

ORIGINAL

VOLUME II OF II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JUN - 6 2011

Appeal from Cherokee County

J. Derham Cole, Circuit Court Judge

S.C. Supreme Court

RICKY BRANNON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER
VOLUME II OF II
PAGES 501-678

SUZANNE H. WHITE
Assistant Attorney General
P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

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Exhibit # 22

INVESTIGATION REPORT
CRIME SCENE INVESTIGATIONS

DETECTIVE JIMMY HENSON

2003-003773
224 CANDLEWOOD LN.
GAFFNEY, S.C.
11/20/03
KENNETH W. GALLMAN - VICTIM
RICKY BRANNON - SUSPECT

PAGE 1 OF 3

ON DATE ABOVE I WAS DISPATCHED TO THE RESIDENCE FOR A
BURGLARY.

UPON ARRIVAL I FOUND THAT ENTRY HAD BEEN GAINED BY BREAKING A
WINDOW ON THE BACK SIDE OF THE RESIDENCE. THE WINDOW FRAME
HAD BEEN PRIED ON BY AN OBJECT ABOUT THE SIZE OF A TIRE TOOL
LEAVING MARKS ON SAME. I TOOK 35MM PHOTOGRAPHS OF THE BACK
OF THE RESIDENCE AND OF THE ENTRY POINT.

I COLLECTED 5 HAIRS FROM THE WINDOW ENTRY POINT AND THEY WERE
AS FOLLOWS:

EVIDENCE #3 - A HAIR FROM THE WINDOW SILL ON THE OUTSIDE OF
THE WINDOW

EVIDENCE #4 - HAIR AND FIBERS TANGLED TOGETHER FROM THE
WINDOW SILL ON THE OUTSIDE OF THE WINDOW

EVIDENCE #5 - A HAIR FROM THE WINDOW SILL ON THE OUTSIDE OF
THE WINDOW

EVIDENCE #6 - A HAIR FROM THE BROKEN GLASS STILL HANGING IN
THE WINDOW FRAME

EVIDENCE #7 - A HAIR FROM THE WINDOW SILL INSIDE THE
RESIDENCE

THESE 5 HAIRS WERE COLLECTED AS EVIDENCE AND SEALED IN
EVIDENCE ENVELOPES.

I PROCESSED THE WINDOW FRAME AND THE BROKEN PIECES OF FRAME
FOR LATENT FINGERPRINTS BY USING FINGERPRINT POWDER. THERE
WERE NO IDENTIFIABLE FINGERPRINTS.

I COLLECTED A COUPLE OF THE BROKEN PIECES OF WINDOW FRAME
THAT HAD TOOL MARKS ON THEM AS EVIDENCE. THEY WERE AS
FOLLOWS:

EVIDENCE #1 - A 9 INCH PIECE OF WINDOW FRAME

EVIDENCE #2 - A 6 AND 1/4 INCH PIECE OF WINDOW FRAME

2003-003773

PAGE 2 OF 3

THERE WAS BROKEN GLASS ON THE FLOOR INSIDE THE RESIDENCE UNDER THE POINT OF ENTRY. I TOOK 35MM PHOTOGRAPHS OF THIS BROKEN GLASS AND THEN I PROCESSED THE BROKEN GLASS FOR LATENTS BY USING FINGERPRINT POWDER AND DEVELOPED A SHOE PRINT ON THEM WHERE THE SUSPECT HAD STEPPED ON THEM WHEN COMING THROUGH THE WINDOW. I COLLECTED THEM AS EVIDENCE AND THEY ARE AS FOLLOWS:

EVIDENCE #8 - ONE PIECE OF BROKEN GLASS WITH SHOE PRINT
EVIDENCE #9 - ONE PIECE OF BROKEN GLASS WITH SHOE PRINT
EVIDENCE #10 - ONE PIECE OF BROKEN GLASS WITH SHOE PRINT

I TOOK 35MM PHOTOGRAPHS OF THE INSIDE OF THE RESIDENCE WHERE IT HAD BEEN RANSACKED.

I PROCESSED SOME ITEMS THAT HAD BEEN MOVED OR OPENED INSIDE THE RESIDENCE FOR LATENT FINGERPRINTS AND NO IDENTIFIABLE FINGERPRINTS WERE FOUND ON ANY OF THE ITEMS.

I BROUGHT BACK TO THE LAB ONE TIN CAN WITH A PLASTIC LID (EVIDENCE #11) AND ONE BLACK C&S MONEY BAG (EVIDENCE #12) TO PROCESS.

ON 11/25/03 I PROCESSED THE CAN AND MONEY BAG FOR LATENT FINGERPRINTS AND NO IDENTIFIABLE FINGERPRINTS WERE FOUND.

ON 11/25/03 CAPT. MIKE FOWLKES ASKED ME TO PROCESS A VEHICLE THAT A SUSPECT IN THIS CASE HAD BEEN DRIVING AND MATCHED THE DESCRIPTION OF THE VEHICLE SEEN ON CANDLEWOOD LANE ON THE DAY OF THE BURGLARY.

ON 11/25/03 CAPT. FOWLKES GAVE ME A CONSENT TO SEARCH FORM SIGNED BY TARSHA LITTLEJOHN AND I PROCESSED THE VEHICLE WHICH WAS A 2001 DAEWOO NUBIRA VIN KLAJJC52Z01K652098, TAG #250 NAS, S.C. SILVER/BLUE IN COLOR.

I TOOK 35MM PHOTOGRAPHS OF THE VEHICLE INSIDE AND OUT.

I TOOK THE FOLLOWING ITEMS FROM THE VEHICLE AND CONTINUED THE EVIDENCE NUMBERS WITH THIS CASE:

EVIDENCE #13 - ONE TIRE TOOL FROM THE TRUNK OF THE VEHICLE
EVIDENCE #14 - ONE PAIR OF YELLOW HANDLE SWANSTORM WIRE CUTTER PLIERS
EVIDENCE #15 - ONE CONTROL SWAB
EVIDENCE #16 - ONE SWAB FROM KICK PANEL OF DRIVER DOOR
EVIDENCE #17 - SCRAPINGS FROM THE KICK PANEL OF DRIVER DOOR
EVIDENCE #18 - ONE SWAB FROM FLOORBOARD DRIVER SIDE
EVIDENCE #19 - ONE SWAB FROM GAS PEDDLE
EVIDENCE #20 - ONE SWAB FROM BRAKE PEDDLE

THE VEHICLE WAS TURNED BACK OVER TO TARSHA LITTLEJOHN.

Exhibit #23.

PP 11-25-03
m. f. l. d.

ROAD SERVICE

TIME OF CALL		DATE IN	DATE OUT	TIME START	TIME FINISH	REQUESTED BY	RO/CASE	TECHNICIAN NAME
NAME		ADDRESS			CITY		STATE	ZIP
YEAR	MAKE/MODEL	COLOR	ODOMETER	DRIVE	REGISTERED OWNER			
MARKER PLATE		STATE	VIN	LOCATION OF VEHICLE				
TOWED TO								
INSPECTOR'S INSURANCE CO.		APPRAISER NAME		DATE	FORMER	REASON FOR TOW		
TYPE OF TOW		PERSON TAKEN AWAY		DATE	PHONE	VEHICLE STORAGE TIME		
VEHICLE STORAGE TIME		INDICATE DAMAGED AREAS ON VEHICLE		KEYS LEFT				
TOWED PER ORDER OF		MILEAGE		TOWING CHARGE		MILEAGE		
LABOR TIME		EXTRA PERSON		SPECIAL EQUIPMENT		STORAGE		
CUP TOTAL		TAX		TOTAL		TOTAL		

WE warrant responsibility for damage caused by our vehicles and equipment. If damage is caused by our vehicles or equipment, we will pay for the cost of repair or replacement of the damaged property. If damage is caused by third parties, we will not be responsible for the cost of repair or replacement of the damaged property.

THANK YOU
PROBUDY, INC.

Exhibit

Cherokee County Sheriff's Office
TOWED VEHICLE REPORT

Location Towed From				Case or Summons Number			
Vehicle Operator's Name (First, Middle, Last)							
Street				City		State	
Vehicle Make	Year	Model	VIN	License Tag Number	State	Year	
DAEWOO	01	NUBRA	KLAC52Z0K65	230-NAS	S.C.	03	
Reason Towed				Operator Incarcerated		Owner Notified	
2098				☐ Yes ☐ No		☐ Yes ☐ No	
Vehicle Owner's Name (First, Middle, Last)							
TARSHA LITTLEJOHN				City		State	
Street				CATTLET		SC	
Towed by				Requested by			
				☐ Owner ☐ Operator ☐ Rotation			
Street				City		State	
Released To (First, Middle, Last)							
Street				City		State	

PROPERTY INVENTORY	
☒ Radio	☒ Spare Tire
☐ Cell Phone	☒ Hub Caps 3
☐ CD Radio	☐ Mag Wheels
☐ Radar Det.	☒ Tapes/CD's 3
☒ Vehicle Jack	☐ Tape/CD Deck
Additional Inventory	
2 BOXES OF 16" LEE STAINLESS SET	
Walmart bag containing 3 towels + 4 wash cloths	
1- LUG WRENCH (DOES NOT FIT VEHICLE)	
Officer's Name	I have received the above listed vehicle and inventory. 11/21/03
	Department Receiving Custody of Vehicle Date
Items in Custody of Officer	
ALL ITEMS LEFT IN VEHICLE	

Officer's Name	Rank	Badge Number
Date Towed	Time Towed	O.A.M. O.P.M.

White: Records Copy/Canary: Towing Service Copy/Pink: Operator's Copy

TOWED VEHICLE REPORT

505

Location Towed From L. Wagon St + Gardner St				Case or Summons Number			
Vehicle Operator's Name (First, Middle, Last) Ricky Brannen							
Street				City Gaffney		State SC	
Vehicle Make Dodge	Year 01	Model Nubia	VIN	License Tag Number 250-1145	State SC	Year 03	
Reason Towed Arrest				Operator Incarcerated ☒ Yes ☐ No		Owner Notified ☐ Yes ☒ No	
Vehicle Owner's Name (First, Middle, Last) Tasha L. Hoggan							
Street				City Gaffney		State SC	
Towed by Triangle				Requested by ☐ Owner ☐ Operator ☒ Rotation			
Street				City		State	
Released To (First, Middle, Last)							
Street				City		State	

PROPERTY INVENTORY					
☒ Radio	☐ Spare Tire	☐ CB Radio	☐ Radar Det.	☐ Vehicle Jack	
☐ Cell Phone	☐ Hub Caps	☐ Mag Wheels	☐ Tapes/CD's	☐ Tape/CD Deck	
Additional Inventory Towed to impound per I 20 / 124					
I have received the above listed vehicle and inventory.					
Officer's Name R.W. Turner					
Department Receiving Custody of Vehicle					Date
Items in Custody of Officer					

Officer's Name R.W. Turner	Rank Det	Badge Number 127
Date Towed 11-20-03	Time Towed 10	O.A.M. ☒ P.M.

White: Records Copy/Canary: Towing Service Copy/Pink: Operator's Copy

Exhibit

Exhibit #24

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 8, 2007

Mr. Ricky Brannon
Inmate #179051
Broad River Correctional Inst.
4460 Broad River Road
Columbia, SC 29210

RE: The State vs. Ricky Brannon

Dear Mr. Brannon,

As you requested, I am sending you your copy of the file.


JAMES ROGER POOLE
ATTORNEY AT LAW

Exhibit # 25

KICKY Kronnon 1770A
Broad River Cor. 507
4460 Broad River Rd
Columbia S.C. 29216

Date January 3, 2007,

Mr. Roger J. Poole, Esquire
Attorney At Law

Mr. Poole

I have sent you letters as well as spoken to you personally before and after my trial in an attempt to obtain my Motion of Discovery you have yet to reply to my request for my file.

I am formally filing a motion, as pursuant to In The Matter of Haddock 217 S.E.2d 601 (S.C. 1984); Suprem Court rules, Rule 32, Code of Professional Representation, DRG-101(A)(3); Rules of Disciplinary Procedure 7. Subd (A) 3.

Also, In The Matter of Crosland 243 S.E.2d 198 (1978); There for I do at this time respectfully request that you forward to me my complete case file. So that I may pursue other avenues of justice I implore you to forward all papers and document pertaining to my file.

Also, I would like to thank you in advance for your cooperation in this matter, and I pray that I receive my case file/Discovery as soon as possible upon you officially receiving this motion.
Thank you once more

S.P. 1222 #1

508 Copy of this letter, I am also sending a motion to the
Cherokee county clerk of court.

With kind regards, I Am

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

Sworn before me this 3rd day of January 2007

Jonathan Steen
Notary public for South Carolina

March 17 2016
my commission expires

Ricky Brannon #179051.

Broad River Corr. INST.

4460. Broad River Rd

Columbia S.C. 29210.

Amendment To P.C.R.
Application.

To: Mr. Leon Richer. P.A.

P.O. 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 past conviction Relief Application. I would respectfully ask you to read and review my allegation as shown in (K). For this case involves a New Supreme Court Ruling, that now requires the police when they seize and arrest some one, for Traffic violation's and place them in their patrol car. That they now must obtain a search warrant before they can conduct an unconsented search of the vehicle. Sir, In my case: A pair of shoes were obtained resulting from an unconsented search follow^{ing} a made up false Traffic violation. This evidence was introduced into my Trial and testified to by a Cherokee County investigator, Deemed an expert witness by the Trial Court. And ultimately help lead to my

conviction. It is clear by The record in my Trial. That No Warrants to search and obtain This evidence was ever sought or Authorized. Therefore it was illegally obtained in violation of my 4th and 14th, Amendment Rights. I do believe im entitle to an evidentiary hearing on This issue. I, have submitted a copy of The News paper clipping involving This U.S. Supreme Court Ruling which is dated May 6. 2009. please reviews. The case and submit This Amendment to The Court. Thanks for Your cooperation in This matter.

Dated 4/12/10

S / Ricky Brannon
Ricky Brannon
#179051.

p.s. please return 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. ⁵¹¹
7th Judicial Circuit

CASE NO. 009-CP-11-0555

"Third" Amendment To Post
Conviction (P.C.R.) Application.

The Applicant, Ricky Brannon do hereby submits his Amendment to his post Conviction Relief Application (p.c.r.). And continues to raise The follow allegations. in Support of his following claims. Set out in Question #7. of Application which states:

7. STATE Concisely The grounds on which you base your allegation That you are bein held in custody unlawfully.

(J.) That pursuant to § 17-27-10, S.C. Code of Laws. Applicant alleges, That his prior convictions, used for inhancement of his current sentence. still persist. Are Constitutionally invalid. ^① That conviction's obtained in absents of Counsel. ^② That The Trial Court ldk subject matter Jurisdiction, to accept his guilty plea. to his (4). Four, prior, 1991. 1st, degree burglary charges. Where The indictment failed to state The offense. Where he was allowed to signe waivers of presentment. without Counsel or a waiver of Counsel, That increased The punishment. without

- The burglary indictments being presented to The Grand Jury And True billed. Therefore applicant current sentence requires vacating

(K). That pursuant To The United States Supreme Court Rulings in Arizona v. Johnson. 07-1122. The applicant alleges That his due process Rights to a fair Trial was violated Because The state introduce evidence into The Trial, which was obtained as a result of an illegal Traffic stop, Arrest, search and Seizure, in violation of his 4th Amendment Right And his 14. Amendment. dueprocess Right to Warrant requirement. Applicant is requesting an evidentiary hearing on This issue

(L). The applicants due process Rights to a fair Trial was violated, where The prosecution intentionally withheld exculpatory and impeachment evidence. and allowed The destructions of impeachment evidence, for which it was obligated to turn over To The defense. In violation of Brady vs Maryland, and Rule 5. Discovery. request., Applicant, was prejudiced because he was denied The opportunity to impeach The testimony of states witnesses with The relevant destroyed material evidence. For which to call there credibility in question, when Credability of These witnesses testimony was The key in convicting The applicant. An evidentiary hearing is requested on The issue of whether or not The applicants Rights to a fair Trial was violated by The states intentional destruction of impeachment, Brady evidence.

(M). The Trial Court error in failing to grant Applicant a directed verdict of acquittal. Where The States evidence was insufficient To prove, "Entry" which is The essential element of Burglary, In violation IN Re, Winship 397. U.S. 358. 364. 90 S. CT. 1068 (1970).

(N). Applicant is entitled to a reversal of his convictions where The Trial Court failed to swear The Jury For Applicants Trial. After They were seated. And The Trial Record of The proceedings. Failed to affirmatively show That every Juror was sworn. See Howard v State 1917. 80 Tex. Cr. R 588. 192 S.W. 770. L.R.A. 1917 at pg 400. (A Trial Record must affirmatively show That The Jury was sworn, And If it does not, The conviction must be reversed.

(O). The Trial Court committed reversible error, By failing To determine if The applicant agreed to The stipulations of his 4. prior burglary convictions, which was an essential element of his charge of 1st, degree burglary see. Johnson v. Cowley, 40 F.2d 341. (10 Cir Okla 1994) Holding, That If stipulation is made to a former conviction, use for enhancement. The Court must determine whether The defendant agreed -

514 The stipulations.

(p). The Trial Court committed reversible error. In its failure to inquire of Jurors during voir dire of whether or not any of The Jurors either knew or were any relations to any one employed in The Cherokee County and Spoutenburg, Counties, 9th Circuit Solicitor's office. where The Solicitor's office was disqualified from prosecuting Applicant case, Due to Actual Conflict of interest.

(Q).

The Trial Court committed reversible error. in its failure to submit The Applicant additional prior convictions To The Jury and instruct them accordingly, where neither The prosecution of The defense agreed to any stipulations concerning The additional prior convictions which was added To The record by The prosecution.

Dated April 12, 2010,

S/ Ricky Brannon
Ricky Brannon #179051

The Applicant Amends his post conviction relief Application, with The following ineffective assistance of Trial Counsel.

prejudice ineffective assistance of Trial Counsel For his failure To.

1. Object to The prosecutions and Trial Court Constructive Amendments. of The indictment. and fatal variances between indictment and proof.
2. failing to object to The prosecutions continuous attack on Applicants character. and mentioning of other crimes evidence, when The Trial Court had not ruled such evidence was admissible. under Rule 404 and 403. And other crime was dismissed.
3. failure to object and preserve issue for appeal of The Trial Court permitting The prosecution to add Applicants additional prior convictions to The Record, when They gave no Notice of Their intent. and The additional priors were irrelevant and a wast of Court time Rule 403.
4. Trial Counsels failure to file motion for severance was prejudice ineffective, where crimes did not arise out of a single chain of circumstances, and could not be proved by The same evidence.

Trial Counsel was prejudice ineffective for his failure to object to The Trial court erroneous Jury instructions. For The Court failed to instruct The Jury: "That it must first find. That, Applicant recieved and understood his Maranda Rights before it could consider his alleged oral statement as evidence.

6. Trial Counsel's failure to Take The Trial Court offer of 10, days for which to formulate an argument on The use of Applicant's prior convictions for enhancement, was prejudice ineffective. For Trial Counsel refused The offer but elected to immediately proceed with his argument, and cited erroneous case Law. to support his argument. When there was concrete case Law to support a more compelling argument. That The prior convictions, Guilty please. were of The same nature and were consolidated for sentencing Thus only constituted one conviction. For they accrued in 1991. before The changing of The statute.

Respectfully

Dated April 12, 2010

S/ Ricky Brannon
Ricky Brannon # 179051

Certificate of Service.

Please Notice: That The undersigned do hereby certify. That he has mailed The belowe stated document to his belowe stated p.c.R. Attorney. by placing said document in an envelope properly Addressed with U.S. postage. silled and deposited in The United State mail at The Broad River Corr INST. on This 12th day of April 2010.

Type of Document Mailed:

3rd Amendment To P.C.R.
Application.

Mailed To :

Mr. Leon Richey, Atty. At Law
p. o. box 10916
Greenville S.C. 29603.

Respectfully Submitted.

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

sworn before me This 12
day of April 2010.

Eugene Ker
Notary public for South Carolina

My Commission Expires April 4, 2018

My Commission Expires

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHEROKEE)

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

RICKY BRANNON,
 SCDC # 179051

Applicant,

vs.

THE STATE OF SOUTH CAROLINA,
 Respondent

AMENDMENTS TO
 POST CONVICTION
 RELIEF APPLICATIONS

BRANDY W. MCBEE

2010 MAR 10 A 10:21

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.

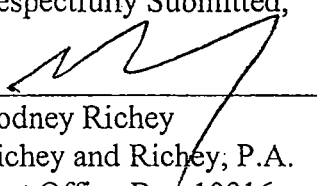
15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were or whether or not I understood exactly what the term "criminal" element" actually meant.
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.

26. My defense attorney failed to oppose the prosecution's case with any adversarial litigation.
27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.
29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,


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

March 9, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)
)
RICKY BRANNON,)
SCDC# 179051)
)
vs.)
)
THE STATE OF SOUTH CAROLINA)

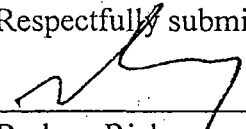
IN THE COURT OF COMMONS PLEAS
CASE NO: 2009-CP-11-0555

AFFIDAVIT OF SERVICE

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2010 MAR 10 A 10:21
BRANDY W. MOBEE

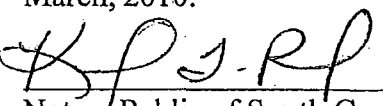
I certify that I have served the Amendment to PCR Application on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on March 9, 2010, addressed to their attorney of record, Suzanne H. White, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:



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

Sworn to before me this 9 day of
March, 2010.



Notary Public of South Carolina
My Commission Expires: 10/7/19

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	
	)	2009-CP-11-0555
	)	
Ricky Brannon, #179051	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed June 10, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Cherokee County Grand Jury indicted the Applicant at the February 2004 term of General Sessions for two counts of burglary, first degree (04-GS-11-0201, 04-GS-11-0202) and grand larceny (04-GS-11-0203). J. Roger Poole, Esquire, represented the Applicant. On April 13, 2006, the Applicant was convicted by a jury for one count of burglary, first degree (04-GS-11-0202) and of grand larceny. The Honorable Doyet A. Early, III sentenced the Applicant to confinement for life without parole (LWOP) for the burglary, first degree charge, and for five (5) years for the grand larceny charge, sentences running concurrently¹.

¹ The Applicant was sentenced to life without parole pursuant to §17-25-45.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Williams, Unpublished Op. No. 2008-UP-313 (S.C. Ct. App. filed June 20, 2008). The Remittitur was issued on July 8, 2008.

Attached herewith and incorporated herein are the records of the Cherokee County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, the appellate briefs, and the Court of Appeals Opinion and Remittitur. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Prosecutorial and trial court misconduct and errors;
 - a. "Prosecution in closing arguments constructively amended the aggravating element of crime charged in the indictment²."
 - b. "Trial court in its jury charge constructively amended the indictment by giving instructions of second degree burglary statute absent the required aggravating element when applicant was indicted on first degree burglary charges³."
 - c. "Fatal variance between indictment charging applicant with 1st degree burglary and grand larceny of the resident of person named in the indictment and proof shown at trial."

² The "aggravating element" to which the Applicant refers is his prior record, specifically "prior convictions or guilty pleas of two or more burglaries." (TT. p. 39; TT. p. 308-311).

³ During pre-trial motions the parties stipulated that evidence of the Applicant's prior convictions for burglary, first degree would be introduced into evidence in order to establish the aggravating element outside the presence of the jury to avoid prejudicing the Applicant, and the jury would be instructed "in such a manner that two prior convictions [would] not prejudice the Defendant." (TT. 39-40).

- d. "Abuse of discretion of Trial Court. Failure to conduct 'gate keeping' obligation, proffer testimony, hold relevant 403 hearing before allowing prejudice shoe print expert testimony."
- e. "Abuse of discretion allowing stipulation to an essential element in lieu of informing and/or instructing the jury about the element."
- f. "Failure to serve timely Notice seeking life without parole on Applicant."
- g. "Error in 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 crime was consolidated for sentencing constituting one conviction."
- 2. Ineffective assistance of original trial counsel "in violation of applicants right to due process, conflict of interest...denial of counsel..."
- 3. Ineffective assistance of substitute trial counsel "in violation of applicants right to due process, conflict of interest...denial of counsel..."
- 4. Ineffective assistance of appellate counsel for "frivolous appeal, prejudice late notice of final decision of issue on appeal."
- 5. Due Process Violations; and
 - a. "Conflict of interest in the 7th Circuit Solicitor's Office in violation of order of disqualification, obstruction of justice, due process violation, denial of right to trial and appeal."
- 6. Newly discovered evidence.
 - a. "Perjury testimony, 6th amendment violation, discovery violation, 4th amendment violation and violation of due process (involuntary statement)."

III.

The Applicant's first claim alleges several prosecutorial and trial court errors and general misconduct pertaining specifically to the prosecutor's closing argument, disparities between the indictments and proof offered at trial, trial court errors regarding rulings on pre-trial motions and jury charges, conflicts of interest, and untimely notice of the State's intention to seek life without parole (LWOP). Respondent contends that allegations (a) through (g) in the Applicant's first claim raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal⁴. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily dismiss all of allegations in the Applicant's first claim.

However, if the Court grants an evidentiary hearing on the allegations in the Applicant's first claim, Respondent contends in the alternative that the Applicant cannot meet his burden to establish any ground for relief in his first claim, and respectfully submits the following additional responses:

a. Solicitor's Closing Argument

The Applicant alleges he is entitled to relief because the Solicitor "constructively amended" the indictment during his closing argument⁵. The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be

4 The issue on appeal was whether the trial court erred in admitting the testimony of the foot print analysis expert because his testimony was more prejudicial than probative due to the nature of the testimony. (App. Brief, p. 3).

5 The Applicant specifically states that the "prosecution in closing arguments constructively amended the aggravating element of the crime charged in the indictment."

drawn from the evidence. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). A constructive amendment to an indictment occurs when it is effectively altered by evidence or jury instructions that modify essential elements of the charged offense such that there is a substantial likelihood that the defendant was not convicted of the offense for which he was indicted⁶. U.S. v. Miller, 471 U.S. 130, 105 S.Ct. 1811 (1985); U.S. v. Floresca, 38 F.3d 706, 710 (4th Cir. 1994). Additionally, a defendant waives his claim that prosecutor constructively amended his indictment at the trial when he fails to make contemporaneous objection. U.S. v. Williams, 106 F.3d 1173, 1175 (4th Cir. 1997).

The Respondent interprets the Applicant's allegation to refer to the Solicitor's omission of any reference to the aggravating element of burglary, first degree. The Solicitor did not address the aggravating element for burglary, first degree (the Applicant's two or more prior burglary, first degree convictions) during his closing argument pursuant to the parties' stipulation. The record indicates that all of the parties, including the Applicant, stipulated that neither party nor the judge would refer to the Applicant's prior convictions at any time in the presence of the jury in order to avoid any prejudice to the Applicant that may otherwise result⁷. (TT. p. 39; TT. p. 308-311). The record also makes it clear that the Applicant's intention in so stipulating was specifically for the purpose of establishing that element outside the presence of the jury⁸. (TT. p. 40.).

The Solicitor's presentation at trial established the essential elements of the indicted offense, and his closing argument was clearly confined to the evidence on the

⁶ As long as the crime and the elements of the offense that sustain the conviction are fully and clearly set out in the indictment, the right to a grand jury is not normally violated by the fact that the indictment alleges more crimes or other means of committing the same crime. Miller, 471 U.S. at 134.

⁸ The State entered certified copies of the Applicant's four prior burglary, first degree convictions into the record outside the presence of the jury, without objection. (TT. p. 251-253). The State also admitted into evidence three more indictments for burglary, second degree and two counts for arson, second degree). (TT. p. 308).

record presented during the trial. There is no substantial likelihood that the Solicitor's omission of any reference to the Applicant's prior convictions in his closing argument allowed the jury to convict the Applicant of an offense for which he was not indicted. The Applicant also waived his claim that prosecutor constructively amended his indictment at the trial because he failed to make contemporaneous objection or otherwise bring his claim to the attention of the trial court judge. Accordingly, Respondent submits that the Applicant cannot now assert that the Solicitor's omitting any reference to the aggravating element during his closing argument, per the parties' stipulation, now entitles him to post-conviction relief.

b. Trial court erred in its jury charges

The Applicant alleges that the trial court also "constructively amended the indictment" in its jury charge⁹. A jury charge is correct if when read as a whole, it contains the correct definition and adequately covers the law in light of the evidence and issues presented at trial. State v. Johnson, 315 S.C. 485, 487, 445 S.E.2d 637, 638 (1994); State v. Caulder, 287 S.C. 507, 339 S.E.2d 876 (Ct. App. 1986). A jury charge that is substantially correct and covers the law does not require reversal. Johnson at 487; See also U.S. v. Woods, 2008 WL 795312 (4th cir. 2008)(noting defendant's failure to raise constructive amendment objection to the jury instructions at trial; finding that the jury charges, when viewed as a whole, did not cause the jury to convict the defendants on an uncharged offense). While it is the trial judge's responsibility to charge the law on all material issues, the party who desires a particular instruction and does not request it

⁹ The Applicant alleges that the "trial court erred in its jury charge constructively amended the indictment by giving jury instructions of second degree burglary statute absent the required aggravating element. [sic] when applicant was indicted on 1st degree burglary charges."

cannot later base trial court error on the omission thereof. State v. Napier, 218 S.C. 320, 62 S.E.2d 793 (1950).

The Respondent contends that the Applicant cannot obtain relief on the grounds that the trial court's omission of the aggravating element (the Applicant's prior record) from its jury instructions resulted in a constructive amendment of the indictment. Significantly, the judge's jury charges reflect the Applicant's stipulation, and were given without objection. The judge instructed the jury as to the State's burden to prove beyond a reasonable doubt each and every element of its case, "that the Defendant entered a dwelling without consent with the intent to commit a crime therein." (TT. p. 295-296). The judge defined "dwelling" and clarified the element of "intent to commit a crime therein." (*Id.*) In addition, the judge specifically instructed the jury that there were "some other technical matters that the State must prove, but the lawyers have stipulated that they have met that, so, that is not something that you must consider yourself with." (TT. p. 296).

The law does not require the judge to go further by expressly instructing the jury as to the "aggravating element" in light of the Applicant's stipulation, and absent any objection or other request from the Applicant¹⁰. (TT. p. 40). The jury charges were substantially correct when read as a whole, and did not cause the jury to convict the Applicant for any uncharged offense. Respondent submits that the Applicant is not entitled to relief on this ground.

c. "Fatal variance" between indictment and proof shown at trial

10. As previously stated, the judge did not expressly refer to the aggravating circumstance during jury instructions in order to avoid prejudicing the Applicant. (TT. p. 39; TT. p. 308-311).

The Applicant alleges he is entitled to post-conviction relief due to a "fatal variance between indictment charging applicant with 1st degree burglary and grand larceny of the resident of person named in the indictment and proof shown at trial." Respondent interprets this allegation to be a collateral attack on the sufficiency of the evidence produced at trial and moves to dismiss this allegation as improper for post-conviction relief. S.C. Code Ann. § 17-27-20(a)(6) states in pertinent part "that this section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction." It is clear under the statute that post-conviction relief is not the proper avenue to attack the sufficiency of evidence. Accordingly, Respondent moves to dismiss this allegation as improper under the Uniform Post-Conviction Relief Act.

d. "Abuse of discretion of Trial Court"

The Applicant also claims that he is entitled to post-conviction relief because the trial court abused its discretion¹¹. The admissibility of an expert witness testimony rests solely within the discretion of the trial court and is reviewable only by direct appeal. State v. Weaverling, 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999). In contrast, a post-conviction relief action is an action by which a person may challenge his or her conviction or sentence on constitutional grounds. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). The Applicant's claim that the trial court abused its discretion in admitting the expert's testimony does not put forward any violation of a constitutional right or any other cognizable claim for relief under the Uniform Post-Conviction Relief

¹¹ The Applicant specifically alleges that the trial court abused its discretion by failing to "conduct 'gate keeping' obligation; proffer testimony, hold relevant 403 hearing before allowing prejudice shoe print expert testimony."

Act¹². Additionally, the Applicant could have raised this issue on appeal; his failure to do so has waived this allegation as a ground for relief. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss this allegation.

e. Abuse of discretion in allowing stipulation to an essential element

Applicant alleges that the trial court further abused its discretion by “allowing stipulation to an essential element in lieu of informing and/or instructing the jury about the element.” While the State must prove to a jury each and every element of its case beyond a reasonable doubt, the United States Supreme Court has provided an express exception for prior convictions. Apprendi v. New Jersey, 530 U.S. 466 (2000)(“*Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.*”)(emphasis added)¹³. Our courts have repeatedly permitted a criminal defendant to stipulate to an essential element of a crime in order to avoid evidence being admitted at trial that would likely be unfairly prejudicial to the defendant¹⁴. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000)(defendant offered to stipulate that he had two prior burglary convictions in lieu of the State introducing evidence of the burglary convictions)¹⁵. Furthermore, because a stipulation induces the government to forego its

12 According to the record, the trial court did conduct a motion in limine (“relevant 403 hearing”) after which the trial judge decided to admit the expert’s testimony, and necessarily fulfilled its “gate keeping function.” (TT. p. 36-39).

13 Recognized by our courts in State v. Laney, 367 S.C. 639, 627 S.E.2d 726 (2006), State v. Brown, 360 S.C. 581, 602 S.E.2d 392 (2004), State v. Simuel, 357 S.C. 378, 593 S.E.2d 178 (Ct. App. 2004), and State v. Grooms, 343 S.C. 248, 540 S.E.2d 99 (2000).

14 However, our courts have also held that the State is not required to accept the defendant’s stipulation.

15 State v. James, 355 S.C. 25, 583 S.E.2d 745 (2003)(recognizing the potential for improper conviction resulting from the introduction of a defendant’s prior burglary convictions under §16-11-311(A)(2)); State v. Hamilton, 327 S.C. 440, 486 S.E.2d 512 (Ct. App. 1997). See also U.S. v. Muse, 83 F.3d 672 (4th Cir. 1996) (defendant stipulated to a prior felony conviction to prevent government from introducing potentially prejudicial evidence concerning the prior felony).

right to introduce evidence against the defendant in order to prove its case, a defendant may not later argue that the stipulation is insufficient to prove beyond a reasonable doubt the facts or elements to which he has stipulated¹⁶. Muse, 83 F.3d at 679.

As stated, the Applicant agreed to stipulate to the prior convictions specifically for the purpose of establishing the aggravating element outside the presence of the jury. (TT. p. 40). The Applicant's stipulation waived any requirement that the government prove the aggravating circumstances element in the presence of the jury. See U.S. v. Clark, 993 F.2d 402 (4th Cir. 1993)(holding that defendant's stipulation relieved the government of any obligation of proving any aspect of that element). Respondent contends that when the parties agreed to stipulate that the aggravating element had been met, and that the jury would be so instructed, the judge did not remove the consideration of the issue from the jury; the parties did. As a result, the Applicant is not entitled to post-conviction relief on the grounds that the jury was not charged with regard to an element of the crime charged when he agreed to stipulate to that element as part of a legitimate tactical trial strategy in order to keep that information from the jury.

e. "Failure to serve timely Notice seeking life without parole"

The Applicant additionally alleges he is being held in custody unlawfully on the ground that he did not receive a timely Notice of Intent to Seek Life Without Parole. When the State seeks sentencing of a defendant under §17-25-45(H), written notice must be given by the solicitor to the defendant and defendant's counsel not less than ten (10) days before trial. State v. Washington, 338 S.C. 392, 526 S.E.2d 709 (2000). The record

¹⁶ See also U.S. v. Green, 21 F.Supp.2d 521 (D. Md. 1998)(holding that instruction stating the jury must regard stipulated facts as true did not deprive defendant of his right to have jury determine his guilty beyond a reasonable doubt).

directly refutes the Applicant's allegation that notice was untimely. The Applicant and his attorney were served with the State's Notice of Intent to Seek Life Without Parole on August, 2, 2004 and again in November, 2005. (TT. p. 309). The Applicant's trial was held April 12, 2006-April 13, 2006. The Applicant received the State's Notice at least five (5) months prior to his trial, and he is not entitled to relief on this ground. Therefore, the State's Notice was timely, and the Court should summarily dismiss this allegation.

f. "Conflict of interest, improper jury instructions, lesser included offenses"

The Applicant further claims that he is entitled to post-conviction relief due to trial court errors for "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 crime was consolidated for sentencing constituting one conviction." First, the mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984).

Respondent interprets the Applicant's "conflict of interest" allegation to refer to a juror who came forward at trial after hearing a witness testify to notify the court that she knew the witness¹⁷. The record indicates that the Applicant's attorney, after conferring with the Applicant, chose to use an alternate juror, and the conflicted juror

¹⁷ The juror did not come forward sooner because she did not recognize the witness's name, the witness was not present in the court room during voir dire, but only realized she knew him from church because she recognized his face when he testified. [TT. p. 183-184].

was excused. (TT. p. 186). The juror in question was not involved whatsoever in jury deliberations or in the jury rendering the Applicant's guilty verdict. Moreover, the Applicant did not raise any objection or seek to put any comment on the record with regard to the way the matter was handled. (TT. p. 186). Therefore, the Applicant's allegation is insufficient to challenge his conviction, and he cannot obtain relief on this ground.

Second, for a defendant to be entitled to a jury instruction on a lesser-included offense, there must be some evidence in the record that would tend to show that the defendant is guilty of the lesser rather than the greater offense. State v. Fields, 356 S.C. 517, 589 S.E.2d 792 (Ct. App. 2003); State v. Funchess, 267 S.C. 427, 229 S.E.2d 331 (1976). The possibility that the jury might believe some of the State's case and not the rest is an insufficient argument for a lesser-included offense instruction. Funchess, 267 S.C. at 430, 229 S.E.2d at 332. The Applicant's prior convictions were the factor elevating the offense with which he was charged to burglary, first degree. The prior convictions were entered into evidence on the record. (TT. p. 251). Consequently, Respondent submits that there was no evidence in the record tending to show that the Applicant was guilty of the lesser, rather than the greater offense, and the Applicant is not entitled to relief on this ground. In any case, the Applicant's defense was that he did not participate in the burglaries for which he was charged at all. In such circumstances, a lesser-included offense instruction would not be warranted. See Moultrie v. State, 354 S.C. 646, 583 S.E.2d 436 (2003) (where defendant's defense was that he never assaulted the victim at all, a lesser-included offense charge was not warranted).

Finally, Respondent interprets the Applicant's allegation that his prior convictions were "consolidated for sentencing constituting one conviction" to mean that he is challenging his eligibility to be sentenced to LWOP pursuant to §17-25-50. In determining the number of convictions for the purpose of imposing a LWOP sentence, "the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate offenses." S.C. Code Ann. §17-25-50. Our Court recently interpreted the "so closely connected in point of time" language of §17-25-50 to preclude a LWOP sentence only when "the multiple offenses are inextricably connected and share an immediate temporal proximity." Bryant v. State, --- S.E.2d ---, 2009 WL 2948557 (2009)¹⁸. Multiple convictions arising from multiple criminal transactions should be treated as separate convictions, regardless of the number of judicial proceedings involved in the conviction¹⁹. Id.; See, also, United States v. Schieman, 894 F.2d 909, 911 (7th Cir. 1990).

The fact that Petitioner pled to the four prior burglaries on the same day (November 21, 1991) is of no consequence. Even if the court granted trial counsel's motion and considered the Petitioner's four prior burglaries to constitute "one offense" because the charges were adjudicated on the same day, the Petitioner would still have one prior conviction for burglary, first degree, a "most serious" offense subjecting him to a life without parole sentence. According to the record, the Applicant was convicted on

18 See State v. Woody, 359 S.C. 1, 596 S.E.2d 907 (2004) (recognizing "one continuous course of conduct" under §17-25-50 where the defendant's two prior convictions arose out of a single incident for which defendant was convicted of armed robbery of both the store's clerk and the store itself).

19 To hold otherwise would create a troubling issue in which, assuming a defendant is adjudicated guilty, disposing of all charges at the same time will avoid the application of section 17-25-45(F) as it relates to those charges and preclude a life without parole sentence. The State, by electing to consolidate or not to consolidate charges based on separate transactions, could manipulate the timing of adjudications of guilty to pursue a LWOP sentence under the recidivist statute. Bryant, supra. Schieman, 894 F.2d at 911.

November 21, 1991 of four 20 separate burglaries (first degree), one burglary (second degree), and two arsons (second degree) from incidences that occurred from September 22 through September 27, 1991²¹. (TT. p. 310). The Respondent contends the trial court did not err in finding the incidents were separate and distinct crimes over a several day period and were not so “inextricably connected” and did not share an “immediate temporal proximity” as to constitute “one offense” under §17-25-50. Respondent further submits that even if the trial court considered his prior 1991 burglary convictions to be “one offense,” he is still indeed eligible for LWOP based on the undisputed fact that he has two or more prior convictions for a most serious offense. S.C. Code Ann. § 17-25-45(B), (F) (2002).

IV.

The Applicant’s second and third claims for post-conviction relief allege that he received ineffective assistance of original counsel and ineffective assistance of substitute trial counsel²². Where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in

20 Whether or not the Petitioner’s prior 1991 burglary convictions are treated as one offense, it was still proper for the grand jury to indict him for burglary, first degree (1991-GS-11-0202) for “two or more convictions for burglary or housebreaking or a combination of both” where the Petitioner was also convicted of burglary, second degree (non-violent; 1990-GS-11-1137).

21 The trial court judge denied the Applicant’s attorney’s motion under State v. Woody that the his prior convictions should be considered “one event, one incident...one ‘spree’” for the purposes of sentencing under §17-25-45. (TT. p. 310).

22 The Applicant’s original trial counsel was Mr. Don Thompson. However, Mr. J. Roger Poole was substituted for Mr. Thompson and is the only attorney that represented the Applicant during his trial. The Respondent addresses the Applicant’s allegations of ineffective assistance of original and substitute trial counsel jointly.

criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625; *citing* Strickland v. Washington. Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Cherry v. State, *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard . However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

The Applicant further alleges ineffective assistance of appellate counsel in his fourth claim for post-conviction relief²³. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830

²³ The Applicant specifically alleges ineffective assistance of appellate counsel for "frivolous appeal, prejudice late notice of final decision of issue on appeal."

(1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999).

To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI.

The Applicant additionally alleges that he was denied due process of law²⁴. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VII.

The Applicant also seeks relief on the grounds of newly discovered evidence. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant's allegation is vague and general in its terms (alleging general "perjury testimony" and "discovery violations"). There are no specific allegations of the nature of any newly discovered evidence. The Applicant has not shown that the alleged

²⁴ The Applicant's allegation claims "conflict of interest in the 7th Circuit Solicitor's Office in violation of order of disqualification, obstruction of justice, due process violation, denial of right to trial and appeal."

evidence meets *any* of the requirements for after-discovered evidence. Most importantly, the "new evidence" offered by the Applicant is not "material to the issue of guilt or innocence," and probably would not "change the result if a new trial was had." Hayden, Id. The Court should summarily dismiss this allegation.

The Respondent construes the Applicant's "discovery violation" claim to allege that the State withheld favorable evidence in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

The Respondent submits that the Applicant's newly discovered evidence ground for relief is totally without merit.

VI.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

October 8, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

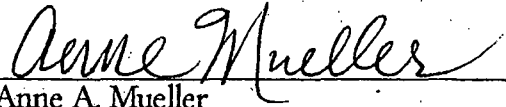
Ricky Brannon,)
)
Applicant,)
)
vs.)
)
State of South Carolina,)
)
Respondent.)

2009-CP-11-0555

CERTIFICATE OF SERVICE BY MAIL

- 1. I am an employee of the Respondent in the above-captioned action.
- 2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
- 3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Rodney W. Richey, Esquire
Richey & Richey, PA
P.O. Box 10916
Greenville, South Carolina 29603-0916



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 8th day of October, 2009.

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF CHEROKEE

CASE NO: 2009CP1100555

IN THE COURT OF COMMON PLEAS

Ricky Brannon vs. State of South Carolina

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: _____

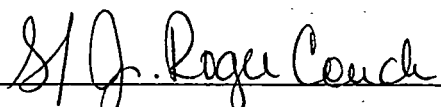
IT IS ORDERED AND ADJUDGED:

☒ See attached order;☐ Statement of Judgment by the Court:

Order of Continuance.

Dated at Gaffney, South Carolina, this the 11th day of February, 2010.

Court Reporter:


 PRESIDING JUDGE - J. Roger L. Couch

This judgment was entered on the the 9th day of February, 2010, and a copy mailed first class this the 11th day of February, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Ricky Brannon Broad River Correctional
Institution 4460 Broad River Rd Columbia, SC
29210

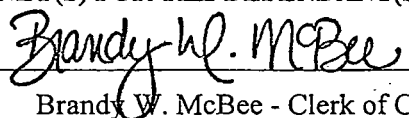
Rodney Wade Richey Richey & Richey, PA
P.O. Box 10916 Greenville, SC 29603-0916

State of South Carolina ,
PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4


 Brandy W. McBee - Clerk of Court

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

Ricky Brannon, #179051,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2009-CP-11-0555

ORDER OF CONTINUANCE

2010 FEB -9 A 10:55
BRANDY W. RICHIE
CLERK OF COURT
SPARTANBURG COUNTY, S.C.

This matter comes before the Court by way of an application for post conviction relief. An evidentiary hearing was convened on January 12, 2010, at the Spartanburg County Courthouse. Applicant was present and represented by Rodney W. Richey, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office represented Respondent. Counsel for Applicant requested a continuance so that he could review DNA evidence that may be vital to Applicant's case. Counsel for Applicant also made a Motion for Discovery. The Respondent opposed both motions. This Court granted the continuance upon good cause shown. In addition to granting Applicant's motion for continuance, this Court recused itself from hearing the matter and instructed both parties to submit any additional motions pertaining to this case to the Administrative Judge until the next term of court.

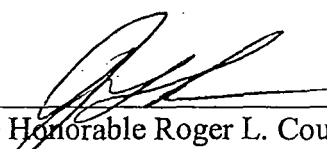
This Court finds that this matter should be continued until the next term of court for post-conviction relief matters in the Seventh Judicial Circuit.

IT IS THEREFORE ORDERED:

1. That this post-conviction relief matter shall be continued and rescheduled;
and,
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 9th day of February, 2010.

Spartanburg, South Carolina.


The Honorable Roger L. Couch
Presiding Seventh Circuit Court Judge

2010 FEB -9 A 10:55
BRANDY W. MCBEE

CLERK OF
COURT
SPARTANBURG COUNTY, S.C.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHEROKEE) IN THE COMMON PLEAS COURT
3
4 Ricky Brannon,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2009-CP-11-0555
7 The State.) April 6, 2010
8 Spartanburg, South Carolina
9

10 B E F O R E:
11 HONORABLE J. DERHAM COLE, JUDGE
12

13
14 A P P E A R A N C E S:
15 RODNEY W. RICHEY, ESQUIRE
16 Attorney for the Applicant
17 SUZANNE H. WHITE, ESQUIRE
18 Attorney for the State
19

20
21
22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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No exhibits entered into evidence.

1 THE COURT: All right. This is who?

2 MS. WHITE: This is Mr. Ricky Brannon vs. the State of
3 South Carolina, Your Honor, case No. 2009-CP-11-0555.

4 He's represented today by Mr. Rodney Richey. I
5 believe that Mr. Richey has a few motions before Your
6 Honor.

7 THE COURT: Okay.

8 MR. RICHEY: Thank you, Your Honor.

9 We -- first of all, Mr. Brannon is serving a
10 life-without-parole sentence. We were before the Court in
11 front of Judge Couch previously, and at that time a motion
12 was made to have Judge Couch recused. The -- and we're --
13 and my client would make that same motion as to the Court.

14 Mr. Brannon was charged with allegedly trying to burn
15 down the Cherokee County Courthouse, and he believes that
16 that put the Courts in this circuit -- he believes that
17 they should be recused from hearing his case. That's the
18 first motion we're making.

19 The second motion --

20 THE COURT: Recused from hearing this
21 post-conviction-relief case?

22 MR. RICHEY: Yes, sir.

23 THE COURT: Well, he wasn't convicted of burning down
24 the courthouse, was he?

25 MR. RICHEY: No.

1 THE COURT: No.

2 MR. RICHEY: No. But he believes that sheds him in a
3 negative light. And he's requesting that the Court recuse
4 itself from hearing the case, and he made the same motion
5 in front of Judge Couch in a previous term. And we also
6 made a motion before Judge Couch in a previous term for
7 discovery.

8 There were some issues -- there are some items that my
9 client had wanted, and Judge Couch since he recused
10 himself, he didn't rule on the motion. So we didn't
11 have -- we didn't have a ruling so we would know how to
12 proceed with the case.

13 My client is asking for discovery in this case, but
14 there -- there are certain items that he has not been able
15 to get.

16 One -- this case was a result of a traffic stop. It
17 was a burglary. And after the alleged burglary a car was
18 spotted at the home, and that car subsequently ran -- ran
19 at a high rate of speed. And one of the residents came
20 back.

21 That car was then later stopped at some point, the
22 alleged car, for disregarding a stop sign. My client was
23 the driver of that car.

24 It's his position that stop was not valid because that
25 stop led to his arrest on burglary charges and that type of

1 thing.

2 We've -- we've tried to get a copy of the ticket,
3 information on that case down at the Cherokee courthouse.
4 They don't have it for some reason. I'd tell the Court the
5 ticket ultimately got dismissed.

6 There was a search warrant in this case, and we
7 searched to find items. We don't have that search warrant.
8 It was not filed with the Court. We're asking to get that
9 search warrant and the records that were produced.

10 There was also a waiver of rights that was apparent --
11 supposedly signed by my client. We don't have that as
12 well.

13 My client -- at the time of the arrest there was a DNA
14 swab taken from him allegedly to match certain items or
15 something pursuant to this crime.

16 We -- we have not got the specimen. He would like to
17 have the specimen to review against the evidence -- the
18 evidence would have for that. So those are some of the
19 items.

20 He did have a request for a transcript from a
21 magistrate's-court proceeding in this case, but I've
22 expressed the difficulty in getting that at this point.
23 But he is asking the Court to allow him to have discovery
24 so he can get some of these items so he can pursue his
25 case.

1 And, as I said, previously in front of Judge Couch we
2 didn't get a ruling so we couldn't --

3 THE COURT: All right. Tell me specifically, now.
4 Give me a list of what he's looking for.

5 MR. RICHEY: No. 1, he's looking for a copy of the
6 traffic ticket that the officer wrote for -- from
7 disregarding a stop sign. Apparently that ticket if I am
8 not mistaken -- it's not at the Cherokee County Courthouse
9 for some reason. It may be in Mr. Poole's file. But he
10 wants a copy of that ticket. That ticket was ultimately
11 dismissed.

12 There's a search warrant, and an affidavit came with
13 that search warrant, that he doesn't have. They found some
14 items pursuant to a search warrant. He doesn't have that
15 to review.

16 Also, there was some waiver-of-rights forms when they
17 talked to him that he does not have and would like to
18 review those.

19 It may be that these things don't exist, but without
20 the discovery we would not be able to tell whether they
21 exist or not.

22 Also, there's a DNA swab that was taken. There was a
23 DNA swab taken, and he's trying to figure out what was that
24 used for in terms of the evidence. And we don't know where
25 the swab exists, where it's at but --

1 THE COURT: They took a buccal swab from him?

2 MR. RICHEY: Yes, sir.

3 THE COURT: This all relates to the -- to a burglary
4 conviction --

5 MR. RICHEY: Yes, sir.

6 THE COURT: -- that's the subject of this post
7 conviction relief.

8 MR. RICHEY: Yes, sir.

9 THE COURT: Okay. Is that it -- traffic ticket,
10 search warrant, waiver-of-rights form and buccal swab?

11 MR. RICHEY: I'm sorry, Your Honor. They took blood
12 instead of a swab. He went to the hospital, and they took
13 a vial of blood from him.

14 That's all the items that were requested. But as a
15 discovery matter, I'm assuming I can get the file
16 information that we won't have to be back before the Court
17 on this.

18 THE COURT: All right. Ms. White.

19 MS. WHITE: Yes, Your Honor.

20 I guess to go back to the motion for recusal first,
21 the state would submit that Mr. Brannon was never convicted
22 of any actual crime for the alleged burning or attempted
23 arson of the courthouse. And that case obviously -- it is
24 a 7th Circuit courthouse. But the state submits there's no
25 reason for recusal.

1 Your Honor did not represent -- or did not preside
2 over any charges that he's previously been in court for.
3 So I don't think there's any need for that.

4 In regards to the discovery motion, obviously
5 discovery is not standard in PCR except for in death
6 penalty cases.

7 And addressing, I guess, each of the issues starting
8 from the last one, the DNA evidence, I believe the trial
9 transcript reflects that they found some hairs and blood
10 maybe at the scene.

11 However, those were never tested or compared to Mr.
12 Brannon, because Mr. Brannon actually took the police to
13 his home to show them the guns that were stolen from that
14 particular home, which he then gave back to the police and
15 which were identified by the homeowner as the guns that
16 were stolen from his home, in addition to admitting to
17 taking other paperwork and throwing those away.

18 So they -- I think it's clear from the transcript that
19 there was no need to and that they did not actually even
20 test that because of his admission and his actually showing
21 them the guns and the paperwork that was -- or where he
22 threw the paperwork away that was stolen from that
23 particular house.

24 THE COURT: All right. So there was -- he did give a
25 specimen or a sample of blood --

1 MS. WHITE: I --

2 THE COURT: -- but it's not been tested by anybody for
3 any reason?

4 MS. WHITE: From my understanding -- I have no record
5 and we've not been told that it was tested. The testimony
6 at the actual hearing did not use any kind of DNA evidence
7 whatsoever to -- to try to place him at the scene. So that
8 was never actually used in a hearing at all.

9 THE COURT: All right.

10 MS. WHITE: In regards to the traffic --

11 THE COURT: Well, let me ask Mr. Richey.

12 How is that going to benefit him if they took a blood
13 sample but haven't used it for anything? He's got more.

14 MR. RICHEY: Because that -- well, we don't have any
15 of the samples that they took at the scene.

16 It's our position that he did not go in that house.
17 Okay. And without the use --

18 THE COURT: I thought you said you were looking for
19 his blood sample that was taken.

20 MR. RICHEY: Right. Without that sample we can't even
21 attempt to try to match it or anything. We can't do
22 anything. We're asking to have access to the sample, to
23 the testing, and we've had none.

24 THE COURT: There is -- she tells me there is no
25 testing, but he's got more blood. I mean, they took the

1 blood to match up with something. They didn't do any
2 matching or testing.

3 MR. RICHEY: Right.

4 THE COURT: So I don't know why you need his blood
5 back.

6 MR. RICHEY: Well, Your Honor, I think if we can get
7 the sample that they had, plus the other -- I say sample.
8 If there's a collection of his DNA somewhere they took and
9 have the stuff they found at the scene, the blood, then we
10 could make a match to determine whether my client was
11 ever -- my client denies being in the house. Now, he says
12 that he was in the possession of receiving stolen goods but
13 he never went in that house.

14 MS. WHITE: Your Honor, if I could just clarify, I
15 think page 195 of the actual transcript, the police when
16 they did the crime scene, they retrieved hair and fibers
17 from a windowsill and broken glass.

18 But from my understanding in this particular case, the
19 one that he was convicted of, the burglary, there was no
20 blood found and used at all in this case. In that trial he
21 was actually found not guilty of one of the burglaries.
22 And I don't know if that's the one that he alleges there
23 was blood evidence at.

24 But in the case that he was actually convicted of it
25 was hair and fibers that were never used. No DNA was used.

1 THE COURT: Okay. All right. Tell me about the
2 waiver-of-rights form.

3 MS. WHITE: The waiver-of-rights form, I don't have
4 one either. They did have a Jackson vs. Denno hearing in
5 regards to the voluntariness of his statement. That was
6 actually held.

7 The judge did find at that time that the statement
8 that was given was voluntary. They had various testimony.
9 His attorney cross-examined everybody.

10 I do not have a waiver-of-rights form in my packet
11 from the clerk's office, so I'm not aware of one that
12 exists at this time although --

13 THE COURT: Okay. Mr. Richey, what you're going to
14 have to do is just serve a subpoena on the -- is this the
15 Cherokee County Department that investigated the case?

16 MS. WHITE: I believe so, yes, sir.

17 THE COURT: Just serve a subpoena on the sheriff and
18 tell him you need a waiver-of-rights form.

19 MR. RICHEY: Yes, sir.

20 THE COURT: All right. Search warrant.

21 MS. WHITE: The search warrant I'm -- again, I'm not
22 aware of what -- what that is for. It's according to my
23 reading of the transcript and everything -- he actually
24 took after making a statement the police to the house that
25 he had a key and entered in and pointed out the evidence.

1 I'm not aware that there was a search warrant ever issued
2 in that case.

3 THE COURT: All right. Mr. Richey, have you checked
4 with the -- with the sheriff's department, and-or the
5 magistrate's court, and-or the circuit court regarding the
6 existence of the search warrant, whether it's been filed
7 with any court? Have you checked anywhere?

8 MR. RICHEY: I checked with the circuit court and the
9 magistrate court.

10 THE COURT: They don't have it?

11 MR. RICHEY: Didn't have it, Your Honor.

12 THE COURT: Did you check with the sheriff's
13 department to see if one was even sought?

14 MR. RICHEY: No, sir. I went to --

15 THE COURT: Check with the sheriff's department and
16 with the solicitor's office and, you know, if they say they
17 have it and won't give it to you, let me know.

18 MR. RICHEY: Yes, sir.

19 THE COURT: All right. And the traffic ticket.

20 MS. WHITE: The traffic ticket, Your Honor, I believe
21 that he was stopped. There had already been issued a
22 be-on-the-lookout for that particular car.

23 The policeman, I believe, that stopped him actually
24 did stop him for a traffic violation, disregarding a stop
25 sign, which he -- looking at my notes -- I believe he

1 actually -- according to the transcript as well -- there
2 was a bench trial on that disregarding a stop sign and he
3 was found guilty and sentenced to time served.

4 And then the -- there was also, I believe, a ticket
5 for failure to have a driver's license in hand. And I
6 think that one he just pled guilty to.

7 It's the state's position that there's no need for an
8 actual traffic ticket. There was testimony at the trans --
9 at the actual trial and hearing about the stop. I don't
10 believe that there's any need for an actual traffic ticket
11 to evidence anything in this case.

12 THE COURT: All right. Mr. Richey, how is the actual
13 traffic ticket going to help you, assuming it exists
14 somewhere?

15 MR. RICHEY: Well, he -- he wants the ticket to put
16 into evidence and show there was an invalid stop. The
17 actual ticket itself, I mean --

18 THE COURT: Won't establish anything.

19 MR. RICHEY: No. The actual ticket itself won't
20 establish whether it was a legal stop. I think the
21 evidence will establish that.

22 But my client has requested I get the actual ticket.
23 And I'll just tell the Court I did go to the Cherokee
24 County Magistrate Court that issued the ticket. They
25 didn't have a copy of it.

1 They did dismiss the ticket -- that was my
2 understanding -- at the trial.

3 But what happened in this case, Your Honor, briefly,
4 is that he had some stuff pending in magistrate court when
5 he got this life sentence. They didn't pursue it, the
6 solicitor's office. And that's the same with his case
7 against the courthouse. They didn't pursue it because he
8 got a life-without-parole.

9 It's still pending, but they're not going to do
10 anything with it while he's got this life-without-parole
11 sentence, so.

12 THE COURT: All right. Well, the traffic ticket, I
13 don't know where that would be unless -- do they have a
14 record of it, like a number, a ticket number?

15 MR. RICHEY: Yes, sir. They've got a printout.

16 THE COURT: Have you checked with the Department of
17 Public Safety to see if it had been reported or turned in
18 to the Department of Public Safety?

19 MR. RICHEY: No. I spoke with the solicitor in this
20 case, and an investigator, one of the investigators. They
21 dismissed that ticket because they didn't see the need to
22 pursue them. So I can get --

23 THE COURT: Well, what happened to the original ticket
24 is what I'm saying. Do they have a copy of it?

25 MR. RICHEY: Oh, no, no. The solicitor's office and

1 the Court doesn't have it, the magistrate's court.

2 THE COURT: Are those -- are those sent into the
3 Department of Public Safety or the highway department?

4 MS. WHITE: The only thought I was going to have, Your
5 Honor, is that I think Mr. Brannon filed an appeal on this
6 traffic ticket.

7 THE COURT: Right.

8 MS. WHITE: So maybe it -- maybe it was with appellate
9 defense.

10 He was found guilty, I think, originally with a bench
11 trial for disregarding the stop sign and filed an appeal.
12 And I think they remanded back, maybe back, which is at
13 what point it became dismissed. So maybe appellate defense
14 had it.

15 MR. RICHEY: No. I checked the appeal file in the
16 circuit court where it was appealed. I checked that file.
17 It wasn't in that appeal file in circuit court.

18 THE COURT: All right. Well, okay. I don't see any
19 need for discovery of the traffic ticket. The state
20 doesn't have it. It might be obtained through other
21 sources, but I don't see a need for it, quite frankly. So
22 that motion is denied.

23 I don't see the need for the blood sample that he
24 gave. That motion is denied.

25 The waiver-of-rights form can be obtained by simply,

1 you know, serving a subpoena on the sheriff and having him
2 bring to it the hearing or whatever.

3 And the same goes for a search warrant if they exist.
4 I'm satisfied if they do exist Ms. White can just, you
5 know, check with the solicitor's office. I'm sure if they
6 have it they'll give you a copy of it. No reason not to.
7 But if they don't have it, they don't have it. But they
8 don't maintain possession of it anyway. They might have a
9 copy of it.

10 The sheriff's department has the original
11 waiver-of-rights form and the magistrate's court should
12 have the search warrant if they issued it.

13 All right. So the request for discovery is denied.

14 And I don't need to address any recusal request unless
15 it comes back up before me.

16 MS. WHITE: Okay, Your Honor. So you want us to go
17 ahead and proceed on trying to get these copies and provide
18 them to the defense and then reset this for another roster?

19 THE COURT: Well, if they -- if it's something that
20 bears on the ineffective assistance of counsel, I don't
21 know what it could show. But I don't know what the case is
22 about either, so.

23 MS. WHITE: Well, Your Honor, we have -- we have a
24 witness today who would be happy to go ahead and go forward
25 and then leave the record open if you feel like it's

1 necessary.

2 THE COURT: All right. Well, let me do this.

3 Mr. Richey, let me ask you. What do you see the
4 benefit -- if you had the search warrant and you had the
5 waiver-of-rights form, what benefit would it be? Is he
6 making allegations of ineffective assistance?

7 MR. RICHEY: Yes, sir.

8 THE COURT: How would those documents, you feel, could
9 relate to those allegations or benefit you in establishing
10 it?

11 MR. RICHEY: Well, Your Honor, as to the search
12 warrant it is our position that there was a search warrant
13 that provided -- we -- my client never got notice of it,
14 one. And the house was searched.

15 I believe that counsel could have made a motion to
16 suppress the stuff based on some faultiness of the search
17 warrant. But without the search-warrant affidavit I don't
18 know what's in it. And if that search-warrant affidavit
19 has information that directly relates to the stop, as well
20 as the stop being pretense, then -- then I think that
21 borders on ineffective assistance of counsel if that stuff
22 exists.

23 Because, see, it's our position that this stop was not
24 because of disregarding the stop sign. We think that was
25 just a pretext and that the stop illegal.

1 Now, if that search warrant has something, something
2 in it -- the affidavit that relates to that stop -- then I
3 would need to ask counsel about how he related those things
4 about how -- well, I think those are intertwined within
5 themselves.

6 But I believe that the Court should continue the case
7 because I think with -- Mr. Brannon got a substantial
8 sentence. And the items we're asking for, I think it would
9 be -- I think it would be more reasonable to have this --
10 this information off the table, you know. And I don't
11 know. Mr. Poole may have some of this information in his
12 file. I don't know. If he does we --

13 THE COURT: Have you asked him about it -- have you
14 asked him about it?

15 MR. RICHEY: No, sir, because we've asked for
16 discovery. And I asked the state first if they opposed it,
17 and that's not my client's.

18 THE COURT: Well, I know. But have you talked to Mr.
19 Poole? Well, I know he's not your client, but he's a
20 material witness in the case. There's nothing wrong with
21 talking to or interviewing a material witness before you
22 present anything.

23 MR. RICHEY: I understand. It's been my position when
24 the state denies a request for discovery, then that
25 information I'm not entitled to until I go before the

1 Court. But I'll give the Court --

2 THE COURT: Yeah. Mr. Poole's not -- he's not the
3 state.

4 MR. RICHEY: Yes, sir.

5 THE COURT: I don't think.

6 All right. Well, I'm going to deny the motion to
7 continue it and deny the motion for recusal and presently
8 deny the motion for discovery.

9 If during the hearing it is determined those are
10 relevant matters, then we can always hold the record open
11 and reconvene if we need to.

12 Okay. All right. Let's proceed.

13 MS. WHITE: Your Honor, I can give a brief procedural
14 history if we're going to proceed now.

15 THE COURT: Okay.

16 MS. WHITE: Mr. Brannon was represented at trial by
17 Roger Poole. And he proceeded to trial April 13th of 2006
18 on charges that he had been indicted for February of '04 --
19 two burglary first charges and a grand larceny.

20 Ultimately, he was found not guilty of one of the
21 counts of burglary, found guilty of the grand larceny and
22 the additional count of burglary and because of previous
23 sentences or previous history received a
24 life-without-parole sentence on the burglary and five years
25 concurrent on the grand larceny.

Ricky Brannon
Direct examination by Mr. Richey

1 He did file an appeal. The conviction was affirmed
2 and the remittitur was submitted July 8th of 2008.

3 And then he filed this application July 10th of 2009
4 alleging ineffective assistance of counsel and various
5 other claims regarding conflict of interest in the
6 7th Circuit Solicitor's Office, including due process,
7 obstruction of justice. And order of disqualification is
8 one of the claims.

9 I believe Mr. Richey had submitted recently an amended
10 application as well which alleged some additional claims.
11 But I'll turn it over to Mr. Richey at this point to go
12 forward.

13 THE COURT: All right. Mr. Richey.

14 MR. RICHEY: We call Mr. Brannon.

15 RICKY BRANNON, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. RICHEY

18 Q Sir, will you state your name, please?

19 A Ricky Brannon.

20 Q You're going to have to speak up.

21 A Ricky Brannon.

22 Q Mr. Brannon, are you currently in the Department of
23 Corrections?

24 A Yes, sir.

25 Q And what are you in the Department of Corrections for?

Ricky Brannon
Direct examination by Mr. Richey

1 A Life without parole, first degree burglary and grand
2 larceny.

3 Q Okay. And who represented you on those cases?

4 A Mr. Roger Poole.

5 Q And you have filed an application for post conviction
6 relief, is that correct?

7 A Yes, sir.

8 Q And you believe that Mr. Poole did not effectively
9 represent you.

10 A Yes, sir.

11 Q One of the things that you allege is that Mr. Poole
12 did not properly investigate the case, is that correct?

13 A Yes, sir.

14 Q And was there a potential witness out there that you
15 wanted Mr. Poole to talk to?

16 A Yes, sir.

17 Q And who was that?

18 A I only know the witness by the first name, Tasha. She
19 was with me on the actual date that I was stopped. And
20 that's the date they allege the crime happened. And
21 Cherokee County Sheriff's Department stopped me driving a
22 vehicle which belonged to my girlfriend. The vehicle did
23 not belong to me.

24 She was with me that day, and they elected to let her
25 go. And I asked Mr. Poole to get her address and number

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Direct examination by Mr. Richey

1 and stuff like that because I didn't know that information,
2 that she was a witness, material witness, to the fact of
3 where I was that day.

4 And as far as the guns were concerned, about me
5 purchasing the guns, speaking with Mr. Poole several times,
6 he never -- at least two or three times -- he stated he
7 couldn't -- he'd check into it, but he never did get -- get
8 the information.

9 Q Let me ask you this. Let's go back a little bit.
10 This was an alleged burglary, correct?

11 A Yes, sir.

12 Q And -- and the burglary was alleged to have happened.
13 And supposedly the state's position was that you were in
14 the cul-de-sac and got out of the car and allegedly went to
15 the house and robbed it and left, correct? That's a theory
16 the state used, not --

17 A Yes, sir.

18 Q That's not to say correct. That's a theory they used,
19 correct?

20 A Yes, sir, the state theory, sir.

21 Q And then -- then at some point a car that resembles a
22 car that was supposedly in the cul-de-sac was stopped. And
23 you were in that car as the driver, is that correct?

24 A No. What happened was that it is alleged that the
25 date before the actual burglary a lady recognized a vehicle

Ricky Brannon
Direct examination by Mr. Richey

1 similar to the vehicle that I had.

2 Q And they contacted your girlfriend first.

3 A Right.

4 Q Is that correct?

5 A And she took her tag down. And the car belonged to my
6 girlfriend.

7 Q Right. And so subsequently you got stopped in the
8 car.

9 A I got stopped, and my girlfriend told them that I had
10 the vehicle. So they went to my home and stopped me.

11 Q Okay. So during this particular case you were
12 never -- you were never apprehended or anything near the
13 home, correct?

14 A No, sir, no, sir. This was the next day.

15 Q All right. And at some point the police stopped your
16 car, is that correct?

17 A Yes. The police stopped me for failure to stop for a
18 stop sign that didn't exist at the time. And I pointed it
19 out to him.

20 For some reason he then proceeded to ask me did I have
21 my -- my license. And at the time I gave him my license,
22 but I didn't have my physical license on me. And he called
23 it in. I had no detainers.

24 And he told the -- the passenger in the vehicle that
25 she was free to go and get out. And at that point in time

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Direct examination by Mr. Richey

1 detectives pulled up, took me out of the vehicle and put me
2 in the back seat of the car and proceeded to search the car
3 without my permission.

4 Evidently, they had already went to my girlfriend's
5 home and gathered information about where I stayed at and,
6 you know, and that -- and that stuff -- and come and
7 searched for the vehicle, not me. They was searching for
8 the vehicle.

9 When they stopped me they let her go. They searched
10 the vehicle. And he decided to take me to jail for the
11 traffics, for the traffic stop, and never issued any
12 tickets.

13 Q Okay. So you're saying there was no ticket ever
14 issued to you.

15 A Never issued me any tickets.

16 Q And -- and so is that one of the reasons why you asked
17 for the ticket?

18 A Yes, sir.

19 Q And -- and did you and Mr. Poole ever talk about this
20 ticket?

21 A I talked to Mr. Poole several times about the ticket.
22 I told him that the tickets actually led to me being taken
23 downtown, which was happening November the 20th. I was
24 took downtown at night around about 10:00 o'clock. I was
25 put in a holding cell and kept by myself.

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1 They put -- they wrote, actually wrote, on the -- on
2 one of the forms that they fill out when you go to jail not
3 to let me use the phone or anything until the detectives
4 have a chance to talk to me. I think I have that in my
5 dis -- in my part of discovery over there.

6 The next morning instead of taking me to traffic court
7 they decide to hold me over and deny letting me see any
8 judge until I decide to talk to the detectives. And so
9 that's when I -- the first statement was supposed to have
10 came about from talking to the detective.

11 Q And in the statement did you ever admit to going into
12 the house?

13 A No, sir.

14 Q What -- what did you actually tell the investigator?

15 A The investigator wanted to know was I in some area of
16 Gaffney. And, frankly, not knowing the roads I told him
17 no, I never been in the area before.

18 He wanted to know did I have a vehicle, and I said
19 several people use the vehicle.

20 He said that can you tell us where you was. And I
21 said, well, you stopped the person that was with me,
22 because the detective was part of the traffic stop. I said
23 you can ask the person that I had with me about my alibi.

24 And after that I told them I didn't want to talk to
25 them any more, but they refused to let me see the judge

Ricky Brannon
Direct examination by Mr. Richey

1 or -- or to use the phone. So I couldn't call nobody from
2 the jailhouse.

3 Q Okay. And so -- and in the transcript -- well, it's
4 alleged that you showed the police where some of the stuff
5 was, is that correct?

6 A On the -- on the second interview the police came back
7 to me after I spoke to them and told them I didn't want to
8 see them any more.

9 And when they came back to me they tried to
10 interrogate me about separate crimes that I was never
11 charged with, and which they failed to mention anywhere in
12 this transcript -- between another detective. And he
13 wanted to know. He said, listen, the guy had some
14 important stuff and missing that, a house got broken into,
15 you can help me any kind of way, then I would make sure
16 that the prosecution and -- and the alleged victim know
17 that you helped.

18 And I said, well, listen, I don't know too much. I
19 said, listen, I -- I got guns, I got two guns. And he said
20 can you show me where they at. I said, well, they's at my
21 aunt's -- my aunt's house. He said do you stay there. I
22 said, no, I do not stay there. I said I go there every now
23 and then because she's elderly.

24 So he decided to take me to my aunt's house that
25 evening, decided to take me to my aunt's house. And he got

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1 the keys out of property, and he entered into the house
2 himself.

3 I was handcuffed at the time. He went in, and I
4 showed him where the guns was. And I gave him back the
5 gun, so. And that's how that statement had came about.

6 Q Was -- when you gave that statement did you sign a
7 waiver of rights?

8 A For that statement there?

9 Q Uh-huh.

10 A I -- I don't recall. Like I said, they -- they
11 interrogated me about a whole different crime.

12 Q Do you recall whether you signed a waiver of rights at
13 all?

14 A I think I did sign something, but I signed before I
15 even talked. I mean, I signed like before we even
16 discussed anything. They had me sign a waiver of rights,
17 what I'm saying, so.

18 Q Okay. And you have asked for a copy of that waiver of
19 rights, correct?

20 A I asked for -- I asked for the -- in the Denno hearing
21 of this trial Officer Mike Fowlkes alleged that I --
22 incident -- initiated the second contact with the police
23 after I told him I didn't want to speak to him.

24 See, that was a -- that was a false testimony. They
25 came back to me and tried to talk to me about a different

Ricky Brannon
Direct examination by Mr. Richey

1 burglary that happened that was unrelated to the burglary
2 they had me charged with. And it was him and Mark
3 Vanderburg and not the detective that he alleged in the
4 trial.

5 Now, they never made a waiver of rights or anything.
6 They never made no statements or nothing about that at all,
7 period. Right. So they never turned that over.

8 And I do believe that Mr. Poole did try to go to them
9 and get those, all statements, concerning any type of
10 interrogation. They never alleged none of that. So they
11 didn't tell none of that.

12 And I had to actually sue them. And when I sued them
13 for taking my blood illegally, because they came to me and
14 said we need to get your blood from you that you have,
15 there's DNA in the case -- they alleged there was DNA in
16 the case, but they didn't give me no affidavits or nothing.

17 And they took me to the hospital and made me give them
18 blood down to the hospital. They said it was matched
19 with -- matched the blood, whatever DNA they had from the
20 burglary scene.

21 Q Do you believe that Mr. Poole had a conflict in your
22 case?

23 A At the time after I was charged with this, this
24 burglary here, it was alleged that I had something to do
25 with setting the Cherokee County Courthouse on fire.

Ricky Brannon
Direct examination by Mr. Richey

1 I moved in front of Judge Couch to dismiss my
2 attorney. And I was taken to Laurens, South Carolina, in
3 front of Judge Couch, and he dismissed my attorney who was
4 with Cherokee County Public Defender, because he's a county
5 employee. And he dismissed him for being a conflict of
6 interest and then turned around and appointed me Mr. Poole.

7 Now, at the time I didn't know Mr. Poole because I
8 wasn't aware that the 7th Circuit really comes out of
9 Spartanburg. So at the time I didn't know that Mr. Poole
10 was a defense attorney out of Spartanburg, South Carolina,
11 this county right here.

12 If I would have known that, then I never would have
13 accepted him as an attorney, because I feel like Mr. Poole
14 had other clients that had to deal with the 7th Circuit
15 Solicitor's Office who's also recused from prosecuting my
16 case.

17 They was dismissed also, you know what I'm saying.
18 Not only was my attorney dismissed. The 7th circuit was
19 dismissed. And they was my initial prosecution of the
20 case, but they had to give it up to the attorney general's
21 office.

22 And I feel like Mr. Poole withheld that information
23 from me and gave me ineffective assistance of counsel all
24 the way around, you know. He basically just pretty much
25 laid down on the case.

Ricky Brannon
Direct examination by Mr. Richey

1 Q Okay. And you were served with notice of seeking
2 life, is that correct?

3 A I was -- I was -- I was served with notice by the
4 7th -- by the 7th Circuit Solicitor's Office with a notice
5 to seek life, not life without parole.

6 And I do believe it's life without parole. There was
7 a notice to seek life, but the 7th Circuit was a conflict
8 in interest also.

9 Q So you're saying that notice was invalid.

10 A It was invalid, a conflict.

11 Q And -- and -- and do you believe notice was invalid
12 because it did not tell you it was life without parole?

13 A I believe on both ends that the notice by them is --
14 will be in conflict with their dismissal from my case from
15 any prosecution of it, and also it would -- it doesn't
16 inform me, tell me what it is. It says life, notice to
17 seek life. It's not life with a statute. It's just life,
18 so.

19 Q And -- and did you discuss any of that with Mr. Poole?

20 A I discussed -- well, according to the -- as far as the
21 life sentence thing, I don't believe I discussed that with
22 Mr. Poole. I don't think we had any real discussions
23 concerning me getting any type of forms about the life --
24 life sentence, at all. I don't think we had any
25 discussions at all about that.

Ricky Brannon

Direct examination by Mr. Richey

1 I think he was aware because he told me he was going
2 to talk to my original counsel when I got Mr. Poole who was
3 also a conflict of interest. And he was going to get
4 updated from my original attorney who was dismissed.

5 Q And during the course of your trial one of the
6 investigators, Henson, he was deemed an expert in this
7 case, is that correct?

8 A He was -- Investigator Henson and Detective Mike
9 Fowlkes was deemed expert witnesses in the case.

10 And I feel like that Mr. Poole had an obligation to
11 inform the Court that due to the courthouse and all of the
12 things that was said in the news media concerning the
13 sheriff's department about how try to convict me and get
14 the most sentence they could out of me that he was -- he
15 was something like a hostile witness towards me and that he
16 made a conflict to me -- to made a -- to be made a (sic)
17 expert witness in the case, is, you know, pretty much
18 sealing the deal.

19 Q So it's your position he should have objected to them
20 being qualified as an expert.

21 A Yes, sir, yes, sir.

22 Q And -- and -- and in terms of advising you as to the
23 state's evidence, did you believe that Mr. Poole did an
24 adequate job of that?

25 A I only met Mr. Poole three times. And the first time

Ricky Brannon
Direct examination by Mr. Richey

1 Mr. Poole came to speak with me was generally just
2 introduct -- introducing himself.

3 And we tried to go over a little bit of the case, and
4 I tried to give him a little bit of what I wanted him to
5 really do as far as the -- the traffic stop was concerned,
6 because it is my position that all of the evidence in my
7 case that was related to it came from the illegal traffic
8 stop, you know what I'm saying.

9 And everything -- everything from the -- me going to
10 the jailhouse -- I was arrested for the traffic stop. And
11 I was trying to get Mr. Poole.

12 I had a pending case in the magistrate courts, which
13 Mr. Poole failed to show up for, dealing with the traffic
14 stop.

15 I also had a (sic) original attorney that didn't do
16 anything according to the traffic stop either. I feel like
17 that was -- you know, I asked him to please come to the
18 hearing. I think that hearing was on -- on or about April
19 of 2006.

20 Q Okay.

21 A Maybe May or June -- maybe June -- May -- May of 2006.
22 Mr. Poole failed to show up.

23 And I went in front of the magistrate court, Cherokee
24 County Magistrate Court, with the solicitor's office who
25 was -- who was already recused or disqualified from my

Ricky Brannon
Direct examination by Mr. Richey

1 case.

2 Now, they knew the traffic stop was a part of my
3 burglary trial, and they showed up in representation of a
4 state's witness. And it was just me against the
5 solicitor's office. And I felt like Mr. Poole didn't -- he
6 didn't -- he didn't show up for that also.

7 Q And -- and that was -- and that was the case that was
8 subsequently reversed on appeal. You were convicted
9 initially and got reversed.

10 A Right. I was convicted because I was -- I was taken
11 to Blacksburg with me, and I asked for an attorney and was
12 denied an attorney.

13 And Judge Macaulay -- I did an appeal of the case just
14 by listening to other inmates. I didn't really know how to
15 do appeal. I just gave something to the -- what's his
16 name -- just by listening to other inmates. I did an
17 appeal. And Judge Macaulay reversed the conviction because
18 I was denied counsel.

19 But at the time I was already appointed Mr. Poole, I
20 mean, Mr. -- the Cherokee County Public Defender's Office,
21 not Mr. Poole. I was already appointed Mr. -- I can't
22 think of his name right now. But I had two attorneys. I
23 had initial attorney, my initial attorney. I was already
24 appointed him. But he didn't -- he failed to show up too.

25 But I was granted a new trial in the magistrate court

Ricky Brannon
Direct examination by Mr. Richey

1 with Mr. Poole, and he didn't show up neither.

2 Q And so your position -- really to narrow the framework
3 down, your ineffectiveness of counsel as to Mr. Poole is
4 one that you don't believe that he properly investigated
5 the stop which started the chain that was then going.

6 A Yes, sir. To me, I mean, in retrospect looking at it,
7 Mr. Poole should have investigated the stop, should have
8 get the information from the solicitor's office concerning
9 the actual witness or the girl that was in the car whom
10 they failed to charge. They didn't charge her with
11 nothing. And they just basically let her walk free.

12 At the time according to the information they only had
13 a car. They didn't have no -- they wasn't a suspect. I
14 wasn't a suspect. It was just looking for a car. And that
15 was it.

16 So everything pertaining to the stop that led to me
17 being arrested for a traffic offense, which I should have
18 got a ticket for, which I failed to get any tickets, was
19 plainly in error.

20 Q And -- and -- and on the burglary where the hair was
21 found, were you convicted on that burglary, or were you
22 not?

23 A I was -- I was convicted for that burglary. The other
24 burglary I was found not guilty on.

25 Q And that is a case where your blood was taken.

Ricky Brannon
Direct examination by Mr. Richey

1 A Yes, sir.

2 Q Did you have any conversations with Mr. Poole about
3 how the DNA could be matched to determine whether you were
4 there or not?

5 A I had -- I had the conversation with the original
6 attorney who dismissed for conflict of interest.

7 I had a conversation with Mr. Poole about getting the
8 test results because I -- it took me three years to go to
9 court. This case happened in 2003. All the incident
10 happened in 2003. I went to court in 2006.

11 And I kept trying to get what was the results of the
12 test, because up under an affidavit or whatever they
13 allege, the police came to me and said, listen, we've got
14 physical evidence, you know, from this crime scene and we
15 believe.

16 Now, they went to the magistrate court for this. We
17 believe that your -- your DNA matches this, this physical
18 evidence. And they forced me to give them blood. And they
19 got this blood sent to SLED right now. And he never -- he
20 never got a result.

21 Q So what your request is, to have the blood tested
22 against to see DNA.

23 A Yeah, yeah. It was un, un -- unbeknownst to me. I
24 didn't know that the blood wasn't tested until I got my
25 discovery filed in 2007 after I was convicted in April of

Ricky Brannon
Direct examination by Mr. Richey

1 2006.

2 Q And so did you talk to Mr. Poole about doing that?

3 A Yes, I talked. See, I didn't know the blood wasn't
4 tested. I had no idea at that time. I just kept asking
5 about the results of the test. The whole time it hasn't
6 been tested.

7 The blood was used for other crimes. The state just
8 went searching for other crimes with the blood, you know,
9 and they never tested it towards the reason that they came
10 and got it for.

11 Q And so -- I'm sorry. Excuse me, sir.

12 A So they never tested it for the reason they come and
13 got it for.

14 But at the time of trial they only -- they never --
15 they never -- they phatically -- emphatically answered the
16 question when you asked them about the blood. They just
17 stated that we don't know, we never looked at the test
18 results, you know.

19 They made it sound like, you know, they never -- they
20 hadn't got the results back or anything.

21 Q So it's your position as to the traffic ticket you
22 never received any such ticket.

23 A Right. I never got any ticket at all, period.

24 Q And you believe the -- that not having a ticket or
25 being able to show that wasn't -- no ticket was ever

Ricky Brannon
Direct examination by Mr. Richey

1 written that you could attack the credibility of the stop
2 petty officer.

3 A Yeah. Not just that. In the trial transcript
4 Officer -- Deputy -- I can't think of his name right now.
5 He gave testimony concerning the traffic stop, but he gave
6 insufficient testimony.

7 He failed to allege that the car was searched. He
8 stated that he gave me a courtesy summons and -- and when
9 Mr. Poole asked him during my trial can you produce -- do
10 you have a copy of this traffic ticket, he stated no.

11 So it was like in error to testify to something that
12 he's not even produced and you would never seen, you know.
13 And my whole case really relied on credibility.

14 It was all about -- it was a circumstantial-evidence
15 case, credibility. It was no overwhelming evidence. And
16 he allowed the officer to testify to something that
17 document he'd never seen. He alleged giving me a summons.
18 He never wrote a ticket at all. And you don't arrest a
19 person for a summons.

20 Q And -- go ahead. I'm sorry.

21 A You don't arrest a person for a courtesy summons. But
22 he took me to jail anyway.

23 Q And it's your position at the time this crime happened
24 there wasn't a stop sign.

25 A There was no stop sign exists. And I -- I

Ricky Brannon
Direct examination by Mr. Richey

1 emphatically wanted to go to court and prove that point.
2 But the solicitor -- the solicitor's office and the
3 stopping officer, as well as the magistrate, elected to
4 drop the charge in 2008, which was well after I was
5 convicted.

6 So I couldn't even raise a Fourth Amendment violation,
7 which was part of the reason going back to that, that
8 second trial that was ordered by Judge Macaulay, I was
9 trying to allege that these people illegally stopped me.

10 And the solicitor's office showed up, they said, you
11 know, that -- that they didn't have jurisdiction over the
12 case, that it was in the hands of the attorney general's
13 office -- my traffic stop case, now.

14 So therefore when I said I was prejudiced by that, I
15 was prejudiced because I didn't have a (sic) attorney. Mr.
16 Poole wasn't there.

17 And the solicitor's office came in and represented a
18 state's witness who testified in the trial and basically
19 got my traffic stop continued, and really continued all the
20 way into 2008 until they dismissed it. And that was in
21 2006.

22 Q So you basically, you didn't have a trial on the
23 traffic.

24 A No. They delayed it. They didn't want to have a
25 trial because it was attack on 4th Amendment violation.

Ricky Brannon
Direct examination by Mr. Richey

1 They knew what they was doing.

2 Q Now, was Mr. Poole appointed to represent you in the
3 magistrate's court?

4 A Mr. Poole was not appointed to represent me in
5 magistrate court, but he was my acting attorney at the
6 time. And Mr. Poole had -- through discussion already knew
7 that the case involved a traffic stop.

8 If you look at the beginning of my transcript when he
9 moves for a dismissal, he didn't say there was a stop, and
10 on my client, and some evidence was obtained from the stop.
11 So he already knew this right here was part of this -- part
12 of the case, the traffic stop.

13 Q Okay.

14 A And also dealing with the traffic stop, I had a (sic)
15 illegal search that resulted from me being taken downtown
16 in which the detective elected to go into my property. And
17 I told Mr. Poole about that too. I told him they -- they
18 went into the property that was at the detention center.

19 I'm only arrested for a traffic offense, not no
20 failure. Besides them not allowing me to see the
21 magistrate judge, they also went into the property and
22 decided to take clothing and stuff out of the property
23 without a search warrant.

24 Q So on the traffic stop you were actually taken to
25 jail, correct?

Ricky Brannon
Direct examination by Mr. Richey

1 A I was taken to jail for that.

2 Q So on the transcript...

3 MR. RICHEY: And may I approach the witness one
4 moment?

5 Q On the transcript where it said that you were issued
6 courtesy summons, on page 180, lines 11 through 13, where
7 the officer testified you were issued a courtesy summons,
8 that wasn't correct.

9 A I -- because -- because we never seen the tickets, I
10 don't have no idea what type of -- what kind of issuance I
11 got. I have -- nobody never seen the tickets. Nobody's
12 never seen the tickets. Nobody, not my attorney, not me,
13 nobody.

14 But this is testimony that he's allowing to go forth
15 in the trial, and couldn't even produce the trial, the
16 tickets in the trial.

17 And then I think he did go -- he goes on further and
18 asks them do you arrest people for courtesy summons, upon a
19 courtesy summons, instead of just issuing them a citation.
20 I had no charge for anything else but a traffic stop.

21 Q Those are -- those are the complaints you have against
22 Mr. Poole, is that correct?

23 A Yes, sir.

24 Q Okay. Answer any questions the attorney general may
25 have.

Ricky Brannon
Cross-examination by Ms. White

1 MS. WHITE: Thank you, Your Honor, I mean, thank you,
2 Mr. Poole.

3 CROSS-EXAMINATION

4 BY MS. WHITE

5 Q Mr. Brannon, just to go over a few things that you
6 said to start off with, you said that you never had
7 gotten -- you never saw any tickets for those traffic --
8 the traffic stops.

9 A I was never issued any tickets, ma'am.

10 Q Never issued any tickets. How did you know to show up
11 to the magistrate court to plead guilty to not having a
12 driver's license?

13 A Because I sat incarcerated in the county jail until
14 they come and took me up one morning and said let's go
15 to -- you're going to court for a traffic stop.

16 Q And you said that's the same way you knew to go and
17 request a bench trial for this nonexistent ticket for
18 disregarding a stop sign?

19 A I never requested a bench trial. I asked the judge.
20 I asked the judge for -- for an attorney, because it was an
21 illegal stop. And the judge denied me an attorney and said
22 you're going to have a trial now. And he wouldn't even
23 give me a continuance of the matter, so.

24 Q So at your actual trial when the officer testified
25 that you actually requested a bench trial and were found

Ricky Brannon
Cross-examination by Ms. White

1 guilty, appealed it, and then it was taken back to the
2 magistrate court, was that -- that was a lie?

3 A I never -- I never requested a bench trial. The bench
4 trial was forced upon me because the judge -- again, he
5 would not issue a continuance or give me an attorney in the
6 matter. I do believe upon Amijer vs. -- Aminger v. Hamlin
7 I'm entitled to attorney for a misdemeanor.

8 Q Now, the car you were driving when you were pulled
9 over, was that your car?

10 A No, ma'am.

11 Q That was your girlfriend's car at the time?

12 A That was my girlfriend's vehicle.

13 Q And the person that you were riding -- that was riding
14 with you -- how old was that person, do you remember, do
15 you recall?

16 A I have no idea, but she wasn't a minor like he's
17 alleging.

18 Q So the testimony that she was a 15-or-16-year-old, you
19 say, is incorrect.

20 A That's false testimony.

21 Q Okay. In regards to the car and what you said was
22 illegal search and seizure, what did they take? What did
23 they take from the car when they searched you right there
24 at the car after the stop?

25 A Well, if -- I have indictments over there. The

Ricky Brannon
Cross-examination by Ms. White

1 indictments do show that I was charged with possession of
2 burglary tools.

3 Now, and it will show that the possession of burglary
4 tools came about from me being stopped on Kelly Street. I
5 was stopped on Littlejohn Street. That was in error. That
6 was -- that was a false testimony also. But it came from
7 the traffic stop.

8 They allege that I was stopped on Kelly Street and
9 burglary tools was found in my possession in the trunk of
10 the vehicle that didn't belong to me.

11 So I was basically charged with a failure for having
12 burglary tools, which was later on in error dismissed by
13 the solicitor's office, because I guess they could show
14 that it was illegal stop.

15 Q So you were not actually charged or convicted,
16 ultimately convicted, of having anything as a result of the
17 stop.

18 A They dropped -- they dropped the indictment for the --
19 for the possession of burglary tools, but it did show that
20 I was searched right there at the scene of the crime.

21 Q And you say that that was an illegal search because
22 they never asked you or they never actually said that
23 they -- you could search the car, is that right?

24 A I'm saying, I'm saying --

25 Q You never told them they could search.

Ricky Brannon
Cross-examination by Ms. White

1 A No, ma'am. I never gave them consent to search the
2 vehicle. They never even -- they even -- they never made
3 a -- any statements or anything concerning a search even
4 happening to the vehicle. There's no affidavits concerning
5 the search.

6 Q And the convictions that you're actually charged with
7 that your you're actually attacking today, nothing is
8 related to anything that was actually retrieved from the
9 car that day, is that correct?

10 A I was retrieved from the car.

11 Q So other than your arrest --

12 A See, I'm part -- I'm part of the vehicle. They
13 arrested me and they seized me and they took me downtown.
14 They took property out of my property that came off my
15 body. So if you don't arrest me, then you don't get the
16 property.

17 Q And had you -- you stated earlier that the car had
18 actually been seen at one of the houses that was
19 burglarized, leaving the area.

20 A Allegedly.

21 Q Is that right?

22 A Allegedly the day before on the crime that I'm
23 convicted the car was actually seen by alleged burglary
24 victim on the 19th.

25 The car was stopped in my residential area on the

Ricky Brannon
Cross-examination by Ms. White

1 20th due to information they gathered from my girlfriend.

2 Q And this car -- they were able to get that information
3 because that witness actually had that full tag number of
4 the car and the description of the car, is that right?

5 A Yes, ma'am. Well, she didn't have a description. She
6 had a tag number.

7 Q She had a tag number which actually went back to the
8 ownership from your girlfriend, is that right?

9 A Yes, ma'am, as far as I'm concerned.

10 Q And your girlfriend's the one that told the police you
11 were driving the car on those days, is that right?

12 A My girlfriend told the police, according to them, that
13 I had the vehicle, that I operated the vehicle at certain
14 times of the day, that at that current moment I had the
15 vehicle right then.

16 Q And, in fact, your girlfriend testified to that at
17 trial as well, is that not correct?

18 A Yes, yes, ma'am.

19 Q Okay. And, in fact, once you were pulled over your
20 girlfriend is the one that actually told them that you were
21 living on the Kelly Street address, is that not right?

22 A I -- I think that's speculating. I -- I can't answer
23 that question.

24 Q Your girlfriend testified that you were living at
25 Kelly Street at the trial, is that not correct?

Ricky Brannon
Cross-examination by Ms. White

1 A I have --

2 Q But if the transcript reflects that you wouldn't
3 dispute that then, would you?

4 A Well, if the transcript say it, then that's what she
5 said.

6 Q Right. Now, you've -- you've testified just prior to
7 this that you weren't living at that home. That was
8 actually your aunt's home, correct?

9 A Yes, ma'am.

10 Q But then you just testified you were stopped in your
11 residential area. Does that not mean where you reside?

12 A Well, it's -- it's an area. Like I said, my aunt is
13 elderly. And several of us -- my cousins and all -- stop
14 by and checks on my aunt. We might stay a day or two, but
15 that doesn't make it our home.

16 Q But you did consider that partially your residence
17 because you referred to it as the residential area.

18 A When you say partially, I -- then I will agree with
19 that then.

20 Q And, in fact, you had a key for that residence, is
21 that not correct?

22 A We all have a key. She was like -- she was like 80
23 years old.

24 Q And that's how you were able to actually let the
25 police in the house.

Ricky Brannon
Cross-examination by Ms. White

1 A I didn't let the police in the house. I was
2 handcuffed. The police went into the property and took the
3 keys. And I do believe I have pictures in my discovery to
4 show that the keys was in the ignition of the car. The
5 police took the keys and opened the door themselves.

6 He only alleged in the trial without objection from my
7 attorney that I opened the door. They're not going to let
8 the handcuffs off me to open the door of a house.

9 Q In particular, when you were showing them guns, is
10 that right?

11 A I didn't show them the gun. I showed them the
12 whereabouts where the guns was at.

13 Q Okay.

14 A And that was up under agreement given back to them,
15 helping them out.

16 Q Now, let's talk a little bit about Mr. Poole's
17 representation.

18 After trial -- in fact, he represented you after
19 Mr. Thompson, I believe, is who it was that was originally
20 your attorney.

21 A Yes, ma'am.

22 Q And was conflicted out, is that right?

23 A Yes, ma'am.

24 Q He actually represented you probably about six months
25 prior to your trial, is that right?

Ricky Brannon
Cross-examination by Ms. White

1 A About four months.

2 Q Okay. You say four months.

3 Now, at that time he had some pretrial motions prior
4 to that, is that not right?

5 A Mr. Poole made one pretrial motion, I believe, to
6 exclude expert witness testimony up under 403, that it be
7 irrelevant or -- not irrelevant but more or less
8 prejudicial -- prejudicial.

9 Q And, in fact, he made an objection to that using the
10 evidence of a shoe print at the scene --

11 A Right.

12 Q -- based on a 403 objection, is that right?

13 A And the shoes was obtained from the traffic stop.

14 Q And, in fact, that was testimony that was provided

15 ~~that he objected to in regards to one of these experts that~~

16 you said should not have testified, is that right?

17 A Yes, ma'am.

18 Q Okay. So Mr. Poole did test -- did object to this
19 expert testimony regarding the shoe print.

20 A Yes, ma'am.

21 Q Okay. Now, did he also --

22 A He -- he -- he raised a pretrial motion to exclude it.
23 He failed to object during the trial. That's -- he didn't
24 object. He raised a pretrial motion.

25 Q And he argued that motion, and on your behalf, and it

Ricky Brannon
Cross-examination by Ms. White

1 lost, is that correct?

2 A Well, actually the judge -- he -- I don't think he
3 even ruled on it.

4 Q Okay.

5 A I think he just went forward and nobody...

6 MS. WHITE: One moment, Your Honor.

7 (Pause.)

8 Q Now, did your attorney, did Mr. Poole, also talk about
9 whether or not you would be able to have these burglary
10 charges enhanced based on prior convictions?

11 A Mr. Poole discussed nothing with me about prior
12 convictions of enhancement. He -- he never once spoke to
13 me about anything about reviewing enhancement or reviewing
14 my prior conviction to see whether or not the state has
15 lawfully enhanced my conviction.

16 Q Did he talk about that at trial? So if the
17 transcript --

18 A No. He -- he discussed at the trial about the
19 burglaries being maybe construed as a spree. But he -- the
20 judge gave him ten days to review this stuff. And he
21 decided he wanted to do it that right then and there in the
22 trial. And he didn't take the ten days to review anything
23 about -- about my past records, so.

24 Q Did Mr. Poole discuss with the state -- and it
25 referenced in the transcript at all -- whether or not these

Ricky Brannon
Cross-examination by Ms. White

1 burglary firsts could be considered burglary firsts instead
2 of maybe second or third degree?

3 A He discussed on whether they should be construed as a
4 spree constituting one conviction.

5 I think the judge did say that -- he was having some
6 people look into whether they could be construed as
7 burglary first based on the time that they was done before
8 the statute changed. But nobody -- Mr. Poole never
9 elaborated with that or anything on that.

10 Q Okay. I'm just going to refer. Page 39 of the
11 transcript, the Court actually says, "Let me put on the
12 record. We had an in-chambers discussion concerning the
13 definition of burglary first."

14 And the Court says, "The case rises to burglary one
15 because of the defendant's prior convictions or guilty
16 pleas to two or more burglaries."

17 Does that mean, does that indicate, that Mr. Poole
18 actually spoke in chambers with the judge about that?

19 A They had, like I say, I'm thinking, I'm pretty sure,
20 that the record is clear, said they had a discussion later
21 on. And I'm not -- I don't have the actual page.

22 The judge did also say that they -- they went over.
23 They was trying get -- put some people on it, was trying to
24 figure out do these crimes actually come up to the statute,
25 talking about a serious and most serious due to the fact

Ricky Brannon
Cross-examination by Ms. White

1 that they was done in 1991. And even -- now, they did have
2 a discussion, like you said, counsel, but it was --

3 Q I'm sorry.

4 A But they did have a discussion without my being aware
5 of it at the time.

6 Q And, in fact, once you were convicted they actually
7 went through on the record and discussed whether or not
8 these were a spree as you mentioned. I believe, in fact,
9 Mr. Poole offered case law to try to fight for that.

10 A No, sir. He offered case of Woody.

11 Q State vs. Woody?

12 A Yeah, State vs. Woody. And I think that Mr. Poole did
13 not really do his homework on the case because Woody was a
14 little different from what he was trying to argue in front
15 of the court.

16 Q And, in fact, your charges were actually
17 September 22nd, 24th and 25th and 27th, is that right? And
18 Mr. Poole did make that motion, and the Court respectfully
19 denied it, is that right?

20 A They denied that.

21 Q Okay. Now, one quick note about you mentioned that
22 you never received notice, or you received notice from the
23 7th Circuit about life sentence. But you said you never
24 received notice of life without parole.

25 A Yes, ma'am.

Ricky Brannon
Cross-examination by Ms. White

1 Q So in the transcript when Mr. Pauling says he has
2 affidavits of service from August 2nd of 2004 by the
3 7th Circuit Solicitor's Office and the A. G.'s office,
4 November of 2005, where they served you with notice of
5 intent to seek life without parole --

6 A They never -- they never served me. I sat in the
7 county jail. Nobody never came to serve with me a life
8 from the A. G. office.

9 Q So the attorney was lying.

10 A I been in jail all the way since two thousand --
11 August the 1st of 2004. I sat in the county jail all the
12 way to the time I went to court.

13 The A. G. office never served me with any notice to
14 seek life without parole.

15 The only -- only documents I ever got served was from
16 the 7th Circuit Solicitor's Office, you know what I'm
17 saying, and that was just a notice of life.

18 Q So you dispute the fact that they had affidavits of
19 service at the transcript to indicate life without parole
20 was served on you in August of 2004 and November of 2005.

21 A Ma'am, if you would -- if you would calmly look at
22 your records you would see that the affidavit they
23 referring to was given to the clerk of court and was faxed
24 from the attorney general's office.

25 Nobody ever came. Nobody never came down and served

Ricky Brannon
Cross-examination by Ms. White

1 Ricky Brannon inside the county jail with a notice to seek
2 life without parole from the A. G.'s office.

3 Q And you were represented at that time, is that right,
4 by Mr. Poole?

5 A Yes, ma'am.

6 Q Okay. Now, in regards to the blood evidence that
7 you're alleging should have been discussed, what blood
8 evidence was used against you at this trial?

9 A Well, the blood evidence. Well, my attorney did,
10 Mr. Poole did, ask them did they collect DNA evidence. And
11 they did state yes.

12 And he wanted to know the results from the evidence.
13 So instead of the state being forthright and telling them
14 they never tested the evidence, which they already knew,
15 they allege they never read the record, so.

16 Q Okay. What -- what evidence was used against you at
17 your trial for burglary first and grand larceny?

18 A Well, actually no blood evidence was used.

19 Q So nothing was actually used against you.

20 A But it was alleged in the affidavit that whoever the
21 perpetrator was left his DNA evidence. So I'm pretty sure
22 that it should have been used.

23 Q But over all it actually was in your benefit that they
24 didn't use that --

25 A Well, they couldn't use it.

Ricky Brannon
Cross-examination by Ms. White

1 Q -- because nothing was used. They didn't use that
2 against you to try to place you at the scene, is that not
3 right?

4 A Well, ma'am, they can't use it if you don't test it.

5 Q Exactly. Okay. In regards to the witness that you
6 allege Mr. Poole should have had asked to come, the witness
7 that was in the vehicle with you, is she present here today
8 to testify?

9 A We couldn't get the witness, and Mr. Poole never tried
10 to get the witness. And the -- one of the problems is that
11 the state, well, the solicitor's office, alleged that they
12 had the witness' address and information.

13 Mr. Poole never sought the address information that
14 interviewed a witness. And I don't have the information
15 myself.

16 But being that she was stopped at the same time that I
17 was stopped and was let go in a, quote, unquote,
18 investigation of a burglary, and it seemed like to me as
19 a -- as a competent counsel you would go out and -- and
20 find this witness and discuss any discussion you discussed,
21 especially when I led you to her already.

22 Q And is this witness here today to testify?

23 A No, ma'am. We can't get it. That's part of
24 discovery. That's part of the discovery.

25 Q So she's not here. You don't know what she would have

Ricky Brannon
Cross-examination by Ms. White

1 testified to had she testified at trial.

2 A Yeah. She could testify. She could testify to
3 where -- where the guns came from. And she was with me the
4 day. You got to remember that the crime happened on the
5 same time that they picked me up, and she was in the
6 vehicle.

7 Q One of the crimes actually happened the day before, is
8 that not correct?

9 A That crime was found not guilty, ma'am.

10 Q Right. In regards to the tickets -- one more final
11 question -- that you never received, you did appeal those,
12 right, or appeal one of those?

13 A That appeal was turned, overturned, by Judge Macaulay
14 because I was denied counsel.

15 The solicitor, the prosecution, destroyed the
16 transcripts from the -- from my trial that I had where
17 Deputy Richard Turner testified on the transcript to
18 something totally different than what he testified in my
19 trial. And I -- and that was destroyed. And that's part
20 of the discovery, ma'am.

21 Q Just a couple of other questions.

22 Now, Mr. Poole actually had a Jackson vs. Denno
23 hearing about whether or not your statement was voluntary,
24 is that correct?

25 A I do believe that the A. G. office asked for the Denno

Ricky Brannon
Cross-examination by Ms. White

1 hearing. Mr. -- Mr. Poole almost forgot it. I think -- I
2 think the record will reflect that the A. G. office asked
3 for the Denno hearing.

4 Q And in regards to that, your statement was deemed
5 voluntary, was it not, by the Court?

6 A My statement was deemed voluntary without objection.
7 Mr. Poole failed to cross-examine anybody in -- in the
8 Denno hearing. He basically said no questions, Your Honor.

9 Q So your testimony is that Mr. Poole just didn't --
10 just -- you said just laid down. I think he didn't ever
11 fight for that at all.

12 A Mr. Poole -- Mr. Poole didn't even ask me did I
13 need -- did I want to testify during the Denno hearing. He
14 never even asked me that.

15 I think I do have an obligation to testify during the
16 Denno hearing. He never even questioned me as far as
17 that -- as far as that's concerned. I had no idea.

18 Q Did Mr. Poole make objections during your trial?

19 A I think Mr. Poole made a couple of objections to maybe
20 a couple of hearsay.

21 Q Hearsay, maybe speculation, issues having to do with
22 that expert testimony, is that correct?

23 A He failed to -- he failed to object. And my -- my
24 conviction was affirmed by the South Carolina Court of
25 Appeals because my counsel failed to object during the

Ricky Brannon
Cross-examination by Ms. White

1 trial. I do believe your record will reflect that.

2 I had an issue dealing with the expert witness on my
3 direct appeal of appellate counsel. And the South Carolina
4 Supreme Court -- South Carolina Court of Appeals affirmed
5 my conviction because my counsel failed to object during
6 the introduction of the evidence in the trial.

7 Q Okay. Now, in regards to...

8 MS. WHITE: One moment, Your Honor.

9 (Pause.)

10 MS. WHITE: I think that's all the questions I have at
11 this time, Your Honor.

12 THE COURT: Anything else?

13 MR. RICHEY: There's nothing else, Your Honor.

14 But at this time I would like to renew my motion for
15 discovery and also for a continuance based off Mr.
16 Brannon's testimony.

17 I believe at this point to cross-examine or examine
18 trial counsel without the benefit of the -- some of the
19 items in discovery I think would prejudice Mr. Brannon's
20 case at this point.

21 So I renew my motion for discovery. And I would say
22 that the issues about him wanting to discover the issue
23 dealing with the blood, I think that is a critical issue in
24 this case, because without any investigation as to whether
25 those samples match him or not match him, whether the

1 sample is there or not there, at this point would make the
2 cross-examination of Mr. Poole not possible because Mr.
3 Poole could not -- if -- if we knew what the results and
4 how that went and whether it's even there, then we could go
5 forward too and I believe at this point get to the bottom
6 of this traffic ticket.

7 It appears from his testimony, one, that this
8 gentleman was never given a traffic ticket. He was taken
9 to jail and arrested without firming up did they give this
10 man a ticket.

11 It's really important because it shows the stop was a
12 pretext, that it was a fake, that it wasn't legitimate.
13 And I believe at this point without being able to discover
14 that information you cannot effectively cross-examine Mr.
15 Poole, because this man went to jail and sat in jail over a
16 ticket that nobody has, that nobody can give an answer to,
17 nobody -- that in itself, Your Honor, I believe is critical
18 at this time to show that the stop was a pretext and some
19 investigation should have been done into it.

20 Also, to take this man's blood under an affidavit of
21 some theory without having that information, I think at
22 this point would be hard to cross-examine Mr. Poole,
23 because we've got here, we've got a case where the state is
24 collecting information and getting stuff from this
25 gentleman, and nobody has the stuff.

1 I mean, they get all of this stuff from him. Nobody
2 was a warrant, nobody has a ticket, nobody has a drug --
3 nobody has anything in this case. And without proper
4 discovery this man received a life-without-parole sentence
5 on a case that nobody saw him at the crime scene. He was
6 arrested nowhere near the crime scene.

7 There were items taken that was not anywhere from my
8 reading close to the scene. There was a woman in the car
9 with him. I mean, this was a case where this gentleman had
10 no information at all.

11 And so at this point for us to -- for me to
12 cross-examine Mr. Poole at this point, it is my position
13 it'd be a continuation of this no information, no
14 information, no information, because there has to be an
15 explanation for the ticket.

16 I mean, if the cop doesn't have it, I think he should
17 be brought in this court and testify as to a reason why he
18 doesn't have it and sat this man in jail on a
19 failure-to-stop ticket.

20 THE COURT: Well, but you've got to subpoena those
21 witnesses.

22 MR. RICHEY: I don't have --

23 THE COURT: If you want somebody to come in and
24 testify you can subpoena anybody you want.

25 MR. RICHEY: Yeah. But, Judge, I don't have the

1 ticket. I have no way of compelling the cops to give me
2 the ticket.

3 THE COURT: Well, I understand, but they say they
4 don't have a ticket. So we're going to continue it until
5 the next time. When we don't have a ticket, then what
6 happens?

7 MR. RICHEY: Well, I want a discovery motion where I
8 can, one, I can depose them. I can depose them. And I can
9 go through the full discovery to figure out what's going
10 on. I can depose them.

11 When I go to magistrate's court the only power I have
12 is to ask them and accept it. That's two only power I have
13 is to ask them and accept it.

14 And as to this blood evidence, Your Honor, I mean, I
15 believe that that is a critical issue in this case. And I
16 believe this gentleman would have the right to know whether
17 it even exists or not. They say it exists, but, you know,
18 nobody knows.

19 So I would renew my motion for a continuance at this
20 time. Thank you, Your Honor.

21 THE COURT: All right. Ms. White.

22 MS. WHITE: Your Honor, just briefly.

23 We would object to the continuance, again, obviously.
24 No. 1, the gentleman that stopped Mr. Brannon on the
25 traffic stop not only testified, but they were

1 cross-examined by Mr. Poole at the trial. So we do have
2 their testimony from the transcript.

3 They are not here present today to testify to anything
4 and could have well been subpoenaed to testify here today,
5 as well as the witness that could have been subpoenaed here
6 today that he says could have had information.

7 Furthermore, the blood evidence, I think it's clear
8 even from his own testimony no blood evidence was used
9 against him in anything. There's no reason that there
10 would need to be any kind of discovery for blood or any
11 kind of DNA that was removed from him as nothing was used
12 against him at trial.

13 So we would just further object to the actual motion
14 for a continuance and ask that we finalize the hearing
15 today.

16 THE COURT: All right. I'm going to deny the motion
17 to continue it.

18 I'll refer y'all to the trial transcript of page 42,
19 43, and 233, and 234. That transcript reflects that those
20 items of preinterrogation-waiver forms, Mr. Richey, those
21 were introduced into evidence as State's Exhibits 1, 2 and
22 3. I found that to be in the transcript. So that's where
23 the exhibits are. They're in the record of this case.

24 THE APPLICANT: Huh?

25 MR. RICHEY: We call Mr. Poole.

J. Roger Poole
Direct examination by Mr. Richey

1 THE COURT: You can step down.

2 J. ROGER POOLE, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. RICHEY

5 Q Sir, could you state your name, please?

6 A My name is Roger Poole.

7 Q Mr. Poole, are you a practicing attorney in
8 Spartanburg?

9 A Yes, I am. I'm currently with the public defender's
10 office.

11 Q And do you recall representing Mr. Brannon?

12 A Yes, I do.

13 Q And what charges did you represent him on?

14 A I represented him on the burglary charges.

15 Q Okay. And -- and you have been in the courtroom and
16 you've heard the testimony about this stop.

17 A Right.

18 Q Do you recall the stop, the circumstances around it?

19 A Yes, I'm aware of it.

20 Q Did -- did you see a ticket that he received for that
21 stop?

22 A I don't recall seeing a ticket. I do not.

23 Q Did you ever request that ticket?

24 A No, I did not. And, now, I could be mistaken about
25 this, but I do believe that Chip Weatherford of Gaffney

J. Roger Poole
Direct examination by Mr. Richey

1 represented him on that charge.

2 Q Okay.

3 A I could be wrong, but I believe I -- I talked to Chip
4 about, and Don Thompson about, the stop. But I don't
5 recall seeing a ticket to answer your question.

6 Q Okay. Do you recall when you did your investigation,
7 did you believe the stop was -- was unreasonable?

8 A No, because I knew that the testimony at trial was
9 going to be that the stop was the result of the reporting
10 of the description of a car. And officers were on the
11 lookout for that type of car; and that the testimony was
12 going to be that that driver of the car that matched that
13 description disregarded a stop sign.

14 I knew that was what the testimony was going to be.
15 So I didn't focus that much on the nature of the stop
16 itself.

17 Q Okay. Do you -- do you believe that if the stop was
18 improper it could suppress some of the evidence that was
19 brought forward against him -- the statements, the shoes,
20 any of that stuff?

21 A It could have, but I have no way of knowing, you know,
22 of course, one way or the other.

23 Q Okay. Do you recall the -- the blood evidence and the
24 hair evidence in this case?

25 A I was aware of the fact that it had been taken and

J. Roger Poole
Direct examination by Mr. Richey

1 sent for analysis, but I was also aware that the testing of
2 it, the results of the tests, or the lack thereof, was not
3 going to be used at trial. So I did not follow up on any
4 of that.

5 Q Was it -- was it Mr. Brannon's theory that he did not
6 do the burglary? Is that what he was saying, he did not do
7 it, he wasn't there?

8 A His defense was that the state could not prove that
9 he, in fact, was the one that committed the burglaries.

10 Q And did you discuss with him about that evidence being
11 tested, being good and bad for him, meaning if they tested
12 it and it came back it was him it'd be bad, if they tested
13 it and it came back it wasn't him -- did you have that
14 analysis with him, do you recall?

15 A I don't recall having that specific discussion with
16 him.

17 Q Do you believe that that discussion would have been
18 proper in this case? Do you believe that?

19 A Well, not necessarily since the -- I knew that at
20 trial there was not going to be the introduction of any
21 type of evidence on those types of things such as hair,
22 blood or DNA.

23 Q But do you believe that if those samples had been
24 tested for DNA and those samples came back not Mr. Brannon
25 that that would have been beneficial in his case?

J. Roger Poole
Direct examination by Mr. Richey

1 A Well, of course it would have been if that was borne
2 out.

3 Q Right. I'm saying there's a risk in the doing that,
4 you know, saying, hey, they didn't test him, so that's good
5 because they can't use it against you, right? And then, on
6 the other hand, if they do test him and they don't match
7 you one -- one -- you were the one in the house, then that
8 would prove that somebody else is in that house at that
9 time.

10 A It would. And if it had been tested and it would have
11 came back as not Mr. Brannon's blood, then that conceivably
12 could have put it as exculpatory and therefore discoverable
13 if it had been tested and that was the result.

14 Q Did you talk to him about the pros and cons of having
15 those tests done?

16 A I don't recall discussions like that.

17 Q And do you believe that you had any conflict in this
18 case?

19 A No.

20 Q And the witness that was in the car with him, did you
21 have any information about that witness -- where they
22 lived, name, phone number, anything?

23 A No, sir, I do not.

24 Q No other questions. Thank you.

25 A Thank you.

J. Roger Poole
Cross-examination by Ms. White

1 CROSS-EXAMINATION

2 BY MS. WHITE

3 Q Mr. Poole, just briefly. If you would, just give us a
4 little bit of your background. How long have you been
5 practicing criminal law?

6 A Thirty years.

7 Q And is that all in the P. D.'s office? Is that in
8 private practice?

9 A No. I was in the public defender's office shortly
10 after law school, and I worked there for a while. I went
11 into private practice about 25 years. And now I'm back
12 with the public defender's office.

13 Q Okay. Now, do you remember how far in advance, when
14 you began representing Mr. Brannon before his trial?

15 A It was in December of the previous year of his trial.

16 Q Okay. And he --

17 A That's what I was appointed.

18 Q And he went to trial in April of '06, is that right?

19 A That's right.

20 Q Now, in regards to the motions you made, did you feel
21 like the evidence against him was solid? Did you think
22 y'all had a chance at trial?

23 A Yes, I thought we had a chance because he -- there was
24 no -- nobody could put him there at the scenes of the
25 crime. There was no identification. The theme of the car

J. Roger Poole
Cross-examination by Ms. White

1 was pervasive. Yeah, he had a chance. I thought so.

2 Q Now, what -- in regards to evidence against him, did
3 you go over with him the evidence? Did you file a
4 discovery motion and...

5 A Yes. It was filed by Don Thompson, and I think I
6 renewed it and we went over everything.

7 Q Do you recall how many times you met with Mr. Brannon
8 in the course of your representation?

9 A At least six times.

10 Q And did you go over with him the charges he was facing
11 and the elements that were in the charge?

12 A Yes, ma'am, I did or we did.

13 Q And the potential sentence?

14 A That's right.

15 Q Do you recall ever talking with him about this
16 burglary first enhancement or life without parole
17 potentially?

18 A Well, certainly about the life-without-parole, and the
19 reasons for the enhancement and the reasons why the state
20 was seeking life-without-parole certainty.

21 Q Now, were you served as his attorney with this notice
22 of life-without-parole?

23 A I think Don Thompson was served.

24 Q Okay. And is that by the 7th Circuit? Do you recall
25 if you were served with the one by the A. G.'s office, or

J. Roger Poole
Cross-examination by Ms. White

1 was that still Mr. Thompson?

2 A I don't recall independently. I want to say that I
3 was served also because they were being cautious about
4 that. But I know Don Thompson was.

5 Q Now, included in discovery did you receive any kind of
6 waiver of rights that Mr. Brannon had signed while he was
7 incarcerated?

8 A Yes.

9 Q So you do recall reviewing that and seeing that.

10 A Yes.

11 Q Did you go over that with him at all, discuss with him
12 his statement or anything?

13 A We would have gone over it as we were discussing his
14 case, yes.

15 Q Okay. And you actually filed a motion to keep his
16 statement out, is that right?

17 A You talking about the Jackson vs. Denno?

18 Q The Jackson vs. Denno hearing.

19 A Yes, ma'am.

20 Q And you unfortunately were denied that, is that right?

21 A That's right.

22 Q Now, in regards to his taking the police to the home
23 on Kelly Street to show them or give them the guns, what
24 was that in regards for evidence -- for where you -- how
25 did you think that affected your case?

J. Roger Poole
Cross-examination by Ms. White

1 A Well, it doesn't help him, of course, because he's in
2 possession of items that were taken from the homes or home.
3 And, you know, it's not a good thing for him. But at the
4 same time it doesn't necessarily mean that he committed the
5 burglary and that's how it came to be in his possession.

6 Q Now, did --

7 A Or burglaries.

8 Q Okay. In regards to the shoes that were used or the
9 footprint that was used, you filed a motion or a pretrial
10 motion in regards to excluding that, is that right?

11 A That's right.

12 Q And ultimately you were denied after arguing that
13 motion.

14 A That's right, that's correct.

15 Q Did you also argue, make an argument, in regards to
16 making this a one-incident or a spree?

17 A That post-verdict, yes.

18 Q Post verdict, yes, sir.

19 A Uh-huh.

20 Q And jumping back, I guess during the trial did you
21 offer objections at various times to -- to items that were
22 introduced and-or testimony?

23 A Yes. The obvious trial motions made on the spot, yes.

24 Q Did you make any motions posttrial, do you recall?

25 A My notes indicate. I think at that time I made a

J. Roger Poole
Cross-examination by Ms. White

1 motion in arrest of judgment and a motion for a new trial.

2 Q Okay.

3 A I think.

4 Q And those were denied --

5 A Yes.

6 Q -- by the judge. Did you -- how was Mr. Brannon as a
7 client? Did you -- were you able to communicate with him,
8 you felt like he understood you?

9 A Yes. We -- he was able to participate in his own
10 defense. And there was no impediment whatsoever in
11 speaking with him.

12 Q Now, did he ever tell you -- was his defense that he
13 had received stolen goods?

14 A No, no, not in so many words.

15 Q So if he testified today that the guns he had simply
16 were -- because I think he said he bought them from
17 someone. Did he ever give you that as a defense?

18 A I don't -- I don't recall that.

19 Q In regards to any other kind of defense or witnesses,
20 did he ever ask you to ask -- to -- to get this witness
21 from the car or any other witnesses?

22 A He asked me to try to locate some witnesses for
23 purposes of an alibi from a gym, or, yeah, a gym like a --
24 a month-to-month place over in Cherokee County.

25 I called them up and asked them if he had any types of

J. Roger Poole
Cross-examination by Ms. White

1 records of attendance or something, and they said no, they
2 had nothing that would help me one way or the other.

3 Q Did he offer any other defense to you for you to
4 investigate that you were not able to pursue?

5 A No, ma'am.

6 Q Did you file a notice of appeal in this case?

7 A Yes, I did.

8 Q And from your understanding was that appeal affirmed
9 or was the case affirmed or --

10 A Affirmed.

11 MS. WHITE: Okay. One moment, Your Honor.

12 (Pause.)

13 Q And we did -- were you aware of any -- he mentioned
14 some burglary tools that was taken from the stop. Was that
15 of any concern to you for this case?

16 A Well, that was what I was looking at. I was concerned
17 about whether or not they were going to introduce any tools
18 at trial as a result of the stop. And since they were not
19 going to do so that in my mind made it a nonissue to a
20 certain extent, yes.

21 Q Okay. Did you know anything about his living
22 arrangements or his residence at the time?

23 A Yes. He was living or with on a part-time basis or
24 almost full time maybe, with one Tarsha Little --
25 Littlejohn, I believe.

J. Roger Poole
Cross-examination by Ms. White

1 Q Okay. And that was the girlfriend that testified at
2 the trial.

3 A She testified. I had her number and I spoke with her.

4 Q And, in fact, she testified and placed him in the
5 vehicle on the days in question, is that right?

6 A That's right.

7 Q Do you feel like her testimony hurt or helped y'all in
8 this case?

9 A It didn't -- it didn't help a whole lot. It certainly
10 didn't.

11 MS. WHITE: I think that's all the questions I have,
12 Your Honor.

13 THE COURT: Anything else?

14 MR. RICHEY: No other questions.

15 THE COURT: You may step down.

16 Any other witnesses?

17 MS. WHITE: The state has no witnesses, Your Honor.

18 MR. RICHEY: We have no other witnesses.

19 THE COURT: I'll review the record in the case and the
20 transcript of the trial, and I will make my own
21 determination as to whether any of your discovery requests
22 should be granted.

23 If they would have an affect on the outcome of this
24 case or be of any benefit to the presentation of any
25 defense, I'll make that determination. If I determine that

1 it should be, then I will order that it should be provided.
2 And if I determine it's not, then I'll issue an order in
3 the case.

4 But, now, as I have said, with respect to the traffic
5 ticket -- and that's just something that it's either of
6 record or it's not. And, in other words, you can't
7 discover something that doesn't exist.

8 So if the magistrate doesn't have it and the police
9 officer who issued the ticket doesn't have it and the
10 Department of Public Safety doesn't have it, then I assume
11 it does not exist.

12 There has to be some record of a ticket. It has a
13 number. It has to be reported as to how disposition was
14 made. So that record has to be somewhere. But if it's not
15 there, then it can't be discovered.

16 The search warrant, as I say, you'll have to simply --
17 maybe Ms. White can help you determine if that exists or
18 not. I don't know what the benefit it might be. But since
19 I think Mr. Brannon says it didn't -- didn't have one or he
20 didn't receive one and he wasn't served with one -- isn't
21 that a fair statement?

22 MR. RICHEY: Yes, sir.

23 THE COURT: Yeah. And the waiver-of-rights form, as
24 I've indicated -- and I assume that goes along with the
25 statement. It doesn't -- it's not that clear.

1 In the transcript it reflects the fact that those
2 exhibits were marked and were introduced during the trial
3 as State's Exhibits 1, 2 and 3. So they're in the record
4 of the case. Might be at the Court of Appeals.

5 And then I'll determine whether or not any DNA type of
6 evidence is, you know, material in this case.

7 MR. RICHEY: Yes, sir.

8 THE COURT: All right. So I'll review the record, and
9 then I'll inform y'all as to my decision with respect to
10 any further discovery and also -- and-or a disposition of
11 the request for the other. Okay.

12 MR. RICHEY: So, Your Honor, if I get those items, I
13 can still try to retrieve those items. If I get them I'll
14 alert the Court. Is that --

15 THE COURT: You may, and you let me know.

16 MR. RICHEY: Yes, sir.

17 THE COURT: If you determine -- I mean, if you're
18 convinced that there's something else that needs to be
19 addressed, then we can -- the record is still open for
20 right now.

21 MR. RICHEY: Yes, sir.

22 THE COURT: Okay.

23 MR. RICHEY: Thank you.

24 MS. WHITE: Thank you, Your Honor.

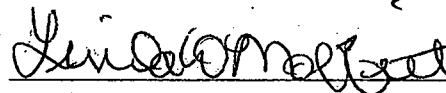
25 END OF REQUESTED TRANSCRIPT OF RECORD

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Cherokee County, South Carolina, on the 6th day of April 2010.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 30, 2010



Linda D. Moffitt
Circuit Court Reporter

FORM 4

621

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 09-CP-11-0555

Ricky BRANNON, SCD CID#179051

Applicant

The STATE of South Carolina,

Respondent

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

IT IS ORDERED AND ADJUDGED: ☒ See formal order to follow; ☒ Statement of Judgment by the Court:

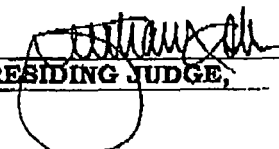
This matter came before this court on an application for post-conviction relief filed pursuant to *South Carolina Code Annotated Section 17-27-20*.

After consideration of the record in this case, the evidence presented at the hearing held in this matter, the argument of counsel, the applicable statutory and case law, this court finds that the applicant has failed to establish by a preponderance of the credible and probative evidence contained in the record that (1) trial counsel's representation fell below an objective standard of reasonableness and/or (2) but for any error by trial counsel there is a reasonable probability the result would have been different.

The applicant's request for **post-conviction** relief should be and **is** therefore **denied** and the **application dismissed** with prejudice.

Counsel for Respondent is to prepare a proposed order for the court's consideration.

Dated at Spartanburg, South Carolina, this 8th day of April, 2010.


PRESIDING JUDGE,

J. Derham Cole

This judgment was entered on the _____ day of April, 2010, and a copy mailed first class this _____ day of April, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

Rodney W. Richey, Esq.
Post Office Box 10916
Greenville, South Carolina 29603

ATTORNEY(S) FOR THE APPLICANT

Suzanne H. White, Esq.
Post Office Box 11549
Columbia, South Carolina 29211-1549

ATTORNEY(S) FOR THE RESPONDENT

CLERK OF COURT, Brandy McBee

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2009CP1100555

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
BRANDY W. MCBEE
2010 NOV 15 PM 4:34

Ricky Brannon vs. State of South Carolina

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):
SCRPC (Vol. Nonsuit);

☐ Rule 12(b), SCRPC;
☐ Rule 43(k), SCRPC (Settled);
☐ Other: _____

☐ Rule 41(a),
☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON):
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ Rule 40(j) SCRPC;
☐ Bankruptcy:
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:
Order of Dismissal.

Dated at Gaffney, South Carolina, this the 15th day of November, 2010.

Court Reporter: s/ J. Derham Cole
PRESIDING JUDGE - J. Derham Cole

This judgment was entered on the the 15th day of November, 2010, and a copy mailed first class this the 15th day of November, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Ricky Brannon Broad River Correctional Institution
4460 Broad River Rd Columbia, SC 29210
Rodney Wade Richey Richey & Richey, PA P.O.
Box 10916 Greenville, SC 29603-0916

Office of Attorney General
PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Brandy W. McBee
Brandy W. McBee - Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF CHEROKEE

Ricky Brannon, #179051,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2009-CP-11-0555

ORDER OF DISMISSAL

BRANDY W. RICHEY

2010 NOV 15 P 2:39

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 10, 2009. The Respondent made its Return on or about October 12, 2009. An evidentiary hearing into the matter was convened on April 6, 2010, at the Spartanburg County Courthouse. Rodney W. Richey, Esquire, represented the Applicant. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

Prior to testimony, PCR Counsel requested a continuance and made a motion for Discovery on Applicant's behalf. Applicant wanted discovery rights in order to test the blood that was taken from the Applicant after his arrest and to obtain the traffic ticket Applicant was given when he was originally stopped and arrested. This Court denied Applicant's motions for continuance and discovery. Applicant also made a motion for this Court to recuse itself from hearing the matter, as the Applicant had been accused of attempted arson of the Cherokee County Courthouse and this Court is a member of the Seventh Judicial Circuit as well as Cherokee. This Court found that the Applicant had not demonstrated good cause and denied the motion.

At the conclusion of testimony, PCR Counsel again renewed the request for discovery and requested the traffic ticket, original search warrant, waiver of rights form, and Applicant's blood.

This Court denied Applicant's requests again, finding that Applicant could test his blood currently without retrieving the blood that was taken from him at the time of the arrest, and finding that the documents requested by Applicant should be available in files available to Applicant or the State.

At the hearing, the Applicant testified on his own behalf. J. Roger Poole, Esquire, also testified on behalf of the State. This Court also had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court, appellate records and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Cherokee County Clerk of Court. The Cherokee County Grand Jury indicted the Applicant at the February 2004 term of General Sessions for two counts of burglary, first degree (04-GS-11-0201, 04-GS-11-0202) and grand larceny (04-GS-11-0203). J. Roger Poole, Esquire, represented the Applicant. On April 13, 2006, the Applicant was convicted by a jury for one count of burglary, first degree (04-GS-11-0202) and of grand larceny. The Honorable Doyet A. Early, III sentenced the Applicant to confinement for life without parole (LWOP) for the burglary, first degree charge, and for five (5) years for the grand larceny charge, sentences running concurrently¹.

A timely Notice of Appeal was filed on the Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Williams, Unpublished Op. No. 2008-UP-313 (S.C. Ct. App. filed June 20, 2008). The Remittitur was issued on July 8, 2008.

¹ The Applicant was sentenced to life without parole pursuant to §17-25-45.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Prosecutorial and trial court misconduct and errors;
 - a. "Prosecution in closing arguments constructively amended the aggravating element of crime charged in the indictment²."
 - b. "Trial court in its jury charge constructively amended the indictment by giving instructions of second degree burglary statute absent the required aggravating element when applicant was indicted on first degree burglary charges³."
 - c. "Fatal variance between indictment charging applicant with 1st degree burglary and grand larceny of the resident of person named in the indictment and proof shown at trial."
 - d. "Abuse of discretion of Trial Court. Failure to conduct 'gate keeping' obligation, proffer testimony, hold relevant 403 hearing before allowing prejudice shoe print expert testimony."
 - e. "Abuse of discretion allowing stipulation to an essential element in lieu of informing and/or instructing the jury about the element."
 - f. "Failure to serve timely Notice seeking life without parole on Applicant."
 - g. "Error in 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 crime was consolidated for sentencing constituting one conviction."
2. Ineffective assistance of original trial counsel "in violation of applicants right to due process, conflict of interest...denial of counsel..."
3. Ineffective assistance of substitute trial counsel "in violation of applicants right to due process, conflict of interest...denial of counsel..."

² The "aggravating element" to which the Applicant refers is his prior record, specifically "prior convictions or guilty pleas of two or more burglaries." (TT. p. 39; TT. p. 308-311).

³ During pre-trial motions the parties stipulated that evidence of the Applicant's prior convictions for burglary, first degree would be introduced into evidence in order to establish the aggravating element outside the presence of the jury to avoid prejudicing the Applicant, and the jury would be instructed "in such a manner that two prior convictions [would] not prejudice the Defendant." (TT. 39-40).

4. Ineffective assistance of appellate counsel for "frivolous appeal, prejudice late notice of final decision of issue on appeal."
5. Due Process Violations; and
 - a. "Conflict of interest in the 7th Circuit Solicitor's Office in violation of order of disqualification, obstruction of justice, due process violation, denial of right to trial and appeal."
6. Newly discovered evidence.
 - a. "Perjury testimony, 6th amendment violation, discovery violation, 4th amendment violation and violation of due process (involuntary statement)."

SUMMARY OF TESTIMONY

Applicant testified that Roger Poole ("Counsel") was appointed to represent him on charges of burglary – first degree and grand larceny. Applicant testified that Counsel did not properly investigate the case and did not interview a witness, who was material to the case. Applicant testified that a female named "Tasha" was with him in the car when he was stopped for a traffic violation and she witnessed him purchasing the guns that were stolen. Applicant also testified that Counsel should have properly investigated the traffic stop. Applicant testified that the Deputy that stopped and arrested him gave insufficient testimony regarding the stop because the Deputy said that Applicant was given a courtesy summons.

Applicant testified that a woman saw the car at her house around the time of a burglary and reported the tag number to the police. The police then contacted the owner of the car, Applicant's girlfriend at the time, who informed them that the Applicant had the car. However, Applicant also testified that several other people used the car as well as him. Applicant testified that he was subsequently pulled over for disregarding a stop sign and having no license, but he was never issued any tickets for those violations. Applicant also testified that the car was searched without his permission, at which time the Deputy seized burglary tools found in the car. After he spent the night

in jail, Applicant testified that he gave a statement to the police. Applicant testified that the police interviewed him a second time as well, and at that time, Applicant informed them that he did not live at his Aunt's house. Applicant further testified that the cops initiated the second conversation after he had requested an attorney. Applicant testified that he never signed a waiver of rights form. Applicant testified that he was forced to give blood at the hospital. Applicant testified that he spoke with Counsel about when the results of the DNA test would come in and never realized that the blood was never tested. Applicant did acknowledge that there was never any DNA evidence used against him during his trial.

Applicant testified that he believes that Counsel had a conflict in representing Applicant. Applicant had been accused of attempted arson of the Cherokee County Courthouse, so Don Thompson, a public defender for Cherokee County had been dismissed as Applicant's attorney because of the conflict. Applicant testified that he believed that no one from the Seventh Judicial Circuit should have been involved in the case because of the conflict.

Applicant testified that he was served with notice to seek life without parole by the Seventh Judicial Circuit, but not by the Attorney General's office. Applicant also testified that he never discussed the notice with Counsel. Applicant testified that he met with Counsel approximately three times. Applicant testified that he told Counsel about the illegal traffic stop at their first meeting.

Applicant testified that Investigators Henson and Fowlkes both gave expert testimony at his trial and Counsel did not attempt to question them as hostile witnesses.

Applicant testified that in May 2006, he proceeded to trial in magistrate's court for the traffic charges and Counsel did not appear to represent him. Applicant testified that he pled guilty to not having a driver's license and asked for a bench trial for the charge of disregarding a stop sign. Applicant also testified that after he was found guilty of that charge, he appealed the decision and a

second trial was ordered.

Counsel testified that he was appointed to represent Applicant on the charges of grand larceny and burglary – 1st degree, but he was not representing Applicant on the traffic charges. Counsel testified that he believed Chip Weatherford represented the Applicant on the charge of disregarding a stop sign. Counsel testified that he did not recall ever seeing the traffic tickets that resulted from Applicant's traffic stop. However, Counsel testified that he did not believe the stop was unreasonable, as the police had received a notice to be on the lookout for that vehicle and the officer testified that the driver disregarded a stop sign. In addition, Counsel testified that the only evidence that may have been suppressed if the stop was found to be unreasonable would have been Applicant's tennis shoes.

Counsel testified that he did recall Applicant's blood being sent off for analysis, but that no testing was going to be used at trial. Counsel testified that he did not believe that they needed to discuss the blood samples since the State was not using any of the samples at trial. Counsel testified that if the blood had been tested and had exculpated the Applicant, then it was discoverable; however, he is not aware of that occurring. Counsel testified that he did not believe there was a conflict in his representation of Applicant in this case simply because he worked in the Seventh Judicial Circuit. Counsel also testified that he had no information regarding the witness in the car and had no way of contacting her. Counsel further testified that notice of life without parole was properly served on Mr. Don Thompson, Applicant's previous counsel.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony

accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Prosecutorial and Trial Court Misconduct and Errors

Applicant raises several issues that he claims are errors on behalf of the trial court or the prosecution, in which approximately five issues involve Applicant's claims that the indictment was either constructively amended or improper in some fashion.

Indictment

Applicant alleges that not only did the prosecution constructively amend the aggravating element of the crime charged in the indictment during closing arguments, but Applicant also alleges the trial court similarly amended the indictment during jury instructions. The Applicant failed to present any evidence or testimony in support of his allegation. This Court also finds that the record directly refutes Applicant's allegations; therefore, this Court finds that this claim is denied and dismissed.

Applicant also alleges that there was a fatal variance between the indictment and crimes he faced and the proof shown at trial. This Court finds that not only did the Applicant fail to provide any evidence or testimony in support of this allegation, but also the record reflects that a jury found the Applicant guilty and his conviction was affirmed on appeal. Therefore, this Court finds that the Applicant has failed to meet his burden of proof as to this claim and it is denied and dismissed.

Abuse of Discretion

Applicant alleges that the trial court abused its discretion when it allowed the parties to stipulate to an essential element instead of informing the jury. Applicant also alleges that the trial court abused its discretion when it allowed the testimony of an expert in shoe prints. This Court finds that the Applicant failed to meet his burden of proof as to both of these claims. Again, other

than Applicant's allegations in his application, he failed to provide any evidence or testimony to support his claims. Additionally, the record clearly reflects and supports the trial court's communication with the parties, pre-trial hearing and decision regarding both the stipulation to the aggravating element and the testimony of the expert regarding Applicant's shoe prints. Furthermore, this Court finds that both issues were raised, ruled upon by the trial court, and the issue of the shoe print expert's testimony was reviewed and ruled upon by the South Carolina Court of Appeals. Therefore, this Court finds that the claim should be denied and dismissed.

Untimely Service of Notice of Intent to Seek Life Without Parole

Applicant also alleges that the prosecution failed to provide timely notice of the intent to seek life without parole. Applicant's testimony lacks credibility on this issue, in particular, when the record and Counsel's testimony directly refute Applicant's testimony. This Court finds that notice of intent to seek life without parole was timely served and Applicant has failed to meet his burden of proof as to this claim. Therefore, this allegation is denied and dismissed.

Other Allegations

Applicant also alleges numerous vague and repetitive claims regarding conflicts of interest, jury instructions and prior convictions. However, Applicant failed to provide any testimony, other than testimony regarding his claims of Counsel's alleged conflict of interest, to support any of these claims. Once again, this Court finds that Applicant has failed to meet his burden of proof as to these claims and they should therefore be denied and dismissed.

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of original and substitute trial counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a

preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court finds that as to allegations of ineffective assistance of substitute trial counsel, Counsel's testimony was more credible than the Applicant's testimony. Counsel was believable, knowledgeable, and well prepared. This Court finds that Counsel thoroughly investigated the case, researched legal issues, and prepared legal arguments in support of the defense theory. Counsel

made the appropriate motions and argued against the introduction of the evidence from the traffic stop and attempted to attack the credibility and qualifications of State witnesses, but unfortunately, the judge disagreed with Counsel's efforts. This Court also finds that Counsel communicated with the Applicant and attempted to negotiate with the State on Applicant's behalf.

Regarding Applicant's claims that his original appointed trial counsel was ineffective, this Court finds that the Applicant failed to present any testimony or evidence in support of his allegation that his original trial counsel was ineffective. Therefore, this claim is denied and dismissed.

Failure to Interview or Call Witnesses

In regards to Applicant's allegations that testimony from "Tasha" regarding the traffic stop or Applicant purchasing the stolen guns would have helped his case, this Court finds that Applicant has failed to meet his burden of proof. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). The Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Applicant produced no testimony or evidence to support his allegations. Applicant offered nothing more than his assertions that "Tasha" could have assisted in his defense. Therefore, this claim is denied and dismissed.

Failure to Investigate

Applicant alleged that Counsel was ineffective for failing to investigate the case sufficiently, in particular the traffic stop. However, Applicant offers no testimony or evidence as to what he believes Counsel would have discovered had he conducted additional investigations. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The record reflects that Counsel was well prepared to argue against the traffic stop and evidence obtained as a result. This Court finds that Applicant has failed to meet his burden of proof as to this claim. Therefore, this allegation is denied and dismissed.

Conflict of Interest

Applicant also alleged that Counsel had a conflict of interest because of Counsel's employment within the Seventh Judicial Circuit and Applicant's pending charges of attempted arson. The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id.; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). Although Counsel practiced law in the Seventh Judicial Circuit, his office and work was centered in Spartanburg County while the pending arson charges Applicant faced originated in Cherokee County. It is clear from the record that Counsel was a zealous advocate for Applicant, so this Court finds that Applicant has failed to meet his burden of proof as to this claim. Therefore, this

allegation is denied and dismissed.

Failure to Object and Properly Question Witnesses

Regarding Applicant's allegation that Counsel was ineffective for failing to object to the defective indictment, this Court finds that the Applicant has failed to meet his burden of proof. Applicant presented no evidence or testimony in support of his claims that Counsel was ineffective for failing to object to the allegedly defective indictment and in fact, the record demonstrates that there was no legal basis for an objection to the indictment; therefore, this claim is denied and dismissed.

Regarding Applicant's claim that Counsel failed to properly question Investigators Henson and Fowlkes, this Court finds that there is no merit to this claim. Not only did the Applicant provide no examples of questions that Counsel should have asked either witness, but the record clearly reflects that Counsel cross-examined each witness during the trial. Therefore, this claim is denied and dismissed.

Failure to Represent Applicant at Magistrate Court

Applicant also alleges that Counsel was ineffective for failing to appear to represent Applicant at his Magistrate trial for the traffic charges related to this incident. This Court finds Applicant's testimony to lack credibility as to this issue and finds Counsel's testimony to be far more credible. This Court finds that Counsel was not representing Applicant on the traffic charges and was therefore, not required to appear on Applicant's behalf. Therefore, this claim is denied and dismissed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing

professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

Ineffective Assistance of Appellate Counsel

Regarding Applicant’s allegation that Appellate Counsel was ineffective because of “frivolous appeal, prejudice late notice of final decision of issue on appeal,” this Court finds that the Applicant has failed to meet his burden of proof. Applicant failed to present any evidence or testimony to support his claims or prove prejudice; therefore, this Court finds that this allegation is denied and dismissed

Due Process Violations

Regarding Applicant’s allegation that that his due process rights were violated because of “Conflict of interest in the 7th Circuit Solicitor’s Office in violation of order of disqualification, obstruction of justice, due process violation, denial of right to trial and appeal,” this Court finds that the Applicant has failed to meet his burden of proof. Applicant’s allegations are vague and repetitive and he offers no support in the form of testimony or evidence for any of the alleged claims. In fact, in particular, this Court finds that the record directly refutes Applicant’s claim that he was “deni[ed] right to trial and appeal.” Clearly, Applicant received a full trial and subsequent appeal regarding these charges. Therefore, this Court finds that the claim is denied and dismissed.

Newly Discovered Evidence

As to Applicant's allegation that newly discovered evidence exists in the form of perjury testimony, 6th amendment violation, discovery violation, 4th amendment violation and violation of due process (involuntary statement), this Court finds that the Applicant has failed to meet his burden of proof. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant failed to produce any evidence that meets *any* of the requirements for after-discovered evidence, in the form of either testimony or physical evidence. Therefore, the Applicant failed to meet his burden of proof in regards to this allegation and this Court should find that the claim should be dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR.

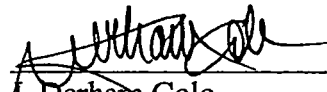
Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243⁴ for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15 day of November, 2010.

Gaffney, South Carolina


 J. Derham Cole
 Presiding Circuit Court Judge

⁴ Formerly Rule 227, SCACR. Rules 224 through 230, SCACR, were renumbered as Rules 240 through 246, SCACR, by order of the South Carolina Supreme Court dated April 29, 2009.

WITNESSES

Micheal Fowlkes, CCSO

DOCKET NO. 04-GS-11-0202

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 19 2004

TERM

ARREST WARRANT NUMBER

H-519030

**THE STATE
vs.**

Ricky Brannon

ACTION OF GRAND JURY

TRUE BILL

Tom Drown
of Grand Jury
2/19/04

VERDICT

12 Jerry E Keller

**Indictment for
BURGLARY, FIRST DEGREE
(DWELLING)**

SC Code: 16-11-0311

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.

A TRUE COPY
Brandy H. Miller
CLERK OF COURT
CHEROKEE COUNTY, S.C.

Foreperson of Petit Jury

Date: 4-13-06

STATE OF SOUTH CAROLINA)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on FEB 19 2004 the
Grand Jurors of Cherokee County present upon their oath:

BURGLARY, FIRST DEGREE

(DWELLING)

That Ricky Brannon, did in Cherokee County on or about November 20, 2003 willfully and unlawfully enter the residence belonging to Kenneth Gallman at South Carolina without the authority to do so and with the intent to commit a crime therein and Ricky Brannon has a prior record of two or more convictions for burglary or housebreaking or a combination of both all in violation of §16-11-311, THE 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

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

VS.

INDICTMENT/CASE#:

2004 -GS- 11 - 202

AKA:

AW#:

Date of Offense:

S.C. Code §:

CDR Code #:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

In violation of §16-11-311 of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Clerk

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 180 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

PTUP

days/hours Public Service Employment

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

White - Clerk

Green - Corrections

Canary - Probation

Pink - Defendant

SCCA/217 (7/2003)

WITNESSES

Micheal Fowlkes, CCSO

DOCKET NO. 04-GS-11- 0203

The State of South Carolina

County of Cherokee

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

FEB 19 2004

TERM

ARREST WARRANT

H-519035

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 2/19/04

VERDICT

Guilty, Jerry E Keller

Foreperson of Petit Jury

Date: 4-13-06

THE STATE

vs.

Ricky Brannon

Indictment for

GRAND LARCENY

SC Code: 16-13-20

A TRUE COPY
Handy 11/11/06
CLERK OF COURT
CHEROKEE COUNTY, SC.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF CHEROKEE)

At a Court of General Sessions, convened on FEB 19 2004 the

Grand Jurors of Cherokee County present upon their oath:

GRAND LARCENY

That Ricky Brannon did in Cherokee County on or about November 20, 2003, with the intent to permanently deprive the owner take and carry away goods belonging to Kenneth Gallman, the value of which was greater than one-thousand dollars but less than five thousand dollars to wit: Ricky Brannon did take and carry away a Firearms, Jewelry, Monies and personal papers belonging to Kenneth Gallman, in violation of §16-13-20, *THE 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

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CherokeeSTATE Ricky Brannen VS.

INDICTMENT/CASE#:

2004

-GS-

11203

A/W#:

H-519035

Date of Offense:

11-20-2003

S.C. Code §:

16-13-20

CDR Code #:

0 1 4 1 7 1 8☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIAL

AKA:

Race:

B

Sex:

M

Age:

30

DOB:

1

SS#:

Address:

City, State, Zip

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Grand Larcenyin violation of § 16-13-20 of the S.C. Code of Laws, bearing CDR Code # 0 1 4 1 7 1 8☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

L. DeWayne Pearson
Solicitor AAGRicky Brannen
DefendantRoger Poole
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 04-65-11-202☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114(BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

	\$
\$	\$
\$100	\$
\$100	\$
\$12	\$
\$500	\$
\$25	\$
\$100	\$
\$50	\$
\$40/ea	\$
\$	\$
\$	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

ARREST WARRANT

H- 519030

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 DI #: _____

DOB: _____ Agency ORI#: SC0110000

Prosecuting Agency: SHERIFF'S OFFICE

Prosecuting Officer: CAPTAIN MIKE FOLKES

Offense: BURGLARY 2ND DEGREE

Offense Code: _____

Code/Ordinance Sec. 16-11-312

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 (L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant Ricky Brannon
on 217 / 0298 Da

B. Carlsman 33229
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 FOLKES who
being duly sworn deposes and says that defendant RICKY BRANNON
did within this county and state on November 19, 2003 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHEROKEE COUNTY)
in the following particulars:
DESCRIPTION OF OFFENSE: BURGLARY 2ND DEGREE

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 THE RESIDENCE BELONGING TO JOY SHERRICK AT 224 GREEN
PARK DRIVE WITHOUT AUTHORITY TO DO SO AND WITH THE INTENT TO COMMIT A CRIME THEREIN. INCIDENT OCCURRED ON
NOVEMBER 19, 2003 IN CHEROKEE COUNTY, S.C.

WARRANT BASED ON THE INVESTIGATION BY THE CHEROKEE COUNTY SHERIFF'S OFFICE.
CASE# 2003-003757

Sworn to and subscribed before me
on 11/21/2003

Signature of Issuing Judge (L.S.)

Signature of Affiant Michael Folkes
Affiant's Address 312 EAST FREDRICK STREET
GAFFNEY, SC 29340
Affiant's Telephone 864 487-2583

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
CHEROKEE COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE IN THIS COUNTY:

It appearing from the above affidavit that there are reasons to believe that
on November 19, 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 CHEROKEE COUNTY, SC

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.)
Judge's Address Cherokee County Court House
GAFFNEY, SC 29340
Judge's Telephone 803 487-2533
Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

ORIGINAL

H-519030

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
NOV 25 4:00
GRANDY W. MCNEEL

ARREST WARRANT

H-519035

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 DI #: _____DOB: _____ Agency ORI#: SC0110000Prosecuting Agency: SHERIFF'S OFFICEProsecuting Officer: CAPTAIN MIKE FOLKESOffense: GRAND LARCENY

Offense Code: _____

Code/Ordinance Sec. 16-13-20
 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

 Form Approved by
 S.C. Attorney General
 July 26, 1990
 SCCA 518

 Personally appeared before me the affiant CAPTAIN MIKE FOLKES who
 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 the
 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHEROKEE COUNTY)
 in the following particulars:
DESCRIPTION OF OFFENSE: GRAND LARCENY
 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 WITH THE INTENT TO PERMANENTLY DEPRIVE THE OWNER TAKE AND CARRY AWAY
 FIREARMS, JEWELRY, MONIES, AND PERSONAL PAPERS AND EFFECTS VALUED AT MORE THAN \$1000 BELONGING TO KENNETH
 GALLWAL. INCIDENT OCCURRED ON NOVEMBER 20, 2003 AT 224 CANDLEWOOD LANE 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)
Frank R. Klockner (L.S.))
 Signature of Issuing Judge

Signature of Affiant

Affiant's Address

312 EAST FREDRICK STREET
GAFFNEY, SC 29340

Affiant's Telephone

864 487-2503

STATE OF SOUTH CAROLINA

☐ County/ ☐ Municipality of
CHEROKEE COUNTY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSISTENT 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
DESCRIPTION OF OFFENSE: GRAND LARCENY
 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.

Frank R. Klockner (L.S.)
 Signature of Issuing Judge
 Judge Code: 703
Judge's Address: Cherokee County Court House

GAFFNEY, SC 29340

Judge's Telephone

803 487-2533

Issuing Court:

☐ Magistrate☐ Municipal☒ Circuit

ORIGINAL

H-519035

RECEIVEDDEC 07 2007 *alg***ATTORNEY GENERALS
OFFICE**

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

FINAL BRIEF OF APPELLANT

LANELLE C. DURANT
Appellate DefenderSouth Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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Rules

Rule 403, SCORE 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 (ROA p. 154, lines 20 -25, SUP. ROA p. 1, 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 (ROA 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. (ROA 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 (ROA 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 (ROA 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 (ROA 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. (ROA 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."

(ROA p. 214, lines 17-21). He went on to say that without the nicks and cuts this shoe pattern is like every other pattern. (ROA 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. (ROA 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. (ROA 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.

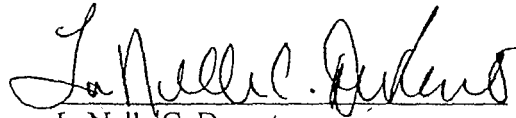
The court also did not have a pretrial hearing after the defense's motion to exclude the expert's testimony to at least do some sort of analysis of the testimony to determine if it was more prejudicial than probative. The on-the-record analysis done by the court regarding prejudicial versus probative 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,

A handwritten signature in cursive script, reading "LaNelle C. Durant". The signature is written in black ink and is positioned above the printed name and title.

LaNelle C. Durant

Appellate Defender

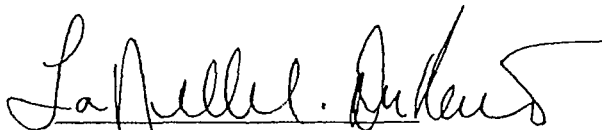
ATTORNEY FOR APPELLANT

This 6th day of December, 2007.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

December 6, 2007

A handwritten signature in black ink, appearing to read "LaNelle C. DuRant", with a long horizontal flourish extending to the right.

LaNelle C. DuRant
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, SC 29211-1589
803) 734-1343
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

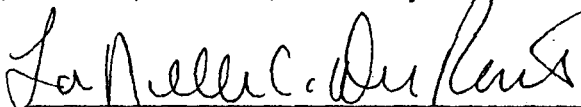
V.

RICKY BRANNON,

APPELLANT

CERTIFICATE OF SERVICE

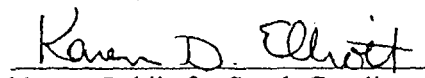
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon , Deborah Shupe, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of December, 2007.



LaNelle C. Durant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of December, 2007.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: March 19, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

vs.

RICKY BRANNON,

Appellant.

FINAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

HAROLD W. GOWDY, III
Solicitor, Seventh Judicial Circuit

County Courthouse
180 Magnolia Street, 3rd Floor
Spartanburg, S. C. 29306-2335
(864) 596-2575

ATTORNEYS FOR RESPONDENT

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TABLE OF AUTHORITIES

Cases:

<u>State v. Douglas</u> , 367 S.C. 498, 626 S.E.2d 59 (Ct. App. 2006)	7
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STATEMENT OF ISSUE ON APPEAL

The circuit court properly qualified the crime scene investigator as an expert in footwear identification and allowed him to testify regarding his comparison of shoe prints found at the scene and Appellant's shoes.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On February 19, 2004, the Cherokee County Grand Jury indicted Appellant Ricky Brannon ("Brannon") on two counts of first degree burglary and one count of grand larceny. (Indictments; Record on Appeal [R.], pp. 165-171). The matter was called for a jury trial on April 12, 2006, before the Honorable A. Doyet Early, III, Circuit Court Judge.

Andrea Randolph testified that Brannon came to her front door at approximately 7:30 a.m. on November 19, 2003, and asked if she allowed people to fish in her ponds. Mrs. Randolph had never seen Brannon before, and she told him they usually did not allow people to fish in the ponds. She then watched him walk to a car parked in her driveway, which she described as a silvery light blue metallic color car, and drive away. (Trial Transcript [TT], pp. 66-75; R., pp. 11-20).

Joy Sherrick testified that on the morning of November 19, 2003, she left her home around 7:30 a.m. to take her children to school, and was gone approximately forty-five minutes. When she returned, she noticed a "bluish grey silver" car backed up to her front yard. She pulled into her garage and noticed that one of her window screens was laying on the ground. As she started through the breezeway between the garage and house, she noticed glass on the steps and floor, and realized someone had broken into her house. She went back into the garage to call 911, and then heard the car in front of her house speeding away. After police arrived and she was able to enter her house, Mrs. Sherrick saw that the house had been ransacked. (TT, pp. 85-103; R., pp. 22-40).

Ira Jo Gallman testified that on the morning of November 19, 2003, she was in bed asleep when someone rang her doorbell. As she walked toward the door, she looked out a bedroom window and saw a strange car parked in her driveway. Through some glass in her

front door, she saw a man wearing a big jacket with a hood on his head. She did not answer the door and returned to the bedroom to watch the car. The man at the door then rang the doorbell again for approximately one to two minutes. Mrs. Gallman's neighbor came home at about that time, and the man walked from the porch to the car in the driveway. Mrs. Gallman went to her living room window and watched the man as he got in the car, and when his hood fell back she saw his face. As he drove away, Mrs. Gallman wrote down the license tag number on the car. (TT, pp. 109-124; R., pp. 42-57).

The next day, Mrs. Gallman's husband called her at work and told her to come home. When she arrived, she learned that someone had broken into her home through a kitchen window and ransacked the house. She told police about the incident the morning before and gave them the license tag number of the car. (TT, pp. 124-129; R., pp. 57-62).

Kenneth Gallman testified that after receiving a telephone call from his son at approximately 1:00 p.m. on November 20, 2003, he went home and found that windows had been broken out and the house ransacked. A safe containing papers, jewelry, guns and cash had been stolen. The stolen guns were subsequently returned by police. (TT, pp. 136-147; R., pp. 64-75).

Tarsha Littlejohn testified that on November 19 and 20, 2003, Brannon was her boyfriend and he was driving her 2001 Daewoo. She identified photographs of the vehicle that had previously been identified by Mrs. Randolph, Mrs. Sherrick and Mrs. Gallman as the car they saw at their homes on November 19, 2003. (TT, pp. 149-164; R., pp. 76-91).

Deputy Richard Turner of the Cherokee County Sheriff's Office testified that on the evening of November 20, 2003, he observed the vehicle previously identified as the one Brannon was driving run a stop sign and he initiated a traffic stop. Brannon was driving and

he had a fifteen year old girl in the car with him. Brannon did not have his driver's license with him, so Deputy Turner issued tickets to Brannon for running the stop sign and not having his license in his possession, and took Brannon into custody. (TT, pp. 172-178; R., pp. 92-98).

Investigator Jimmy Henson of the Sheriff's Department testified he had been in law enforcement for thirty years, and had been a crime scene investigator since 1995. He stated he processed the crime scenes at the Sherrick and Gallman homes, and gathered some broken glass from the windows at the Gallman home, which he dusted with fingerprint powder and found some shoe prints. (TT, pp. 191-198; R., pp. 99-106).

Investigator Henson testified about his extensive training since 1979 in the area of crime scene investigation, including latent print examinations, with a total of 440 training hours. He also testified that he was qualified by a circuit court judge on one occasion in 1999 as an expert in footwear identification, and he had testified several times on footwear impressions. The circuit court judge, without objection, qualified Investigator Henson as an expert in footprint identification. (TT, pp. 199-205; R., pp. 107-113).

Investigator Henson then testified he compared the shoe prints he found on the glass from the Gallman home to a pair of Fila athletic shoes taken from Brannon when he was arrested. Based on common characteristics, he concluded Brannon's shoes were of the same type as the shoes that made the shoe prints. He also testified that some of the patterns in the shoe prints were consistent with movement while the person was standing on the glass. He then stated it was his opinion that Brannon's shoes made the shoe prints at the scene. (TT, pp. 205-219; R., pp. 113-127). On cross-examination, Investigator Brannon testified that while he could not say with certainty Brannon's shoes made the shoe prints because the

shoes did not have any specific identifying characteristics like cuts and nicks, it was his opinion they did make the prints. (TT, pp. 220-221; R., pp. 128-129).

Investigator Mike Fowlkes testified he was the primary investigator on the Sherrick and Gallman burglaries. After Deputy Turner arrested Brannon on the traffic violations, Investigator Fowlkes interviewed him about the burglaries. During the first interview, Brannon refused to answer questions. The following day, however, Brannon asked to speak with Investigator Fowlkes, and after waiving his rights, stated he knew where some of the property stolen from the Gallman home was located. He then took Investigator Fowlkes to his home and turned over a bag containing the guns from the Gallman home. He also took investigators to a dumpster where he threw away some of the other stolen items. (TT., pp. 228-246; R., pp. 134-152).

The jury convicted Brannon of first degree burglary and grand larceny in connection with the Gallman case, but acquitted him of first degree burglary in connection with the Sherrick case. (TT, p. 302; R., p. 155). Brannon had previous convictions for most serious and serious offenses, and prior to trial, the State provided the required notice of its intention to seek a sentence of life without parole. The circuit court found the notice was proper, and sentenced Brannon to life without parole on the first degree burglary conviction, and five years concurrent on the grand larceny conviction. (TT, pp. 308-315; R, pp. 156-163). This appeal followed.

ARGUMENT

The circuit court properly qualified the crime scene investigator as an expert in footwear identification and allowed him to testify regarding his comparison of shoe prints found at the scene and Appellant's shoes.

Brannon contends the circuit court erred in allowing Investigator Henson to testify regarding his comparison of the shoe prints from the Gallman home to Brannon's shoes. The gist of his contention is that the brand of Brannon's shoes was common, and Investigator Henson's testimony contained contradictions, which made the evidence more prejudicial than probative.

The admission or exclusion of evidence is addressed to the sound discretion of the trial judge. *E.g.*, State v. Gaster, 349 S.C. 545, 564 S.E.2d 87, 93 (2002); State v. Edwards, ____ S.C. ____, 644 S.E.2d 66, 68 (Ct. App. 2007). The qualification of an expert witness and the admissibility of the expert's testimony are also matters largely within the trial judge's discretion. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993); State v. Douglas, 367 S.C. 498, 626 S.E.2d 59, 63-64 (Ct. App. 2006) (citations omitted). The trial court's rulings on these matters will not be reversed on appeal absent an abuse of discretion or commission of legal error, resulting in prejudice to the defendant. Edwards, 644 S.E.2d at 68; State v. Jamison, 372 S.C. 649, 643 S.E.2d 700, 701 (Ct. App. 2007).

Brannon did not object to Investigator Henson's qualification as an expert in footwear impressions. As an expert, Investigator Henson was allowed to express his opinion based on his examination of the evidence. Brannon thoroughly cross-examined Investigator Henson regarding purported contradictions in his testimony, as well as his knowledge, or lack thereof, regarding the common nature of the Fila athletic shoe brand. His assertions regarding those issues go to the weight of the evidence, not its admissibility. *See Douglas*,

626 S.E.2d at 65 (defects in the amount and quality of the expert's education or experience generally go to the weight of the testimony and not its admissibility).

While much of the evidence in this case was circumstantial, it was more than sufficient to support the jury's verdict.¹ The circuit court did not abuse its discretion in allowing Investigator Henson's testimony, and Brannon's conviction and sentence should be affirmed.

¹Brown's contention that Investigator Henson's testimony regarding the shoe print was the only direct evidence implicating Brannon in the Gallman burglary is contrary to the evidence. Brannon's possession of items stolen from the Gallman home also directly linked him to the burglary.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

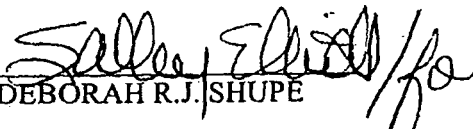
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General

HAROLD W. GOWDY, III
Solicitor, Seventh Judicial Circuit

BY: 
DEBORAH R.J. SHUPE

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 06, 2007

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

vs.

RICKY BRANNON,

Appellant.

CERTIFICATE OF COUNSEL

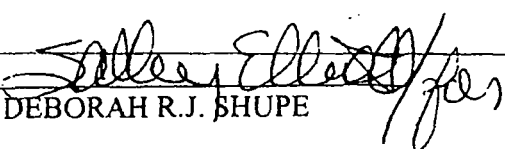
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General

By: 

DEBORAH R.J. SHUPE

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 06, 2007

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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

THE STATE,

Respondent,

vs.

RICKY BRANNON,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing three copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle C. Durant, Esquire
Assistant Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
P. O. Box 11589
Columbia, S. C. 29211

I further certify that all parties required by Rule to be served have been served.

This 6th day of December, 2007.

Ellen R. DuBois
ELLEN R. DUBOIS
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Ricky Brannon,

Appellant.

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

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

AFFIRMED

Appellate Defender Lanelle C. Durant, South Carolina Commission on Indigent Defense, Division of Appellate Defense, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott,

and Assistant Attorney General Deborah R. J. Shupe ,
all of Columbia; and Solicitor Harold W. Gowdy, III,
of Spartanburg, for Respondent.

PER CURIAM: Ricky Brannon appeals his convictions for burglary in the first degree and grand larceny, arguing the trial court erred in admitting the testimony of a footprint analysis expert. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities: State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (“Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review.”); State v. Wood, 362 S.C. 520, 526, 608 S.E.2d 435, 438 (Ct. App. 2004) (holding a party opposing the admission of evidence must object to the evidence when it is introduced because “a motion in limine is not a final determination”), cert. denied (Aug. 15, 2006); State v. Burton, 326 S.C. 605, 611, 486 S.E.2d 762, 765 (Ct. App. 1997) (“Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review.”).

AFFIRMED.

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

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



RECEIVED

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dyr

ATTORNEY GENERALS

The South Carolina Court of Appeals OFFICE

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

July 8, 2008

REMITTITUR

The Honorable Brandy W. McBee
125 E Floyd Baker Blvd
PO Drawer 2289
Gaffney, SC 29342-2289

Re: The State v. Brannon, Ricky
2006-GS-11-00201 2006-GS-11-00202 2006-GS-11-00203

Dear Ms. McBee:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Due to the size of the exhibits the Court of Appeals requests that the Office of Attorney General or his designee pick up the exhibits within 10 days of the date of this letter. The exhibits to be picked up are: State's Exhibits 4, 5, 6, 7, 8, 9 and 10 (all of which are photographs), State's Exhibit 28 (blow up of shoe print), State's Exhibit 36 (transparency).

Sincerely,

Renee S. Johnson
Administrative Specialist

KAR/tj
KAR/tj

cc: Appellate Defender Lanelle C. Durant
Assistant Attorney General Deborah R. J. Shupe
Harold W. Gowdy, III, Esquire

BRANNON, RICKY - FBI # 888390DAB STD# SC00490227 SCDC # 179051 (CONTINUED)
 6/ 3/91 PERRY R&E INCARCERATED NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	08/28/08	0/ 0/ 0		3F5
WARDKEEPER ASSISTANT	11/29/07	7/28/ 8	PLACED IN ST/SP CUSTODY	2F5
WARDKEEPER ASSISTANT	02/14/07	10/24/ 7	PLACED IN ST/SP CUSTODY	2F5
WARDKEEPER ASSISTANT	05/16/06	2/13/ 7	MEDICAL	2F5
WARDKEEPER ASSISTANT	11/23/04	8/ 1/ 5	RELEASED/PAROLED	2F5
SUPER.FURL.	08/07/01	10/14/ 4	INSTIT TRANSFER	2F5
GENERAL WORKER	01/26/99	8/ 7/ 1	FURLOUGH	2F5
BARBER	10/22/98	1/25/99	INMATE REQUEST	2F5
SENIOR WARDKEEPER	07/15/97	10/21/98	INSTIT TRANSFER	2F5
WARDKEEPER ASSISTANT	05/23/97	7/11/97	INSTIT TRANSFER	2F7
WARDKEEPER ASSISTANT	04/08/97	5/22/97	MI ELIGIBLE FOR LEVEL 2	3F7
WARDKEEPER ASSISTANT	03/06/97	4/ 7/97	CUSTODY REVIEW	5F7
SENIOR INVENTORY OPE	04/06/96	11/18/96	DISCIPLINARY/LOCK-UP	2F7
SENIOR INVENTORY OPE	01/10/96	3/29/96	MEDICAL	2F7
GENERAL WORKER	06/28/95	1/ 9/96	INMATE REQUEST	7F7
INVENTORY CLERK	05/10/95	5/25/95	UNSAT JOB PERFORM	3F5
SENIOR INVENTORY OPE	02/14/95	5/ 9/95	DEMOTION	2F5
SENIOR CUSTODIAN	01/06/95	2/13/95	PROMOTION	3F5
CHIEF CLERK	08/09/94	1/ 5/95	INMATE REQUEST	3F5
TRU DRIVER HVY >=1 1	08/03/94	8/ 8/94	DEMOTION	2F5
TRU DRIVER HVY >=1 1	08/27/93	6/20/94	INSTIT TRANSFER	2F5
FURNITURE ASSEMBLER	09/11/92	8/26/93	PROMOTION	3F5
WAREHOUSE ATTENDANT	08/12/92	9/10/92	PROMOTION	5F5
FURNITURE ASSEMBLER	03/04/92	5/23/92	INSTIT TRANSFER	3F5
MACHINE OPERATOR HEL	01/15/92	3/ 3/92	PROMOTION	5F5
COOK	06/11/91	8/30/91	INSTIT TRANSFER	3F7

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
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NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

BRANNON, RICKY - FBI # 888390DAB SID# SC00490227 SCDC # 179051 (CONTINUED)

10/24/87	THREATENING TO INFLICT H	CONVICTED	MAJOR	00133719
10/24/87	SEXUAL MISCONDUCT	CONVICTED	MAJOR	00133719
9/25/87	SEXUAL MISCONDUCT	CONVICTED	MAJOR	00133719
7/29/87	FIGHTING WITHOUT A WEAPN	CONVICTED	MINOR	00133719
8/ 5/86	STEALING	CONVICTED	MAJOR	00133719

HISTORY OF MOVEMENTS:

9/ 8/ 9	BROAD RIVER	INCARCERATED	RETURN FROM COURT
9/ 8/ 9	CHEROKEE CO	AUTH ABSENCE (AWL)	TO COURT
5/18/ 9	BROAD RIVER	INCARCERATED	RETURN FROM COURT
5/18/ 9	CHEROKEE CO	AUTH ABSENCE (AWL)	TO COURT
4/30/ 9	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
4/30/ 9	KIRKLAND	INCARCERATED	MEDICAL
4/27/ 9	BROAD RIVER	INCARCERATED	RETURN FROM COURT
4/27/ 9	CHEROKEE CO	AUTH ABSENCE (AWL)	TO COURT
2/ 2/ 9	BROAD RIVER	INCARCERATED	RETURN FROM COURT
2/ 2/ 9	CHEROKEE CO	AUTH ABSENCE (AWL)	TO COURT
12/10/ 8	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
12/10/ 8	KIRKLAND	INCARCERATED	MEDICAL
12/ 9/ 8	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
12/ 9/ 8	RICHLAND CO	AUTH ABSENCE (AWL)	MEDICAL
11/18/ 8	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
11/18/ 8	KIRKLAND	INCARCERATED	MEDICAL
4/28/ 8	BROAD RIVER	INCARCERATED	RETURN FROM COURT
4/28/ 8	CHEROKEE CO	AUTH ABSENCE (AWL)	TO COURT
11/ 9/ 7	BROAD RIVER	INCARCERATED	RETURN FROM COURT
11/ 8/ 7	CHEROKEE CO	AUTH ABSENCE (AWL)	TO COURT
2/22/ 7	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
2/22/ 7	KIRKLAND	INCARCERATED	MEDICAL
2/14/ 7	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
2/13/ 7	KIRKLAND INFRM	INCARCERATED	MEDICAL
2/13/ 7	SUMTER CO	AUTH ABSENCE (AWL)	MEDICAL
1/11/ 7	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
1/11/ 7	KIRKLAND	INCARCERATED	MEDICAL
5/15/ 6	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
4/19/ 6	KIRKLAND	INCARCERATED	R&E PROCESSING
4/19/ 6	PERRY	INCARCERATED	NEW SENT W/O PR/CS/SF REV
8/ 1/ 5	CHEROKEE CO	PROBATION	RELEASED TO PROBATION
7/29/ 5	CHEROKEE CO	AUTH ABSENCE (AWL)	TO COURT
4/25/ 5	BROAD RIVER	INCARCERATED	RETURN FROM COURT
4/25/ 5	CHEROKEE CO	AUTH ABSENCE (AWL)	TO COURT
3/ 7/ 5	BROAD RIVER	INCARCERATED	RETURN FROM COURT
3/ 7/ 5	CHEROKEE CO	AUTH ABSENCE (AWL)	TO COURT
11/22/ 4	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
10/14/ 4	KIRKLAND	INCARCERATED	R&E PROCESSING
10/14/ 4	PERRY	INCARCERATED	NEW ADMISSION
2/ 3/ 2	UNK	RELEASE	SFII COMPLETED
8/ 7/ 1	CHEROKEE CO	SFII-SUPERVISED FURL	SUPERVISED FURLOUGH
10/21/98	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
7/11/97	MANNING	INCARCERATED	ADMINISTRATIVE
12/21/96	PERRY	INCARCERATED	ADMINISTRATIVE
11/18/96	PERRY R&E	INCARCERATED	DISCIPLINARY
8/ 2/94	PERRY	INCARCERATED	ADMINISTRATIVE
6/20/94	PERRY R&E	INCARCERATED	LOCKUP-PROTECTIVE CUST.
8/ 5/92	PERRY	INCARCERATED	ADMINISTRATIVE
5/23/92	PERRY R&E	INCARCERATED	DISCIPLINARY
12/ 5/91	PERRY	INCARCERATED	ADMINISTRATIVE
11/22/91	PERRY R&E	INCARCERATED	NEW SENT W/O PR/CS/SF REV
8/30/91	CHEROKEE CO	PROBATION	RELEASED TO PROBATION
8/12/91	BLUE RIDGE	PRE-RELEASE	PRE-RELEASE
6/ 6/91	NORTHSIDE	INCARCERATED	ADMINISTRATIVE

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 09/11/09

C0235

BRANNON, RICKY - FBI # 888390DA8 SID# SC00490227 SCDC # 179051

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ...: BROAD RIVER CORR. INST.

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 999 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #....:

DORM.....: UA0274B

RACE.....: B SEX....: M

PROJ MAXOUT DATE: 99/99/9999

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: WARDKEEPER ASSISTANT

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: WARD HELPER

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 40 DATE OF BIRTH...:

PREVIOUS NUMBERS:

Y00125663

00133719

CURRENT OFFENSES	SENTENCE				COUNTY	SENTENCE		
	YRS	MOS	DYS			START	V/VU	CATEGORY
BREAKING INTO MOTOR VEH	1	0	0	CHEROKEE	6/22/20	7	N	2
GRAND LARCENY	5	0	0	CHEROKEE	7/29/20	5	N	2
BURGLARY-1ST DEGREE	999	99	999	CHEROKEE	7/29/20	5	V	4
BREAKING INTO MOTOR VEH	2	0	0	CHEROKEE	8/ 3/20	4	N	2
RECEIVE STOLEN PROPERTY	0	6	0	CHEROKEE	5/30/1991		N	2
BURGLARY-2ND DEG/NON-VIO	0	6	0	CHEROKEE	5/30/1991		N	3

PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE				COUNTY	SENTENCE		
	YRS	MOS	DYS			START	V/VU	CATEGORY
RESISTING OFFICER	1	0	0	CHEROKEE	8/ 3/20	4	N	3
RECEIVE STOLEN PROPERTY	9	6	0	CHEROKEE	11/21/1991		N	2
BURGLARY-2ND DEG/NON-VIO	9	6	0	CHEROKEE	11/21/1991		N	3
LARCENY	10	0	0	CHEROKEE	10/12/1991		N	2
BURGLARY-1ST DEGREE	10	0	0	CHEROKEE	10/12/1991		N	4
GRAND LARCENY	10	0	0	CHEROKEE	10/12/1991		N	2
BURGLARY-1ST DEGREE	20	0	0	CHEROKEE	10/12/1991		V	4
BURGLARY-1ST DEGREE	20	0	0	CHEROKEE	10/12/1991		V	4
BREAKING INTO MOTOR VEH	5	0	0	CHEROKEE	10/12/1991		N	2
ARSON-2ND DEGREE	20	0	0	CHEROKEE	10/12/1991		N	4
GRAND LARCENY	10	0	0	CHEROKEE	10/12/1991		N	2
BURGLARY-1ST DEGREE	20	0	0	CHEROKEE	10/12/1991		V	4
ARSON-2ND DEGREE	20	0	0	CHEROKEE	10/12/1991		N	4
GRAND LARCENY	10	0	0	CHEROKEE	10/12/1991		N	2
BURGLARY-1ST DEGREE	0	0	0	CHEROKEE	10/12/1991		V	4

PRIOR COMMITMENTS OVER 90 DAYS:

10/23/90 POSSESS STOLEN PROPERTY 0 YRS 0 MOS 97 DYS

4/14/89 INDECENT EXPOSURE 3 YRS 0 MOS 0 DYS

5/13/85 *STOREBRKG + LARCENY 6 YRS 0 MOS 0 DYS

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINEES

ESCAPES:

4/28/86 ESCAPE CLASS II

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

7/25/ 8 STRIKING AN INMATE WITH/ CONVICTED MAJOR INMATE

10/23/ 7 STRIKING AN INMATE WITH/ DROPPED CHARG INMATE

NON-ASSAULTIVE DISCIPLINARIES:

3/ 9/ 5 GAMBLING AND LOAN SHARKI OTHER

11/18/96 POSSESSION OF CONTRABAND CONVICTED MAJOR

5/23/92 FIGHTING WITHOUT A WEAPON CONVICTED MINOR

5/23/92 REFUSING OR FAILING OBEY CONVICTED MINOR

10/24/89 STEALING CONVICTED MAJOR

00133719

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 09/11/09
 OMCOMITA RELEASE DATE SCREEN C023981
 SCDC# > 179051 LOC: BROAD RIVER
 BRANNON, RICKY - SCDC CLASSIFICATION... VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... Y
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS...: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION...:
 CURRENT SENTENCE: CONSECUTIVE SENTENCE ...
 LIFE CURRENT SENT START DATE: 07/29/2005
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 99/99/9999 CURRENT EWC ..
 YOA SIX YEAR DATE: CURRENT EEC ..
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000
 TOTAL SERVICE TIME EARNED ...: 000000

 PFKEYS: 5:HISTORY OF DATE CHANGES.
 4-© 1 Sess-1 167.7.50.33 SCDC1413 3/11

STATE OF SOUTH CAROLINA

County of Cherokee
STATE VS.

Ricky Brannon

AKA: _____

Race: B Sex: M

DOB: _____

SSN: _____

SID#: 56 490227

IN THE COURT OF GENERAL SESSIONS

INDICTMENT#:

04 -GS- 11 - 217

CW#: 6-11-06-142

Name of Original Offense: P.I.M.V.

Conviction S.C. Code §: 16-13-160

Conviction CDR Code #: 0 1 2 1 5 1 8

Date of Original Offense: 04-21-03

Original Sentence: 3 yrs. upon 2-yr. Prob. Hcy.

ORDER

The above named defendant has been charged with violating the conditions of probation ordered on 10/12/04 in the Court of General Sessions of Cherokee County as set forth in the attached warrant or citation dated 08/03/06. After hearing the evidence and being duly advised, in the (presence/absence) of the defendant, I find that the above named defendant has violated the following condition(s) of probation: (List by number or indicate special condition as provided in the affidavit) 1, 6, 9, 10

Therefore, IT IS ORDERED that:

- ☒ the suspended sentence be revoked and the above named defendant be required to serve 1 (one) months/years, the remainder of the original sentence, and/or pay \$ _____.
- ☐ the suspended sentence be revoked and the above named defendant be required to serve _____ months/years of the original sentence and/or pay \$ _____; thereupon to be reinstated on probation, subject to the conditions set forth in the attached order and not inconsistent with this order.
- ☐ the above named defendant is continued on probation as provided for in the original sentence, subject to the conditions set forth therein and not inconsistent with this order.
- ☐ probation is reduced to time served under supervision and the defendant is discharged from supervision on this date.

☒ Additional Conditions ordered by the Court:

Convert PDF of #515 to Civil Judgment
Sentence to run concurrent to present sentence now serving
Full Revocation

☐ The defendant is given credit for pre-revocation hearing detention time on current probation violation to be calculated and applied by the SC Department of Corrections.

☒ The defendant has previously served 2 months/years on this sentence.
(split sentence time and/or prior partial revocation time)

This 22 day of June, 2007.

Guthrie, SC.

Ed W. Miller
Presiding Judge

Hon. Edward Miller 2nd Judicial Circuit

You are hereby advised that under the law the Court may at any time revoke or modify any condition of this probation; impose any lawful conditions it deems proper; or extend your period of probation not to exceed five (5) years. At any time within the period of your probation, the Court may require you to serve any part of the original sentence imposed.

This is to certify that I have read, or have had read to me, the order and the conditions set out therein. I agree to comply with such conditions and the conditions of my attached probation order during the period of my probation. I have received a copy of this Court's order and all attachments.

Offender's Signature X Witnessed by Hon. E. Rhodes

Signed this 15 day of June, 2007, at Columbia, SC
Day Month Year City