What time did your business person eventually show up at  
17 your home, Ms. Randolph?

18 A. I don't know the exact time.

19 Q. Okay. Was it after ---

20 A. It was shortly after, very shortly after.

21 Q. Right around eight o'clock (8:00)?

22 A. I can't say the exact time. I don't know.

23 Q. Okay. And your testimony indicated that I believe that  
24 you saw Mr. Brannon between the hours -- between 7:30 and  
25 8:00. Is that your best estimate?



ANDREA RANDOLPH - CROSS by MR. POOLE

Page 83

1 A. My best estimate would be a little earlier than that. I  
2 -- I honestly do not know, but my estimate would be more  
3 between 7:15, approaching eight o'clock (8:00). I don't know.

4 Q. Between 7:15 and eight o'clock (8:00)?

5 A. Yes.

6 Q. Okay. Was it cold that morning?

7 A. Yes, it was cool.

8 Q. Okay. Did you have your heat on?

9 A. I honestly don't remember. I -- I would assume we did,  
10 but I do not remember.

11 Q. Okay. And this was just like a few days before  
12 Thanksgiving in November, right?

13 A. Correct.

14 Q. And you testified it was raining?

15 A. It was just a light rain, drizzle, yes.

16 Q. Okay. And you did not actually go outside on your porch,  
17 did you?

18 A. No, I did not.

19 Q. Okay. And did you have lights on your porch or ---

20 A. No. It was daylight.

21 Q. It was daylight at that time? Okay. And is your porch  
22 enclosed; that is, to keep the rain off?

23 A. No.

24 Q. So, when the door was opened, and you saw Mr. Brannon,  
25 was he standing in the rain?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. Yes.

2 Q. Okay. And, although it was cloudy, it's your testimony  
3 that it was daylight?

4 A. Yes, it was.

5 Q. And although it was drizzling, it was clear for you to  
6 see?

7 A. Absolutely.

8 Q. Okay.

9 MR. POOLE: Okay. Thank you, ma'am.

10 THE COURT: Redirect, if any?

11 MR. PAULING: No redirect, Your Honor.

12 THE COURT: Ms. Randolph, you may step down.

13 THE WITNESS: Thank you.

14 THE COURT: May she be excused from her subpoena?

15 MR. PAULING: No objection from the State.

16 MR. POOLE: No problem here.

17 THE COURT: Ms. Randolph, you're welcome to stay with  
18 us, and you're welcome to leave.

19 THE WITNESS: Thank you very much, Your Honor.

20 THE COURT: Thank you very much. Have a nice day. Next  
21 Witness?

22 (The witness stepped down from the witness stand and was  
23 excused at 11:15 a.m.)

24 MR. PAULING: Your Honor, the State ---

25 THE COURT: Hold on one second. Is everybody okay?

JOY SHERRICK - DIRECT by MR. PAULING

Page 85

1 We'll do one more witness and then, take a break. Is that  
2 fair?

3 (Jurors nod affirmatively.)

4 THE COURT: Raise your hands if it isn't. Okay. Next  
5 witness.

6 MR. PAULING: Yes, Your Honor. The State calls Joy  
7 Sherrick.

8 (Ms. Sherrick steps forward to be sworn.)

9 (Whereupon,

10 JOY SHERRICK

11 having been first duly sworn, testified as follows:)

12 DIRECT EXAMINATION by MR. PAULING:

11:16 A.M.

13 Q. Ms. Sherrick, could you, please, state your full name for  
14 the jury?

15 A. Yes, it's Joy Ellen May Sherrick (phonetic). It's a long  
16 one.

17 Q. And where do you live? What is your address?

18 A. Gaffney, South Carolina.

19 Q. Is that in Cherokee County?

20 A. Yes, sir, it is.

21 Q. And how long have you lived at that address?

22 A. About three years now.

23 Q. Were you living there on November 19<sup>th</sup>, two thousand,  
24 three?

25 A. Yes, sir.

1 Q. Are you married?

2 A. Yes, sir.

3 Q. Do you have any children?

4 A. I do.

5 Q. How many?

6 A. I've got two little girls.

7 Q. And what are their ages?

8 A. I have -- my youngest is having a birthday today. She's  
9 ten (10) today, and my oldest is twelve (12). At the time of  
10 this incident, they were almost three (3) years younger.

11 Q. Well, tell her happy birthday from everybody at the  
12 courthouse.

13 A. Thank you.

14 Q. What kind of work does your husband normally do? Or --  
15 I'm sorry, what kind of work was he doing in November of two  
16 thousand, three (2003)?

17 A. At the time, he was working for Oxford Corporation in  
18 Gaffney. He's in the transportation industry.

19 Q. So, is he normally gone during the day or at home?

20 A. He's an early riser and he's always the first to arrive  
21 at his office. He doesn't work there any more, but a very  
22 early person.

23 Q. And what do you do for a living?

24 A. I'm in pharmaceutical sales. I have been for about nine  
25 years now.

JOY SHERRICK - DIRECT by MR. PAULING

Page 87

1 Q. So, you were doing that kind of work in November of two  
2 thousand, three (2003)?

3 A. Yes, sir.

4 Q. Is that the kind of job you do from the home or do you  
5 travel around? How does that work?

6 A. Both, sir. I have a home office, as well as I travel  
7 usually one or two days, depending on how my territory is set  
8 up. At the time, I was covering mostly South Carolina and  
9 parts of North Carolina.

10 But I do have a -- an office set up in the home where I  
11 do computer work, teleconference meetings, a lot of telephone  
12 work, especially in the morning before I head off into the  
13 field.

14 Q. So, there's times where you're working at home during the  
15 day?

16 A. A good bit.

17 Q. So, at what time do you normally get started with your  
18 day? You testified that you had some children. Do you have  
19 to do anything with them?

20 A. Yes, sir. On that particular morning, especially I was  
21 running late because it was drizzly out that morning. My  
22 husband had actually been hearing a tornado siren that  
23 morning. So, I had taken my children down in the basement,  
24 and we were kind of getting ready for school down there.

25 They were watching a little television, and we actually

1 got a late start that morning. So, I wasn't completely ready  
2 for work when I took my kids to school.

3 Q. Do you take your kids to school every morning?

4 A. Yes.

5 Q. Or did you ---

6 A. I'm sorry. Unless I travel, then, my husband does.

7 Q. Okay. Now, let's talk a little more specifically about  
8 November 19<sup>th</sup>, two thousand, three (2003). Do you remember  
9 that day?

10 A. I do.

11 Q. How specifically do you remember that day of more than  
12 two years ago?

13 A. Well, it made a huge impact on my life and my family's  
14 life. I had taken my -- my children to school rather late  
15 that morning. We were in a bit of a rush. Because of the  
16 storm, there were some limbs down in the driveway. I remember  
17 getting out and removing some of those.

18 I took our dog with us to school because he always gets  
19 into a nervous tizzy whenever there's a storm, and he likes to  
20 ride to school with my girls anyway. So, I had my dog in the  
21 car with me, and I took my kids to school.

22 I dropped my kids off at the school, and met with one of  
23 the mothers just for a brief chitchat in the parking lot and  
24 stopped by McDonald's, through the drive thru, for a cup of  
25 coffee and took that with me.

JOY SHERRICK - DIRECT by MR. PAULING

Page 89

1 But, when I arrived at my home ---

2 Q. I'm sorry. If I could just break in one second.

3 A. Yes, sir.

4 Q. You testified that you left the home and took your kids  
5 to school. Why did you have to go back home?

6 A. To finish getting ready for work.

7 Q. All right. Okay.

8 A. Yeah, because I wasn't completely ready at that point.

9 Q. All right.

10 A. And that's typical. My doctors' offices usually open at  
11 9:00, 9:30, so, as long as I'm ready and out the door by 9:30.

12 Q. Okay. What time do you think you left home to take your  
13 children to school?

14 A. It was between 7:15, 7:30. It was probably closer to  
15 7:30, but again, I don't remember exactly.

16 Q. And, after you dropped them off at school, and I think  
17 you said you had a conversation with another parent ---

18 A. Yes.

19 Q. --- and went by McDonald's, then, you returned home?

20 A. Yes.

21 Q. And how long would you say the interim was?

22 A. I remember going through McDonald's drive thru. I  
23 believe it was close to 8:00, around eight o'clock (8:00).  
24 So, I was home maybe ten (10) after or fifteen (15) after.

25 Q. Okay. So, forty-five (45) minutes, an hour? Would that

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

JOY SHERRICK - DIRECT by MR. PAULING

Page 90

1 be a ---

2 A. Yeah.

3 Q. Now, before you left the house, to take your children to  
4 school, do you remember leaving any lights on in the house?

5 A. I believe that the -- the lights were on. I think my  
6 laptop was on, as well as the t.v.

7 Q. Did you leave any doors open?

8 A. No. We do lock the doors when we leave.

9 Q. Now, your home, do you normally enter through -- I mean,  
10 how many doors do you have? Do you have a front door, back  
11 door, a garage door?

12 A. The exits, our -- our family exit is usually out the  
13 garage door because I park in the garage, so, I'm just leaving  
14 out the garage bay.

15 Q. Okay. And do you normally -- like the front door and the  
16 back door of your house locked most of the time?

17 A. Yes, both are locked all of the time unless we're taking  
18 the dog out.

19 Q. All right. Now, what kind of -- what kind of plot is  
20 your home situated on? Is it in a residential community? Is  
21 it kind of rural? Is it out in the country or...?

22 A. It's a subdivision that's out in the country. For the  
23 most part, the yards are an acre or larger. There's a good  
24 bit of woods on my property.

25 I'm at the end of a -- a drive that has a cul de sac.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864



JOY SHERRICK - DIRECT by MR. PAULING

Page 91

1 I'm at the end of the cul de sac. There's one way in and one  
2 way out. There's a good bit of woods around my house, on both  
3 sides, as well as in the back.

4 Q. Can you see your home from the road though?

5 A. When you get all the way down to the end of the cul de  
6 sac.

7 Q. Would you say it's fairly secluded?

8 A. Yes. The way my house sits, it angles such that you have  
9 to go down into the driveway and around the woods to the  
10 garage.

11 Q. Okay. And you testified just a moment ago that you're in  
12 that cul de sac. Do you know your neighbors?

13 A. Yes. I know ---

14 Q. Do you know what kind of -- I'm sorry. What did you say?

15 A. I know the neighbors, their kids, what cars they drive.

16 Q. So, you're familiar with the vehicles that they have  
17 and ---

18 A. Yes. It's a very close neighborhood.

19 Q. So, let's go back to November 19<sup>th</sup>. You testified that  
20 you dropped your daughters off at school and went to  
21 McDonald's, you came home, and the whole trip took forty-five  
22 minutes, somewhere around there?

23 A. Right.

24 Q. When you got back to your home, as you entered your cul  
25 de sac, did you see anything that wasn't there when you left?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

JOY SHERRICK - DIRECT by MR. PAULING

Page 92

1 A. Yes. As I mentioned, my house is at the end of the cul  
2 de sac, on the right, with my mailbox. There was a car facing  
3 with the nose out. And, at first glance, it looked to me like  
4 my boss' car, and it's not atypical for my boss to come to  
5 town to work with me, or to check -- to check my drug samples,  
6 because I'm FDA regulated. I have to have my drugs counted by  
7 a manager.

8 So, my first thought was my boss is there and I haven't  
9 even finished getting ready for work. But, as I turned into  
10 the driveway, I looked at the back of the car and I noticed it  
11 was South Carolina license, like it looked like my boss'  
12 Volvo.

13 It had the same color, a bluish grey silver, so, I did  
14 notice that. But I was going to tease him because there was a  
15 Christmas tree hanging from the mirror and that's not like him  
16 to do that. So, I was going to give him a hard time for that.

17 (Brief Pause)

18 MR. PAULING: Permission to approach, Your Honor?

19 THE COURT: Yes, sir.

20 (Exhibits handed to witness.)

21 Q. (By Mr. Pauling) I want you take a look at these  
22 photographs that have been moved into evidence.

23 THE COURT: That's 4 through 10?

24 MR. PAULING: Yes, Your Honor, State's 4 through 10.

25 (Brief pause while witness reviews exhibits.)

JOY SHERRICK - DIRECT by MR. PAULING

Page 93

1 Q. Do you recognize those photographs?

2 A. Yes, I do.

3 Q. How do you recognize them?

4 A. I would say that's definitely the car that was in my  
5 driveway.

6 Q. And how are you sure that it is the car?

7 A. The same color, same markings, same Christmas tree.

8 Q. Thank you.

9 (Photographs retrieved from the witness.)

10 THE COURT: Let me see those pictures.

11 (Photographs handed up to the Court.)

12 (Off-the-Record Comments)

13 Q. (By Mr. Pauling) Now, you mentioned just a moment ago  
14 that you noticed a Christmas tree. Do you mean like a big  
15 Christmas tree or ---

16 A. One of those little deodorizers.

17 Q. Where did you see this Christmas tree?

18 A. It was hanging from the mirror when I drove in.

19 Q. Okay.

20 A. I noticed it hanging from the mirror.

21 Q. So, you saw it as you approached your house?

22 A. Yes. Well, when I drove in, I noticed the Christmas tree  
23 hanging from the mirror. I noticed that it looked like a  
24 Volvo until I drove behind the car in my driveway. And that's  
25 when I thought, "I got to give my boss a hard time about that

JOY SHERRICK - DIRECT by MR. PAULING

Page 96

1 Q. All right. Let me interrupt one second. You said you  
2 went into the garage. Was the garage door down when you  
3 pulled up ---

4 A. It was still up.

5 Q. It was up? Okay. Do you know if you made any noise as  
6 you entered the house with the dog or the keys or ---

7 A. Yes. When I saw the glass on the floor, I remember  
8 saying something to the dog, something to the effect that,  
9 "Uh-oh, we better -- we got to get out of here." I realized  
10 at that point that I had been broken into.

11 Q. And, after you noticed this and kind of backed out to  
12 -- to tend to your dog, what happened after that? Did you see  
13 anything?

14 A. When I took my dog into the garage, and I went -- stepped  
15 back outside, I had my cell phone, you know, ready to dial  
16 911. There was a car -- that car leaving at a rapid -- rapid  
17 speed.

18 Q. Is this the same -- is the same car you identified just a  
19 moment ago?

20 A. Yes, yes. And cars in our neighborhood, there's a 20  
21 mile an hour -- an hour limit. And people don't drive that  
22 fast. Whoever it was, was clearly leaving in a hurry.

23 Q. Did you ever actually see who was in the car?

24 A. No.

25 Q. Did you ever actually see the individual that was in your

JOY SHERRICK - DIRECT by MR. PAULING

Page 97

1 home?

2 A. No.

3 Q. After you saw the car leave, what did you do next?

4 A. I dialed 911 on my cell.

5 Q. And did the -- did the police respond?

6 A. Immediately.

7 Q. Could you just tell us what happened after the police  
8 responded to your burglary call?

9 A. After the first officer -- well, the conversation with  
10 the 911 attendant, they instructed me not to go back into the  
11 home in case there was still someone there.

12 MR. POOLE: Objection to hearsay, Your Honor.

13 THE COURT: Ma'am, don't tell us what they said. As a  
14 result of what they told you, what did you do?

15 A. Okay. I waited outside for the officers to arrive.

16 Q. (By Mr. Pauling) All right. And, after the officers  
17 arrived, what did you do?

18 A. I stayed there until they finished their investigation.  
19 I called my husband and I called my boss.

20 Q. Now, when you say their investigation, did the police go  
21 into your house?

22 A. There were several officers that went through my home,  
23 detectives, police officers. There was -- there was quite a  
24 few people that arrived.

25 Q. And this is before you went back inside?

1 A. Oh, I wasn't allowed in at all.

2 Q. Okay. All right.

3 A. No.

4 Q. Were you ever actually able to go back into your home  
5 after the burglary?

6 A. After the investigation, I was allowed in. It was well  
7 after lunch time.

8 Q. Could you, please, describe to the jury the condition of  
9 your house when you were allowed back inside?

10 A. An amazing amount of -- of upheaval for that short amount  
11 of time. All my drawers had been pulled out and dumped on my  
12 bed. All the drawers in my vanity in the bathroom were pulled  
13 out.

14 The jewelry boxes and boxes I had in my closet were  
15 pulled out and dumped. My laptop was pulled out of the wall.  
16 Some of the cords were disconnected, but it wasn't completely  
17 removed. And the back door, which is behind where my laptop  
18 is, had been forcibly opened and was damaged.

19 THE COURT: Had been forcibly opened and what?

20 A. Damaged.

21 THE COURT: Okay.

22 A. I don't know if it was opened while locked or what the  
23 case was, but...

24 Q. Now, this may seem like a silly question, but was this  
25 the condition of your house when you left earlier that day to

JOY SHERRICK - DIRECT by MR. PAULING

Page 99

1 take your daughters to school?

2 A. No way.

3 Q. You said that there were drawers open and things  
4 scattered about. When this -- are you talking about in the  
5 living room, your bedroom?

6 A. My bedroom, the master bedroom, which is at the back of  
7 the house. The laptop is in the middle room, which is like a  
8 family room.

9 Q. And you said that the -- your laptop computer was half  
10 connected. What does that mean? Aren't laptops -- don't you  
11 just pick those up and carry them around or ---

12 A. Just the high speed connection and a printer cable, the  
13 power cord, and it was pulled away from the -- it's in an  
14 armoire, and it was pulled out and all the cords were  
15 disconnected at that point.

16 Q. Okay. And is that -- was that in a different condition  
17 than when you left it earlier that morning?

18 A. Yeah.

19 Q. All right. Are you sure you didn't just leave that back  
20 door open ---

21 A. No.

22 Q. --- on your way to school, just forgot it maybe?

23 A. No way.

24 Q. Now, you testified earlier that the police did an  
25 investigation?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

- 1 A. Uh-huh (affirmative).
- 2 Q. When they were doing this investigation, did you tell
- 3 them what you saw, what happened?
- 4 A. Yes.
- 5 Q. Okay. Did you tell them about the vehicle that you saw?
- 6 A. Yes.
- 7 Q. Did you mention -- did you mention any distinguishing
- 8 features in your statement to your police about that car?
- 9 A. The color and what I thought was the make and model.
- 10 Q. And you said you thought the make and model was ---
- 11 A. A Volvo.
- 12 Q. --- a Volvo?
- 13 A. Uh-huh (affirmative), like my boss'.
- 14 Q. Okay. Are you aware that the vehicle in the photographs,
- 15 that you identified, is actually a Daewoo?
- 16 A. Yes, sir.
- 17 Q. You testified that it took the police about till you say
- 18 noon until they were done with their investigation?
- 19 A. Uh-huh (affirmative).
- 20 Q. At that point, did they leave? Did they stay over, did
- 21 they give anybody a time? What happened?
- 22 A. There was a -- a young man remaining who was doing some
- 23 dusting. I don't remember his name. But he was still in the
- 24 home while I went out because my husband was at home at that
- 25 point. I called him and he came home.



JOY SHERRICK - DIRECT by MR. PAULING

Page 101

1 Q. Did anybody actually -- did they -- did he ever leave?  
2 Were you ever there just you and your husband?

3 A. Eventually, the other detective did leave ---

4 Q. Okay.

5 A. --- maybe one (1:00) or two o'clock (2:00).

6 Q. Were you ever contacted again concerning the burglary at  
7 your house?

8 A. Yes. Is it Mr. Fowlkes? Yes, I was contacted by Mr.  
9 Fowlkes about my home maybe two days later, I can't remember  
10 exactly when, regarding my identification of a vehicle.

11 Q. All right. And without testifying as to what anyone else  
12 said, could you just tell the jury what you did when you were  
13 contacted again by the police?

14 A. I went to identify a vehicle that was confiscated.

15 Q. And where did you go to identify this vehicle?

16 A. It was somewhere downtown Gaffney.

17 Q. All right. And this vehicle that you identified -- I'm  
18 going to hand these pictures back up to you.

19 (Photographs handed to witness.)

20 Q. This vehicle that you identified -- oh, I'm sorry. Do  
21 you remember about what time this was that you went to  
22 downtown Gaffney to.---

23 A. It was night time. It was dark. And I didn't -- I  
24 wasn't really able to tell the color of the vehicle, but it  
25 sure looked like the make and model.

1 Q. And why weren't you able to tell the color?

2 A. It was dark. It was dark. So, at that point, I asked if  
3 I could see it in the day time.

4 Q. And why did you ask that?

5 A. Just to make sure that it was the right color because  
6 it's real hard to tell the color in the dark.

7 Q. Those pictures that I have handed up to you, the ones  
8 that you identified the car you saw outside of your house ---

9 THE COURT: State's 4 through 10. Go ahead.

10 Q. (By Mr. Pauling) --- Exhibits 4 through 10, is that the  
11 same car that you saw on that night when they took you to  
12 identify it?

13 A. Yes, sir.

14 Q. And you also testified that you went to see it again.  
15 Did you ever have the opportunity to see the car again after  
16 that night?

17 A. I did.

18 Q. When?

19 A. I think it was the following morning when I came back  
20 during the day time.

21 Q. And is the car you saw the following morning the same car  
22 that's in those pictures?

23 A. Yes.

24 Q. And is it the same car that you saw outside of your house  
25 immediately prior to your burglary?

JOY SHERRICK - DIRECT by MR. PAULING

Page 103

1 A. Yes. I was further convinced when I saw the color in the  
2 day light.

3 Q. Was there -- are there any other things that you see in  
4 the pictures, or from that day and night, that also identified  
5 it to you as being the same car?

6 A. The Christmas tree hanging from the mirror. And it  
7 looked very much like my boss' Volvo, even though it is not a  
8 Volvo.

9 Q. All right.

10 A. My boss drives an S-150, which is very similar to this.

11 Q. All right. Just for a moment, let's talk about that.  
12 Now, you testified earlier that you're in pharmaceutical  
13 sales?

14 A. Uh-huh (affirmative).

15 Q. Have you ever sold cars for a living?

16 A. Never.

17 Q. Would you describe yourself as a car enthusiast?

18 A. Never.

19 Q. Would you say you know a lot about cars?

20 A. No.

21 Q. At the time you made that statement, were you -- you were  
22 aware that a Daewoo was a type of car?

23 A. Yes. I had heard of Daewoo, and I know there's a dealer  
24 in town.

25 Q. So, when you were describing a Volvo, in the statement

JOY SHERRICK - CROSS by MR. POOLE

Page 104

1 that you made to police, that's what the car looked like to  
2 you?

3 A. Yes.

4 (Brief Pause)

5 MR. PAULING: Begging the Court's indulgence.

6 (Brief Pause)

7 MR. PAULING: I don't have any further questions, Ms.  
8 Sherrick. Please, answer any questions the Defense may have  
9 for you.

10 THE COURT: Cross?

11 CROSS EXAMINATION by MR. POOLE:

11:37 A.M.

12 Q. Ms. Sherrick, how long did you live at this particular  
13 address?

14 A. We had just moved that summer.

15 Q. Okay.

16 A. From Charlotte, so, we lived there from June until  
17 November.

18 Q. Okay. And so, you just lived there a few months?

19 A. Almost -- yes.

20 Q. Do you still live in this area now?

21 A. Yes, I do, the same house.

22 Q. Okay. And it's your testimony that you have never been  
23 down --- Is that your ---

24 A. I may have been down there, but I don't associate the  
25 name with a road with that area.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

JOY SHERRICK - CROSS by MR. POOLE

Page 105

1 Q. Okay.

2 A. I've -- I've seen Grassy Pond Elementary School.

3 Q. Okay.

4 A. But I've never been down that road to my knowledge.

5 Q. Okay. Is that a big, rural area down there?

6 A. Yes.

7 Q. Okay. There's a fire department down there; is that  
8 right?

9 A. There's a voluntary fire department down at Grassy Pond  
10 Elementary.

11 Q. Okay. And I believe you testified that -- that, when you  
12 came back from school, and dropping the children off, the  
13 garage door was still up; is that right?

14 A. Oh, no, it was down.

15 Q. It was down?

16 A. Yeah. I didn't pop it up until I got in my driveway.

17 Q. Okay. So, you did not leave it up as you went to take  
18 the children to school; is that right?

19 A. No way.

20 Q. Okay. And you testified that after this, there were a  
21 lot of law enforcement personnel in your home?

22 A. Yes.

23 Q. Okay. How many would you estimate that were there?

24 A. I remember seeing four or five cars, some unmarked and  
25 some marked; maybe six or seven officers.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 Q. Okay. And the investigation lasted until approximately  
2 12:00 noon?

3 A. That's my best guess, uh-huh (affirmative).

4 Q. Okay. Did anybody stay after that point in time?

5 A. A detective did doing some dusting for fingerprinting.  
6 And I don't know his name. I'm sorry.

7 Q. And how long did he stay?

8 A. It was shortly after lunch, maybe 1:00, 1:30 or so.

9 MR. POOLE: Thank you, Ms. Sherrick.

10 THE WITNESS: You're welcome.

11 THE COURT: Redirect?

12 MR. PAULING: Very briefly, Your Honor.

13 REDIRECT EXAMINATION by MR. PAULING: 11:39 A.M.

14 Q. You testified on cross just a second ago that your garage  
15 door was down. Do you have an automatic opener or do you have  
16 to do it by hand?

17 A. It's automatic.

18 Q. So, you press the button and it goes up?

19 A. And we always double check behind us especially when we  
20 take the kids to school because it goes up ---

21 Q. Okay.

22 A. --- especially if there's a breeze from a storm. So, I  
23 remember exactly making sure it was down when I went to go to  
24 school.

25 Q. And this garage door was on I guess rails on the side and

1 just pulls up into the ---

2 A. Yes, uh-huh (affirmative).

3 MR. PAULING: Okay. No further questions, Your Honor.

4 THE COURT: Thank you, ma'am. You may step down. May  
5 she be released from her subpoena?

6 MR. PAULING: No objection from the State, Your Honor.

7 MR. POOLE: And none here.

8 THE COURT: You may leave or you're welcome to stay.

9 THE WITNESS: Thank you.

10 (The witness stepped down from the witness stand and was  
11 excused at 11:40 a.m.)

12 THE COURT: Mr. Foreman, and ladies of the jury, let's  
13 take a long enough break for you all to stretch your legs and  
14 use the restroom and get a Coke or whatever.

15 Here's my plans, and Mr. Foreman, see if this is okay  
16 with everybody. We'll probably work till about 12:30, and  
17 then, we'll take a break, a lunch break from 12:30 till 2:00  
18 if that's okay with everybody. Okay? Everybody remain seated  
19 and you all go to your jury room.

20 (The jury exited the courtroom at 11:40 a.m.)

21 THE COURT: Anything for the record on behalf of the  
22 State?

23 MR. PAULING: No, Your Honor.

24 THE COURT: Mr. Defendant?

25 MR. POOLE: No, sir.

1 THE COURT: All right. He's in custody. Let's take a  
2 break. Make sure he gets to use the bathroom or whatever.  
3 We'll take about a ten-minute break.

4 (Whereupon, a recess was taken from 11:40 a.m. till 11:49  
5 a.m.)

6 (Off-the-Record Comments)

7 (Another matter was heard before the trial reconvened at  
8 11:54 a.m.)

9 (Off-the-Record Comments)

10 THE COURT: All right, Gentlemen, are you all ready to  
11 start back?

12 MR. PAULING: The State is ready, Your Honor.

13 MR. POOLE: Yes, sir.

14 THE COURT: Do you have certified copies of Mr.  
15 Brannon's record?

16 MADAM CLERK: No, sir.

17 (Off-the-Record Comments)

18 THE COURT: Do you have certified copies?

19 MR. PAULING: We do have certified copies, Your Honor.

20 THE COURT: Well, just show them to Mr. Poole and then,  
21 sometime between witnesses or between taking a break, you all  
22 mark those and admit them as exhibits, Court's exhibits.

23 (Mr. Poole is shown documents.)

24 (The jury entered the courtroom at 11:54 a.m.)

25 (Off-the-Record Comments)



IRA JO GALLMAN - DIRECT by MR. PAULING

Page 109

1 THE COURT: The next witness, please.

2 MR. PAULING: Thank you, Your Honor. The State would  
3 call Ire Jo Gallman.

4 THE COURT: Come around, ma'am, please.

5 (Ms. Gallman steps forward to be sworn.)

6 (Whereupon,

7 IRA JO GALLMAN

8 having been first duly sworn, testified as follows:)

9 THE COURT: Your witness.

10 MR. PAULING: Thank you.

11 DIRECT EXAMINATION by MR. PAULING:

11:55 A.M.

12 Q. Ms. Gallman, would you, please, state your full name for  
13 the record?

14 A. Ira Jo Floyd Gallman (phonetic).

15 Q. Are you a little nervous this morning?

16 A. I am.

17 Q. Okay.

18 THE COURT: Well, ma'am, let me tell you what, just  
19 about everybody that sits there is nervous. You just take a  
20 deep breath and you'll be fine. And, if you get too nervous  
21 to talk, that's fine. We'll just take a break.

22 THE WITNESS: Okay.

23 MR. PAULING: If there's ever any time you don't  
24 understand what I've said, just stop me and I'll repeat the  
25 question.

1 THE WITNESS: Thank you.

2 Q. (By Mr. Pauling) Ms. Gallman, where do you currently  
3 reside?

4 A. We -- i. e. -- on Highway 100 in Gaffney.

5 Q. Okay. And how long have you lived at that particular  
6 residence?

7 A. Six (6) years.

8 Q. Okay. And you said -- What's the actual  
9 number?

10 A.

11 Q. Okay. And that's here in Gaffney, Cherokee County?

12 A. Yes, sir.

13 Q. Okay. And whom do you live with at that particular  
14 residence?

15 A. My husband and myself.

16 Q. Okay. And what is your husband's name?

17 A. Ken -- Kenneth Gallman.

18 Q. And do you have any other family in the Gaffney area.

19 A. I do. I have -- we have six beautiful children and seven  
20 gorgeous grandchildren.

21 Q. And, Ms. Gallman, I would ask you to just speak up just a  
22 little bit, so, everyone in the jury can -- can hear you.

23 THE COURT: How many children?

24 A. We have six children and seven grandchildren.

25 THE COURT: Congratulations.

IRA JO GALLMAN - DIRECT by MR. PAULING

Page 111

1 Q. (By Mr. Pauling) And where do you currently work?

2 A. I work for Food Lion. I'm a deli-bakery manager.

3 Q. And how long have you -- have you been working at Food  
4 Lion?

5 A. Well, I retired from Bi-Lo, but I worked for Food Lion  
6 for eleven years before that and now, I'm act -- working with  
7 them again. And I've been with them for three (3) years now.

8 Q. Okay. So, back in November of '03, were you working at  
9 Food Lion?

10 A. Yes, I was.

11 Q. And, prior to moving at this address,  
12 where were you living?

13 A. Where was I living when?

14 Q. Prior to that, before -- before moving to this particular  
15 address?

16 A. I -- I lived at -- on (phonetic).

17 Q. And I want to focus your attention to November 19<sup>th</sup>, two  
18 thousand, three (2003).. Do you recall that date?

19 A. Yes, I do. I don't think I'll ever forget it.

20 Q. Well, why is it that you can recall that date?

21 A. Well, with the events that took place that day, that  
22 morning.

23 Q. Okay. And before we get -- go into that, describe for me  
24 your -- your normal day, your normal morning.

25 A. My normal morning? Well, I usually -- is it a work

1 morning or a day off?

2 Q. Well, if it was a work morning, describe that to us, if  
3 it was -- if it was a work morning.

4 A. Well, my husband and I, we -- we get up and we -- we --  
5 we -- we get ready to go to work. We have breakfast together,  
6 and we pretty much leave together.

7 And I go -- like I said, we go into work, and do our  
8 normal routine.

9 Q. And -- and ---

10 A. And this morning, the morning you're speaking of, I ---

11 Q. And were you -- about what time do you usually get up in  
12 the morning?

13 A. We get up about 6:30.

14 Q. About 6:30? Where does your husband work? Where was he  
15 working back in November of '03?

16 A. He works for Abrasive Belt Services (phonetic).

17 Q. Okay. And what -- what does he do there? What type of  
18 work is that?

19 A. You know, I don't know. I think he works with belts.

20 Q. Well, perhaps I'll ask him. I'm sorry.

21 A. Okay.

22 Q. But -- but -- so, usually you get up and have breakfast  
23 together. What time are you expected at work on a normal work  
24 day?

25 A. Eight o'clock (8:00).

IRA JO GALLMAN - DIRECT by MR. PAULING

Page 113

1 Q. Eight o'clock (8:00)? Is that -- what are your normal  
2 hours?

3 A. Usually, unless I'm closing or we have a meeting; if so,  
4 I'm there from 8:00 to 4:30 or 8:00 to 5:00.

5 Q. Is that Monday through Friday or Saturday, every other  
6 day or...?

7 A. The grocery business, you usually work on weekends. I  
8 have a couple of days off during the week unless I have the  
9 weekend off.

10 Q. And, again, it's usually -- you said just the two of you  
11 live at that residence?

12 A. Yes, we do.

13 Q. And you leave at the same time?

14 A. Right.

15 Q. Okay. On that particular morning, November 19<sup>th</sup>, two  
16 thousand, three (2003), were you preparing to go to work that  
17 morning?

18 A. No, it was a day off.

19 Q. Okay.

20 A. And I was sleeping in.

21 Q. And was your husband going to work that morning?

22 A. He had already left. He had already left to go to work.

23 Q. Okay. Tell me about the events of -- of that morning.  
24 Tell this jury what happened that particular morning.

25 A. Well, when you get out, and it's kind of cool and rainy,

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 and -- and you just kind of want to sleep in. Well, I was in  
2 the bed, and our doorbell rang.

3 So, I got up -- I jumped up because it kind of frightened  
4 me. So, I jumped up and I was going down my hallway -- the  
5 hall because our bedroom one of those bedrooms here going down  
6 to the hallway to go to the front door.

7 As I passed the bedroom that I had my blinds open on, I  
8 see a vehicle parked in my front yard off the road. And this  
9 is strange because I've got a huge driveway right beside my  
10 house and my garage is right there. So, nobody parks there.  
11 So, that caught my attention before I ever made it down the  
12 hallway.

13 So, I stopped. I proceeded very cautiously because I  
14 didn't recognize this vehicle.

15 Q. And just briefly, were you expecting anyone that  
16 particular morning?

17 A. Oh, no, no one in particular.

18 Q. And you said you were sleeping in, so, did you have  
19 breakfast with your husband that morning, if you recall?

20 A. No. I was -- I -- he had kissed me good bye before he  
21 left, but I didn't have breakfast with him that morning. I  
22 was sleeping in.

23 Q. And you usually leave sometime before 8:00 usually, when  
24 you go to work, both of you at the same time ---

25 A. Right, right.

IRA JO GALLMAN - DIRECT by MR. PAULING

Page 115

1 Q. --- I believe you testified? And so, about how long --  
2 how much time had passed, from the time he left, till you hear  
3 the doorbell approximately? Or do you recall when he left?

4 A. Thirty-five (35) to thirty-eight (38), forty (40)  
5 minutes.

6 Q. Thirty-five (35) to forty (40) minutes?

7 A. Uh-huh (affirmative).

8 Q. And, again, you were expecting anyone that morning?

9 A. No.

10 Q. You weren't expecting your children or anything?

11 A. No.

12 Q. Okay. And, I'm sorry, go ahead. You saw this vehicle?

13 A. Well, I walked to the end of my -- I was in my pajamas,  
14 and I -- I just didn't want to answer the door in my pajamas  
15 unless it was a neighbor or one of my family members or one of  
16 my kids. So, I stopped before I got to my front door.

17 The hallway, there's a staircase that goes up, and I  
18 could just peek around my staircase and see my front door.  
19 It's the wooden door with an oval insert with different panes  
20 of glass in it that -- that distorts your vision, but you can  
21 see through it; you can see through it, but you can't see  
22 anything, a face or anything very clearly, but you can see  
23 that there's someone there.

24 It was evidently, from what I could see, it was -- it was  
25 a man, and he had this big jacket on and he had the hood up on

1 it. Well, that ---

2 Q. And -- just a moment. You saw that at the point where  
3 your door was closed?

4 A. Uh-huh (affirmative).

5 Q. Okay.

6 A. Yeah, through the door.

7 Q. You could see that through the glass ---

8 A. Uh-huh (affirmative).

9 Q. --- this sort of glass you're talking about?

10 A. Right. I could see that through the door. Well, this  
11 was something, you know, that's -- that's unusual for people  
12 to ring the doorbell with hoods on their heads, you know, and  
13 the big glass, through the glass.

14 So, I backed up and go back into that bedroom, where my  
15 windows are -- are open, and I could see the vehicle, but I  
16 couldn't see, you know, where he was. But, at this time, he  
17 is not -- he's kind of pacing back and forth, but, then, he  
18 starts ringing my doorbell.

19 And, I mean, not just ringing it, he's -- he lays down on  
20 the doorbell. And he -- I mean, it was just for I know  
21 twenty-five (25), thirty (30), forty (40), fifty (50), a full  
22 minute or two, just as hard he could ring that doorbell, he  
23 was ringing the doorbell.

24 Q. And you said you can't see -- you can't see clearly, so,  
25 this is a distorted view looking out. Is it also a distorted



IRA JO GALLMAN - DIRECT by MR. PAULING

Page 117

1 view on the other side of the door, if you're looking at the  
2 front of your doorway ---

3 A. He couldn't see me.

4 Q. --- is it also distorted?

5 A. He couldn't see me any clearer, you know, if he could see  
6 me from where I was. But I could see, you know, the outline  
7 of his body and I could see him there at the door. And he's  
8 doing this number (demonstrating), you know, trying to see  
9 into the cut glass.

10 So, I go running back into the hallway and I keep  
11 watching him. And I -- I -- I'm alarmed by then. And I -- I  
12 don't know, but I just had the feeling, you know, something  
13 said, "Don't answer the door, just stay where you are." And I  
14 did.

15 After a few minutes, I -- I see the person on my porch  
16 look down the road, and then, I hear my neighbor coming in,  
17 and she drives a school bus.

18 Q. And just quickly, when you say, "down the road," where is  
19 your house positioned on the street? Are you the first house  
20 on that street, the last house? Describe the houses around  
21 you.

22 A. Okay. Down the street, there are three houses. Well,  
23 you've got three houses beside us. We're on the -- a cul de  
24 sac and it curves around. Beside us are empty lots, and  
25 behind us is woods.

IRA JO GALLMAN - DIRECT by MR. PAULING

Page 118

1 And I guess my husband can testify more about how it  
2 works, but behind us is just a wooded area. And we have  
3 neighbors right beside us all the way down.

4 And this particular neighbor was the one who drives a  
5 school bus, Ms. -- Ms. Simpson, and she was coming in and  
6 parking her bus when -- that was who he turned to watch. And,  
7 when she came in, he proceeded to leave my porch and walk to  
8 his vehicle.

9 Well, my neighbors across the street are directly in  
10 front of us because it's a -- it's a subdivision. It's  
11 Shalimar (phonetic), and we're on the back side when you come  
12 into the development. And there are two or three lots right  
13 beside us.

14 We own the one beside us, and there are two empty ones  
15 and there's houses start again and goes up to a cul de sac,  
16 and that's a turnaround and come back out. There's no through  
17 traffic through there. So, you do not -- if you come into our  
18 development, you're coming to see somebody. You're not just  
19 passing through.

20 He proceeded to step down off because he heard Ms.  
21 Simpson clearly come and parking her bus down there, and he  
22 decided he was going to leave. And he turns around, and I  
23 watch him through my cut glass, and I see him leaving.

24 So, I come into my living room. And I go to my window,  
25 and I pull my sheer back. And I can see him very clearly now.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

IRA JO GALLMAN - DIRECT by MR. PAULING

Page 119

1 Q. And which window was this? Is this the bedroom window  
2 from where ---

3 A. No.

4 Q. --- you saw the car, or is this -- where is this window  
5 located in your house?

6 A. This window -- this window is in my living room. I -- I  
7 was out there, and I was still -- I was going back into the  
8 hallway, and I'm watching as he turns and looked up the road  
9 through the cut glass.

10 He's acting very strange. So, I go ---

11 Q. Is this -- I'm sorry, is this the front room window ---

12 A. In my living room.

13 Q. --- at the front door?

14 A. At -- beside my front door, right beside the front door.  
15 And they're full length windows. When we built our house, we  
16 had windows that went from the ceiling to the floor.

17 And I was pulling -- but there are sheers there. I  
18 pulled my sheers back, and I'm peeping. I don't want him to  
19 turn around and see me in the house because I'm -- I'm -- by  
20 then, I'm alarmed.

21 And he has on a hooded jacket, kind of a ski type jacket,  
22 and he has blue jeans and sneakers on. And I -- I'm just  
23 watching him to see what he's going to do next.

24 He's fixing to get into his vehicle and sit down. Now, I  
25 can't see anything because the hood is over his head, until he

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 sits down, and the hood on his -- on his jacket goes back, and  
2 I could see his face when he closes the door to his car.

3 Q. So, you saw his face at that point?

4 A. Uh-huh (affirmative).

5 Q. Did you see anyone else with this individual?

6 A. No, there wasn't anyone else in that vehicle.

7 Q. And this car you're speaking of, is this the same car  
8 that you were describing earlier?

9 A. Yes, it is. A blue car with a hub cap off of the front.

10 Q. I'm sorry, say -- I'm sorry, say that again?

11 A. It was a blue car with a hub cap off the front.

12 Q. Off -- off the front tire?

13 A. Right.

14 Q. Do you remember if it was the driver's side or the  
15 passenger side? Do you remember?

16 A. It was on the front driver's side.

17 Q. The driver's side?

18 A. Uh-huh (affirmative).

19 Q. Now, what did you do at that -- well, I'm sorry, did you  
20 recognize that individual?

21 A. Oh, yes.

22 Q. Well, when I say -- had you seen him before that day?

23 A. Oh, no.

24 Q. Okay. So, when the hood blows back, you're able to see  
25 his face; is that correct?

IRA JO GALLMAN - DIRECT by MR. PAULING

Page 121

1 A. Right.

2 Q. Okay. But did you know who he was at that point? Had  
3 you seen him before?

4 A. No, never. I never seen him before.

5 Q. So, it wasn't anyone you expected or anybody -- was it  
6 someone you knew from the neighborhood, from your  
7 neighborhood?

8 A. Oh, no, I know all my neighbors.

9 Q. Okay. And what did you do at that point?

10 A. I watched him. We have neighborhood watch, you know, and  
11 that's just part of what you do if someone suspicious you feel  
12 like, you know, shouldn't be in the neighborhood, you just  
13 keep an eye out.

14 And he proceeded, then, to, like I said, get in his  
15 vehicle. And he didn't drive away. And Mary was still  
16 parking her bus. He pulled directly into my neighbor's yard,  
17 in front of us, up in their driveway, and he stopped for a --  
18 a minute or two.

19 I don't know if he was just giving her time to park her  
20 bus and get in the house, but ---

21 Q. Well, let -- let me ask you this: Did it appear to you  
22 that he was obstructed by her bus?

23 A. That he was what?

24 Q. That he couldn't get around her?

25 A. I don't know. I don't think so because she was done --

1 by the time he pulled over, she was standing in her driveway.

2 Q. So, she had already parked it at that time?

3 A. Right.

4 Q. She had already parked the school bus?

5 A. Right, yes. I think he was giving her time to get in the  
6 house.

7 Q. Okay.

8 A. But, while he was sitting there, I could see the tags  
9 clearly, and I wrote -- I just thought, you know, I need to  
10 -- I need to write this down. He's not acting like he should,  
11 you know, to be in this development.

12 So, I -- then, I just went into the kitchen, where my  
13 phone thing is and -- and just jotted it down on a note where  
14 I had my church directory and didn't think any more about it  
15 till my husband -- I did call and tell him, you know, what had  
16 happened. And he -- he just -- he just thought maybe it was  
17 someone that might have been selling something.

18 MR. POOLE: Well, objection to the hearsay.

19 THE COURT: Don't talk about what your husband said.  
20 That's hearsay in our rules of evidence. You can only testify  
21 to what you say, okay?

22 THE WITNESS: I beg your pardon?

23 THE COURT: Don't testify about what your husband said.

24 THE WITNESS: Oh, okay.

25 THE COURT: That's hearsay.

IRA JO GALLMAN - DIRECT by MR. PAULING

Page 123

1 THE WITNESS: I'm sorry.

2 THE COURT: Thank you.

3 Q. (By Mr. Pauling) And after you -- you wrote down the tag  
4 number, after you wrote down the tag number, what did you do?

5 A. After I wrote down the tag number, I ---

6 Q. Was he still there?

7 A. Oh, yes. I -- I was still at home. You know, I just --  
8 I just -- I got up and started my normal routine throughout  
9 the day.

10 Q. Okay.

11 A. I was a little nervous and scared to think, you know,  
12 that he wasn't acting really the way he should have.

13 Q. And while he was standing at your door, do you know about  
14 how tall he was? Could you tell? Do you remember?

15 A. Well, I got a better impression of his height when I got  
16 to the window to see him clearly. I couldn't tell from the  
17 door. It just -- he looked enormous through the door with  
18 that big jacket on.

19 Q. But you did get a clear view of him through your window?

20 A. I sure did.

21 Q. Okay. And describe his build once you got a clear look  
22 at him through the window.

23 A. Like I said, he had that big jacket on, you know, and he  
24 -- I could tell from his hands that he was a -- a black -- a  
25 black male. And that, like I said, he had on blue jeans and

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864.

1 tennis shoes and I could see, when he sat down, you know, that  
2 he was a black male and that's when I seen his face.

3 Q. How tall are you?

4 A. I'm five, six (5'6").

5 Q. Okay. Did he appear to be your height, taller, shorter?

6 A. He appeared to be a little taller than myself.

7 Q. A little taller? And did you tell your husband about  
8 this incident?

9 A. Yes, I did.

10 Q. Okay. And, now, let's move ahead to November 20<sup>th</sup>. What  
11 happened that particular day, the next day, November 20<sup>th</sup>?

12 A. The next day?

13 Q. Yes.

14 A. Well, we went to work. I was working, and I got a  
15 telephone call and it was my husband. And he had told me -

16 MR. POOLE: Objection, Your Honor.

17 A. -- that I need to come home.

18 MR. POOLE: That's, again, hearsay.

19 THE COURT: Well, as a result of your husband's  
20 telephone conversation, what did you do?

21 A. I went home.

22 THE COURT: Thank you. Go ahead.

23 A. And ---

24 Q. (By Mr. Pauling) And, when you arrived home, what did you  
25 find out?



IRA JO GALLMAN -- DIRECT by MR. PAULING

Page 125

1 A. When I -- when I walked in the house what I saw or  
2 what...?

3 Q. Well, upon talking to your -- your husband, what  
4 information did you ---

5 THE COURT: No, sir. No, sir. That's hearsay. You can  
6 ask as a result of the telephone call, what did she do.

7 Q. (By Mr. Pauling) What did you do as a result of ---

8 A. I proceeded to go home.

9 Q. And, when you got home, what did you discover?

10 A. When I walked in my house, my husband had called the --  
11 they were waiting for us, the police. There were police  
12 officers everywhere. There were -- my husband and my son, my  
13 stepson, were there.

14 Q. Well, describe your house. What did -- what did you see?  
15 Was it the way you left it?

16 A. Oh, no.

17 Q. Okay. Well, describe to the jury, what did your house  
18 look like when you -- when you got back? I understand there  
19 were people there, but what did your house look like?

20 A. My kitchen window had been broken in.

21 THE COURT: Had been what?

22 THE WITNESS: Ma'am?

23 THE COURT: The kitchen window was what?

24 A. Had been broken, bursted.

25 Q. (By Mr. Pauling) And, Ms. Gallman, you just -- you just

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 take your time.

2 A. Okay. It had been -- my kitchen window had been broke in  
3 and there was glass all over the kitchen floor, my dining  
4 table, my chairs. There were papers strewn all over the  
5 living room. There was drawers in my bedroom that had been  
6 ransacked.

7 The closet doors were open. Things was pulled out. The  
8 safety -- a little safety box, that we kept papers in, was  
9 just all through the living room. There were knives laying on  
10 the bed.

11 Q. There were knives on the bed?

12 A. Butcher knives that he had gotten out of my table -- out  
13 of my kitchen -- had gotten out of my kitchen drawers. There  
14 were -- it was just a mess.

15 Q. Okay.

16 THE COURT: You okay? You want some water?

17 THE WITNESS: I think I'm okay.

18 THE COURT: Okay. You'll be fine.

19 Q. (By Mr. Pauling) And, Ms. Gallman, I'm going to show you  
20 what's been marked, for identification purposes, State's  
21 Exhibits 11 through 27.

22 (Exhibits handed to witness.)

23 Q. I'm going to ask you -- well, I'll let you look at them.  
24 I'm sorry.

25 (Brief pause while witness reviews photographs.)

IRA JO GALLMAN - DIRECT by MR. PAULING

Page 127

1 THE COURT: Have you all agreed on those?

2 MR. POOLE: Yes, sir, we have agreed on them. No  
3 objection.

4 THE COURT: They're in evidence. They're agreed upon,  
5 11 through 27. What does that accurately depict, Ma'am?

6 (Whereupon, State's Exhibit Numbers 11 through 27 were  
7 admitted into evidence without objection.)

8 Q. (By Mr. Pauling) Do those photographs depict the way  
9 your house looked when you returned on November 20<sup>th</sup>, two  
10 thousand, three (2003), the way you just described to the --  
11 to the jury?

12 (Brief pause while witness reviews photographs.)

13 A. Yes, sir.

14 Q. Do those pictures describe the placement of the knives  
15 that -- that you testified to?

16 A. Yes, sir.

17 Q. And were those knives -- were the knives just in one bed  
18 -- where were the knives exactly? Was it in one bedroom?

19 A. Two bedrooms.

20 Q. Two bedrooms?

21 A. Two bedrooms.

22 Q. And you usually don't leave your knives -- your butcher  
23 knives in the bedroom, do you?

24 A. Beg your pardon?

25 Q. You don't usually leave your butcher knives ---

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. No.

2 Q. --- in the bedroom, do you?

3 A. No.

4 Q. Thank you, Ms. Gallman.

5 (Exhibits retrieved and handed up to the Court.)

6 Q. And, Ms. Gallman, State's 4 through 10, I ask you to take  
7 a look at these particular photos.

8 (Exhibits handed to the witness.)

9 (Brief pause while witness reviews photographs.)

10 A. This is the vehicle.

11 Q. Okay. This is the vehicle -- does the vehicle, in those  
12 particular photographs, is that the same vehicle that you saw  
13 at your house on November 19<sup>th</sup>, two thousand, three (2003)?

14 A. Yes, it is.

15 Q. The same vehicle that you saw this individual you  
16 described getting into?

17 A. Yes, it is.

18 Q. And the individual that you saw, at your home November  
19 19<sup>th</sup>, two thousand, three (2003), do you see that individual  
20 today?

21 A. Yes, I do.

22 Q. Okay. And would you, please, point that individual out  
23 and describe him?

24 A. It's the gentleman over there in the blue shirt  
25 (indicating).

IRA JO GALLMAN - DIRECT by MR. PAULING

Page 129

1 Q. And describe him. I'm sorry.

2 THE COURT: She said the gentleman over there in the  
3 blue shirt. Let the record reflect she's pointing to the  
4 defendant.

5 Q. (By Mr. Pauling) Thank you. Once you got home, and you  
6 saw your house was a mess, what happened next? Did you talk  
7 with law enforcement officers?

8 A. Yes, I did. Ah ---

9 Q. Let me ask you this: Did you ---

10 A. I was so shocked and angry and so scared, you know, and I  
11 happened to remember seeing -- you know, I told my husband and  
12 the law enforcement officers I -- that I had written a number  
13 down of -- a tag number of someone who was at the door the  
14 previous day and I believed, you know, that he was acting so  
15 suspicious that -- and -- and the way he rang the doorbell and  
16 things that he did while he was there that this could have  
17 been the gentleman that had broke ---

18 MR. POOLE: Objection, Your Honor. That calls for  
19 speculation.

20 THE COURT: All right. Sustained. Don't you speculate,  
21 ma'am.

22 THE WITNESS: Okay.

23 A. I gave them the tag number ---

24 THE COURT: Tell him what you ---

25 A. --- of the -- the car that I had seen the previous

1 morning.

2 MR. PAULING: Just beg the Court's indulgence for one  
3 moment.

4 (Brief Pause)

5 MR. PAULING: Your Honor, I have no further questions at  
6 this time.

7 THE COURT: Cross?

8 MR. POOLE: May it please the Court.

9 CROSS EXAMINATION by MR. POOLE:

12:21 P.M.

10 Q. Ms. Gallman, I've just got a few questions for you, okay?

11 A. Okay.

12 Q. Your doorbell started ringing and you said it was around  
13 8:30 that morning; that is, on the 19<sup>th</sup>? Was it around 8:30?

14 A. The 19<sup>th</sup>? I'm not sure what day it was. I just know that  
15 it was Monday. It's been three years. I don't remember the  
16 date.

17 Q. Okay. I understand.

18 A. I'm sorry.

19 Q. So, it was your day off and it was raining, and you  
20 remember that?

21 A. No, it wasn't raining. It was just drizzling and kind of  
22 cool that morning.

23 Q. Okay. And I'm trying to - to get an idea about through  
24 your door. You said you got some sort of glass that's what  
25 they call translucent?

IRA JO GALLMAN - CROSS by MR. POOLE

Page 131

1 A. It's a wooden door and it's cut glass.

2 Q. Uh-huh (affirmative).

3 A. You know, with marking on it, and you can see through it.  
4 But it's -- it's cut glass.

5 Q. Uh-huh (affirmative).

6 A. It's very common in -- in these wooden doors. It's just  
7 an insert, it's huge. You know, it's a round -- oval shaped  
8 glass.

9 Q. Okay. And is it like rough, the rough glass that you  
10 can't see clearly through?

11 A. Yes, and it's thick and it has theses little -- like  
12 stained glass windows, but it's clear.

13 Q. Okay. And it's very -- like you indicated, about an inch  
14 thick?

15 A. Yes.

16 Q. And it's impossible to see clearly through it; is that  
17 true?

18 A. You can see outlines in it, but you can't see clearly  
19 through it. No, you cannot.

20 Q. Okay. Not enough to be able to discern facial features;  
21 is that a fair statement?

22 A. Right, not at all.

23 Q. Okay. And, then, it's your testimony, then, that you,  
24 then, moved to your living room and looked through a window  
25 there by pulling back the sheers?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. Yes, I did.

2 Q. And that's when you saw an individual get into a car?

3 A. I saw him walking away and get in the car.

4 Q. Okay. And how far was that car parked from your ---

5 A. To the end of -- to the door there (indicating), like a  
6 little ---

7 Q. From here to the end of this courtroom?

8 A. Yes, uh-huh (affirmative).

9 Q. Okay. And did -- was the car parked -- let's say you're  
10 looking through your window ---

11 A. Yes.

12 Q. --- and let's say this is the car (indicating) ---

13 A. Uh-huh (affirmative).

14 Q. --- this white space right here ---

15 A. Straight.

16 Q. Was it parked straight towards you?

17 A. Straight, just -- you know, and the driver's side was  
18 towards me, just like that (indicating).

19 Q. Like this (indicating)? The driver's side was towards  
20 you like this (indicating)?

21 A. Uh-huh (affirmative).

22 Q. And you were looking at the individual get into the car?

23 A. Uh-huh (affirmative).

24 Q. And then, he opened the door on the driver's side?

25 THE COURT: Hold on one second.



IRA JO GALLMAN - CROSS by MR. POOLE

Page 133

1 (Brief pause while sirens and horns are heard outside the  
2 courthouse.)

3 A. He was ---

4 THE COURT: Let the fire engines go by.

5 THE WITNESS: Oh, excuse me.

6 THE COURT: Okay.

7 Q. (By Mr. Poole) He was getting into the car?

8 A. Yes.

9 Q. And, then, the hood of his jacket fell down ---

10 A. Yes.

11 Q. --- or was moved?

12 A. It fell to the back, and that's when I could see his  
13 face.

14 Q. Okay. And, then, he got in the car and closed the door?

15 A. He did.

16 Q. And this was on -- well, I think you testified you don't  
17 remember the date, but it was the day before ---

18 A. Right.

19 Q. --- there was an alleged break-in in your home; is that  
20 right?

21 A. Exactly, yes.

22 MR. POOLE: Okay. Thank you, Ms. Gallman.

23 THE COURT: Redirect, if any?

24 MR. PAULING: Just quickly.

25 REDIRECT EXAMINATION by MR. PAULING:

2:24 P.M.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 Q. Ms. Gallman, you were able to clear -- were you able to  
2 get a clear view of the person once you looked through your  
3 front living room window?

4 A. Yes.

5 Q. Okay. Are you certain that the Defendant is the man who  
6 you saw?

7 A. Yes.

8 Q. A hundred (100) percent?

9 A. A hundred (100) percent.

10 MR. PAULING: Thank you.

11 THE COURT: Thank you. You may step down.

12 (The witness stepped down from the witness stand at 12:25  
13 p.m.)

14 THE COURT: Any objection from her being removed from  
15 her subpoena?

16 MR. PAULING: No objection, Your Honor.

17 MR. POOLE: No objection.

18 THE COURT: All right.

19 (Whereupon, the witness was excused.)

20 THE COURT: Okay. It's about 12:30. Let's take a  
21 break. We'll start back at 2:00. That gives you plenty of  
22 time to eat. And do me a favor: Number one, do not start any  
23 type of deliberations or talk about the case. While you're at  
24 lunch, do not talk about the case with anyone, family or  
25 friends or lunch pals.

1        If anybody tries to discuss it with you, please, tell  
2        them you're on the jury and you can't discuss it. If they  
3        insist on it, get their name and I'll deal with it  
4        accordingly. You all have a very pleasant lunch and be back  
5        in the jury room at 2:00 and we'll start right up on time,  
6        okay? Thank you. Everybody else remain seated.

7        (The jury exited the courtroom for the lunch recess at  
8        12:26 p.m.)

9        THE COURT: All right, Gentlemen, anything for the  
10       record on behalf of the State?

11       MR. PAULING: Not for the State, Your Honor.

12       MR. POOLE: No, sir.

13       THE COURT: Okay. We will stand at ease until two  
14       o'clock (2:00). The Defendant is in custody; make sure he  
15       gets some lunch and access to his lawyer. Okay. Thank you.

16       MR. PAULING: Thank you, Your Honor.

17       MR. POOLE: Thank you, Your Honor.

18       (Whereupon, a luncheon recess was taken from 12:27 p.m.  
19       until 2:00 p.m.)

20       (State's Exhibit Number 29 through 31 were marked for  
21       identification.)

22       THE COURT: Thank you. Please, be seated. Anything for  
23       the record, gentlemen, before we start?

24       MR. PAULING: Not from the State, Your Honor.

25       MR. POOLE: No, sir.

1 THE COURT: All right.

2 (The jury entered the courtroom at 2:01 p.m.)

3 THE COURT: I hope you all had a pleasant lunch. Next  
4 witness, please.

5 MR. PAULING: The State would call Kenneth Gallman.

6 (Mr. Gallman steps forward to be sworn.)

7 (Whereupon,

8 KENNETH GALLMAN

9 having been first duly sworn, testified as follows:)

10 DIRECT EXAMINATION by MR. PAULING: 2:02 P.M.

11 Q. Mr. Gallman, how are you doing?

12 A. I'm doing great.

13 Q. Would you, please, state your full name for the record?

14 A. Kenneth W. Gallman.

15 Q. And sir, where do you presently reside?

16 A. . . . .

17 Q. And that's here in Cherokee County?

18 A. That's correct.

19 Q. Do you live there with your wife, Ira Jo Gallman?

20 A. That's correct.

21 Q. And how long have you lived there, sir?

22 A. Six years this month.

23 Q. So, you lived there back in November of two thousand,  
24 three (2003)?

25 A. That's correct.

KENNETH GALLMAN - DIRECT by MR. PAULING

Page 137

1 Q. Okay. And what is it that you -- you do, sir? Where are  
2 you employed?

3 A. I'm actually kind of semi-retired, but I'm working two  
4 part-time jobs just simply because I enjoy working. I work at  
5 Abrasive Belt Service and I'm also a salesman at the car lot.

6 Q. Okay. Which car lot is that, sir?

7 A. Cherokee Avenue Motors.

8 Q. Okay. And where are you retired from or semi-retired  
9 from?

10 A. Primarily the food business. I was a meat department  
11 manager for a number of years with different, varied  
12 companies.

13 Q. All right. And, sir, do -- do you recall November of two  
14 thousand, three (2003), and I guess more specifically November  
15 20<sup>th</sup>, two thousand, three (2003)?

16 A. Yes, sir, I do.

17 Q. Okay. And -- and why do you specifically recall that  
18 particular day?

19 A. On that day I was at work at Abrasive Belt Service, and  
20 somewhere in the proximity of one o'clock (1:00), my son,  
21 Mitchell, called me. And he had been to the house, our house,  
22 the prior day, on the 19<sup>th</sup>, and had left an article at the  
23 house and had gone back to retrieve that article.

24 Upon going in and opening the door, the first thing he  
25 noticed ---

1 THE COURT: No, don't tell me what he noticed. As a  
2 result of the call, what did you do?

3 A. I -- I immediately went home.

4 Q. You went -- you went home?

5 A. Right.

6 Q. When you arrived home, what did you discover?

7 A. I discovered a house that was in total disarray, windows  
8 knocked out of the kitchen area and the bay window area. I  
9 discovered a screen door that the screen was cut out of.

10 I discovered total disarray of our house, all drawers and  
11 things in cabinets, dresser drawers, whatever, were pulled out  
12 and turned upside down, debris all over the beds, including  
13 butcher knives. Later that evening, I didn't find ----

14 Q. And, I'm sorry, if I could, just stop you for a moment  
15 and just briefly -- they're in evidence, State's 11 through  
16 27. I just want you to look at those and tell me if those  
17 particular photos depict the way you found your residence when  
18 you returned on November 20<sup>th</sup>, two thousand, three (2003).

19 (Exhibits handed to the witness.)

20 (Brief pause while witness reviews photographs.)

21 A. Yes, sir, those are a very good description.

22 (Exhibits handed back to Mr. Pauling.)

23 Q. Thank you. And -- and these particular photos -- well,  
24 let me ask you this: Is your house one level or two levels?

25 A. Two levels.

KENNETH GALLMAN - DIRECT by MR. PAULING

Page 139

1 Q. Okay. And those particular photos, State's 11 through  
2 27, are those photographs of the lower level of your house?

3 A. The lower level only, yes, sir.

4 Q. Was anything disturbed in -- in -- in the upper level?

5 A. Not that I could detect.

6 Q. And I'm -- I'm sorry, I cut you off earlier.

7 A. That's quite all right.

8 Q. But let me -- let me -- let me ask you this: You  
9 testified that there were knives on the -- on the bed?

10 A. Yes, sir. On each of the beds, there was a butcher knife  
11 that had been taken from the drawer in the kitchen and  
12 discreetly placed around on each -- in each bedroom.

13 Q. And you don't normally leave your knives there, do you?

14 A. Oh, no, sir.

15 Q. Okay. Whose bedroom was -- were these knives found?

16 A. We have one bedroom that's a guest bedroom -- well, two  
17 bedrooms that are really guest bedrooms. And, then, we have a  
18 master bedroom. The knives were in the middle guest bedroom  
19 and in the master bedroom.

20 Q. Do you have -- well, I'll let you continue. I cut you  
21 off. Was there any other weapon in your -- in your home?

22 A. Yes, sir. After a great deal of investigation had been  
23 completed, and we had tried to put back the house together, as  
24 best we could, in a short period of time, then, we got ready  
25 to retire that evening.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 And, as I pulled back the sheets in the master bedroom,  
2 under the pillow was another one of my guns laying up under  
3 the pillow.

4 Q. And what type of weapon was that?

5 A. A twenty-two (22) pistol.

6 Q. Okay. Did you normally keep that gun under the pillow?

7 A. No, sir.

8 Q. Okay. In fact, where did you -- where would you keep  
9 that gun?

10 A. In the dresser drawer.

11 Q. Was -- was that weapon loaded?

12 A. Yes, sir.

13 Q. When you said the dresser drawer, was it under -- under  
14 lock and key?

15 A. No, it was not.

16 Q. Mr. Gallman, would you, please, tell the jury what items  
17 were taken from your home?

18 A. Okay. We had -- the greatest item that was removed from  
19 the home was our safe that I had in the closet there. And  
20 that safe ---

21 Q. Was it -- was it in the bedroom closet or the hall  
22 closet?

23 A. In the bed, yeah. Up until a week earlier, I had it in  
24 the hall closet. And, for whatever reason I know not, I chose  
25 to move it to the front -- our bedroom closet and had it



KENNETH GALLMAN - DIRECT by MR. PAULING

Page 141

1 moderately disguised, but, you know, not bolted down, which I  
2 probably should have.

3 But that safe contained money. It contained antique  
4 coins. It contained about six gold watches. It contained  
5 gold chains. It contained jewelry of my deceased mother, with  
6 rings with diamonds in it, that was to be passed on to my  
7 daughter and ultimately to my granddaughter.

8 It contained documents that I spent a terrific amount of  
9 time trying to get all of these documents back in our  
10 possession, get copies of them. Then, there was -- in the  
11 walk-in closet, there was places where I kept silver and  
12 copper coins, in two separate places.

13 In there, there was about three hundred and fifty (\$350)  
14 to five hundred dollars (\$500) of silver coins, which was  
15 taken. And one of the pillow cases was removed from the  
16 master bedroom bed in order to facilitate, I would think, to  
17 carry the garments and ---

18 MR. POOLE: Objection, Your Honor.

19 THE COURT: Please, don't speculate.

20 A. I thought about that too late.

21 THE COURT: That's all right. You thought about it at  
22 least.

23 Q. (By Mr. Pauling) Mr. Gallman, you said -- you said money  
24 was in the safe. Was it cash money?

25 A. Cash money.

1 Q. Okay.

2 A. It was money that my wife had set aside for buying  
3 Christmas gifts. It really was what that was for, and she had  
4 asked me to put it in the safe.

5 Q. Do you know about how money that was?

6 A. Well, it wasn't near all she would spend, but it was  
7 about four hundred (400) bucks.

8 Q. And these -- these gold watches and these gold chains  
9 that -- that you spoke of, do you know how much those were  
10 worth?

11 A. Ah ---

12 Q. Well, how much -- how much did you purchase them for, or  
13 did you purchase them?

14 A. I purchased most of them. Some of them were gifts.  
15 Most of them were very, very nice quality watches. One or two  
16 of them might have been not so expensive, but about four out  
17 of the six were very expensive watches.

18 Q. And your mother's jewelry?

19 A. My mother's jewelry was a twenty-seven (27) carat diamond  
20 ring that I had already taken and condensed and put into  
21 another setting for my daughter and put about half the  
22 diamonds in it. And this was the remaining amount of diamonds  
23 that was still mounted into the cluster. And then, I had a  
24 pink ice ring of hers and some other stuff that -- that had  
25 been left as a result of her passing.

KENNETH GALLMAN - DIRECT by MR. PAULING

Page 143

1 Q. And -- and these particular items, had you -- did you  
2 know the value? Had they ever been appraised?

3 A. Don't know that they had been individually appraised. I  
4 do know what my father paid for the cluster, but that was some  
5 oh, twenty-five (25) or thirty (30) years earlier. He paid  
6 about twenty-five hundred dollars (\$2,500) for it.

7 And I recall the night he gave it to my mother, that my  
8 daughter was a very small child then, and said -- said,  
9 "Grandma, when you pass, that ring is going to be mine." So,  
10 there was a lot of sentimentality there attached to that ring.

11 Q. And so, you were prepared to pass that on to your  
12 daughter?

13 A. Exactly. I had already passed a portion of it.

14 Q. And was this particular item covered? Were you able to  
15 get this back, this jewelry that was stolen?

16 A. Oh, you mean back from the theft process?

17 Q. That's correct.

18 A. No, sir.

19 Q. And, just briefly, these documents that you spoke of,  
20 what type of documents were they?

21 A. Insurance policies, burial plots, life insurance  
22 documents, deeds, deeds to the house, et cetera. All those  
23 things I had to get new copies of.

24 Q. And what type of safe was this?

25 A. This was a safe in the proximity of eighteen (18) to

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

KENNETH GALLMAN - DIRECT by MR. PAULING

Page 144

1 twenty-four (24) inches in width, depth, and height. It  
2 probably weighed approximately a hund -- with what was in it,  
3 probably a hundred, fifty (150), a hundred seventy-five (175)  
4 pounds.

5 Q. Were -- were there any other items that were taken from  
6 your home that you recall?

7 A. Nothing that I can come across in my mind right at  
8 present that -- that really amounts to a tremendous amount of  
9 money. There were other, a few small and varied things, but I  
10 don't recall anything really heavy that...

11 Q. You mentioned that a -- a -- that you had a gun in your  
12 bedroom that was placed under the cover ---

13 A. Right.

14 Q. --- well, the ---

15 A. The guns -- the guns I did -- those guns were taken. But  
16 they were in the safe, so, that's how they vanished too.

17 Q. So, you also had guns in the safe?

18 A. I had those -- I had three guns in the safe, and then, I  
19 had one gun that was not in the safe that I kept out.

20 Q. Okay. Mr. Gallman, I'm going to show you, for ID  
21 purposes, what's been marked State's 29, 30, and 31.

22 A. Yes, sir.

23 Q. And, if you would, look at these items.

24 THE COURT: Are those the guns there?

25 MR. PAULING: Yes, sir.

KENNETH GALLMAN - DIRECT by MR. PAULING

Page 145

1 THE WITNESS: Yes, sir.

2 THE COURT: Are they -- they don't have any bullets and  
3 they've got a safeguard on them and all of that ---

4 MR. PAULING: Yes, sir.

5 THE COURT: --- a gun lock?

6 MR. PAULING: Yes, sir.

7 THE WITNESS: Yes, sir, they're actually locked in  
8 position.

9 MR. FOWLKES: They're wrapped in Saran Wrap, Judge.

10 MR. PAULING: Yes, sir.

11 THE COURT: All right. I see.

12 Q. (By Mr. Pauling) I'd ask you to look at those particular  
13 items.

14 (Exhibits handed to the witness.)

15 (Brief pause while witness examines items.)

16 A. Yes, sir, that's the thirty-two (32) semi-automatic.

17 THE COURT: Hold it up, please.

18 (Witness complies with Court's request.)

19 THE COURT: Thank you. That's a thirty-two semi-  
20 automatic?

21 THE WITNESS: Yes, sir.

22 THE COURT: That's 29?

23 MR. PAULING: That is -- Your Honor, that is 31.

24 A. It's a thirty-eight (38) police special.

25 THE COURT: What number is that?

1 MR. PAULING: That's 29, Your Honor.

2 (Brief pause while witness retrieves item from bag.)

3 A. A thirty-eight (38) Smith-Wesson.

4 MR. PAULING: That's item 30, Your Honor.

5 THE COURT: Okay.

6 Q. (By Mr. Pauling) Thank you, Mr. Gallman.

7 A. Yes, sir.

8 Q. Now, the way those items are packaged, were they packaged  
9 that way when they were in your safe?

10 A. Yes, sir. I did that for the purpose of making an effort  
11 to keep moisture out from around them because I very rarely  
12 ever, you know, even handle them or use them very much at all.  
13 And, when I put them away, I just wrap them in Sarah Wrap.

14 Q. And you were able to recover those items?

15 A. Yes, sir.

16 Q. And how did that come about?

17 A. That came about by virtue of the fact that ---

18 THE COURT: Well, how did you get them? You gave them  
19 to you?

20 A. Who gave the guns to me?

21 THE COURT: Yes.

22 A. I -- I purchased -- I purchased ---

23 Q. I'm sorry. You recovered those guns after the burglary;  
24 is that correct?

25 A. That's correct.

KENNETH GALLMAN - CROSS by MR. POOLE

Page 147

1 Q. Okay.

2 A. And, then, I received those guns from Mr. Mike Fowlkes,  
3 the detective.

4 THE COURT: Thank you.

5 Q. (By Mr. Pauling) Thank you.

6 (Brief Pause)

7 Q. Now, you testified you had a safe. Did you have a -- a  
8 home security system?

9 A. No, sir.

10 Q. At that particular moment?

11 A. No, sir.

12 MR. PAULING: Okay. Beg the Court's indulgence.

13 (Brief Pause)

14 MR. PAULING: Your Honor, I don't have any further  
15 questions at this time.

16 THE COURT: Cross exam?

17 MR. POOLE: Just a couple of questions of Mr. Gallman.

18 CROSS EXAMINATION by MR. POOLE:

2:16 P.M.

19 Q. You said you worked where back in -- on this date, where  
20 were you employed?

21 A. On the date of this incident?

22 Q. Yes, sir.

23 A. At Abrasive Belt Service.

24 Q. Okay.

25 A. On Hyatt Street.

1 Q. Okay. And your son gave you a telephone call; is that  
2 right?

3 A. That's correct.

4 Q. Does your son -- did your son live at this address?

5 A. No, sir.

6 Q. Okay. He just went by there ---

7 A. He had visited ---

8 Q. --- to pick something up?

9 A. --- us the night prior.

10 Q. Uh-huh (affirmative).

11 A. And had left an item there that he needed to get back.

12 And he went by the house to get that item. And upon entering,  
13 found this.

14 Q. Okay. About what time did you go to work that morning?

15 A. Seven thirty (7:30).

16 Q. And what time did your wife go to work that morning?

17 A. The day of the incident, or...?

18 Q. The 20<sup>th</sup> of November, yes, sir.

19 A. The 20<sup>th</sup>? She went to work at eight o'clock (8:00).

20 Q. Okay. So, you went to work at 7:30 and she went to work  
21 at 8:00?

22 A. Yes, sir. I mean, she was to arrive at work at 8:00.

23 She probably left between 7:30 and a quarter of.

24 Q. So, you all left about the same time?

25 A. Pretty close, yeah. Probably thirty (30) minutes apart.



TARSHA LITTLEJOHN - DIRECT by MR. PAULING

Page 149

1 Q. And at what time did you get the phone call from your  
2 son?

3 A. It would be the approximate time of one o'clock (1:00).

4 Q. Okay.

5 A. Just prior to the time that I was going to be leaving at  
6 2:00.

7 MR. POOLE: Okay. Thank you, Mr. Gallman.

8 A. Yes, sir.

9 THE COURT: Redirect, if any?

10 MR. PAULING: None, Your Honor.

11 THE COURT: All right. You may step down. May he be  
12 excused from his subpoena?

13 MR. PAULING: Yes, Your Honor.

14 THE COURT: You may leave or stay. Next witness?

15 (The witness stepped down from the witness stand and was  
16 excused at 2:17 p.m.)

17 MR. PAULING: The State calls Tarsha Littlejohn.

18 THE COURT: Come on up, Ms. Littlejohn.

19 (Ms. Littlejohn steps forward to be sworn.)

20 (Whereupon,

21 TARSHA LITTLEJOHN

22 having been first duly sworn, testified as follows:)

23 DIRECT EXAMINATION by MR. PAULING:

2:18 P.M.

24 Q. Good afternoon, Ms. Littlejohn. Would you state your --  
25 your full name for the record?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

TARSHA LITTLEJOHN - DIRECT by MR. PAULING

Page 150

1 A. Tarsha Livette Littlejohn (phonetic).

2 Q. And that's Tarsha, T-a-r-s-h-a?

3 A. T-a-r-s-h-a Littlejohn.

4 Q. Thank you. Ms. Littlejohn, where do you currently  
5 reside? Where do you live?

6 A. I live at [redacted] Gaffney, South Carolina,  
7 29340.

8 Q. And that's here in Cherokee County?

9 A. Yes.

10 Q. Okay. And -- and, Ms. Littlejohn, have you lived here in  
11 Cherokee County?

12 A. All my life.

13 Q. All your life? How old are you, ma'am, if you don't  
14 mind?

15 A. I'm thirty-seven (37).

16 Q. So, you grew up here in Gaffney?

17 A. Uh-huh (affirmative).

18 Q. And went to school here?

19 A. Yes.

20 Q. Where did you graduate from school?

21 A. Gaffney -- Gaffney High School.

22 Q. Gaffney High School? Do you have other family here?

23 A. Yes.

24 Q. And do they live with you at [redacted] Road?

25 A. Yes.

- 1 Q. Okay. And who would that be?
- 2 A. My mother, Paulette (phonetic).
- 3 Q. Paulette?
- 4 A. Uh-huh (affirmative).
- 5 Q. Is your mother's name Paulette?
- 6 A. Paulette Lockhart (phonetic), uh-huh (affirmative).
- 7 Q. Paulette? It's just you and your mother?
- 8 A. Me and my mother and my children. I have two kids.
- 9 Q. Two children?
- 10 A. Uh-huh (affirmative).
- 11 Q. And boys, girls? How old are they?
- 12 A. Two girls.
- 13 Q. Two girls?
- 14 A. One just turned one (1) and the other one is seven (7).
- 15 Q. The other one is seven (7)?
- 16 A. Uh-huh (affirmative).
- 17 Q. And -- and where are you working at this time? Where are
- 18 you employed?
- 19 A. At Nestle's.
- 20 Q. Nestle? Where is Nestle?
- 21 A. It's at Old Georgia Highway (phonetic), back towards
- 22 Spartanburg on 29.
- 23 Q. Okay.
- 24 A. Okay.
- 25 Q. Now, Nestle ---

- 1 A. It's frozen food.
- 2 Q. Okay. Well, what do you do there?
- 3 A. I'm a prep weigher.
- 4 Q. A prep waiter?
- 5 A. Uh-huh (affirmative) -- prep weigher.
- 6 Q. A prep weigher?
- 7 A. Uh-huh (affirmative).
- 8 Q. And what does that mean?
- 9 A. I weigh out food and I put it in a bowl.
- 10 Q. Okay. Is it like -- is it like an assembly line sort of
- 11 thing?
- 12 A. It's like an assembly line.
- 13 Q. Okay. Now, Nestle I think candy, but this is frozen
- 14 foods?
- 15 A. Yes.
- 16 Q. Okay.
- 17 A. I deal with their frozen foods.
- 18 Q. And were you working there back in November of two
- 19 thousand, three (2003)?
- 20 A. Yes.
- 21 Q. And what were your hours back then?
- 22 A. From -- I was working from 5:00 to 3:00.
- 23 Q. Okay. And ---
- 24 A. Like I go in at 5:00 and I like leave about fifteen after
- 25 3:00 or 3:00, three o'clock (3:00).

TARSHA LITTLEJOHN - DIRECT by MR. PAULING

Page 153

1 Q. Okay. And just to clarify, 5:00 in the morning, 5:00 in  
2 the evening?

3 A. Five (5:00) in the morning.

4 Q. Five in the morning?

5 A. Uh-huh (affirmative).

6 Q. Which shift is this?

7 A. First shift.

8 Q. First shift?

9 A. Uh-huh (affirmative).

10 Q. And 5:00 a.m. till 3:00 p.m.? Would you work that same  
11 shift every time you worked?

12 A. Yes.

13 Q. Okay. And which days did you work?

14 A. I worked Monday through Saturday.

15 Q. Monday through Saturday?

16 A. Yeah, I have one day off, or two days off during the  
17 week. But I usually volunteer on my days to work.

18 Q. Okay. Do you know an individual by the name of Ricky  
19 Brannon?

20 A. Yes.

21 Q. And do you see him today?

22 A. Yes.

23 Q. Okay. Where is he?

24 A. He's right there, beside his attorney (indicating), Mr.  
25 Poole.

1 Q. Okay.

2 MR. PAULING: Your Honor, I just ask the record reflect  
3 that Ms. Littlejohn ---

4 THE COURT: She has pointed out the Defendant.

5 Q. (By Mr. Pauling) Okay. And, would you, please, tell the  
6 jury how you know Ricky Brannon?

7 A. I met him in two thousand, one (2001).

8 Q. Back in two thousand, one (2001)?

9 A. Uh-huh (affirmative), by -- by a friend, it was a  
10 girlfriend, I met him.

11 Q. Girlfriend of yours?

12 A. Yes, uh-huh (affirmative).

13 Q. Okay. And could you describe your relationship with Mr.  
14 Brannon?

15 A. Me and him was friends for a long time, and then, we got  
16 more than friends.

17 Q. Did you -- did you eventually begin dating?

18 A. Yes (inaudible) .

19 COURT REPORTER: I couldn't hear.

20 Q. And when did you begin dating?

21 THE COURT: Hold on. Ma'am, you have to speak up for  
22 me, now. What was that last sentence? What did you last say?

23 A. I said I did start dating.

24 THE COURT: Okay. Speak up. My court reporter has to  
25 hear you.

TARSHA LITTLEJOHN - DIRECT by MR. PAULING

Page 155

1 A. Okay.

2 Q. And if there's anything you don't understand, just ask me  
3 to repeat it.

4 A. Okay.

5 Q. But you -- you began dating about when?

6 A. In about I'd say November or December I started dating  
7 him. Me and him just started talking at first.

8 Q. In -- in November of two thousand, one (2001)?

9 A. Uh-huh (affirmative).

10 Q. And you began dating a short time afterwards?

11 A. Yes.

12 Q. What -- do you know where he was living at the time?

13 A. He was staying at 512 1/2 Kelly Street.

14 Q. Okay. And was he living by himself?

15 A. He was living with his aunt, Iota Lattimore (phonetic).

16 Q. Iola Lattimore?

17 A. Uh-huh (affirmative).

18 Q. Well, was he working at the time?

19 A. He was working -- during the time that I met him, he was  
20 working, at the time that I met him he was working.

21 Q. When you first began dating?

22 A. Uh-huh (affirmative), yes.

23 Q. And I'm going to kind of fast forward to November of --  
24 of two thousand, three (2003).

25 A. Okay.

1 Q. Were you still in a relationship with Mr. Brannon at that  
2 time?

3 A. We were still friends, dating, yes, Uh-huh (affirmative).

4 Q. And where was he living in November of two thousand,  
5 three (2003)?

6 A. At [redacted]

7 Q. With his aunt?

8 A. Yes, sir.

9 Q. And how do you know that?

10 A. How did I know what?

11 Q. Where he was living?

12 A. Because I was over there to his house.

13 Q. Okay. Did he own a car at the time? Do you know if he  
14 owned a car at that time?

15 A. Yeah, he was purchasing a car.

16 Q. He was purchasing a car?

17 A. Uh-huh (affirmative).

18 Q. Okay. Do you know if he owned a car at that particular  
19 time?

20 A. No, huh-uh (negative).

21 Q. In November of two thousand, three (2003), was -- was Mr.  
22 Brannon working?

23 A. He was not working during that time.

24 Q. Do you know why?

25 A. The time that he was not working, he had sued his -- his



TARSHA LITTLEJOHN - DIRECT by MR. PAULING

Page 157

1 insurance company. I mean, he thought -- well, he had got  
2 hurt. He had got hurt on his -- on his job.

3 And he sued the work people. And all I know is he was  
4 not working during that time. I guess because ---

5 THE COURT: If you know, ma'am.

6 MR. PAULING: And I'll -- I'll -- I'll move on.

7 THE COURT: Okay.

8 Q. (By Mr. Pauling) I'm going to fast forward to November  
9 19<sup>th</sup> of two thousand, three (2003). Do you recall that day?

10 A. Yeah -- yeah.

11 Q. Let me ask you -- well, let me ask you this: How were  
12 you getting to work?

13 A. I was driving my nineteen -- or two thousand, one (2001)  
14 Daewoo.

15 Q. I'm going to show you State's -- in evidence State's 4  
16 through 10 and ask you to take a look at those pictures.

17 (Exhibits handed to the witness.)

18 (Brief pause while the witness reviews photographs.)

19 Q. And, Ms. Littlejohn, do those photos accurately depict  
20 your Daewoo, your two thousand, one Daewoo?

21 A. Uh-huh (affirmative).

22 Q. And that's a "yes"?

23 A. Yes, sir.

24 Q. Now, was that the only vehicle that you -- that you  
25 owned?

1 A. Yes.

2 Q. Was -- was that -- was that your mode of transportation?

3 A. Yes.

4 Q. Is that how you got to work?

5 A. Yes.

6 Q. Okay. November 19<sup>th</sup>, two thousand, three (2003), tell the  
7 jury how you got to work.

8 A. I ---

9 Q. Did you drive to work?

10 A. No. Well -- no, I didn't drive to work.

11 Q. Would you explain to the jury how you got to work that  
12 morning?

13 A. That morning I got up and ---

14 Q. Just take -- just take your time.

15 A. I got up that morning and I took my little girl to her  
16 daycare because I always take her to daycare before I -- I  
17 drop her off at daycare, and then, I -- then, I have to drive  
18 -- I drive to work or he will drive me to work.

19 Q. And when you say, "he," who are you speaking of?

20 A. Ricky Brannon, he would drive me to work or I would drive  
21 to work and then, he'll take my car.

22 Q. And specifically that morning ---

23 A. Uh-huh (affirmative).

24 Q. --- November 19<sup>th</sup>, did he drive you to work?

25 A. Yes, I think he drove me to work.

1 Q. He drove you to work?

2 A. Uh-huh (affirmative).

3 Q. And, so, did he come to your house and then ----

4 A. No, we left from ---

5 Q. --- took you to work? You left from his house?

6 A. Uh-huh (affirmative).

7 Q. From

8 A. Yes.

9 Q. Okay. And he drove you to work?

10 A. Uh-huh (affirmative), yeah.

11 Q. Was there anyone else with you all?

12 A. My little girl.

13 Q. So, did you drop your little girl off?

14 A. We left earlier, and then, we dropped -- yeah, drive to  
15 daycare, and then, we -- she took -- I mean, we dropped her at  
16 daycare, and then, we went on to my work place.

17 Q. Okay. Nestle?

18 A. Nestle, uh-huh (affirmative).

19 Q. And which way would you go to go to Nestle? Which --  
20 which road would you take?

21 A. Twenty-nine (29).

22 Q. Highway 29?

23 A. Uh-huh (affirmative), Highway 29.

24 Q. And how would you get home? Would you -- you were on  
25 that first shift; is that correct?

- 1 A. Yes.
- 2 Q. Five (5:00) a.m. to three (3:00) p.m.?
- 3 A. Uh-huh (affirmative).
- 4 Q. Okay. And at 3:00 p.m., how -- how would you get home?
- 5 A. How would I get home?
- 6 Q. How would you get home?
- 7 A. He would come and pick me up.
- 8 Q. He, Mr. Brannon, would come pick you up?
- 9 A. Yes, sir.
- 10 Q. Now, did anyone else have access to your vehicle?
- 11 A. No.
- 12 Q. And why was it that he was taking you to work and -- and
- 13 then, he had your car? How ---
- 14 A. He told me that he had to find -- go find a job, so, I
- 15 let him have my car to go find a job.
- 16 Q. Did you know where he was going?
- 17 A. No.
- 18 Q. You understood he was going to look for a job?
- 19 A. Yes.
- 20 Q. Now, on November 20<sup>th</sup>, the next day, November 20<sup>th</sup>, two
- 21 thousand, three (2003), did the same scenario happen?
- 22 A. Yes.
- 23 Q. Is that how you got to work?
- 24 A. Uh-huh (affirmative).
- 25 Q. Did Mr. Brannon take you to work?

TARSHA LITTLEJOHN - DIRECT by MR. PAULING

Page 161

- 1 A. Yes.
- 2 Q. And drove your car?
- 3 A. Uh-huh (affirmative).
- 4 Q. Your two thousand, one (2001) Daewoo?
- 5 A. Yes.
- 6 Q. And dropped you off at Nestle?
- 7 A. Uh-huh (affirmative).
- 8 Q. And did he have your car the rest of that day?
- 9 A. Yes, sir, until three o'clock (3:00), when he'd get ready  
10 to pick me up.
- 11 Q. Okay. And specifically, on -- on that day, on November  
12 20<sup>th</sup>, two thousand, three (2003), did he pick you up?
- 13 A. Yes, sir.
- 14 Q. Mr. Brannon picked you up at your work?
- 15 A. Uh-huh (affirmative).
- 16 Q. In your car?
- 17 A. Yes.
- 18 Q. Was anyone with him at that particular time?
- 19 A. No, huh-uh (negative).
- 20 Q. And, after he picked you up from work ---
- 21 A. I'd go pick up my little girl.
- 22 Q. And you said you'd go. The two of you went together?
- 23 A. Yeah, both of us went together, yeah. Then, we went and  
24 picked up my little girl. And then, he took me home.
- 25 Q. Okay. And after he took you home, what happened?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. He said he would be back shortly, but he didn't come  
2 back.

3 Q. Okay. And -- and when he left, was he in your vehicle?

4 A. Yes.

5 Q. About what time do you recall getting home, him dropping  
6 you off at home?

7 A. About 3:30, four o'clock (4:00).

8 Q. About 3:30, four o'clock (4:00)?

9 A. Uh-huh (affirmative).

10 Q. And you said you didn't see him after he left your home?

11 A. Huh-uh (negative).

12 Q. Do you know where he was going when he left?

13 A. I guess he was going to the gym. I don't know. I don't  
14 know.

15 Q. You didn't know where he was going?

16 A. No.

17 Q. And later on that evening, were -- were you contacted by  
18 law enforcement, by the police?

19 A. Later on that -- at about -- I'd say about 5:00 or 5:30,  
20 Fowlkes came I think -- yeah, Fowlkes came, Mike Fowlkes. He  
21 came by and -- well, he came by and two other polices came by  
22 my house.

23 Then, I looked out the window, and he motioned me to come  
24 -- come to the -- to the -- to -- to his car. Then, he asked  
25 me, was my car there, and I told him that Ricky Brannon had my

1 car.

2 And, but, before then, he couldn't tell me what kind of  
3 car I had. He -- he asked me did -- what kind of car I had.

4 MR. POOLE: Objection, Your Honor, to the hearsay.

5 She's saying what the officer said to her.

6 THE COURT: I think she stated, "He asked me." She  
7 never said what he said. Don't say what the police officer  
8 said. Okay? As a result of the question, what did you tell  
9 him?

10 A. I said, "He..."

11 Q. (By Mr. Pauling) Did the -- did the investigator inquire  
12 about your car?

13 A. Yes.

14 Q. And what did he ask you?

15 THE COURT: No, sir.

16 MR. PAULING: I -- I -- I apologize, Your Honor.

17 Q. (By Mr. Pauling) As a result, of the conversation you  
18 had with the investigator, what information did you relay?

19 THE COURT: What did you tell the police officer?

20 A. I told him what kind of car I had.

21 Q. Was there any other information that you gave him?

22 A. Then, where he stayed -- where Ricky stayed at.

23 Q. You told the officer where Ricky Brannon stayed?

24 A. Uh-huh (affirmative).

25 Q. And where did you tell the officers he -- he stayed?

1 A. He stayed at 512 1/2 Kelly Street.

2 Q. Okay. Did you see Ricky Brannon after that?

3 A. No.

4 Q. Did you speak with him after that?

5 A. Not as I recall. But I might did. I don't -- I don't  
6 remember.

7 Q. Can you recall, do you know if you spoke with him?

8 A. No. It might have been the next day, but I don't know  
9 exactly.

10 Q. Did you provide a statement to law enforcement?

11 A. Yes.

12 MR. PAULING: Beg the Court's indulgence.

13 (Brief Pause)

14 MR. PAULING: No further questions at this time, Your  
15 Honor.

16 THE COURT: Cross?

17 MR. POOLE: May it please the Court.

18 CROSS EXAMINATION by MR. POOLE:

2:33 P.M.

19 Q. Ms. Littlejohn, how long have you worked at Nestle's?

20 A. For eleven -- almost eleven and a half years.

21 Q. Eleven and a half years?

22 A. Uh-huh (affirmative).

23 Q. Okay. And you work some pretty long hours, don't you?

24 A. Yes.

25 Q. Did you work these long hours back in two thousand, three



TARSHA LITTLEJOHN - CROSS by MR. POOLE

Page 165

1 (2003)?

2 A. Yes.

3 Q. And that is like Monday through Saturday from 5:00 a.m.  
4 until 3:00 p.m.?

5 A. Well, one -- one day I'll -- I'll be off, probably  
6 Monday. But I will volunteer to work, and I volunteer to  
7 work.

8 Q. So, you volunteer as much as possible?

9 A. Uh-huh (affirmative).

10 Q. Okay. And you have to get up pretty early, obviously,  
11 don't you?

12 A. Yes, uh-huh (affirmative).

13 Q. All right. How long had Ricky been borrowing your car  
14 back during this period of time?

15 (Brief Pause)

16 Q. During this period of time I mean to say?

17 A. About a month or two. I think it had been about a month  
18 or two.

19 Q. Okay. So, anywhere from four weeks to eight weeks?

20 A. Yeah.

21 Q. Okay.

22 A. I mean, I can't -- I can't give you an exact time.

23 Q. Okay. Within that period of time, let's say from two --  
24 a month or so, would the routine be basically the same between  
25 you and him?

1 A. Uh-huh (affirmative), it would be always the same.

2 Q. And that would be that he would come from his -- where he  
3 stayed to your house ---

4 A. Uh-huh (affirmative), or I would go to ---

5 Q. --- and pick ---

6 A. --- or I would spend the night with him, and he and me  
7 would go from there.

8 Q. Okay. All right. Or you would take -- or you would take  
9 -- and correct me if I'm wrong -- or you would take your  
10 daughter to his house and then, go to work?

11 A. Yes.

12 Q. Okay. Or, if you were over at his house, would your  
13 daughter be there by any chance sometimes?

14 A. Yes, uh-huh (affirmative).

15 Q. And then, you would always go to the daycare center ---

16 A. To the daycare center, and then, I would go on to work.

17 Q. Okay. Now, this daycare center, where is it located?

18 A. It's located on the way to my work place.

19 Q. Okay. And what time does it open?

20 A. It opens when -- well, she -- it's a home daycare.

21 Q. Uh-huh (affirmative).

22 A. So, whenever I get ready to take her, she would go ahead.

23 And I would drop her off, and it would be about 4:30 -- about

24 4:00 or 4:30. The most -- the -- the majority of the time it

25 was 4:30 that I would get her there. And then, I would go on

TARSHA LITTLEJOHN - CROSS by MR. POOLE

Page 167

1 to work.

2 Q. Okay. Four thirty (4:30) in the morning?

3 A. Uh-huh (affirmative).

4 Q. Okay. So, somebody is having to get up pretty early?

5 A. Yes.

6 Q. Would your child be the first one there?

7 A. Yes.

8 Q. Okay.

9 A. Uh-huh (affirmative).

10 Q. Are you still using this daycare?

11 A. Yes.

12 Q. Okay. And so, Ricky was -- had been using your car and  
13 you all were doing this for the better part of one or two  
14 months?

15 A. Uh-huh (affirmative).

16 Q. Is that a fair statement?

17 A. Yes.

18 Q. Okay. And he had been out of work during this period of  
19 time?

20 A. Yes.

21 Q. What period of time had he been out of work? Was it for  
22 a month or two?

23 A. Yeah, probably a month or two.

24 Q. Okay. And, then, each day he would come by and pick you  
25 up after work?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. Uh-huh (affirmative).

2 Q. And then, would you both go pick up your daughter at the  
3 daycare center?

4 A. Yes.

5 Q. Okay. And so, when you testified a -- a moment ago, you  
6 said on November 19 -- I wrote it down, said, "Yes, I think he  
7 drove me to work." Are you absolutely sure?

8 A. Yeah, he drove me to work.

9 Q. Okay.

10 A. If I'm going to drive, he'd drive ---

11 Q. Uh-huh (affirmative).

12 A. --- to work, and then, he'll take the car and go, and  
13 then, come back and pick me up.

14 Q. Okay. And ---

15 A. But nobody else drive my car except me or him.

16 Q. Okay. Right. But now, while he has your car, from 5:00  
17 until 3:00 ---

18 A. Yeah.

19 Q. --- he's out of your sight? You're over at Nestle's  
20 working as hard as you can?

21 A. Yes, that's true.

22 Q. And you don't know who's driving your car ---

23 A. No, I do not.

24 Q. --- while you're there working, do you?

25 A. No, I do not.

TARSHA LITTLEJOHN - CROSS by MR. POOLE

Page 169

1 Q. And you don't know if -- if Ricky is even in your car  
2 when you're in there at Nestle's working those long hours, do  
3 you?

4 A. No, sir, I don't.

5 Q. Okay. So -- and you can't say that on November 19 and  
6 20, from the hours of five o'clock (5:00), 5:00 a.m. until  
7 3:00 p.m., that he was the sole person driving your car, can  
8 you?

9 A. No, I cannot.

10 Q. And you can't even say that he was even in your car on  
11 November 19 and November 20?

12 A. Yes, I can say he was in -- in my car because he was in  
13 my car during the time that I seen him he was in my car.

14 Q. But, during -- during the time you're in there at  
15 Nestle's working hard ---

16 A. No, I do not.

17 Q. --- you don't know, whether even or not he's -- he's  
18 inside your car, do you?

19 A. That's true, Uh-huh (affirmative).

20 Q. Okay. All right.

21 MR. POOLE: Thank you, Ms. Littlejohn.

22 MR. PAULING: Just briefly, Your Honor.

23 REDIRECT EXAMINATION by MR. PAULING:

2:38 P.M.

24 Q. Ms. Littlejohn, when Mr. Brannon dropped you off at  
25 Nestle's, do you watch when he leaves?

1 A. Yes.

2 Q. You watch when he leaves?

3 A. Uh-huh (affirmative).

4 Q. So, you know he's driving your car when he leaves Nestle?

5 A. Yes.

6 Q. And, when he returns to pick you up, he's in the car?

7 A. In my car, yes.

8 Q. Is anyone else in the car?

9 A. No.

10 Q. Have you ever given anybody else permission to drive your  
11 car?

12 A. No.

13 Q. Now, you stated on cross that he had been out of work a  
14 month or two.

15 A. Uh-huh (affirmative).

16 Q. How was he supporting himself?

17 A. Well, he had a -- a settlement. There was a settlement  
18 that he got for about five or six months.

19 Q. Now, was this settlement -- what was that settlement from  
20 -- for?

21 A. From work. He had got hurt at work. It was five to six  
22 hundred dollars a month that he was getting, by the 15<sup>th</sup> or the  
23 30<sup>th</sup> of each month.

24 Q. Do you recall if he received a settlement check in  
25 November?

TARSHA LITTLEJOHN - CROSS by MR. POOLE

Page 171

1 A. I think he did, but I'm not sure. But I think he did.

2 But I ---

3 Q. You don't know?

4 A. No, I don't know that.

5 Q. Do you know if he ever ceased getting -- did he ever stop  
6 getting settlement checks?

7 A. I don't know that either.

8 Q. You don't know if he -- he no longer got settlement  
9 checks?

10 A. I know he got some, but I don't know when it stopped.

11 Q. Do you know it stopped?

12 A. No, I do not.

13 Q. You do not? Okay.

14 MR. PAULING: Thank you. No further questions.

15 THE COURT: Thank you. You may step down, ma'am.

16 (The witness stepped down from the witness stand at 3:39  
17 p.m.)

18 THE COURT: The next witness? Is Ms. Littlejohn excused  
19 from her subpoena, so, she can get some sleep?

20 MR. PAULING: Yes, Your Honor.

21 THE COURT: You can go home and get you some rest.

22 THE WITNESS: Okay.

23 (Whereupon, the witness was excused.)

24 MR. PEARSON: Your Honor, the State calls Deputy Richard  
25 Turner.

1 THE COURT: Come around.

2 (Deputy Turner steps forward to be sworn.)

3 (Whereupon,

4 DEPUTY RICHARD TURNER

5 having been first duly sworn, testified as follows:)

6 THE COURT: You okay?

7 THE WITNESS: It's a tight fit.

8 (Further Off-the-Record Comments)

9 THE COURT: Your witness.

10 DIRECT EXAMINATION by MR. PAULING: 2:40 P.M.

11 Q. Deputy Turner, could you, please, state your whole name  
12 for the record?

13 A. Richard Turner.

14 Q. And what is your occupation?

15 A. I am a deputy sheriff for the Cherokee County Sheriff's  
16 Office.

17 Q. And how long have you been employed with the Cherokee  
18 County Sheriff's Department?

19 A. Just about five (5) years. It'll be five years this  
20 month.

21 Q. All right. So, you were working there in November of two  
22 thousand and three (2003)?

23 A. Yes, sir.

24 Q. Did you have any previous law enforcement experience  
25 before working for Cherokee County?



DEPUTY RICHARD TURNER - DIRECT by MR. PAULING Page 173

1 A. I had worked for approximately six and a half (6 ½) years  
2 as a reserve officer before coming on full time.

3 Q. And, in your capacity as a -- a deputy in Cherokee  
4 County, what -- what is in your normal duties?

5 A. Okay. We have a wide variety of duties; patrol different  
6 areas of the county, also, to answer 911 calls. I -- for  
7 approximately two (2) years, I was responsible for traffic --  
8 traffic enforcement, which involves speed detection, enforcing  
9 the speed laws and DUI laws.

10 Q. Were you doing any traffic work in November of two  
11 thousand, three (2003)?

12 A. Yes, sir.

13 Q. Is one of your duties also to assist in other  
14 investigations?

15 A. Yes, sir.

16 Q. Did you ever have an occasion to be involved -- become  
17 involved in the investigation of the Defendant?

18 A. Yes, sir.

19 Q. Do you know when this was?

20 A. It was the evening of November 20<sup>th</sup> of two thousand, three  
21 (2003).

22 Q. Could you explain to the jury how you became involved in  
23 this case?

24 A. As I -- I was -- I was working my -- my shift, which was  
25 second shift, I was contacted by Detective Tim Clark of the

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 sheriff's office. And ---.

2 Q. Well, excuse me. I'm sorry. You said second shift; when  
3 is second shift?

4 A. Second shift, t that time, was from 4:00 in the afternoon  
5 to 12:00 midnight.

6 Q. Okay. So, you said you were contacted by Detective  
7 Clark. So, what happened after that?

8 A. He contacted me and he gave me a vehicle description and  
9 asked me -- said that -- that vehicle was ---

10 MR. POOLE: Well, objection, Your Honor, to hearsay.

11 THE COURT: Just, as a result of what he said, what did  
12 you do?

13 A. Okay. I went to an area and attempted to locate a  
14 vehicle.

15 Q. So, you were searching for a particular -- for a  
16 particular car basically?

17 A. Yes, sir.

18 Q. During the course of your investigation, did you ever  
19 come into contact with this car you were seeking?

20 A. Yes, sir.

21 Q. I want to show you what has been previously marked [sic]  
22 into evidence as State's Exhibit 4 through 10. Would you take  
23 a look at those pictures?

24 (Exhibits handed to witness.)

25 (Brief pause while witness reviews photographs.)

DEPUTY RICHARD TURNER - DIRECT by MR. PAULING

Page 175

1 Q. Do you recognize those pictures?

2 A. Yes, sir.

3 Q. And what are -- what are those pictures of?

4 A. These are pictures of the vehicle that I was asked to  
5 locate, to -- to attempt to locate.

6 Q. And did you locate it on the night of November 20<sup>th</sup>, two  
7 thousand, three (2003)?

8 A. Yes, sir.

9 Q. Could you, please, describe the circumstances where you  
10 actually located the vehicle and what happened after you found  
11 it?

12 A. Okay. I was patrolling an aer -- the area, and I  
13 observed a vehicle matching -- matching the description, which  
14 was the vehicle that I looked at in the pictures, traveling on  
15 Kelly Street.

16 I was traveling on Kendrick (phonetic) Street.

17 Q. Do those streets run perpendicular to one another?

18 A. Perpendicular, yes, sir. I observed the vehicle run the  
19 stop sign at Kelly and Kendrick.

20 Q. And after you observed the vehicle run the stop sign,  
21 what did you do?

22 A. I initiated a traffic stop.

23 Q. Were you able to pull over the vehicle?

24 A. Yes, sir.

25 Q. And who was -- who was in that vehicle when you pulled it

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 over?

2 A. Ricky Brannon.

3 Q. Do you see Ricky Brannon in the courtroom here today?

4 A. Yes, sir.

5 Q. Could you identify him?

6 A. He's the gentleman over there (indicating).

7 MR. PAULING: Please, let the record indicate that he  
8 identified the Defendant.

9 Q. (By Mr. Pauling) Was there anyone else in the car?

10 A. Yes, sir.

11 Q. Were you able to determine who this was?

12 A. Yes, sir. She was a young girl, approximately fifteen  
13 (15) or sixteen (16) years of age. I did -- did get her  
14 information.

15 Q. So, did you ---

16 A. Yes.

17 Q. All right. Now, after you pulled the Defendant over for  
18 a traffic stop, what did you do?

19 A. At that time, I approached the vehicle, introduced myself  
20 as a deputy sheriff with the sheriff's office, explained to  
21 Mr. Brannon, the driver of the vehicle, that I had observed  
22 him run the stop sign. And I asked him for his driver's  
23 license and proof of insurance and registration too.

24 Q. Was he able to provide those things for you?

25 A. He was able, after a time, to provide the vehicle

DEPUTY RICHARD TURNER - DIRECT by MR. PAULING Page 177

1 registration. He was not able to provide his driver's  
2 license.

3 Q. Did you issue any citations?

4 A. Yes, sir.

5 Q. What did you issue a citation for?

6 A. I issued two courtesy summons for disregarding the stop  
7 sign and for not having a driver's license in his possession.

8 Q. And after you were issuing these summons, did you do  
9 anything else? Did you send him on his way? What happened?

10 A. No, sir. At that time, I placed Mr. Brannon under arrest  
11 for -- under custodial arrest, for disregarding the stop sign  
12 and not having his driver's license in his possession.

13 Q. So, you placed him under custody for the traffic  
14 offenses?

15 A. Yes, sir.

16 Q. Could you, please, tell the jury, do you normally place  
17 people under arrest for a traffic violation?

18 A. It's -- it's probably fifty/fifty, depending on the  
19 circumstances.

20 Q. All right. Do you remember why specifically under -- in  
21 this case you detained the Defendant?

22 A. Yes, sir. It was a number of -- a number of factors  
23 involved in -- in that decision. The fact that Mr. Brannon  
24 was uncooperative with giving me his information. I was able  
25 finally to obtain the information, but also the fact that I

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 was advised earlier in the evening, from ---

2 MR. POOLE: Your Honor, I'm -- I have to object again.  
3 That's the third time he's mentioned this.

4 A. Okay.

5 THE COURT: Sustained. Disregard that last statement,  
6 ladies and gentlemen.

7 Q. (By Mr. Pauling) But you -- you detained -- you detained  
8 the Defendant?

9 A. Yes, sir.

10 Q. And, after you detained the Defendant, what did you do?

11 A. I placed him in -- in my patrol car and asked for a -- a  
12 wrecker service to come for the vehicle.

13 Q. Did any other police or officers arrive at the scene?

14 A. Yes. I contacted Detective Tim Clark and advised him  
15 that I had located the vehicle and that I had initiated a  
16 traffic stop for disregarding the stop sign.

17 MR. PAULING: Begging the Court's indulgence, Your  
18 Honor.

19 (Brief Pause)

20 Q. (By Mr. Pauling) You said the Defendant gave you the  
21 registration. Do you recall who the car was registered to?

22 A. If I recall correctly, it was Tarsha Littlejohn.

23 MR. PAULING: No further questions, Your Honor. Please,  
24 answer any questions the Defense may have of you.

25 THE COURT: Mr. Poole?

DEPUTY RICHARD TURNER - CROSS by MR. POOLE

Page 179

1 MR. POOLE: Thank you, Your Honor.

2 CROSS EXAMINATION by MR. POOLE:

2:48 P.M.

3 Q. Deputy Turner, your incident report indicates that this  
4 occurred around twenty-one, forty-five (2145).

5 A. Approximate, yes.

6 Q. Okay. And what time would that be in layman's terms?

7 A. That would be approximately 9:45 p.m.

8 Q. Okay. And, of course, it was dark at that time, wasn't  
9 it?

10 A. Yes, sir.

11 Q. There was an individual in the car that was a young girl?

12 A. Yes, sir.

13 Q. Did you find out her name?

14 A. Yes, sir.

15 Q. Did you talk to her?

16 A. Yes, sir, briefly.

17 Q. Did you follow up with any investigation or speak to her  
18 about whether -- where she had been the previous couple of  
19 days or anything like that -

20 A. No.

21 Q. --- you personally?

22 A. No, sir.

23 Q. Okay. Did you go to her home and talk to her parents?

24 A. No, sir.

25 Q. Did you find out where she lived?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. Yes, sir.

2 Q. Okay. And was that here in Cherokee County?

3 A. Yes, sir. She stated that -- that she was staying at

4

5 Q. Did you go to that home?

6 A. No, sir.

7 Q. Did you give a ticket to Mr. Brannon?

8 A. Yes, sir, I issued two -- two tickets.

9 Q. Okay. You mentioned courtesy summons; is that right?

10 A. Yes, sir.

11 Q. Now, is a courtesy summons the same thing as a uniform  
12 traffic ticket?

13 A. No -- yes, sir.

14 Q. Well, what's the difference? Why do you call one one,  
15 and one the other?

16 A. I -- I do -- I do not call them one or the other. I -- I  
17 -- I normal -- I normally refer to -- to a ticket as a  
18 courtesy summons.

19 Q. Okay. Well, if you're asked, if you routinely place  
20 people under arrest for a courtesy summons -- issuance of a  
21 courtesy summons, what would your response be?

22 A. Well, the courtesy summons in and of itself, the  
23 violation of the traffic offense, is an arrest. A courtesy  
24 summons -- a courtesy summons is issued at the discretion of  
25 the officer or a custodial arrest can be made.



DEPUTY RICHARD TURNER - CROSS by MR. POOLE

Page 181

1 Q. Do you have copies of those tickets with you today?

2 A. No, I do not have copies today.

3 Q. So, a courtesy -- would you repeat that for me one more  
4 time?

5 A. Gladly. At the time that I charge you -- that I charged  
6 Mr. Brannon ---

7 Q. Uh-huh (affirmative).

8 A. --- with the traffic offense, he -- he was, at that time,  
9 under arrest. The courtesy summons, at the discretion of the  
10 officer, can be given at the roadside and that -- that subject  
11 can be allowed to go home and then, return to court at a later  
12 date, at the court date, or they can be taken into custodial  
13 arrest, at which -- which was the case of Mr. Brannon.

14 Q. So, it's your testimony that you can place people under  
15 arrest for the issuance of a courtesy summons?

16 A. Yes -- well, the issue of the -- of -- no, being charged  
17 with a traffic offense can be, yes. That is a -- an  
18 arrestable offense.

19 Q. Has this case been -- have these cases been disposed of  
20 yet?

21 A. Yes and no. They -- would you like for me to explain the  
22 situation?

23 THE COURT: Yes, he's asked you the question.

24 A. Okay. Yes, the -- Mr. Brannon pled guilty to not having  
25 his driver's license in his possession and he was given time

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 served.

2 Mr. Brannon, then, asked for a trial, a bench trial, for  
3 the disregarding a stop sign. At which time, he was found  
4 guilty, at that time, and given time served.

5 It's come to my knowledge that he filed an appeal for --  
6 for that conviction, and currently we're awaiting a trial in  
7 Magistrate Court on the disregarding a stop sign.

8 MR. POOLE: Okay. All right. Thank you.

9 THE WITNESS: Thank you.

10 MR. PAULING: Redirect, Your Honor?

11 THE COURT: If you need to.

12 MR. PAULING: Very briefly.

13 REDIRECT EXAMINATION by MR. PAULING: 2:51 P.M.

14 Q. This juvenile you said was in the car, do you -- did  
15 someone, you or another officer, have to actually take her  
16 home or how did she leave the scene?

17 A. She was allowed -- she was allowed to walk home. It was  
18 -- the -- the house was back up at and -- and you  
19 could see it from where the intersection where we were.

20 Q. So, it was in sight -

21 A. Yes.

22 Q. -- so, she just walked home?

23 A. She was allowed to walk home, yes.

24 MR. PAULING: No further questions, Your Honor.

25 THE COURT: You may step down.

## MOTIONS &amp; MATTERS

Page 183

1 (The witness stepped down from the witness stand at 2:52  
2 p.m.)

3 THE COURT: Call your next witness.

4 MR. PAULING: Your Honor, may we approach? It's about  
5 the next witness.

6 THE COURT: Yes.

7 (Whereupon, a bench conference was had with all counsel  
8 present.)

9 THE COURT: Yes, sir?

10 (The foreman of the jury steps up to the bench.)

11 (Off-the-Record Discussion)

12 THE COURT: Mr. Foreman, how about you all stepping back  
13 to the jury room for just a second, so, Miss, stay with me,  
14 please.

15 (The jury, except for Juror Number 78, exited the  
16 courtroom at 2:53 p.m.)

17 THE COURT: Okay. All right. Let the record reflect  
18 that, at a side bar with all three lawyers - well, came back  
19 from the bench, the foreperson got my attention and told me  
20 that Juror Number 78, Ms. Barbara Scruggs, had advised him  
21 that she knew Deputy Turner.

22 I don't think he was here this morning during voir dire.  
23 I just called his name, and I assume you didn't recognize his  
24 name, but you recognize his face?

25 MS. SCRUGGS: Yes, sir. I didn't mention at the

## MOTIONS &amp; MATTERS

Page 184

1 appropriate time because I didn't recognize his name.

2 THE COURT: You recognized his face when he testified?

3 MS. SCRUGGS: Yes, sir.

4 THE COURT: She advised the foreperson that you go to  
5 church with him?

6 MS. SCRUGGS: Yes, sir.

7 THE COURT: You both go to the same church?

8 MS. SCRUGGS: Yes, sir.

9 THE COURT: And, obviously, he wasn't here during voir  
10 dire and couldn't stand up, so, she couldn't have recognized  
11 his face. And she didn't recognize his name.

12 The fact that you go to church with him, ma'am, would  
13 that in any way preclude you from being a fair and impartial  
14 juror in the trial of the case?

15 MS. SCRUGGS: It would not.

16 THE COURT: All right. Mr. Poole, I can do one of two  
17 things. She says it would not affect her; I can leave her on  
18 the jury or I can replace her with one of the alternates.  
19 It's your choice.

20 MR. POOLE: Okay. Your Honor, let me just ask -- I'll  
21 talk to my client briefly. And what's this juror's number?

22 THE COURT: Seventy-eight (78), it's Barbara Scruggs.  
23 The situation is, when we conducted voir dire for this case  
24 and I called out the names of the witnesses, including the  
25 officer, Richard Turner, who was not present in the courtroom

## MOTIONS &amp; MATTERS

Page 185

1 when -- when we did that.

2 And, obviously, she couldn't look at his face and she  
3 didn't recognize the name. When he testified, she recognized  
4 the face as a member of her church and told -- told the  
5 foreperson that.

6 MR. POOLE: Okay. Let me confer with my client.

7 THE COURT: Absolutely.

8 (Brief pause while Mr. Poole and Mr. Brannon confer.)

9 THE COURT: And you did the exact right thing. We  
10 appreciate it.

11 THE COURT: What's your pleasure?

12 MR. POOLE: After conferring with Mr. Brannon, he tells  
13 me that his choice is to use the alternate.

14 THE COURT: Very well. Now, I have two alternates. I  
15 have Ms. Blackwood and Mr. Peterson. And what I would want to  
16 do is draw randomly. I don't go with the first alternate and  
17 the second alternate. I think that's what the statute  
18 provides. Any objection on behalf -- on behalf of the State?

19 MR. PAULING: None from the State, Your Honor.

20 THE COURT: On behalf of the Defendant?

21 MR. POOLE: No, sir.

22 THE COURT: Ms. Clerk, would you randomly draw those two  
23 names and give me one?

24 MADAM CLERK: Yes, sir.

25 (Brief pause while clerk draws an alternate as directed)

## MOTIONS &amp; MATTERS

Page 186

1 by the Court.)

2 THE COURT: And the winner is?

3 MADAM CLERK: Betty Jo Blackwood.

4 THE COURT: Ms. Blackwood? Okay. I will elevate her to  
5 the jury. And, Ms. Scruggs, we certainly appreciate your  
6 willingness to serve and appreciate your honesty and bringing  
7 that to our attention. You did exactly what a good juror is  
8 supposed to do. And I'm going to excuse you at the present  
9 time and listen to the instructions from our wonderful clerk.  
10 Ms. Scruggs, thank you.

11 MS. SCRUGGS: Thank you.

12 (Off-the-Record Comments)

13 (Whereupon, Ms. Scruggs was replaced with one of the  
14 alternates, Ms. Blackwood.)

15 THE COURT: All right. Is there any objection or any  
16 comment the Defendant wants to put on the record in regards to  
17 the way that matter was handled?

18 MR. POOLE: No, sir.

19 THE COURT: Anything from the State?

20 MR. PAULING: Nothing from the State, Your Honor.

21 THE COURT: All right.

22 (The jury re-entered the courtroom at 2:59 p.m.)

23 THE COURT: Ms. Blackwell, I'm going to ask that you now  
24 join the jury. You're one of my regular jurors now. You're  
25 no longer an alternate, so, Mr. Peterson, you're all alone by

1 yourself now.

2 MR. PETERSON: I noticed.

3 (Ms. Blackwell takes a seat with the jury.)

4 THE COURT: So, the jury is not kept in the dark, Ms.  
5 Scruggs, after the gentleman testified, she recognized him as  
6 being someone that she went to church with. And he was not  
7 here when I had everybody stand up, so, she didn't recognize  
8 the name; she recognized his face.

9 And she did the right thing by telling the foreperson and  
10 he advised me. So, that we will have a fair trial, I've  
11 excused her. That's why we have alternates. So, nothing out  
12 of the ordinary. Those things sometimes come up.

13 Next witness?

14 MR. PAULING: Your Honor, the State calls Detective Tim  
15 Clark.

16 THE COURT: Come around, Detective Tim Clark.

17 (Detective Clark steps forward to be sworn.)

18 THE COURT: Do you need any more time? Are you okay?

19 MR. POOLE: Yes, sir. We're fine. Thank you.

20 THE COURT: Your witness.

21 (Whereupon,

22 DETECTIVE TIM CLARK

23 having been first duly sworn, testified as follows:)

24 DIRECT EXAMINATION by MR. PAULING:

3:04 P.M.

25 Q. Detective Clark, would you, please, state your full name

1 for the record?

2 A. Tim Clark.

3 Q. And what is your occupation?

4 A. I'm a detective with the sheriff's office.

5 Q. Which sheriff's office?

6 A. Cherokee County.

7 Q. And how long have you been -- been employed by the  
8 Cherokee County Sheriff's Department?

9 A. Eleven (11) years.

10 Q. How long have you been a detective?

11 A. Approximately two (2) years, two and a half (2½).

12 Q. And what did you do before becoming a -- a detective?

13 A. I was a lieutenant on the shift and on the road.

14 Q. Could you, please, describe for the jury some of your  
15 duties as a detective with Cherokee County?

16 A. Yes. We -- we -- we work a particular zone, about like  
17 the deputies do. We handle burglaries, rapes, shootings,  
18 stabbings, any kind -- any kind of a crime basically.

19 Q. Were you -- well, excuse me, were you working as a  
20 detective in November of two thousand, three (2003)?

21 A. Yes, sir.

22 Q. And as a -- as a detective, you testified that one of  
23 your duties is to assist or supervise investigations, correct?

24 A. Assist, yes, sir.

25 Q. Did you ever have the opportunity to assist or



DETECTIVE TIM CLARK - DIRECT by MR. PAULING

Page 189

1 participate in the investigation of the Defendant, in this  
2 case, Ricky Brannon?

3 A. Yes, sir, I did.

4 Q. Could you, please, describe for the jury how you became  
5 involved with this case?

6 A. I went to two of the locations of the victims that have  
7 been up here.

8 Q. Those are the burglaries?

9 A. That's correct.

10 Q. All right.

11 A. I went to -- forgive me for not remembering names,  
12 but ---

13 Q. Well, the two are Joy Sherrick and Mr. And Mrs. Gallman.

14 A. Ms. Sherrick. Ms. Sherrick, I did have the occasion to  
15 go to her house. I was one of the first detectives to that  
16 location.

17 Q. Okay. And you supervised the collection of evidence  
18 there?

19 A. I participated in that.

20 Q. Okay. And the Gallmans as well?

21 A. I can't remember. I don't believe I went to the  
22 Gallmans. I can't remember which one. I do know I went to  
23 Ms. Sherrick's.

24 Q. Did you have anything to do with the case on the night of  
25 November 20<sup>th</sup>, two thousand, three (2003), or the evening?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. In reference to the evening Mr. Brannon was picked up?

2 Q. Yes, sir.

3 A. Yes, sir. I went out that night and assisted Captain  
4 Fowlkes.

5 Q. And, when you say assisted Captain Fowlkes, generally,  
6 what did you do?

7 A. Like, if we have someone that we're looking for that  
8 needs to be found, then, he'll give me a phone call and I'll  
9 come out and meet up with him and we'll go out and, you know.  
10 Of course, the investigation has already started, but I'll go  
11 out and participate and assist him in any way I can.

12 Q. Mostly -- so, you're saying maybe as a team or the two of  
13 you kind of work together?

14 A. Basically, yes, sir.

15 MR. PAULING: Beg the Court's indulgence, Your Honor.

16 (Brief Pause)

17 Q. (By Mr. Pauling) Without getting into the specifics of  
18 what anybody may or may not have said, were you present when  
19 Captain Fowlkes interviewed the suspect?

20 A. Yes, sir, I was.

21 MR. PAULING: No further witness -- no further questions  
22 for this witness, Your Honor.

23 THE COURT: Cross?

24 MR. POOLE: No questions.

25 THE COURT: You may step down.

DETECTIVE TIM CLARK - DIRECT by MR. PAULING

Page 191

1 (The witness stepped down from the witness stand at 3:05  
2 p.m.)

3 THE COURT: All right. Call your next witness, and get  
4 as much out of it as you can before we have to take a break.  
5 Okay?

6 MR. PAULING: Thank you, Your Honor. The State  
7 calls ---

8 THE COURT: And what that means, Madam -- Mr.  
9 Foreperson, ladies -- ladies of the jury, there's a -- in this  
10 testimony, I have to rule on something before you all hear it,  
11 a matter of law.

12 I'm going to let him get all the testimony up until then,  
13 and then, I'll have to ask you all to step back for just a  
14 second. So, I can listen to what he's going to say and see  
15 whether or not it comes with the Rules of Evidence. And that  
16 way I can make a determination, and if it's permissible, you  
17 all will hear it. If it's not, then, it's my verdict on  
18 whether to sustain the objection that was recently made. All  
19 right. Call your witness.

20 MR. PAULING: The State calls Jimmy Henson.

21 (Investigator Henson steps forward to be sworn.)

22 (Whereupon,

23 JIMMY HENSON

24 having been first duly sworn, testified as follows:)

25 DIRECT EXAMINATION by MR. PAULING:

3:06 P.M.

1 Q. Investigator Henson, would you, please, state your full  
2 name for the record?

3 A. Jimmy Dale Henson.

4 Q. And sir, where are you currently employed?

5 A. With the Cherokee County Sheriff's Office.

6 Q. With the sheriff's office, and how long have you been  
7 with the sheriff's office -- the Cherokee County Sheriff's  
8 Office?

9 A. Going on thirty (30) years.

10 Q. Thirty (30) years?

11 A. Yes.

12 Q. How long have you been involved in law enforcement,  
13 thirty (30) years?

14 A. Yes, sir.

15 Q. Were you with any agencies prior to Cherokee County?

16 A. I was with the City of Blacksburg for about a year and a  
17 half (1 1/2), two (2) years.

18 Q. And with Cherokee County, what is it specifically -- what  
19 is your -- what do you do?

20 A. I'm a crime scene investigator and evidence technician.

21 Q. Crime scene investigator and evidence tech?

22 A. Yes, sir.

23 Q. And now, in the thirty (30) years with the Cherokee  
24 Sheriff's Department, has -- has -- has that been your only  
25 job duties, or did you do something else previous to ---

JIMMY HENSON - DIRECT by MR. PAULING

Page 193

1 A. No, sir.

2 Q. -- in the sheriff's department?

3 A. I started out at the desk in the jail, and after a year  
4 there, I went on the road, and I worked my way up to  
5 lieutenant on the road. And after that, I made detective, in  
6 1990, and worked criminal detective a couple of years.

7 And I've been in undercover narcotics for about five (5)  
8 years. And in 1995, I went to crime scene investigator.

9 Q. And what exactly are your duties with the -- excuse me,  
10 with the crime scene unit?

11 A. A crime scene investigator, I go to the crime scene  
12 itself. My job is to determine what evidence is of value to  
13 collect and preserve that evidence, take photographs of the  
14 crime scene, and do sketches of the crime scene if it's  
15 needed.

16 Q. And in -- in November two thousand, three (2003), you  
17 were in crime scene investigating?

18 A. Yes, sir, I was.

19 Q. Okay. And did you have occasion to work a burglary  
20 investigation at the home of Joy Sherrick and Kenneth and Ira  
21 Jo Gallman, this being ---

22 A. I -- I worked the crime scene investigation at Mr.  
23 Gallman's. I wasn't on the Sherrick.

24 Q. Okay. I'm sorry, at the Gallmans? And that's at  
25

1 A. Yes, sir.

2 Q. And that's here in Cherokee County?

3 A. Yes, sir.

4 Q. Would you tell the jury what process you go through in --  
5 in processing a crime scene? What -- what steps do you  
6 usually take in processing a crime scene?

7 A. To process a crime scene, when you first go on the scene,  
8 you do what is called a walk through, just walk through the  
9 crime scene and try to determine what is valuable evidence  
10 that will pertain to the case.

11 After you do your walk through, you get -- you go around  
12 and take photos and photo everything that you think is going  
13 to be pertinent in the case. After the photos, you go back  
14 and mark any items -- items of evidence and go back and re-  
15 photograph the items of evidence.

16 After you get them photographed, if you're going to do a  
17 sketch, you get your measurements for each piece of evidence.  
18 You draw your sketch out. And then, you collect the evidence,  
19 each item of evidence.

20 After it's been collected and secured individually -- you  
21 can't put items of evidence together. You have to package  
22 them individually. Once you get your items -- items of  
23 evidence collected, the way I always do, I've got a truck and  
24 I secure them in the back of my truck until I can get back to  
25 the lab with them or get them back to the evidence vault,

JIMMY HENSON - DIRECT by MR. PAULING

1       whichever place they're going to go to.

2       Q.     Just quickly, Investigator Henson, I'm going to show you  
3       items, State's Exhibits 11 through 27. I just want you to  
4       take a look at them and tell me are those photographs -- do  
5       you recognize those photographs?

6             (Exhibits handed to witness.)

7             (Brief pause while witness reviews photographs.)

8       A.     Yes, sir, I do.

9       Q.     Who took those photographs?

10      A.     I did.

11      Q.     Are those photos of the -- the Gallman residence?

12      A.     Yes, sir, they are.

13      Q.     As it appeared back in November, November 20<sup>th</sup>, two  
14      thousand, three (2003)?

15      A.     Yes, sir.

16      Q.     Did you, in fact, retrieve items from -- from the home?

17      A.     Yes, sir, I did.

18      Q.     And what type of items did you retrieve?

19      A.     Evidence number three (3) was a hair from the window sill  
20      on the outside of the window. Evidence number four (4), hair  
21      and fibers tangled together from the window sill on the  
22      outside of the window.

23             Evidence number five (5) was the hair from the window  
24      sill on the outside of the window. Evidence number six (6)  
25      was a hair from a broken glass still hanging in the window

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 frame.

2 Evidence number seven (7), a hair from the window sill  
3 inside of the residence. Evidence number one (1), a nine-inch  
4 piece of window frame. Evidence number two (2) is a six and a  
5 quarter inch piece of window frame.

6 Evidence number eight (8) is one piece of broken glass  
7 with a shoe print. Evidence number nine (9), one piece of  
8 broken glass with a shoe print. Evidence number ten (10) is  
9 another piece of broken glass with a shoe print.

10 (Brief Pause)

11 A. I believe that was all from the residence.

12 Q. Let me ask you this: Did you -- did you actually analyze  
13 this -- this hair and fiber evidence?

14 A. The hair and fiber evidence, no, sir, I do not.

15 Q. Okay. What did you do with those items?

16 A. Those items are -- are secured in individual packages and  
17 are taken to SLED, to the State Law Enforcement Division lab,  
18 by me.

19 Q. Okay. Do you recall if you were able to get any -- any  
20 fingerprints, any hand prints?

21 A. No, sir, in this case, I didn't get any fingerprints that  
22 I can recall.

23 Q. Well, did you process the -- the scene for fingerprints?

24 A. Yes, sir, I did. I processed the inside of the house,  
25 the windows that were broken and the frame, and I didn't get



JIMMY HENSON - DIRECT by MR. PAULING

Page 197

1 any identifiable fingerprints.

2 (Brief Pause)

3 MR. PAULING: Beg the Court's indulgence.

4 (Whereupon, State's Exhibit Numbers 32 through 34 were  
5 marked for identification.)

6 Q. (By Mr. Pauling) Investigator Henson, I'm going to hand  
7 you what's been marked, for ID purposes, State's Exhibits 32,  
8 33, and 34. And I'm going to ask you if you recognize those  
9 particular items?

10 (Exhibits handed to witness.)

11 (Brief pause while witness reviews exhibits.)

12 A. Yes, sir. State's Exhibit 32 is a piece of broken glass  
13 that I got, from the inside of the house window, the point of  
14 entry, where the window had been broken out on the back side  
15 of the house. This piece of glass was laying on the floor on  
16 the inside of the house.

17 And State's Exhibit 33 is another piece of broken glass,  
18 which was on the floor on the inside of the house. And  
19 State's Exhibit Number 34 is another piece of glass that was  
20 on the inside of the house on the floor.

21 Q. And -- and how did you secure those items?

22 A. On -- on glass, you can use a fingerprint powder on them  
23 and dust it just like you're dusting for fingerprints.

24 Q. And I'm sorry.

25 THE COURT: He asked you how you secured them.

JIMMY HENSON - DIRECT by MR. PAULING

Page 198

1 A. Oh, how I secured them? I secured them in these  
2 envelopes.

3 Q. Okay. And -- and -- and I'll back up. Before you  
4 secured them, did you actually process those items?

5 A. Yes, sir, I did process them.

6 Q. And what did you process them for?

7 A. I processed them for any kind of print.

8 Q. And were you able to -- to find a print?

9 A. No, sir, I wasn't.

10 Q. Well, tell me exactly how -- how you did that, what  
11 process you went through ---

12 A. Okay.

13 Q. --- with regard to the -- the glass.

14 A. Well, glass itself -- on glass itself, I dust it with  
15 fingerprint powder, just like I would be dusting for a  
16 fingerprint, a latent fingerprint.

17 Now, you can't see the prints on the glass, and there  
18 could be a latent fingerprint because once -- once a piece of  
19 glass is stepped on, especially by a -- a shoe, with a rubber  
20 bottom on it, it leaves a pattern on the glass.

21 And, once you put the fingerprint -- dust it with the  
22 fingerprint powder, this pattern will show up.

23 MR. POOLE: Your Honor, excuse me, but may we approach  
24 the bench for a moment?

25 THE COURT: Yeah.

JIMMY HENSON - DIRECT by MR. PAULING

Page 199

1 (Whereupon, a bench conference was had with all counsel  
2 present.)

3 THE COURT: Come on fellows, move along.

4 Q. (By Mr. Pauling) Investigator Henson, have you ever been  
5 qualified as an expert?

6 THE COURT: No, sir, no, sir. No, sir, that's not how  
7 you do it.

8 MR. PAULING: All right.

9 THE COURT: Ask him his education, training, and  
10 experience, please.

11 Q. (By Mr. Pauling) Sir --

12 THE COURT: And I qualify him as an expert, not somebody  
13 else.

14 MR. PAULING: I'm sorry, Your Honor.

15 THE COURT: No problem.

16 Q. (By Mr. Pauling) Investigator Henson ---

17 THE COURT: Play by the rules.

18 Q. Investigator Henson, could you, please, explain your --  
19 your -- your education, your background and training in latent  
20 print identification?

21 THE WITNESS: Do you want me to read the schools about  
22 it that I've taken?

23 THE COURT: I want you to answer his question.

24 THE WITNESS: Okay.

25 THE COURT: What education and experience do you have in

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

JIMMY HENSON - DIRECT by MR. PAULING

Page 200

1 that area?

2 A. Education and experience, it started in 1979, at the  
3 South Carolina Criminal Justice Academy. I had thirty-two  
4 (32) hours of fingerprint and crime scene investigation.

5 In 1995, I had a class, from a federal agency training  
6 counsel, in Atlanta, Georgia, in Practical Homicide  
7 Investigations, Homicide Investigation Tech -- Tactics,  
8 Procedures, and Forensic Techniques.

9 The Polaroid School of Law Enforcement Images, Crime  
10 Scene and Accident Scenes Photography; a notification and  
11 training capsule in -- in Myrtle -- Myrtle Beach I went  
12 through Practical Crime Scene Techniques; at the South  
13 Carolina Criminal Justice Academy in Columbia, Basic  
14 Fingerprints in 1996 that was forty (40) hours.

15 Greenville Technical College, Greenville, South Carolina,  
16 Forensic Pathology, and Legal Death Investigation. That was  
17 sixteen (16) hours. The South Carolina Criminal Justice  
18 Academy, in Columbia, South Carolina, Law Enforcement  
19 Photography, in June of '97, that was eighty (80) hours.

20 The South Carolina Criminal Justice Academy, in Columbia,  
21 South Carolina, ID Technician. That was a forty (40) hour  
22 class in 1997. A FBI class, at the South Carolina National  
23 Academy -- the Criminal Justice Academy in Columbia, for ID  
24 Technician, in February of '98. And that was forty (40)  
25 hours.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

JIMMY HENSON - DIRECT by MR. PAULING

Page 201

1           An FBI sponsored class at the South Carolina Criminal  
2           Justice Academy in Columbia, Latent Print Development  
3           Techniques, and that's April of '98, and the class was twenty-  
4           four (24) hours.

5           Hair Follicles, a private agency company, continuing  
6           education through the Ford Emergency Medical Services as a  
7           Emergency Crime Scene Responder. That was June of '98 for  
8           eight (8) hours.

9           An FBI sponsored class at the Spartanburg Public Safety  
10          Department, Spartanburg, South Carolina, Latent Print  
11          Identification, in December of '98, twenty-four (24) hours.  
12          An LPI (phonetic) sponsored class in International Association  
13          for Identification in South Carolina, in Columbia, South  
14          Carolina, Chemical Development and Enhancement of Latent  
15          Prints. That was in June of two thousand (2000), and that was  
16          an eight (8) hour class.

17          Legal Health Consultants, the South Carolina Coroner's  
18          Association sponsored this class, Meeting -- Meeting Legale --  
19          Legal Death Investigation and Forensic Medicine. That was  
20          sixteen (16) hours.

21          An FBI sponsored class in Columbia, put on by the  
22          International Association for the Identification Expert Rem --  
23          Courtroom Testimony. And the class was eight (8) hours. A  
24          SLED sponsored class, the International Association for  
25          Identification, in Columbia, put this on, Forensic

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

JIMMY HENSON - DIRECT by MR. PAULING

Page 202

1 Applications of DNA.

2 An FBI sponsored class, The International Association for  
3 Ident -- Identification in South Carolina sponsored this  
4 class, Proper Testimony (phonetic). The Birmingham of  
5 Jacksonville Crime Lab, the International Association for  
6 Identification sponsored the class there, Footwear -- Footwear  
7 and Tire Track Evidence, in February of two thousand, three  
8 (2003), for eight (8) hours.

9 The United States Bureau of Alcohol and Fire -- Firearms  
10 put on a class, at The International Association for  
11 Identification of South Carolina, Scene Processing. It was in  
12 June -- June -- the third of June, two thousand and three  
13 (2003), eight (8) hours.

14 Edward Husky (phonetic), from the University of North  
15 Texas, Department of Criminal Justice, put on a program at the  
16 International Association for Identification in South  
17 Carolina, a Shooting and Reconstruction Workshop. John Black,  
18 of the South Carolina SLED Division, put on a Bloodstain  
19 Pattern and Analysis class in two thousand and five (2005).

20 And Rita Rhinehart (phonetic) of SLED put on a class for  
21 DNA Evidence Identification, Collecting, and Preservation in  
22 two thousand, five (2005). In all I have a total of four  
23 hundred and forty (440) hours of -- of specific training.

24 Q. Have you been certified as an expert in a South Carolina  
25 Court before?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864.

JIMMY HENSON - DIRECT by MR. PAULING

Page 203

1 A. Yes, sir, I have.

2 Q. Have you been certified as an expert -- what have you  
3 been certified as?

4 THE COURT: What do you mean by certified? Has he been  
5 qualified by another judge as an expert in footprint  
6 identification?

7 MR. PAULING: Yes, Your Honor. I -- I -- I misspoke.

8 THE COURT: That's all right.

9 Q. (By Mr. Pauling) Have you been qualified as an expert in  
10 footwear identification?

11 A. Yes, sir, I have.

12 Q. And -- and when was that?

13 A. Footwear expert, by Judge Clary, in November of 1999.

14 Q. And how many times have you testified before, after being  
15 qualified as an expert in this field?

16 A. In footwear only?

17 Q. Yes.

18 A. Just that -- well, I've -- I've testified several times  
19 on footwear impressions, but that was the only -- just one  
20 time I've been qualified as an expert.

21 THE COURT: All right. Do you move to have him  
22 qualified as an expert?

23 MR. PAULING: Yes, Your Honor. At this time, I'd move  
24 to have Investigator Henson qualified as an expert.

25 THE COURT: Mr. Poole, you may cross examine him on his

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

JIMMY HENSON - CROSS by MR. POOLE

Page 204

1 qualifications only, if you'd like.

2 CROSS EXAMINATION by MR. POOLE:

3:25 P.M.

3 Q. Mr. Henson, you've been qualified to testify in this area  
4 one -- only one time before?

5 A. For footwear impressions, yes, sir.

6 Q. And that's prints, impressions?

7 THE COURT: Footwear impressions?

8 A. Footwear impressions, yes, sir.

9 Q. (By Mr. Poole) Okay. Is that under the title of latent  
10 print also?

11 A. It -- it would fall under the same title because, once  
12 you study latent prints and fingerprinting, the footwear  
13 impressions or printing falls into the same category. Most  
14 fingerprint experts and fingerprint technicians are able to do  
15 an analysis on footwear impressions because it's all in the  
16 same field.

17 Q. But fingerprints are very small and almost microscopic,  
18 aren't they?

19 A. Yes, sir.

20 Q. Okay.

21 A. But your footwear impressions, that's what you're looking  
22 for also, microscopic.

23 Q. I see.

24 MR. POOLE: That's all the questions I have, Your Honor.

25 THE COURT: All right. Mr. Foreman, ladies of the jury,



JIMMY HENSON - REDIRECT by MR. PAULING

Page 205

1 normally, a person cannot testify about opinions. You have to  
2 testify about things you see. You can't speculate about  
3 opinions..

4 But we do have an exception, by our rules of evidence,  
5 where someone has been qualified based on education, training,  
6 and experience, in a certain area, they can give an opinion.  
7 And I qualify this man in that field, of footprint  
8 identification, as an expert, and he will be allowed to give  
9 an opinion.

10 Now, I'll charge you, at the end of the case, you treat  
11 an opinion like any other evidence and give it whatever  
12 weight, if any, you so desire. So, just because he's an  
13 expert, you don't have to give him any more weight than you  
14 want to. But he will be allowed to give an opinion. And  
15 that's the only way we allow opinions under our rules of  
16 evidence, if they're qualified as an expert. All right, sir.

17 MR. PAULING: Thank you, Your Honor.

18 REDIRECT EXAMINATION by MR. PAULING:

3:27 P.M.

19 Q. Now, when you processed the -- the glass, were you able  
20 to lift any prints?

21 A. Yes, sir. I -- I brought prints up on these three pieces  
22 of glass. That's the reason I kept them as evidence.

23 Q. And did you compare those -- those -- those prints with  
24 any items, any other items?

25 A. Yes, I did, with a pair of I believe it was Fila tennis

1 shoes.

2 (Brief Pause)

3 (Whereupon, State's Exhibit Number 35 was marked for  
4 identification.)

5 Q. Investigator Henson, I'm going to show you what's marked,  
6 for just ID purposes, as State's Exhibit 35.

7 (Exhibit handed to witness.)

8 A. Yes, sir.

9 Q. If you'll look at those and tell me if you recognize  
10 those particular items.

11 A. Yes, sir, I do.

12 Q. Okay. And -- and what are those?

13 A. It's a pair of Fila, F-I-l-a, tennis shoes, that I sealed  
14 in these bags myself.

15 Q. And how did you come in -- in possession of those  
16 particular items?

17 A. On December the 2<sup>nd</sup>, two thousand, three (2003), Captain  
18 Mike Fowlkes brought me these tennis shoes. And I marked them  
19 as evidence twenty-one (21). They were taken from the  
20 suspect, Ricky Brannon, in the Detention Center.

21 Q. And those items -- excuse me, did you seal them in the  
22 bag?

23 A. Yes, sir, I did.

24 Q. Okay. And it's my understanding you're also the evidence  
25 tech?

JIMMY HENSON - REDIRECT by MR. PAULING

Page 207

1 A. Yes, sir.

2 Q. Okay. And, in this particular investigation, were those  
3 also your duties as evidence tech?

4 A. Yes, sir.

5 Q. Okay. Did you secure items that's marked State's 32, 33,  
6 34, and 35 into evidence?

7 A. Yes, sir.

8 Q. Okay. And were they under your -- your -- your care,  
9 control, and custody during that time?

10 A. Yes, sir, they were.

11 Q. From the time they were received until now?

12 A. Yes, sir.

13 Q. Okay. And who brought those items to court today?

14 A. I did.

15 Q. Okay. And has anyone tampered with those -- those items?

16 A. No, sir, not -- not -- not without me being present.

17 They're locked in an evidence vault and only myself and the  
18 sheriff as I know have a key to it.

19 MR. PAULING: Your Honor, at this time, I'd -- I'd move  
20 the items State's -- I'm sorry -- 32, 33, 34, and 35 be moved  
21 into evidence.

22 THE COURT: Mr. Poole?

23 (Brief Pause)

24 MR. POOLE: No objection.

25 THE COURT: Without objection.

1           (Whereupon, State's Exhibit Numbers 32, 33, 34, and 35  
2           were admitted into evidence without objection.)

3           Q.    (By Mr. Pauling) And you said on December 2<sup>nd</sup> you received  
4           State's 35?

5           A.    Yes, sir.

6           Q.    And what did you do with those items in relation to  
7           State's 32 through 34?

8           A.    Okay.

9           THE COURT:   Hold on a second. Are you ladies okay? You  
10          all okay?

11          UNIDENTIFIED FEMALE JUROR: This chair, it's broke.

12          THE COURT:   It's broke?

13          UNIDENTIFIED FEMALE JUROR: Well, it goes back.

14          THE COURT:   Do you want me to put you another chair to  
15          sit in?

16          UNIDENTIFIED FEMALE JUROR: Could you, please?

17          (Continued off-the-Record discussion related to the  
18          juror's chair being broken.)

19          (Brief pause while the juror's chair was replaced.)

20          THE COURT:   Move along.

21          MR. PAULING:   Thank you, Your Honor.

22          Q.    (By Mr. Pauling) Investigator Henson, what process did  
23          you go through to prepare State's 35, and those other items,  
24          State's 32 through 34?

25          A.    Well, I got patterns on -- on the one piece of glass that  
PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

JIMMY HENSON - REDIRECT by MR. PAULING

Page 209

1 I got out of the house. And the glass was laying on the floor  
2 and it had patterns on it.

3 I take the shoes -- well, first I just take the shoes and  
4 looked at them and compare them -- compare them with my pieces  
5 of glass to see if there's enough pattern and enough shapes,  
6 on the piece of glass, that I used, to maybe get me a starting  
7 point for the shoes.

8 If I determine there are, then, I go in and compare it to  
9 the pattern on the piece of glass, and look at the pattern  
10 that's on the bottom of the shoes. To help me with this, if  
11 you'll notice, the bottom of the shoes are black, I rolled  
12 printer's ink, on the bottom of the shoes, it's just on a  
13 roller, roll it up the bottom of the shoe and make an  
14 impression of this pattern (indicating) onto a white piece of  
15 paper.

16 Q. And -- and, then, what did you do?

17 A. Then, I can make a poster board with it.

18 Q. Okay.

19 (Brief Pause)

20 (Whereupon, State's Exhibit Number 36 was marked for  
21 identification.)

22 THE COURT: I thought we had all of that marked,  
23 fellows.

24 MR. PAULING: Your Honor -- Your Honor, we didn't get to  
25 these, and I knew that was coming up, and I didn't know how

1 much I was going to be able to get to at that point. I  
2 apologize.

3 THE COURT: That's all right. Go ahead. I just -- you  
4 know I fuss.

5 Q. (By Mr. Pauling) Investigator Henson, I'm going to show  
6 you what's been marked for ID purposes as State's Exhibit 36  
7 and ask you if you recognize that item.

8 (Exhibit handed to witness.)

9 A. Yes, sir, I do. It's a -- a transparency that I made  
10 from the white -- once I made the -- the shoe print onto a  
11 white piece of paper, I put it in a copy machine and put a --  
12 a clear sheet in the paper tray and make an impression of the  
13 shoe on this clear sheet.

14 Q. Okay. You actually made that -- that particular  
15 transparency?

16 A. Yes, sir, I did.

17 Q. I'm going to show you what's -- what's been marked as  
18 State's 28 for ID purposes.

19 (Exhibit handed to witness.)

20 A. Okay.

21 Q. And ask if you recognize that particular item?

22 A. Yes, sir, I do.

23 Q. Okay. And what is that?

24 A. This is a poster board that I made for jury purposes.

25 This is of the shoe and the impression of the shoe on a piece

JIMMY HENSON - REDIRECT by MR. PAULING

Page 211

1 of glass -- a photo of the piece of glass that I got out of  
2 the residence.

3 (Exhibit shown to Mr. Poole.)

4 MR. POOLE: No objection.

5 MR. PAULING: Your Honor, we'd offer State's Exhibits 36  
6 and 28 into evidence.

7 THE COURT: Without objection.

8 (Whereupon, State's Exhibit Numbers 28 and 36 were  
9 admitted into evidence without objection.)

10 Q. (By Mr. Pauling) Now, Investigator Henson, would it --  
11 would it be easier to use the transparency to describe your  
12 analysis?

13 A. Probably both of them.

14 Q. Both of them? Would you step down?

15 (The witness steps down from the witness stand.)

16 THE COURT: We're going to bring it up on the screen,  
17 so, I assume that's what you want him to do, go down and  
18 testify?

19 MR. PAULING: Yes, Your Honor.

20 (Off-the-Record Comments)

21 THE COURT: You all do it however. This is your -- your  
22 witness.

23 (Off-the-Record Comments)

24 (Brief pause while the projector and the screen are  
25 readied for viewing the exhibits.)

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 Q. (By Mr. Pauling) Investigator Henson, explain to the jury  
2 State's 28 and how you came to prepare that.

3 THE COURT: Mr. Poole, you want to come on around, so,  
4 you can see it?

5 MR. POOLE: Yes, sir.

6 (Mr. Poole moves to see the projected exhibit on  
7 overhead.)

8 A. This is a -- a photograph of a piece of glass that I got  
9 from underneath the window sill that was broken into the  
10 house.

11 THE COURT: Speak up. I can't hear now.

12 A. Okay. This is a photograph of the piece of glass that I  
13 got from inside the house.

14 Q. (By Mr. Pauling) And I'm sorry to interrupt. Is that --  
15 which item is that? Is that State's Exhibit...?

16  
17 A. Thirty-two (32).

18 Q. Okay. Which item are you talking about?

19 A. State's Exhibit 32.

20 Q. Exhibit 32? Okay.

21 A. Okay. At the house, when I dusted for fingerprints, this  
22 is what came up, this pattern. Okay. So, I secured that in  
23 my truck. When I get it back to the lab -- and like I said,  
24 on December 2<sup>nd</sup> was it, Captain Fowlkes brought me the tennis  
25 shoes and said, "This is the suspect in the case."



1           So, I took the tennis shoe and first looked at the tennis  
2 shoes to see, you know, "Have I got enough pattern on this  
3 piece of glass, enough shapes on this piece of glass, that I  
4 can even relate it to the tennis shoes?" And I did.

5           So, then, I took the tennis shoes, inked the bottom of it  
6 and made this impression on a white piece of paper. And then,  
7 I sat down and started looking at my shapes and patterns and  
8 how the shapes and patterns are -- are related to each other,  
9 okay?

10           First, I had to have a starting point. And a starting  
11 point, I found this "V" (indicating) on the bottom of the  
12 shoe. It looks like a "V," okay? So, I come back to my piece  
13 of glass and start hunting for this "V," and I got it right  
14 here (phonetic).

15           And you can see the number 1, and number 2 is the -- the  
16 "V" shape. Two is the "V" shape here (indicating).

17           THE COURT: Can all of my jurors see that? Ma'am?

18           UNIDENTIFIED FEMALE JUROR: (Nods affirmatively.)

19           THE COURT: Okay.

20           A. Once you get a starting point, you've got to look and  
21 say, "Well, are the shapes and the patterns and -- and  
22 relative -- relatively at the same place, on the piece of  
23 glass, as they are on the shoe or the shoe print?"

24           So, I get another point. I go to the back and maybe go  
25 down -- I'll go back to one (1) go to one. Number one (1) has

1 a little round dot, okay? Number one is a little round dot.  
2 So, is this in relatively the same place on the piece of glass  
3 that it is on the shoe? And yes, it is.

4 When you come out from the "V" to the round dot, and come  
5 from the "V" to the round dot. And I -- I just keep going on  
6 like that, okay? Let's go from the "V" to Number three (3).

7 If you go from the "V" to Number three (3) on here, on  
8 the shoe pattern, you have another round dot. And you can  
9 barely see the triangle that's started there and the triangle  
10 is here (indicating), around the round dot.

11 And you just -- I just keep going like that until I get  
12 most of the points that I can get, or most of the -- the same  
13 class characteristics that would put this shoe, or a shoe  
14 that's just like this one, with the same pattern on it, as the  
15 ones that made the pattern on this piece of glass that was  
16 inside the house.

17 I cannot say that this is the shoe because I don't have  
18 any identifying points on it. If I had -- if this shoe, and  
19 these places had nicks or cuts in it -- and everybody that  
20 wears shoes -- there's probably thousands of these patterns,  
21 okay, out here on the street.

22 But, when you wear a shoe, you get nicks and cuts on the  
23 bottom of it. And I can go back and compare the nicks and the  
24 cuts, from this piece of glass where I raised the print, to  
25 the nicks and the cuts on the bottom of this shoe and say,

JIMMY HENSON - REDIRECT by MR. PAULING

Page 215

1 "Yes, that's definitely the shoe that did this."

2 In this case, I don't have those nicks and cuts that I  
3 can go by. I can say that this class pattern is the same  
4 class pattern that's on the piece of glass.

5 THE COURT: Thank you.

6 MR. PAULING: Thank you, Investigator Henson.

7 THE COURT: All right. You may have a seat now. Do you  
8 need him back down?

9 MR. PAULING: I'm going to need him back over here.

10 Q. (By Mr. Pauling) Did you do any further analysis?

11 A. Yes, sir, I did on the transparency.

12 (State's Exhibit Number 36 displayed on overhead.)

13 MR. PAULING: Beg the Court's indulgence. I'm just  
14 trying to get it -- get it on here.

15 THE COURT: Do you know how to work that thing?

16 MR. PAULING: I was told to hit, "base" and I'm pressing  
17 as hard as I can, Judge.

18 THE COURT: Ms. Clerk, do you know how to work it other  
19 than hit "base"?

20 (Off-the-Record Discussion continued about working the  
21 projector. Madam Clerk assisted with the projector.)

22 THE COURT: As you practice law for a while, first --  
23 one of the first things you learn, before you start your case,  
24 is how to work all the equipment. It is embarrassing to get  
25 up there and you can't make it work.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 MR. PAULING: Especially when it's that easy to figure  
2 out, Judge.

3 THE COURT: What did you have to do? Hit "base"?

4 MADAM CLERK: No.

5 MR. PAULING: I guess there was another switch. I was  
6 told to hit base.

7 THE COURT: Very good. Go ahead.

8 MR. PAULING: Thank you, Your Honor.

9 Q. (By Mr. Pauling) Investigator Henson, that's State's 36;  
10 is that correct?

11 A. It's State's Exhibit 36.

12 Q. And what did you do next?

13 A. I went on -- I did the copy of the -- the shoe print  
14 itself. And I noticed on -- on my piece of glass, as I was  
15 analyzing it, some of the triangle pattern, on my piece of  
16 glass -- and it may show up on here -- some of my triangle  
17 pattern on the piece of glass were kind of in the form of a  
18 star shape, okay?

19 So, I -- as I was sitting and looking at this, you know,  
20 where did this star shape come from? So, I got to analyzing  
21 it, and laying my piece of glass down on it (demonstrates).  
22 And the -- and the star shapes were going to come from the  
23 movement of the foot.

24 If you'll notice, notice this shape there to here  
25 (indicating) and the shape there to here (indicating), and

JIMMY HENSON - REDIRECT by MR. PAULING

Page 217

1 watch it slide right into this triangle formation here  
2 (demonstrates). And they'll slide right in perfect, okay?

3 So, that's the foot down one time, okay? And you'll  
4 notice we have a part sticking out here (indicating), and  
5 you've got another shaded area here (indicating) that's not  
6 lining up on the glass.

7 When the foot moves, it's going to bring the other parts  
8 into -- into play with the triangle on the bottom of the shoe  
9 (demonstrates). See how this star pattern is right here  
10 (indicating) on this one? When the foot moved, and stepped  
11 back down again, it stepped right there on that triangle  
12 (demonstrates).

13 And each time the foot moved -- and I got three different  
14 positions that the foot moved on this piece of glass, and each  
15 time that the foot moved, it made a different pattern.

16 If you'll watch the shaded areas here (indicating) and  
17 the shaded areas here (indicating), they'll fit right into  
18 these triangles (demonstrates).

19 And all of this is -- is a matter of sitting down and  
20 studying this thing and taking the shapes of your pattern and  
21 studying it and moving the piece of glass around from  
22 different angles. You just have to -- to study it.

23 Q. Thank you. Take your seat.

24 (The witness returned to the witness stand.)

25 Q. And I just have a few more questions.

JIMMY HENSON - REDIRECT by MR. PAULING

Page 218

1 THE COURT: How about working on turning it on and off,  
2 Mr. Pauling.

3 (Mr. Pauling turned off the projector.)

4 MR. PAULING: Thank you, Your Honor.

5 THE COURT: Ladies and gentlemen, I -- I have to pick on  
6 my lawyers every now and then. They go to law school, and get  
7 all these parts, and they don't have to cut the thing on and  
8 off.

9 Q. (By Mr. Pauling) Just a few more questions. Investigator  
10 Henson, we were talking about the patterns on the shoes. And  
11 you testified that there are several shoes that have similar  
12 patterns?

13 A. Yes, sir.

14 Q. Okay. If you have a shoe width -- two shoes, with a  
15 similar pattern, but they're different sizes. Does -- does  
16 that make a difference in your analysis as far as -- does that  
17 make a difference?

18 A. Yes, sir, it would. The -- the star patterns or the  
19 triangle pattern on the bottom of the shoe, if the shoe was  
20 larger or smaller, they would be closer together or farther  
21 apart.

22 Q. So, if it was -- and I don't know what size shoes they  
23 were, but if it were a smaller shoe, what would you expect to  
24 see as far as the pattern?

25 A. Well, the smaller the shoe, this pattern would be more

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

JIMMY HENSON - REDIRECT by MR. PAULING

Page 219

1 concentrated, this triangle pattern would be closer to each  
2 other.

3 Q. And a larger shoe?

4 A. A larger shoe, they would be farther apart.

5 Q. Would you expect two different shoes, the same pattern,  
6 different -- different sizes to line up like you demonstrated?

7 A. Different ---

8 Q. I'm -- I'm -- I'm sorry. I made it more complicated than  
9 I needed to. If you had two different -- two shoes, with the  
10 same pattern, but different sizes, would you expect them to  
11 make the same print?

12 A. In order to line it up like this did?

13 Q. That's correct.

14 A. No, sir, I wouldn't, not -- not two different sizes.

15 Q. Okay. Based on your analysis of the -- of the print that  
16 you retrieved, from the Gallman home, and the -- the shoes  
17 that were retrieved from the Defendant, do you have an opinion  
18 as to the prints that were left on the pieces of glass in the  
19 Gallman home? Do you have an opinion about what made those  
20 prints?

21 A. Do I have opinion? Yes, sir. My opinion is that these  
22 shoes made that print (indicating).

23 Q. Those shoes made that print?

24 A. Yes, sir.

25 MR. PAULING: No further questions at this time, Your

1 Honor.

2 THE COURT: Cross?

3 RECROSS EXAMINATION by MR. POOLE:

3:49 P.M.

4 Q. Investigator Henson, let me see if I understand. A moment  
5 ago, when you were standing and talking to the jury about this  
6 Exhibit here, you said ---

7 THE COURT: Which is exhibit what for the record?

8 (Brief pause while Mr. Poole examines exhibit.)

9 MR. POOLE: I need my glasses. Twenty-eight (28).

10 Q. (By Mr. Poole) Did you not state that you could not  
11 testify that this shoe caused this print?

12 A. I can't testi -- I can't say absolutely that that shoe  
13 made that print, absolutely not. I can say that -- that this  
14 pattern on this shoe matches the pattern on that piece of  
15 glass.

16 Q. Okay. But your last statement was that your opinion  
17 these shoes made this print?

18 A. I think they did.

19 Q. Okay.

20 A. In my opinion.

21 Q. Okay. But do you remember telling the jury that you  
22 can't say for certain that this shoe made this print?

23 A. As far as just characteristics that I can pinpoint, I  
24 can't say that.

25 Q. Okay. Well, what size shoes are those?



1 A. I'm not sure.

2 (Brief pause while the witness examines exhibit.)

3 A. A U.S. nine and a half (9½)

4 Q. Nine and a half (9½)?

5 A. Yes, sir.

6 Q. Fila?

7 A. Fila, F-I-l-a.

8 Q. Tennis shoes or athletic shoes, right?

9 A. Yes, sir.

10 Q. And didn't you testify also that -- that, since these had  
11 no cuts or nicks, that you also could not say that, that shoe  
12 made this print?

13 A. That's -- that's an identifying characteristic that I'm  
14 talking about, cuts and nicks. Without it, you know, this  
15 pattern is like every other pattern, on this same type of  
16 shoe, this same size shoe, the pattern matches all of them.

17 Q. Okay. And do you -- do you have any idea as to, in two  
18 thousand, three (2003), or now for that matter, how much of a  
19 market share Fila may have in the athletic footwear market in  
20 the United States?

21 A. No, sir, I do not.

22 Q. Have you ever done this type of work with Adidas?

23 A. I've done it with a couple of other kinds of pairs of  
24 shoes, but I'm not sure what the name brand are right off  
25 hand.

1 Q. Well, I'm talking about have you ever done any work with  
2 -- with famous name athletic shoes; Adidas, Nike, Reebok?

3 A. I've -- I've -- yeah, I'm sure I have. I've looked at a  
4 -- a lot of them.

5 Q. Have you ever testified to it?

6 A. Ah ---

7 Q. Athletic footwear, a big name manufacturing athletic  
8 footwear?

9 A. A couple of times.

10 Q. A couple of times?

11 A. Two or three times, yeah.

12 Q. All right. Have you been qualified as an expert only one  
13 time in this area?

14 A. One time, yes, sir.

15 Q. So, is it fair -- was that athletic footwear in that  
16 case?

17 A. Yes, sir, it was.

18 Q. Okay. Well, what brand name was it?

19 A. I don't recall.

20 Q. All right. As far as the big name brand wear athletic  
21 footwear is concerned, do you have any idea how much is sold?  
22 Like these types of shoes (indicating) are sold throughout the  
23 United States, not the market share, but how many are sold  
24 every year?

25 A. No, sir.

JIMMY HENSON - RECROSS by MR. POOLE

Page 223

1 Q. Do you have any idea how many sold in Cherokee County?

2 MR. PAULING: Objection, Your Honor. I mean ---

3 THE COURT: What's your objection?

4 MR. PAULING: Asked and answered. I think we've been  
5 over this as far as ---

6 THE COURT: Overruled. Go ahead. He's on cross; I'll  
7 give him a lot of leeway.

8 A. No, sir, I do not know how many are sold in Cherokee  
9 County.

10 Q. And are there any footwear outlets over here in Cherokee  
11 County?

12 A. Oh, yes, sir.

13 Q. And where are they located?

14 A. Oh, gosh, I know there's some out at the Gaffney Prime  
15 Outlets probably. There used to be one on the boulevard. I'm  
16 not sure if still there or not, but there's several in the  
17 county.

18 Q. Okay. And have you ever been in there to see how many  
19 racks of Fila shoes are there for sale?

20 A. No, sir.

21 Q. And, in fact, Officer, you've probably never gone in  
22 there to look and compare as to which athletic footwear is  
23 predominant; is that a fair statement? Have you ever done  
24 that?

25 A. Predominant? No, sir.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

JIMMY HENSON - REDIRECT by MR. PAULING

Page 224

1 Q. Okay. And you don't have any idea as to the volume of  
2 sales of all athletic shoes in Cherokee County, do you?

3 A. No, sir.

4 (Brief Pause)

5 Q. And, in your role as the evidence manager, for cases like  
6 this, you testified that some hair and fiber in this case was  
7 taken to SLED; is that right?

8 A. Yes, sir.

9 Q. And that evidence was not linked to Ricky Brannon, was  
10 it?

11 A. I haven't seen all of the reports on it; I couldn't say.  
12 I -- I don't know.

13 Q. In the same vein, didn't you testify that there were no  
14 fingerprints?

15 A. No, sir.

16 Q. There were no fingerprints found?

17 A. I did not find any identifiable fingerprints.

18 MR. POOLE: Okay. Thank you.

19 THE COURT: Redirect?

20 MR. PAULING: Just briefly, Your Honor.

21 THE COURT: If you have to.

22 FURTHER REDIRECT EXAMINATION by MR. PAULING: 3:55 P.M.

23 Q. You said you didn't find any identifiable prints; could  
24 you explain that?

25 A. You -- you can find smears of prints, maybe prints on

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

JIMMY HENSON - REDIRECT by MR. PAULING

Page 225

1 prints that -- that you cannot read. All prints aren't --  
2 aren't identifiable. I've got to be able to -- to read the  
3 ridge detail and find identifying characteristic of that print  
4 to be able to read the print. And sometimes they're just --  
5 they come up good enough that you can read them.

6 Q. And -- and do you know if Fila tennis shoes are -- are  
7 more famous than Nike or Adidas?

8 A. No, sir, I don't.

9 Q. But those are Fila shoes?

10 A. Yes, sir.

11 MR. PAULING: No further questions, Your Honor.

12 THE COURT: You may step down.

13 (The witness stepped down from the witness stand at 3:59  
14 p.m.)

15 THE COURT: How many more witnesses do you have?

16 MR. PAULING: I have two, Your Honor, but one is ---

17 THE COURT: Okay. Don't -- don't make a representation.  
18 I know you were saying they're short. And I have lawyers  
19 telling me they're short and they end up being long. I was a  
20 lawyer for years. Let's take a little break. Do any of you  
21 all smoke? Do I have any smokers? Do you need to take a  
22 smoke?

23 UNIDENTIFIED MALE JUROR: Yes, sir.

24 THE COURT: Sir?

25 UNIDENTIFIED MALE JUROR: It would be -- it would be nice.

1           THE COURT: All right. I'll get somebody to walk down  
2 with you to take a smoke. You all don't discuss the case and  
3 we'll get back with you.

4           Let me -- Mr. Foreman, it looks like we won't be through  
5 with the testimony and all until about 4:30, quarter to 5:00  
6 or 5:00-ish. After we do that, we have to -- the lawyers have  
7 to argue and then, I have to charge.

8           So, you probably wouldn't get the case till 6:00-ish.  
9 We'll probably just come back tomorrow and finish up. You  
10 don't want to stay here late tonight, do you?

11           (Off-the-record discussion between the jury members.)

12           THE COURT: Well, here's what we'll do: We'll -- we'll  
13 come back either 9:30 or 10:00 in the morning and I'll have  
14 you some doughnuts or -- along hot coffee and maybe some  
15 sausage biscuits or something. We'll get the morning started,  
16 and then, you'll be fresh and we'll go right on and finish.

17           If I was fresh, from a couple of other trials, I might  
18 ask you to work late tonight, but quite frankly, I've been  
19 worn out after the last week. I went seven straight days and  
20 then, drove up here Monday night. So, I'm beat. Like I said,  
21 I took Sunday off.

22           So, let's do that, if that's okay with you all. So,  
23 don't deliberate; just go back and enjoy talking to each other  
24 and take a smoke, if you want to, and we'll start back up in  
25 about ten minutes, and we'll finish the testimony today.

JIMMY HENSON - REDIRECT by MR. PAULING

Page 227

1 Then, we'll break for the evening and come back tomorrow. Is  
2 that okay?

3 (The jury exited the courtroom at 3:59 p.m.)

4 THE COURT: Mr. Poole, anything for the record before we  
5 break?

6 MR. POOLE: No, sir.

7 THE COURT: Mr. Pauling?

8 MR. PAULING: Not for the State, Your Honor.

9 THE COURT: I hope you understand I was just cutting up  
10 with you.

11 MR. PAULING: I do, Your Honor. I understand.

12 (Off-the-Record Comments)

13 (Whereupon, a recess was taken from 3:59 p.m. till 4:10  
14 p.m.)

15 (Off-the-Record Comments)

16 THE COURT: Anything for the record we start, Mr. Poole?

17 MR. POOLE: No, sir.

18 THE COURT: You okay?

19 MR. PAULING: Nothing from the State, Your Honor.

20 THE COURT: All right.

21 (The jury entered the courtroom at 4:11 p.m.)

22 (Off-the-Record Comments)

23 THE COURT: I appreciate you all putting up with a  
24 little humor this afternoon. Next witness?

25 MR. PAULING: The State would call Mike Fowlkes.

MIKE FOWLKES - DIRECT by MR. PAULING

Page 228

1 THE COURT: Come around, Mr. Fowlkes.

2 (Captain Fowlkes steps forward to be sworn.)

3 (Whereupon,

4 MIKE FOWLKES

5 having been first duly sworn, testified as follows:)

6 DIRECT EXAMINATION by MR. PAULING:

4:12 P.M.

7 Q. Investigator Fowlkes, please, state your name for the  
8 record.

9 A. It's Mike Fowlkes.

10 Q. And where are you currently employed?

11 A. I'm a captain with the Cherokee County Sheriff's  
12 Department.

13 Q. And how long have you been with the sheriff's department?

14 A. Sixteen (16) years.

15 Q. Have you been with any other law enforcement agency?

16 A. The Spartanburg County Sheriff's Office.

17 Q. Prior to obviously?

18 A. Yes, sir.

19 Q. How long were you with the Cherokee -- I'm sorry, with  
20 Spartanburg County?

21 A. A year and a half.

22 Q. And, as a captain with the Cherokee County Sheriff's  
23 Office, what are your duties? Are you a supervisor?

24 A. Yeah, I am. I'm a supervisor in criminal investigations,  
25 which covers all aspects of investigations except narcotics.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864



MIKE FOWLKES - DIRECT by MR. PAULING

Page 229

1 And we have our own narcotics division.

2 Q. And you gave me your prior work history in law  
3 enforcement. Have you attended the police academy?

4 A. I have.

5 Q. Okay. And when was that?

6 A. In 1989.

7 Q. Okay. Did you graduate from the police academy?

8 A. Yes.

9 Q. And any other training you have in law enforcement?

10 A. I've had numerous school classes, conducted by the  
11 Criminal Justice Academy, as well as homicide reconstruction,  
12 arson school, sponsored by the SLED arson unit, and -- which  
13 involved reconstruction of crime scenes and interviewing  
14 suspects, interviewing children of sexual assault, a number of  
15 hours at the Criminal Justice Academy.

16 Q. Okay. Thank you. And -- and were you involved in a  
17 burglary investigation back in November of two thousand, three  
18 (2003)?

19 A. I was.

20 Q. Was that an investigation regarding a burglary on  
21 November 19<sup>th</sup> at ?

22 A. It was.

23 Q. Did you also investigate a burglary at  
24 on November 20<sup>th</sup> of '03?

25 A. Yes, sir, I did.

MIKE FOWLKES - DIRECT by MR. PAULING

Page 230

1 Q. Okay. And how did you become involved in that particular  
2 investigation?

3 A. The burglary at the Sherrick's residence, on  
4 I was on the 19<sup>th</sup>, and I was actually involved in another  
5 case when that burglary call actually came in, so, I had two  
6 detectives go to that area, along with an officer that  
7 responded to the 911 call.

8 And, after I completed the case that I was working on, I  
9 got the information from the detective that was there and  
10 became the case agent on that case with the Sherricks. And  
11 then -- and then, the Gallman's burglary after the next day  
12 involving the same vehicle description.

13 Q. Okay. And these two residences, are you -- you're  
14 familiar with Cherokee County?

15 A. Very.

16 Q. Okay. Have you patrolled this area before?

17 A. Yes, sir.

18 Q. Okay. And at [redacted] and [redacted]  
19 Lane, where are they in relation to one another?

20 A. [redacted] both -- both of them would be  
21 considered the [redacted] Community. [redacted] is off  
22 of Twin Bridge Road (phonetic).

23 THE COURT: What kind of bridge?

24 A. Twin Bridge Road.

25 THE COURT: Twin Bridge?

MIKE FOWLKES - DIRECT by MR. PAULING

Page 231

1 A. It's probably about a mile, a mile and a half from C  
2 and Church. It sits just off of Highway 154, Boiling Springs  
3 Highway. And Candlewood Lane is in the Shalimar Subdivision,  
4 which is also off of -- turns off of Boiling Springs Highway,  
5 back towards the city limits of Gaffney. I would say it's, if  
6 I had to guess, seven to eight miles apart or less.

7 Q. And, during this investigation, did you -- of these two  
8 burglaries, did you develop a suspect?

9 A. I did, yes, sir.

10 Q. Okay. And how did that come about?

11 A. By -- the burglary that occurred on the 20<sup>th</sup>, at the  
12 Gallman residence, Ms. Gallman was able to obtain a tag number  
13 of the vehicle of a sus -- of a vehicle that had been  
14 described the day before at the Sherrick residence, and we  
15 were able to find Ms. Tarsha Littlejohn, who was the owner of,  
16 that vehicle.

17 Q. Do you remember what -- I'm sorry, do you remember what  
18 type of vehicle it was?

19 A. It was a two thousand, one (2001) Daewoo.

20 Q. I'm sorry I had to stop you. You spoke with Ms.  
21 Littlejohn?

22 A. I spoke with Ms. Littlejohn, and basically -- basically  
23 was able to run that tag, get her information and her address  
24 at [redacted], located her there, and she indicated  
25 that she did own such a vehicle and that Ricky Brannon was

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 232

1 operating it, and it was her boyfriend, her present boy --  
2 boyfriend.

3 Q. And, after having gathered that information, did you have  
4 an interview [sic] to -- to come into contact with Ricky  
5 Brannon?

6 A. Yes. Ms. Littlejohn, Tarsha Littlejohn, told us that  
7 Ricky Brannon -- this was on the evening of the 20<sup>th</sup> ---

8 MR. POOLE: Your Honor, I object to what somebody told  
9 him ---

10 THE COURT: As a result of what she told you, what did  
11 you do?

12 A. As a result of what Ms. Littlejohn told me, we went to  
13 the area of Kelly Street, in particular -- -- Street,  
14 looking for this vehicle, which was not there that afternoon.  
15 I went out about six o'clock (6:00).

16 I did call Detective Tim Clark, in reference to the  
17 vehicle that we were looking for, and -- and the individual  
18 who possibly would be in it. He also did go to -- Street  
19 -- which we talked briefly about it, and he, then, notified  
20 Deputy Turner, the officer, while he was on patrol, to go to  
21 -- and look for this particular vehicle.

22 And then, you heard the testimony of Detective -- Deputy  
23 Turner, who located the vehicle also.

24 Q. Did you have occasion to interview Ricky Brannon in  
25 relation to this burglary?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 233

1 A. I did, on the morning of the -- the 21<sup>st</sup>, November 21<sup>st</sup>.

2 Q. On the 21<sup>st</sup>?

3 A. Yes, sir. And I've got those pre-interrogation waivers.

4 THE COURT: And those are previous exhibits.

5 Q. (By Mr. Pauling) I'm going to show you what's previously  
6 marked as ID State's Exhibits 1, 2, and 3 and ask if you  
7 recognize those particular items.

8 (Exhibits handed to witness.)

9 A. They're a pre-interrogation waiver forms. And one was on  
10 November 21<sup>st</sup>, '03, at 9:45, when I made my first contact with  
11 Mr. Brannon.

12 These -- these cover a statement of rights that we  
13 commonly use when talking to suspects in any case. It covers  
14 their Miranda warnings. And, after we complete the first  
15 part, and the suspect indicates that he does understand what  
16 that means, then, it goes into a waiver of rights, which says  
17 that -- that this particular person, whoever you're talking  
18 to, is willing to talk to you without an attorney or waive his  
19 rights at that time to talk to you about the case you want to  
20 talk to him about.

21 (Brief pause while Mr. Poole is shown exhibits.)

22 MR. POOLE: I have no objection.

23 THE COURT: One, two, and three without objection are  
24 admitted into evidence.

25 (Whereupon, State's Exhibit Numbers 1, 2, and 3 were

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 234

1 admitted into evidence without objection.)

2 Q. (By Mr. Pauling) Investigator Fowlkes, on those -- those  
3 items, 1, 2, and 3, is your signature on those particular  
4 items?

5 A. They are, yes, sir.

6 Q. And Mr. Brannon's signature, are they also on those -- on  
7 those waiver forms?

8 A. They are, yes, sir.

9 Q. Okay. Would you explain to the jury how you went through  
10 the waiver?

11 A. Okay. The first -- the first part of the waiver is  
12 basically their general information. It's their name,  
13 address, telephone number, social security number, date of  
14 birth, the date -- the date they -- the present date, the time  
15 that you're talking with them, and the amount of education  
16 that they have.

17 The second part is the statement of rights, which reads,  
18 "Before answering any questions you're asked, you must  
19 understand your rights." And there's check marked space out  
20 next to each right that is read to them, and we check them off  
21 as we read each sentence.

22 "You have the right to remain silent. Anything you say  
23 can and will be used against you in a Court of Law. You have  
24 the right to talk to a lawyer or have a lawyer present while  
25 you're being questioned.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 235

1 "If you cannot afford to hire a lawyer, a lawyer will be  
2 appointed, free of any cost, to represent you before any  
3 questioning begins," and "you have the right to stop answering  
4 any questions at any time."

5 It says, "The above rights have been read by..." and in  
6 this particular case, it was me, my name is in the place  
7 there, and "...I have read the above rights and understand  
8 them fully."

9 And you have them indicate that they do understand what  
10 their rights are and they sign. And, then, I witness where  
11 they did sign that they understood their rights.

12 The second part -- or the third part in this case, is the  
13 waiver of rights, "Fully understanding my rights, as they have  
14 been explained to me, I -- I wish to waive or give up my  
15 rights and talk to Officer Mike Fowlkes in reference to a  
16 burglary.

17 "I have waived my rights freely and voluntarily, without  
18 being threatened or coerced or without being promised any  
19 leniency or reward." And they also indicate that they  
20 understand that by signing their signature. And I do witness  
21 it.

22 Q. Okay. Thank you. Who else was present during this  
23 interview?

24 A. Detective Tim Clark.

25 Q. And where did this -- this first interview take place?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 A. In my office at the law enforcement center.

2 Q. And approximately what time did that interview begin?

3 A. Nine, forty-five (9:45).

4 Q. And when did it end?

5 A. Ten, oh five (10:05), twenty minutes.

6 Q. And was Mr. Brannon in custody at this point?

7 A. He was.

8 Q. He had been arrested?

9 A. Yes, sir.

10 Q. Now, relay to the jury -- well, let me back up. Had you  
11 -- you said he had waived his rights and indicated on the  
12 waiver form he waived his rights. Did you, at any time, offer  
13 him any hope of reward to make a statement to you in -- in  
14 relation to these burglaries?

15 A. No, sir. We -- we basically just wanted to talk to Mr.  
16 Brannon and lay out for him the -- the evidence and -- and  
17 stuff that we had in the case that we wanted to talk to him  
18 and present it to him, basically what we had and the  
19 information we had ---

20 Q. Okay.

21 A. --- as far as his involvement in the burglaries.

22 Q. I mean, did you promise him anything at -- at all?

23 A. No, sir.

24 Q. Okay. And you say that interview lasted twenty (20)  
25 minutes. Did he ever ask to take a break?



MIKE FOWLKES - DIRECT by MR. PAULING

Page 237

1 A. No.

2 Q. Did he ever ask for an attorney?

3 A. No, he did not.

4 Q. Okay. Relay to the jury what his statement was to you at  
5 that time.

6 A. As I said, when we began talking with Mr. -- Mr. Brannon,  
7 at that first interview, he was I guess pretty arrogant  
8 especially at the beginning of the interview. His rights were  
9 read and he signed the pre-interrogation rights -- waiver, and  
10 he was asked about the Daewoo that -- that he was driving that  
11 Tarsha Littlejohn owned and who she was and he did indicate  
12 that that was his girlfriend.

13 And, then, he was asked about, if he was operating that  
14 vehicle on November the 19<sup>th</sup>, of two thousand, three (2003), in  
15 the [redacted] area. And that -- he stated that he had -- he  
16 did have the vehicle on that date, but he was not the only  
17 person who drove the vehicle and that he had never been in the  
18 [redacted] area in his life.

19 Mr. Brannon was asked, if he was operating the vehicle on  
20 November the 20<sup>th</sup> of two thousand, three (2003), and he just  
21 stated he was. He did have the vehicle on that day.

22 Mr. Brannon was, then, told that the vehicle's tag number  
23 was taken down by a witness on November the 19<sup>th</sup>, two thousand,  
24 three (2003), and the witness identified the subject operating  
25 the vehicle as one black male. And, then, Brannon replied

PAMELA FAUCETTE; CVR, 864-574-9534 or 336-260-2864

1 that he was done talking to the officers; that, "I'm done  
2 talking. You might be able to put the car there, but you  
3 can't put me there."

4 And we interviewed -- we ended the interview. And it did  
5 kind of become a little confront -- confrontational at that  
6 time.

7 Q. But, at the time he said, "I'm done talking," you ended  
8 the interview?

9 A. Yes.

10 Q. Did you ask him any more questions?

11 A. No, we did not.

12 Q. Did Detective Clark ask him any questions?

13 A. We had a deputy come take him back to the detention  
14 center.

15 Q. And, again, that was November 21<sup>st</sup>; is that correct?

16 A. That's on the 21<sup>st</sup> at 9:45.

17 Q. At 9:45? Did you have an opportunity to speak with Mr.  
18 Brannon again on that day?

19 A. We did. I was notified, by the detention center, that  
20 Mr. Brannon had requested that we come back and talk to him at  
21 the detention center. And I went and talked to him, along  
22 with Detective Clark, again at 2:30.

23 Q. Okay.

24 A. That afternoon.

25 Q. And did you go through the same procedures you did

MIKE FOWLKES - DIRECT by MR. PAULING

Page 239

1 before? Did you advise him of his rights?

2 A. I did. I read him -- I went through the same process  
3 with the pre-interrogation waiver, at the 2:30 interview which  
4 took place at the detention center.

5 Q. Okay. Did he ever ask for an attorney at that particular  
6 time?

7 A. He did not.

8 Q. And, if you can, explain to the jury what the substance  
9 of -- of that particular interview was, what statements did he  
10 give to you at that time?

11 A. Okay. Through -- through the first interview that  
12 morning, or -- or when we began our interview that afternoon,  
13 at the detention center, I had explained to Mr. Brannon that  
14 Mr. Gallman had had several irreplaceable items taken from his  
15 house; that there were things that he couldn't replace through  
16 -- antique watches and guns and that he -- Mr. Gallman was  
17 very concerned about these items, that he didn't think that he  
18 -- they would be able to replace them.

19 And, so, Mr. Brannon had knowledge of that. And I read  
20 the pre-interrogation waiver with him, went over it again, and  
21 he did sign it again. And I asked him why he wanted to talk  
22 to the detective this afternoon.

23 And he stated that, if he may have an idea of where the  
24 property is at, from the man's house that got broke into  
25 yesterday, on November 20<sup>th</sup> of two thousand, three (2003),

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 240

1 Brannon asked, if he got the property back, what we could for  
2 him.

3 And I indicated to Mr. Brannon that Mr. Gallman would be  
4 made aware that -- that who got his property back or if he was  
5 able to recover the property back, that we, you know, would  
6 make Mr. Gallman aware of it.

7 Q. Did you -- did you ever, at any time, promise Mr. Brannon  
8 anything for a statement?

9 A. No, I didn't go any further than that right there. And  
10 Mr. Brannon kind of just sat and dropped his head for a little  
11 bit and then, said, "Okay." Said, Well, he wanted to take the  
12 detectives to 512½ Kelly Street where -- where he said there  
13 was property at.

14 We asked if anybody was at 512½ Kelly Street to let us  
15 in, and he said the key to the house was in -- in his property  
16 in the jail. And we did obtain his key from his property in  
17 the jail and he took us to 512½ Kelly Street.

18 He opened the door with his keys and we followed him to a  
19 back bedroom and he pointed to a handbag on -- on the head  
20 rail, which he indicated was his bedroom. And said the guns  
21 were in it. And he was going to reach towards the bag, and we  
22 told him, hold up because -- because of the guns.

23 Q. I'm sorry. He reached for the bag you said?

24 A. He was reaching towards the purse. He -- he was  
25 gesturing or -- or reaching toward the bag, and we said,

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 241

1 "Whoa, it's guns." And we reached and got the bag, and it did  
2 have those -- these three guns in it (indicating).

3 Q. Investigator Fowlkes, I hand you State's 29, 30, and 31  
4 and ask you to look at those.

5 (Brief pause while exhibits are retrieved and handed to  
6 witness.)

7 A. Yes, sir.

8 Q. And are those the items that were recovered?

9 A. They are, and in the same -- the same packing they were  
10 recovered in.

11 Q. And after Mr. Brannon gave you these -- these three  
12 firearms, what happened next?

13 A. We took the firearms into custody that were in the  
14 handbag. We -- Mr. Brannon advised us, upon going back out to  
15 the car, that he would take us to a dumpster that was in a  
16 trailer park, which is off Providence Road (phonetic), also  
17 known as McIntyre's Trailer Park (phonetic), a dumpster at the  
18 end of a driveway in that trailer park where he threw the  
19 paperwork and the parts of the safe and other items that he  
20 didn't do anything with.

21 Upon him taking us to this dumpster, the dumpster had  
22 already been emptied. There was only about three bags of  
23 trash in there that had been put in there recently. And he  
24 told us that, at the time he put that property in there, in  
25 the dumpster, it had been about half full, so, they had to

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 243

1 Q. And, once you recovered the guns, what did you do with  
2 the guns at that point?

3 A. I placed them in my office for identification from Mr.  
4 Gallman to verify that -- that is the guns in question.  
5 And ---

6 Q. Did -- I'm sorry. Did he verify those were his guns?

7 A. Yes, sir.

8 Q. The guns that were taken from his home?

9 A. He did.

10 Q. And -- and what did you do with the guns at that point?

11 A. Placed them in my evidence locker in my office.

12 Q. And after -- and you said, "we," and I don't want to  
13 assume anything. Who was with you during this time when you  
14 take the second statement and you go to Ricky Brannon's home  
15 and you recover the weapons? Who else was there?

16 A. Detective Clark.

17 Q. Detective Clark was also with you?

18 A. Yeah.

19 Q. And, after recovering the guns, and checking the  
20 dumpster, what did you do with Mr. Brannon?

21 A. He was -- he was taken back to the detention center, and  
22 so, that I could contact Mr. Gallman to see if he could verify  
23 that this was his guns in question. And -- and, then, I re-  
24 approached him on the 24<sup>th</sup> after we had made the verification  
25 of the guns and after advised by Detective Henson of the --

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 244

1 that he -- that I needed to get some shoes because he did have  
2 a shoe sole comparison that he could make.

3 Q. I show you State's Exhibit 35, and ask if you recognize  
4 these items?

5 (Exhibit retrieved and handed to witness.)

6 A. That's the shoes that was taken from Ricky Brannon's  
7 property at the Cherokee County Detention Center. That's the  
8 shoes he had on prior to arrest.

9 Q. And where did you take those shoes you said?

10 A. From the detention center.

11 Q. From -- and who were they taken to? I'm sorry.

12 A. Detective Henson.

13 Q. Detective Henson? All right. Did you speak with Ricky  
14 Brannon a third time?

15 A. I did.

16 Q. Okay. And how did that occur? When -- when did that  
17 occur?

18 A. It happened on November -- November 24<sup>th</sup> of '03, three  
19 days later. I re-approached him, at the detention center, in  
20 an effort to get a written statement of how he acquired these  
21 guns and -- and the additional information on the shoes, what  
22 we had learned in those few, short days.

23 And he said that he had done enough and he wanted his  
24 attorney. And the interview ceased at that time.

25 Q. And you had gone through his -- his waiver of rights?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864



MIKE FOWLKES - DIRECT by MR. PAULING

Page 245

1 A. I did another complete pre-interrogation. Anytime that  
2 we re-initiate an interview or they initiate an interview, a  
3 new one -- a pre-interrogation form will be done.

4 Q. And the purpose of that was to get a written statement  
5 from Mr. Brannon?

6 A. That's correct.

7 Q. And was it, at that point, he requested a lawyer?

8 A. That's correct.

9 Q. And just for clarification, on the waiver forms, it's --  
10 it's -- is there an area where Mr. Brannon places his address?

11 A. There is, yes.

12 Q. Okay. And what address is -- is -- is given?

13 A. He gave us Drive (phonetic).

14 Q. And do you know if he lived there?

15 A. I -- I asked Ms. Littlejohn about it. I think -- I'm not  
16 sure if he's got a family member that actually live there. I  
17 don't think he -- he physically lived at that address, no, no,  
18 sir.

19 Q. Were you able to get information from his driver's  
20 license?

21 A. (No Response)

22 Q. Did you locate a driver's license at that -- at that  
23 time?

24 A. I -- I know he had a driver's license. I can't tell you  
25 right now what -- what his driver's license said.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - DIRECT by MR. PAULING

Page 246

1 Q. But I'm saying, did he have a driver's license on his  
2 person?

3 A. No. He -- he was taking in for no driver's license in  
4 his possession.

5 (Brief Pause)

6 Q. Investigator Fowlkes, I'm going to show you briefly  
7 Exhibits 4 through 10 and -- State's Exhibits 4 through 10,  
8 and ask if you recognize those photographs?

9 (Exhibits handed to witness.)

10 A. Yes, sir. This is the Daewoo with the tag number that  
11 Ms. Gallman had given. And this is the Daewoo that Tarsha  
12 Littlejohn indicated to me that was her car. She signed a  
13 consent to search for this car.

14 MR. PAULING: Beg the Court's indulgence.

15 (Brief Pause)

16 Q. Investigator Fowlkes, when you and Detective Clark and  
17 Ricky Brannon went to 57 1/2 Kelly Street, do you recall if  
18 anyone else was at house?

19 A. No, no one was home. The door was locked and he unlocked  
20 it with the key on the key ring.

21 Q. He unlocked the door with his key?

22 A. Yes.

23 Q. Okay. Did he direct you to any other room in the house?

24 A. No. He went specifically to that back bedroom to the  
25 right.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

MIKE FOWLKES - CROSS by MR. POOLE

Page 247

1 Q. And -- and did he indicate whose room it was?

2 A. He -- he indicated it was his room, and that that was his  
3 bed, the bed and the bag and the guns were on the head rail of  
4 the bed. And it's just like a shelf.

5 MR. PAULING: No further questions, Your Honor.

6 THE COURT: Mr. Poole, cross?

7 MR. POOLE: May it please the Court.

8 (Brief Pause)

9 MR. POOLE: May I approach the witness, Your Honor?

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION by MR. POOLE:

4:36 P.M.

12 Q. Just a few questions, Detective Fowlkes, on -- on this e  
13 case if that's okay. As Mr. Brannon's attorney, you know I  
14 filed what's called a Rule 5, a request for discovery. And I  
15 came to your office on Monday and got another set of  
16 discovery. Do you remember me being there ---

17 A. Yeah.

18 Q. --- the day before yesterday? Okay. And basically,  
19 you've given to me everything that you have in your  
20 possession, have you not?

21 A. Right.

22 Q. Okay. And, when you testified to these State's Exhibits  
23 1, 2, and 3 -- let me pull these apart, okay? That's 3, 1,  
24 and 2. I was given copies of these, was I not?

25 A. Yes, sir.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 Q. Okay. And then, you -- also, there are two sets of notes  
2 right here (indicating) that you testified -- were you using  
3 these to refresh your memory?

4 A. Yes, sir.

5 Q. Okay. And, when you were testifying as to what Mr.  
6 Brannon said or did, as a result of you seeing him at 9:45 and  
7 2:30 on November 21, you were using these notes, a copy of  
8 which I have; is that correct?

9 A. Yes, a copy.

10 Q. Do you see those?

11 A. Yeah.

12 Q. And I have those in my possession, don't I?

13 A. Yes, sir.

14 Q. And, of course, as he was told; that is, Mr. Brannon, he  
15 has the right to stop answering questions at any time when you  
16 all were talking to him; is that right?

17 A. That's correct.

18 Q. And, as he was told, he has the right to ask for an  
19 attorney at any time; is that correct?

20 A. That's correct.

21 Q. Okay. And, so, you approached him on the 24<sup>th</sup> for the  
22 purpose of obtaining a written statement; is that correct?

23 A. That's correct.

24 Q. And did you tell him, "Look, Mr. Brannon, we're here.  
25 We'd like to get a written statement from you"? I mean, how

MIKE FOWLKES - CROSS by MR. POOLE

Page 249

1 did you approach him? I have no notes from that ---

2 A. No.

3 Q. --- about what was said.

4 A. What you just said. We were there to get a written  
5 statement on -- and basically bring him up-to-speed on what  
6 had taken place since the last time that we had talked. And  
7 he said no, he had done enough and he wanted his attorney.  
8 And that was the end of the interview.

9 Q. Okay.

10 A. It might have lasted five (5) minutes.

11 Q. Okay. And, is it for the reason that you didn't make any  
12 notes, like you did in the previous two interviews, because  
13 there was no substantial conversation? Is that a fair  
14 statement?

15 A. Yeah, I made notes, "No statement. Attorney -- requested  
16 attorney." And that was the gist of the interview.

17 Q. I mean, as in there's not a separate piece of paper where  
18 you ---

19 A. No.

20 Q. --- condensed the essence of your conversation?

21 A. No, I -- I basically just told you the gist of the  
22 conversation, that there was just enough to let him know we  
23 were there to get a written statement. And he said no, he had  
24 done enough and wanted his attorney.

25 MR. POOLE: Thank you.

## MOTIONS &amp; MATTERS

Page 250

1 THE COURT: You may step down.

2 (The witness stepped down from the witness stand at 4:39  
3 p.m.)

4 THE COURT: Have you got one more short witness?

5 MR. PAULING: Yes, Your Honor. Can we approach?

6 THE COURT: (Nods affirmatively.)

7 (Whereupon, a bench conference was had with all counsel  
8 present.)

9 THE COURT: Okay. Mr. Foreman and ladies of the jury  
10 panel, I think that concludes the evidence for today. Let's  
11 take a break. You all have a wonderful evening tonight.  
12 Please, once again, do not deliberate the case among  
13 yourselves, don't discuss it with anyone; family, friends,  
14 whatever.

15 If anybody tries to discuss it with you, let me know, and  
16 I'll handle it. You all have a wonderful evening. We're  
17 going to start at 10:00 in the morning. Brandy, what are you  
18 going to have for them to eat in the morning?

19 (Continued Off-the-Record Discussion)

20 THE COURT: We'll start about 9:30, so, we'll see you  
21 then. Everybody else remain seated, please.

22 UNIDENTIFIED FEMALE JUROR: At 9:30?

23 THE COURT: Nine-thirty (9:30). We're going to start at  
24 10:00. If you want something to snack on, be here around  
25 9:30, quarter to 10:00.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## MOTIONS &amp; MATTERS

Page 251

1 (Whereupon, the jury was excused for the day and left the  
2 courtroom at 4:41 p.m.)

3 THE COURT: Close the door, Mr. Bailiff.

4 (Off-the-Record Comments)

5 THE COURT: All right. My understanding is you're going  
6 to put his prior record -- records into evidence; is that  
7 correct?

8 MR. PAULING: Yes, sir.

9 THE COURT: Well, why don't you hand them to Mr. Poole  
10 and let's just mark them as Court's Exhibits, so, they will  
11 not go to the jury, pursuant to our previous agreements.

12 MR. PAULING: Yes, sir.

13 (Off-the-Record Comments)

14 (Brief pause while exhibits are shown to Mr. Poole.)

15 THE COURT: Let's just mark them as Court's Exhibit --  
16 we haven't had any Court's exhibits, have we? Court's Exhibit  
17 1 and those are certified records ----

18 MR. PAULING: Certified copies -- well, I'm sorry.

19 (Brief pause while documents are retrieved.)

20 MR. PAULING: Your Honor, these are certified  
21 convictions for Docket Number 1991-GS-11-1022, burglary.

22 THE COURT: Burglary in what degree?

23 MR. PAULING: Of a dwelling.

24 THE COURT: Let me see it.

25 MR. PAULING: It just says, "dwelling."

MOTIONS & MATTERS

Page 252

1 (Document handed up to the Court.)

2 MR. PAULING: Also, indictment number 1991-GS-11-1025,  
3 also burglary of dwelling.

4 THE COURT: All right. Well, let the record reflect  
5 that indictment 91-GS-11-1022, that was -- he pled guilty to  
6 burglary first on November 21, 1991. What's the next one?

7 MR. PAULING: The next one is Docket Number 1991-GS-11-  
8 1025, burglary in the first degree.

9 (Document handed up to the Court.)

10 THE COURT: Okay. That was also on November 21, 1991,  
11 there was a guilty plea to burglary first before Judge  
12 Stephens (phonetic). All right.

13 MR. PAULING: The third is indictment number 1991-GS-11-  
14 1030, also burglary in the first degree.

15 (Document handed up to the Court.)

16 THE COURT: That was a guilty plea on the same date.

17 MR. PAULING: And the fourth is Indictment Number 1991-  
18 GS-11-1029, burglary in the first degree.

19 (Document handed up to the Court.)

20 THE COURT: That was also a guilty plea. So, those are  
21 the four prior convictions that you're relying on to prove  
22 this to be burglary first?

23 MR. PAULING: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. PAULING: The statute says two or more, but we've



## MOTIONS &amp; MATTERS

Page 253

1 got more, so...

2 THE COURT: I understand. All right. Mr. Poole, any  
3 comment on that? Any objection to that?

4 MR. POOLE: No, sir, I have no exceptions or objections.

5 THE COURT: And on the -- Section 17-25-45 life  
6 sentence, this would be a most serious, right, and this is the  
7 second strike if he's convicted.

8 MR. PAULING: Most serious, Your Honor? Yes, Your  
9 Honor.

10 THE COURT: And this would be a second strike if he's  
11 convicted?

12 MR. PAULING: Yes, Your Honor.

13 THE COURT: And you all have served him with notice  
14 under 17-25-45(h); is that correct?

15 MR. PAULING: Yes, Your Honor.

16 THE COURT: Please, tomorrow, in the event he's  
17 convicted, I want a copy of the -- I assume the written notice  
18 that was given to the Defendant and his counsel, okay?

19 MR. PAULING: Yes, Your Honor.

20 THE COURT: I want all of that if we need it. All  
21 right, anything else, Gentlemen, before we break for the  
22 evening?

23 MR. PAULING: Nothing further from the State, Your  
24 Honor.

25 THE COURT: Make that -- make these four sentence sheets

## MOTIONS &amp; MATTERS

Page 254

1 and indictments Court's Exhibit 1. It's just a total package.

2 (Whereupon, Court's Exhibit Number 1 was marked for  
3 identification and admitted into evidence.)

4 THE COURT: All right, Gentlemen, I'll see you all in  
5 the morning.

6 MR. PAULING: Yes, sir.

7 THE COURT: The Defendant is in custody. Make sure he's  
8 available to his lawyer tonight and tomorrow morning. What  
9 are you all going to do with those guns over the evening? Are  
10 you all going to ---

11 MR. PAULING: We weren't going to enter -- well, we  
12 didn't enter them. We weren't planning on entering them.

13 THE COURT: Brandy, what do you all do with guns?

14 MADAM CLERK: I can lock them up downstairs.

15 MR. PAULING: I -- I guess what I was saying is  
16 eventually they're going to go back to the officer, but ---

17 THE COURT: I understand. Just for the evening I need  
18 them somewhere ---

19 MR. PAULING: Yes.

20 THE COURT: --- without just leaving them around.

21 MR. PAULING: Right.

22 THE COURT: Give them to the Clerk and she'll return  
23 them in the morning.

24 MR. PAULING: Okay.

25 (Whereupon, court was adjourned for the day at 4:45 p.m.)

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## MOTIONS &amp; MATTERS

Page 255

1 (Court reconvened on April 13, 2006, at 9:50 a.m.)

2 (Whereupon, Court's Exhibit Numbers 2 through 6 were  
3 marked for identification and admitted into evidence.)

4 THE COURT: All right. As I understand it, the State  
5 has a couple of more previous convictions they need to put in  
6 the record?

7 MR. PAULING: Yes, Your Honor. Your Honor, the State  
8 would introduce indictment number 1990-GS-11-1137, that is a  
9 burglary second into the record. Can I just read them all?

10 THE COURT: Well, a burglary is not a most serious, is  
11 it?

12 MR. PAULING: No, Your Honor, but it is a serious.

13 THE COURT: Well, go ahead.

14 MR. PAULING: The State would also read into the record  
15 indictment number 1990-GS-11-1027, that's an arson in the  
16 second degree. All -- also a serious crime. And the State  
17 would also introduce 1991-GS-11-1024, arson in the second  
18 degree, also serious.

19 THE COURT: Okay. Have you shown those to Mr. Poole?

20 MR. PAULING: Yes, Your Honor.

21 THE COURT: All right. Any objection, Mr. Poole?

22 MR. POOLE: No objection to the introduction of the  
23 indictments, Your Honor, but we would like to be heard on the  
24 issue of enhancement for purposes of this case.

25 THE COURT: Well, let's see if we get to that ---

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## MOTIONS &amp; MATTERS

Page 256

1 MR. POOLE: Yes, sir.

2 THE COURT: Get to that point. Okay. Thank you. So,  
3 if we get to that point, we've got four burglary firsts, which  
4 are all most serious. And we've got these that you put in  
5 this morning, which are serious, so, we've got a combination  
6 of three serious -- three -- two most serious and -- and a  
7 combination of three serious. Is that what you're saying?

8 MR. PAULING: Yes, Your Honor.

9 THE COURT: Or two serious and a most serious?

10 MR. PAULING: Yes, Your Honor.

11 THE COURT: We've got all types of combinations. Let's  
12 wait till we get to the point that we need to -- well, let's  
13 see what the verdict is, and then, I will let you argue on the  
14 enhancement, whether or not the previous burglary firsts --  
15 the two burglary firsts are all out of the same incident, so,  
16 it wouldn't be burglary first, it would be burglary second.

17 But, even if it is burglary second, you've still got  
18 three serious. Are we -- I'll let you put anything on the  
19 record that you want.

20 MR. POOLE: Yes, sir.

21 THE COURT: And let the record reflect that I had an in-  
22 conference discussion, with all of the lawyers this morning,  
23 on some issues dealing with the four burglary firsts that we  
24 put in yesterday, whether or not they came within the statute  
25 that talks about 17-25-50 considering closely connected

## MOTIONS &amp; MATTERS

Page 257

1 offenses as one offense.

2 If it was one offense, then, he wouldn't have but two  
3 prior burglaries, making this a burglary first. That is one  
4 issue. And, then, I had also a question as to whether or not  
5 those burglary firsts were before the statute or after talking  
6 about classifying crimes as most serious. And we had some  
7 discussion on that and I asked the lawyers to -- to look into  
8 that to protect everybody's interest concerning that.

9 But we can deal with that at the appropriate time I think  
10 as far as arguments. You won't be prejudiced by not arguing  
11 or arguing that because that's a matter of law not a factual  
12 issue.

13 MR. POOLE: Yes, sir.

14 THE COURT: All right. How about asking your guy to  
15 stand up for me and be sworn in.

16 (Mr. Brannon stands as requested.)

17 (Whereupon,

18 RICKY BRANNON

19 having been first duly sworn, testified as follows:)

20 THE COURT: Good morning, Mr. Brannon.

21 THE DEFENDANT: Good morning.

22 THE COURT: Mr. AG, as far as impeachment purposes, you  
23 don't have anything within the last ten (10) years, do you?  
24 Do you have anything for impeachment?

25 MR. PAULING: Within the last ten (10) years, Your

## MOTIONS &amp; MATTERS

Page 258

1 Honor?

2 THE COURT: Well, that comes under the statute 609.

3 (Brief Pause)

4 THE COURT: Six, oh, nine (609), impeachment.

5 MR. PAULING: Let me check the record one -- one second,  
6 Your Honor.

7 (Brief Pause)

8 THE COURT: Well, those that are over ten (10) years,  
9 you have to -- have you given him notice that you were going  
10 to use them for impeachment purposes as the statute requires,  
11 609(b)?

12 Six, oh, nine "b" (609(b)) says, "If it -- if it's more  
13 than ten years old, you have to give a notice to the Defendant  
14 that you're going to use them.

15 (Brief Pause)

16 MR. PAULING: I have not, Your Honor. I have not.

17 THE COURT: Do you have any other prior convictions that  
18 could be used for impeachment purposes? I need to ask and  
19 know that, so, when I talk to him about testifying.

20 (Brief Pause)

21 MR. PAULING: No, Your Honor.

22 THE COURT: All right. Mr. Brannon, we've reached the  
23 stage of the trial now where, obviously, you can present your  
24 own defense. And you have the right to claim the protections  
25 given to you by the Fifth Amendment of the United States of

## MOTIONS &amp; MATTERS

Page 259

1 America.

2 And that Amendment states in part, quote, "No person  
3 shall be compelled, in any case, to testify against  
4 themselves," end of quote. What that means is, you cannot be  
5 required to testify in this trial. Nobody can make you  
6 testify.

7 However, you do have the right to testify, if you choose  
8 to do so, and exercise your Fifth Amendment right not to  
9 testify.

10 It's a personal right that you, yourself, must make that  
11 decision. You can talk with your lawyer, your family, your  
12 friends, but nobody can make the decision other than you.

13 If you decide to testify, you would -- you will be  
14 subject to the same rules that all other witnesses are subject  
15 to when they proffer their -- when they're -- when they  
16 testify. In other words, you can be cross examined on any  
17 relevant subject that came up during the trial.

18 Anything for impeachment?

19 MR. PAULING: No, Your Honor. And ---

20 THE COURT: Okay.

21 MR. PAULING: --- we don't have anything.

22 THE COURT: Now, if you decide to testify, as I said,  
23 the decision -- or, if you decide not to testify, whichever  
24 one you decide to do, that decision must be your -- made on  
25 your part and it must be freely, voluntarily, and

## MOTIONS &amp; MATTERS

Page 260

1 intelligently made, with knowledge of the protections given to  
2 you by the Fifth Amendment of the Constitution.

3 If you decide not to testify; in other words, if you  
4 exercise your Fifth Amendment right to remain silent, then, I  
5 will tell the jury that they cannot hold the fact that you did  
6 not testify against you in any matter whatsoever.

7 In fact, I will tell them and instruct them and charge  
8 them that they can't even consider the fact that you didn't  
9 testify when they deliberate your guilt or innocence.

10 I will further testify -- I will further charge them that  
11 they can't even discuss, in the jury room, the fact that you  
12 didn't testify. And they can't use the fact that you didn't  
13 testify against you in any manner whatsoever.

14 I will instruct them that if you decide not to testify.  
15 But that decision is entirely up to you. Do you understand  
16 everything I told you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you need to discuss that with your  
19 lawyer?

20 THE DEFENDANT: Can you give me one minute?

21 THE COURT: Yes, sir.

22 (Brief pause while Mr. Poole and Mr. Brannon confer.)

23 THE DEFENDANT: Yes, sir, I understand.

24 THE COURT: All right. Do you want to testify?

25 THE DEFENDANT: No, sir.



## MOTIONS &amp; MATTERS

Page 261

1 THE COURT: Okay. Now, under our rules, when the  
2 Defendant does not testify and does not offer any evidence, he  
3 has the right to make the final argument in closing. Is that  
4 everybody's understanding?

5 MR. PAULING: Yes, Your Honor.

6 MR. POOLE: Yes, sir.

7 THE COURT: Now, is the State ready to proceed with  
8 their final argument?

9 MR. PAULING: The State is ready to proceed, Your Honor.

10 MR. POOLE: Your Honor, may I, please -- may I make a  
11 motion for a directed verdict?

12 THE COURT: Well, absolutely. I apologize. Excuse me.  
13 The State rests?

14 MR. PAULING: The State rests at this time, Your Honor.

15 THE COURT: All right, now.

16 MR. POOLE: May it please the Court.

17 THE COURT: Yes, sir.

18 MR. POOLE: Your Honor, at this time, it is the  
19 appropriate time for the Defense to make a motion for a  
20 directed verdict of not guilty since the State has rested.

21 I know the Court has paid good attention, rapt attention  
22 to the testimony presented. We would submit that the Court  
23 should impose a directed verdict of -- and find a directed  
24 verdict of not guilty.

25 And, certainly, I will not highlight the test -- all of

## MOTIONS &amp; MATTERS

Page 262

1 the testimony or most of -- of the facts of the testimony of  
2 the witnesses presented, but my notes indicate that the first  
3 witness, one Andrea Randolph, on November 19, identified a  
4 person of -- that appeared to be Ricky Brannon, who was at her  
5 front door.

6 Ms. Sherrick was a victim of an entry. She saw a -- and  
7 on the 19<sup>th</sup> -- and she saw a car and no person even resembling  
8 Mr. Brannon.

9 Ms. Gallman, on November 19, testified that she had a  
10 brief look at a person that appeared to be Mr. Brannon on  
11 November 19, ringing her doorbell. Mr. Gallman testified that  
12 certain items were taken as a result of an entry on the 20<sup>th</sup>.

13 Ms. Littlejohn testified that, although Mr. Brannon had  
14 use of her car, on the 19<sup>th</sup> and 20, and on extensive other  
15 occasions, she could not say that, while he was in possession  
16 of that car, who was the actual driver or occupants.

17 And, finally, the testimony of Mr. Henson, regarding the  
18 shoe print, he testified that he could not say that the shoe  
19 that was attributed to -- to being taken off Mr. Brannon, at  
20 the time he was arrested for the traffic offense, was the shoe  
21 that caused that print on the Gallman pane of glass.

22 And, finally, there is no testimony, from the Defendant  
23 himself or otherwise, indicating that he, in fact, was the  
24 individual who committed the alleged entries. And, on that  
25 basis, we make our motion for a directed verdict.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## MOTIONS &amp; MATTERS

Page 263

1           THE COURT:   Thank you.  I respectfully deny your motion  
2   for a directed verdict.  Obviously, at this stage of the game,  
3   you're proper in making that motion, and I am instructed by  
4   our law to direct a verdict in your favor if, after the  
5   evidence is closed, there is a failure of competent evidence  
6   tending to prove the charge in the indictment.

7           In other words, I have to consider only the existence or  
8   non-existence of evidence at this stage of the trial.  And I  
9   find that there is more than ample evidence that has been  
10  introduced, during the trial of this case, although it may be  
11  circumstantial, that, if the jury believed it, and made the  
12  logical inferences and conclusions from it, could find that  
13  the Defendant committed these offenses.  I find that there is  
14  ample evidence in the record and respectfully deny your motion  
15  for a directed verdict.

16          MR. POOLE:   Thank you.

17          THE COURT:   Anything else, Gentlemen, before we begin?

18          MR. PAULING:  Not from the State, Your Honor.

19          THE COURT:   All right.

20          (The jury entered the courtroom at 10:05 a.m.)

21          (Off-the-Record Comments)

22          THE COURT:   I hope you all had a pleasant evening, and  
23  we've got doughnuts?

24          MADAM CLERK:  Yes, sir.

25          THE COURT:   Were the doughnuts good and the coffee good?

## MOTIONS &amp; MATTERS

Page 264

1 (Jurors nod affirmatively.)

2 THE COURT: Good. All right. Mr. Pauling?

3 MR. PAULING: Thank you, Your Honor. May it please the  
4 Court.

5 THE COURT: I assume you rest?

6 MR. PAULING: Yes, the State rests, Your Honor.

7 MR. POOLE: Nothing from the Defense at this time, Your  
8 Honor.

9 THE COURT: All right. What that means is, when the  
10 State rests, that's the State has put up all the evidence that  
11 they intend to put up. After that, the Defendant has advised  
12 me that he is not putting up any evidence, and so, that leaves  
13 us now with the final arguments, which will be made first by  
14 the State, followed by the Defendant.

15 And, after they do that, I will charge or instruct you on  
16 the law of the case. And, then, it will be turned over to you  
17 to reach a decision. So, if you would, please, pay close  
18 attention to the lawyers as they do their final arguments, and  
19 then, we'll go into the charge. Mr. Pauling?

20 MR. PAULING: Thank you, Your Honor. If it please the  
21 Court?

22 THE COURT: Yes, sir.

23 (Mr. Pauling's Closing Argument Began at 10:07 a.m.)

24 MR. PAULING: Mr. Poole? Good morning.

25 (Responses of "good morning" heard.)

## CLOSING ARGUMENTS - MR. PAULING

Page 265

1           MR. PAULING: I want to first thank all of you, on  
2 behalf of the State of South Carolina, for your willingness to  
3 serve on this jury this week.

4           As the judge told you, at the beginning of this trial,  
5 jury service is very important. Our criminal justice system  
6 cannot work, cannot function, without citizens, like each one  
7 of you, who are willing to serve. So, at the outset, I say  
8 thank you.

9           Now, as the judge instructed earlier, he rules over the  
10 law. So, your providence, as the jury, is the fact finders.  
11 Only the twelve or thirteen of you can determine what  
12 happened, what the facts were.

13           In this particular case, as you know, the Defendant Ricky  
14 Brannon, is charged with two counts of burglary first degree  
15 and grand larceny.

16           Now, just briefly, a burglary is basically the -- the  
17 entering of a dwelling of another without consent, with the  
18 intent to commit a crime once therein.

19           Grand larceny -- and the judge is going to charge you on  
20 this -- this is what larceny, it's the taking away of personal  
21 property of another with a value of a thousand dollars or  
22 more. And the judge charges you the law and follow the  
23 instructions as the judge gives them to you.

24           Now, the burden rests firmly upon the State. It's a  
25 burden that -- that we welcome; the burden should rest on us.

## CLOSING ARGUMENTS - MR. PAULING

Page 266

1 And that burden is beyond a reasonable doubt.

2 But what is a reasonable doubt? As Mr. Pearson told you,  
3 reasonable doubt is doubt which causes a person to hesitate to  
4 act. And the judge is going to instruct you on what  
5 reasonable doubt is.

6 But you should also realize that reasonable doubt is not  
7 beyond every possible doubt. There are few things that we  
8 know for certain in life. So, the standard is beyond a  
9 reasonable doubt.

10 So, how do you determine what actually happened back on  
11 November of two thousand, three (2003)? Well, there were  
12 several witnesses that came to the witness box and swore to  
13 tell the truth, the whole truth, and nothing but the truth.  
14 And I submit that they did that.

15 And, as these witness were in this box (indicating), I  
16 want you to think back how they presented themselves.  
17 Credibility is key in this particular case.

18 And how do you judge credibility? Well, the demeanor of  
19 the -- the witness on the stand. Did they have any bias or  
20 any reason to lie? Was their testimony collaborated by  
21 evidence that was presented? Was it collaborated by other  
22 testimony?

23 And, when we talk about this evidence, and the judge will  
24 instruct you as well, there are two types: There's direct  
25 evidence and there's circumstantial evidence.

## CLOSING ARGUMENTS - MR. PAULING

Page 267

1 Now, in the eyes of the law, there's no difference in  
2 direct evidence and circumstantial evidence. It's set on the  
3 same plane. And you decide what weight to give to that  
4 evidence.

5 What is direct evidence? Direct evidence simply is that  
6 which you can perceive with your senses. An example that's --  
7 that's often used is -- deals with the weather, direct  
8 evidence. You're outside in an inch of snow. You see it  
9 snow. You see the precipitation, you see it fall to the  
10 ground; that's direct evidence. You can perceive that with  
11 your senses. You actually see that.

12 Circumstantial evidence is that evidence where you might  
13 have a chain of events or a chain of certain things that, once  
14 you link them together, you can deduce what happened.

15 Let me use that same example with it snowing. Let's say  
16 you go home tonight and get ready to go to sleep, and before  
17 you go to bed you look out and the sky is clear, and the  
18 ground is dry.

19 The next morning you wake up and go outside and discover  
20 there's ice on your front porch, ice on the car, and there's  
21 snow on the ground. Now, you didn't actually see it snow  
22 because presumably you were asleep all night.

23 So, you didn't see the snow actually coming down, but as  
24 you walk outside the next morning, you can deduce, based on  
25 the ice on the car and the snow on the ground, that it snowed

1 last night.

2 Again, the law sees no difference between circumstantial  
3 and direct evidence. You have to determine what weight you  
4 want to give the evidence, what weight you want to give the  
5 testimony that was given.

6 And I submit to you that, in this particular case, what  
7 we have is a lot of circumstantial evidence. And let's go  
8 into that. What exactly do we have?

9 On November 19<sup>th</sup> of two thousand, three (2003), Andrea  
10 Randolph testified that early that morning she and her husband  
11 were getting ready and preparing for a business meeting,  
12 someone was going to come to their house that morning.

13 And they live out at 3600 East Road. And, at that  
14 time, Ms. Randolph said an individual came to her front door,  
15 rang the doorbell, and it was raining that morning, a foggy  
16 day.

17 Well, Andrea Randolph said the person asked her could  
18 they fish in the pond. And it's outside a rainy day, could he  
19 fish in the pond. Ms. Randolph, yesterday in court, ID'ed the  
20 Defendant, Ricky Brannon, as being the one who came to her  
21 door that day. Not only that, but she also ID'ed the car that  
22 he was driving, a powder blue car.

23 Later that same morning, over at 4400 East Road,  
24 Joy Sherrick was preparing to take her -- her children to  
25 school. In fact, she took her children to school, and her



## CLOSING ARGUMENTS - MR. PAULING

Page 269

1 husband had already left for work.

2 She recalls that it was -- it had been storming, at some  
3 point, that particular day. She took her children to school,  
4 and upon returning home she noticed a -- a car which she  
5 described as looking like a Volvo. She didn't say it was a  
6 Volvo, but she thought that it was possibly her boss's car.  
7 It was parked near her house.

8 As she returned home, she went to the garage, and, as she  
9 proceeded to go into her house, she found that a screen was  
10 out of place and thought maybe the storm did it. But, as she  
11 went further, she found evidence of a break in.

12 And, as she backed out of her house, out of her own home  
13 to call 911, she noticed this vehicle, that she also ID'ed,  
14 speeding off.

15 Now, later that very same morning, over at  
16 Lane, Ira Jo Gallman was home that day. Her husband had  
17 already gone to work, and she had the -- the day off.

18 She testified that, that particular morning, she had been  
19 sleeping in because she had the day off. And then, the bell  
20 ringing was waking her up.

21 She wasn't expecting anyone that morning. She's not sure  
22 who it is; she's not expecting her children. But this person  
23 is laying on her bell, ringing and ringing and ringing the  
24 bell, and she becomes nervous.

25 And, as she's walking down her hallway, she looks out one

1 still has her car.

2 They said they go at first and they don't see the car.

3 Then, Deputy Turner goes over to

4 (Brief pause while Mr. Pauling retrieves documents.)

5 MR. PAULING: --- that same evening, November 20<sup>th</sup>, he  
6 goes over to 512½ Kelly Street, Brannon's home, and at that  
7 time, he does see the car. This is a powder blue car with the  
8 tag number that Ms. Gallman had given them.

9 And he sees him blow that intersection at Kelly and  
10 Kendrick, and he conducts a traffic stop and finds he has no  
11 driver's license and -- and takes him in for both driving with  
12 no driver's license and disregarding the stop sign. And he  
13 detains him at that point.

14 Later on, law enforcement, then, goes and gets Joy  
15 Sherrick. And Joy Sherrick, that same evening, identifies  
16 this particular vehicle, this two thousand and one (2001)  
17 Daewoo, this Daewoo as being the car that she saw speed away  
18 from her house moments after she discovered the break in.

19 And, in fact, I believe she testified she remembered the  
20 Christmas tree -- and you'll have these back with you --  
21 (shows jury photo) but the Christmas tree, the deodorizer,  
22 hanging from the mirror because she thought it was odd that  
23 her boss would have this Christmas tree deodorizer in his car.

24 Is that enough? Maybe not, so, let's -- let's go --  
25 let's go a little further. You heard Investigator Henson,

## CLOSING ARGUMENTS - MR. PAULING

Page 273

1 who's qualified as an expert in footwear impressions -- and  
2 he's also the evidence tech -- and you heard him describe how  
3 he went to the Gallman home and processed the crime scene and  
4 described how -- he processed for -- for latent prints and was  
5 not able to get any usable fingerprints.

6 He described that sometimes the prints are -- are  
7 smudged, but what he was able to get were shards of glass at  
8 the point of entry, as he described it, at the Gallman home.  
9 He took these shards of glass -- he took these shards of glass  
10 (indicating) and he was able to lift prints off of them; not  
11 fingerprints ---

12 (Brief pause while Mr. Pauling retrieves exhibits.)

13 MR. PAULING: --- but shoe prints. And he described to  
14 you how he analyzed these prints, with shoes that were  
15 recovered from Ricky Brannon, shoes he had on the day of the  
16 burglary.

17 And he explained to you how he inked the bottoms and made  
18 the impression, how he found common patterns and how he even  
19 took one of the shards of glass and was able to -- showed you  
20 how he lined them up that showed not only how the prints were  
21 made, but even how the person's foot moved around.

22 And, on cross exam, Mr. Poole made a comment or asked  
23 Investigator Henson, if he had dealt with famous footwear, or  
24 how famous is Fila; is it famous like Adidas or Nike. Well,  
25 ladies and gentlemen, fame is kind of -- it's notoriety.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

1 And, so, if you're known for something good, you're  
2 famous; George Washington, Abraham Lincoln, Dr. King. If  
3 you're known for something negative, then, you're infamous;  
4 The Unabomber, Jesse James, and Ted Bundy.

5 And, so, I don't know -- just like Investigator Henson  
6 said, I don't know how famous these shoes are. And I don't  
7 know if they're any more famous than Nike or Adidas.

8 I'll also submit to you that these -- these shoes are  
9 infamous (indicating) because these shoes belong to the  
10 individual who broke into the Gallman home. These shoes were  
11 worn by the individual who kicked in their window, the  
12 individual who ransacked their home.

13 Those shoes, those infamous shoes, belong to the  
14 individual who went through their belongings and stole their  
15 precious treasures.

16 You heard Mr. Gallman on the stand yesterday testify that  
17 numerous items were taken; documents, important papers;  
18 jewelry that he had gotten from his mother, jewelry that he  
19 intended to pass on to his daughter; gold watches, antique  
20 coins.

21 Ira Jo had Christmas money in that safe. He had guns in  
22 that safe; items that can't be replaced. And these infamous  
23 shoes, I submit to you, were worn by the Defendant who not  
24 only burglarized their house, he destroyed the peace and the  
25 sanctity of their home.

## CLOSING ARGUMENTS - MR. PAULING

Page 276

1 what he's supposed to do. Ricky Brannon was taken back to the  
2 detention center, and sometime later that same day -- this is  
3 November 21<sup>st</sup>, later that day, Ricky Brannon contacts the  
4 sheriff's office. He wants to speak back to the detectives. .

5 They don't go back to him, "Ricky, we need some more  
6 information." He contacts the sheriff's department. And they  
7 go to talk to him again. They go, they read him his rights.  
8 He waives his rights, does not want an attorney. And he  
9 speaks with them. They do it by the book.

10 Now, it's -- it's -- it's a little different. "Well, you  
11 can put the car there, but you -- you can't put me there."  
12 First, you're in the car, but never been to Grassy Pond. But,  
13 when he's told about the tag number, "Well, the car may be  
14 there, but I'm not there."

15 And now it's, "Well, what -- what if I get that property  
16 back for the man?" "What if I get that property back?" And  
17 Mike Fowlkes told you, he got on this stand and he swore to  
18 tell the truth, and he told the truth. He didn't promise him  
19 anything, explained to him that -- that Mr. Gallman had  
20 precious items.

21 And Ricky Brannon took Mike Fowlkes and Detective Clark  
22 to his home at 512½ Kelly Street, and with his key, Ricky  
23 Brannon's key, they gained entry to that home. He took them,  
24 not throughout the house, here, there, under the kitchen sink,  
25 he took them to his room and showed them exactly where Mr.

## CLOSING ARGUMENTS - MR. PAULING

Page 275

1 And, again, these -- these pictures will be back in  
2 evidence with you (indicating). And look closely. The  
3 testimony also was that there were knives, butcher knives,  
4 placed in the bedrooms that the Defendant ransacked.

5 The gun he could get to was even placed under a pillow in  
6 one of the rooms. Well, why is that? Why were there knives  
7 placed on the bed? The Gallmans said they don't keep knives  
8 around the bedroom. Mr. Gallman doesn't leave his gun under  
9 the pillow. The person who broke in, I submit to you, placed  
10 those knives there for a reason, placed that gun there for a  
11 reason.

12 Well, is that enough? Maybe, maybe not. But, then,  
13 Detective Mike Fowlkes and Detective Tim Clark, they go and  
14 they speak with Ricky Brannon. And I submit to you they did  
15 everything by the book.

16 Mike Fowlkes was up here and testified how they read him  
17 his Miranda rights, and he waived his rights and never asked  
18 for an attorney. And he was asked about the car, a two  
19 thousand, one (20010 Daewoo. And first he said, "Yeah, I had  
20 the car, but I wasn't the only one in the car."

21 And we know that. Tarsha Littlejohn testified that she  
22 was in the car, at some point, when he took her to work.  
23 "Yeah, I was in the car, but I've never been in the grassy  
24 pond area. And I'm done talking."

25 At which point, Mike Fowlkes stopped then because that's

## CLOSING ARGUMENTS - MR. PAULING

Page 277

1 Gallman's guns were.

2 Then, he took them to the trailer park across the street.  
3 He took them to the dumpster where he just discarded  
4 everything else. And, as Mike Fowlkes testified, not seeing  
5 anything, the Defendant, "Well, this -- this is where it was.  
6 They must have picked it up, the trash people must have picked  
7 it up. It must have been dumped."

8 Ricky Brannon takes them to the property taken from Mr.  
9 Gallman's house not because he lucked up, because he knew  
10 where it was. And he knew where it was because he broke into  
11 that home. He ransacked that home. He was the one driving  
12 the car speeding off from the Sherrick home. He was the one.

13 Now, again, when you're dealing with circumstantial  
14 evidence, is one piece enough? It's somewhat like a puzzle.  
15 There's a hundred (100) pieces to a puzzle, and you can start  
16 piecing it together, and at a certain point, you can see what  
17 the picture is. You can have a puzzle that has nine hundred  
18 (900) pieces, and even without that last piece, you can still  
19 see the big picture.

20 I'm just asking each one of you to take what you've heard  
21 on this witness stand and the evidence that's been presented,  
22 and take your common sense and deduce what happened at the  
23 Sherrick home on November 19<sup>th</sup>, two thousand, three (2003), and  
24 what happened at the Gallman home on November the 20<sup>th</sup> of two  
25 thousand, three (2003).

## CLOSING ARGUMENTS - MR. POOLE

Page 278

1 Again, on behalf of the State, thank you for being  
2 patient with us. Thank you for your willingness to serve this  
3 week on the jury. Mr. Pearson and I, we're here today simply  
4 seeking justice.

5 We just ask that you return a verdict that speaks  
6 justice. And I submit that that verdict can only be that  
7 Ricky Brannon, charged with burglary in the first degree, is  
8 guilty.

9 Ricky Brannon, who's charged with burglary in the first  
10 degree is guilty. And Ricky Brannon, charged with grand  
11 larceny, is guilty.

12 (Mr. Pauling's closing argument concluded at 10:36 a.m.)

13 THE COURT: Mr. Poole?

14 MR. POOLE: May it please the Court?

15 THE COURT: Yes, sir.

16 MR. POOLE: Mr. Pauling and Mr. Pearson?

17 (Mr. Poole's closing argument began at 10:36 a.m.)

18 MR. POOLE: I too want to thank each and every one of  
19 you for your attention that you have paid throughout this  
20 case. I know, I've watched all of you, and you've listened  
21 and you've listened and absorbed all that has been said over  
22 what's going to be essentially a day and a half.

23 Thanks. I appreciate it, on behalf of Mr. Ricky Lee  
24 Brannon, and I appreciate on the behalf of the State of South  
25 Carolina and the jury system that we have. You certainly have

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## CLOSING ARGUMENTS - MR. POOLE

Page 279

1 a very serious role today. You have to decide guilt or  
2 innocense of a person who sits charged with very, very serious  
3 crimes.

4 And I want to say a few things in his defense in a way  
5 that Mr. Pauling has so aptly described his view of the  
6 evidence and the evidence that was presented from a defense  
7 perspective. And, from that perspective of what is required  
8 by the law.

9 Now, I agree a lot with what Mr. Pauling said in his use  
10 of the falling snow for instance. That's a good description  
11 of what the difference is between direct and circumstantial  
12 evidence. It's very apt and it's a very good one.

13 But, unfortunately, in life the good examples in simple  
14 terms, have a hard time fitting the facts, when they are  
15 presented in a way that we have the facts presented in this  
16 case.

17 I agree that this is a circumstantial evidence case. I  
18 disagree that this is a case which the State has proved, by  
19 the use of that type of evidence, as proved Ricky Brannon to  
20 be guilty of these three crimes beyond a reasonable doubt.

21 And, if you'll bear with me, I'd like to do the same type  
22 of thing that Mr. Pauling has done and say ---

23 (Brief pause while Mr. Poole retrieves documents.)

24 (Off-the-Record Comments)

25 MR. POOLE: --- that, for the most part, I agree with

## CLOSING ARGUMENTS - MR. POOLE

Page 280

1 what he said the witnesses testified to. These are fine  
2 people that testified as to what happened to them and what  
3 they observed.

4 And there is no reason whatsoever to think that any one  
5 of them; that is, Ms. Randolph, Ms. Sherrick, Ms. Gallman, Mr.  
6 Gallman, or Ms. Littlejohn, these witnesses testified to the  
7 truth. And what they said is accurate.

8 Now, I could say that there's certain -- there are  
9 certain observations that may have been made that could have  
10 been called into question, such as somebody observing someone  
11 in a -- through a glass darkly, or through a window sharply,  
12 but with early morning conditions and lighting problems.

13 But, let's -- let's assume for instance that -- and we're  
14 going to talk about that, and let's go by what we have, date  
15 it and use the witnesses' name.

16 (Mr. Poole begins writing on a piece of paper on easel.)

17 MR. POOLE: On eleven, nineteen (11/19), we have Ms.  
18 Randolph. She was the first witness they had. And she  
19 testified that she saw Ricky Brannon and car. And I hope you  
20 can read my writing; it's very sloppy, but let's just say car  
21 (indicating) and we won't say tag number because what did you  
22 see is what boils down to the very essence of this case.

23 Now, I believe her testimony was, "I believe that it was  
24 his car." That is what I had written down, that she  
25 testified, "I believe it was his car." But let's say that she

## CLOSING ARGUMENTS - MR. POOLE

Page 281

1 saw Ricky Brannon and car, okay?

2 The second witness was on eleven, nineteen (11/19) also.  
3 (writes on piece of paper) This is Ms. Sherrick who saw the  
4 car -- the car, the car only; no person, on eleven, nineteen  
5 (11/19).

6 And Ms. Gallman (writes on piece of paper), a hood falls  
7 back and she sees an individual that appears to be Ricky  
8 Pearson [sic] -- Ricky Brannon. Mr. Pearson is the State's  
9 attorney.

10 (Mr. Poole continues writing on piece of paper.)

11 MR. POOLE: And let me show you what we did here folks  
12 -- and a car. And Mr. Gallman testified that he got a phone  
13 call from her son and he was at work and he went home and saw  
14 that there were some items missing -- missing. And he had --  
15 he did not observe either an individual or a car.

16 (Mr. Poole continues writing on piece of paper.)

17 MR. POOLE: And, then, let's say for the purposes -- and  
18 I'm using these reference points, eleven, nineteen (11/19) and  
19 eleven, twenty (11/20), because these are the dates of the  
20 burglaries. These are the dates of the entries.

21 And we have Tarsha Littlejohn, and Ms. Littlejohn (writes  
22 on piece of paper) she testified that she had a car that was  
23 being used by Mr. Brannon, for a period of time, and it could  
24 have been as long as two months.

25 She testified that there was a routine that was normally

## CLOSING ARGUMENTS - MR. POOLE

Page 282

1 used, when he used this car, when she would go to work, he  
2 would drop her off sometimes take her little girl to daycare,  
3 and he would have use of that car while she was at work.

4 She testified that she had no idea who was in that car,  
5 who had used that car; there was no way for her to know who  
6 was using the car. The only thing that she knew was that Mr.  
7 Brannon, she would see him right before work and right after.

8 Now, we do -- the only thing that we've got, if we're  
9 going to use circumstantial evidence to convict, is the  
10 conviction of a car. But cars don't commit burglaries and  
11 cars don't commit entries.

12 Mr. Brannon was not seen at any point in time. There's  
13 no direct evidence linking him to the burglaries that occurred  
14 on November 19, at the Sherrick's residence or November 20 at  
15 the Gallman residence.

16 There is more than twenty-four (24) hour difference  
17 between the entry in the Sherrick residence and the entry on  
18 -- in the Gallman residence. There is absolutely no direct  
19 evidence whatsoever putting Mr. Brannon at these places;  
20 nothing putting him around them or him even with the car,  
21 putting him near it.

22 Putting him using the car from time-to-time does not  
23 prove that he is the one that entered this house (indicating)  
24 the Sherrick residence on eleven, nineteen (11/19), nor this  
25 house (indicating), the Gallman residence on eleven, twenty

## CLOSING ARGUMENTS - MR. POOLE

Page 283

1 (11/20).

2 And, if Ms. Littlejohn had known anything about what Mr.  
3 Brannon may have said to her about these -- what he may have  
4 known, you know that she would have told you because she's a  
5 truthful, hard working person. It's not there. It's simply  
6 not there.

7 Now, when Mr. Pauling was speaking to you a moment ago,  
8 he stated that, at about this point (indicating) and about  
9 this point right here (indicating) or this point right here  
10 (indicating) I believe, after you have the testimony of these  
11 folks, he said, "Is this enough," meaning is that enough to  
12 convict on the circumstantial evidence. He said, "probably  
13 not."

14 And then, the next invest -- well, the next witnesses we  
15 had were the law enforcement officers. And, then, there was a  
16 great deal of importance placed by Mr. Pauling on the  
17 testimony of Mr. -- Investigator Henson.

18 (Mr. Poole continues writing on piece of paper.)

19 MR. POOLE: Now, Investigator Henson, you heard all  
20 about the shoe print. And you saw what he had to say and you  
21 heard what he had to say and you saw his demonstration.

22 Now, the testimony, as I recall, the important point of  
23 his testimony, was doubtful to my recollection. And, when I  
24 heard him testify yesterday, I heard him say, at one point in  
25 time, he said, "I cannot say that this is the shoe that caused

1 this print."

2 And I also heard him, at the end, say that he had an  
3 opinion that, "My opinion is that this shoe made this print."  
4 I heard two different statements from Investigator Henson.  
5 Well, if we have two different statements, then, I submit to  
6 you, then, there's some doubt there.

7 And the only reason I was asking questions about Reebok  
8 or Adidas, Reebok, and Nike was because I don't own a pair of  
9 any one of those famous shoes. I'm not that athletic, and I  
10 don't have need to.

11 But a lot of people wear these, and that's what my point  
12 was of asking Investigator Henson of what is the market share  
13 of Fila? I mean, what is the proportions of the buying public  
14 that gets these shoes. Is it one fifth of the market or one  
15 half? Who sells the most?

16 And, you know, it's understandable that he does not know  
17 that. Who would know that? My point is, these are shoes that  
18 are worn by a lot of people. They're worn by a lot of people.

19 And he also said that there was nothing really  
20 distinguishing about these shoes because there were no cuts  
21 and there were no nicks that could say that this is absolutely  
22 the shoe that made the imprint. I hope you remember that  
23 testimony.

24 And, then, Mr. Pauling says, after he speaks about  
25 Investigator Henson's testimony, he says, "Is this enough?"

## CLOSING ARGUMENTS - MR. POOLE

Page 285

1 And he said, "Maybe, maybe not." The State rests its case  
2 upon Captain Fowlkes' testimony, and other law enforcement,  
3 saying that they got the property from where Ricky Brannon  
4 lived.

5 Now, let's be clear. Burglary is unlawful entry.  
6 November 19<sup>th</sup>, November 20<sup>th</sup>, unlawful entry on these dates  
7 (writing on piece of paper). Possession of property  
8 thereafter is not an entry. Possession of stolen goods  
9 perhaps, but burglary no. Not at all.

10 So, if the lynch pen, if that what's holds this entire  
11 case together is the recovery of property, I say the State's  
12 case still fails because you still don't have Mr. Brannon at  
13 the crime scene. It's no one's fault. It's a failure of the  
14 evidence.

15 It's a failure in that it should not create -- show that  
16 the State has carried a burden of proof by proofing to each  
17 one of you that they have to prove, and that is to say the  
18 State of South Carolina proving its case beyond a reasonable  
19 doubt.

20 So, consider these things when you go in there and -- and  
21 talk about it because it is very important. And this is a  
22 government of laws, a government of procedure, a government of  
23 the way things are -- are done, and Judge Early will tell you  
24 about what the law is.

25 And he will tell you that reasonable doubt is that type

**JURY CHARGE**

Page 286

1 of doubt which will cause a reasonable person to hesitate to  
2 act. And I submit to you, you should really hesitate to find  
3 Mr. Brannon guilty because this is not the type of case that  
4 you should find somebody guilty of entry and burglary.

5 Thanks for your attention. It's been a pleasure to see  
6 you and be with you at this time. I trust that you will go  
7 back there and -- and do what is the right thing. Thank you.

8 (Mr. Poole's closing argument concluded at 10:55 a.m.)

9 **THE COURT:** Now, Mr. Foreperson, ladies and gentlemen, I  
10 -- I suspect my charge -- my instructions are fifteen (15) or  
11 twenty (20) minutes. So, I ask you if you need to take a  
12 little -- stretch your legs and break before I do it, or do  
13 you want me to go right on into it? It's your pleasure. What  
14 do you want to do? Is everybody okay?

15 (Jurors nod affirmatively.)

16 **THE COURT:** Okay. If it gets to be longer than that and  
17 you need a personal break, just raise your hand. But I don't  
18 think it'll be any longer than that.

19 **JURY CHARGE**

20 **THE COURT:** What I do is, I charge. And, as I told you,  
21 a charge is simply an instruction. And the first part of the  
22 charge is -- deals with general propositions of law that I  
23 instruct juries all over the state in every criminal case and  
24 they all -- the first part deals with every type -- type of  
25 crime. And, then, the second part of the charge will



## JURY CHARGE

Page 287

1 instruct you on specifically what the Defendant, in this case,  
2 is charged with.

3 So, let me start off by reminding you, again, that the  
4 fact that Mr. Brannon in this case was arrested, charged, and  
5 indicted, by three indictments, is not evidence in the case.

6 And it cannot be considered by you as evidence in the  
7 case or any evidence of guilt in the case. Nor does it create  
8 any presumption or inference of guilt. These three  
9 indictments (indicating) are simply the charging documents or  
10 the instrument which brings the Defendant into Court.

11 These are the formal documents by which the case is  
12 brought into the court and they are not, in any sense,  
13 evidence in the case.

14 In this case, we have three indictments. Two of them  
15 deal with burglary in the first degree and one with grand  
16 larceny. They charge three separate and distinct offenses.

17 And you must decide each offense separately on the evidence  
18 and the law applicable to it, uninfluenced by your decision as  
19 to any other offense.

20 In other words, you must decide each one of them separate  
21 and apart from the others. And you're not to be influenced by  
22 your decision as it relates to another.

23 The Defendant may be convicted or found not guilty or  
24 acquitted on any or all of the charges and you'll be asked to  
25 write a separate verdict of guilty or not guilty for each

## JURY CHARGE

Page 288

1 indictment.

2 The Defendant has pled not guilty to each of these three  
3 indictments, and that plea of not guilty puts the burden, on  
4 the State of South Carolina, to prove the Defendant guilty of  
5 each indictment, beyond a reasonable doubt.

6 A person charged with committing a criminal offense, in  
7 South Carolina, is never, ever required to prove himself  
8 innocent. I charge you that it is an important Constitutional  
9 Law and Rule of Law that the Defendant -- that the Defendant,  
10 in a criminal trial, no matter how serious the charge may be,  
11 will always be presumed to be innocent of the crime for which  
12 the indictments are issued unless guilt has been proven by  
13 evidence satisfying you of that guilt beyond a reasonable  
14 doubt.

15 Now, this presumption of innocence does not end when you  
16 start your deliberations, but it stays with the Defendant  
17 throughout the trial, until you reach a verdict of guilt,  
18 based on the evidence satisfying you of that guilt beyond a  
19 reasonable doubt.

20 The presumption of innocence is not a mere legal theory.  
21 And it's not just a legal phrase. It is a substantial,  
22 Constitutional Right which every Defendant is entitled unless  
23 you, the jury, are satisfied, from the evidence, of the  
24 Defendant's guilt, beyond a reasonable doubt, and the State  
25 has proven that guilt to you beyond a reasonable doubt.

## JURY CHARGE

Page 289

1 Now, what is a reasonable doubt? Our courts has -- has  
2 defined a reasonable doubt very simply. It says that, "A  
3 reasonable doubt is the kind of doubt that would cause a  
4 reasonable person to hesitate to act," very simple. "A  
5 reasonable doubt is the kind of doubt that would cause a  
6 reasonable person to hesitate to act."

7 I remind you once again that, during the trial, you and I  
8 have certain duties to perform. As the trial judge, it has  
9 been my responsibility to preside over the trial of the case.  
10 And I also have a duty to rule on the admissibility of the  
11 evidence offered during the trial.

12 If, at any time, during the trial, I commented on the  
13 facts or if I had any kind of facial expression or I smiled or  
14 frowned or yawned or whatever, please, don't infer anything  
15 from what I may have done up here. I have absolutely no right  
16 to have any opinion whatsoever on the facts. That is up to  
17 you. So, please, do not take what I may have looked like up  
18 here and think that I may have an opinion because I do not.

19 I also have the additional duty to charge you the law, as  
20 I told you yesterday. I ask that you accept the law that I  
21 charge to you now, and if you have any preconceived ideas of  
22 what the law ought to be and what the law is, and it's  
23 different than what I charge you, please, set that aside.

24 You've sworn to do that and accept the law as I give it  
25 to you. I can't tell you what the facts are, and basically,

## JURY CHARGE

Page 290

1 you can't tell me what the law is.

2 Now, in this case, and like most all cases that I try,  
3 deal with two types of evidence. The lawyers have argued  
4 that, and they both gave you good examples, but there are two  
5 types of evidence: There is direct evidence and there's  
6 circumstantial evidence.

7 And I charge you that direct evidence is the testimony of  
8 a person who asserts or claims to have actual knowledge of a  
9 fact or circumstance indicating the existence of a fact. In  
10 other words, they can see it or smell it or hear it.

11 The law makes no distinction between circumstantial  
12 evidence and direct evidence. And circumstantial evidence is  
13 a series of facts which would lead you to an inference or a  
14 conclusion. Sometimes I say -- I don't use the snow analogy,  
15 but I use the rain example.

16 If you go outside and see it raining, that's direct  
17 evidence. If you sit in here with me this morning and it was  
18 cloudy when you came in and you go out and there's puddles on  
19 everything, that's circumstantial evidence. You can infer  
20 from the puddles and all that it -- that it rained.

21 So, don't give any different weight to circumstantial  
22 evidence and direct evidence. They both should be treated the  
23 same.

24 And one of your main jobs is to determine the  
25 believeability or the credibility of witnesses who testified

## JURY CHARGE

Page 291

1 in the case. And credibility simply means believeability. It  
2 becomes your duty, as jurors, to analyze and evaluate the  
3 evidence and determine which evidence convinces you of its  
4 truth.

5 Now, in determining the believability or credibility of  
6 witnesses, who have testified in the case, you may believe one  
7 witness over several witnesses or several witnesses over one  
8 witness. You may believe a part of the testimony of a witness  
9 and reject the remaining part of the testimony of that same  
10 witness.

11 You may believe the testimony of a witness in its  
12 entirety or you may reject the testimony of a witness in its  
13 entirety. You may consider whether any witness has exhibited  
14 to you any interest, bias, prejudice, or other motive in the  
15 case. You may also consider the appearance and manner a  
16 witness has while on the witness stand.

17 I explained to you yesterday a little bit about the Rules  
18 of Evidence concerning opinions. Our Rules of Evidence  
19 ordinarily do not permit witnesses that testify to opinions or  
20 conclusions.

21 An exception to this Rule exists for witnesses we call  
22 expert witnesses, a witness who, by education and experience,  
23 has become an expert in some art, science, or profession or a  
24 calling may state an opinion as to relevant and material  
25 matters to which the witness claims to be an expert and may

## JURY CHARGE

Page 292

1 also state the reasons for that opinion.

2 You should consider any expert opinion received into  
3 evidence in this case, and like any other evidence, give it  
4 the weight you think it deserves. If you decide that the  
5 opinion of an expert witness is not based on sufficient  
6 education and experience, or if you conclude that the reasons  
7 given, in support of the opinion, are not sound or that the  
8 opinion is outweighed by other evidence, you may disregard the  
9 opinion entirely.

10 An expert witness' testimony is to be given no greater  
11 weight than that of other witnesses simply because the witness  
12 was qualified as an expert. I further charge you that you are  
13 not required to accept an expert's opinion, even though it is  
14 not contradicted.

15 And there's another important Constitutional Rule of Law  
16 and I charge you on that. And I charge and instruct you and  
17 emphasize that the fact that the Defendant did not testify is  
18 not a factor to be considered by you, in any way whatsoever,  
19 in your deliberation and in your consideration on the question  
20 of the guilt or innocence of the Defendant.

21 It must not. It must not be considered by you, in any  
22 manner, whatsoever. The Defendant has the Constitutional  
23 Right to remain silent. And the assertion of this right must  
24 not be considered by you in your deliberations.

25 I repeat, under your oath, you're to draw absolutely no

## JURY CHARGE

Page 293

1 conclusion whatsoever from the fact that the Defendant in this  
2 case did not testify. The fact that he did not testify should  
3 not even be discussed in the jury room. The burden of proof  
4 is, on The State of South Carolina, to prove the Defendant  
5 guilty beyond a reasonable doubt.

6 The Defendant is not required to prove his innocence.  
7 So, Mr. Foreman, one of your duties is that, if anybody  
8 discusses or attempts to discuss the fact that the Defendant  
9 did not testify, I charge you that is improper and should not  
10 be considered at all by you twelve people when you deliberate  
11 his guilt or innocence.

12 An oral statement has been alleged to have been made by  
13 the Defendant and has been admitted into -- into evidence in  
14 this case. The Court has determined that the statement is  
15 admissible.

16 But I instruct you that you make the ultimate decision of  
17 whether or not the Defendant, in fact, made the statement.  
18 And, if he did make the statement, you must, then, determine  
19 whether the statement was made by the Defendant voluntarily  
20 and of his own freewill.

21 This means that the statement was not caused by pressure,  
22 force, fear, threats, coercion or intimidation or by hope or a  
23 promise of leniency or a reward of any kind. In determining  
24 whether the statement was voluntary, you should consider both  
25 the characteristics of the Defendant's -- of the Defendant and

## JURY CHARGE

Page 294

1 the details of the questioning.

2 Some of the factors that you must consider are: The age  
3 of the Defendant, the Defendant's education or lack thereof,  
4 his mental ability or capacity, his IQ or intelligence, his  
5 background and environment, the place and length of detention,  
6 the nature of the questioning, and the advice or lack thereof  
7 to the Defendant of his Constitutional Rights, including but  
8 not limited to his right to remain silent, that any statement  
9 could be used against him in a Court of Law;

10 The right to have a lawyer present; that, if he could not  
11 afford a lawyer, a lawyer would be appointed to represent him  
12 without cost, and that he could stop making a statement at any  
13 time.

14 You must carefully consider all of the surrounding  
15 circumstances before you give any weight to an alleged  
16 statement. The State of South Carolina has the burden of  
17 proving, beyond a reasonable doubt, that the alleged statement  
18 was voluntary.

19 If you determine it was, you may give the statement any  
20 further consideration that you deem proper. You must decide  
21 what weight, if any, to be given to the alleged statement.  
22 And, if you determine the alleged statement was not the free  
23 and voluntary statement of the Defendant, you should not  
24 consider the statement at all.

25 Now, Mr. Foreman, ladies and gentlemen, that is, as I



## JURY CHARGE

Page 295

1 said earlier, the standard charge that I give in all criminal  
2 cases that I try throughout the State, as well as all of the  
3 other judges that try cases. Now, let's turn our attention to  
4 the specific charges in this case.

5 In two of the indictments, he is charged with first  
6 degree burglary. In order to prove that, the State must  
7 prove, beyond a reasonable doubt, that the Defendant entered a  
8 dwelling without consent, must prove beyond a reasonable  
9 doubt, that the Defendant entered a dwelling without consent.

10 A dwelling is defined in our state as any building or  
11 portion of a building which a person ordinarily sleeps. A  
12 building constructed as a dwelling that has never been  
13 occupied cannot be considered a dwelling for purposes of a  
14 burglary. But a building is a dwelling even, if the residents  
15 are temporarily absent, from the building.

16 In order to prove that the Defendant entered the  
17 dwelling, the State does not have to show that the Defendant's  
18 entire body entered that dwelling; the smallest entry is  
19 sufficient. It may be any part of the body such as a hand or  
20 a foot or even an instrument such as a crook or other  
21 instrument.

22 In addition, the State does not have to prove that force  
23 was used to gain entry. In other words, the first element is  
24 that they must prove, beyond a reasonable doubt, that the  
25 Defendant entered a dwelling without consent and a dwelling is

## JURY CHARGE

Page 296

1 a building where a person normally -- ordinarily sleeps.

2 The next thing the State must prove, beyond a reasonable  
3 doubt, is that the Defendant intended to commit a crime  
4 therein, either a felony or a misdemeanor, at the time of the  
5 incident.

6 The mere entry into a dwelling without consent is not a  
7 burglary. If the intent to commit a crime is formed, after  
8 the entry, it is not a burglary. On the other hand, if the  
9 Defendant intended to commit a crime, at the time of the  
10 entry, it is a burglary even if the intent was abandoned after  
11 the entry.

12 It does not matter that the intended crime was never  
13 completed. An intent that is shown by acts and conducts of  
14 the Defendant and other circumstances from which you may  
15 naturally and reasonably infer intent.

16 Now, those are the elements of first degree burglary. In  
17 addition to that, there's some other technical matters that  
18 the State must prove, but the lawyers have stipulated that  
19 they have met that, so, that is not something that you must  
20 consider yourself with.

21 So, all you have to consider is whether or not the State  
22 has proven, beyond a reasonable doubt, that the Defendant  
23 entered a dwelling without consent with the intent to commit a  
24 crime therein. Those are the two main elements that you have  
25 to consider. Hold on one second.

## JURY CHARGE

Page 297

1 (Brief Pause)

2 THE COURT: I have such a wonderful law clerk, and she  
3 always prints these things out for me, but she left one out  
4 today. I'll have to call her. I'm just kidding.

5 The other indictment charges that the Defendant with  
6 grand larceny. The State must prove, beyond a reasonable  
7 doubt; that the Defendant took and carried away the property  
8 of another against the will or without the consent of the  
9 other person.

10 The slightest removal of the property or the complete  
11 possession of the property, even for an instant, by the  
12 Defendant, is enough to show a taking and carrying away of the  
13 property.

14 The State also must prove, beyond a reasonable doubt,  
15 that the Defendant intended to permanently deprive the owner  
16 of the property. And finally, the State must prove, beyond a  
17 reasonable doubt, that the value of the property taken was  
18 more -- was one thousand dollars (\$1,000) or more.

19 Now, that is a general charge, on the general  
20 propositions of law, and that is an instruction on the two  
21 offenses charged in this case, i.e., burglary first and grand  
22 larceny. Now, what you do, as I told you earlier, you must  
23 consider each indictment separately and independently of the  
24 others. Your verdict must be unanimous on each indictment.

25 And what I have done, Mr. Foreperson, is I have three

## JURY CHARGE

Page 298

1 verdict forms in the case. And it's very simple, I have to  
2 list one before the other, I have to put "not guilty" or  
3 "guilty," so, don't place any emphasis on the fact that I got  
4 one before the other. Obviously, if I put two of them down,  
5 one would have to come first.

6 So, what I've done is I got three verdict forms. One is  
7 on the burglary in the first degree as to Ms. Sherrick's case.  
8 The other one is as to the Gallmans' case, and the last one is  
9 to the grand larceny as to the Gallmans' case.

10 So, you go in and you deliberate one at a time,  
11 separately and distinctly from the other. And your decision  
12 has to be unanimous. All twelve of you must -- must agree as  
13 to the verdict. When you finish one, you go to the next,  
14 simply whatever the verdict may be, whether it's guilty or not  
15 guilty, simply check the correct, guilty or not guilty, and  
16 sign your name and date it.

17 And once you've reached a decision on all three, then,  
18 you will knock on the jury door and the bailiffs will be right  
19 outside the jury room and we'll bring you back into the  
20 courtroom to receive your verdict.

21 If, at any time during the deliberations, Mr. Foreman,  
22 you all have any questions, if you'll write those down on a  
23 piece of paper and knock on the door and give them to the  
24 bailiff, and he'll pass it up to me. And I will either bring  
25 you out here to explain it or I'll send you back a written

## JURY CHARGE

Page 299

1 note as to what I can and cannot do in regard to whatever the  
2 question may be. I'm not saying you will have any questions,  
3 but you may.

4 So, at this time, I'm going to ask my twelve jurors to  
5 follow the bailiff. And we'll put my alternate -- hold on one  
6 second -- my alternate juror in another room for a -- a little  
7 while.

8 Mr. Foreman, do not start deliberations yet. It takes me  
9 about five more minutes to make sure I haven't left anything  
10 out in my instructions to you, number one; and two, and then,  
11 we have to gather the evidence and make sure we have  
12 everything that's been entered into evidence.

13 Once we do that, I'll send the verdict forms back to you,  
14 along with the evidence, and then, the bailiff will tell you  
15 to start your deliberations. So, give me about five more  
16 minutes before you start to deliberate.

17 (The jury exited the courtroom at 11:18 a.m.)

18 THE COURT: On behalf of the State, are there any  
19 additional requests or objections to my charge?

20 MR. PAULING: There are none, Your Honor.

21 THE COURT: Mr. Poole?

22 MR. POOLE: No, sir.

23 THE COURT: All right. Mr. Poole, you and Mr. Pauling  
24 and Mr. Pearson, would you all, please, come forward and make  
25 sure we have the exhibits correct, and -- and then, we'll send

## JURY CHARGE

Page 300

1 it to the jury.

2 (Brief pause while the attorneys go over the exhibits  
3 with the court reporter.)

4 THE COURT: All right, Gentlemen, do we agree on all the  
5 exhibits?

6 MR. PAULING: Yes, Your Honor.

7 MR. POOLE: Yes, sir.

8 THE COURT: And, the form of the verdict is simply not  
9 guilty or guilty. What I do is, whatever the verdict they  
10 reach, I keep the indictment for the file. I do not send the  
11 indictments back.

12 MR. PAULING: All right. Yes, sir.

13 THE COURT: All right. And those guns don't go back  
14 there ---

15 MR. POOLE: No, sir.

16 MR. PAULING: No, sir.

17 THE COURT: Thank you. Take them back.

18 (Off-the-Record Comments)

19 THE COURT: Tell them they can start with their  
20 deliberations. Thank you, sir.

21 (The jury began deliberating at 11:21 a.m.)

22 (Off-the-Record Comments)

23 THE COURT: All right, Gentlemen, on behalf of the  
24 State, Mr. Pauling and Mr. Pearson, anything for the record  
25 now?

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## JURY CHARGE

Page 301

1 MR. PAULING: Not from the State, Your Honor.

2 THE COURT: Mr. Poole?

3 MR. POOLE: No, sir.

4 THE COURT: All right. On the record, I would like to  
5 commend both of you -- all three of you for being very well  
6 prepared and presenting your case, in a most professional and  
7 civil manner, and being so courteous not only to the Court but  
8 to each other and the parties and everyone. And I commend all  
9 of you.

10 So, we'll stand at ease and see what happens. He's in  
11 custody and will one of you gentleman, the captain or  
12 whatever, get me Mr. Morin?

13 (Other matters were heard while the jury deliberated.)

14 (The verdict was reached at 1:32 p.m.)

15 THE COURT: Madam Clerk, I understand we have a verdict;  
16 is that correct?

17 MADAM CLERK: Yes, sir.

18 THE COURT: Are you ready to receive the verdict, AG  
19 office?

20 MR. PAULING: The State is ready, Your Honor.

21 THE COURT: Mr. Poole?

22 MR. POOLE: Yes, sir.

23 THE COURT: All right. Bring the jury in.

24 (The jury entered the courtroom at 1:34 p.m.)

25 (Off-the-Record Comments)

## VERDICT

Page 302

1 THE COURT: Mr. Foreman, have you all reached a verdict?

2 MR. KELLER: Yes, sir.

3 THE COURT: If you would, please, hand it to the  
4 bailiff.

5 (Documents handed to the bailiff, who, in turn, handed  
6 them up to the Court.)

7 THE COURT: You may publish it.

8 MADAM CLERK: "2004-GS-11-201, The State of South  
9 Carolina vs. Ricky Brannon, we the jury find the Defendant in  
10 this case, Ricky Brannon, to be not guilty of burglary in the  
11 first degree as to Joy Sherrick. Signed by foreperson, Jerry  
12 Keller.

13 "Indictment 2004-GS-11-202, The State of South Carolina  
14 vs. Ricky Brannon, we the jury find the Defendant in this  
15 case, Ricky Brannon, to be guilty of burglary first degree, as  
16 to Kenneth Gallman.

17 "Indictment 2004-GS-11-203, The State of South Carolina  
18 vs. Ricky Brannon, we the jury find the Defendant in this  
19 case, Ricky Brannon, to be guilty of grand larceny. Signed by  
20 foreperson Jerry Keller."

21 Ladies and gentlemen of the jury, if this is the verdict  
22 of you all, please, indicate by raising your right hand.

23 (Jurors all raise hands.)

24 MADAM CLERK: Thank you.

25 THE COURT: Thank you. Anything further for the jury



## VERDICT

Page 303

1 before I dismiss them?

2 MR. PAULING: Not from the State, Your Honor.

3 MR. POOLE: I would ask the jury -- for the Court to  
4 poll the jury.

5 THE COURT: All right. What that means, Madam -- Mr.  
6 Foreman -- I'm sorry, I did it all this week -- and ladies of  
7 the jury, as I call your name, I will ask you a question. The  
8 question will be, "Is this your verdict, and is it still your  
9 verdict?" And if it is, please, say, "I do." If it is not,  
10 say, "I disagree." As your name is called, please, stand.

11 MADAM CLERK: Juror 103, Jerry Keller?

12 THE COURT: Sir, is this your verdict and is it still  
13 your verdict?

14 MR. KELLER: Yes, sir.

15 THE COURT: Thank you, sir.

16 MADAM CLERK: Juror 68, Viola Palmer.

17 THE COURT: Ma'am, is this your verdict and is it still  
18 your verdict?

19 MS. PALMER: Yes, sir.

20 THE COURT: Thank you, ma'am.

21 MADAM CLERK: Juror 59, Ashley Mathis.

22 THE COURT: Ms. Mathis, is this still your verdict, and  
23 is it still your verdict?

24 MS. MATHIS: Yes, sir.

25 THE COURT: Thank you.

## VERDICT

Page 304

1 MADAM CLERK: Juror 105, Jean Whiteside.

2 THE COURT: Ms. Whiteside, is this your verdict and is  
3 it still your verdict?

4 MS. WHITESIDE: Yes, sir.

5 THE COURT: Thank you.

6 MADAM CLERK: Juror 86, Debbie Stokes.

7 THE COURT: Ma'am, is this your verdict and is it still  
8 your verdict?

9 MS. STOKES: Yes, sir.

10 THE COURT: Thank you.

11 MADAM CLERK: Juror 57, Mary Lender.

12 THE COURT: Is this your verdict and is it still your  
13 verdict, Ms. Lender?

14 MS. LENDER: Yes, sir.

15 THE COURT: Thank you.

16 MADAM CLERK: Juror 50, Joanne Humphries.

17 THE COURT: Ms. Humphries, is this your verdict and is  
18 it still your verdict?

19 MS. HUMPHRIES: Yes, sir.

20 THE COURT: Thank you.

21 MADAM CLERK: Juror 11, Sandy Bell.

22 THE COURT: Ms. Bell, is this your verdict and is it  
23 still your verdict?

24 MS. BELL: Yes, sir.

25 MADAM CLERK: Juror 47, Janelle Holmes.

## VERDICT

Page 305

1 THE COURT: Ms. Holmes, is this your verdict and is it  
2 still your verdict?

3 MS. HOLMES: Yes, sir.

4 THE COURT: Thank you, ma'am.

5 MADAM CLERK: Juror 60, Angela McDonald.

6 THE COURT: Ms. McDonald, is this your verdict and is it  
7 your verdict?

8 MS. MCDONALD: Yes, sir.

9 THE COURT: Thank you.

10 MADAM CLERK: Juror 100, Christina Wright.

11 THE COURT: Ma'am, is this your verdict and is it still  
12 your verdict?

13 MS. WRIGHT: Yes, sir.

14 THE COURT: Thank you.

15 MADAM CLERK: Juror 14, Betty Blackwood.

16 THE COURT: And, ma'am, is this your verdict and is it  
17 your verdict?

18 MS. BLACKWOOD: Yes, sir.

19 THE COURT: Thank you so very much. Mr. Foreman, ladies  
20 and gentlemen, thank you so very much for serving this week.  
21 Obviously, we could not have conducted court without you. Mr.  
22 Foreman, I need for you to sign the back of the indictments,  
23 if you would, please.

24 (Brief pause while Mr. Keller signs documents.)

25 THE COURT: All right. Mr. Foreman, and ladies of the

## MOTIONS &amp; MATTERS

Page 306

1 jury, what I have to do now is sentence the Defendant. And  
2 you all are welcome to stay for that. It'll be about a ten-  
3 minute proceeding, or you're certainly welcome to leave.

4 I know your food has been delivered, and you can pick it  
5 up and eat it here or take it with you, whatever your  
6 pleasure. Of, if you have any questions of me, I'll be more  
7 than happy to answer them.

8 So, having said that, any questions? Anyone would like  
9 to stay for the sentencing, you're welcome to do so. If you  
10 do not, you're certainly free to go at this time. Or you can  
11 all stay, whatever suits you.

12 (The jurors all chose to stay for the sentencing.)

13 THE COURT: All right, bring the Defendant forward,  
14 please.

15 (Mr. Poole and Mr. Brannon step forward for sentencing.)

16 THE COURT: I think you'll find this interesting, or  
17 it'll explain some things that you probably did not know.

18 (Brief Pause)

19 THE COURT: All right. Mr. Pauling, what's the  
20 statute, 17 ---

21 MR. PAULING: 17-25-45 I believe, Judge.

22 MR. POOLE: May it please the Court, prior to us getting  
23 there?

24 THE COURT: I'll be glad to hear from you.

25 MR. POOLE: Yes, sir. At this time, I would make a

## MOTIONS &amp; MATTERS

Page 307

1 motion, on Mr. Brannon's behalf, for a motion in arrest of  
2 judgements/new trial.

3 This motion is based, upon my motion for a directed  
4 verdict, that was made at the end of the State's case. And I  
5 -- that is what it is based upon.

6 THE COURT: Thank you. And for the same reasons as,  
7 when I denied it, at that point in time, obviously, there was  
8 sufficient evidence and the jury has spoken. They're the  
9 finders of fact and they found the State has proven the  
10 elements of burglary and grand larceny as it pertained to the  
11 Gallman house beyond a reasonable doubt.

12 And likewise, on the other house, they found it -- the  
13 State did not, so, I think the jury certainly paid very  
14 careful attention to the evidence. They digested it and  
15 they've made their decision, which I certainly do not find to  
16 be inconsistent.

17 There was some reason to hesitate, reasonable doubt,  
18 because there was really no evidence other than seeing his car  
19 in the presence of -- of the lady's house, Ms. Sherrick's  
20 house, quite the contrary to the Gallman house, and the  
21 evidence of shoe prints and shoes were there and obviously the  
22 jury -- that is their decision to find what they believe and  
23 who they believe. And they were the finders of the fact and I  
24 respect that and I concur with their decision and respectfully  
25 deny your motion.

## MOTIONS &amp; MATTERS

Page 308

1 Now, as I understand, the State has moved, pursuant to  
2 Section 17-25-45, to seek a sentence of life without parole  
3 based on the fact that the Defendant has two or more previous  
4 most serious and/or serious, a combination, one and one  
5 previous serious or more or a combination of more than two  
6 serious -- serious and most serious offenses. And, at the  
7 close of the State's case, they put into the record all of  
8 those convictions.

9 There were a series of burglaries one back in 1991, four  
10 as I remember correctly, and subsequent to that, there were  
11 placed into evidence a conviction and/or guilty plea for --  
12 help me.

13 MR. PAULING: A burglary second degree, as well as an  
14 arson ---

15 THE COURT: Two arsons.

16 MR. PAULING: --- two arsons second degrees, Your Honor.

17 THE COURT: So, another burglary second, which is a  
18 serious and two arsons, which are also serious; is that  
19 correct?

20 MR. PAULING: That's correct, Your Honor.

21 THE COURT: So, we have a combination of three serious  
22 and four most serious; is that correct?

23 MR. PAULING: That's correct, Your Honor.

24 THE COURT: All right. Mr. Poole, I know that -- I want  
25 to first of all also say, and pursuant to Section "H" of that

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## MOTIONS &amp; MATTERS

Page 309

1 code section, I'd like to put in the record the service of the  
2 notice of the intent to seek life without parole pursuant to  
3 the Statute which to be served -- should be served on the  
4 Defendant as well as his lawyer. Has that been done, sir?

5 MR. PAULING: That has been done, Your Honor, and I have  
6 -- I have copies of the affidavit of service, Your Honor. It  
7 was actually served back in -- August 2<sup>nd</sup> of two thousand, four  
8 (2004), by the Seventh Circuit Solicitor's Office. Notice was  
9 also given back in November of two thousand, five (2005) by  
10 our office as well, Your Honor.

11 THE COURT: Mr. Poole, I will allow you -- I'm going to  
12 go ahead and sentence him today. I will allow you -- if you  
13 want to make any post-trial motions on life without parole,  
14 Section 17-25-50, there's been some discussions concerning  
15 that, and that's where you consider the closely connected  
16 offenses as one offense after you look at all the  
17 circumstances, and I'll give you ten (10) days to file any  
18 post-trial motion on that and will make myself available to  
19 hear that argument and allow you to submit briefs on that  
20 issue. Is that fair enough?

21 MR. POOLE: Yes, sir. But if I may see the -- the  
22 indictments that we -- the State produced today, I might be  
23 able to make that motion right now.

24 THE COURT: Go ahead and look at them. Let him look at  
25 them.

## MOTIONS &amp; MATTERS

Page 310

1 MR. POOLE: Just to confirm what I read earlier.

2 (Brief pause while Mr. Poole reviews documents.)

3 MR. POOLE: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. POOLE: Your Honor, yesterday introduced into the  
6 record were four burglary first degree convictions against Mr.  
7 Brannon. The dates of those incidents were September 22, 24,  
8 25, 27, nineteen, ninety-one (1991).

9 THE COURT: Correct.

10 MR. POOLE: This morning, there were three indictments  
11 that were introduced, on three charges of burglary second,  
12 arson second, arson second. And those dates were September  
13 22, September 24, September 25, and September 27. All of the  
14 indictments that have been introduced occurred and encompass  
15 incidences and activities that extend from September 22  
16 through September 27.

17 And, for purposes of sentencing under the 17-25-45, we  
18 would submit that these convictions could be -- were so  
19 closely related and connected that they could be construed as  
20 one event, one incident, one quote, "spree," unquote.

21 And I make this motion under the case of State v. Woody  
22 (phonetic), a two thousand, one (2001) South Carolina Court of  
23 Appeals case.

24 THE COURT: I'm very aware -- aware of Woody. That was  
25 tried by Judge Clary here in this courtroom.



## MOTIONS &amp; MATTERS

Page 311

1 MR. POOLE: Yes, sir.

2 THE COURT: It was a Gaffney case.

3 MR. POOLE: Yes, sir. And that is our motion.

4 THE COURT: All right. Well, that is respectfully  
5 denied. I have read very carefully this morning the Woody  
6 case, the statutory scheme, and I find that Woody does not  
7 apply and Section 17-25-50 does not apply. I find that these  
8 prior convictions were not so closely connected to one  
9 incident they would come within the statutory scheme and your  
10 motion is respectfully denied. Anything else?

11 MR. POOLE: No, sir.

12 THE COURT: Anything you want to tell me before I  
13 sentence Mr. Brannon?

14 MR. POOLE: Your Honor, there is really nothing that I  
15 can say other than the fact that he is thirty-seven (37) years  
16 old. He has one child who is one year old. And his  
17 background, as far as work history is concerned, he's done  
18 menial labor. He's worked in restaurants. He's done  
19 construction.

20 The Court is already familiar with his record. He served  
21 an eight-year period back in the 1991 events, but that was a  
22 twenty-year sentence that was handed down. And, if I say  
23 anymore, I don't believe the Court has any -- any latitude as  
24 far as sentencing is concerned, so, that's all I have to say,  
25 unless Mr. Brannon has something to say.

## MOTIONS &amp; MATTERS

Page 312

1 THE COURT: All right. 16-13-20, grand larceny, carries  
2 up to five (5) years; is that correct?

3 MR. PAULING: That's correct, Your Honor.

4 (Brief Pause)

5 THE COURT: Mr. Brannon, anything you want to tell me?

6 THE DEFENDANT: Yes, there's a couple of things I want  
7 to say.

8 THE COURT: Sir?

9 THE DEFENDANT: There's a couple of things I want to  
10 say. First, I ain't surprised.

11 THE COURT: The first thing is what?

12 THE DEFENDANT: I'm not surprised with the outcome. I  
13 feel like I got an unjust trial. That's my feeling.

14 THE COURT: Well, why is that?

15 THE DEFENDANT: I feel like some testimony was construed  
16 and misruled and put out of place. I feel a couple of your  
17 rulings was all against me.

18 THE COURT: A couple of my rulings were against you?

19 THE DEFENDANT: Yes, maybe all of your rulings, to be  
20 blunt.

21 THE COURT: Well, let me tell you what ---

22 THE DEFENDANT: Ah ---

23 THE COURT: --- there's courts in Columbia called  
24 Appellate Courts ---

25 THE DEFENDANT: Yes, sir.

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## MOTIONS &amp; MATTERS

Page 313

1 THE COURT: --- and they can certainly review my  
2 rulings, and if I'm wrong, you'll get a new trial. But I  
3 don't think I'm wrong. I've looked at all the law in your  
4 case. And it's time for you to move forward and step up to  
5 the plate.

6 THE DEFENDANT: Well, you know, that's ---

7 THE COURT: And, sir, you've chosen this lifestyle, not  
8 me. Don't blame me.

9 THE DEFENDANT: I'm not really blaming you, but you are  
10 the judge.

11 THE COURT: And I accept that responsibility.

12 THE DEFENDANT: I want to say this much. I don't think  
13 a watch and a ring, a window, or a car amounts to a person's  
14 life. I really don't.

15 THE COURT: Well, Mr. Brannon ----

16 THE DEFENDANT: And maybe -- maybe you do ----

17 THE COURT: No, sir, I don't. I don't make the laws.  
18 The legislature makes the law.

19 THE DEFENDANT: All right.

20 THE COURT: And, you're right, if this had been your  
21 first offense, or second offense, we wouldn't be looking at a  
22 life without parole sentence. But you have an extensive prior  
23 record and the legislature has passed laws that say that, if  
24 you commit crimes that are most serious ---

25 THE DEFENDANT: Uh-huh (affirmative).

## SENTENCING

Page 314

1           THE COURT:    --- and have two strikes, you subject  
2 yourself to life without parole.

3           And, if you commit crimes that are serious, and you get  
4 three strikes, you subject yourself to life without parole.  
5 And your prior record is four burglary ones in the past, a  
6 burglary second, and two arsons.

7           THE DEFENDANT:   Yeah.

8           THE COURT:    And so, your combination strikes you out, as  
9 they say in the law, on whether it's serious or most serious.

10          THE DEFENDANT:   Yeah, but it was eighteen (18) years  
11 ago.

12          THE COURT:    Sir?

13          THE DEFENDANT:   It was eighteen (18) years ago, Your  
14 Honor.

15          THE COURT:    Eighteen (18) what?

16          THE DEFENDANT:   Eighteen (18) years ago.

17          THE COURT:    I understand that, and I have looked at the  
18 case law concerning that as well. It's like the case of State  
19 v. Riley (phonetic) where there was a prior conviction  
20 nineteen years ago and the Courts held that that was not too  
21 remote in time to enhance your sentence under recidivism.  
22 Anything else you want to tell me?

23          THE DEFENDANT:   That's all. That's all I got to say.

24          THE COURT:    All right. Mr. Brannon, on indictment 2004-  
25 GS-11-202, burglary in the first degree, the sentence of the

PAMELA FAUCETTE, CVR, 864-574-9534 or 336-260-2864

## SENTENCING

Page 315

1 Court is that you be committed to the State Department of  
2 Corrections for the balance of your natural life without being  
3 eligible for parole pursuant to Section 17-25-45.

4 As to indictment 04-GS-11-203, grand larceny, it is the  
5 sentence of the Court you be committed to the State Department  
6 of Corrections for five (5) years. That runs concurrent.  
7 Good luck to you.

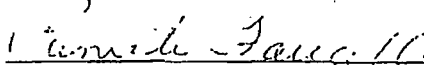
8 (Whereupon, the proceeding concluded at 2:02 p.m.)  
9  
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REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 315, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

November 4, 2006

  
Pamela Faucette  
Official Court Reporter  
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA )

In the Court of Common Pleas

County of Cherokee )**009CP-110555**Ricky Brannon #179051 )

Full name and prison number, if any, of applicant )

v. )

State of South Carolina )

Name of Respondent )

APPLICATION FOR

POST-CONVICTION RELIEF

ERANDY T. MCBEE

JUN 10 A 10:49

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Broad River Corr. INST. 4460, Broad River Rd, Columbia S.C. 29210.
2. Name and location of Court which imposed sentence Court of General Session, 7th Judicial Circuit, Cherokee County, Gaffney S.C.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 2004-GS-11-202, 1st Degree burglary, sentence
  - (b) to Life without parole pursuant to sec. 17-25-45.
  - (c) 2004-GS-11-203, Grand Larceny sentence to 5 years concur.
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) April 2006
  - (b) Life without parole,
  - (c) \_\_\_\_\_

5. Check whether a finding of guilty was made

- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty ✓ \_\_\_\_\_
- (c) after a plea of nolo contendere \_\_\_\_\_

6. Did you appeal from the judgment of conviction or the imposition of sentence? YES,  
"Direct Appeal"

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

- i. Affirmed, on grounds That the issue was not
- ii. preserved for review. Due to counsel's failure to object
- iii. at time of evidence, at trial.

(c) the date of each such result:

- i. June 20, 2008
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. Affirmed, pursuant to Rule 220(b) SCACR, and state
- ii. v. Schumpert. 312 S.C. 520.526.608 SC.2d:435 (Ct App 2004).
- iii. Unless an objection is made at time of evidence, Not preserved for review

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) \_\_\_\_\_
- (b) NA
- (c) \_\_\_\_\_

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) see attached sheets
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_



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

(a) \_\_\_\_\_

see attached sheet

(b) \_\_\_\_\_

(c) \_\_\_\_\_

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

N/A

(d) any other petitions, motions or applications in this or any other Court?

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

N/A

(b) the name and location of the Court in which each was filed:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

N/A

(c) the disposition thereof:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

iv. \_\_\_\_\_

N/A

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

NA

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

NA

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

NA

(b) the proceedings in which each ground was raised:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_

NA

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Applicant, Had No issues heard by The
- (b) Appeals Court, on his "Direct Appeal", Because, issues
- (c) was not preserved for review. Other issues not raised

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? NO

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Initial Counsel, Mr. Don Thompson, Cherokee Co. public Defender
- ii. Substitute Trial Counsel, Mr. Roger Pask, Esquire, Spartanburg S.C.
- iii. Appellate Counsel Mrs. Labele C. Durant. (Direct Appeal)

(b) the proceedings at which each such attorney represented you:

- i. In preparation of trial, such as preliminary hearing,
- ii. In the Trial itself, as my Defence Counsel,
- iii. As my Appellate Counsel on Direct Appeal.

18. State clearly the relief you seek in filing this application.

Seek to have conviction and sentence vacated and/or  
seek Order of New Trial, or resentencing if applicable

19. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA )  
COUNTY OF Cherokee )

009CP-110555

VERIFICATION

I, Ricky Brannon #179051, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Ricky Brannon

Sworn to and subscribed before me  
This 8<sup>th</sup> day of June, 2009

Donald J. Dill L.S.

Notary Public for South Carolina My Commission Expires  
My Commission Expires August 25, 2015

BRADLEY W. NOBEE  
2009 JUN 10 A 10:49

APPLICATION TO PROCEED WITHOUT PREPAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF

I, Ricky Brannon #179051, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Ricky Brannon  
Applicant

Sworn to and subscribed before me  
This 8<sup>th</sup> day of June, 2009

Donald J. Dill L.S.

Notary Public for South Carolina My Commission Expires  
My Commission Expires: August 25, 2015

Applicant continues to answer his p.c.R. application, Question No. (9). STATE CONCISELY The Grounds on which you base your allegations that you are being held in custody unlawfully:

- (A) 1. Prosecution in closing arguments constructively amended the aggravating element of crime charged in the indictment.
2. FATAL variance between Indictment charging Applicant with 1st degree burglary and Grand Larceny of the residence of person named in the indictment and proof shown at Trial that Applicant
3. Trial Court in its Jury charge constructively amended the indictment by giving Jury instructions of second degree burglary statute absent the required aggravating element, when Applicant was indicted on 1st degree burglary charges. Due to the Trial Court permitting the aggravating element to be stipulated to in lieu of informing and instructing the Jury as to that element.
- (B). Ineffective assistance of original counsel, Don. Thompson, in violation of Applicant's Right to due process, conflict of interest, 6th Amendment violation Denial of Counsel at Advers proceedings
- (C). Ineffective assistance of Substitute Trial Counsel Mr. Roger Poole violation of Applicant's Right to due process. Conflict of interest. 6th Amendment Denial of Counsel at Advers proceedings.
- (D). Ineffective assistance of Appellate Counsel, Ms Lanielle C. Durants Frivolous Appeal, prejudice late Notice of final decision of issue on appeal.
- E). Conflict of interest of The 7th Circuit Solicitors office, in violation of order of Disqualification, Obstruction of Justice, Due process violation, Denial of Right to trial and Appeal,

(F) "Newly Discovered Evidence," perjury testimony, 6th Amendment violation, Discovery violation, 4th Amendment violation, and violation of Due process. Involuntary statement.

(G) 1. Abuse of Discretion of Trial Court, failure to conduct "Gate keeping" obligation, proffer testimony, Hold relevant 403. Hearing before allowing prejudicial shoe print expert testimony.  
2. Abuse of Discretion allowing stipulation to an essential element in lieu of informing and/or instructing The Jury About The element.

(H). Failure to serve timely Notice seeking life without parole on Applicant.

(I). Error of Trial Court, Not inquiring into known conflict and potential Conflicts of interest in Applicants Trial, Improper jury instructions, Failure to instruct Jury on Lesser included offense, Finding that prior guilty plea convictions were separate, when ~~conviction~~ crime was consolidated for sentencing constituting one conviction.

Ricky Brannon #179051

Broad River Corr INST.

4460 Broad River Rd.

Columbia S.C. 29210.

Amendment To (p.c.R)

Rodney W. Richey P.A.

Richey & Richey Atty At Law.

Post Office box 10916.

Greenville S.C. 29603.

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

Dear Sir

please find inclosed herein an Amendment To my post conviction Relief Applicant. In This Amendment, Applicant continues to answer question NO#10. of p.c.R. application. Allegations, A-I, as is set out in support of my claims in Question No#9. of Application, please submit This Amendment or make the necessary changes To it.  
Sincerely

Dated October 2, 2009

S/ Ricky Brannon  
Ricky Brannon #179051.

please Return The Applicant  
a Copy of This Amendment.

STATE of South Carolina }

County of Cherokee. }

Ricky Brannon #179051 }

Applicant }

- vs - }

STATE of South Carolina. }

Respondent. }

IN The Court of Common Pleas  
7th Judicial Circuit.CASE NO. 009-CP-11-0555Applicant. Amends his post  
Conviction Relief Application  
(p.c.r.).

The above named Applicant do hereby Amends his post conviction  
Relief Application, And continues To answer question # 10. of  
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 will set out in The same alphabetical order The factual  
grounds to support each issue raised in his Application, please see those  
ground in support on The Following attached sheets.

Dated October 2, 2009

Respectfully,

S/ Ricky Brannon  
Ricky Brannon



# Certificate of Service

Please Take Notice, That The undersigned, Do hereby certify, That he has mailed The herein attached, Amendment to his post Conviction Relief Application, To his, p.c.r. attorney Mr. Rodney W. Richey, of Richey & Richey PA. at post office box 10916, Greenville S.C. 29603. By plain said Amendment in an envelope with U.S. postage prepaid, properly addressed, sealed and deposited in The United States MAIL, at The Broad River Corr. INST. on This 2nd day of October 2009.

Type of Amendment MAILED:

Respectfully Submitted.

Continued Answer to p.c.r. Application of question NO# 10. of Application, Submitted brief of Allegation A-I.

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

sworn before me. This 2nd day of November 2009.

Donald J. Quirk  
Notary public for South Carolina

My Commission Expires  
August 25, 2015

My Commission Expires.

A. Issue.

Subject Matter Jurisdiction of Trial Court.

Subject Matter Jurisdiction of The Circuit Court may be raised at any time. *Koon v. State* 358 S.C. 359, S.E. 2d. 456 (2004) *State v. Carroll* 30 S.C. 85, 8 S.E. 433 (1889).

Applicant raises (3) Three Claims, under Subject Matter Jurisdiction in violation of his 5th Amendment Right, and will show that the Court lost Jurisdiction over his 1st, degree burglary case.

CLAIM NO# 1.

Prosecution in Their closing argument constructively amended the "aggravating" element of applicant 1st, degree burglary Indictment thus surprising 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 South Carolina Code of Laws 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 convictions for burglary or house breaking or a combination of both.

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 rooms, 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). Trial Transcript Page 275, lines 5-11.

The Court has held That one of The elements of first degree bur lar. is The aggravating circumstance which is the essence of first degree burglary, Sowell, 85. S.C. At 284 67 S.C.2d At 318.

Thus when The prosecution in their closing arguments, started. (I. submit to you, placed those knives There for a reason, placed That Gun there for a reason). This language implies a Threat Thus The aggravating circumstance charged in The indictment of Applicants first degree burglary charge, was changed from violation of § 16-11-311 (A)(2) to a violation of § 16-11-311 (A)(1)(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
- 1) Displays 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. Amended the aggravating element by implying That Applicant. placed knives and gun in different bedrooms of The Gallman's home as a Threat in violation of § 16-11-311 (A)(1)(C) and (d).

But The prosecution further Amended The aggravating element charged in The indictment when they stated in closing argument:

"The Gun he could Get to was even placed under a pillow in one of The rooms" Trial Transcript page lines 5-6.

Thus The aggravating element was changed once more from § 16-11-311 (A)(2) to a violation of § 16-11-311 (A)(1)(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 (1)(A), is armed with a deadly weapon or explosive."

The Court has held, 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)(1)(A). State v. McCaskill 468, se 2d 81 (S.C. App 1996)

Thus even though The penalty did not change because of The amendment, The Court may still be deprived of its jurisdiction see. Weinhauer v. State, 334, S.C. 327, 333 513 se 2d 890. (1999), citing State v. Sowell 85, S.C. 278 67 se 316 (1910) And State v. Lynch 545 se 2d 511 S.C. 2001 Code (1976). § 17-19-100.

Further. These Aggravating circumstances were never submitted to an Grand Jury or charged in The indictment.

There was never any proof beyond a reasonable doubt. That Applicant Placed Guns under The Gailmans pillow. And in fact The state failed to prove entry beyond a reasonable doubt, in a case That was a circumstantial evidence case. The Aggravating circumstance charged to Applicant in The indictment For 1st degree burglary is The Aggravating element for which proof is required. The Aggravating circumstance upon which The Conviction was based was never presented to a Grand Jury And Proof required for each Aggravating circumstance was materially different from one another. Code Ann 1976 § 16-11-311(A)(1)(b) (A)(3) 1749-100. STATE V. LYNCH 545 S.E.2d 511 (S.C. 2001).

The Fifth Amendment Guarantees Applicant. That a criminal Defendant will be tried only on charges in a Grand Jury indictment and Thus only The Grand Jury may broaden or Alter The charge in The indictment. Const. Amend 5. U.S. v. Randle, 171 F.3d 195. (4th Cir 1999). Further. The Court has held:

That when The Government through it presentation of evidence and/or it argument. or The District Court through it 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 5.

IN, Applicant Trial No instruction were Given by The Court as to The impermissible Amendment by The prosecution in Their closing arguments Further The Court also failed to instruct The Jury as to Applicants two prior burglary and/or house breaking convictions for which was The Aggravating circumstance for which he was indicted.

Appellant says even though there were evidence and testimony of firearms presented in Appellants Trial for the herein stated 1st degree burglary Trial and conviction, That Appellant was not charged in The indictment of first degree burglary with violating 16-11-311, (A)(1)(A), which is an Aggravating circumstance of offense when indictment does not contain essential elements of the offense charged. 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 & they are void Carter v. State 495 S.E.2d 773. (1998) Brown v. State 410 S.E.2d 846. (2001)

Also Appellant states. The Trial Court failed to submit any aggravating circumstance in its Jury charge. There for Jury instruction did not cure impermissible Amendment of the prosecution aggravated charged offense.

A.2.

CLAIM NO 2.

The prosecution in its opening statement. Amended The indictment of Applicant 1st, degree, burglary And Grand Larceny indictment. To charge, That Applicant committed burglary and Grand Larceny of The home of Kenneth And Ira Joe Gallman.

Applicant was only charged and indicted in The indictment. For (1st) First degree burglary and Grand Larceny of The Residents of Kenneth Gallman. Section § 16-11-311 (A) (2).

The prosecution in its opening statement stated The following, On Trial, Transcript, page, 61. lines, 3-11.

... "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 he burglarized The home of Kenneth And Ira, Jo. Gallman."

This amendment also constitutes FATAL variance because The Indictment alleges That, Applicant burglarized The home of Kenneth, Gallman, Thus The state was required to prove That Mr. Kenneth Gallman was The owner of The home, ~~that~~ ~~the only~~

334 That Applicant was accused of burglarizing, instead The state offered proof through testimony That, Mrs, Ira, Joe. Gallman, also reside in The burglarized home and was in-fact a victim of That alleged crime and Grand Larceny. herself.

see STATE v. ALford 140 SE. 261. 192. S.C. 43. (S.C. 1927)

[Variance between house breaking indictment alleging ownership in one and proof of ownership in another And occupancy in Third person held fatal.]

Because Applicant was Not Indicted of burglarizing The home of Ira Joe Gallman. As proof was shown throughout Applicants Trial. That Mrs Ira Joe Gallman also Jointly resided in The home, Applicant was accused of burglarizing with Mr Kenneth Gallman. Thus she constitutes a separate victim of This same burglary. Therefore Applicant is expose to The dangers of a potential second prosecution For same crime. Thus variance has accrued. See,

United STATES v. Fletcher 79. F.3d 49. 53 9th Cir Cir denied — U.S. — 117 S.Ct. 157. 136 L.Ed. 2d 101 (1996).

Therefore base on This fatal variance The Applicants conviction and sentence should be vacated and/or reversed.



A. 3:

Claim No. 3.

The Trial Court, lost subject Matter Jurisdiction over Applicants 1st degree burglary Trial, case No: 2004-G3-11-202, when it constructively Amended The Indictment, by Giving Jury charge of Second degree burglary statute, Absent The existence of an aggravating circumstance, of Applicants two prior burglary or house breaking convictions because Court permitted The Aggravating circumstance to be stipulated to in Lieu of informing The Jury.

The Trial Court erred pursuant to *IN Re Winship*, 397. U.S. 358, 90. S.C.T. 1068 (1970) in failing to submit to The Jury, Certified Copies of Applicants prior burglary and/or house breaking conviction or Give limited instruction of those prior convictions, in its Jury charge, Because The Court permitted The State to Agree to stipulate in Lieu of informing the Jury.

Applicant, was Indicted on (2) two counts of burglary 1st. Because he had (2) two or more convictions For burglary and/or house breaking pursuant to section § 16-11-311 (A)(2) Thus, Applicants prior convictions for burglary and/or house breaking charged in the Indictment are clearly elements of 1st, degree burglary.

STATE V. JAMES 551 S.E.2d 591 (S.C. App, 2001) Id in, State v. Hamilton 327. S.C. 440, 486 S.E.2d 512 (CT App 1997) At 496. 486 S.E.2d At 515.

336 On Trial Transcript page 39. lines 21-25, The Court with Applicant Defense Attorney, And The prosecution held an in chambers discussion concerning Applicants prior burglary convictions.

On. Trial Trans, page 40. lines 1-9. The Court permitted The Defense and prosecution to stipulate to Applicants prior burglary convictions. Stating, That, The Court when it instruct The Jury:

Will Simply State That The other elements have been met And both parties stipulated to That"

Because The Court permitted The parties to stipulate in Lieu of informing The Jury, Applicants prior burglary and/or house breaking convictions. were entered in to evidence, But not submitted to The Jury see Trial, Tran, page, 251. lines 5-11.

In, STATE V. Simmons 573. S. Ct. 856, 'The Court held Because two. prior burglary and/or house breaking convictions are an element of first degree burglary. ~~The trial court should~~ a defendant charged with first degree burglary cannot require The state to stipulate to The prior convictions in Lieu of informing he Jury Code 1976, § 16-11-311 (A) (2). Further.

Due process clause and The sixth Amendment Right to Jury Trial required criminal conviction to rest upon Jury Determination, but defendant is Guilty of every element of crime with which he charged beyond a reasonable doubt. Const Amend 5. 6. 14 U.S. GAUDIN 115 S. Ct. 2310 (1995).

On Trial Transcript pg 295. lines 5-7. The 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.)

and on Trial Transcript pg 296. lines 21-25. As follows

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.);

S.C. Acts 603. Codified At S.C. cod Ann. 16-11-310 to 16-11-313. supp 987. 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 and with the intent to commit a crime therein absent any aggravating circumstance. § 16-11-312(A). State v. Goldenbaum 365 S.e2d 731, (C. 1988)

338 The Trial Court Failed to inform and/or instruct The Jury as to Applicants prior burglary and/or house breaking convictions. and merely inform The Jury That:

... In addition to That. There's some technical matters That The state must prove. But The Lawyers have stipulated That they have met That. So That is Not some thing That You must consider Your self with ... Trial Tran page 296.

The Court failed to instruct The Jury as to Any Aggravating circumstance. For which it could find Applicant Guilty of 1st burglary. Thus only giving instruction of second degree burglary statute. § 16-11-312 (A).

In, STATE v. LYNCH, 545 SE. 2d 511 (S.C. 2001) This Court held, the offense of first degree burglary as defined by section 16-11-311, occurs when a person enters a dwelling without consent with the intent to commit a crime in the dwelling and a aggravating circumstance. Without Aggravating circumstance The crime committed would be second degree burglary. S.C. Code Ann '6-11-312 (A).

here, Applicant, was Indicted under a specific provision of ~~the~~ <sup>the</sup> 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 element of an Aggravating circumstance. See U.S. v. Floresca 38, F.3d, 706, 710. (4th Cir 1998) [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.

Even Though NO timely objections was made To The constructive amendments stated in These (3). claims under subject matter of The Trial Court, Applicant is still yet entitle to have his conviction and sentence vacated on These <sup>improper</sup> ~~fraudulent~~ amendments.

constructive amendments per se reversible error and must be converted on appeal even if defendant did not preserve issue by objecting U.S. v. Randall 171 F3d, 195. (4th Cir 1999).

Applicant Ask This Court To vacate his conviction and sentence.

ISSUE.

IN Effective Assistance of Original Counsel  
IN VIOLATION of Applicants Right To Due Process.  
And due to a conflict of interest.

---

The Sixth Amendment to The United States Constitution Guarantees to All criminal defendants. The Right to effective Assistance of counsel. *Strickland v. Washington*, 466, U.S. 668, 104, S.Ct. 2052 (1984). Further,

A necessary corollary to The Right to effective Assistance is The Right to representation Free from a conflict of interest. *Cuyler v. Sullivan*, 100, S.Ct. 1708 (1980). *U.S. v. Swartz*, 975, F.2d 1042 (9th Cir 1992).

Here Applicant will raise and show (3) Grounds of Prejudice Ineffective Assistance of original counsel Mr. Don Thompson of The Cherokee County Public Defenders office.

TO Establish claim of ineffective Assistance of counsel, Post-conviction Relief Applicant must show That counsels representation fell below Objective, standard of reasonableness and That he was Prejudiced by deficient Performance. U.S.C.A. Const Amend 6.

*Padgett v. STATE* 484, S.E. 2d 101, S.C. (1997).

Claim NO. 1.

Applicant was denied his Sixth Amendment Right to The assistance of Counsel At critical stage of adverse proceeding when, his original counsel Mr. Don Thompson of The Cherokee Co. Public Defenders office, whom was timely appointed to Represent Applicant on his, 1st, degree burglary charges. Failed to attend and represent Applicant at The Cherokee Co. Magistrate Court brace of two Traffic violations. where Applicant was forced to represent himself.

The said Traffic stop was part of Applicants 1st degree burglary case. where, The Cherokee Co. sheriffs dept. in its attempt to investigate The said burglary case. intentionally sought Applicants vehicle out, stopped and detained Applicant on false traffic charge. Searched The vehicle without permission, Arrested Applicant, staged a show up, failed to serve Traffic ticket on Applicant, Took Applicant to The station question him about The burglaries. And charge him with possession of burglary tools because of a car Jack found in The Trunk.

S.C. 1996. Sixth Amendment Right to counsel attaches when adversarial Judicial Proceedings have been initiated And at All critical stages; And is distinguished from fifth Amendment. Miranda Right to counsel in custodial setting U.S.C.A. Const Amend 5. 6. - State v Register 496. S.E. 2d 153. rehearing denied

The Supreme Court of The United States, has establish in it rulings in Argersinger v. Hamlin, 407, U.S. 25. 40. (1972). The Right to counsel in misdemeanor case.

Here. For The Denial of Counsel Throughout The Magistrate Court proceedings, prejudice need not be shown although if Applicants Counsel Mr. Don Thompson had attended Applicants Trial in The Magistrates Court, He could asserted Applicants 4th Amendment Rights had been violate based upon an illegal Traffic stop, which would have excluded The states use of illegally obtained evidence from being introduced into Applicants 1st degree burglary Trial.

If Sixth Amendment violation prevades The entire proceeding Harmless error is inapplicable, and error is enough to overturn conviction. Satterwhite v. TEXAS 486 U.S. 249 256. (1988).

### Claim NO: 2.

Failure To inform Applicant of offered Plea negotiations from Solicitor's office. of Applicants first degree burglary case. instead rejected Plea offer on his own without Applicants knowledge, lead Applicant to Trial involving a Life sentence.

A. Defendant has The Right To make a reasonable informed decision whether to accept a plea offer. Turner v. Colderson 281 F.3d 857 (9th Cir 2002). See also United States v. Blaylock 20 F.3d 1448. (9th Cir 1994). Counsel failure to communicate Plea offer held unreasonable.

On, October 12th 2004. Applicant Proceeded To Trial For Resisting Arrest Case NO: 04-GS-11-0216. And Breaking into Motor vehicle Case NO: 04-GS-11-0217. IN The County of Cherokee. Presided over by The Honorable Judge Roger L. Couch. Applicant being -



343  
: Represented at The proceeding by Mr. Don Thompson, who also was representing Applicant on his additional charges of 1st degree burglary. Sought at The outset of The Trial To Dismiss Mr. Thompson for his lack of representation. During The hearing of The Dismissal motion. Applicant discovered upon testimony of solicitor Abel Gray, of The 7th Circuit Solicitor's office. That Plea negotiations was made concerning Applicant 1st degree burglary, life sentence case, To Mr. Thompson. who then turned The offers down without The knowledge of Applicant. That a offer had been made. See The Above state Trial Transcript. Page 15. lines 8-1 of Page 16. Testimony of Mr. Abel Gray. Solicitor. See Exhibit 1

Applicant was prejudice because plea offer was taken of The table he was lead to a Trial and sentence to Life with out parole. And discovered after That his coencsel was a conflict of interest.

### Claim NO. 3.

Coencsel Mr. Don. Thompson was laboring under a Actual Conflict of Interest in his representation of Applicant. Where Applicant was charged with several County charges involving his and The 7th Circuit Solicitor's office. Mr. Thompson continued to represent Applicant when he knew a conflict existed. Failing to reprsent Applicant at magistrate Court proceeding, with hold Plea negotiations. leading forwords a Trial where he recieved life without Parole. allowed The Cherokee County Sheriff's Dept. To acquire Applicants 'blood' by fraud to use as a discovery tool.

Whenever a defendnt is Able to demonstrate That his Law er Actively -

pursued conflicting interest and That an actual conflict of interest adversely effected his Lawyers performance. constitutional error has occurred as prejudice inherent in the conflict. Cuyler v. Sullivan 446 U.S. At 350. 100 S.Ct. At 1919 (1980)

Sixth Amendment Right to Counsel includes Right to effective assistance free from conflict. U.S. v. Swartz 975 F.2d 1042.

On or About Dec 8, 2005 Applicant was able to move before the Court and have his counsel Mr. Don Thompson Dismissed due to an Actual Conflict of interest. See Exhibit #2 showing dismissal of counsel due to conflict.

The Applicant assert. He had already suffered prejudice by his initial counsels. lack of representation and failure to Advocate Applicants Constitution Right. including his failure to investigate the circumstance of Applicants illegal Traffic stop. Failure to interview Applicants witness. Failure to obtain critical Discovery material. such as Traffic Tickets. Search Warrant ~~At Affidavit~~. Failure to obtain relevant Trial Transcript. of Applicants Traffic Court Trial. Failure to have Applicants. D.N.A. Tested. towards physical evidence collected from burglary crime scene. After which The police had obtained The Applicants blood. by search warrant. alleging That The physical evidence belonged to The Applicant.

The Applicant. Ask This Court to find That his initial Counsel. Mr. Don. Thompson. was prejudice ineffective. in his representation of The Applicant. And That The Applicant was further denied his sixth Amendment Right to The representation of counsel in his Traffic Court Trial. Further. That Applicant was denied effective assistance of counsel Due. To a Actual Conflict of interest. between. Applicant and Mr. Thompson

INEFFECTIVE ASSISTANCE OF SUBSTITUTE TRIAL COUNSEL  
Mr. Roger J. Poole. In violation of Applicants  
Right to Due Process.

The Sixth Amendment to The United STATES Constitution  
Guarantees to all criminal defendants. The Right to effective  
ASSISTANCE OF COUNSEL. STRICKLAND vs. WASHINGTON. 466  
U.S. 668. 104. S.C.T. 2052. 80 L.ED 2d 647 (1985).

Here Applicant will show this Court 27 Allegations of his  
Trial Counsel's deficient performance. That substantially prejudice  
Applicant in his Trial

To establish claim of ineffective assistance of counsel.  
Postconviction relief Applicant must show that counsel's  
representation fell below objective standard of reasonableness  
That he was prejudice by deficient performance. Const Amend 6.  
PADGETT vs STATE. 484. SE 2d 101. (S.C. 1997).

Allegation No. 2.

Applicant's first Allegation of prejudice ineffective assistance of his substitute Trial Counsel. was that a "Conflict of interest" existed between Applicant and his trial counsel. That Trial counsel failed to inform Applicant of the conflict, due to his appointment to represent Applicant out of the same district as the 7th circuit solicitors office, for whom he had been disqualified from Applicant 1st degree burglary case and Trial, due to an actual conflict. Trial counsel had other client and obligations to those clients as a defense attorney, thus a personal interest in advocating the best deals with the 7th circuit solicitors office in the interest of his clients or future clients.

Trial counsel was appointed to represent Applicant pursuant to Rule 608 SCACR. By the Cherokee Co. clerk of Court whom also was a conflict of interest. Trial counsel should have been excluded due to his potential conflict to Applicant pursuant to Rule 608 (c) (6). And had an obligation under Rule 1.7 1) (2). Due to his personal interest. Rules of professional conduct.

Applicant alleges that because of his Trial Counsel Conflict he was denied his 6th Sixth Amendment right to effective assistance of Trial Counsel in his, 1st, degree burglary Trial and was substantially prejudiced by his Trial Counsel's deficient performance in the Trial.

Cuyler v. Sullivan 466 U.S. 335. 100 S.Ct. 1708. (Defense counsel has a obligation to avoid conflicting representation and to promptly advise the court of conflict.

(The Right to effective Assistance of Counsel includes The Right to representation free from Conflict.

An Actual conflict of interest occurs where an Attorney owes a duty to a party whose interest are adverse to The defendant Criminal Law Key 641. 5.15). Thomas v. State., Duncan v. State 281. S.C. 435. 315. S.e 2d. 809 (1984).

Trial Counsel Conflict interfered with his duty and obligation to Applicant, where Applicant informed his Trial Counsel. That the 7th Circuit Solicitor's office had shown up in violation of The order of Disqualification, and represented a states witness Deputy Richard Turner. In a Magistrate Court Trial. of two traffic violations directly related to Applicants 1st degree burglary case. for which they had been disqualified from, Applicants Trial Attorney, failed to investigate, stated to Applicant that it didn't matter, and never informed The Court at The Trial, of The contempt of order of Disqualification of The 7th Circuit Solicitor's office. Trial Counsel also failed to inform the Court of other potential Conflict of States witnesses, and relied on The advice of Applicants original Attorney Mr. Don Thompson whom was dismissed from representing Applicant due to a conflict of interest. Further Applicant never consented to The representation of a conflicting Attorney as is pursuant to Rule 7 (A)(4), Rule of professional conduct.

Allegation NO # 2

Trial Counsel failed to move for a "supression hearing" to exclude The shoe and shoe print evidence. As well as any and all in-custody interrogation statements, and notes. base on two 4th Amendment violation of Applicants Rights to be free from unreasonable searches and seizures with out probable cause, and in violation The warrant requirement. was substantial ineffective, and well below

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In. Mapp v. Ohio. 367 U.S. 643. 6 L Ed 2d 1081. 81. S Ct. 1684 (1961). (The Court held. That evidence obtained by search and And seizure in violation of The Fourth Amendment is inadmissible in state and Federal Trials.).

Applicant, was illegally stoped on November 20, 2003. And falsly charged with Failure to stop for a stop sign, by States. witness Cherokee Co. Sheriff's Deputy Richard Turner, who alleges in his testimony on Tran, pg. 173, That he was working second shift as a Traffic enforcement officer. when he was contacted by Detective Tim Clark. and given a vehicle description. And That he went to an area in an attempt to Locate it And That he was searching for a particular vehicle. Deputy Richard Turner further testified under direct examination. That he came in contact with The vehicle for which he was searching while patrolling The area. That he observed a vehicle matching The discreption. run a stop sign at Kelly and Kendrick Tr, Tran 9 174. lines 18-24 of pg. 175.

Deputy Richard Turner went on to testify. That he pulled Applicant over for failing to stop for a stop sign Tr. Tran pg. 175 line 18. to pg, 176, line 23. And That he issued two courtesy summons for disregarding a stop sign and Not having a driver's license in his possession Tr. Tran pg, 177. lines 3.-7. And That in stead of sending Applicant on his way. He arrested Applicant, placing him under custodial arrest. Tr. Tran. pg, 177. lines 8-17. Further

Applicant, Alleges, That he informed his Trial Attorney. That Deputy Turner, intentional initiated a false Traffic stop on Applicant on November 20, 2003, That he was arrested for The traffic offenses, That his vehicle was search without his consent. That he was held at The traffic stop, until an vehicle arrived at which time, The Cherokee Co. Sheriff's Dept. Conducted a show up, flashing flash lights, on Applicant while he was handcuffed in The back of Deputy Richard Turner's patrol car. That Although he was arrested for The traffic offenses, He was never issued any tickets for These Traffic violations. That he was denied use of The phone until he was Questioned

Applicant asserts, That The states two key pieces of evidence against him in is Trial of 2. counts of 1st degree burglary and Grand Larceny. was an alleged pair of shoes obtained from The illegal Traffic stop. See Tr. Tran. pg 36. lines 3-11, and Tr. Tran. pg. 243. lines 25-8. of pg, 244. In which The state

350 claimed Match a partial shoe print found at The burglarized home of Mr. Kenneth Gullman. The state introduced an expert witness to give his opinion concerning The identification of The shoe print. See Expert testimony Tr. Tran. pg. 191. to pg. 226. The state also introduced into The Trial an alleged oral statement resulting from an in-custody interrogation of Applicant following his arrest on Traffic violation. See Testimony Concerning The alleged oral statement by Detective Mike Fowlkes. Tr. Tran. pg. <sup>228</sup> lines 12. to pg 52, and pg. ~~lines~~ <sup>228</sup> to pg. 249.

First Trial Counsel could have shown That The initiation of The traffic stop was unsupported by probable cause due to The fact that The officer initiated The traffic stop on a false charge. That he observed Applicant run a stop sign on Kelly and Kendrick st. But The facts would have shown That there was no stop sign on Kelly st. at That time. And This charge was later Dismissed.

Second Counsel could have shown That The traffic stop was not only based on a made up traffic violation. But That it was "retextual", in That The officer was intentionally instructed to seek Applicant's vehicle out, to stop it in hopes of discovery evidence of The alleged burglaries. That a complete unconsented search had taken place at The scene of both Applicant and The vehicle. That a show up identification was also conducted at The traffic stop scene. While Applicant sat handcuffed in The back seat of Deputy Richard Turner's patrol car. That No report was made concerning these searches, and show up identification. See Tr. Tran. pg. 232 lines 16-23. where Detective Mike Fowlkes testifies to leading officer Turner to intentionally track down Applicant's vehicle.



Third. Trial Counsel could have argued that The Sheriff's Dept. was without sufficient probable cause to even initiate an investigation and track applicants vehicle. When all the information they had at the time, was a tag number of a car that was seen the day before the alleged burglary occurred.

Fourth. The stop didn't constitute an investigative stop. Because no one questioned the applicant concerning the burglaries. No Miranda warning was given. Applicants passenger was allowed to leave with<sup>out</sup> any sort of an investigation of her potential involvement into the burglaries. Tr. Tran, pg.

Further the officer chose to arrest applicant for traffic offenses under the issuance of a summons. Thus the arrest was invalid, applicant received no copy of the alleged tickets, and was denied seeing the magistrate for which to post bail, or allowed use of the phone to contact an attorney see Exhibit #5. Booking sheet. see also Exhibit #6. where Deputy Turner, submitted the incident report of traffic stop. (3) Three years after the stop and 6. days before applicants burglary trial, in violation of Brady plus the information contained therein had been changed. finally see. The consent to search form signed by applicants girl friend. which was meant to disguise the fact that the vehicle had been already search Exhibit #7. Plus the police refused to release her vehicle until she consented to allow them to search.

see U.S. v. Clark. 822 F. sup 990. W.D. NY (1993) (The court ruled the stop of the vehicle was pretextual though vehicle was observed making right turn without signal. where officer was under —

352 directions to observe the vehicle and stop it if there was cause to stop it, and where police impounded the vehicle, which was standard procedure where drug activity was suspected rather than simply issuing a summons to the driver.

Arrest Kix 63.5(1).

In challenging stop of vehicle, Defendant is objecting to the seizure of his person as violation of the fourth amendment. U.S.C.A. Const Amend 4.

See also U.S. v. Soto 988 F.2d 1548. CA Defendant had standing to challenge search of car which was loaned to him by uncle. Police may briefly stop an obvious suspect for investigative purposes when an officer has reasonable suspicion, supported by articulable facts that the person is involved in criminal activity. STATE v. Fowler 322 S.C. 263, 471 S.E.2d 706 (S.C. App 1986).

In applicant traffic stop, his vehicle was fully searched and as a result he was charged with possession of burglary tools, because a car jack was discovered in the trunk of the vehicle by Detective Mike Foltz during the unconsented search of the vehicle at the traffic stop scene. See Exhibit \_\_\_\_\_, copy of warrant. See Price v. Kramer 200 F.3d 1237 (9th Cir 2000). Search of automobile following investigative stop is strictly limited to weapons).

Further applicants trial counsel was ineffective for failing to challenge the validity of applicants arrest of the traffic offenses where the arresting officer issued two summons against app-

licant for offenses, but yet still arrested Applicant on his own  
belief That he can arrest a person on issuance of a summons  
see Tr. Tran. pg. 180 to 181

see Beie. v. City of Lewiston 354 F.3d 1058 (9th Cir 2004.)

Probable cause to arrest cannot be established by erroneous  
understanding of The Law.

2. Applicants second claim That his Trial Counsel was  
prejudice ineffective for failure to move for a suppression  
hearing to exclude shoes and shoe print evidence which  
in violation of Applicants 4th Amendment Right and The  
Statutory Warrant Requirement.

Applicant was denied his due process Right to effective assistance  
of Trial Counsel. When Applicant informed his Trial Counsel and  
The information provided in his discovery supported Applicants  
claim. That after his arrest of said traffic offenses. On November  
10 2003. That his person property was inventoried and placed  
in his silled personal property bag and stored in property room  
of The Detention Center. with all of The other incustody inmates  
property. On December 2, 2003 exactly 12 days. After  
applicant arrest on The Traffic offenses. Detective Mike Fowlkes  
entered into Applicants silled property bag at The Cherokee Co.  
Detention Center and seized a pair of shoes. Without probable  
cause in violation of Section § 17-13-140 South Carolina Code 1976.  
Detective Mike Fowlkes. sawt No, search warrant to authorize

The search of Applicant property and The seizure of The shoes therein. See Exhibit #8 chain of custody of shoe evidence. Further Detective Mike Fowlkes never had probable cause to believe the shoes seized from Applicant property was The particular shoes or which matched an alleged partial shoe print found at The burglarized home. For There was no statement of any witness who alleged seeing Applicant wearing These particular shoes on The day of The alleged burglary. If Trial Counsel would have moved For a suppression hearing on The shoe evidence, he would have discovered That Detective Mike Fowlkes was directed to seek out some or any pair of shoes belonging to Applicant so as a comparison could be made by Investigator Jimmy Jensen. See Tr. Tran, pg. 243, lines 24. to pg. 244, line 12. where Detective Fowlkes testifies to his reason for seizing The shoe evidence from Applicant's property.

IN. Katze v. U.S. 389. 347. 357. 1967. Also Johnson v. U.S. 333. U.S. 10. 14-15 1948. (The Court held That The 4th Amendment requires warrant for searches and seizures unless pre-existing exceptions applies).

See Terry v. Ohio 392. U.S. 1. 20 (1968) (Police "must" whenever practicable obtain advance Judicial approval of search and seizure through The warrant procedure).

Applicant asserts That his Trial would have been different had his Trial Counsel move to exclude The illegally obtained Fila shoes from Traffic stop and personal property. For The state relied substantially on The shoe evidence in proving Their case →

in a case that was solely based on circumstantial evidence. The shoe and an alleged oral statement was the states two key pieces of evidence that it relied on to convict Applicant. And both resulted from Applicant's illegal Traffic stop. See, Expert witness testimony concerning the shoe print evidence. Tr. Tran pg. 191 to pg. 219.

Thus Applicant was prejudiced by his Trial Counsel failure, to seek a suppression hearing to exclude the shoe evidence and, any in custody statements. On the ground that this evidence was obtained in violation of Applicant, 4th Amendment Right and 14th Amendment Right to due process. Thus it is the Fruit of an unlawful stop, arrest, and search. See Wong Sun v. United States 371 U.S. 971 83 S.Ct. (1963). (The Fruit of the poisonous tree doctrine holds, that where evidence would have not come to light but for the illegal actions of the police. And the evidence has been obtained by the exploitation of that illegality the evidence must be excluded.

If Jury might have relied on evidence obtained in violation of 4th Amendment in reaching its verdict. Then error is harmful unless evidence of Guilt is so over whelming that a defendant suffered no prejudice. U.S. v. KHoury 901 f2d 998 (11th Cir 1990). warrantless search after arrest is invalid. U.S. v. Bonitz. 826 F.2d. 954. 10th Cir (1987). No Justification of search because Agent knew suspect was in custody U.S. v. Barry 853 F.2d 1479. (8th Cir 1988).

3. Third Allegation of Prejudice Ineffective Assistance of Counsel  
 Trial Counsel. Mr. Roger Pooler. Lack of performance at Applicants pre-Trial. Jackson - vs - Denno. Hearing, of an alleged oral statement, was substantially prejudice ineffective. Where Trial Counsel failed to conduct any cross examination, of States witness. Detective. Mike Fowlkes's testimony, where there was substantial evidence to impeach his testimony. And bring light relevant factors. To show that applicant alleged oral statement, was involuntary, Counsel was also ineffective. At Denno hearing for his failure to inform applicant of his Right to testify at the hearing when applicant had expressed his desire to tell his story of how he was interrogated.

The Court has held in Jackson - vs - Denno. 84. S. CT. 1774 (1964) that a defendant has Constitutional Right at some stage in the proceeding to object to the use of confession and to have a fair hearing and reliable determination on issue of voluntariness, un influenced by Truth or falsity of confession. U.S.C.A. Const Amend 4.

Applicant first asserts. That. His Trial Counsel. Had been informed of the events leading up to his incustody interrogation. Concerning the alleged burglaries. Applicant, prior to Trial. Had explained to his counsel. That he was illegally, stopped and arrested on November 20, 2003. For failure to stop for a stop sign by, The Cherokee Co.

Sheriff's Dept. Deputy Richard Turner. That applicant was arrested for this traffic violation. That applicants vehicle was fully search at the scene. And a showup identification was also held at the scene. without applicant consent. Trial Counsel was also inform. That applicant had not been given his Miranda warning by the arresting officer. And that the arrested officer intentionally, under the instruction of Detective Tim Clark, with held the actual tickets. For which was meant to keep applicant from being brought in front of the Magistrate, where he would be able to pay fine for traffic offenses, and gain release. Applicant also informed his Trial Counsel, that he was held in custody at the Detention Center 4. days without seeing a Magistrate. And while being intentionally denied any phone calls for which to contact a Lawyer and his family until the Detective could interrogate him concerning the burglaries. That the Detectives kept re-interrogating him about a burglary, assault crime of a man name JAMES SPENCER after he told them he didn't want to talk with them any more.

At Jackson v. DENNO. Hearing Trial Counsel failed to cross examine Detective Mike Fowlkes. About the facts surrounding applicants in custody interrogation. After applicant had provided the information to him. And the evidence of documents contained in applicants discovery file would have substantiated applicants allegation. See. U.S. v. Smith 451 F.3d. 209. (4th Cir 2006). (A criminal defendants right of cross examination is precious one. essential to a fair trial.)

358 Here Applicant will direct The Court to The Trial Transcript of Denno, hearing and The sworn testimony of Detective Mike Fowlkes under direct exam by Mr. Pauling. For which Trial Counsel failed to cross examine, impeach, and bring The Courts attention to other known factors. for which The Court could have concluded That The alleged oral statement was involuntary there for inadmissable in The Trial.

First Trial Counsel at Denno hearing On Tr. Tran pg 52. When directed him to cross. Trial Counsel simply stated. No Questions of This witness at this time. line 13-14.

Here Applicant was prejudiced by his counsels failure to contest The testimony of Detective Fowlkes.

Trial Counsel should have first informed The Court That Applicant was only in custody of The police Dept. on two Traffic violations Not on burglary charges as Detective Fowlkes made it seem in his testimony. At the time he was interrogated by Detectives Fowlkes and Clark. See Exhibit #5.

That, Applicant was prevented from seeing The Magistrate for fear That he would pay The fines for The Traffic offenses. and gain his freedom.

That Applicant was intentionally denied use of The phone under direction of Detective Tim Clark who inform, Deputy, Richard Turner, upon taking Applicant into custody For Traffic offenses. to instruct The booking officers At The Detention Center. That Applicant is not be allowed to make any phone calls at all-



until. The Detectives. Fowlkes and Clark had a chance to. inter-  
atc him About The Alleged burglary see Exhibit #5. where  
The Detention Center officers. even wrote across The top of  
Applicants Booking sheet. NO phone calls. So That The  
other shift officers would be informed that applicant is not to  
use The phone. This Exhibit evidence was in Applicants discover  
file.

Trial Counsel. Should have presented A copy of Applicants book-  
sheet. As evidence at "DENNO" hearing as proof That applicants  
was denied his 6th Amendment Right to counsel. Thus his initial  
interrogation was involuntary. where applicant was intentionally  
denied his Access to The phone, for which to contact an Attorney  
and family. until he Agreed to speak with The Detectives.

cc. MARANDA v. STATE OF ARIZONA 86 S. Ct. 1602. (1966) [COERCION  
can be mental as well as physical and blood of accused is  
Not The only hall mark of unconstitutional inquisition U.S.C.A.  
const Amnd 5th. Further. The privilege Against self-incriminat-  
ion is fulfilled only when person is guaranteed right to remain  
silent unless he choose to speak in unfettered exercise of his  
own will. crim. Law key 393(1), MARANDA 86. S.C.T.

On Tr. Trans pg. 46. of DENNO Hearing, under direct by Mr.  
Pauling, Detective Mike Fowlkes, testifies That, Applicant  
stated At first interrogation. That "He was don talking and  
he didnt want to talk to The Detectives anymore. ----->

360 And on Tri. Trans pg 46, lines 19, of Denna Hearing Detective Fowlkes. Testified That he was contacted by The Detention Center and told That Applicant wanted to speak with Them Again.

Applicant, was prejudice by his trial counsels failure to attack The allegation; That Applicant re-initiated Contact with The Detectives. by contacting some one at The Detention Center. This constitutes hearsay. And denied Applicant The Right to confront any adverse ~~with~~ witnesses against him. For The state produced NO, witness. to testify to The Truth of The allegation. For The evidence will show That The Detectives re-initiated contact with Applicant concerning an unrelated crime. Thus Detective Mike Fowlkes WAS committing perjury in his testimony. See Newly Discovered evidence Exhibit A1.

The Sixth Amendment provides, in pertinent part, In all criminal prosecution. The accused shall enjoy The right... to be confronted with The witnesses against him. U.S. const Amend 5. And is through The due process clause of The fourth-enth. Amendment. See pointer v. Texas 380 U.S. 400 (1965). hearsay. "is a statement, other than one made by The declarant while testifying at The Trial or hearing offered in evidence to prove The truth of The matter asserted FED. R. Evid. 801 (c).

In U.S. v. Rodriguez 993 F.2d 1130 (5th cir 1993) The Court found A Sixth Amendment violation when co-defendant indicated to hat. defendant wanted to speak with Them. But defendant didnt request to speak with officers.).

Further. The Court has held. That after. The accused has requested 361  
for counsel, Government Agents may no longer. question The  
defendant unless he or she initiates further communications with them  
Michigan v. Jackson. 475. U.S. 625. 636. (1986).

Here. Trial Counsel. Also failed to bring to The knowledge of The  
Trial Court through questioning Detective. Fowlkes. About any  
biases he held towards Applicant including his close ties with The  
7th. Circuit Solicitors office. Whom due to an conflict of interest,  
had been disqualified from prosecuting Applicant on his burglary,  
and larceny charges.

Applicant had provided his Trial attorney with The knowledge, That  
during The interrogations. with Detective. Fowlkes. That The  
Detective. became angry at Applicant. Because he refused to  
admit to any involvement in an unrelated burglary of a Mr.  
Spencer. home. That The Detective. Then Threaten to see to it That  
Applicant spent The rest of his life in Jail., See Exhibit #13  
documentation which was within Applicants discovery file.  
That shows The close ties and influence. That Detective. Fowlkes  
held with The 7th Circuit Solicitors office. In That it was. Detective.  
Fowlkes. recommendation. That Applicant. be charged as a career  
criminal. by falsely alleging That Applicant: STATE That he would  
get off on a technicality. Further No. Testimony Is Detective. Fowlkes  
was offered either at "Denmo" hearing or in The Trial it self. of This  
alleged declaration. That The Applicant sought a technicality to set off.

Applicant. also alleges. That his Trial Counsel. was also prejudice ineffective. in violation of "Strickland." For his failure. to inform Applicant of his right to testify in. Denno hearing. The Trial record will reflect That neither The Court or Applicants Trial attorney. Mr. Roger Poole. inquired of Applicant. to see. if he wanted to testify on his own behalf in The "Denno hearing" see Trial. Transcript Pg. 52. There is no inquiry. of Right to testify. The Court has held That. ∴ A defendant in a criminal Trial has a constitutional Right to testify on his own behalf. Rock v. Arkansas 483. U.S. 44. 51. 107. S.ct. 2704. 2709. 97. L.ed.2d 37. (1987). Further it is The defendant who retains The ultimate Authority to decide whether or not to testify. Jones. v. Barnes 463. U.S. 745. 751. 103 S.ct. 3308. 3312. 77. (1983).

Here even though Applicant wanted to contest The testimony of Detective Mike Fowlkes. He was denied The opportunity because The Court. and his Trial Counsel. failed to advise him of his Right to testify. and if he did testify. he would not Lose his 5th Amendment Right to remain silent through out his Trial. In United States vs. McMeans. 926 F.2d 162. (4th Circuit 1991). The Court held. That where to waive The Right to testify. All. defendants need to know is That a Right to testify exists.

Applicant was prejudice. and denied his Right to testify by his Trial Counsels. failure to advise him at Denno hearing of That Right. For Applicant would have testified.

Applicant. asserts he was substantially prejudice by his Trial Counsels deficient performance at Denno. Hearing. In That his alleged oral Statement . . . . .

went uncontradicted At DENNO hearing Thus found to be voluntary 363  
by The Court, when there existed substantial evidence. That Trial  
counsel should have introduced to impeach Det. Mike Fowlke testi-  
mony under cross examination. That The Court with The knowledge  
of these facts could have found That The alleged oral statement  
was involuntary. Thus would be excluded from Applicants Trial  
and Therefore Applicants Trial of 1st degree burglary could have  
turned out differently minus The oral statement. Where The case  
was a circumstantial evidence case. And Guilt was not overwh-  
emin.

Applicant ask This Court to find his Trial Counsel Mr. Roger  
poole. Representation of Applicant in his "DENNO" hearing of  
an alleged oral statement substantially deficient, and  
Thus prejudice ineffective. In violation of "Strickland" And  
Grant my request For a New Trial.

Allegation "No # 4.

Applicant was prejudiced by his Trial counsels failure to move before The Court for a continuence. So as The prosecution could produce produce. For Trial counsels inspection. The actual copies of two Traffic Tickets. For which was the subject matter of states witness. Deputy Richard Turners testimony in his claim to have arrested Applicant under the issuance of two courtesy summons.

under South Carolina State Constitution, Art (1). section 3. Due process. The Court has held. That Granting a continuence is one measure. The Court may use to protect an accused due process right. STATE V. OWENS. 346 S.C. 637 552 sc 2d 745.

Trial counsel was ineffective for his failure to seek to obtain relevant Discovery Material as pursuant To his request for Brady v. Maryland 373 U.S. 83 (1963). And Rule 5 disclosure, of two Traffic Tickets. For which Deputy Richard Turner gave sworn testimony in Applicants Trial. To stoping Applicant. For Traffic violation and arresting him under the issuance of two courtesy summons for the violations. But failed to produce copies of the Tickets for Applicants Trial, for counsel. inspection, see. sworn Testimony of Cherokee Co. -

Sheriff's Deputy, Richard Turner Under Direct, by Mr. Pauling Testifying to issuing Applicant two courtesy summons for Traffic violations. Tr. Tran, pg. 176, line 17. to pg. 178, line 1. And see cross examination by Applicants Trial Attorney Mr. Roger Pooler Tr. Tran, pg. 180, to pg. 181, line 18. Where Deputy Turner Testified. To issuing two Tickets on Applicant following Traffic stop. And to not having copies of those Ticket with him at Trial.

Applicant asserts. That his Trial Counsel failure to request for a continuence. And Move before The Trial Court for a order to compel ~~The~~ state To produce not only The copies of The Tickets in question. But allso. The video from The actual stop and The actual copy of The transcript of The Magistrate Court proceedings For which Deputy Turner, Gave Contradictive Testimony in A Trial involving The same Traffic stop violations. was substantial prejudicial to Applicant and deficient ineffective. Because Tickets, video, and Transcript was need to potential impeach officer Turners testimony and to challenging The validity. And The Constitutionality of The Traffic stop and arrest. For Applicant had claimed That traffic stop was illegal. car was searched, show up was conducted and and he was never served Tickets for Traffic violations.

See U.S. v. Miller 116 F.3d 641 681 (2d Cir 1997) (continuence -

sufficient to cure any prejudice). U.S. v. Singer 970 F.2d 1414, 1418 (5th Cir 1992). continuance sufficient to cure potential prejudice, when defendant alleged Government had not provided Jencks Act materials in narcotics case) And. U.S. v. Gonzales 164 F.3d 1385 - 86 (10th Cir 1999). continuance sufficient to cure prejudice caused when Government knowingly and intentionally violated discovery order).

Applicant was prejudice by Trial counsel's failure to seek a continuance to obtain relevant discovery ~~for~~ evidence, of Traffic Tickets And other discoverable Material concerning The Traffic stop. where All of The states key evidence came into there possession as a result of The Traffic stop And Applicants arrest. That if counsel had acquired Tickets, and other relevant information, counsel could have shown That Applicants 4th Amendment Right was violated by and illegal stop And arrest. Thus move to exclude, shoe print evidence And all in custody oral statements. Further counsel could have also shown That Applicants arrest was invalid base on The fact That Deputy Turner arrested Applicant under The issuance of two courtesy summons, for which he was not authorized by Law to make The arrest. see U.S. v. Mota 982 F.2d 1384, 1388-89 (9th Cir 1993) (Police officer not authorized to make custodial arrest for violation of municipal code).



Failure to Investigate, Review Discovery, and Adequately prepare for Trial

Applicant was denied an effective meaningful Defense. In his 1st degree burglary Trial. by his Trial Counsel's failure to adequately prepare for Trial. To sufficiently <sup>(2)</sup> review Applicants discovery file. which contained impeachment. Documents. <sup>(2)</sup> Evidence of potential biasness of states witnesses. <sup>(3)</sup> Documents of an unlawful D.N.A. Analysis of an unrelated crime. <sup>(4)</sup> An improper search warrant. <sup>(5)</sup> Documents of an improper inventory search of Applicants vehicle. for evidence, <sup>(6)</sup> Evidence showing Applicant personal property was illegally searched, <sup>(7)</sup> That evidence in the chain of custody was improperly held in possession of an authorized person, thus tainted. <sup>(8)</sup> Untested D.N.A. evidence. Documents showing several conflict of interest, <sup>(10)</sup> Altered documents. involving Applicants Traffic stop violations, <sup>(11)</sup> Documents showing that Tire tool evidence was tested and found not to be the alleged burglary tool involved in the breakins. Thus the dismissal of the indictment was improper because evidence was exculpatory. There was also key pieces of missing Brady Material, for which Trial counsel should have realized had he reviewed the discovery file. provided by the state.

second). Trial counsel also failed to investigate the case. To seek out an interview potential witnesses. such as the passenger of Applicants vehicle. who was with Applicant on the day of-

368 The Alleged burglary of The Gallmans home. See Tr. Tran, pg. 176 line 9. where Deputy Richard Turner testified That there was a young Girl passenger with Applicant when You was stoped for Traffic violations and That No body have investigated her for her potential involvement in The burglaries.

Counsel even failed to interview any of The states witnesses. or investigate The circumstances surrounding Applicants illegal Traffic stop. And Magistrates Court Trial of Traffic stop. from wich The states key evidence was obtained.

The Courts has held That an Attorney has a duty to familiarize himself with The discovery material provided by The state. Williams v. Washington, 59. F.3d 673 (9 Cir 1995). Thus Applicants Trial Counsels behavior was not objectively reasonable under Strickland, Kimmelman, 477. U.S. at 385-87. 106. S.C.T. at 2588-89.

Trial Counsel also failed to call any witnesses That was favorable to Applicant. or who had relevant knowledge to a fact at issue. in The Trial. see. Rock v. Arkansas. '87. S.C.T. 2204. [The Right to testify is also found in The compulsory process clause of The Sixth Amendment which Grant a Defendant The to call witnesses in his favor.]

Applicant Asserts his Trial would have been different had his Trial Counsel sufficiently review The discovery file, presented relevant Material evidence to impeach state witnesses. uncontradicted testimony and call relevant witness in

Applicants favor to establish material facts. Applicant ask this court to find that his counsel failure to review discovery, file. failure to interview known witnesses and seek relevant witnesses to testify in applicant behalf. And Trial counsels failure to investigate case. ineffective assistance of Trial Counsel. Thus Grant Applicant a New Trial.

Allegation NO# 6 ISSUE

"Sixth Amendment Denial of Counsel, during Trial."

Applicant was denied his 6th Amendment Right to Counsel in his 1st degree burglary, Grand Larceny Case. When his Trial Counsel Mr. Roger, Poole, with knowledge beforehand that Applicant was scheduled for a New Trial, involving Traffic stop violation, used by The Cherokee County Sheriff Dept. to initiate Traffic stop on Applicants vehicle. In Thier attempt to investigate Applicant concerning burglaries. Thus to arrest search and detain Applicant on false Traffic stop charge. While they interrogate and gather evidence against Applicant. See Exhibit #9. Granting of a New Trial with Counsel, and see Deputy Richard Turners Testimony concerning Traffic stop. Tri. Tran, pg 172.

Applicant was granted a new Trial in The Cherokee County Magistrates Court. concerning Traffic stop charge. In an appeal of initial conviction on basis Applicant was denied his

370 Right to counsel At Traffic Court proceedings. Trial counsel was appointed to represent applicant on his 1st degree burglary Grand Larceny Case And Trial, Traffic stop incident was directly related to burglary case. Thus was also required to represent applicant At Magistrates Court proceeding involving Traffic stop. Where applicant maintain That he, was illegally stop. for running a stop signe that did not exist. That his vehicle was searched without his permission. That a show up, identification was conducted. That NO Miranda warning was given NO Tickets issued. And applicant was arrested instead of given citation. For minor Traffic offenses. An illegally held for interrogation by Detectives.

Denial of Right to counsel At Trial is prejudice per se, U.S. v. WADSWORTH 830. F2d 1500. (9th Cir 1987) See also Mcknight v. State 765 se 2d. 352. (S.C. 1995)

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Actual or constructive denial of the assistance of counsel altogether is legally presumed to result in prejudice. Strickland, Id at 692 104. S.C.T. at 2067.

AT Magistrates Trial proceedings applicant faced both the disqualified 7th circuit solicitors office, whom was deemed a 'conflict of interest' see Exhibit #10. But still in violation of the order of "Disqualification", showed up At The proceedings And took on The representation of states. witness Deputy Richard Turner. see WADE 388. U.S. at 226-27. 87 S.C.T. -

At 9931.32 (In Addition to Counsel's presence at Trial. The Accuse is guaranteed That he need Not stand Alone against The State at Any stage of The prosecution, formal or informal).

Applicant Ask This Court To find ~~prejudice ineffective Assis-~~ <sup>That he was denied his right to</sup> ~~stance of his~~ <sup>Defense</sup> Trial Counsel For his failure to represent Applicant At Magistrates Trial Court proceedings. Constituting a denial of Applicants Right to The representation of Trial Counsel at critical stage of adverse proceedings. Thus Applicant Ask This Court to reverse his conviction and sentence.

### Allegation No # 7.

Applicant was prejudice by his Trial Counsels, Lack of knowledge due to his failure to sufficiently investigate case and review discovery documents. To Move To exclude Any in court identification of States "Guns" Exhibits 29, 30, and 31, Marked 135. By States witness Kenneth Gallman. When Gun evidence had been held in The custody of Mr. Gallman The whole Time and not in The possession of The police Dept. as was falsely testified to by Detective Mike Fowlkes who claimed to have placed Them in his evidence locker at his office. Tri. Tran. pg 243 lines 1-11.

Here Applicant will show The Court. That The identification of The Gun evidence by Mr. Gallman was improper. And That his Trial Counsel should have discovered before hand That The alleged Gun evidence, was already being held in The custody of Mr. Kenneth Gallman. See Exhibit #11 chain of custody, from Applicants -

372 discovery file. which was in the possession of Trial Counsel well in advance of Applicants Trial. And thus should have move to suppress any in court identification of the Guns. see Kenneth Gallmans testimony, where he is ask to identify Guns evidence. Tri. Tran. pg 144. lines 20-25. And pg 145 lines 1-25.

Further not only did Trial Counsel fail to move to exclude the in court identification of the Guns. by Mr. Gallman. But he never even inspected the evidence to see if they were the actual Guns in question when the state introduce them. The alleged Guns evidence. was wrapped in saran wrap. thus not clearly visible, see Tri. Tran pg 145 line 9.

Further, Trial Counsel. failed to object to the prosecutions misconduct in re-directing the Courts Question. To the states witness. Mr. Kenneth Gallman, as to how he got possession of the Guns. evidence. Tri. Trans pg, 146 line 18. The prosecution then redirected the Courts Question. to its witness. and led him to an answer. Tri. Trans pg 146. line 20-25. Applicant was prejudice by his Trial Counsel failure to challenge the in court identification of the Guns evidence. when Mr. Gallman was in possession of the alleged Gun evidence. and not the police Dept. There for there was no corroborative evidence presented to substantiate. whether or not they were the actual Guns recovered and further Trial Counsel never inspected these alleged Guns. To see if they really were the actual Guns in question where they were wrapped in saran wrap -

and could not be clearly seen.

Therefore The Applicant ask This court to find prejudice ineffective assistance of Counsel in violation of "Strickland" against his Trial Counsel Mr. Roger Poole. And Grant him a new Trial.

Failure To Request Jury charge for receiving Stolen Goods. After submitting The argument in his closing argument. And suggesting That Applicant could be found to have possess Stolen goods.

Applicant was prejudiced by his Trial Counsel, Mr. Roger Pooler's failure to request The Court for a jury charge of Receiving stolen Goods. When Mr. Pooler posed This Argument to The Court, in his closing Arguments, Trial Transcript PJ, 285., lines 5-9. Further, Trial defense Counsel argued in his closing remarks, That, The state never placed Applicant at The crime scene, where entry is required to constitute Burglary, Thus it is a failure of The evidence.

Applicant asserts. That his Defense Counsel should have requested A Jury charge of The Lesser offense of Receiving stolen goods. When at The close of states evidence. The states evidence had failed to establish entry against Applicant. But only proved That Applicant. New of, or had possession of 3, Three, Guns. which was substantially Less Than The numerous pieces of Stolen property Alleged to have been taken from The Burglarize Home of The Gallmans.

Applicant Further asserts. That The evidence presented in his Trial or Lack of evidence. showed. That Applicant was only Alleged to be seen at, or around The Burglarize home of The Gallmans, The



The day before The actual burglary took place. No, evidence was presented in The Trial. To show That Applicant was seen in, near, or around The, Craftmon's, home on The actual day That The burglary occurred. There was no, finger print evidence linking Applicant to The crime scene. The only evidence, That The state introduced in its attempt to place Applicant into The ~~burglarized~~ burglarized home, was a partial shoe print. For which The states very own expert witness, could not conclusively say was made by The applicants shoes. Therefore it was error of applicants defense counsel to not request for a jury charge of Receiving Stolen Goods. When all The state proved was That 3. Stolen Guns was in Applicants possession.

See. S.C. App. 2006. If There is any evidence to support a Jury charge. The Court should grant The requested charge.

State vs. Santiago 634. Se 2d. 23. State vs. Lockamy 631. Se 2d 555. S.C. App 2006.

Further To Justify charging a lesser crime. The evidence presented must allow a rational inference The defendant was guilty only of The lesser offense. STATE v. Geiger 635. Se 2d. 669. (S.C. App. 2006)

The Applicant ask This Court to find his Trial Attorney, prejudice ineffective in violation of Strickland v. Washington, For his failure to request for jury charge of The lesser offense of receiving stolen Goods. A. Grant him a New Trial.

Trial Counsel failed to assist Applicant in his Appeal at the Request of Applicants Appellate Counsel, constitutes ineffective assistance of Trial Counsel because he had an obligation to assist Applicant on direct Appeal for which he abandoned in violation of <sup>Rule</sup> ~~section~~ 602, S.C.A.C.R.

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Rule 602. (c) (3). S.C.A.C.R. states in part that:

The public defender or appointed counsel shall assist in representing the accused in any manner necessary to properly perfect the appeal or as otherwise requested by the office of appellate defense.

The Applicant do alleges that his Trial Counsel intentionally refused to turn over relevant Brady Material. for which Applicant and Applicants Appellate Counsel made several formal Request for specifically stated Material evidence. for which was the subject matter of several state witnesses testimony. But was not included in Applicants discovery file. See Exhibits

See also Exhibit #25, where Applicants Appellate Counsel also made request for the relevant Brady Materials Applicant do alleges that he is prejudiced by his Trial Counsel -

- failure to turn over The relevant requested Material, as show in Exhibits 25 — — — because it denied him his Right to sufficiently and factually challenge testimonial evidence presented in his Trial for which is relevant in The appeal of his conviction and sentence. Applicant also believes That his Trial Counsel, has intentional failed to assist Applicant in producing These "Brady" Material, because such Material, would also show That Trial Counsel was ineffective, for his failure to move for The production of such Material, on The ground That The state had violated "Brady" and Rule 5. Disclosure. For There failure to produce The Highly credible evidence for which was The subject matter of There testimony. This Material evidence, could have impeached the testimony of several witnesses. and showed There di

Applicant ask This Court to find prejudice ineffective assistance of Counsel in violation of Strickland vs Washington for his failure to assist Applicant in his appeal and produce relevant Brady Material relevant to The appeal.

Allegation No #10

Trial Counsel's failure to object through out The course of Trial, was prejudice ineffective assistance of Counsel, For it Allowed The prosecutions case to go uncontested on many fronts and denied Applicant a chance to have the issue reviewed on direct Appeal.

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For An issue to be preserved for appeal, it must have been raised to and Ruled upon by The Trial Court. *Pike v. South Carolina Dept. of Transp.* 506 S.e.2d, 516, 332 S.C. 605 rehearing denied and certiorari granted. (S.C. App 1998.)

Applicant will show The Court 9 instances where he was prejudiced by his Trial Counsel's failure to timely object to states evidence. To seek a ruling from The Trial Court or preserve The issue.

see *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 Motion in limine is not a final determination.

10A) Applicant was first prejudiced by his Trial Counsel's failure to object to The introduction of The "Foot wear Impression" expert witness testimony, in The Trial. where Trial Counsel moved in pre-Trial. To exclude expert witness testimony on The basis it would be more prejudice Than probative, pursuant to Rule 403, Tri. Tran, pg, 36, to pg, 37. Trial Counsel further moved to exclude expert witness testimony, on The basis That, he would offer testimony in A field for which he would not be qualified in, and it may conf-  
uss The Jury. Tri. Tran pg 38 and 39.

This was a motion in Limine. For which The Court never ruled<sup>379</sup> upon. And in fact, The Trial Court failed to proffer The expert witness testimony. Never Conducted 403, Hearing or Conducted any of The Courts "Gatekeeping obligations".

Applicant was prejudiced. Because expert. was allowed to give contradicting, conflicting conclusions of his opinion of The evidence. Gave substantial testimony in a field for which he had No knowledge or specialized training which was irrelevant to The underlining issue at hand. And confessing to The Jury. Further Applicant was prejudiced Because Trial Counsel's failure to object denied Applicant review of The issue on Direct Appeal. See Exhibit #3 where The Court of Appeals affirmed Applicants conviction in refusing to hear Applicants issue on Appeal. For Failure to preserve issue, by Contemporaneous objection.

Applicant Ask This Court to find his Trial Counsel prejudice ineffective. For his failure to object to The expert witness testimony in The Trial. Thus denying Applicant a review of The issue on Appeal.

### Allegation NO: 2(A)

Prejudice ineffective Assistance of counsel. For Trial Counsel's failure to Raise and object to The States introduction of The 26. Photographs depicting The burglarized home of Sallmans. in disarray. in Applicants Trial; Applicant Asserts -

380 That his trial counsel was ineffective for his failure to object to the photographs evidence and move to exclude the photos on the grounds that they were more prejudicial than probative. do to the fact that they were only intended to arouse sympathy from the jury. And that the photos were totally irrelevant to the issue of whether or not Applicant burglarized the home of the Gallman's. Further Applicant never contested the fact of whether or not the Gallman's home was actually burglarized. And the introduction of the photographs came on the heels of an emotional testimony of Mrs. Ira, Joe Gallman, who became very emotional to the point for which she started to cry while describing the condition of her home after the alleged burglary. See Trial Tran. PG. 125. to PG. 127. of Mrs. Gallman's testimony in which even the Judge had to ask her if she was O.K. And the introduction of the photos followed this testimony.

cc STATE V. BRAZELL 480 S.E.2d 64. (S.C. 1997), STATE V. WELLS 426 S.E.2d 814. (S.C. App 1992) (holding that photographs calculated to arouse the sympathy, or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material fact or condition).

here Applicant was even more prejudiced by the state submitting the prejudicial photos to the jury to review while they deliberated in the jury chambers.

Allegation No # 3(A)

Applicants 6th and 14th Amendments Right to effective Assistance of Counsel in his Trial of 1st degree burglary and Grand Larceny was violated and he was prejudiced by his Trial Counsel's Failure to object to in court identification of Applicant. And Move for a in camera hearing.

A person who identifies a defendant as a perpetrator of crime, In court identification, needs to be challenged by a timely objection and pre-Trial Motion State v. Cash. 185. 522d 525.

Trial Counsel Mr. Roger Poole failed to object to and ask for an in camera hearing on the in court identification of Applicant by several State witnesses. was prejudiced ineffective Assistance of Counsel.

Trial Counsel was well aware. That prior to Applicants Trial, Applicant was featured several times in the Local News papers. That State witnesses. Joe. and Ira Joe Gallman, had been present at Applicants preliminary hearing and two bond hearings, Further. At the outset of Applicants Trial, The vior Dire. The Court had Applicant stand in front of The Jury and All of The States witnesses to be recognized see Tri. Tran. pg. 9. lines 4-11. Applicant was also involved in a show up identification. At the traffic stop scene. For which he was arrested

382 for two Traffic violation.

-See states witness. Andrea Randolphs identification of Applicant in the Trial.. Tri. Tran pg, 72. lines 11-20. And Ira Joe Gallmans identification of Applicant At The Trial. Tri. Tran. pg, 128, line 18. to pg, 129, line 4.

Trial Counsel. should have Ask for an in camera hearing to establish the validity of the identification. And A 403. hearing to establish that any identification of Applicant by State witness Ira Joe Gallman. who could only testify to allegedly seeing Applicant ring her door bell and return to his car. would be prejudice to Applicant and could possibly mislead the Jury into believing because Applicant rang the Gallman door bell. that he must have committed the burglary on the following day.

If. Trial Counsel would have simply said your honor, I'm, requesting A Neil vs. Biggers. which can be found in book of The Supreme Court Reporter. The request is also made under State v. Simmons pg, 92. and State v. Moore on, pg, 626. plus State v. Cheatham 561 S.E. 2d. 618. Then this extremely Meritorious issue would have been properly preserved for appellate review and my case might have turned out differently.

Ask This Court to find and recieve. prejudice ineffective assistance of Trial Counsel as pursuant to Strickland v. Washington 104 S.Ct. 1052. And Grant me the requested Relief of a New Trial



Allegation No. # 4 (A).

Trial Counsel's failure to object to The prosecution's closing Arguments. So as to seek a ruling from Trial Court and/or preserve issue for Appellate review. Denied Applicant his Right to a fair Trial. And Thus was prejudice ineffective assistance of his Trial Counsel.

Applicant alleges, That, he was denied The Rights to a fair Trial of his first degree burglary and Grand Larceny Trial. By his Trial. Defense attorney Mr. Roger Pooler's failure to object to The numerous misconducts The prosecution committed in there closing Arguments. See closing Arguments Trial Transcript PG.

Here Applicant asserts. The prosecution was allowed to:

1. Vouch for The credibility and for Truthfulness of its state witnesses. Applicant was prejudiced because credibility was The key issue in This Trial. See *Gilchrist v. State* 563. Se 2d 281. see. *STATE v. Shuler* 344. S.C. 604. 545. Se 2d 805. cert denied.

(prejudice of Counsel for erroneous failure to object to state giving statement vouching for credibility of witnesses credibility warrant reversal.). Further The Court has explained That A Solicitor cannot vouch for The credibility of a witness by express or implying his personal opinion concerning a witness Truthfulness.

384 Trial counsel, failed to object to the prosecution's closing arguments. Alluding to the character of the applicant, as a bad person with the likes of Jesse James, Ted Bundy and the Unabomber. By describing applicant's alleged shoes, as something bad because they belonged to applicant. Was an indirect and direct attack on the applicant's character and was thus improper.

Because, (1) applicant never placed his character at issue in the trial. (2) The alleged shoe evidence, which the prosecution alleged to have made a shoe print on a piece of glass from burglary crime scene. Could not be conclusively proven to have been made by applicant's shoes.

See, STATE v. TAYLOR, 508 S.E.2d 870, 333 S.C. 159. (S.C. 1998)

(IN A criminal case the state may not attack the character of the accused unless he first place his character in issue

further. The prosecution also committed misconduct. By stating that the applicant blew an intersection and was pulled over and that he had NO license. Tri. Trans. pg 272.

This constitutes evidence of other crimes and prior bad acts. and it was a misstatement of facts. Because applicant never blew an intersection. This charge was dismissed. Thus applicant has been prejudiced by the his trial counsel's failure to object. For the prosecution's statements were left unchallenged. And No, curative instruction was given by the trial court.

Applicant assert that his trial counsel also failed to object to the prosecution's amendment of the aggravating circumstance, of 1st degree burglary indictment. By alleging that applicant was armed and pointed guns and knives in the burglarized

STATE v. PEAKE. 396 S.E.2d (S.C. 1990)

Evidence of prior criminal acts which are independent and unconnected to the crime for which accused is on Trial is inadmissible for proving that accused possesses criminal character or has propensity to commit crime with which he is charged.

The Applicant ask this Court to find prejudiced ineffective assistance of counsel, for his counsel failure to object to numerous misconducts committed by the prosecution in there closing arguments. That went unchallenged and denied Applicant a fair Trial.  
Applicant seek a New Trial.

Allegation No. # 5. (A).

Prejudice Ineffective Assistance of Trial Counsel. For his failure to object, to The prosecutions comments on Applicants failure to Give a written statement.

Applicant alleges. That his Trial Counsel's Failure to object to The prosecutions comments on The Applicants failure to give a written statement. Tri. Trans. pg. 244 lines 13-20 And pg 245. lines 1-5. constitutes ineffective Assistance of Counsel..

see United State v. Frady 456 U.S. 152, 102 S.Ct. 1584. (1982)

Few mistakes by criminal defense counsel are so grave as The failure to protest evidence That The defendant exercised his right to remain silent.

Applicant asserts. The state improperly offered testimony on The Applicants failure to give a written statement. and evoking his right to counsel. see. State v. Johnson 293. S.C. 321. 368. S.E. 2d. 317 (1987) (It is improper for The state to refer to or comment upon a defendant's exercise of a Constitutional Right.). Further The Court has held. That such comments may not be made either directly or indirectly. State v. Goolsby 275 S.E. 110. 268. S.E. 2d 31. (1980).

on. Trial Trans. pg 244. Under Direct by The prosecuting Attorney Mr. Dawling State witness, Mike Fowlkes. testified as follows.

Q. Did you speak with Ricky Brannon A Third Time.

A. I did, .....

Q. OKAY. And how did that occur? When -- when did that occur.

A. It happened on November 29th of 03. Three day later.

I re-approached him - at The Detention Center in an effort to get a written statement of how he acquired these guns and --- and the additional information on the shoes. What we had learned in those few days.

And he said that he had done enough and he wanted his attorney.

The Applicant asserts. That on Tri. Trans. pg, 245. lines 1-8.

Testimony was offered once again, to the fact that a written statement was sought, from Applicant at the third interview.

Further Counsel also failed to object to the prosecution's attempt to impeach the Applicant's alleged oral statement of answers he had given at the interrogations. by improperly mixing Applicant's answers to questions of two separate burglaries. Together to create the inference. That the Applicant was being dishonest. And so had change his story. See Closing Arguments by the prosecution.

Tri. Trans. - pg to pg

The Courts has held. That. Where a defendant is advised of his Right under Miranda v. Arizona 384 U.S. 436. (1966) Including The Right to remain silent, any exercise of That Right may not be used against the defendant. Doyle v. Ohio 426 U.S. 610. 1976.

### Prejudice:

The Applicant states That he was substantially prejudice by his Trial counsel's failure to object. to the improper comments of his 5th --

Amendment Right to Silence and his Right to exercise That Right  
see. STATE v. Woods 316 S.E. 2d 673 (1984) Holding That,

State could not through introduction of evidence that defendant received and understood Miranda Warning or through solicitors comment on defendants failure to testify or make a statement U.S.C. 18. Court Amend 6.

Applicant assert. That The failure of his Trial Counsel To object was not harmless. Where The case against applicant was not overwhelming. The case was a circumstantial evidence case. Where Trial Counsel committed numerous errors. And That Counsel failure to object denied applicant appellate review of The issue.

Wherefore The Applicant Ask This Court To find prejudice ineffective assistance of Trial Counsel, in violation of "Strickland", For his failure to object and preserve The issue for appeal. Thus Applicant Request For a New Trial.

### Allegation No. 6 (A)

Trial Counsel's failure to object and seek a dismissal of the 1st degree burglary indictment. Where variance was shown. And the indictment was amended in the prosecution's opening statement. When the prosecuting stated that they will show that the applicant committed Grand Larceny, when he burglarized the home of Kenneth and Ira Joe Gallman. Tri. Tran. pg.

This constitutes fatal variance to the indictment which only alleges. That the applicant burglarized the home of Kenneth Gallman. Trial Counsel should have objected to this amendment to the indictment.

### Allegation No. 7. (A)

Trial Counsel failure to object to the Trial Court excluding and/or dismissing a Juror. Because she was a few minutes late in getting to the Court Room.

### Allegation No. 8. (A)

Trial Counsel's failure to object to the Trial Court's failure to instruct the Jury on other crimes evidence. Where. Applicant add-  
itional prior convictions and where. Testimony evidence was given that applicant was charged with two misdemeanor offenses. but no objection was made to either the introduction of the other crimes evidence testimony. or the failure of the Trial Court to instruct jury about other crimes evidence. of applicant Traffic offenses.

Allegation NO. # 9. (A).

Trial Counsel's failure to object to The identification of The Gun evidence. Marked as states exhibits 29, 30 and 31. by, states witness. Mr. Kenneth Gallman, during The trial was prejudice ineffective assistance of counsel. Where testimony given by Mr. Gallman clearly showed, although. The prosecution tried to mask it. That he was in possession of The alleged Gun evidence. up to The day of The Trial. see Trial Transcript PG. 144. Line 11. To PG. 147.

Applicant alleges That his Trial Counsel violated his Due process Right. by his failure to object to The identification of The Gun's by Mr. Gallman. and challenge The chain of custody of This alleged evidence. For fact would have shown That Mr. Gallman was already in possession of The Gun's up to The actual Trial date. prior to his identification. see Exhibit #11. COPY of chain of custody. Further The chain of custody does not stipulate as to what types of Guns was recovered and further the testimony and evidence. would have further allowed Applicants Trial Counsel to call in question The testimony of Detective Mike Fowlkes. who testified on Transcript PG. 243. lines 1-



- 11. That After, Mr. Gallman identified The Guns. He Then placed Them in his locker. Tri. Trans, pg. 243. lines 3-11

S.C. 1995. party offering evidence must trace possession of substance and what was done with it from time it was taken until final analysis. STATE v. Singleton 460 S.E. 2d. 573.

Further, A party offering evidence is required to establish complete chain of evidence. Tracing possession from time specimen is taken to final analysis. Identity of persons who ~~had~~ handled evidence must be established. STATE v. Gibbs 426 S.E. 2d 306.

IN. Applicant. case. The chain of custody of The Alleged Guns evidence should have been challenged by Applicant's Trial Counsel. Where The Validity of The Identification of The Gun evidence. Was Tainted because. The police failed to retain possession of This evidence until Trial. There for No one can accurately say whether or not The Guns evidence identified by Mr. Gallman in The Trial were The same Guns. Alleged to have been removed from Applicant's Aunt's home. Further, The Guns evidence remain hidden by saran wrap. And could not be clearly seen. And Trial Counsel never inspected The Guns but took The prosecution's word. That they were The actual Guns that was seized.

Applicant Ask This Court to find prejudice ineffective assistance of counsel, For Counsel failure to object and challenge The Validity and chain of evidence of The Gun evidence. And Grant The Applicant a New Trial.

Allegation No. 11

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL FOR COUNSEL'S FAILURE TO SEEK "D.N.A. TESTING" OF APPLICANT'S ONE, WAL OF BLOOD, OBTAIN BY POLICE PURSUANT TO SEARCH WARRANT, ALLEGING THAT PHYSICAL EVIDENCE WAS GATHERED FROM CRIME SCENE OF THE BURGLARIZED HOME OF KENNETH GALLMAN. AND THAT THIS EVIDENCE WOULD PROVE TO BELONG TO THE APPLICANT.

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APPLICANT ALLEGES. THAT HIS TRIAL COUNSEL WAS SUBSTANTIALLY PREJUDICE INEFFECTIVE IN HIS FAILURE TO HAVE APPLICANT'S D.N.A. TESTED FOR COMPARISON WITH THE EXISTING PHYSICAL EVIDENCE COLLECTED FROM THE ENTRY POINT OF THE CRIME SCENE OF THE BURGLARIZED HOME OF KENNETH GALLMAN. SEE. EXHIBIT \_\_\_\_\_. REPORT FROM CRIME SCENE INVESTIGATOR. DETAILING THE COLLECTION OF "HAIR" FROM ENTRY POINT OF BURGLARIZED HOME.

APPLICANT FURTHER ASSERTS. THAT HIS TRIAL COUNSEL KNEW THAT D.N.A. WAS OBTAIN FROM APPLICANT PURSUANT TO AN AUTHORIZED SEARCH WARRANT. AND THAT THE POLICE HAD ALLEGED THAT APPLICANT'S D.N.A. WOULD MATCH THE PHYSICAL EVIDENCE COLLECTED FROM THE CRIME SCENE.

ON TRIAL TRANS pg. 224. TRIAL COUNSEL, CROSS EXAMIN INVESTIGATOR HENSON WHO TESTIFIED. THAT HE HADNT READ THE REPORT ON THE RESULT OF THE D.N.A. TESTING OF APPLICANT'S D.N.A. AGAINST THE PHYSICAL EVIDENCE COLLECTED FROM THE CRIME SCENE.

APPLICANT CONTENDS. THAT HIS TRIAL COUNSEL NEVER BOTHERED TO CHECK AND FIND OUT IF ANY TEST WAS DON AND WHAT THOSE RESULTS WERE. FOR IF HE HAD SIMPLY REVIEWED APPLICANT'S DISCOVERY FILE HE WOULD HAVE DISCOVERED THAT NO. SUCH TEST WAS EVER PERFORMED.

Applicant WAS substantial prejudiced by his Trial Counsel's lack of effective representation in his failure to obtain testing of Applicant's D.N.A. After which The state had alleged would match The Applicant to The physical evidence discovered at The crime scene. This evidence would have constituted exculpatory evidence tending to prove That Applicant ~~wasn't~~ <sup>wasn't</sup> The burglar of The Gallman residence. Applicant case was a circumstantial evidence case where guilt was not over whelming based upon The evidence. Here, Applicant's Trial Counsel had No. strategy and simply abandon Applicant to The prosecution. and relinquish his obligation as a competent attorney under The mandates of "Strickland."

Applicant Ask This Court to find That his Trial Counsel's deficiency performance in his failure to seek Testing of Applicant's D.N.A. Against existing physical evidence, which could have ~~been~~ been presented as exculpatory evidence, tending to prove. The Applicant's innocence. constitutes prejudice ineffective assistance of counsel. and entitles The Applicant to a New Trial.

Allegation No # 12.

394 Ineffective Assistance of Counsel, Because Trial Counsel stipulated To Applicant prior burglary convictions. Failed To consult with and seek Applicants Agreement To, stipulations, prejudice. Because, stipulations deprived Applicant of his due process Right. To have The state prove every element of The crime charged in The indictment, and it relieved The state of it obligation to prove The validity of Applicants prior convictions including The diffinition, And proof That prior convictions was counseled.

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Applicant Asserts. That his Trial Counsel, prejudiced him by stipulation to his prior 16. year old burglary convictions. That Trial Counsel never consulted with him in re wards to his prior convictions, or set his A reements to The stipulations. See Trial Transcript, pg. where stipulations took place in absence of Applicant and before The start of his Trial.

Applicant was bre ualce because Trial Counsel by stipulating to The prior convictions. Counsel gave up The Right to attack The validity of Those prior convictions used for enhancement. on The grounds That The prior convictions were uncounseled convictions. Thus could not be used for enhancement purposes. see.

Curtis v. United States 511 U.S. 485. 114. S.Ct. 1732 (1994) Holding It is clear That a failure to be represented by counsel or to validly waive That Right can be used to collaterally attack a conviction to be used to enhance a sentence.

Where defendant was denied his sixth Amendment Right to counsel his conviction could not be serve as bases for enhancement.

U.S. v. Paleo 738. F.Supp 611.

Further Counsel, could have but failed to challenge the validity of those additional prior convictions of Applicants introduced into evidence. See Trial Transcript pg

Here, No such stipulation was sought or agreed upon. Thus, Trial Counsel had an obligation to attack to validity of those additional convictions. See. *Burgett v. Texas* 387 U.S. 109, 88 S.Ct. 258, 1967. (The Court has held that a defendant must be able to attack a prior conviction validity.

Also Applicant was prejudiced by the stipulations because his prior indictments of those convictions, contained jurisdiction issues, where the indictment failed to sufficiently state the offense.

Applicant asks this Court to find his counsel was ineffective in violation of "Strickland" for stipulating without the agreement of Applicant, failing to challenge the validity of Applicants prior conviction and indictments used for enhancement purposes.

INEFFECTIVE ASSISTANCE OF Appellate Counsel. Mrs. Lanelle, C. Durant. Invalidation of Applicants Due process Right.

Due process requires effective assistance of Counsel during first appeal as of Right. Evitt v. Lucy, 469 U.S. 387 396 (1985).

Applicant Raises and will show <sup>4</sup>~~(3)~~ claims of prejudice and ineffective Assistance of Appellate Counsel. Mrs. Lanell, C. Durant.

CLAIM NO. I

First, Appellate Counsel failed To raise and Argue any Appellable issue's in Applicants Initial Brief. for which could be reviewed by The Court of Appeals. And The issue for which Appellate Counsel did raise. WAS a frivolous issue. Because Appellate Counsel knew The Court of Appeal would not consider it, pursuant to The contemporaneous objection rule.

See. S.C. App. 1997. 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 - Samples v. Mitchell 495 S.E.2d 213. 329 S.C. 105.

The Court of Appeals Therefore Affirmed Applicants 1st degree -

burly conviction. Citing The fact That it need not consider Applicant's issue on Appeal. Because issue not preserved, by objection rule. see Exhibit #3. Ruling of The Court of Appeals.

Appellate counsel submitted NO other issue on Appeal of Applicants case. Except for The error of The Trial Court in admitting The testimony of The footprint expert. which was not objected To. Appellate Counsel had at least 15 months and The Trial Trans of record. To Raise and Argue an Appealable Meritorious issue. Appellate counsel performance was well below The standard of professional norm, of a competence attorney. For The least educated attorney would have know. That a contemporaneous objection was needed for The issue to preserved for review. Therefore Applicant was deprived of his Right to an appeal, and The Right to effective assistance of counsel on Appeal. see. Delgado v. Lewis. 181 F.3d 1087. 1093-94. (9th Cir 1999) (Failure of counsel to raise any arguable issues in appellate brief deprived defendant of Right to counsel on appeal and created 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. And see. The Federal Laws of Litigation Abuse 415 (1989) (And Appeal is "frivolous" only if The result are obvious).

### CLAIMS NO II

Applicant second claim is That Appellate counsel failure to Raise And Argue in Applicants direct Appeal. The issue of The Trial -

# 398 Court Abuse of discretion in failing to conduct its "Gatekeeping" Obligation

In Daubert v. Merrell Dow pharmaceutical Inc. The Court held that Federal rule of evidence 702 imposes a special obligation upon a Trial Judge to "ensure" that any and all scientific testimony is not only relevant but reliable 509 U.S. at 589. 113 S.Ct. 2786.

In Kumho Tire Co. v. Carmichael 119 S.Ct. 1167 The Court made it clear. The Daubert "Gatekeeping" obligation requires an inquiry into both relevant and reliability, applies not only to scientific testimony but to all expert testimony. Fed. 702. 28 U.S.C. 4.

In The initial brief of Appellant. Appellate Counsel, on page 7 of brief, made a minor reference to the fact that the Trial Court failed to have a pre Trial Hearing to conduct some sort of analysis of the expert witness testimony. And that the on the record analysis regarding prejudice versus probative was insufficient.

This issue should have been raised and argued by Appellate Counsel in Applicant initial brief. The Trial Record clearly shows that after Applicants former defense Counsel made two pre-Trial motions to exclude the shoe print experts testimony, Trial Trans. pg. 38. lines 1-11. The Trial Court conducted no hearing on the matter and stated on the record at least 3. Three times. That the court didn't know what he (Expert witness) was going to testify to. Tr. Trans. pg. 38, and 39.

The Court failed to "proffer" the expert witness testimony to make a determination that the testimony was admissible that the evidence was not only relevant but reliable. The Trial Court permitted the -



- Jury To hear The unproffered shoeprint experts testimony. where The expert went on to give conflicting contradictory testimony, of his opinion of the evidence, testified to "star shape" and "twisting," and for which he was not qualified to Give. See Tr. Trans pg. 191, lines 9-18. And PD. 216-217. Expert witness Testimony.

(The Court is now obligated to screen expert testimony to insure it stems from not just a reliable methodology, but also a sufficient factual basis and reliable application of the methodology to the fact.)  
Rudd v. General Motors Corp. 127 F. Supp. 2d, 1330-1337 (M.D. Ala. 2001) (Amended) Rule 702.

### Claim No III

Appellate Counsel failed To Raise and Argue. The properly preserved issue of The failure of The Trial Court, To Grant Applicant's Motion For a Directed verdict of his 1st degree burglary, Trial of Not Guilty, This Motion was properly preserved by Applicant's defense Counsel for Appellate review, Tr. Trans pg. 261. And pg. 307. where counsel made second request for Directed verdict.

pursuant, To In re Winship 397 U.S. 358, 364 (1970). The state was required to prove every element of Applicant's 1st degree burglary charges and The main essential element is "Entry". In Applicant's Trial The state failed to place Applicant in The burglarized home of Mr. Kenneth Gallman or either near or around The home on The actual day of The burglary. The record of The Trial Transcript would have shown, That all of The states witness. Testified to Applicant's suspicious behavior on The day-

400 before the alleged burglary occurred. The only key piece of  
states evidence, for which the state introduced in its attempt to  
place applicant into the burglarized home, was a partial shoe  
on a broken piece of glass. But the states shoe print expert  
witness gave conflicting opinions. and stated that he couldn't  
say if applicants shoes made the print on the glass. Tri:  
Trans. pg. 214, and 220/ The state offered no other evidence in trying  
to establish the element of entry against applicant.

see. State v. Lyles - Gray 328 S.C. 458. 492. S.E. 2d 802 (C.T. App 1997)  
and State v. Barksdale 311. S.C. 210. 428 S.E. 2d 498 (C.T. App  
1993). (A Directed Verdict should be granted when there is an  
absence of competent evidence tending to prove the offense  
charged. Because the jury should not be allowed to decide the  
case based on conjecture which raises only a mere suspicion  
of the defendants guilt.)

And further the court held in State v. Mitchell, 535. S.E. 2d. 126  
S.C. 2000). (where state failed to place defendant in burglarized  
home. A Directed Verdict should be granted.

Appellate Counsel, failed to raise and argue this meritorious issue  
even after applicant brought it to her attention. See Exhibit  
4 Dated June 13, 2007. Thus Appellate Counsel's failure to  
consider and consult with applicant about this issue was  
reflective, because Counsel had a duty to consult with applicant  
on issues raised in his appellant brief, and the issue Counsel  
did raise was frivolous with no chance of any consideration by  
the Court of Appeals.

CLAIM NO:

Appellate Counsel. Failure to timely inform applicant of The South Carolina Court of Appeals affirming of his conviction until six (6) Month after The Decision, was prejudice ineffective assistance of Appellate Counsel. Where it denied applicant The full one year statutory requirement to sufficiently raise his issues on post conviction Relief Application and where within The same one year limitation after final Judgement. 12 Applicant Required to file his petition pursuant to, 28, U.S.C. § 2244 (d) or otherwise he is barred by The statute of Limitation from seeking through Habeas corpus.

Base on The Above Asserted claims of prejudice ineffective & assistance of Applicants Appellate Counsel. Applicant ask This Court to find That his Appellate Counsel was ineffective thus denying his Rights to a direct appeal of his conviction and sentence. And Thus Grant him a ~~new~~ Direct appeal.

Conflict of Interest of 7th Circuit Solicitors office  
 E. violation of order of Disqualification. obstruction  
 of Justice. destroying Relevant Trial Transcripts.

The Applicant Alleges that his Rights to a Trial free from conflict was violated by the numerous misconducts of the Cherokee County 7th Circuit Solicitors office, who was disqualified from any involvement in the prosecution of Applicant of his 1st degree burglary and Grand Larceny charges. see Exhibit #10. where the 7th Circuit Solicitors office Requested, that the Attorney General handle the prosecution of Applicants burglary charges. Due to an actual Conflict of interest. see.

Smith v. Robbin 120 S.Ct. 746. (2000) under Strickland. There are three categories of cases in which Supreme Court presumes prejudice rather than requiring a defendant to demonstrate it are: (1) in a case of denial of counsel: (2). cases involving various kind of state interference with counsels assistance, (3). when counsel is burdened by an actual conflict of interest.

The Applicant Alleges The 7th Circuit Solicitors office. committed the following misconducts. in which some constitutes obstruction of Justice. Because it intentionally hindered Applicants defense counsel from adequately defending Applicant with all relevant evidence at his disposal. Here Applicant asserts the following misconducts.

4). Intentionally Destroyed The Transcripts of Applicant Magistrate Court Trial and proceedings of his November 20, 2003, Traffic -

1. charges of Failing to stop for a stop sign Ticket No. \_\_\_\_\_  
 And, Not having his driver's license in his possession while  
operating a motor vehicle Ticket No. \_\_\_\_\_ For which  
 contained relevant testimony of Deputy Richard Turner. Who  
 gave contradictory testimony in Applicant's Burglary Trial. To  
 the sworn testimony he gave in Applicant's Traffic Court Trial.  
 Applicant asserts that he timely appealed his Traffic Court Trial  
 conviction. So it was improper for the Solicitors to allow the Trans-  
 cripts of the Traffic Court Trial to be destroyed knowing full  
 well, that the Transcripts constituted "Brady" material. And required  
 disclosure, because of the testimonial evidence. The transcripts held.

(B). Represented states witness. Deputy Richard Turner. After they had  
 been disqualified due to a conflict of interest. in Applicant's  
 court ordered new trial of his November 20, 2003. Traffic  
 charges. The 7th circuit Solicitors office. Did show up and  
 presented themselves as attorneys representing Deputy Turner.  
 and did request for a continuance. on behalf of Deputy Turner.  
 This request for a continuance, was granted. But it was meant  
 to delay the Traffic Court Trial. Until the evidence obtained as  
 a result of the Traffic stop. could be used in Applicant's 1st  
 degree burglary Trial without a full adjudication of the validity  
 of the illegal stop and seizure.

The Applicant ask this Court to find that the 7th circuit Solicitors  
 office of Cherokee County violated the Applicant's rights to due process  
 by withholding and destroying relevant evidence. Thus  
 constituting an actual conflict of interest, for which denied the  
 Applicant his right to a fair trial.

"Newly Discovered Evidence," perjury, false Testimony, Involuntary Statement, Brady violation, 5. amendment violation. And is pursuant to §17-27-45(c) S.C. Code of Law 1976.

Applicant is entitled to a new Trial of his conviction of 1. Count of First degree burglary, and Grand Larceny. Base upon Newly discovered evidence. That shows his conviction was founded upon perjury false Testimony, which would have otherwise shown that his 5th, Amendment Right to remain silent and refuse to answer question was violated. And that discovery of relevant statements was intentionally withheld in violation of Brady.

To obtain New Trial based upon after-discovered evidence. party must show. That evidence would probably change result, If new Trial is had, has been discovered since Trial. could not have been discovered before Trial, is material to issue of Guilt or Innocence and is not merely cumulative or impeaching, United States v Chavis 880, F.2d. 788 795. (4th Cir 1994) State v. Prince 447 S.E2d 177 (S.C. 1993).

Applicant Amits Exhibit (A1), In his p.c.R. application. which constitutes newly discovered evidence. That shows that The prosecution allowed its witness Detective Mike Fowlkes, To give perjury, false Testimony with intent to mislead The Court. by withholding The Truth of The facts surrounding Applicants alleged oral statement At second interrogation. Applicant asserts. That his new evidence came about from answers he recieved from a civil action case, Ricky Brannon v. Bill Blanton, ETAL, case no. 008-cv-11-556. And shows. That The Applicant did not re-initiate contact with The Detectives. As Detective Mike Fowlkes, falsely testified to At Jackson v. DENNO hearing and in The Trial. Further —

That he has obtained new evidence. Since his Trial, Evidence for which The Applicant could not prove. Because The prosecution failed to document and admit such evidence existed. Applicant alleges that The new evidence. establishes the following factors.

(A) That The prosecution allowed Detective Mike Fowlkes to give perjury misleading testimony at both "DENNO" hearing and in The Trial itself. By falsely Alleging That Applicant, Reinitiated contact with The Detectives, By contacting The Detention Center and Requesting to speak with The Detectives again, After The Applicant, at first interrogation is Alleged to have told The Detectives Mike Fowlkes, and Tim Clark, That he didn't want to talk to them any more. Thus The interviews ended. See pre Trial DENNO hearing testimony Trial Trans, pg. 46. line 9.

(B) That Such perjury testimony substantially contributed to The Trial Court concluding That, The alleged "ORAL statement" was voluntary and thus was admitted into The Trial. and therefore was presented as a key piece of evidence. That contributed to Applicants Conviction.

(C). That it also constitute A "Brady" Rule 5. Disclosure violation. Because Applicants Trial Attorney Specifically Requested from The prosecution Before Trial, all relevant statements or Notes from Detective Mike Fowlkes, concerning his numerous interrogations of The Applicant. concerning The alleged Berghories  
see Trial Trans pg. 247. lines 12-21.

Applicant Asserts That The Courts has held in U.S. v. Kelly 35. F3d. 929. (4th Cir 1999). That a conviction acquired Through knowing use -

406 of perjury testimony by Government, violates Due process, regardless of whether government solicited testimony. That it knew or should have known to be false, or simply allowed such testimony to pass uncorrected U.S.C.A. Const Amend 5.14.

Further Applicants conviction, should be reversed because the false testimony related to the credibility of Detective Mike Fowlkes in giving his testimony of the alleged oral statement giving by Applicant. See United State v. Agurs 427 U.S. at 103, 96 S.Ct. at 2397. Holding (Even if the false testimony relates only to the credibility of a Government witness and other evidence has called that witness credibility into question. A conviction must be reversed when there is any reasonable likelihood that the false testimony could have affected the judgement of the jury.

Secondly, Applicant asserts, that the newly discovered evidence is factual proof that the prosecution violated Applicant 5th Amendment Right to remain silent, and 6th Amendment Right to Counsel By reinitiating contact with Applicant to conduct second interview. After Applicant at first interview, stated that he didn't want to talk to the Detectives any more and ~~because~~ <sup>it</sup> not for the perjury testimony of Detective Mike Fowlkes, his alleged oral statement at second and 3rd interviews with the Detectives. Could have been found to be involuntary. Thus would have been inadmissible in the Trial. See Rogers vs Richmond 81 S.Ct. 735. 09615 (A conviction following admission of involuntary confession cannot stand regardless of Trustworthiness of confession). U.S.C.A. Const Amend. 14.

This Applicant Ask This Court to find the following factors and reverse his conviction and sentence. Based on the New evidence and/or Grant The Applicant an evidentiary Hearing on the issue.



## Second. CLAIM

### Newly Discovered Evidence. 4th Amendment violation

The Applicant asserts. That he has obtained, Newly Discovered Evidence. in accordance with The requirements setout in United States v. Davis 880. F.2d. 788. 795. (4th Cir 1994). See also State v. South 427 Se.2d 666. Clark v. State 434. Se.2d (S.C. 1993).

The Applicant has obtained a Dismissal of his initial November 20 2003. Traffic charge, of Failure to stop for a stop sign. Ticket No. ~~26822~~ CR. See Exhibit (A 2) Copy of Dismissal.

The Applicant assert. He's entitled to a New Trial and/or an hearing on The issue of whether or not The Cherokee County sheriffs Dept. unlawfully, and without probable cause, initiated and illegal Traffic stop on The Applicant, in violation of his 4th Amendment Right.

The Applicant further asserts. That all of The evidence obtained and used in his criminal Trial of 2 counts of 1st Degree burglary Grand Larceny and possession of Burglary tools. was obtained directly from This illegal Traffic stop. and unlawful unconsented search, and seizure. See Terry v. Ohio 88. S. Ct. 1868 (1968) Evidence may not be introduced if it was discovered by means of seizure and search which was not reasonably related in scope —

- To Justification for There initiation. see also Mapp v. Ohio 367 U.S. 643, 6 LEd. 2d 1081, 81. S.Ct. 1684 (1961). Holding That (evidence obtained by search and seizure in violation of The 4th Amendment is inadmissible in state and federal criminal Trials).

The Applicant also alleges, That The prosecution, intentionally destroyed The Transcript of The Applicants Magistrates Court Trial, Concerning The unlawful Traffic stop charge. Even after The Applicant, Timely appealed his, Conviction of The Traffic charge, And That he obtained his information in a recent hearing, Thus its Newly Discovered evidence, And shows The misconduct of The solicitors office.

Because Thos relevant Transcripts, Held relevant Testimony of Deputy Richard Turner. And would have shown in Applicants Burglary Trial That, Deputy Turner, Intentionally initiated a false Traffic stop on Applicant, with a made up violation. Under The Command of Detectives Mike Fowlkes and Tim Clark. So As They could gain possession of Applicants vehicle, And detain Applicant, while investigating The burglaries. And would have Also shown, That Deputy Turner, was giving false testimony before The Court, in Applicants burglary Trial, with The knowledge of The prosecution. And other states witnesses That The Testimony was false.

The Applicant ask This Court to reverse his conviction or hold an evidentiary hearing on The issue of probable cause and whether or not Applicants 4th Amendment Right was violated by The initiation of The Traffic stop and was he prejudiced in his Trial due to The intentional destruction of his Chacee County Magistrate Court Trial, Transcript.

G.

The Trial Court Abused its discretion in allowing stipulations to an essential element in lieu of informing the jury of element. and offering proof

Applicant alleges that the Trial Court erred in its discretion to allow stipulations to an essential element of the crime charged to Applicant in the indictment, in lieu of informing or instructing the jury of the element.

On Trial Transcript pg 40, lines 2-7 The Trial Court allows both parties to stipulate to Applicant's prior 1991 burglary convictions. which was an essential element of Applicant's first degree burglary charges. enhanced based upon Applicant's two or more conviction for either burglary or house breaking Sec § 16-11-311 A(2).

see State v Hamilton 486 S.e 2d 512 (S.C. App 1997) (Defendants two prior burglary convictions were elements of charged first degree burglary).

The United States Supreme Court has noted. The prosecution's burden to prove every element of the crime is not relieved by a defendant's tactical decision not to contest an essential element of the offense. Estelle v. McGuire - 451 U.S. 432 (1981).

Here, The Trial Court failed to sufficiently weigh its obligation to inform and instruct the jury of the essential element, in spite of stipulation by both parties to that element.

see, State v. Simmons. 573 S.e 2d 856. (Because two prior burglary convictions are elements of first degree burglary. A defendant charged with first degree burglary cannot require the state to stipulate to the

410 prior convictions in Lieu of informing The Jury about The prior convictions.

The Trial Court error in allowing The stipulation to The essential element charged in The indictment. For The Trial Court erroneously failed to charge or instruct The Jury on any aggravating element which is essential. For The Jury to find Applicant guilty of The crime charged in The indictment. of First degree burglary. Thus The Applicant was permitted To be found guilty on an amended. Jury charge of Second degree burglary § 16-11-312, absent any aggravating element.

Further. The Trial Courts instruction to The Jury concerning Applicants prior conviction. were insufficient to constitute. informing or instructing The Jury as To Applicants prior burglary conviction element. For The most part There is no way an ordinary Juror, could have determined The Trial Courts Jury charge. concerning ~~his~~ Applicants prior conviction. see: Jury charge. of prior convictions. Tri. Trans. pg 296. lines 17-20

Also. The Trial Court error in its determination under Rule 403. That The prejudice of informing The Jury about Applicants prior burglary conviction element, but weighed its probative value. of having the state offer proof of prior convictions to The Jury. To meet The required element. See, STATE v. Benton, 520 S.E. 2d 228. Holding: That The probative value of admitting evidence that first degree burglary defendant had two prior burglary and/or house breaking convictions, which constitutes elements. of first degree burglary. was not outweighed by its prejudice effect. Code 1976 § 16-11-311 (A)(2) Rule 03.

Further, Proffered stipulations does not utter means of proof which The Trial Court should consider in balancing whether probative value of evidence is out weighed by danger of unfair prejudice; Stipulation is not proof. Fed. Rules, Evid. Rules 403, 403. Note, 28. U.S.C.A. U.S. V. BREITKREUTZ. 8. F.3d 688 (9th Cir 1993).

IN This case the error was not harmless. Because, the error affected Applicant Right to require the state to prove every ~~the~~ element of his crime, and it cause Applicant to be convicted on lesser proof than was required by indictment absent the aggravating element.

The Applicant ask This Court to find that The Trial Court abused its discretion, in allowing stipulations to an essential element in lieu of informing The Jury. IN violation of The Applicants Right to Due process, And find That The error was not ~~be~~ harmless, And Grant Applicant his post convict Relief Application.

412 ... motion of DISCRETION WITH CITATION 140 2.  
The Trial Court Abused its Discretion by failure To conduct  
its Gatekeeping obligation under Rule 702. To proffer experts  
testimony for relevance and reliability. To hold 403 hearing before  
allowing The shoe print experts testimony.

### FACTS

In a pre Trial Motion Applicants Counsel moved to exclude  
The testimony of The feet print on The ground that The brand shoe  
FILA was so common, that The testimony was more prejudicial  
than probative. Tri. Tran, pg. 36 lines 7-25. pg. 37 lines 19-21. He  
argued that The FILA athletics shoe has a national market similar  
to Adidas and Nike. Tri. Tran pg 37. lines 1-3. The Court denied  
Counsel Motion, SAYING that The evidence goes more to The weight  
of The testimony as opposed to its admissibility.

In Addition Trial Counsel also move to exclude expert witness Testimony  
about smudge marks on The glass. and that The smudge marks were caused  
by The Turning of The foot. Tri. Tran. pg 37. lines 20. to pg. 38. lines 1-4.  
Counsel concluded that The expert witness. would not be qualified to  
testify because he'll be starting to get into basic physics. Like pressure  
torque, Angle of impression. Tri Tran. pg 38. lines 1-11.

The Court stated at Least 3. Three Time that it didn't know what The  
expert would testify to. Tri Tran. pg. 38. line 12. to pg. 39. line 1-2.

At The introduction of The shoe print experts Testimony. on Tri. Tran.  
pg. 191. lines 8-11. The Trial Court instructed The Jury as follows:  
The Court: Mr. Foreperson ladies — ladies of The Jury. There's a —  
in this ~~case~~ testimony, I have to rule on something before you all  
here it a matter of Law,

The expert went on and testified that he did not know the market share that FILA shoes have in the athletic footwear market in the United States or in Cherokee County. Tri. Tran. 221 lines 17-21. pg. 222 lines 20-22. The expert also testified that he could not say that Applicant's FILA shoes was the one that made the print at the crime scene Tri. Tran. pg. 214. lines 17. pg. 220 lines 12-13. The expert also admitted that he could not pinpoint characteristics of the shoe to confirm that it was the crime shoe print. Tri. Tran. pg. 220 lines 21-24. The expert stated:

"I cannot say this is the shoe, because I don't have any identifying points on it. If I had... if this shoe and these places had nicks or cuts in it... And everybody that wears shoes, there's probably thousand of these pattern. Okay, cut here on the street.

Tri. Tran. pg. 214 lines 17-21."

The Expert witness went on to testify about star shapes, and how the foot moves on the glass. Tri. Tran. pg. 216. line 19. To pg. 217.

He then went on to testify that without the nicks and cuts this shoe pattern is like every other pattern. Tri. Tran. pg. 221 lines 13-16. He then testified in his opinion he thought Applicant's shoe made the print at the crime scene Tri. Tran. pg. 220 lines 16-20.

Applicant argues that the Trial Court erred in allowing unproffered shoe print expert testimony, who, have contradicting and conflicting opinion, for his opinion failed to match his analysis of the shoe evidence.

414 Applicant Assert. First The Trial Court Error. In not conducting some sort of analysis of probative vs prejudice. Once Applicants Counsel made The Motion, for The 403. Analysis on The grounds. That The brand name FILA. was so common. That it would be more prejudice That probative in Allowing The expert testimony concerning The Shoe. The Court erroneously denied The Motion without a hearing.

Although relevant. evidence may be excluded if its probative value is substantially out weighed by the dangers of unfair prejudice..

Stith v Alexander. 401 S.E. 2d 146. (S.C. 1991). Further The majority has ruled. That relevant evidence may be excluded for undue prejudice even though no specific exclusionary rule requires exclusion 1. W. more Evidence § 10. A Tillers. rev. (1983)

Second Applicant Alleges That The Trial Court failed To conduct it Gate-keeping obligation and proffer The expert witness. Testimony for relevance and reliability before admission to The jury. After Applicants Counsel Motion to exclude experts testimony.

The United States Supreme Court has held in Kumho Tire. Co. 119 S.Ct. At 117. (The obligation of a district Court to determine whether expert testimony is reliable and relevant prior to admission applies to all expert testimony).

The Trial Record clearly reflects. That NO. on The record analysis of The expert witness testimony, prior to his admission was conducted by The Trial Court. See Westberry v. Gislaved Gummi - AB. 178 F.3d 257 4th Cir 1999. Holding. The obligation of a district Court to determine whether expert testimony is both reliable and relevant applies to all expert testimony not just to novel scientific opinion Fed. Rule Evid Rule 702 28. U.S.C. 11.



415  
It is well established. That while The district Court has discretion in The manner in which it conduct its "Daubert" analysis of expert evidence. There is no discretion regarding The actual performance of The Gatekeeper function. *Goebel v. Denver and Rio Grande Western*, 215 F.3d 1083 (10th Cir 2000). See Also.

*Kumho Tire Co* 119 S.Ct. 1174. Holding in part. (The obligation of a district Court to determine whether expert testimony is reliable and relevant prior to admission applies to all expert testimony).

Here The Trial Court only referenced to it duty to proffer and conduct analysis of The shoe print experts Testimony, before The testimony is heard by The Jury. *Tri, Tran. pg*

Third, The expert witness. gave prejudice testimony in a field for which he held No qualifications. Testifying To shoe shapes and The twisting of The foot! *Tri, Tran pg*

See *Pirayesh v. Pirayesh* 591. S.2d 505. 359 S.C. 284. Holding permitting an expert witness to testify beyond The scope of his or her expertise can constitute reversible error.

Fourth, The shoe print expert gave conflicting opinions And contradicted himself by finding That he thought Applicants shoe, made The print ON The glass found at The crime scene, while giving prior testimony That based on his Analysis. He could ~~say~~ <sup>Not</sup> say if Applicants shoe. made The shoe. print.

This sort of opinion evidence. cannot be said. to be helpful to The Court in determining The underlinin issue. Thus it was Abuse of Discretion to Admit The unbroffered expert witness testimony, when his opinion only amounted to guess work, Absent sufficient proof to support his opinion.

See, *Oglesby v. General Motors Corp* 190 F.3d 244. C.A. App

1999. [A reliable expert opinion must be based on scientific technical or other specialized knowledge. And not on belief or speculation and inferences must be derived using scientific or other valid methods. Fed Rules, 702. 28 U.S.C.A.]

If. The Trial Court would have conducted its Gatekeepers obligation and held requested 403. hearing it could have very well determined that the shoe print expert could not assist the court in determining the facts in issue. or that such testimony would be pre-judicial to the Applicant therefore it would only be proper to exclude the experts testimony.

Applicant was prejudiced because conflicting expert witnesses opinion testimony, may have contributed to the Applicants conviction. in a case based upon circumstantial evidence, where evidence of guilt was not overwhelming

Applicant Ask This Court To find That The Trial Court Abused its discretion in admitting shoe print experts testimony, without holding requested 403. hearing and failing to conduct its Gatekeepers obligation. And That The errors prejudiced Applicant Due to The conflicting opinion of The unproffered experts testimony. Applicant Request That his Conviction be reversed and sentence vacated.

H.

The Trial Court erred in sentencing defendant under section 17-25-45, of S.C. Code Laws (1976) because The prosecution failed to give defendant a written timely Notice which is mandated by section 17-25-45(H) of S.C. Code of Laws (1976).

Applicant says The Trial Court erred in sentencing him to a term of Life imprisonment without parole. under section 17-25-45. of The South Carolina Code of Laws (1976) as amended.

because the prosecution failed to give Applicant a written notice at least 10. days before Trial which is required by section 17-25-45(H) which states.

H) Where The Solicitor is required to seek or determines to seek sentencing under This section, written notice must be given by The Solicitor to The defendant And defendants counsel not less than ten days before Trial § 17-25-45(H) Code (1976).

Applicant says he recieved No. Notice. to seek a Life without parole under § 17-25-45 code Laws 1976, from The Attorney General's office. prosecutors, Mr. Curtis Pauling and Mr. Deywan Pearson.

says: he only recieved a copy of the written notices, when he recieved his discovery file from , his former counsel. Mr. Roger J. Cole. on January 12, 2007. At The Broad River Corr. Inst. which was after Applicant was tryed and convicted.

Written Notice must be Given by The solicitor to The defendcut No less an ten days before Trial. State v. Johnson 552 Sc 2d 339 (S.C. App 2001.) 17-25-45(H) Code (1976)

Applicant says The counsels for the Atty Generals office, improperly in both occassions sent out written notice to seek life without parole. applicants two former counsels but did not personally serve written notice on Applicant, or have some one representing the prosecution serve written Notice on Applicant; (Under statutes The state was requied to provide both defendant and his counsel with written Notice of state intention) Code 1976 § 17-25-45 (H) Jones v State 628 Sc. 2d 892 368. S.C. 323.

Applicant further says. That the first notice to seek life with out parole under section 17-25-45. Code (1995) by The Atty Generals office, was sent to Applicants initial counsel, Dated Nov. 10. 2005. initial counsel, Mr. Don Thompson, of the Cherokee county public defenders office. Mr. Thompson. was latter dismissed from the representation of Applicant due to a conflict of interest.

Applicant also asserts. That he was incarcerated in The Cherokee County Detention Center. From August 1, 2005 until April 12, 2006. in which time NO. Such Notice to seek Life with out parole was served on The Applicant. Applicant further states. That The Court determination, That The Applicant had been served The Notice of intent. was only based on The acknowledgement from The prosecution, That The notice was served. Tri, Tran. pg. 303. NO inquiry was made by The Trial Court to either Applicant or his attorney Mr. Roger poole. As to whether or not The Notice of intent to seek life without parole. was timely served upon him. and Applicant.

The Trial Court error in accept The prosecutions testimony, That there Notice of intent was actually served on Applicant and his attorney back in August 2, 2004. When Applicants attorney at That time was, Mr. Don. Thompson of the public Defenders office. Because Mr. Thompson was not present to substantiate whether or not he was actually served The Notice. Further The only notice actually served on The Applicant. was a notice to seek life. Not The required, Notice to seek life without parole pursuant to section 17-25-45, all other alleged Notices was not served upon The Applicant, at all. but were instead file in The clerk of Courts office, or fax to Applicants Attorney. see Exhibit #12

The Applicant ask This Court to find That his Due process Right to a timely notice. was violated and vacate and remand his case for Resentencing or any other Reliefs.

I Trial Court Errors. Denial of Due process Right To A fair Trial.

Here, The Applicant Alleges - That The Trial Court committed numerous errors, Throughout The course of his Trial, That was prejudice to and denied him his Due process Rights to a fair Trial.

### Allegation No # 1

The Applicants First allegation of The Trial Courts Errors. is:

- 1). Failure of The Trial Court To inquire into a known conflict And/or several potential conflicts of interest, That existed in Applicants. Trial, including a potential conflict Appointment by The clerk of Court pursuant to Rule 608. SCRCP. of his Newly Appointed Defense Attorney. Was Reversible Error.

Sullivan Court Mandates a reversal when The Court has failed to make inquiry even though it knows or reasonable should know That A particular conflict exist. Cyler v. Sullivan 446 U.S. 335. 100 S. CT. 1708.

Applicant asserts. That The Trial Court knew or should have known about The conflict and potential conflicts of interest That existed in his Trial, When prior to The Applicants Trial of 2. counts of -

1st degree burglary and Grand Larceny. He had been additionally charged with Burglary and Arson of The Cherokee County Court house. And Grand Larceny of The clerk of Courts computer. That The Arson damages The 7th Circuit Solicitor's office within The Court house. That, on The Heels of The applicant being charged with The crime, came substantial Local and National media coverage: in which The Sheriff of Cherokee County, declared to The media, That he would see to it. That I ~~receive~~ <sup>receive</sup> as much time as possible. He Then went on to publish my entire criminal record in The News paper.

Further. Because of The Burglary and Arson of The Court house charged To Applicant, in which now made The County of Cherokee, and The 7th Circuit Solicitor's office, who were The prosecutor's of my 1st degree burglary and Grand Larceny case. The actual victims of This crime. That, The 7th Circuit Solicitor's office. Disqualified its self from prosecution or having any involvement in The prosecuting of Applicant's 1st degree burglary case. Thus The case was turned over to The Attorney General's office for prosecution. Soon There After The Applicant himself. Motion The Court for a dismissal of his Appointed public defender. Mr. Don. Thompson. Due to The fact That he was a county employee, and constituted an actual conflict of interest. Due to The County charges, charged to

422 Applicant. The Court Granted The Motion and Mr. Thompson was dismissed.

Applicant Alleges. That because The Sheriff himself, Had already vowed to see That Applicant was convicted and received as much time as possible. And That several of The key states witnesses were officers of The Sheriff's Dept. plus to add to The fact That at least two of The officers testifying for The state in Applicant's 1st degree burglary Trial. Held close, personal and professional ties to The Disqualified Solicitors office. That The Courts failure to inquire into These potential conflicts deprived me of a fair trial. Where The potential of biasness and prejudice, more than likely affected both testimony evidence presented by These witnesses.

Thus, Applicant was deprived of effective assistance of counsel at his Trial. Due To The Trial Courts failure to inquire ~~to~~ in to The potential conflicts. Including a conflicting appointment, by The clerk of Court, of a potential conflicting defence attorney out of The Disqualified District of The, 7th, Circuit Solicitors office. in Spartanburg S.C..

See Holloway v. ARKANSAS 435. U.S. 475. 484. (1978). And U.S. v. Greig 967. F.2d. 1018. 1022. (5th Cir 1992). violation of Right to effective assistance of counsel because court knew of conflict of interest. but failed to conduct further inquiry.



Further. The Trial Court had an obligation under Rule 44(c)(1). To Further inquire and take action if necessary. If new developments suggest a potential conflict.

Applicant assert. That The Trial Court knew of his additional charges involving burglary and arson of The Cherokee County Court house which generated a substantial amount of media attention, and The Court was also aware that The applicants public defender and The 7th Circuit Solicitors office were disqualified from ~~the~~ The case Due to an Actual Conflict of interest. Therefore The Trial Court knew, That The two main key witnesses. To Testify against The Applicant were two County employee's of The Cherokee County Sheriff's Dept. Captain Mike Fowlkes and crime scene investigator Jimmy Henson. whom also held close personal and professional ties with The 7th Circuit Solicitors office in Cherokee County. There was more than ample evidence. of numerous conflicts including, The fact that The Attorney General was prosecuting The case. to put The Court on Notice That an inquiry was needed. The Trial Court erred in failing to inquire.

The Applicant ask This Court to Grant him post-conviction Relief and either reverse his conviction or remand for an evidentiary hearing on The issue. of whether or not several witnesses. constituted conflict, and whether The Trial Court had a duty to inquire into The Conflicts

## #2. Second Error of The Trial Court.

The Trial Court committed reversible Error when it failed To strike reference from Applicants indictments That he had prior conviction for two or more burglaries or house breaking Convictions. After The Trial Court permitted stipulations. To The fact That Applicant had two, or more burglary convictions, which was essential elements of The crime charged in The indictment for Burglary first degree.

---

Applicant asserts The Trial Court erred by its failure to have Applicants Indictments for first degree burglary, which alleges That Applicant had prior convictions of two or more burglary or house breaking in violation of §16-11-311 & (2). Code 1976. Redacted to remove any references from The indictment of Applicants prior burglary convictions. After The Court permitted The parties to stipulate. to The prior conviction, while excluding all evidence of The prior's from The Jury. Because The actual knowledge of priors to The Jury could prejudice Applicant, Rule 403. see. United States v. Poore 594 F.2d 37. 41-43 (4th Cir 1979) (Requiring prosecution to strike any references in indictment to The nature of The defendant's prior felony conviction after defendant offered <sup>to</sup> stipulate ~~to~~ to his status as a convicted felon.

The Trial Record is clear in This case, And shows, That, No changes was made to his indictments. submitted to The Jury. After stipulations occurred.

The Applicant is entitle To Relief for The Trial Court error.

# Exhibit Evidence For .p. C. R.

425

Here. The applicant submits The Following Exhibit evidence In support of his Application for post Conviction Relief. Please Note All of The herein Listed Exhibits. Are listed by # numbers, And are All present, Except For requested Transcripts of relevant proceedings.

- #1. Copy of Transcript of State of South Carolina vs. Ricky Brannon case NO. 04-GS-11-216, 217. Which shows. That initial Counsel, Mr. Don Thompson, was offered Negotiations Concerning Applicants first degree burglary charges. See pg lines
- #2. Showing initial Counsel, Mr. Don Thompson was dismissed from Applicants, Burglary case. Due to an actual conflict of interest.
- #3. Copy of Ruling of S.C. Court of Appeals, And copy of The notice from ~~Court of~~ Appellate Counsel. of Court of Appeals decision, 6 months after decision was rendered.
- #4. Letter to Appellate Counsel. Directing her attention to other issues That could be raised on direct appeal.
- #5. A Copy of The Cherokee County Detention Centers, Booking report That shows. That applicant was detain after arrest for Traffic violation and was intentionally denied use of The phone.
- #6. A. Copy of Traffic Stop incident Report. Submitted 3. Three years after The incident. and Just 6. days before Applicants Trial.
- #7. A Copy of a Consent to Search form. signed by Applicant Girl friend. On November 25, 2008, Even though The vehicle had already been searched without consent at Traffic stop scene.
- #8. A Copy of The chain of Custody form showing Detective Mike Fowlkes did without a warrant enter and retrieved from Applicant personal property be a pair of "Fila" shoe's. No probable cause was presented To a Magistrate, Thus No authorization was given For The seizure of These shoe's

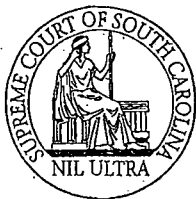
4289. Copy of order, Granting Applicant's appeal, of Traffic stop conviction and ordering a New Trial with Counsel appointed.
- #10. Copy of Letter and Response To 11th Circuit Request for Attorney General to handle Applicant's burglary case. Due to a Conflict of interest.
- #11. Chain of Custody of The Guns evidence. which shows that this evidence was not held in the Custody of The police officers. but was been held. by The Alleged victim.
- #12 4. Copy of Notice of intents. with only copy mark as Exhibit 12(C) was The only Notice ~~not~~ Actually given to Applicant
- #13. Copy of "Officer's Input" sheet. which shows Detective. Mike Fowlkes suggesting To The Solicitors office. That Applicant be tried as a career criminal. It also falsely states. That Applicant stated he was looking for a technicality. Detective Fowlkes, was a conflict. due to his close ties. Solicitors a
- #14. Copy of Initial Brief of Appellant. which shows The frivolous Appeal. and inadequate argument submitted by Appellate Counsel.
- #15 Copy of Narrative. of incident involving Applicant Traffic stop. And events That took place. leading up to Traffic stop. and events after showing The show up and in custody interrogations concerning burglaries
- #16. Copy of two warrant cher in Applicant with burglary and Arson of The Cherokee County Court house.
- #17. Brady Request made by initial Counsel. Don. Thompson
- #18 Brady Request made by substitute Counsel. Roger, Poole
- #19 Copy of warrant and indictment. For possession of Burglary Tools. charged To Applicant because of "Lug wrench" retrieved from car during The unconsented Traffic stop search. by Det. Mike Fowlkes It also shows That The police and prosecution. pacifically selected Applicant to charge. Because. The police let Applicant passen or o. from Traffic stop. Never investigated her, or cher ed her also with being in possession of burglary tools. Even though she left a beer

pliers on the passenger seat when they let her out of the vehicle.  
 See, Exhibit \_\_\_\_\_, which shows a photo of the pliers, on the seat.

~~Exhibit~~

- # 20. Copy of "Return" showing that "blood" DNA was taken from applicant, per. search warrant for comparison to physical evidence collected from crime scene. Alleged to belong to me
- # 21. Copies of (3) Three interrogation waivers done by Det. Mike Fowlkes.
- # 22. Copy of crime scene investigator, Jimmy Henson. whom was qualified as a Expert witness in Applicant Trial - Investigative Report.
- # 23 Copy of "Road Service", showing that Applicant vehicle was Towed from two different streets. Then was impounded, and an illegal inventory search, was conducted.
- # 24. Showing date I received my Discovery file. After numerous Request.
- # 25. # Copy of all Letters To Attorney Mr. Poole, Trying To 'obtain Discovery'. Including a formal Letter written to applicants Trial Counsel. Seeking relevant Discovery.

428 Exhibit (1),  
(1)



## 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

October 23, 2007

The Honorable Robert B. Howell  
Cherokee Magistrate's Court  
P. O. Box 336  
Gaffney, SC 29342-0336

Re: The State v. Brannon, Ricky

Dear Mr. Howell:

This will acknowledge receipt of a letter from Mr. Ricky Brannon dated October 8, 2007, and addressed to Chief Justice Toal, with reference to the above entitled matter.

Mr. Brannon has advised in his letter that on April 25, 2005, Judge Macaulay granted his appeal and remanded his case to you for a new trial. Mr. Brannon alleges that he has not yet had a new trial. The Court asks that you please advise the status of this matter in writing on or before November 2, 2007. Please be sure to show proof that your response has been served on Mr. Brannon.

Very truly yours,

Chief Deputy Clerk

DES/bfs

cc: Mr. Ricky Brannon # 179051

Attached. Sheets 18 →  
A copy of The Letter I sent to  
The Toal

Dated October 8, 2007

429

To The. Honorable South Carolina Supreme  
Court Justic. Ms Jean H. Toal.  
Suprem Court Buidin  
1231 Gervais St.  
P.O. Box. 11330  
Columbia S.C. 29211.

Ricky Brannon #179051  
Broad River Corr. Inst.  
4460 Broad River Rd.  
Columbia S.C. 29210  
(petitioner)

RE: State of South Carolina vs Ricky Brannon  
CASE NO: 26822 CR.

ISSUE: Failure of The Cherokee County Magistrate Court to  
Comply with Court ordered New Trial and/or dismiss  
charge in the above stated case.

1.

Above named petitioner Request from the Honorable Supreme Court  
Justic Ms Jean H. Toal. To compell The Cherokee County Magistrate  
Court to Comply with Court ordered New Trial or dismiss Above  
stated case. Said case is from a Misdemeanor traffic violation  
which occured on November 20, 2003 for which petitioner was charged  
with failure to stop for a stop signe, ticket No 26822 CR and  
not possessing licens while operating a motor vehicle ticket No  
26821 CR by The Cherokee County Sheriff Dept.

2. In The month of December 2003. petitioner was taken to Blacksburg S.C. in the County of Cherokee. In front of a Cherokee County Magistrate Court Judge, for the two traffic violations stated herein.
3. At Above said proceedings. petitioner Requested the assistance of Counsel. And copy of the Actual tickets of the said violations for which petitioner was never issued any written tickets of said violations. The Magistrate Judge At this proceeding denied both of petitioner's request. And ordered petitioner to either enter a plea, or he (Magistrate Judge) will grant petitioner time served. Thus petitioner requested an continuence, because he had witnesses. This request was also denied. petitioner then entered a plea of Not Guilty to failure to stop for a stop sign. And request an Jury Trial. Magistrate Judge denied petitioner's request for a Jury Trial. petitioner was then made to have an bench Trial. At which concluded, with the Magistrate Judge, finding petitioner guilty. The Magistrate Judge then convinced petitioner to plead guilty to not have his licens in his possession while operating a motor vehicle.



4. petitioner did Appeal his herein said conviction, within 10, days At the Cherokee County Court house. For The denial of Counsel, denial of Jury Trial.

5. On Aprile 25. 2005. The Honorable Judge Alexander S. Macaulay presided over petitioners Appeal of said traffic conviction. The Court found that petitioner was denied counsel At the Masistrate Court proceedings. And it was so ordered that petitioner be granted a New Trial, with Counsel Appoited. See exhibit A

6. Since the above Ruling, The Cherokee County Masistrate Court has failed to comply with the Order's as stated in exhibit A petitioner has even submitted two Motion to the Cherokee County Masistrate Court one for a fast and speedy Trial see exhibit B, And one for a dismissal of charges in violation of denial of my Right to a fast and Speedy Trial. See exhibit C. The said Court has failed to hear these Motions

Also Notice pursuant to Article V § 4. of The South Carolina Constitution. It is ordered That Masistrate or Municipal Judge of this state shall try to otherwise dispose of All criminal cases, including TRAFFIC CASES within Sixty days. please Notice my Traffic charges Are 47 months old And, 30 months old, since Court ordered New Trial On April, 25, 05.

please notice, petitioner had been under the assumption that when the Court granted his herein said appeal, due to the Magistrate Court's denial of petitioner's right to the assistance of counsel, at the proceeding, that it automatically voided his guilty plea also. But according to petitioner's Court appointed counsel, Mr. Wade S. Weatherford III, it only involves petitioner's not guilty plea for which he was found guilty and appealed.

8. Thus petitioner submitted a post conviction relief application to take back and/or vacate, uncounseled guilty plea. The Cherokee County clerk of court, return my (p.c.R.) application, informing petitioner, that he could not file (p.c.R.) application on an conviction in the Magistrate Court.

Wherefor, petitioner do request that.

1. The Cherokee County Magistrate Court be compelled to comply with Court ordered New Trial, And to hear all motions in relation to said New Trial. or dismiss charges.
2. That petitioner be allowed to withdraw his uncounseled guilty plea, to the charge of, Not possessing Driver license while operating a motor vehicle ticket NO 26821 CR.

Thanking you for your time and cooperation. Respectfully Submitted  
 Dated October 8, 2007. S/ Ricky Brannon #179051

Exhibit #2.

STATE OF SOUTH CAROLINA

County of Cherokee

STATE OF SOUTH CAROLINA

Petitioner

vs.

Ricky Brannon

Defendant

IN THE COURT OF  
General SessionsSeventh Judicial CircuitORDER OF APPOINTMENT  
FOR LEGAL COUNSEL☒ Public Defender Conflict ←Case Number 04 -GS- 11 - 200  
201  
202  
203

The Defendant contends that he or she is indigent and in need of services of an attorney as contemplated by law. THEREFORE, the Defendant is appointed Roger Poole, Attorney-at-Law, for representation in the above captioned matter pursuant to Rule 608, SCACR.

This 8 day of December, 20 05 at \_\_\_\_\_

Brandy W. McBee ←  
Clerk of Court  
Brandy W. McBee

## Attorney Contact Information

Roger Poole

Name

PO Box 1571

Address

Spartanburg, SC 29304

City, State, Zip Code

864-582-5472

Phone Number

*Exhibit (2)**(2)*

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

October 31, 2007

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

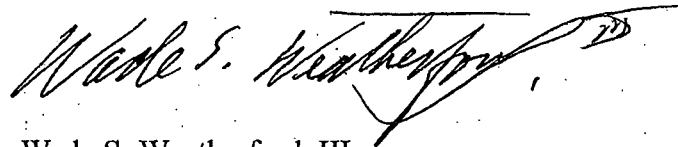
Re: State vs. Ricky Brannon  
Ticket No.: 26822CR

Dear Mr. Brannon:

Enclosed is a copy of letter I received from Chief Magistrate Robert Bart Howell in above referenced matter.

I will send a copy of the signed off ticket upon receipt.

Yours very truly,



Wade S. Weatherford, III

WSW,III:vw

Enclosure

See Attached

Letter

# CHEROKEE COUNTY MAGISTRATE COURT

POST OFFICE BOX 336  
312 EAST FREDERICK STREET  
GAFFNEY, SOUTH CAROLINA 29342  
864-487-2533  
www.cherokeemagistrate.com

POST OFFICE BOX 427  
101 SOUTH SHEELY STREET  
BLACKSBURG, SOUTH CAROLINA 29702  
864-839-2492

October 30, 2007

VIA CERTIFIED MAIL

The Honorable Dan Shearouse  
Clerk of Supreme Court  
P.O. Box 11330  
Columbia, SC 29211

Re: State vs. Brannon, Ricky  
Ticket No. 26822CR

*DAN*  
Dear Mr. Shearouse:

This is in response to Ms. Brenda F. Shealy's letter dated October 23, 2007 regarding the above referenced action. Please be advised that the officer, Richard Turner of the Cherokee County Sheriff's Office, and Mike Morin, Assistant Solicitor, have agreed to dismiss the above referenced ticket. A confirmation of this dismissal will be sent to Mr. Brannon's attorney, Wade S. Weatherford, III, as soon as the ticket is signed off.

Please advise if there is anything further you need regarding this matter.

Very truly yours,



Robert B. Howell  
Chief Magistrate

RBH::vw

cc Wade S. Weatherford, III  
Attorney at Law  
P.O. Box 2207  
Gaffney, SC 29342

Mike Morin  
Seventh Circuit Solicitor's Office  
125 E Floyd Baker Blvd  
Gaffney, SC 29340

436

Exhibit (3)

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

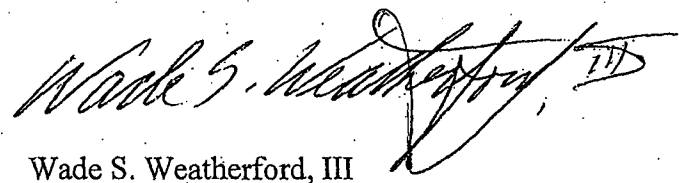
Re: Ticket No.: 26822CR - Disregarding Stop Sign

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

See attached Dismissal  
order

1 of 2 pages of Exhibit #2

STATE OF SOUTH CAROLINA )

COUNTY OF CHEROKEE )

County of Cherokee )

vs. )

RICKEY BRANNON )

Defendant. )

0011676432 SC )

S. C. Driver's License Number )

IN THE MAGISTRATE COURT

## ORDER

Re: 26822CR

Ticket Number

DISREGARDING STOP SIGN

Type of Violation

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 Ishnell v. South Carolina State Highway Department, 264 S.C. 340, 215 S.E. 2d 201 (1975).

AND IT IS SO ORDERED.

Magistrate, Cherokee County, SC

Gaffney, South Carolina

Dated: 10/30/07

I have been notified of this request.

DEPUTY RW TURNER

Signature  
DEPUTY

Title

RECEIVED  
11/5/07

Dated June 13, 2007

Ricky Brannon #179051  
Broad River Corr Inst.  
41460 Broad River Rd  
Columbia S.C. 29210

Mr Lanelle C. Durant  
Appellate Defender.

RE. Initial Brief of Appellant.

Dear sir. First let me thank you for your time and effort in preparing Appellants initial brief. in state vs Ricky Brannon no 04-05-11-201, 2003. But if I may, turn your attention to a couple of issues for which Appellate counsel either overlooked or just failed to argue.

First. In The Initial brief of Appellant on pg 6., titled Discussion you states: A. Trial court Ruling on admissibility of evidence will not be reversed on Appeal absent an Abuse of discretion or commission of a legal error which results in prejudice to defendant. An Abuse of discretion occurs when a trial courts decision is unsupported by the evidence or controlled by an error of Law. State v. Walker 366 S.E. 643 623. S.E.2d 122 (App 2005).

Sir. Even though, you went on to outline. The Trial court abuse of discretion. You failed to cite any case law to which to give it legal standing. Grounded in facts of Law.

It is Appellants wish to Amend, to make stronger, The initial Brief of Appellant, Abuse of discretion Arguments. And also to add to or Amend. Initial brief of Appellant. To include the properly reserved meritis issues, of The Trial court failure to grant a motion for directed verdict, of Not guilty.



## Trial Court Abuse of Discretion

The Court Abuse its discretion,

By Admitting the evidence of the FILA shoe print. Because expert's testimony was not supported by the evidence. expert stated at least twice that he could not say that Brannon shoe made the print. because they had no defining characteristics. And was basically like any other FILA shoe. Then expert witness contradicted himself. by says it was only his opinion. and that he (Thought) Brannon's shoe made the print at the crime scene. Brannon was prejudiced because case was circumstantial. shoe print was only evidence. and expert's opinion testimony was contradictory and conflicting. opinion not based on evidence: (A Reliable expert testimony must be based on scientific, technical or other specialized knowledge. And not on belief or speculation. and inferences. must be derived using scientific or other valid methods. See Oglesby v. General Motors, 190 F.3d 244 (4th Cir. 1999)

The Court Abuse its discretion,

By admitting the FILA shoe print. Because expert who was qualified as a foot print Identification expert. Took his testimony, under further analysis, into the field of physics for which he had stated no qualifications or specialized knowledge. expert gave testimony concerning, steps, motion, star shapes, shaded areas, and turning of the foot. see testimony Trial Tr pg 216 lines 11-25, and pg 217, lines 1-22. Brannon was prejudiced because case was circumstantial shoe print, only evidence. expert was not qualified in field of physics. Testimony was misleading. And the court failed to proffer testimony. "permitting expert witness testimony beyond the scope of his other expertise can constitute reversible error. See Pirayesh v. Pirayesh 591 S.E.2d 505 359 S.C. 284 (S.C. App 2004)

### 3440

## The Court Abuse its discretion

Because faced with a pre-Trial motion by the defense. To exclude expert's testimony, To conduct some sort of analysis, of testimony to see if it was more prejudicial than probative. The court failed in its (gate keeping obligation) and permitted the unproffered testimony of the expert witness. Brannon, was prejudiced, by The Trial Court failure to hold pre-Trial hearing, on relevance and reliability expert gave erroneous, misleading testimony, contradictory opinions unsupported by the evidence. expert testified in field for which he was not qualified or stated no qualifications. Brannon was also prejudiced because case was circumstantial, shoe print only evidence.

Dauberts gatekeeping obligation requires an inquiry into both "Relevance and reliability". Applies not only to scientific testimony but to All expert testimony. see Kumho Tire Co. 119 S.Ct 1174.  
see. Westberry v. Gislaved Gummi - AB. 178 F3d 257 (4th Cir 1999) also  
see. State v. Slocumb 521 S.C. 2d 507. (S.C. 1999)

Because of the herein stated argument of the abuse of discretion of the Trial Court, in admitting the prejudicial evidence of the shoe print because expert could not positively identify shoes belonging to defendant. This case was circumstantial except for the shoe print, based on the herein stated abuse of discretion argument. This case should be remanded for a New Trial.

### Discussion: Harmless Error

Appellant is well aware, that Appeals Court's generally applies the Harmless error standard when it reviews errors committed by the trial Court. And also the curative measures taken by the Court's.

Appellant says his case was circumstantial and the erroneously admitted evidence of the shoe print was substantially prejudicial because shoe print was states only evidence. And the weight of the states case, rested on the erroneously admitted testimony of the expert witness, who's testimony was contradictory, because he stated at least twice. That he could not see defendant's shoe, made print at crime scene. but on his own opinion "he thinks they did". This conflict in opinion lead to Appellant's conviction

see... Fahy v. Connecticut 375 U.S. 85 (1963) Quoting:

The question is whether there is a reasonable possibility that the error complained of might have contributed to the conviction:

Also see, Chapman v. California 386 U.S. 18-22 (1967)

Error harmless if highly probable that it did not contribute to verdict

See following sheet.

3/442  
Appellant says. That the "probability" of the erroneous admitted expert testimony of the shoe print evidence. In which the Trial Court Erred in its Gatekeeping obligation, to conduct analysis, was substantially great That it contributed to Appellants Guilty "Verdict." Because.

- 1) shoe print was only state evidence, in a circumstantial evidence case.
- 2) The state relied heavily on the experts testimony concerning the shoe print evidence. expert gave some 37 pages of on the record testimony. The longest testimony of all of the witnesses. in the Trial.
- 3) The prosecution in there closing argument's even vouched for the Truthfulness of the expert witness. And did a complete review of expert testimony, while at the same time, displaying the FILA shoes in his hands vouching for the credibility of the evidence and calling the FILA shoes infamous because they belonged to the defendant.
- 4) The Court even vouched for the credibility of the evidence. By stating "the evidence of shoe print and shoes were there." I see Court's statements concerning the credibility of the evidence. Trial Transcript p. 307, lines 20-5.
5. curative instructions were general.
6. Expert witness gave contradictory opinions as to the evidence. which placed his credibility at issue <sup>and</sup> places reasonable doubt in, Brannon's Trial.

### Conclusion

Error, Not Harmless. Because shoe print evidence main issue in case, and the only evidence in which the state relied on to prove "entry" in case of 1<sup>st</sup> degree burglary. against, defendant. and if not for the erroneously admitted testimony of the expert witness. There is a probability that the proceedings would have been different. For the above stated argument. Brannon's case should be remanded for a New Trial.

Did. The Trial Court erred in its Refusal to grant  
a Directed verdict of not guilty.

Sir. please note.

D. S.C. 2000. South Carolina. has a contemporaneous objection  
 Rule. Reley v. South Carolina 82 F.supp 2d 474).

S.C. 1999. contemporaneous objection is required to preserve an  
 Issue for Appellate review. State v. Aldret 507. S.C. 2d 811. 333. S.C.  
 307.

Sir. As you may see. in Trial Transcribed page 261, lines 19-20  
 and page 307, lines 1-5., That this issue was properly preserved  
 for Appellate review. And it is Appellants request that the  
 merits issue. of The Trial court failure to grant a Directed  
 verdict, be raised and put forth. in Appellants direct Appeal.

Sir. Burglary is A Crime of "Entry"

The essential element of a charge of burglary  
 is "entry", The state failed to prove entry in to The burglarized  
 home of The Gallman's. beyond a reasonable doubt. see. In Re  
winship 397 U.S. 358 364 (1970).

The prosecution produced witnesses, who gave testimony to Alleged  
 seeing Appellant on Nov. 19, 2003. at a car, purported to be driven  
 by Appellant, at the home of The Gallman's. Ringing the door bell,  
 and there was other testimony of state witnesses to allegedly seeing  
 Appellant or the car. on The same day Nov. 19, 2003.

444. If you check the trial record you will find that there is absolutely no testimony given by any of the state's witnesses to actually seeing Appellant in or around the burglarized home of the Gallmans on the actual day of the burglary. Nov. 20, 2003, testimony given by state's witnesses was to the alleged suspicious behavior of Appellant on November 19, 2003.

State.  
Sir, The State had no other evidence to place Appellant in burglarized home on Nov. 20, but an alleged shoe print. But, foot print identification expert testified at least twice that he could not say that the shoes purported to belong to Appellant made the print. Sir, this clearly shows that the state's only evidence to prove entry was not conclusive. Therefore evidence is not competent. (A. Directed verdict should be granted when there is an absence of competent evidence tending to prove the offense charged. Because the Jury should not be allowed to decide the case based on conjecture which raises only a mere suspicion of the defendant's guilt. State v. Lyles - Gray 328 S.C. 458, 492 S.E.2d 802 (CT App 1997) State v. Barksdale 311 S.C. 210, 428 S.E.2d 498 (CT App 1993)

The state then relied on an alleged oral statement given by Appellant in which Appellant allegedly agreed to take the detectives to his alleged residence and retrieve property for them belonging to the burglarized home of the Gallmans. Sir, the recovery of property does not prove entry and moreover, the state's lack of competent evidence to prove entry as it pertains to Burglary, cannot then rely on an alleged ~~oral~~ <sup>oral</sup> statement given by Appellant to prove its case. (If corpus delicti is not proven and the sole evidence of guilt is a confession, a directed verdict in favor of the defendant is required State v. Lawrence 503 S.E.2d 496 (SC 1998))

If evidence is consistent with both innocence and guilt it cannot support a conviction. United State v. Varoz 740 F2d 772 775. (10<sup>th</sup> Cir 1984).

Sir. This case was a circumstantial evidence case. The evidence produced by the state. Did not conclusively prove that Appellee entered the burglarized home of the Gullman's. There was no. Finger prints, D.N.A. evidence could not be said to match Appellant, There was no eye witnesses to actually seeing Appellant in or around burglarized home. On the actual day of the crime, shoe print evidence, could not be definitely said to belong to Appellant; Once more Sir, Burglary is a crime of Entry. And entry was not proven. (Where state failed to place defendant in burglarized home. A Directed verdict should be granted. State v. Mitchell 535 Se 2d 126 (S.C. 2000)

### Conclusion

Appellant is entitle to have his conviction and Sentence reversed.

Sir. Let me direct your Attention to *Frazer v. South Carolina* 430 F.2d 696 (4th Cir 2005).

[1516]

Although counsel need not press particular issue of defendant's choosing by implication counsel must consult with the defendant to identify whether there are any meritorious issue to Appeal. Barnes. 463 U.S. At 752, 1035 S.Ct. 3308.

The defendant's need for assistance of a advocate who can examine the record with a view to selecting the most promising issue for review. Id. cannot be overstated, and is a necessary component of the particular duty to consult with the defendant on important decision. Identified in Strickland 466 U.S. At 688, 104 S.Ct. 2052. Flores - Ortosa's distillation. That counsel generally. (But no invariable has duty to consult with his client regarding whether to pursue an Appeal is thus dictated.

pleeze Note. Sir it is ineffective of counsel, to raise and argue in the initial Brief of Appellant. That the trial court erred in admitting the testimony of the foot print expert. because his testimony was more prejudicial than probative due to the nature of the testimony). Then you argued That the expert witness. gave contradictory opinion. For he stated twice That he could not say That Appellant shoes made the print at the crime scene. Then he stated that in his own opinion he thinks they made the print.) Sir. you stated in the initial Brief, That this opinion was personal. not based on the evidence.



Sir, like stated earlier. It is ineffective of counsel <sup>To</sup> Raise The argument of the shoe print evidence and the contradictive expert testimony. And not Raise and argue. The Trial court failed to grant a directed verdict. Because for one this issue was properly preserved for Appellate review and it has merit's second. You have already Argued that the expert testimony was not competent. If this be the Argument then entry as it relates to burglary was not proven beyond a reasonable doubt because shoe print evidence, was the only evidence state relied on to place Appellant in burglarized home. And This evidence as The Trial Record has clearly shown. Was not conclusive. There for The state failed to prove entry beyond a reasonable doubt. Directed verdict should have been granted.

please Sir, submit these issues That i have argued. And if i may have applied The law wrong in any of the issues herein Appellant do request that his mistakes be corrected by Appell. counsel. I would like to Thank you in advance for your help and cooperation in this matter.

Respectfully Submitted

sworn before me This 13<sup>TH</sup> day of

June 2007.

Donald J. [Signature]  
Notary public for South Carolina

My Commission Expires  
August 25, 2015.

my commission expires

S/ Rick Brown  
Rick Brown #179051  
Broad River Corr. Inst.  
4460 Broad River Rd.  
Columbia S.C. 29210

TABLE OF CASES

S.C.

State v. Walker 366 S.C. 643 623 S.C. 2d 122 (App 2005)

Oslesby v. General Motors 190 F3d 244 (4th Cir S.C. 1999)

pirayesh v. pirayesh 591 SE 2d 505, 359 S.C. 284 (S.C. App 2004)

Kumho Tire Co. 119 S.Ct 1174.

Westberry v. Gislaved Gummi-AB. 178 F3d 257 (4th Cir 1999)

State v. Slocumb 521 S.C. 2d 507 (S.C. 1999)

Fahy v. Connecticut 375 U.S. 85 (1963)

Chapman v. California 386 U.S. 18 22 (1967)

Rekey v. South Carolina 82 Fsupp 2d 474 (D. S.C. 2000)

State v. Aldret 507 S.C. 2d 811, 333 S.C. 307. (S.C. 1999)

State v Lyles - Gray 328 S.C. 458, 492 S.C. 2d 802 (CT App 1997)

State v Barksdale 311 S.C. 210, 428 S.C. 2d 2198 (CT App 1993)

State v. Lowery 503 S.C. 2d 794 (S.C. App 1998)

United State v. Varoz 790 F2d 772, 775. (10th Cir 1984)

State v Mitchell 535 S.C. 2d 126 (S.C. 2000)

In Re, Winship 397 U.S. 358, 364 1970

Frazer v. South Carolina 430 F3d 696 (4th Cir 2005)

Barnes 463 U.S. At 252, 1035 S.Ct 3308

Strickland 466 U.S. At 688, 104 S.Ct 2052

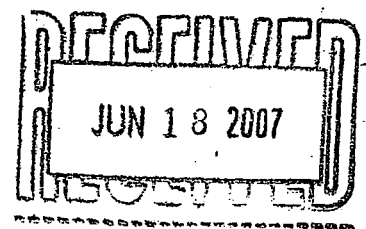


Exhibit #5

Hold for 124/I-20

449

AGENCY I.D.  
SCO. 110000DATE / TIME OF ARREST  
11-20-03/2200

NO calls

CASE NUMBER

BOOKING REPORT  
CHEROKEE COUNTY SHERIFF'S DEPT.

DEFENDANT NAME (LAST, FIRST, MIDDLE)

Brannon - Ricky

RACE

SEX

DATE OF BIRTH

DOCKET NUMBER

B

m

AGE

ETH

HEIGHT

WEIGHT

HAIR

EYES

SOCIAL SECURITY NUMBER

VISIBLE SCARS AND MARKS

NCIC

I.D. NUMBER

36

W

507

175

blk

bro

ADDRESS (NUMBER AND STREET)

CITY

STATE

ZIP CODE

RESIDENT

PHONE NUMBER

Laffney

SC

050U

NA

ALIAS

PLACE OF BIRTH

DRIVERS LICENSE NUMBER

STATE

Spartanburg Co

SC

EMPLOYER OR OCCUPATION

NEXT OF KIN

ADDRESS (CITY AND STATE)

BOOKING OFFICER'S NAME

NUMBER

ARRESTING OFFICER

AGENCY

NUMBER

ARRESTEE ARMED ☐ YES ☒ NO WEAPON TYPE:☐ SEMI-AUTO☐ FULL-AUTO☒ ON VIEW ARREST☐ SUMMONED☐ CUSTODYJUVENILE DISPOSITION: 1. ☐ HANDLED, RELEASED 2. ☐ REFERRED TO OTHER AUTHORITY

J - This Jurisdiction S - State O - Out of State U - Unknown

ADDITIONAL CASE NUMBERS

MORE IN REMARKS ☐

IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A, B, C

CHARGE ID

A

B

C

CHARGE

NO. 101A Poss.

D. Shop Steal

STATUTE

Ticket # 26821 CR

Ticket # 26822 CR

REDUCTIONS

BOND TYPE

DISPOSITION

DAYS

AMOUNT

DAYS

AMOUNT

DAYS

AMOUNT

SENTENCE

TIME SERVED

COWARD

DAMAGES

FEE

RECEIPT NUMBER

ANY KNOWN ALLERGIES

IF YES, WHAT

ANY HISTORY OF HEART DISEASE

DIABETES

EPILEPSY

HIGH BLOOD PRESSURE

IS SUBJECT NOW UNDER DOCTORS CARE AND / OR TAKING ANY MEDICATIONS

IF YES, WHAT

ANY HISTORY OF NARCOTICS USE?

IF YES, WHAT

RELEASE DATE

TIME

RELEASING OFFICER

NUMBER

AGENCY RELEASED TO

SIGNATURE OF RECEIVING OFFICIAL X

LIST ANY REMARKS BELOW

REMARKS

## DEFENDANT'S PERSONAL PROPERTY RECEIPT

TOTAL CASH AT TIME OF ARREST

\$ 31 in yellow bag

QUANTITY

ITEM

QUANTITY

ITEM

I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

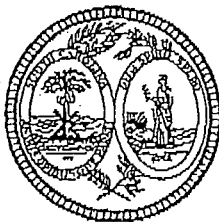
X

DEFENDANT'S SIGNATURE AT TIME OF ARREST

OFFICER

I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

X



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

April 6, 2006

J. Roger Poole, Esquire  
215 Magnolia Street  
Spartanburg, South Carolina 29306

SENT VIA FACSIMILE

Re: State v. Ricky Brannon  
Indictment Nos.: 2004-GS-11-201, 202, 203, & 204

Dear Mr. Poole:

Attached please find a copy of an incident report in connection with the above-referenced matter. I just received this incident report today and so I am forwarding it to you in compliance with Rule 5. Please call me at 803-734-2816 if you have any questions.

With best wishes, I remain  
Sincerely,

Curtis A. Pauling, III  
Assistant Attorney General

CAP, III/

Exhibit #6

see next sheet false incident report by Deputy Richard Turner

AGENCY I.D.  
SCO 110000INCIDENT REPORT  
CHEROKEE COUNTY SHERIFF'S OFFICE

CASE NUMBER

INC.

ENTR.

451

| INCIDENT TYPE                                                                                                                                                                                                                                                                                                                                                                                                                                |              | COMPLETED                                                                                         | FORCED ENTRY                                                        | PREMISE TYPE                                                                                    | UNITS ENTERED        | TYPE VICTIM                                                                                                                                                                                                                                                                                                                                                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------------------------------------------------------------------------------------------|---------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Disregarding a Stop Sign                                                                                                                                                                                                                                                                                                                                                                                                                  | 26822CR      | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                               | <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | Roadway                                                                                         |                      | <input type="checkbox"/> Individual<br><input type="checkbox"/> Business<br><input type="checkbox"/> Financial Inst.<br><input type="checkbox"/> Government<br><input type="checkbox"/> Relig. Org.<br><input type="checkbox"/> Soc. / Public<br><input type="checkbox"/> Other<br><input type="checkbox"/> Unknown<br><input type="checkbox"/> Police Off. |
| 2. No D.L. in Possession                                                                                                                                                                                                                                                                                                                                                                                                                     | 26821CR      | <input type="checkbox"/> YES <input type="checkbox"/> NO                                          | <input type="checkbox"/> YES <input type="checkbox"/> NO            |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| 3.                                                                                                                                                                                                                                                                                                                                                                                                                                           |              | <input type="checkbox"/> YES <input type="checkbox"/> NO                                          | <input type="checkbox"/> YES <input type="checkbox"/> NO            |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)                                                                                                                                                                                                                                                                                                                                                                |              |                                                                                                   |                                                                     | ZIP CODE                                                                                        | WEAPON TYPE          |                                                                                                                                                                                                                                                                                                                                                             |
| Kendrick St + Kelly St                                                                                                                                                                                                                                                                                                                                                                                                                       |              |                                                                                                   |                                                                     | Gaffney                                                                                         | 29340                | NA                                                                                                                                                                                                                                                                                                                                                          |
| INCIDENT DATE                                                                                                                                                                                                                                                                                                                                                                                                                                | 24 HR. CLOCK | TO                                                                                                | DATE                                                                | 24 HR. CLOCK                                                                                    | DISPATCH DATE / TIME |                                                                                                                                                                                                                                                                                                                                                             |
| 11-20-03                                                                                                                                                                                                                                                                                                                                                                                                                                     | 2145         |                                                                                                   |                                                                     |                                                                                                 | DISPATCH DATE / TIME |                                                                                                                                                                                                                                                                                                                                                             |
| COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                                                                                                                                                                     |              | RELATIONSHIP TO SUBJECT                                                                           |                                                                     | RESIDENT                                                                                        | RACE                 | SEX                                                                                                                                                                                                                                                                                                                                                         |
| CCSO                                                                                                                                                                                                                                                                                                                                                                                                                                         |              |                                                                                                   |                                                                     | JSOU                                                                                            |                      |                                                                                                                                                                                                                                                                                                                                                             |
| ADDRESS                                                                                                                                                                                                                                                                                                                                                                                                                                      |              | CITY                                                                                              |                                                                     | STATE                                                                                           | ZIP CODE             | LOCATION NO.                                                                                                                                                                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                              |              | Gaffney                                                                                           |                                                                     | SC                                                                                              |                      |                                                                                                                                                                                                                                                                                                                                                             |
| VICTIM'S NAME (LAST, FIRST, MIDDLE)                                                                                                                                                                                                                                                                                                                                                                                                          |              | RELATIONSHIP TO SUBJECT                                                                           |                                                                     | RESIDENT                                                                                        | RACE                 | SEX                                                                                                                                                                                                                                                                                                                                                         |
| Society / Public                                                                                                                                                                                                                                                                                                                                                                                                                             |              |                                                                                                   |                                                                     | JBOU                                                                                            |                      |                                                                                                                                                                                                                                                                                                                                                             |
| HEIGHT                                                                                                                                                                                                                                                                                                                                                                                                                                       | WEIGHT       | HAIR                                                                                              | EYES                                                                | FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.                    |                      |                                                                                                                                                                                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                              |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| ADDRESS                                                                                                                                                                                                                                                                                                                                                                                                                                      |              | CITY                                                                                              |                                                                     | STATE                                                                                           | ZIP CODE             | LOCATION NO.                                                                                                                                                                                                                                                                                                                                                |
|                                                                                                                                                                                                                                                                                                                                                                                                                                              |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| VISIBLE INJURY (MOT. 1) <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                  |              |                                                                                                   |                                                                     | EXPLAIN                                                                                         |                      |                                                                                                                                                                                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                              |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| VICTIM (NO. 1) USING ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                             |              |                                                                                                   |                                                                     | TYPE                                                                                            |                      |                                                                                                                                                                                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                              |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| TWO-MAN VEH. <input type="checkbox"/> ONE-MAN VEH. <input type="checkbox"/> DETECTIVE PLASMT. <input type="checkbox"/> OTHER <input type="checkbox"/> ALONE <input type="checkbox"/>                                                                                                                                                                                                                                                         |              |                                                                                                   |                                                                     | ASSAULTED <input type="checkbox"/> J - This Jurisdiction S - State O - Out of State U - Unknown |                      |                                                                                                                                                                                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                              |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| SUBJECT                                                                                                                                                                                                                                                                                                                                                                                                                                      |              | NAME (LAST, FIRST, MIDDLE)                                                                        |                                                                     | RACE                                                                                            | SEX                  | AGE                                                                                                                                                                                                                                                                                                                                                         |
| <input type="checkbox"/> RUNAWAY                                                                                                                                                                                                                                                                                                                                                                                                             |              | Brannon - Ricky                                                                                   |                                                                     | B                                                                                               | M                    | 36                                                                                                                                                                                                                                                                                                                                                          |
| <input type="checkbox"/> WANTED                                                                                                                                                                                                                                                                                                                                                                                                              |              | FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.                      |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| <input type="checkbox"/> WARRANT                                                                                                                                                                                                                                                                                                                                                                                                             |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| <input type="checkbox"/> ARREST                                                                                                                                                                                                                                                                                                                                                                                                              |              | ADDRESS                                                                                           |                                                                     | CITY                                                                                            | STATE                | ZIP CODE                                                                                                                                                                                                                                                                                                                                                    |
| <input type="checkbox"/> JAIL                                                                                                                                                                                                                                                                                                                                                                                                                |              |                                                                                                   |                                                                     | Gaffney                                                                                         | SC                   |                                                                                                                                                                                                                                                                                                                                                             |
| <input type="checkbox"/> SUMMONS                                                                                                                                                                                                                                                                                                                                                                                                             |              | SUBJECT (NO. 1) USING ALCOHOL <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO |                                                                     | ARRESTED NEAR OFFENSE SCENE <input type="checkbox"/> YES <input type="checkbox"/> NO            |                      | DATE / TIME OF OFFENSE                                                                                                                                                                                                                                                                                                                                      |
|                                                                                                                                                                                                                                                                                                                                                                                                                                              |              | DRUGS: <input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> UNKNOWN  |                                                                     | TOTAL # ARRESTED                                                                                |                      | DATE / TIME OF ARREST                                                                                                                                                                                                                                                                                                                                       |
|                                                                                                                                                                                                                                                                                                                                                                                                                                              |              |                                                                                                   |                                                                     | 1                                                                                               |                      |                                                                                                                                                                                                                                                                                                                                                             |
| <p>On the above date &amp; time, while on routine Patrol, R/O observed a 2001 Daiwoo SC tag # 250 WAS, Disregard the stop sign at the above location. R/O initiated a traffic stop and asked Subject no. 1, the driver of the vehicle, for his license and registration. Subject no. 1 stated that he did not have his license in his possession. R/O placed subject no. 1 under arrest for the above charges &amp; transported to CCDC.</p> |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| JURISDICTION OF THEFT<br>LAW ENFORCEMENT AGENCY                                                                                                                                                                                                                                                                                                                                                                                              |              |                                                                                                   |                                                                     | JURISDICTION OF RECOVERY<br>LAW ENFORCEMENT AGENCY                                              |                      |                                                                                                                                                                                                                                                                                                                                                             |
|                                                                                                                                                                                                                                                                                                                                                                                                                                              |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| PROPERTY EXT.                                                                                                                                                                                                                                                                                                                                                                                                                                |              |                                                                                                   |                                                                     | TOTAL VALUE                                                                                     |                      |                                                                                                                                                                                                                                                                                                                                                             |
| TYPE (GROUP)                                                                                                                                                                                                                                                                                                                                                                                                                                 |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| STOLEN                                                                                                                                                                                                                                                                                                                                                                                                                                       |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| DAMAGED                                                                                                                                                                                                                                                                                                                                                                                                                                      |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| BURIED                                                                                                                                                                                                                                                                                                                                                                                                                                       |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| RECOVERED                                                                                                                                                                                                                                                                                                                                                                                                                                    |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| SEIZED                                                                                                                                                                                                                                                                                                                                                                                                                                       |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| SUBJECT IDENTIFIED                                                                                                                                                                                                                                                                                                                                                                                                                           |              | SUBJECT LOCATED                                                                                   |                                                                     | CLATIVE <input type="checkbox"/> ADM. CLOSED <input type="checkbox"/>                           |                      | EX-CLEAR UNDER 18                                                                                                                                                                                                                                                                                                                                           |
| <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                          |              | <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                               |                                                                     | <input type="checkbox"/> UNFOUNDED                                                              |                      | <input type="checkbox"/> EX-CLEAR 18 AND OVER                                                                                                                                                                                                                                                                                                               |
| REASON FOR EXCEPTIONAL CLEARANCE: 1. <input type="checkbox"/> OFFENDER DEATH 2. <input type="checkbox"/> NO PROSECUTION 3. <input type="checkbox"/> EXTRADITION DENIED 4. <input type="checkbox"/> VICTIM DECLINES COOPERATION 5. <input type="checkbox"/> JUVENILE - NO CUSTODY                                                                                                                                                             |              |                                                                                                   |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |
| REPORTING OFFICER(S)                                                                                                                                                                                                                                                                                                                                                                                                                         |              | DATE                                                                                              |                                                                     | UNIT NUMBER                                                                                     |                      | APPROVING OFFICER                                                                                                                                                                                                                                                                                                                                           |
| R.W. Turner                                                                                                                                                                                                                                                                                                                                                                                                                                  |              | 11-20-03                                                                                          |                                                                     | 127                                                                                             |                      |                                                                                                                                                                                                                                                                                                                                                             |
| FOLLOWUP INVESTIGATION <input type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                              |              | OFFICER                                                                                           |                                                                     |                                                                                                 |                      |                                                                                                                                                                                                                                                                                                                                                             |

Exhibit (I)

CHEROKEE COUNTY SHERIFF'S OFFICE  
127 BAKER BOULEVARD  
GAFFNEY, S.C. 29341  
(803) 487-2531

CONSENT TO SEARCH

I, TARSHA LITTLEJOHN HAVING BEEN INFORMED OF MY CONSTITUTIONAL RIGHT NOT TO HAVE A SEARCH MADE OF THE PREMISES OR VEHICLE HEREAFTER DESCRIBED WITHOUT A SEARCH WARRANT AND OF MY RIGHT TO REFUSE TO CONSENT TO SUCH A SEARCH, HEREBY AUTHORIZE OFFICERS FROM THE CHEROKEE COUNTY SHERIFF'S OFFICE TO CONDUCT A COMPLETE SEARCH OF THE PREMISES OR VEHICLE UNDER MY CONTROL DESCRIBED AS 2001 DAEWOO NUBIRA VIN# KLAJC52Z01K THIS WRITTEN PERMISSION IS GIVEN BY ME VOLUNTARILY AND WITHOUT THREATS OR PROMISES OF ANY BEING MADE TO ME.

DATE: 11-25-03 TIME: 1600  
LOCATION: CHEROKEE COUNTY SHERIFF'S OFFICE

[Signature] WITNESS  
Tarsha L. Littlejohn SIGNATURE OF PERSON GIVING CONSENT

INVENTORY OF PROPERTY SEIZED

I, Sheriff Newton, OF THE CHEROKEE COUNTY SHERIFF'S OFFICE, ON Nov. 25th, 2003 AT 4:30 PM UNDER AUTHORITY OF THE VOLUNTARY CONSENT TO SEARCH DO HEREBY SEIZE THE FOLLOWING ARTICLES FROM A SILVER/BLUE NUBIRA DAEWOO VIN WHICH ARE CONSIDERED TO BE FRUITS OF A CRIME TO WIT: KLAJC52Z01K652098  
TAC# 250 NAS, S.C.

| ITEM NUMBER | DESCRIPTION:                      | WHERE FOUND:                 | OFFICERS INITIALS |
|-------------|-----------------------------------|------------------------------|-------------------|
| 1.          | (1) ONE LUG WRENCH                | TRUNK                        | JAH               |
| 2.          | (1) PLIERS SWANSON YELLOW HANDLES | PASSENGER SEAT               | JAH               |
| 3.          | (1) ONE SWAB <del>FROM</del>      | FROM GAS PEDDLE              | JAH               |
| 4.          | (1) ONE SWAB                      | FROM BRAKE PEDDLE            | JAH               |
| 5.          | (1) ONE SWAB                      | FROM DRIVERS DOOR KICK PANEL | JAH               |
| 6.          | (1) ONE SWAB                      | FROM DRIVERS FLOOR BOARD     | JAH               |
| 7.          | (1) SCRAPPING <del>FROM</del>     | FROM DRIVERS DOOR KICK PANEL | JAH               |
| 8.          | Nothing                           | Follows                      |                   |
| 9.          |                                   |                              |                   |
| 10.         |                                   |                              |                   |





# CHEROKEE COUNTY SHERIFF'S OFFICE

Kenneth Gallatin  
224 Cambridge Ln.  
Gaffney, S.C.

## 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. HANSON

12-2-03 1115

JIMMY HANSON

EVIDENCE VAULT

04/07/04

Exhibits #8 #11



# CHAIN OF CUSTODY

CASE # 2003 - 003773

## NOTES / DESCRIPTIONS

5 1/2 W 38 CAL

# STAINLESS STEEL

COUR Semi Auto 32CAL

20063

BLACK 38 CAL REVOLVER

2878

THE ABOVE EVIDENCE WAS TRANSFERRED

# FROM

**TO:**

DATE/TIME:

Ricky Brannon

Capt. Mike Fowkes

11-21-03 1450

Capt. Mike Fowlkes

KEN GALLMAN

01-09-04 1500 K.W.G.

Exhibit 9

view yinning - 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)

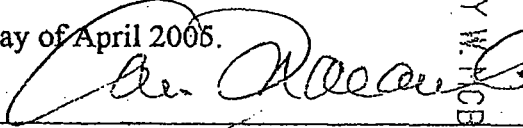
CHECK ONE

- ☐ **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

CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2005 APR 25 PM 2:05  
RANDY W. BEE

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

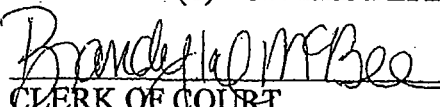
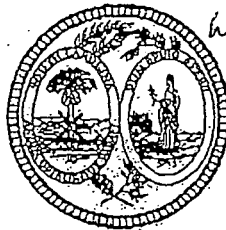
  
CLERK OF COURT

Exhibit  
# 10



Conflict of interest of The 7<sup>th</sup> Cir. selected 457  
who did re-enter my case to stop me  
from making 4<sup>th</sup> Amendment claim.

The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

October 25, 2004

Barry J. Barnett  
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 1<sup>st</sup>, Burglary 1<sup>st</sup>, Grand Larceny \$1,000-5,000, Poss. Of  
Burglary Tools

Dear Mr. Barnett:

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



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 1<sup>st</sup>, Burglary 1<sup>st</sup>, 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/mlj



Exhibit  
#12

The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

March 31, 2006

VIA FAX & REGULAR MAIL

J. Roger Poole, Esquire  
215 Magnolia Street  
Spartanburg, South Carolina 29306

Re: State v. Ricky Brannon  
Indictment Nos.: 2004-GS-11-201 & 202

Dear Mr. Poole:

Enclosed please find State's Notice of Intent to Seek a Sentence of Life Without Parole in connection with the above-referenced matter. Please call me at 803-734-2816 if you have any questions.

Sincerely,

Curtis A. Pauling, III  
Assistant Attorney General

CAP, III/  
enclosure

DeWayne Pearson

*Exhibit #12*

The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

HENRY McMASTER  
ATTORNEY GENERAL

March 31, 2006

**VIA FAX & REGULAR MAIL**

J. Roger Poole, Esquire  
215 Magnolia Street  
Spartanburg, South Carolina 29306

**Re: State v. Ricky Brannon  
Indictment Nos.: 2004-GS-11-201 & 202**

Dear Mr. Poole:

Enclosed please find State's Notice of Intent to Seek a Sentence of Life Without Parole in connection with the above-referenced matter. Please call me at 803-734-2816 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Curtis A. Pauling, III".

Curtis A. Pauling, III  
Assistant Attorney General

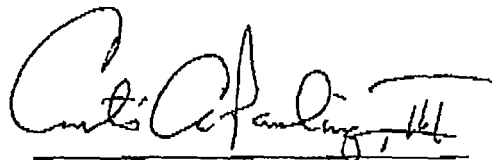
CAP, III/  
enclosure

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF CHEROKEE ) SEVENTH JUDICIAL CIRCUIT  
 )  
THE STATE ) NOTICE OF INTENTION TO SEEK A--  
 ) SENTENCE OF LIFE WITHOUT PAROLE  
 )  
v. )  
 ) Indictment Nos.: 2004-GS-11-201 & 202  
RICKY BRANNON, )  
 )  
Defendant. )

TO: RICKY BRANNON, DEFENDANT and  
J. ROGER POOLE, ESQUIRE, ATTORNEY FOR DEFENDANT

PLEASE TAKE NOTICE that upon conviction (trial or guilty plea) of the above-entitled action, the State will seek a sentence of life imprisonment without the possibility of parole, pursuant to South Carolina Code of Laws, Section 17-25-45, 1995, as amended. The State intends to rely upon the following prior convictions of the defendant to statutorily enhance his punishment:

Charge: Burglary 1<sup>st</sup> Degree (4 counts)  
Indictment Nos.: 91-GS-11-1022, 91-GS-11-1025, 91-GS-11-1029, & 91-GS-11-1030.



Curtis A. Pauling, III  
Assistant Attorney General

March 31, 2006  
Cherokee County

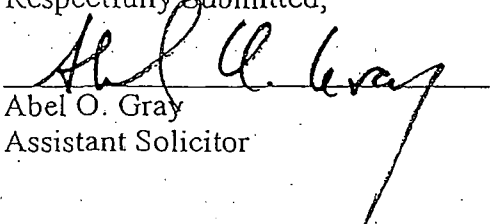
Exhibit #12

462

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

IN THE COURT OF GENERAL SESSIONS  
SEVENTH JUDICIAL CIRCUIT  
  
NOTICE OF LIFE SENTENCE  
PURSUANT TO § 17-25-45  
  
H519031 / 2004-GS-11-201  
H519030 / 2004-GS-11-202

YOU WILL PLEASE TAKE NOTICE that pursuant to § 17-25-45 of the South Carolina Code of Laws, 1976, as amended, the defendant will receive a life sentence if he is convicted of Burglary 1<sup>st</sup> Degree on any of the above indictments, based upon his prior convictions including but not limited to; Burglary 1<sup>st</sup> Degree x 4 (convicted 11/21/1991).

Respectfully Submitted,  
  
Abel O. Gray  
Assistant Solicitor

7-30-04, 2004  
Cherokee County

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.  
2004 JUL 30 A 11:29  
BRANDY W. MCBEE



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 11th 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:

*Adms*

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

- (*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
- (*6*) 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

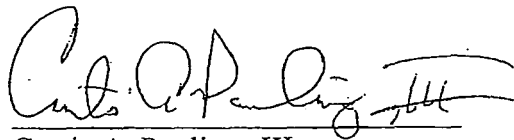
SWORN TO AND SUBSCRIBED before me  
this 2nd day of August, 2004.  
Jamie C. Beale  
Notary Public for South Carolina  
My Commission Expires: 02-10-2010

STATE OF SOUTH CAROLINA )  
 ) IN THE COURT OF GENERAL SESSIONS  
 COUNTY OF CHEROKEE ) SEVENTH JUDICIAL CIRCUIT  
 )  
 THE STATE ) NOTICE OF INTENTION TO SEEK A  
 ) SENTENCE OF LIFE WITHOUT PAROLE  
 v. )  
 ) Indictment Nos.: 2004-GS-11-201 & 202  
 RICKY BRANNON, )  
 )  
 Defendant. )

TO: RICKY BRANNON, DEFENDANT and  
 DON THOMPSON, ESQUIRE, ATTORNEY FOR DEFENDANT

PLEASE TAKE NOTICE that upon conviction (trial or guilty plea) of the above  
 entitled action, the State will seek a sentence of life imprisonment without the possibility  
 of parole, pursuant to South Carolina Code of Laws, Section 17-25-45, 1995, as  
 amended. The State intends to rely upon the following prior convictions of the defendant  
 to statutorily enhance his punishment:

Charge: Burglary 1<sup>st</sup> Degree (4 counts)  
 Indictment Nos.: 91-GS-11-1022, 91-GS-11-1025, 91-GS-11-1029, & 91-GS-11-1030.

  
 Curtis A. Pauling, III  
 Assistant Attorney General

Nov. 10, 2005  
 Cherokee County

A TRUE COPY  
 Brandy W. McBee  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.

FILED IN OFFICE OF  
 CLERK OF COURT  
 CHEROKEE COUNTY, S.C.  
 2005 NOV 10 A 11:00  
 BRANDY W. MCBEE

Exhibit # (13)

Office of the Solicitor 7th Circuit

OFFICER INPUT FORM

FROM: INVESTIGATOR GREG PHILLIPS

DATE: 1-20-04

REF: STATE VS Ricky Brown

CHARGE: Burglary 2nd Degree x 2

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

- ☒ STATES 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.

[Signature]  
Officer Signature

421910  
1/23/04

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tatement ->

ective  
like Folks signature ->

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Cherokee County

Doyet A. Early, III, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

RICKY BRANNON,

APPELLANT

---

INITIAL BRIEF OF APPELLANT

---

LANELLE C. DURANT  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL .....3

STATEMENT OF THE CASE .....4

ARGUMENT.....5

CONCLUSION.....8

TABLE OF AUTHORITIES

**Cases**

|                                                                              |   |
|------------------------------------------------------------------------------|---|
| <u>State v. Alexander</u> , 303 S.C. 377, 401 S.E.2d 146 (1991) .....        | 6 |
| <u>State v. McLeod</u> , 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004) .....   | 6 |
| <u>State v. Walker</u> , 366 S.C. 643, 623 S.E.2d. 122 (Ct. App. 2005) ..... | 6 |

**Rules**

|                     |   |
|---------------------|---|
| Rule 403, SCRE..... | 6 |
|---------------------|---|

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting the testimony of the footprint analysis expert because his testimony was more prejudicial than probative due to the nature of the testimony?



STATEMENT OF THE CASE

On February 19, 2004, the Cherokee County Grand Jury indicted Ricky Brannon for two counts of burglary first degree (indictments # 2004-GS-11-201 and 202) and one count of grand larceny (indictment # 2004-GS-11-203). Brannon proceeded to trial on April 12, 2006 before the Honorable A. Doyet Early, III and a jury. The jury returned a verdict of not guilty on one count of burglary first degree (indictment # 2004-GS-11-201) and guilty on one count of burglary first degree (indictment # 2004-GS-11-202) and grand larceny (indictment #1004-GS-11-203). Judge Early sentenced Brannon to serve a sentence of life without parole based on the two strikes law S.C. Code Sec. 17-25-45 as Brannon had four prior convictions for burglary first degree (Tr. p. 251, lines 20 -25, p. 252, lines 1-25). Brannon filed a timely notice of intent to appeal on April 18, 2006. This appeal follows.

### ARGUMENT

The trial court erred in admitting the testimony of the footprint analysis expert because his testimony was more prejudicial than probative due to the nature of the testimony.

### FACTS

In a pretrial motion, defense counsel for Brannon moved to exclude the testimony of the footprint on the grounds that the brand of shoe, Fila, was so common that the testimony was more prejudicial than probative (Tr. p. 36, lines 7-25, p. 37, lines 19). He argued that the Fila athletic shoe has a national market similar to Adidas and Nike. (Tr. p. 37, lines 1-3). The court denied counsel's motion saying that the evidence goes more to the weight of the testimony as opposed to its admissibility (Tr. p. 38, lines 16-23). The expert later testified that he did not know the market share that Fila shoes have in the athletic footwear market in the United States or in Cherokee County (Tr. p. 221, lines 17-21, p. 222, lines 20-25, p. 223, lines 1-9).

The expert also testified that he could not say that Brannon's Fila shoe was the one that made the print at the crime scene (Tr. p. 214, lines 17, p. 220, lines 12-13). The expert also admitted that he could not pinpoint characteristics of the shoe to confirm that it was the crime shoe print. (Tr. p. 220, lines 21-24). The expert stated:

"I cannot say this is the shoe because I don't have any identifying points on it. If I had --- if this shoe and these places had nicks or cuts in it --- and everybody that wears shoes --- there's probably thousands of these pattern, okay, out here on the street."

(Tr. p. 214, lines 17-21). He went on to say that without the nicks and cuts this shoe pattern is like every other pattern. (Tr. p. 221, lines 13-16). At another point he testified that in his

opinion he thought that Brannon's shoe made the print at the crime scene. (Tr. p. 220, lines 16-20). However, he also stated on cross examination that he had testified concerning athletic footwear a "couple of times" and had been qualified as an expert in this area one time. (Tr. p. 222, lines 5-14).

### DISCUSSION

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). The admission or exclusion of evidence is left to the sound discretion of the trial judge. State v. McLeod, 362 S.C. 73, 606 S.E.2d 215 (Ct. App. 2004). A trial court's ruling on the admissibility of evidence will not be reversed on appeal absent an abuse of discretion or commission of legal error which results in prejudice to the defendant. *Id.* An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law. State v. Walker, 366 S.C. 643, 623 S.E.2d. 122 (Ct. App. 2005).

The court abused its discretion by admitting the evidence of the Fila shoe print because the testimony was not supported by the evidence. The expert said at least twice that he could not say Brannon's shoe was the one that made the print. He admitted that Brannon's shoe did not have any defining characteristics and basically was like any other athletic Fila shoe. He said it was only his opinion and that he "thought" Brannon's shoe was the one that made the print at the crime scene. The expert also contradicted himself by saying he could not say this was the shoe and then it was his opinion this was the shoe.

This contradiction casts doubt on the credibility of the expert. The expert had been qualified only once in footprint analysis and had testified only a couple of times regarding athletic footwear. He had done no research into the availability of Fila shoes.

The court also did not have a pretrial hearing after the defense's motion to exclude the expert's testimony to at least do some sort of analysis of the testimony to determine if it was more prejudicial than probative. The on-the-record analysis done by the court regarding prejudicial versus probative was insufficient.

Brannon was prejudiced by the admission of the footprint because the evidence in this case was circumstantial except for the shoe print. The shoe print could not be positively identified as belonging to Brannon. Based on the above argument, this case should be remanded for a new trial.

CONCLUSION

Based on the above, Brannon's case should be remanded for a new trial.

Respectfully submitted,

  
LaNelle C. Durant  
Appellate Defender

ATTORNEY FOR APPELLANT

This 9th day of March, 2007.

## STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

---

Appeal from Cherokee CountyDoyet A. Early, III, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

RICKY BRANNON,

APPELLANT

---

**DESIGNATION OF MATTER TO BE  
INCLUDED IN RECORD ON APPEAL**

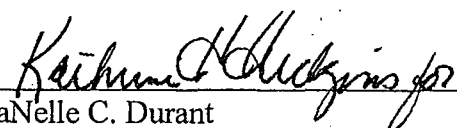
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Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s)
- (2) Trial Transcript Pages 36, 37, 38, 214, 220, 221, 222, 223, 251
- (3) Sentencing Sheet

I certify that this designation contains no matter which is irrelevant to this appeal.

March 9th, 2007

  
LaNelle C. Durant  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1343

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICKY BRANNON,

APPELLANT

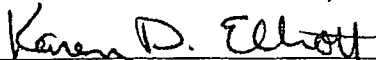
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon , Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of March, 2007.

  
LaNelle C. Durant  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 9th day of March, 2007.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: March 13, 2007.



# 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

March 9, 2007

Salley W. Elliott, Esquire  
Assistant Deputy Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211

Re: The State v. Ricky Brannon

Dear Salley:

Enclosed are two copies of the Initial Brief of Appellant and Designation of Matter in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "LaNelle C. Durant", is written over the typed name.

LaNelle C. Durant  
Appellate Defender

LCD/lcd

Enclosure





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

March 9, 2007

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

Re: Your appeal

Dear Mr. Brannon:

Enclosed is a copy of the Initial Brief of Appellant in your case, which I have filed with the South Carolina Court of Appeals.

Please contact me if you have any questions.

Sincerely,

LaNelle C. Durant  
Appellate Defender

LCD/lcd

Enclosure

CASE #.....: 2003-003757  
2003-003773

7 pages here.

OFFENSE(S)...: BURGLARY  
GRAND LARCENY  
POSS. BURGLARY TOOLS

DEFENDANT...: RICKY BRANNON

DOB:

ON NOVEMBER 19, 2003 JOY SHERRICK CALLED 911 TO REPORT A BURGLARY AT HER RESIDENCE AT 224 GREEN PARK DRIVE AT APPROX 0810 A.M.

SHERRICK TOLD DEPUTIES THAT SHE HAD LEFT TO TAKE HER CHILDREN TO SCHOOL AND RETURNED TO OBSERVE A LIGHT BLUE OR BLuish GRAY COLOR FOREIGN TYPE VEHICLE PARKED IN THE COULDESAC IN FRONT OF HER RESIDENCE. (SIMILAR TO HER BOSSES VOLVO). SHERRICK WENT INTO THE RESIDENCE AND NOTICED A BROKEN WINDOW IN HER RESIDENCE. UPON EXITING THE RESIDENCE, SHERICK NOTICED THE LIGHT COLORED CAR LEAVING THE CULDESAC AT A HIGH RATE OF SPEED BUT COULD NOT IDENTIFY THE OCCUPANT.

DETECTIVES CLARK, OGLESBY AND VANDERBURG RESPONDED TO THE AREA FOR INVESTIGATION AND SATURATION OF THE AREA TO BOLO VEHICLE DESCRIBED. UPON ARRIVAL DETECTIVES SPOKE WITH

SHERRICK. DETECTIVE ALSO LOCATED ANDREA RANDOLPH AT 1093 GRASSY POND ROAD APPROX. ONE MILE FROM GREEN PARK DRIVE. RANDOLPH IDENTIFIED A SIMILAR VEHICLE COMING TO HER RESIDENCE AT APPROX. 0740 A.M. SAME MORNING OCCUPIED BY BLACK MALE WHO CAME TO HER DOOR, RAN DOOR BELL. RANDOLPH STATED IT WAS POURING RAIN AND THE BLACK MALE ASKED IF ANYONE WAS ALLOWED TO FISH IN THE LAKES IN FRONT OF THE RESIDENCE. RANDOLPH STATED NO AND THE BLACK MALE RETURNED TO HIS VEHICLE AND LEFT. RANDOLPH STATED CAR WAS SIMILAR TO FORD FOCUS OR TAURUS SILVER OR GRAY COLORED.

NO FURTHER CONTACT WAS MADE WITH VEHICLE OR SUSPECT ON THAT DATE REPORTED TO OFFICERS.

ON NOVEMBER 20, 2004 MITCH GALLMAN WENT TO HIS FATHERS RESIDENCE AT 224 CANDLEWOOD LANE AT APPROX. 1600 HRS AND UPON ENTERING THE RESIDENCE FOUND THE BACK KITCHEN WINDOW OF THE RESIDENCE BROKEN OUT AND THE RESIDENCE ENTERED.

KEN AND IRA JO GALLMAN RESPONDED TO THE RESIDENCE AND 911 WAS CONTACTED. DEPUTY JAMES HERRIN ARRIVED AT THE RESIDENCE AND BEGAN TAKING THE REPORT. IRA JO GALLMAN THEN BEGAN TELLING DEPUTY HERRIN ABOUT A BLACK MALE THAT CAME TO HER RESIDENCE THE DAY BEFORE, NOVEMBER 19, 2004 AT APPROX. 0830 A.M.. HE WAS DRIVING A BLUE CAR WITH MISSING HUBCAP THAT SHE DID NOT RECOGNIZE. GALLMAN STATED THE BLACK MALE RANG THE DOORBELL. SHE WENT TO THE WINDOW AND OBSERVED THE BLACK MALE ON HER

PORCH. WHEN SHE DID NOT ANSWER THE DOOR, THE BLACK MALE REPEATEDLY RANG THE DOOR BELL ALARMING GALLMAN. HE STAYED ABOUT 5 OR 10 MINUTES. GALLMAN SAW HIS FACE WHEN THE HOOD OF THE COAT CAME OFF HIS HEAD. GALLMAN GOT THE TAG NUMBER FROM VEHICLE WHEN THE BLACK MALE BEGAN TO LEAVE. IT WAS S.C. TAG 250 NAS. GALLMAN TOLD DEPUTY HERRIN AND DEPUTY HERRIN CONTACTED DETECTIVE MIKE FOWLKES. FOWLKES KNEW THE VEHICLE DESCRIPTION PROVIDED BY GALLMAN MATCHED CLOSELY TO THE BURGLARY AT SHERRICK'S THE DAY BEFORE AND THAT DESCRIBED BY RANDOLPH.

THE TAG NUMBER CAME BACK TO TARSHA LITTLEJOHN AT 807 HETTIE HILL STREET, GAFFNEY.

FOWLKES WENT TO 807 HETTIE HILL STREET ON NOVEMBER 20, 2004 AT APPROX. 1730 HRS AND SPOKE WITH TARSHA LITTLEJOHN. LITTLEJOHN STATED HER BOYFRIEND, RICKY BRANNON HAD HER 2001 DAEWOO, LIGHT FROST BLUE COLOR. RICKY BRANNON IS A BLACK MALE, 35 YOA. LITTLEJOHN STATED HE LIVED AT 512 ½ KELLY STREET. LITTLEJOHN STATED BRANNON WOULD OPERATE THE VEHICLE DURING THE DAY WHILE SHE WORKED AND THAT HE HAD BEEN IN POSSESSION OF THE VEHICLE ON THE LAST TWO DAYS.

FOWLKES AND DETECTIVE TIM CLARK WENT TO THE KELLY STREET ADDRESS. THE DAEWOO WAS NOT PRESENT. FOWLKES AND CALRK LEFT THE AREA. AT APPROX 2100 HRS. CLARK WAS TURNING ON KELLY STREET WHEN HE OBSERVED A FROST BLUE COLORED DAEWOO LEAVING 512 ½ KELLY STREET. THE VEHICLE, POSSIBLY OBSERVING THE DETECTIVE'S CAR, RAN THE

STOP SIGN AT THE KELLY STREET INTERSECTION  
CLARK TURNED AND STOPPED THE VEHICLE. THE TAG  
WAS 250NAS, 2001 FROST BLUE DAEWOO BELONGING  
TO TARSHA LITTLEJOHN. VEHICLE WAS BEING  
OPERATED BY RICKY BRANNON. VEHICLE HAD A  
MISSING FRONT HUB CAP.

CLARK CONTACTED FOWLKES AND FOWLKES WENT TO  
THE SHERRICK RESIDENCE AND RETURNED WITH JOY  
SHERRICK TO LOOK AT THE VEHICLE. SHERRICK  
IDENTIFIED THE VEHICLE AS VERY CONSISTENT WITH  
THE VEHICLE OBSERVED IN FRONT OF HER RESIDENCE  
ON NOVEMBER 19, 2004. SHERRICK REMEMBERED A RED  
CHRISTMAS TREE DEODORIZER HANGING FROM THE  
REAR VIEW MIRROR. DUE TO DARKNESS, THE COLOR  
OF THE VEHICLE WAS DISTORTED.

RICKY BRANNON WAS TRANSPORTED TO THE  
DETENTION CENTER AND CHARGED WITH NO D.L. IN  
POSSESSION AND DIS. REGARDING STOP SIGN.

VEHICLE WAS IMPOUNDED AND TOWED BY TRIANGLE  
WRECKER SERVICE.

FOWLKES AND CLARK INTERVIEWED RICKY BRANNON  
ON NOVEMBER 21, 2004 IN THE DETECTIVES OFFICE AT  
0945 A.M. REFERENCE BURGLARIES. BRANNON READ  
AND SIGNED WAIVER OF RIGHTS. (SEE RIGHTS WAIVER  
AND CONTENT OF INTERVIEW) BRANNON LEAVES  
STATING HE WAS LOOKING FOR A "TECHNOCALITY"

2/50 → BRANNON HAS JAIL CALL STATING HE WISHED TO  
SPEAK TO DETECTIVES AGAIN. FOWLKES AND CLARK  
INTERVIEW BRANNON AT JAIL AT 1430 HRS. READ AND

SIGNS WAIVER OF RIGHTS. (SEE CONTENT OF INTERVIEW).

BRANNON CONSENTS TO TAKE DETECTIVES TO 512 ½ KELLY STREET, OPENS DOORS LOCK WITH KEY, AND GIVES OFFICERS THREE PISTOLS IN A CLEAR CREEK HANDBAG MATCHING THOSE REPORTED STOLEN FROM GALLMAN AT 224 CANDLEWOOD LANE. BRANNON FURTHER STATES HE THREW ALL OTHER PROPERTY STOLEN IN A DUMPSTER IN THE TRAILER PARK ACROSS HWY 150 FROM KELLY STREET ADDRESS. DETECTIVES TOOK BRANNON TO DUMPSTER. DUMPSTER EMPTIED PRIOR TO ARRIVAL. NO PROPERTY FOUND IN DUMPSTER.

BRANNON TRANSPORTED TO DETENTION CENTER.

ON NOVEMBER 21, 2004 IRA JO GALLMAN IDENTIFIES BRANNON IN PHOTO LINE-UP.

ON NOVEMBER 25, 2004 BRANNON IDENTIFIED IN LINE-UP BY ANDREA RANDOLPH.

ON NOVEMBER 25, 2004 BRANNON ADVISED OF THE IDENTIFICATION IN AN INTERVIEW WITH FOWLKES AND CLARK. BRANNON ADVISES HE WANTS AN ATTORNEY. INTERVIEW CEASED.

SEE CRIME SCENE NOTES FOR PROCESSING.

EVIDENCE:

TIRE TOOL  
FOOT SOLE IMPRESSION  
IDENTIFICATION OF VEHICLE

IDENTIFICATION OF SUBJECT  
POSS. HAIR FIBER  
PROPERTY RECOVERY (GUNS)  
COOPERATING WITNESSES

11/21/2003 0945 a.m.

INTERVIEW WITH RICKY BRANNON

PRESENT: CAPT. MIKE FOWLKES AND DET. TIM CLARK

BRANNON READ AND SIGNS PRE-INTERROGATION WAIVER.

BRANNON ASKED ABOUT THE 2000 DAEWOO HE WAS OPERATING. BELONGS TO GIRLFRIEND, TARSHA LITTLEJOHN.

BRANNON ASKED IF HE WAS OPERATING THE VEHICLE ON 11/19/2003 IN GRASSY POND AREA. BRANNON STATED HE HAD THE VEHICLE ON THAT DAY BUT WAS NOT THE ONLY PERSON WHO DROVE THE VEHICLE AND HE HAD NEVER BEEN IN THE GRASSY POND AREA EVER IN HIS LIFE. Q -

BRANNON ASKED IF HE WAS OPERATING THE THE VEHICLE ON 11/20/2003. BRANNON STATED YES.

BRANNON WAS THEN TOLD THE VEHICLE TAG NUMBER WAS TAKEN DOWN BY A WITNESS ON 11/19/2003 AND THE WITNESS IDENTIFIED THE SUBJECT OPERATING THE VEHICLE AS ONE BLACK MALE.

BRANNON THEN REPLIES "I'M DONE TALKING, YOU MIGHT BE ABLE TO PUT THE CAR THERE, BUT YOU CAN'T PUT ME THERE".

INTERVIEW ENDED.



## ARREST WARRANT

H- 519492

STATE OF SOUTH CAROLINA

☐ Cherokee County Municipality of

THE STATE

against

RICKY BRANNON

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_ 175

Sex: \_\_\_\_\_ Race: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_

DL State: 03/19/1961 # \_\_\_\_\_ SC0110000

DOB: \_\_\_\_\_ SHERIFFAGE OFFICER # \_\_\_\_\_

Prosecuting Agency: DETECTIVE TIM CLARK

Prosecuting Officer: \_\_\_\_\_

Offense: BURGLARY 2ND DEGREE

15-11-31 Offense Code: \_\_\_\_\_

Code/Ordinance Sec. \_\_\_\_\_

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

\_\_\_\_\_ accused  
is to be arrested and brought before me to be  
dealt with according to law.

Signature of Judge

(L.S.)

Date: \_\_\_\_\_

## RETURN

A copy of this arrest warrant was delivered to  
defendant Ricky Brannon  
on 8-12-05

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Magistrate's Office,  
Cherokee County Court House  
GAFFNEY, SC 29340  
803 487-2533

exhib.

STATE OF SOUTH CAROLINA

☐ Cherokee County Municipality of

Personally appeared before me the affiant \_\_\_\_\_ who  
being duly sworn deposes and says that defendant \_\_\_\_\_  
did within this county and state on \_\_\_\_\_  
State of South Carolina for ordinance of \_\_\_\_\_ County/ \_\_\_\_\_ Municipality of \_\_\_\_\_  
in the following particulars: BURGLARY 2ND DEGREE  
DESCRIPTION OF OFFENSE:

I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:  
THE DEFENDANT, RICKY BRANNON, DID BREAK AND ENTER INTO THE BUILDING BELONGING TO CHEROKEE COUNTY AT 125  
E. FLOYD BAKER BLVD. DURING THE NIGHTTIME, WITHOUT THE AUTHORITY TO DO SO AND WITH THE INTENT TO COMMIT A  
CRIME THEREIN. INCIDENT OCCURRED ON OR ABOUT MAY 11TH, 2004 IN GAFFNEY, BEING IN CHEROKEE COUNTY.

WARRANT BASED ON THE INVESTIGATION BY CHEROKEE COUNTY SHERIFF'S OFFICE, SLEP AND ATF.  
CASE # 35-04-0201

Sworn to and subscribed before me

on \_\_\_\_\_

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge

Signature of Affiant

Affiant's Address \_\_\_\_\_

Affiant's Telephone \_\_\_\_\_

STATE OF SOUTH CAROLINA

☐ Cherokee County Municipality of

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

May appearing from the above affidavit that \_\_\_\_\_ are reasonable grounds to believe that  
on \_\_\_\_\_ defendant \_\_\_\_\_  
did violate the criminal laws of the State of South Carolina (or ordinance of \_\_\_\_\_  
\_\_\_\_\_ County/ \_\_\_\_\_ Municipality of \_\_\_\_\_ ) as set forth below:  
DESCRIPTION OF OFFENSE: BURGLARY 2ND DEGREE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before  
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the  
defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge

Judge Code: 903

Judge's Address GAFFNEY, SC 29340

803 407 2533

Judge's Telephone

Issuing Court: ☐ Magistrate ☐

H-519492

DEFENDANT COPY.

Exhibit #16

## ARREST WARRANT

H- 519490

## STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
CHEROKEE COUNTY

 THE STATE  
against

RICKY BRANNON

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_

Sex: \_\_\_\_\_ Race: \_\_\_\_\_ Height: \_\_\_\_\_ Weight: \_\_\_\_\_

DL State: \_\_\_\_\_ DL #: \_\_\_\_\_

DOB: \_\_\_\_\_ Agency ORI #: SC0110000

Prosecuting Agency: SHERIFF'S OFFICE

Prosecuting Officer: DETECTIVE TIM CLARK

Offense: ARSON 2ND DEGREE

Offense Code: \_\_\_\_\_

Code/Ordinance Sec. 16-11-110

 This warrant is CERTIFIED FOR SERVICE in the  
☐ County/ ☐ Municipality of

 The accused  
 is to be arrested and brought before me to be  
 dealt with according to law.

 \_\_\_\_\_ (L.S.)  
 Signature of Judge

Date: \_\_\_\_\_

## RETURN

 A copy of this arrest warrant was delivered to  
 defendant Ricky Brannon  
 on 8-12-05

 \_\_\_\_\_ 33090  
 Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

 Magistrates Office,  
 Cherokee County Court House  
 GAFFNEY, SC 29340  
 803 487-2533

exhibit (F)

## STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of  
CHEROKEE COUNTY

## AFFIDAVIT

DETECTIVE TIM CLARK

Personally appeared before me the affiant RICKY BRANNON whobeing duly sworn deposes and says that defendant May 11, 2004

did within this county and state on \_\_\_\_\_ violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of CHEROKEE COUNTY)

in the following particulars: ARSON 2ND DEGREE

## DESCRIPTION OF OFFENSE:

 I further state that there is probable cause to believe that the defendant named above did commit  
 the crime set forth and that probable cause is based on the following facts:

 THE DEFENDANT, RICKY BRANNON, DID WILFULLY AND MALICIOUSLY SET FIRE TO OR CAUSED TO BE BURNED THE  
 CHEROKEE COUNTY COURT HOUSE AT 125 E. FLOYD BAKER BLVD. GAFFNEY, SOUTH CAROLINA WITHIN CHEROKEE COUNTY.  
 INCIDENT OCCURRED ON OR ABOUT MAY 11TH, 2004.

 WARRANT BASED ON THE INVESTIGATION BY CHEROKEE COUTNY SHERIFF'S OFFICE, SLED, AND ATF.  
 CASE #35-04-0201

Sworn to and subscribed before me \_\_\_\_\_

on 8-10-15/2004Signature of Affiant Tim Clark

Affiant's Address \_\_\_\_\_

Signature of Issuing Judge Frank E. Crouter (L.S.)Affiant's Telephone 803 487-2533

## STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of  
CHEROKEE COUNTY

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that  
 on May 11, 2004 defendant RICKY BRANNON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☐ Municipality of CHEROKEE COUNTY ) as set forth below:

## DESCRIPTION OF OFFENSE: ARSON 2ND DEGREE

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before  
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the  
 defendant at the time of its execution, or as soon thereafter as is practicable.
Judge's Address Cherokee County Court House

GAFFNEY, SC 29340

Signature of Issuing Judge Frank E. Crouter (L.S.)Judge's Telephone 803 487-2533Judge Code: 903Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

DEFENDANT COPY

H-519489

STATE OF SOUTH CAROLINA)

COUNTY OF CHEROKEE )

State of South Carolina, )

Plaintiff,  
Vs )

Ricky Brannon, )

Defendant. )

IN THE GENERAL SESSIONS COURT  
SEVENTH JUDICIAL CIRCUIT

REQUEST AND NOTICE OF MOTION  
PURSUANT TO BRADY V. MARYLAND,  
373 U.S. 83 (1963) AND RULE 5 OF  
THE SOUTH CAROLINA RULES OF  
CRIMINAL PROCEDURE

Warrant / Ticket # ('s)

H-519030, 031, 034, 035  
B2x2/GL/P-Burglary Tool

BRANDY W. MCBEE

2003 DEC -4 A 10:59

FILED IN OFFICE OF  
CLERK OF COURT  
CHEROKEE COUNTY, S.C.

TO: TREY GOWDY, SOLICITOR, SEVENTH JUDICIAL CIRCUIT

YOU WILL PLEASE TAKE NOTICE that the above named defendant, by his/her undersigned attorney, hereby requests information pursuant to Brady vs. Maryland 373 U.S. 83 (1963), and information pursuant to Rule 5 of South Carolina Rules of Criminal Procedure, on the belief of the attorney for the defense that such information is necessary and important to the defendant's defense. Specifically requested are the following:

1. Disclosure to the defense of any and all exculpatory information that is now, or has been, or may come to the attention of the prosecution or police or any person or agency associated with the prosecution, in the subject matter, until the conclusion of this matter by trial and appeal; as required under the mandate of Brady v. Maryland, 373 U.S. 83 (1963).

2. Any relevant written or recorded statements made by the defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the defendant whether before or after arrest in response to interrogation by any person known to the defendant to be a prosecution agent.

3. A copy of the defendant's prior criminal record, if any, as it is within

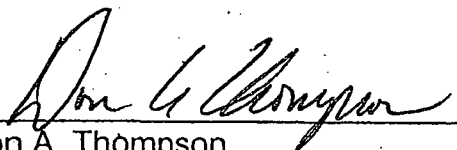
the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

4. All books, papers, documents, photographs, tangible objects, buildings or places or copies or portions thereof, which are in the possession, custody or control of the prosecution, and which are material to the preparation of defendant's defense or are intended for use by the prosecution as evidence in chief at the trial, or where obtained from or belong to the defendant.

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

YOU WILL PLEASE TAKE FURTHER NOTICE that, unless the requests contained herein are complied with within thirty (30) days after the service of this request, the above named defendant, by his/her undersigned attorney, will move before the presiding judge of the Court of General Sessions, Seventh Judicial Circuit, on or after the thirty-first (31st) day following the service of this request, for an Order of the Court granting such relief as is consistent with justice and the dictates of Brady v. Maryland, 373 U.S. 83 (1963), and Rule 5 of the South Carolina Rules of Criminal Procedure.

CHEROKEE COUNTY PUBLIC DEFENDER

by: 

Don A. Thompson  
Attorney for the Defendant  
310-B N. Limestone Street  
Gaffney, South Carolina 29340  
(864) 487-6201

12/03, 2003  
Gaffney, South Carolina

*Exhibit #18*

**J. ROGER POOLE**  
ATTORNEY AT LAW  
215 MAGNOLIA STREET  
SPARTANBURG, SC 29306

MAILING ADDRESS  
P.O. BOX 1571  
SPARTANBURG, SC 29304

TELEPHONE (864) 582-5472  
(864) 582-8101  
FACSIMILE 582-7280

January 5, 2005

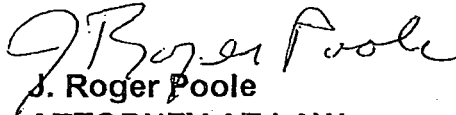
Mr. Curtis Pauling  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211

RE: The State vs. Ricky Brannon  
Indictment #04-GS-11-0201, 0202, 0203, 0204

Dear Mr. Pauling,

I am enclosing the Notice of Brady Motion and Criminal Rule 5 Request for Disclosure as well as a Certificate of Service.

With personal regards, I am

  
J. Roger Poole  
ATTORNEY AT LAW

MJS

492

|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) |                                   |
|                         | ) | GENERAL SESSIONS COURT            |
| COUNTY OF CHEROKEE      | ) |                                   |
|                         | ) |                                   |
| THE STATE,              | ) |                                   |
|                         | ) | NOTICE OF BRADY MOTION AND        |
| VS.                     | ) | CRIMINAL RULE 5 REQUEST FOR       |
|                         | ) | DISCLOSURE                        |
| RICKY BRANNON,          | ) | INDICTMENTS #04-GS-11-0201, 0202, |
| DEFENDANT.              | ) | 0203, 0204                        |

TO: CURTIS A. PAULING,  
ASSISTANT ATTORNEY GENERAL

YOU WILL PLEASE TAKE NOTICE that the Defendant, above named, by his undersigned attorney, will move before the presiding judge, General Sessions Court, Seventh Judicial Circuit, ten (10) days prior to the time and date set for trial; for information pursuant to Brady vs. Maryland, 373 U.S. 83 (1963) and information pursuant to General Sessions Court Criminal Practice Rule 5 on the belief of the attorney for the defense that such information is important to the Defendant's defense. Specifically requested are the following:

1. Disclosure to the defense of any and all exculpatory information that is now or has been or may come to the attention of the prosecution or police or any person or agency associated with the prosecution, in the subject matter, until the conclusion of this matter by trial and appeal; as required under the mandate of Brady vs. Maryland, 373 U.S. 83 (1963).

2. Any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution; the substance of any oral statement which the prosecution intends to offer in evidence at the trial made by the Defendant whether before or after arrest in response to interrogation by any person known to the Defendant to be a prosecution agent.

3. A copy of the Defendant's prior criminal record, if any, as is within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

4. All books, papers, documents, photographs, tangible objects, building or places, or copies or portions thereof, which are in the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or where obtained from or belong to the Defendant.

5. Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

6. All statements, oral or written, made by prosecution witnesses or prospective witnesses.

7. A certification from the State that the within Motion and Request has been complied with; and further a certification that any Court Order pertinent to the within Motion and Request has been complied with; and further that there is no information, either "material to the defense", or otherwise that has been kept from the defense; and further that the prosecution has not seen or known of any such information either in the custody of the prosecution or in the possession of any agent of the prosecution, police, or investigation agency; and transcripts of testimony of all fact witnesses before the Grand Jury.

By: J. Roger Poole  
J. ROGER POOLE, ATTORNEY FOR DEFENDANT

## ARREST WARRANT

H- 519034

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
 CHEROKEE COUNTY

THE STATE

against

RICKY BRANNON

Address:

Phone:

SSN:

Sex: M Race: B Height: Weight:

DL State: SC DL #:

DOB: 7/7/77 Agency ORI#: SC0110000

Prosecuting Agency: SHERIFF'S OFFICE

Prosecuting Officer: CAPTAIN MIKE FOWLKES

Offense: POSS. OF BURGLARY TOOLS

Offense Code:

Code/Ordinance Sec: 16-11-20

 This warrant is CERTIFIED FOR SERVICE in the  
☐ County/ ☐ Municipality of

 The accused  
 is to be arrested and brought before me to be  
 dealt with according to law.

Signature of Judge

Date:

## RETURN

 A copy of this arrest warrant was delivered to  
 defendant Ricky Brannon

on

11/24/03

Signature of Constable/Law Enforcement Officer

## RETURN WARRANT TO:

 Magistrates Office,  
 Cherokee County Court House  
 GAFFNEY, SC 29340  
 803-487-2533

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of  
 CHEROKEE COUNTY

## AFFIDAVIT

 Personally appeared before me the affiant CAPTAIN MIKE FOWLKES wh  
 being duly sworn deposes and says that defendant RICKY BRANNON  
 did within this county and state on November 20, 2003 violate the criminal laws of th  
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHEROKEE COUNTY  
 in the following particulars:

DESCRIPTION OF OFFENSE: POSS. OF BURGLARY TOOLS

 I further state that there is probable cause to believe that the defendant named above did comm  
 the crime set forth and that probable cause is based on the following facts:

 THE DEFENDANT, RICKY BRANNON, DID HAVE IN HIS POSSESSION TOOLS AND/OR IMPLEMENTS KNOWING TO BE USED IN  
 THE COMMISSION OF BURGLARY AND/OR SAFECRACKING. INCIDENT OCCURRED ON NOVEMBER 20, 2003 WHILE ON KELLY  
 STREET IN CHEROKEE COUNTY, S.C.

WARRANT BASED ON THE INVESTIGATION BY THE CHEROKEE COUNTY SHERIFF'S OFFICE.

CASE# 2003-003773

Sworn to and subscribed before me

on 11/24/2003

Signature of Issuing Judge (L.S.)

Signature of Affiant

Affiant's Address

Affiant's Telephone

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of  
 CHEROKEE COUNTY

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that  
 on November 20, 2003 defendant RICKY BRANNON  
 did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of CHEROKEE COUNTY ) as set forth below:

DESCRIPTION OF OFFENSE: POSS. OF BURGLARY TOOLS

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before  
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the  
 defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge Code: 903

Judge's Address: Cherokee County Court House

GAFFNEY, SC 29340

Judge's Telephone: 803-487-2533

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

ORIGINAL

44-510074



**WITNESSES**

cheal Fowlkes, CCSO

DOCKET NO. 04-GS-11- 0200

**The State of South Carolina**

**County of Cherokee**

**Trey Gowdy, Solicitor**

**COURT OF GENERAL SESSIONS**

**ARREST WARRANT NUMBER**

519034

**ACTION OF GRAND JURY**

**TRUE BILL**

representative of Grand Jury  
date: 2/19/04

**VERDICT**

representative of Petit Jury  
date:

**THE STATE  
vs.**

**Ricky Brannon**

**Indictment for  
Possession of Burglary Tools**

SC Code: 16-113-20

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA    )  
                                          )  
COUNTY OF CHEROKEE        )

INDICTMENT

FEB 19 2004

At a Court of General Sessions, convened on \_\_\_\_\_ the Grand  
Jurors of Cherokee County present upon their oath:

**POSSESSION OF BURGLARY TOOLS**

That Ricky Brannon did in Cherokee County on or about November 20, 2003, did have in his possession tools, implements or other things adapted or commonly used for the commission of burglary, larceny or some other crime under circumstances evincing an intent to use, employ, or allow the same to be used or employed in the commission of a crime or knowing that the same intended to be so used in violation of §16-11-20, *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
ASSISTANT SOLICITOR

## RETURN

I received the attached Search Warrant JAN. 13, ~~10~~ 04, and have executed it as follows:  
 On JAN 16, ~~10~~ 04 at 2:15 o'clock P M, I searched  
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with RICKY BRANNON  
 Name of person searched or "at the place of search" with.  
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: \_\_\_\_\_  
ONE PURPLE TOP VIAL OF BLOOD  
— NOTHING FOLLOWS —

FILED IN OFFICE OF  
 CLERK OF COURT  
 JUSTICE  
 2004 JAN 16 P 4:22  
 GAFFNEY, S.C.

2004 JAN 16 P 4:22

GAFFNEY, S.C.

This inventory was made in the presence of BLAIR DENNIS  
 AND KIM HUMPHRIES

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 16  
 day of JAN., ~~2004~~  
Walter W. Clay (L.S.)  
 Signature of Judge 1617

[Signature]  
 (Signature of Officer Executing Warrant)

## CHEROKEE COUNTY SHERIFF'S OFFICE

312 E. Frederick Street  
Gaffney, South Carolina 29340

CASE NUMBER

## Pre-Interrogation Waiver Form

Name: Ricky Brannon Address: 217 Osage Dr Gaffney SC  
 Telephone Number: None Social Security Number: \_\_\_\_\_  
 Date of Birth: \_\_\_\_\_ Today's Date: 11-21-03 Time: 0945 Education: 11th grade

## STATEMENT OF RIGHTS

Before any questions are asked of you, you must understand your rights.

- (☒) 1. You have the right to remain silent.  
 (☒) 2. Anything you say can and will be used against you in a court of law.  
 (☒) 3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.  
 (☒) 4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.  
 (☒) 5. You have the right to stop answering questions at any time.

The above rights have been read to me by MIKE FOWLKES

I have read the above rights, and I understand them fully.

Witness [Signature]Signed [Signature]

## WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk

officer MIKE FOWLKES in reference to Burglary

I have waived my rights freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

Signed [Signature]Witness [Signature]Time Interview Began: 0945 A.m. Time (Statement/Interview) was completed: 1005 A.m.

I have made this statement freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

I have read this statement consisting of 0 page(s), and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

WORN TO AND SUBSCRIBED TO BEFORE ME

THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_

Signed: \_\_\_\_\_

Witness: \_\_\_\_\_

NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: \_\_\_\_\_

Witness: \_\_\_\_\_

## CHEROKEE COUNTY SHERIFF'S OFFICE

312 E. Frederick Street  
Caffney, South Carolina 29340

CASE NUMBER

## Pre-Interrogation Waiver Form

Name: Ricky Brannon Address: 217 Osage Dr. Gaffney

Telephone Number: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Date of Birth: 7-15-67 Today's Date: 11-21-03 Time: 1430 Education: 11<sup>th</sup> Grade

## STATEMENT OF RIGHTS

Before any questions are asked of you, you must understand your rights.

- (☒) 1. You have the right to remain silent.
- (☒) 2. Anything you say can and will be used against you in a court of law.
- (☒) 3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.
- (☒) 4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.
- (☒) 5. You have the right to stop answering questions at any time.

The above rights have been read to me by x MIKE FOWKES

I have read the above rights, and I understand them fully.

Witness: Mike Fowkes Signed: x Ricky Brannon

## WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk

officer MIKE FOWKES in reference to Burglary

I have waived my rights freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

Signed: x Ricky Brannon Witness: Mike FowkesTime Interview Began: 1430 p.m. Time (Statement/Interview) was completed: 1610 p.m.I have made this statement freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward. SUBJECT GAVE ORAL STATEMENTS AND CONSENTED TO GIVE PROPERI have read this statement, consisting of 0 page(s), and I swear or affirm that the facts contained therein are true and correct. BACK FROM 224 CANALEWOOD LANE. GUNS RECOVERED.

I further state that I have received a copy of this statement.

BORN TO AND SUBSCRIBED TO BEFORE ME

THIS 21<sup>st</sup> DAY OF November, 2003NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 11-12-2006Signed: Mike FowkesWitness: Mark D. Vanecko

Witness: \_\_\_\_\_

312 E. Frederick Street  
Gaffney, South Carolina 29340

|             |
|-------------|
| CASE NUMBER |
|             |

Pre-Interrogation Waiver Form

Name: Ricky BRANNON Address: 217 Osage Dr Gaffney S.  
Telephone Number: \_\_\_\_\_ Social Security Number: \_\_\_\_\_  
Date of Birth: \_\_\_\_\_ Today's Date: 11-24-03 Time: 1200p.m Education: 11<sup>th</sup> Grade

STATEMENT OF RIGHTS

Before any questions are asked of you, you must understand your rights.

- ( ☒ ) 1. You have the right to remain silent.
- ( ☒ ) 2. Anything you say can and will be used against you in a court of law.
- ( ☒ ) 3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.
- ( ☒ ) 4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.
- ( ☒ ) 5. You have the right to stop answering questions at any time.

The above rights have been read to me by MIKE FOWLKES

I have read the above rights, and I understand them fully.

Witness M. A. Fowlkes Signed A. J. Brannon

WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk to officer MIKE FOWLKES in reference to Burglary

I have waived my rights freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

Signed A. J. Brannon Witness M. A. Fowlkes

Time Interview Began: 1200 p.m. Time (Statement/Interview) was completed: 1205 p.m.

I have made this statement freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

I have read this statement consisting of 0 page(s), and I swear or affirm that the facts contained therein are true and correct. NO STATEMENT. REQUESTED ATTORNEY

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS 24<sup>th</sup> DAY OF November, 2003  
[Signature]  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 11-12-2006

Signed: A. J. Brannon  
Witness: \_\_\_\_\_  
Witness: \_\_\_\_\_