

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Bamberg County

Edgar W. Dickson, Circuit Court Judge

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MAR - 5 2014

S.C. Supreme Court

JAMES GUNNELLS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001890

A P P E N D I X

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

DANIEL GOURLEY
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 THE COURT: Anything from the State?

2 MR. GIBBONS: No, sir.

3 THE COURT: Thank you very much. Okay. Mr.

4 Gunnells on the burglary first-degree, Indictment No.

5 2004-GS-05-019, sentence you to the Department of

6 Corrections for life. That's consecutive to Indictment No.

7 023 and concurrent with the other four indictments.

8 Indictment No. 023, armed-robbery, sentence to

9 the State Department of Corrections for 30 years. That's

10 consecutive with the burglary first and concurrent with the

11 other four indictments. Indictment 021, possession of a

12 weapon during a violent crime, sentence you to the State

13 Department of Corrections for 5 years. That's concurrent

14 with a other indictments. Indictment No. 026, that's

15 kidnapping, sentence you to the State Department of

16 Corrections for 30 years, that's concurrent with the other

17 indictments.

18 Indictment No. 028, kidnapping, sentence you to

19 the State Department of Corrections for 30 years. That's

20 concurrent with the other indictments. Indictment No. 029,

21 conspiracy, sentence you to the State Department of

22 Corrections for 5 years. That's concurrent with the other

23 five indictments.

24 MR. GIBBONS: Thank you, Your Honor.

25 THE COURT: Thank you.

1 MR. WILSON: Your Honor, if you'll just note
2 for the record -- I'm going to file a motion for
3 reconsideration for your sentence and have some discussions
4 with the solicitor if you'll just note that for the record
5 and I will file the written motions this morning.

6 THE COURT: That will be fine.

7 MR. WILSON: Thank you, Judge.

8 THE COURT: Do you want to have an argument?

9 MR. GIBBONS: No, sir, we'll talk to you about
10 it.

11 THE COURT: Okay. All right.

12
13
14 * * * * * END OF TRANSCRIPT * * * * *

1 MR. WILSON: Your Honor, if you'll just note
2 for the record -- I'm going to file a motion for
3 reconsideration for your sentence and have some discussions
4 with the solicitor if you'll just note that for the record
5 and I will file the written motions this morning.

6 THE COURT: That will be fine.

7 MR. WILSON: Thank you, Judge.

8 THE COURT: Do you want to have an argument?

9 MR. GIBBONS: No, sir, we'll talk to you about
10 it.

11 THE COURT: Okay. All right.

12
13
14 * * * * * END OF TRANSCRIPT * * * * *
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1 STATE OF SOUTH CAROLINA)

CERTIFICATE OF REPORTER

2 COUNTY OF AIKEN)

3
4
5
6 I, THE UNDERSIGNED, Brenda W. Sigwald, Official
7 Court Reporter for the Second Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 12th
11 through the 15th days of October, 2004.

12 I FURTHER CERTIFY that the foregoing pages,
13 numbered 3 through 502 constitute a true, accurate and
14 complete transcript of said hearing.

15 I FURTHER CERTIFY that I am neither kin,
16 counsel, nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand
18 and seal at Aiken County, this 29th day of August, 2006.

19
20
21 Brenda W. Sigwald
22 Brenda W. Sigwald,
23 Court Reporter and Notary Public
24 For the State of South Carolina
25 My commission expires
February 25, 2010

FORM 5

2010 CP-05-72

STATE OF SOUTH CAROLINA)

County of Bamberg)James Gunnells # 305475)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

Pharmy Ginnell, Henry P. Master)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT
BAMBERG, SC

2010 APR 5 AM 9:56

FILED
CLERK OF COURT**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution 440 H. Sackley Hwy
Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence General Session of Bamberg
County
3. Name(s) of co-defendant(s) (if any) TEIG RICHARD LEE
FREDERICK ALEXANDER COLLIER
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 04-05-05-019(1st), 04-05-05-021 (3 years), 04-05-05-023 (30 years)
- (b) 04-05-05-026 (30 years), 04-05-05-028 (30 years), 04-05-05-029 (5 years)

SC Attorney General
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APR -7 2010

Referred to DM. Wms.

Answered _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 15, 2004, (AT Court);
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Trial on all counts
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. Motion for Reconsideration General Sessions;
- ii. Direct Appeal (S.C. Court of Appeals)
- iii. Writ of Certiorari (S.C. Supreme Court)
- (b) the result in each such Court to which you appealed:
- i. Motion for Reconsideration (denied) October 15, 2004
- ii. Direct Appeal (denied) February 26, 2009
- iii. Writ of Certiorari (denied) October 8, 2009
- (c) the date of each such result:
- i. October 15, 2004
- ii. February 26, 2009
- iii. October 8, 2009
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. The Court is unable to state that any written opinion or order of law has been entered
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel
- (b) South Amendment Violation
- (c) Fourteenth Amendment Violation
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial Counsel Failed to do any pre-trial investigation, or prepare for defense
- (b) Same as above
- (c) Same as above
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion for Reconsideration
- ii. Direct Appeal
- iii. Writ of Certiorari
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. General Session
- ii. S.C. Court of Appeals
- iii. S.C. Supreme Court
- iv. _____

(c) the disposition thereof:

- i. Denial
- ii. Denial
- iii. Denial
- iv. _____

(d) the date of each such disposition:

- i. 10/15/2004
- ii. 2/26/2009
- iii. 10/5/2004
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. The Court is unable to discover the any material fact or principle of law has been once before
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Ineffective Assistance of Counsel
- ii. State Procurement Violation
- iii. Fourteenth Amendment Violation

(b) the proceedings in which each ground was raised:

- i. Perkins for Prosecution
- ii. Direct Appeal
- iii. Part of Petition

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) N/A
 (c) N/A

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? UNKNOWN
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. J. Christopher Wilson
392 Second Street Bamberg, S.C. 29003
 ii. LaNelle Lantoy Vincent
1331 Lady Street, Suite 401, Columbia SC 29201-3432
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial and sentencing
 ii. Direct Appeal and Writ of Certiorari
 iii. _____

19. State clearly the relief you seek in filing this application:

Vacated Sentence or Release and Remand for New Trial

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, JAMES GUNNELLS, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James Gunells

SWORN to and subscribed before me this 1 day of April, 2010.

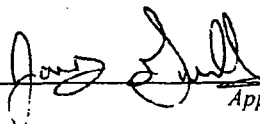
Debra Ann (L.S.)
Notary Public

My Commission Expires: 5-16-10

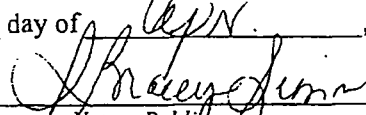
APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, JAMES GUNNELLS, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

1 day of Apr., 2010.

Notary Public

My Commission Expires: 5-16-10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BAMBERG	)	2010-CP-05-0072
	)	
James Gunnells, #305475	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	(Appointment of Counsel Requested)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the application for post conviction relief (PCR) filed April 5, 2010, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Bamberg County Clerk of Court. Applicant was indicted at the March 2004 term of the Bamberg County Grand Jury for Burglary in the First Degree (2004-GS-05-0019), Assault and Battery with Intent to Kill ("ABWIK") (2004-GS-05-0020), Possession of a Weapon During the Commission of a Violent Crime (2004-GS-05-0021), Armed Robbery (2004-GS-05-0023), two (2) counts of Grand Larceny (2004-GS-05-0024 & 0025), three (3) counts of kidnapping (2004-GS-05-0026, 0027, & 0028), and Criminal Conspiracy (2004-GS-05-029). Christopher Wilson, Esquire, and Steve Chandler, Esquire, represented him. Applicant proceeded to a jury trial before the Honorable J.C. Nicholson, Jr. on October 12-15, 2004. On October 15, 2004, Applicant was sentenced to life imprisonment for Burglary in the First Degree and to a consecutive term of thirty (30) years for Armed Robbery. Applicant was also sentenced to thirty (30) years for each of two (2) counts of Kidnapping, to five (5) years for Possession of a Weapon During the Commission of a Violent Crime, and to five (5) years for Criminal Conspiracy. The remaining sentences were to be served concurrently. Applicant was

found not guilty of one count of Kidnapping, both counts of Grand Larceny, and ABWIK.

A Motion to Reconsider the Sentence was filed on the Applicant's behalf on October 15, 2004. A hearing on the matter was convened on January 17, 2007. In an order dated February 13, 2007, and filed April 20, 2007, Judge Nicholson found that the Applicant "knowingly, intelligently, freely, and voluntarily made the decision to withdraw the Motion for Reconsideration of Sentence in this matter and [did] so on his own and against the advice of counsel."

A Notice of Appeal was filed on the Applicant's behalf. LaNelle C. Durant, Esquire, represented the Applicant on appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gunnells, Op. No. 2009-UP-035 (S.C. Ct. App. filed January 14, 2009). Applicant's Petition for Rehearing was denied on February 26, 2009. The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari by Order dated October 7, 2009. The Remittitur was issued on October 12, 2009.

Attached herewith and incorporated herein by reference are the records of the Bamberg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial transcript.

II.

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

1. Ineffective assistance of counsel.
 - a. "Trial counsel failed to do any pre-trial investigation or prepare for defense."
2. "Sixth Amendment Violation."
3. "Fourteenth Amendment Violation."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at

an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. 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, 300 S.C. at 117, 386 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland

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

IV.

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

V.

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

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Oct. 20, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF BAMBERG)

IN THE COURT OF COMMON PLEAS

2010-CP-05-0072

JAMES GUNNELLS, 305475)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,)

Respondent.)

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

**Rose Osborne, Esquire
 Michael Tanner, LLC
 Post Office Box 1061
 Bamberg, SC 29003-0661**

DATED this 20th day of October, 2010

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2010-CP-05-00072

3
4 JAMES GUNNELLS,
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9 Post Conviction Relief Hearing

10 Heard on Friday, January 27, 2008

11 Aiken, South Carolina

12
13 BEFORE:

14 THE HONORABLE EDGAR W. DICKSON

15
16 APPEARANCES:

17 Counsel on Behalf of the Applicant:
18 Tricia Blanchette, Esq.

19 Counsel on Behalf of the Respondent, State of SC:
20 Mary S. Williams, Esq.

21 Counsel on Behalf of Witness, Tivo Lee:
22 Aaron Walsh, Esq.

23 Cheri L. Young, RPR
24 Circuit Court Reporter
25 P O Box 5232
Aiken, SC 29804-5232

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Plaintiff's:

MAR ADM

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1 ON JANUARY 27, 2012 AT 10:45 A.M.:

2 THE COURT: All right. Ms. Williams?

3 MS. WILLIAMS: May it please the Court.

4 THE COURT: Yes, ma'am.

5 MS. WILLIAMS: Your Honor, this is the case of James
6 Gunnells. Mr. Gunnells filed this post conviction relief
7 application on April the 5th of 2010.

8 He was convicted of several charges arising out of a
9 burglary, a home invasion incident in Bamberg County. He
10 was charged with burglary in the first degree, assault and
11 battery with intent to kill, possession of a weapon during
12 the commission of a violent crime, armed robbery, two
13 counts of grand larceny, three counts of kidnapping and
14 criminal conspiracy.

15 He was acquitted of two larcenies, one kidnapping
16 charge and the assault and battery with intent to kill
17 following a jury trial, convicted of the remaining
18 charges. And he was represented at that trial by Chris
19 Wilson.

20 He did have an appeal. His conviction and sentence
21 were ultimately affirmed.

22 And he has filed this application. He's got various
23 allegations of ineffective assistance of counsel and some
24 other things.

25 I'll let Ms. Blanchette go into those more.

1 THE COURT: Ms. Blanchette?

2 MS. BLANCHETTE: Thank you, Your Honor. Tricia
3 Blanchette here on behalf of James Gunnells.

4 We have filed a detailed amendment that was filed back
5 on January 13th of this year. Does Your Honor have a copy
6 of that?

7 THE COURT: I'm hoping.

8 MS. WILLIAMS: If he doesn't, I have an extra copy.

9 THE COURT: I don't have it.

10 MS. BLANCHETTE: Okay.

11 THE COURT: Do you have another copy?

12 MS. BLANCHETTE: I believe the State does.

13 THE COURT: Okay.

14 MS. BLANCHETTE: Your Honor, I have a copy of the
15 filed one. If you want, we could make another copy.

16 THE COURT: Yes, ma'am. If you'd bring it up here.
17 Angel, do you mind?

18 (Pause.)

19 THE COURT: You can go ahead and proceed.

20 MS. BLANCHETTE: I can, Your Honor.

21 Your Honor, as I stated, we have set forth each
22 allegation in that detailed amendment. I can go through
23 each of them if you'd like or if you'd just like to refer
24 to that and then I can summarize it at the end.

25 THE COURT: Yes, ma'am. I'll be happy to do that.

TIVO LEE - DIRECT

1 MS. BLANCHETTE: Okay. Then I'm prepared to call my
2 first witness. Tivo Lee.

3 THE COURT: Is he here?

4 MS. BLANCHETTE: He is here.

5 THE COURT: And Mr. Lee's first name is?

6 MS. BLANCHETTE: Tivo. I believe it's spelled, or
7 it's been spelled by the Court T-I-V-O.

8 THE COURT: Okay.

9 TIVO LEE, having been duly sworn, was examined and
10 testified as follows:

11 THE CLERK: Please have a seat in the witness box and
12 state your full name for the Court.

13 THE COURT: Good morning, Mr. Lee.

14 THE WITNESS: Good morning.

15 THE COURT: Mr. Lee, you might need to slide up just
16 to make sure that we pick up your voice. You need to
17 speak up for me, please, sir. Thank you, sir.

18 THE WITNESS: All right.

19 DIRECT EXAMINATION

20 BY MS. BLANCHETTE:

21 Q. Could you please state your name for the record?

22 A. Tivo Lee.

23 Q. And, Mr. Lee, are you currently incarcerated?

24 A. Yes, ma'am.

25 Q. And where are you incarcerated at?

TIVO LEE - DIRECT

1 A. Kershaw Correctional Institution.

2 Q. Okay. And before you came here today, did you have
3 the opportunity to speak with an attorney that was
4 appointed to you?

5 A. Yes, ma'am.

6 Q. And when did you do that?

7 A. Yesterday.

8 Q. Okay. And is that attorney Aaron Walsh?

9 A. Yes, ma'am.

10 Q. And do you see him here in the courtroom today?

11 A. Yes, ma'am.

12 Q. Okay. Mr. Lee, at any time if you need to consult
13 with your attorney regarding any questions that I ask you,
14 please let me know before you answer. Okay?

15 A. (Nods head.)

16 MS. BLANCHETTE: Your Honor, may I approach the
17 witness?

18 THE COURT: You may.

19 BY MS. BLANCHETTE:

20 Q. Mr. Lee, could you identify what these two documents
21 appear to be for the record?

22 A. Indictment for armed robbery.

23 Q. Okay. And whose name is on this?

24 A. Tivo Richard Lee.

25 Q. And what county is it out of?

TIVO LEE - DIRECT

1 A. Bamberg.

2 MS. BLANCHETTE: Your Honor, at this time I'd move
3 these, it's the same indictment but two different copies,
4 as Applicant's Number One.

5 THE COURT: Any objection?

6 MS. WILLIAMS: Do you want to do just the whole
7 packet?

8 THE COURT: Don't I already have those?

9 MS. WILLIAMS: We have a whole packet of the
10 indictments.

11 MS. BLANCHETTE: I actually separated them out because
12 I have different questions for my client. So just for the
13 record to be clear, if they're separate. If that's okay.

14 THE COURT: Ms. Williams, just so we can move along
15 and make sure. You've reviewed all of these?

16 MS. WILLIAMS: I provided them.

17 THE COURT: Okay. You provided them to her?

18 MS. WILLIAMS: Yes.

19 THE COURT: So the only thing you're trying to do,
20 Ms. Blanchette, is just mark them for identification
21 purposes?

22 MS. BLANCHETTE: Yes.

23 THE COURT: I already have a copy. We're putting them
24 in evidence.

25 MS. BLANCHETTE: You do not have a copy, I believe,

TIVO LEE - DIRECT

1 because they're not part of Mr. Gunnells' packet. Is that
2 correct?

3 MS. WILLIAMS: That's correct.

4 THE COURT: Without objection this will be, I think --
5 do you have it marked Applica'n'ts or Plaintiff's One?

6 MS. BLANCHETTE: Plaintiff's One.

7 (Thereupon, Plaintiff's Exhibit No. 1, Indictment No.
8 2004-GS-05-00045, was received into evidence.)

9 BY MS. BLANCHETTE:

10 Q. And, Mr. Lee, this is an indictment docketed at
11 2004-GS-05-045. Is that what it appears to be?

12 A. Yes, ma'am.

13 Q. And there's actually two here. The first one says
14 it's true billed. And the second one with the same docket
15 number says that you waived presentment. Do you recall
16 waiving presentment on this indictment?

17 A. What that mean?

18 Q. If you look at the second page it has your signature
19 there. It says, I waive presentment.

20 A. Oh, yes, ma'am.

21 Q. And do you recall signing that before you did your
22 plea in this case?

23 A. Yes, ma'am.

24 Q. Mr. Lee, could you identify this document for the
25 record, please?

TIVO LEE - DIRECT

1 A. True bill for burglary in the first degree.

2 Q. And what's the docket number on there, just so we're
3 clear?

4 THE COURT: You can read it out if you want to.

5 THE WITNESS: Oh, okay. 204(sic)-GS-05-040.

6 BY MS. BLANCHETTE:

7 Q. And what's the crime alleged on here?

8 A. Burglary in the first degree.

9 Q. Okay.

10 MS. BLANCHETTE: Your Honor, at this time I'd move
11 this in as Applicant's Number Two.

12 THE COURT: Without objection?

13 MS. WILLIAMS: Without objection. I have a packet of
14 all of them, if you'd like that, Your Honor.

15 THE COURT: Oh. That will be great if you don't mind.

16 MS. BLANCHETTE: And I have an extra copy if you'd
17 like.

18 THE COURT: And, Ms. Blanchette, I have been provided
19 by Ms. Williams copies of all of, I believe, the documents
20 for Mr. Lee. These are the same things that they provided
21 you; is that correct?

22 MS. BLANCHETTE: I believe so, Your Honor, based upon
23 what Ms. Williams said. I did not specifically review
24 each page, but...

25 THE COURT: Okay.

TIVO LEE - DIRECT

1 (Thereupon, Plaintiff's Exhibit No. 2, Indictment No.
2 2004-GS-05-00040, was received into evidence.)

3 BY MS. BLANCHETTE:

4 Q. Mr. Lee, I'm going to hand that to you and see if you
5 can identify what those appear to be for the record. I'm
6 sorry, there's two copies there.

7 A. Oh, these are the sentencing sheets.

8 Q. Okay. And are those for the charges that I just
9 showed you the indictments on?

10 A. Yes, ma'am.

11 Q. Okay. And those sentencing sheets are out of Bamberg
12 County; is that correct?

13 A. Yes, ma'am.

14 MS. BLANCHETTE: Your Honor, at this time I'd move the
15 sentencing sheets in as Plaintiff's Number Three.

16 THE COURT: Any objection?

17 MS. WILLIAMS: No objection, Your Honor.

18 THE COURT: No objection. Okay. They are in
19 evidence.

20 (Thereupon, sentencing sheets for 2004-GS-05-00045 and
21 2004-GS-05-00040, were received into evidence as
22 Plaintiff's Exhibit No. 3.)

23 BY MS. BLANCHETTE:

24 Q. And, Mr. Lee, regarding those sentencing sheets if you
25 could just explain what charges are listed and what

TIVO LEE - DIRECT

1 sentences you got?

2 A. Burglary first and armed robbery.

3 Q. And what were the sentences that you received? First
4 on the burglary first?

5 A. Twenty years.

6 Q. And for the armed robbery, what sentence did you
7 receive?

8 A. Twenty.

9 Q. And where did you actually do your plea?

10 A. Columbia.

11 Q. Okay. And why was that? Why were you in Columbia?

12 A. I was on -- doing trial in a voluntary manslaughter.

13 Q. So they took your plea in Columbia for that reason?

14 A. Yes, ma'am.

15 Q. Okay. And, Mr. Lee, let me show you one final set of
16 documents here. If you could just look through and
17 describe what that packet contains.

18 A. It's the indictment for the assault and battery,
19 intent to kill and -- what is it, the sentencing sheet?

20 Q. Does it appear to be a packet of indictments with your
21 name on it out of Bamberg County?

22 A. Yes, ma'am.

23 MS. BLANCHETTE: Your Honor, at this time I'd move
24 those in as Plaintiff's Number Four.

25 THE COURT: All right. Plaintiff's Number Four,

TIVO LEE - DIRECT

1 without objection.

2 MS. WILLIAMS: Which ones are they?

3 MS. BLANCHETTE: Those would be all the nolle prossed
4 indictments, the remaining indictments.

5 (Thereupon, Plaintiff's Exhibit No. 4, packet of
6 indictments, was received into evidence.)

7 BY MS. BLANCHETTE:

8 Q. Now, Mr. Lee, that's it for the paperwork.

9 I just have some questions to ask you. You've gone
10 through the charges that were nolle prossed or dismissed
11 with your attorney --

12 A. Yes, ma'am,

13 Q. -- yesterday?

14 A. Yes, ma'am.

15 Q. And just to clarify, you pled to two charges in
16 Bamberg County and the rest were dismissed; is that
17 correct?

18 A. Yes, ma'am.

19 Q. Who was your co-defendant on these charges?

20 A. Frederick Culler and James Allan Gunnells.

21 Q. Okay. And do you see James Gunnells in the courtroom
22 today?

23 A. Yes, ma'am.

24 Q. And you had spoken with your attorney and you're here
25 today to testify in his behalf; is that correct?

TIVO LEE - DIRECT

1 A. Yes, ma'am.

2 Q. Mr. Lee, it's my understanding you have information
3 regarding the robbery that you wanted to provide to the
4 Court today.

5 A. Yes, ma'am.

6 Q. My first question to you is: Do you know whether or
7 not my client was involved in these crimes as the State
8 has alleged?

9 A. He wasn't involved, just like I told the SLED officer
10 when they first came and asked me about it.

11 Q. And what was it you told the SLED officer when they
12 first came and asked you about it?

13 A. That I didn't know him.

14 Q. And did you continue to tell people that? Or, how was
15 it that James Gunnells then came to be convicted?

16 A. I don't know because they had me in Columbia. Once
17 they came and talked to me, once I told them that I went
18 back to Columbia.

19 Q. And were you in any way involved at his trial?

20 A. No, ma'am.

21 Q. Did you ever get noticed that you were going to be a
22 witness at his trial?

23 A. No, ma'am.

24 Q. Did you know who his attorney was at the time of his
25 trial?

TIVO LEE - DIRECT

1 A. No, ma'am.

2 Q. Did you have an attorney representing you on these
3 charges at that time?

4 A. Never talked to him.

5 Q. And who was the attorney that was representing you; do
6 you recall?

7 A. I still can't -- no, ma'am.

8 Q. So did you ever have the opportunity to tell your
9 attorney Mr. Gunnells was not involved in these crimes as
10 the State is alleging?

11 A. No, ma'am. They was focused on the charge I had in
12 Columbia. And when I was going to trial, when I caught
13 my -- when I stopped the trial, took the plea to 20, they
14 called down to Bamberg and that's when she agreed to give
15 me the 20 to run concurrent with the 20 I have with the
16 manslaughter charge.

17 Q. So you pled out to your charges here in Bamberg in
18 conjunction with a plea in Richland County; is that
19 correct?

20 A. Yes, ma'am.

21 Q. So there was no negotiations such as you had to
22 testify against Mr. Gunnells or anything in that regard to
23 get that plea?

24 A. No, ma'am.

25 Q. Okay. Now, the State's theory throughout the trial

TIVO LEE - DIRECT

1 was that there was no way that Mr. Gunnells could know the
2 location -- or, I'm sorry. There's no way that the
3 co-defendants, one being you, could know the location of
4 these peoples' home or the information needed to conduct
5 this crime without Mr. Gunnells. He was the key link to
6 the victims.

7 Did you have information -- I guess, essentially my
8 question would be: How could you commit this crime if
9 Mr. Gunnells wasn't involved?

10 A. Because I got people in Swansea, North, Orangeburg.
11 So I know people.

12 Q. And was Mr. Gunnells in any way involved in the
13 planning and preparation of this crime?

14 A. No, ma'am.

15 MS. BLANCHETTE: Your Honor, if I could just beg the
16 Court's indulgence for one moment.

17 THE COURT: Sure. (Pause.)

18 BY MS. BLANCHETTE:

19 Q. Mr. Lee, you have been telling this information that
20 Mr. Gunnells was not involved from the very beginning; is
21 that correct?

22 A. Yes, ma'am.

23 Q. Mr. Lee, has myself or Mr. Gunnells made you any
24 promises or told you we would do anything for you if you
25 came and testified today?

TIVO LEE - CROSS

1 A. No, ma'am.

2 Q. And you're here testifying under your own free will
3 and this is completely voluntary?

4 A. Yes, ma'am.

5 Q. And you have spoken with an attorney and had advice in
6 that regard; is that correct?

7 A. Yes, ma'am.

8 MS. BLANCHETTE: Your Honor, I have no further
9 questions.

10 THE COURT: All right. Ms. Williams?

11 CROSS-EXAMINATION

12 BY MS. Williams:

13 Q. Mr. Lee, in this case you have already pled guilty and
14 it's your understanding that you have no further criminal
15 possibilities out of this home invasion; is that correct?

16 A. No, ma'am.

17 Q. So you really have nothing to lose by coming here
18 today and speaking on Mr. Gunnells' behalf; is that
19 correct?

20 A. No, ma'am.

21 Q. But you never came forward to speak on his behalf at
22 any time prior to your guilty plea?

23 A. No, ma'am.

24 Q. And in addition to the priors that we've already
25 discussed, you have some additional charges, kidnapping,

TIVO LEE - CROSS

1 attempted robbery, voluntary manslaughter as well?

2 A. Yes, ma'am.

3 Q. And how did you know where Mr. Sease lived?

4 A. I mets him, like I say, I got family down in Swansea,
5 North, Orangeburg. So I be down in them areas all the
6 time, too. And I'm from the Columbia area.

7 Q. So how did you come to know where Mr. Sease lived?

8 A. Met some strippers that knew some guy. And, well,
9 basically I knew somebody that worked for him, I think got
10 some businesses. So I knew somebody that worked for him
11 so...

12 Q. So you personally knew somebody that worked for him?

13 A. Yes, ma'am.

14 Q. Okay. And did Ms. Sherri Stoney represent you on
15 these charges?

16 A. I never talked to no attorney. He sent me a letter in
17 the mail saying he was going to come talk to me. Never
18 came and talked to me.

19 The only person I talked to was the SLED officer when
20 I first got locked up. And I told him what I told and
21 that was it.

22 When I caught -- when I took my trial in Columbia,
23 that's the only time I talked to them people.

24 Q. So in addition to Mr. Culler, who was with you that
25 night?

TIVO LEE - CROSS

- 1 A. Ma'am?
- 2 Q. In addition to Mr. Culler, who was with you that
- 3 night?
- 4 A. Who was with me that night?
- 5 Q. Uh-huh.
- 6 A. A guy named Black and a guy named New York.
- 7 Q. Do you know their real names?
- 8 A. No, ma'am.
- 9 Q. Where did you meet them from?
- 10 A. Like I say, I met them through the strippers.
- 11 Q. When did you meet them?
- 12 A. It was in 2003.
- 13 Q. So you'd been -- how long did you meet them before
- 14 this robbery took place?
- 15 A. About like two months prior.
- 16 Q. Did they live in Columbia or did they live down there?
- 17 A. One live in Columbia and one live in Neeses.
- 18 Q. So your testimony earlier was that you had never --
- 19 you don't know James Gunnells at all; is that correct?
- 20 A. No, ma'am.
- 21 Q. You'd be surprised if he said that he knew you?
- 22 A. I mean, I know, I know -- not at that time there. I
- 23 met him since we've been incarcerated.
- 24 Q. Have you communicated with him in any way since you've
- 25 been incarcerated?

TIVO LEE - CROSS

1 A. No, ma'am.

2 Q. So you had met him before, though; is that correct?

3 A. Yes, ma'am.

4 Q. Okay. When did you meet Mr. Gunnells?

5 A. When we got in the county jail.

6 Q. In Bamberg?

7 A. Yes, ma'am.

8 Q. When was that?

9 A. 2003 when I came down there.

10 Q. And y'all remained friends after that?

11 A. No, ma'am. Like I said --

12 Q. So, you only knew him at the jail, you never saw
13 him --

14 A. Yeah, that's all. I ain't knew him.

15 Q. Okay. And you don't know anything further about Black
16 and Neal (sic) other than they're just a couple guys? Do
17 you have their phone numbers or anything?

18 A. No, ma'am.

19 Q. Did you have their phone numbers back then?

20 A. Yeah, that was back then. I been locked up nine
21 years, ma'am.

22 Q. Did you tell SLED about Black and Neal (sic) as well?

23 A. No, I made no statements. I told him what the story
24 was. I knew him and that was it. I went back to
25 Columbia.

TIVO LEE - REDIRECT

1 MS. WILLIAMS: All right. Thank you, Mr. Lee.

2 THE COURT: Anything on redirect?

3 MS. BLANCHETTE: Very briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MS. BLANCHETTE:

6 Q. Mr. Lee, I handed you a packet of charges that had all
7 been nolle prossed or dismissed.

8 A. Yes, ma'am.

9 Q. Is it your understanding that those charges are
10 dismissed with leave to restore in the State of South
11 Carolina?

12 A. That's right.

13 Q. So there could be risk for you testifying today?

14 A. Like how?

15 Q. Well, do you need to discuss that with your attorney?
16 I assume you went over that yesterday.

17 A. Yes, ma'am.

18 Q. You do need to discuss it with your attorney?

19 A. I mean -- yes.

20 Q. Okay. Because you just said no earlier when the State
21 asked you --

22 A. Y'all confusing me. I don't know -- I don't know what
23 you talking about.

24 THE COURT: You're asking him the ones that were nolle
25 prossed, all those charges against you were nolle prossed.

TIVO LEE - REDIRECT

1 THE WITNESS: What that mean? Dismissed; right?

2 THE COURT: Dismissed.

3 THE WITNESS: Uh-huh.

4 THE COURT: But they have leave to restore them; is
5 that correct?

6 THE WITNESS: No.

7 MS. WILLIAMS: I just -- what is annotated on here is
8 nolle pros, pled to AR and burglary first.

9 I don't -- it doesn't say nolle pros with leave to
10 restore. I don't know.

11 THE COURT: Okay.

12 MS. WILLIAMS: I can double-check with the solicitor
13 but my understanding of that would be that that was nolle
14 prossed as part of this plea agreement.

15 I do plan on also securing the transcript from the
16 plea so that might help. At this time that's my
17 understanding but will investigate that further.

18 THE COURT: You don't know. But I want to know if
19 that -- I want to know if that's going to change his
20 testimony. So, Mr. Walsh --

21 MS. BLANCHETTE: I was just concerned with his answer
22 on cross.

23 MR. WALSH: Your Honor, I think perhaps the plea
24 transcript has been requested and I think it may depend on
25 the language of exactly what was said --

TIVO LEE - REDIRECT

1 THE COURT: I agree.

2 MR. WALSH: -- at that time, whether it could possibly
3 come back. And none of us have reviewed that. So on
4 Mr. Lee's behalf, I know, put everyone else aside, but I
5 ask that he be allowed to not answer the question until
6 I've gotten the plea transcript.

7 THE COURT: But depending on, regardless of how it is,
8 how it turns out, whether he's allowed to do it or not,
9 I'm curious as to whether that would affect his
10 testimony.

11 Do you need to -- I just want to know if that would
12 affect his testimony.

13 MR. WALSH: If we could stand down for a second.

14 THE COURT: Yeah. I'll let you talk to Mr. Lee for a
15 minute. Mr. Lee, you're going to stand down and talk to
16 your attorney for a minute. Okay?

17 THE WITNESS: Yeah.

18 (Pause. Mr. Walsh and the witness conferring.)

19 THE COURT: Because that's the question I want
20 answered. And I also want him to tell me a little more
21 information about the other two people; the stripper, and
22 the name of of the SLED agent. Okay?

23 MR. WALSH: Yes, sir.

24 THE COURT: Thanks.

25 (Pause.)

TIVO LEE - REDIRECT

1 THE COURT: Ms. Blanchette, while we're taking this
2 break, I want to go forward with some more testimony if
3 you've got any more.

4 MS. BLANCHETTE: I can begin with my client. He's
5 going to be rather lengthy, though.

6 THE COURT: Yes, ma'am. We'll take a break if we need
7 to.

8 MS. BLANCHETTE: Okay. Be happy to.

9 THE COURT: Okay.

10 MS. BLANCHETTE: Your Honor, I call James Gunnells to
11 the stand.

12 THE COURT: All right. Mr. Gunnells, if you'd come on
13 up, please, sir.

14 JAMES ALLAN GUNNELLS, having been duly sworn, was
15 examined and testified as follows:

16 THE COURT: Hold on one second. I know you've been
17 sworn in. Mr. Walsh?

18 MR. WALSH: I think it was indicated at one point
19 Mr. Gunnells' testimony might take some hours.

20 THE COURT: Oh, yeah. I was going to take a break
21 whenever you're through talking with him.

22 MR. WALSH: We --

23 THE COURT: Are you finished?

24 MR. WALSH: Yes, sir.

25 THE COURT: All right. Mr. Gunnells, I'm going to get

TIVO LEE - FURTHER EXAMINATION BY MR. WALSH

1 you to sit right back down if you don't mind. Mr. Lee,
2 I'm going to let you come back to the stand.

3 (Mr. Lee returns to the witness stand and resumes his
4 testimony as follows:)

5 MR. WALSH: Mr. Lee -- in reviewing the documents with
6 the way he's having some difficulty with the handcuffs
7 there, is any way they could be loosened?

8 THE COURT: No. All right. Mr. Aaron, do you know
9 what my questions are? Did you want to ask him those
10 questions or do you want me to?

11 MR. WALSH: It might be good if I did it. Whatever
12 you think, Judge.

13 THE COURT: No, it will be fine if you ask him.

14 MR. WALSH: All right.

15 FURTHER EXAMINATION

16 BY MR. WALSH:

17 Q. Mr. Lee, did you understand a moment ago the question
18 that the Court is trying to ascertain is whether, when you
19 pled guilty to the two charges in Bamberg there was some
20 charges that were dismissed along with that as part of
21 that deal?

22 A. Uh-huh.

23 Q. The question that the Court is trying to get to is if
24 you found out today, if you were told in fact those
25 charges could be restored, there'd be some possibility you

TIVO LEE - EXAMINATION BY THE COURT

1 might go back to trial on those charges, would that in any
2 way affect your testimony today?

3 A. No, ma'am -- no, sir.

4 Q. Okay. The Court apparently may inquire of you in more
5 detail as to some of things you just testified to --

6 A. Uh-huh.

7 Q. -- knowing that the Court would have some questions of
8 you under oath that may affect some other cases, does that
9 affect what you just said? Does that affect your
10 testimony in any way?

11 A. No, sir.

12 THE COURT: All right. Thank you, sir.

13 MR. WALSH: Thank you.

14 THE COURT: I've got just a couple questions,
15 Mr. Lee.

16 EXAMINATION

17 BY THE COURT:

18 Q. Mr. Lee, who was the SLED agent you talked to?

19 A. I think the name was Mr. Darnell. Darnell. I know
20 his name was Darnell-something.

21 Q. And he was investigating about these --

22 A. Yes, sir.

23 Q. -- this crime?

24 A. Yes, sir.

25 Q. About when did you meet with him?

TIVO LEE - EXAMINATION BY THE COURT

1 A. When I got locked up in Columbia, 2003. When they
2 came to serve me the warrants.

3 Q. And he met with you in the jail in Columbia?

4 A. No, they brought me to --

5 Q. Took you to SLED?

6 A. Took me to Bamberg.

7 Q. Okay. And do you remember what time of year you met
8 with him?

9 A. It was around like July.

10 Q. July 2003 in Bamberg?

11 A. Yes. Yes, sir.

12 Q. And that's where you met with the SLED agent and told
13 him what you just told us?

14 A. Yes, sir.

15 Q. Okay. Now, you met -- and let me get the names
16 right. You met someone that was with you that night in
17 addition to Mr -- was it Mr -- in addition to Mr. Culler,
18 you said two other people were with you?

19 A. Uh-huh.

20 Q. That's a yes?

21 A. Yes, sir.

22 Q. Okay. One of those names was someone with a nickname
23 of Black?

24 A. Uh-huh.

25 Q. And where did he live?

TIVO LEE - EXAMINATION BY THE COURT

1 A. He stayed in Columbia.

2 Q. Where?

3 A. Broad River Road.

4 Q. Okay. Did you tell the SLED agent his name?

5 A. I don't know his real name.

6 Q. I mean, did you tell the SLED agent about him?

7 A. Yes, sir.

8 Q. Did you describe him to the SLED agent?

9 A. No, I met -- no. I just told him what, I didn't know
10 him.

11 Q. You told him that you did not know Mr. Gunnells but
12 you did not tell him the name of Black? I mean, you did
13 not tell him about the guy named Black?

14 A. I really made no statements at all, sir.

15 Q. Okay. Okay. So, are you telling me you did not make
16 a statement to the SLED agent?

17 A. I was just telling him that, that I didn't know
18 Gunnells.

19 Q. That's the only thing?

20 A. That's the only thing they was trying to -- the whole
21 time they had me down there, only thing they was saying;
22 Gunnells, Gunnells, Gunnells.

23 Q. Okay. But you didn't talk about the other people at
24 all?

25 A. No, sir.

TIVO LEE - EXAMINATION BY THE COURT

1 Q. And so, what's the name of the other man? I thought
2 you said New York?

3 A. New York and Black.

4 Q. New York and Black. Okay. And New York is from
5 where?

6 A. New York.

7 Q. Okay. Well, I thought you told me in your testimony
8 you said one lived in Columbia and one lived in --

9 A. Oh, yeah. He stayed down in Neese.

10 Q. Okay. All right. Tell me about him.

11 A. I met him through the strippers. I really don't know
12 him that --

13 Q. Okay. Tell me the name of the stripper.

14 A. Caramel.

15 Q. Caramel. And how did you meet, what is Caramel's -- I
16 know that's not her real name.

17 A. I don't know her real name, sir.

18 Q. Okay. Where does she work?

19 A. She used to work at Lucky's.

20 Q. At Lucky's?

21 A. Uh-huh.

22 Q. Where is Lucky's?

23 A. Columbia.

24 Q. Okay. Where in Columbia?

25 A. Broad River Road.

TIVO LEE - EXAMINATION BY THE COURT

1 Q. Where?

2 A. Broad River Road.

3 Q. Broad River Road. And she was working there in 2003?

4 A. Yes, sir.

5 Q. All right. When you met Mr. Gunnells in 2003 in
6 Bamberg in jail, you met him then?

7 A. (Nods head.)

8 Q. Is that correct?

9 A. (Nods head.)

10 Q. Okay. Now, did you tell anybody when you were in
11 Bamberg that that's the first time you ever met him?

12 A. No, sir.

13 Q. Did you tell Mr. Gunnells that you just met --

14 A. That I just met him?

15 Q. Yeah. I mean, did you tell him that you were
16 interviewed by SLED or anybody like that about him?

17 A. No, sir.

18 Q. Okay. And you never, and you never came to -- you
19 just came to Bamberg. You pled to these charges, these
20 Bamberg charges in Columbia; is that correct?

21 A. Yes, sir. When I went to trial, when I started trial,
22 they gave me the plea of 20 years for the murder. So they
23 called Bamberg and asked, what y'all want to do with Lee.
24 And she was like, well, what you all give him. She was --
25 they was, like, 20. He said, well I'm going to go ahead

TIVO LEE - REDIRECT

1 and run the 20, I'm going to give him 20, run it with the
2 20 you got now because we already got Gunnells.

3 Q. Okay. Okay. And you didn't say anything about that,
4 right, at that time?

5 A. No, sir.

6 Q. Other than your conversation to the SLED Agent
7 Darnell-somebody; is that correct?

8 A. (Nods head), yes, sir.

9 Q. Okay. All right. Now, I've asked. Any questions in
10 follow up to Mr. Lee?

11 MS. BLANCHETTE: I actually had some further redirect,
12 Your Honor.

13 THE COURT: Okay. All right. I'm sorry.

14 REDIRECT EXAMINATION - continued

15 BY MS. BLANCHETTE:

16 Q. Mr. Lee, is it your job to investigate this case?

17 A. No. No, ma'am.

18 Q. And did you give any statements or were you asked by
19 law enforcement to give statements or testimony in this
20 case?

21 A. No, ma'am.

22 Q. And when you actually entered your plea in Richland
23 County, it appears from the sentencing sheets that Joshua
24 Kendrick signed those sentencing sheets; is that correct?

25 A. Yes, ma'am.

TIVO LEE - REDIRECT

1 Q. And he was your attorney on the Richland charge; is
2 that correct?

3 A. Yes, ma'am.

4 Q. And it also appears that someone scribbled in a name.
5 And it says, for Barbara Morgan. So was Barbara Morgan
6 present at your plea?

7 A. She was on the phone.

8 Q. Okay. So no one whether it be your attorney or the
9 solicitor were present from Bamberg at the time you
10 entered this plea?

11 A. No, ma'am.

12 Q. So they did not ask you any questions or specifically
13 the questions we've gone through today, those weren't
14 asked of you in conjunction with this plea; is that
15 correct?

16 A. No, ma'am.

17 MS. BLANCHETTE: Your Honor, I have no further
18 questions at this time. I just have a concern since I'm
19 not sure as to what Mr. Gunnells' attorney's going to
20 testify to. I may need to briefly recall Mr. Lee. I
21 don't anticipate that I will. I also don't anticipate
22 that we need his attorney because I think the matters he
23 was here for we've gone over all of those.

24 THE COURT: Okay. All right. Mr. Walsh, I'll excuse
25 you.

TIVO LEE - RECROSS

1 MR. WALSH: Thank you very much, Your Honor.

2 THE COURT: Thank you.. Ms. Williams, anything on
3 recross?

4 MS. WILLIAMS: Just something that your questions
5 brought up to me.

6 RECROSS-EXAMINATION

7 BY MS. WILLIAMS:

8 Q. Could you just give me briefly a physical description
9 of the two folks that were with you that night?

10 A. Okay.

11 Q. What does Black like look?

12 A. Tall and dark skin.

13 Q. What about New York?

14 A. He was a red dude with dreds.

15 Q. A red guy?

16 A. Yes, ma'am.

17 Q. Like would that mean like native-American looking or
18 somebody? What's red?

19 A. Light skin.

20 Q. Light-skin guy?

21 A. (Nods head.)

22 MS. WILLIAMS: Okay. Thank you.

23 THE COURT: All right. Thank you, sir. You may step
24 down.

25 MS. BLANCHETTE: I would recall James Gunnells. He's

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1 already been put under oath.

2 THE COURT: He's already been sworn? Angel, you did
3 swear him in; right?

4 THE CLERK: Yes.

5 THE COURT: All right. Mr. Gunnells, you know you
6 were placed under oath and then we took a break so we
7 could finish the testimony of Mr. Lee.

8 THE APPLICANT: Yes, sir.

9 THE COURT: You are under oath. You are aware of
10 that?

11 THE APPLICANT: Yes, sir.

12 THE COURT: You need to say your full name for the
13 record.

14 THE APPLICANT: James Allan Gunnells.

15 THE COURT: Mr. Gunnells, if you would answer any
16 questions your attorney may have.

17 THE APPLICANT: Yes, sir.

18 THE COURT: Okay.

19 DIRECT EXAMINATION

20 BY MS. BLANCHETTE:

21 Q. Mr. Gunnells, are you currently incarcerated?

22 A. Yes, ma'am.

23 Q. And where are you currently being housed at?

24 A. Perry Correctional Institution.

25 Q. And did you file the PCR application we're here on

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1 today that's docketed at 2010-CP-05-072?

2 A. Yes, ma'am.

3 Q. And by way of that application, are you making claims
4 of ineffective assistance of counsel that we set out in a
5 detailed amendment that was filed in January?

6 A. Yes, ma'am.

7 Q. And as a result of those allegations, what relief are
8 you asking the Court for today?

9 A. Concerning the sentencing if anything, I would ask for
10 a new trial.

11 Q. And let me go through just some of the information
12 about your case so we make sure we're on the same page.
13 The incident date here was May 5th, 2003, at approximately
14 11 p.m.; is that correct?

15 A. Yes, ma'am.

16 Q. And do you remember when you were arrested,
17 Mr. Gunnells?

18 A. Yes, ma'am. I was arrested on June 4th, 2003.

19 Q. And you went to trial on October 12th through 15th in
20 2004; is that correct?

21 A. Yes, ma'am.

22 Q. Who represented you at that trial?

23 A. Chris Wilson.

24 Q. And do you remember what judge was present?

25 A. Judge JC Nicholson.

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1 Q. And where were you tried, what county?

2 A. Bamberg County.

3 Q. And do you recall the victims' names in this case?

4 A. Yes, ma'am.

5 Q. Who were the victims?

6 A. Hallman Sease, Eunice Sease and Stephen Sutton.

7 Q. Okay. I'm going to go through your charges with you,
8 Mr. Gunnells.

9 A. Yes, ma'am.

10 Q. And please let me know if I'm going too quickly. Your
11 first indictment was 2004-GS-05-019 for burglary in the
12 first degree. And what was the outcome of that?

13 A. I was found guilty.

14 Q. And what did you receive?

15 A. A life sentence.

16 Q. Your second charge was 2004-GS-05-020 for assault and
17 battery with intent to kill, the victim being Steve
18 Sutton. And what was the outcome of that charge?

19 A. I was found not guilty.

20 Q. The third charge was 2004-GS-05-021 for possession of
21 a weapon. And what was the outcome of that charge?

22 A. I was found guilty.

23 Q. And what did you receive?

24 A. A five-year sentence.

25 THE COURT: And, Ms. Blanchette?

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1 MS. BLANCHETTE: Yes..

2 THE COURT: Can you tell me the purpose of this? It's
3 in the record.

4 MS. BLANCHETTE: It is. I was going to ask him a
5 question about risk, but I could briefly summarize if
6 you'd like me to.

7 THE COURT: I would appreciate that.

8 BY MS. BLANCHETTE:

9 Q. Okay. Mr. Gunnells, just to briefly summarize, you
10 were not found guilty on the assault and battery with
11 intent to kill with the victim being Steve Sutton, the
12 grand larceny of both the Dodge truck and the Chevy truck,
13 and the kidnapping of Steve Sutton; is that correct?
14 Those were all not guilties?

15 A. Yes, ma'am.

16 Q. And we're here today on the charges you were found
17 guilty on; is that correct?

18 A. Yes, ma'am.

19 Q. Okay. And we have talked about you do have a life
20 sentence in this case, but you understand you're asking
21 the Court to set aside your guilty convictions and put you
22 back in the position you were after you were indicted on
23 those charges.

24 A. Yes, ma'am.

25 Q. Knowing that, do you want to go forward today?

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1 A. Yes, ma'am.

2 Q. Okay. After you were convicted you had -- did you
3 have an appeal?

4 A. Yes, ma'am.

5 Q. And who handled that for you?

6 A. A lady out of the appellate department named LaNelle
7 DuRant.

8 Q. Okay. And as a result of that appeal your conviction
9 was affirmed by the Court of Appeals; is that correct?

10 A. Yes, ma'am.

11 Q. And did Ms. DuRant also petition the South Carolina
12 Supreme Court on your behalf?

13 A. Yes, ma'am.

14 Q. And was that successful?

15 A. No.

16 Q. Now, Mr. Gunnells, we're going to go back to the very
17 beginning. You said you were arrested on June 4, 2003?

18 A. Yes, ma'am.

19 Q. Did you retain or have an attorney appointed to you?

20 A. I had an attorney appointed to me.

21 Q. When did you first get notice of your charges?

22 A. You're talking about the warrants?

23 Q. When did you first have notice of -- yeah, what you're
24 being charged with?

25 A. I received a warrant the night that I, the day that I

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1 was arrested, later on that night. Whenever I came back
2 to Bamberg County Sheriff's Department, I was provided
3 with a burglary first degree warrant.

4 THE COURT: Ms. Blanchette, and I'm not trying to --
5 is the purpose of this hearing to determine whether or not
6 we have newly-discovered evidence?

7 MS. BLANCHETTE: Your Honor, if it was a second PCR
8 that would be the sole issue but this is his first PCR.
9 So I believe, I'm not sure of the number of issues listed
10 on the amendment but we do have a number of other issues
11 that we need to go into.

12 THE COURT: All right. If there's anything that the
13 dates are already in the record that you can point out to
14 me, you can just point them out to me. He doesn't have to
15 testify to them. You can just tell me where we're going
16 with that.

17 And if you don't mind, just getting to --

18 MS. BLANCHETTE: I'll be happy to, your Honor.

19 THE COURT: Thank you, ma'am. That will make us both
20 happy.

21 MS. BLANCHETTE: Yesterday I had to do all the dates
22 so I prefer not to.

23 THE COURT: I don't want to do that. Thank you,
24 ma'am.

25 BY MS. BLANCHETTE:

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1 Q. In reviewing your arrest warrants, did you have a
2 concern about those and did you address that with your
3 attorney?

4 A. Yes, ma'am.

5 Q. And what was that?

6 A. I was being charged with some things that I didn't
7 know nothing about.

8 Q. And did you have any concerns about how those arrest
9 warrants were issued?

10 A. Yes, ma'am.

11 Q. And what was that?

12 A. The way that they had obtained some information that
13 wasn't valid.

14 Q. Is there anything else regarding the arrest warrants
15 that you'd like to bring to the Court's attention before I
16 move on?

17 A. I mean, yes, ma'am. I was kind of concerned about the
18 issuance of the warrants and the way that they were signed
19 off on by judge, the magistrate judge.

20 And I was wondering if they was valid because there
21 was some type of situation going on concerning some
22 illegal activities in Bamberg County with the judge.

23 Q. And you don't have anything to establish that, those
24 were just concerns you had at the time; is that correct?

25 A. Yes, ma'am. But it is known.

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1 Q. You can go on if you weren't finished.

2 A. No.

3 MS. BLANCHETTE: Your Honor, would you like me to ask
4 every time I need to approach or am I free to approach?

5 THE COURT: You're free to approach.

6 MS. BLANCHETTE: Thank you, Your Honor.

7 THE COURT: And if it's a document that I already
8 have, you can just tell me I've got it in the packet..

9 MS. BLANCHETTE: All of these you should not have.

10 THE COURT: I should not have.

11 MS. BLANCHETTE: So I have a copy for you.

12 THE COURT: Thank you, ma'am.

13 BY MS. BLANCHETTE:

14 Q. Mr. Gunnells, could you identify what that appears to
15 be for the record?

16 A. Yes, ma'am. This is a motion that I personally tried
17 to file with the Clerk of Court of Bamberg County.

18 MS. BLANCHETTE: Your Honor, at this time I'd
19 introduce this handwritten motion as Plaintiff's Number
20 Five.

21 THE COURT: All right.

22 MS. WILLIAMS: And, Your Honor, unless I -- just to
23 make this a little bit faster. Unless I stand up, I don't
24 think there's going to be objections to most of these.
25 There's just a few. So unless I state otherwise.

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1 THE COURT: Unless you jump up --

2 MS. WILLIAMS: Yes, sir.

3 THE COURT: -- I'll consider it.

4 BY MS. BLANCHETTE:

5 Q. Mr. Gunnells, you have the motion there in your hand.

6 Why did you file this motion?

7 A. Because I was concerned about the time that I was
8 sitting in the county jail that I was being seen and I
9 didn't know what was going on. And I kept asking what was
10 the process of the charges, what was going on. And nobody
11 would let me know anything.

12 So I took it upon myself to write a motion to the
13 Court so I could get heard in a timely manner.

14 Q. And at that time did you have an attorney appointed to
15 represent you?

16 A. Yes, ma'am.

17 Q. Had you met with him? Or tell me about your meetings
18 with him.

19 A. I had briefly met with him, Mr. Chris Wilson. And
20 when he explained to me the charges, when I initially was
21 arrested it was burglary first. And approximately two to
22 three weeks later on I was given several other warrants.
23 And I was notified about that through mail, that he would
24 also be representing me on them charges involving,
25 concerning one matter. They just put them all together as

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1 one.

2 Q. Did Mr. Wilson ever convey to you a desire for you to
3 work with the solicitor's office or cooperate in this
4 case?

5 A. Yes, ma'am. He said it would be beneficial for me.

6 Q. And what was your position on that?

7 A. I had no desire to do nothing like that.

8 Q. Did you ever have a meeting with him and with the
9 solicitor?

10 A. Yes, ma'am. He had arranged a meeting with the
11 solicitor and investigator to come try to obtain
12 information from me about these charges.

13 Q. And did they ever convey to you a specific offer if
14 you were to cooperate, or was it just an open-ended type
15 of negotiation?

16 A. I was told that I would see the last years of my life
17 on the streets as a free man if I gave them information
18 concerning these charges, but if I didn't that I would
19 never be home again.

20 Q. Mr. Gunnells, can you identify this document for the
21 record, please? Actually let me ask you this first,
22 Mr. Gunnells. Did you receive a copy of Mr. Wilson's file
23 after your trial?

24 A. Yes, ma'am. I had wrote to him personally, asked for
25 a copy of my file.

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1 Q. Okay. Could you identify that document for the
2 record, please?

3 A. Yes, ma'am. This is a letter that I was sent by Chris
4 Wilson to the county jail when I was there.

5 Q. And did we obtain this copy from the copy that
6 Mr. Wilson gave us of his file?

7 A. Yes, ma'am.

8 MS. BLANCHETTE: Your Honor, at this time I'd
9 introduce this letter dated September 13th, 2004, as
10 Plaintiff's Number Six.

11 THE COURT: Without objection, I believe.

12 MS. WILLIAMS: Your Honor, I'll just state there was
13 one that's notated, did not send. And I've talked to
14 Mr. Wilson. He did send one and the other one he did
15 not. The one that's notated he did not send.

16 THE COURT: Is that the one that he sent or the one he
17 did not send?

18 MS. BLANCHETTE: This is the one he did send.

19 THE COURT: Okay. That's in as Number Six.

20 (Thereupon, Plaintiff's Exhibit No. 6, Wilson letter
21 dated September 13, 2004, was received into evidence.)

22 MS. BLANCHETTE: Your Honor, it appears that I did not
23 properly move in Applicant's Number Five which was the
24 speedy trial motion.

25 THE COURT: And you're doing that at this time.

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1 MS. BLANCHETTE: Yes, I would do that at this time.

2 THE COURT: That's without objection. I believe, for
3 the record, One through Six are in evidence.

4 (Thereupon, Plaintiff's Exhibit No. 5, handwritten
5 motion, was received into evidence.)

6 MS. BLANCHETTE: Thank you, Your Honor.

7 Q. Mr. Gunnells, in this letter Mr. Wilson conveys a
8 desire for you to speak with the solicitor's office; is
9 that correct?

10 A. Yes, ma'am.

11 Q. And does this letter convey what you were just
12 explaining to the Court?

13 A. Yes, ma'am.

14 Q. Were you and Mr. Wilson essentially on two different
15 pages when it came to that?

16 A. Yes, ma'am.

17 Q. And why is that?

18 A. Because, well, as you can see, the letter says from
19 the very beginning where it says a meeting where he
20 confirmed that I informed him that I had no desire to give
21 information, take polygraph, plea bargain or testify. And
22 that's -- that was my stance.

23 Q. Now once you made it clear to him that you did not
24 want to testify or cooperate with the State, was your case
25 set for a trial?

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1 A. Yes, ma'am.

2 Q. And did you meet with Mr. Wilson any more before your
3 trial?

4 A. I met with him one more time before my trial.

5 Q. And did anything -- what occurred at that meeting?

6 A. He asked me did I have any alibis or witnesses or
7 anything that I wanted to present because he had received
8 a motion from the State that I had 10 days to turn over
9 any type of information that I needed to before my trial.

10 Q. And did you all discuss trial strategy and your
11 defenses at that time?

12 A. No, ma'am.

13 Q. As far as the discovery, did you review that with
14 Mr. Wilson or did you go over that on your own?

15 A. I went through it mostly on my own.

16 Q. Did you all discuss that the State was going to
17 proceed on a theory of hand of one hand of all and
18 conspiracy in this case?

19 A. No, ma'am.

20 Q. Do you know if your attorney hired or used an
21 investigator?

22 A. No, ma'am.

23 Q. At the time when you were preparing for trial did you
24 know if your attorney had obtained an expert?

25 A. No, ma'am.

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1 Q. Now are you aware of whether or not your attorney had
2 used an expert?

3 A. Yes, ma'am. I seen, I seen some -- whenever I
4 obtained that file from Chris Wilson, I seen an
5 investigator and expert witnesses' paperwork that was
6 filed that I never knew nothing about.

7 Q. And was an investigator and expert present at your
8 trial?

9 A. No, ma'am.

10 Q. Do you recall how much notice you had that you were
11 going to trial, Mr. Gunnells?

12 A. No, ma'am. Because on several different occasions I
13 was told that I would be going to court, going to trial.
14 And the last minute I would be told no, they ain't going
15 to try you and keep trying to get information from me.

16 And then they'd tell me again, we're going to try you
17 this month coming up unless you want to cooperate. And
18 then when that month would come up they would tell me
19 again, well, you'll go to trial this month. And the last
20 time, like I seen a letter in September. I went to trial
21 the next month in October.

22 Q. And on October 12th, 2004, when you arrived at the
23 courthouse and found out you were going to trial, what
24 occurred?

25 A. I was in a room on the side. They was putting

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1 restraints on me up underneath my clothes. And the
2 solicitor came by and said, well, like, this is the last
3 chance you have before we go in the courtroom. And she
4 had some indictments in her hand and she said, it's up to
5 you whether you want to see the last years of your life as
6 a free man or not. And I told her I didn't have nothing
7 to say to her.

8 Q. And had you gone over those indictments previously
9 with your attorney?

10 A. No, ma'am. I never seen no indictments.

11 Q. Mr. Gunnells, your co-defendant Tivo Lee already
12 testified.

13 And I'm going to show you what's been marked as
14 Plaintiff's Number One and Two. The first one is
15 indictment 2004-GS-05-045 and that's for Mr. Tivo Lee.
16 You've looked at your indictments and you've been provided
17 a copy of his.

18 On the first page there, were you guys actually true
19 billed on the same date?

20 A. Yes, ma'am.

21 Q. Okay. And did you have a concern about the dates you
22 both were true billed versus the date that the grand jury
23 met?

24 A. Yes, ma'am.

25 Q. Could you please explain that?

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1 A. Yes. I had some concerns because I was trying to find
2 out how in the Court of General Sessions, how when they
3 said the March 8th term, when they convened on March 8th
4 how the indictment was true billed before they ever met.
5 The indictment was true billed on March the 5th, 2004.
6 The Court didn't even meet until March the 8th, 2004.

7 Q. And it appears that way in both your and Mr. Lee's
8 indictments; is that correct?

9 A. Yes, ma'am.

10 Q. And you also had the opportunity to review these
11 indictments prior to today. There's two copies there.
12 One, the first was true billed, and then the same exact
13 indictments he waived?

14 A. Yes, ma'am.

15 Q. And did that cause you -- was that a matter that you
16 brought to my attention?

17 A. Yes, ma'am. I was -- I didn't have no one -- I was
18 trying to get an understanding of what type of law or
19 whatever it was, how could this one indictment, they're
20 both the same indictments and they were both filed and
21 went in front of same grand jury. There was supposed to
22 be one of them that says true billed.

23 The other one doesn't have nothing where the grand
24 jury met. Doesn't have no signature or nothing on it.
25 And at the same time it says it was waived presentment to

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1 the grand jury in 2008. And that was over four, over four
2 years later. And I didn't understand how one could have
3 been true billed and the other one not true billed.
4 They're all the same indictments.

5 Q. Mr. Gunnells, we're here today alleging your attorney
6 is ineffective and you deserve a new trial. How do these
7 problems with Mr. Lee's indictments matter essentially to
8 your PCR?

9 A. I mean, I would feel if they was done like that and
10 some of them was -- grand jury seen some of them, some of
11 them didn't, then it would have, probably have the same
12 kind of effect on mine.

13 So I was trying to figure out how all my indictments
14 was true billed but his wasn't true billed and we all went
15 in front of the same grand jury, the same case at the same
16 time.

17 Q. And were these inconsistencies that you now realize
18 you should have addressed with your attorney prior to
19 trial?

20 A. Yes, ma'am. To my knowledge, I never seen no
21 indictments and I never received none of my rule five
22 material to even be able to put up an argument about
23 indictments at my trial.

24 Q. Now if you could, could you grab that transcript
25 there?

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1 A. Yes, ma'am.

2 Q. Or do you need help? At the beginning of trial, on
3 actually page 73, your attorney does make a motion
4 regarding the sufficiency of your indictments.

5 But you were saying today that he failed to talk with
6 you and address additional issues you had with those
7 indictments; is that correct?

8 A. Yes, ma'am.

9 Q. Now -- and, Your Honor, I'll be happy to summarize the
10 transcript unless you'd like me to give you very
11 specific --

12 THE COURT: I would rather you summarize it.

13 MS. BLANCHETTE: Okay. He made a motion regarding the
14 sufficiency of the armed robbery and grand larceny
15 indictments because he says it fails to allege the items
16 that were taken specifically. And as a result the State
17 agreed that they would drop the grand larceny and amend
18 the armed robbery.

19 Q. Is that what the transcript reflects?

20 A. Yes, ma'am.

21 Q. Okay. And you've had an opportunity to review the
22 transcript prior to today; is that correct?

23 A. Yes, ma'am.

24 Q. Now, your attorney indicated on page 84 that he would
25 not consent. The Court took it under advisement and later

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1 ruled against your attorney; is that correct?

2 A. For the amendment of the indictment?

3 Q. Yes. He allowed the State to amend the indictments;
4 is that correct?

5 A. Yes, ma'am.

6 Q. Now this issue was raised by your attorney, but was it
7 ever addressed on appeal?

8 A. No, ma'am.

9 Q. Okay. And are you alleging today that's an issue that
10 should have been addressed on your appeal?

11 A. Yes, ma'am.

12 Q. And if you could turn to page 85, the Court conducts a
13 Jackson versus Denno hearing.

14 A. Yes, ma'am.

15 Q. And the State indicates they have three statements
16 they plan to use: One oral statement where no Miranda was
17 given; one that was written in custody; and the third they
18 weren't sure if they were going to use or not.

19 Mr. Gunnells, could you identify this document for the
20 record, please?

21 A. Yes, ma'am. This is a statement.

22 Q. And whose name is listed as the person giving this
23 statement?

24 A. Mine. Myself.

25 Q. And how many pages does it appear to be?

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1 A. Appears to be four pages.

2 MS. BLANCHETTE: Your Honor, at this time I'd move
3 this in as Applicant's Number Seven.

4 THE COURT: Plaintiff's Number Seven?

5 MS. BLANCHETTE: Yes. Plaintiff's Number Seven.

6 THE COURT: Without objection, I believe.

7 (Thereupon, Plaintiff's Exhibit No. 7, Gunnells'
8 statement, was received into evidence.)

9 BY MS. BLANCHETTE:

10 Q. Now this is the written statement that they were
11 referring to in this hearing; is that correct?

12 A. Yes, ma'am.

13 Q. Okay. And they also indicated that there was a verbal
14 statement that they had planned to introduce; is that
15 correct?

16 A. Yes, ma'am.

17 Q. Mr. Gunnells, could you identify this for the record,
18 please?

19 A. It's the front page of an investigative report from
20 SLED.

21 Q. What is the date on this SLED report?

22 A. February the 26th, 2004.

23 Q. And how many pages is it?

24 A. Two pages.

25 MS. BLANCHETTE: Your Honor, at this time I'd move

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1 this in as Applicant's Number Eight.

2 THE COURT: Without objection, Plaintiff's Number
3 Eight.

4 MS. WILLIAMS: These were discussed at trial and
5 contained in the transcript, and I don't have an
6 objection.

7 THE COURT: Okay. Thank you, ma'am.

8 (Thereupon, Plaintiff's Exhibit No. 8; SLED report,
9 was received into evidence.)

10 BY MS. BLANCHETTE:

11 Q. Mr. Gunnells, if you could turn to the second page of
12 that report. Does it actually contain the verbal
13 statement that you supposedly made?

14 A. Yes, ma'am.

15 Q. Okay. And, Your Honor, there is foul language in
16 this. Would you like him to state it on the record? I
17 just want to be careful here.

18 THE COURT: I can read it.

19 MS. BLANCHETTE: Okay.

20 Q. Now is that statement as it's contained on the second
21 page of that report, did you understand prior to trial
22 that they planned to use that statement against you?

23 A. No, ma'am.

24 Q. Is that something that your attorney advised you
25 about?

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1 A. No, ma'am.

2 Q. Okay. Let's just briefly go over then what happened
3 at that Jackson versus Denno hearing. Agent Darnell took
4 the stand on page 88, and he explained that you were
5 arrested on June 4, 2003, with your girlfriend in the
6 car. She gave a consent to search and they seized a
7 Rubber Maid and shoes from you. Is that what you recall
8 from the trial testimony?

9 A. Yes, ma'am.

10 Q. He goes on to explain that you ran your mouth, but he
11 did give you a Miranda at that time. Is that what he
12 testified to on page 88?

13 A. Yes, ma'am.

14 Q. Then if we look specifically at page 93 lines nine
15 through 17, he explains the situation contained in that
16 report that you saw speakers from the pawnshop and
17 essentially said, you've got me. Is that what he
18 testified to?

19 A. Yes, ma'am.

20 Q. And he explained to the Court, on page 105, that his
21 use of those speakers was not an attempt to elicit a
22 response from you?

23 A. Yes, ma'am.

24 Q. Is that what the transcript reflects?

25 A. Yes, ma'am.

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1 Q. Okay. Now, Mr. Gunnells, you took the stand during
2 that hearing; is that correct?

3 A. Yes, ma'am.

4 Q. And you testified on page 124 and 125 that you didn't
5 remember being Miranda'd but you did sign a waiver?

6 A. Yes, ma'am.

7 Q. Is that what you testified to and is that correct?

8 A. Yes, ma'am.

9 Q. On page 126 through 127, you go into great detail
10 about how you were told your girlfriend's charges would be
11 dismissed if you gave a statement.

12 A. Yes, ma'am.

13 Q. Is that correct, and is that what you testified to?

14 A. Yes, ma'am.

15 Q. Now, Mr. Gunnells, what I'm going to ask you was: Was
16 there additional information that if you were properly
17 prepared for that hearing you would have provided to the
18 Court, and what is that?

19 A. Yes, ma'am. The way that the officers set me in the
20 room for the statements, and also different information
21 that I didn't have nothing to do with these charges that I
22 was never able to present. And I think it would have
23 changed a lot of different things as far as -- the
24 evidence against me was the statement that was made.

25 Q. And when you say the evidence against you was the

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1 statement that was made, that's your own statement; is
2 that correct?

3 A. Yes, ma'am.

4 Q. And did that statement essentially become the catalyst
5 for all the events that led to your trial and conviction?

6 A. The statement was the only thing that they ever had,
7 period.

8 Q. Mr. Gunnells, were you present at this robbery?

9 A. No, ma'am.

10 Q. So, here's the common sense question. If you were not
11 present, why did you write a statement giving great
12 details about being present and what happened?

13 A. Well, at the time that the statement was written the
14 police had told me everything that had happened. And he
15 was sitting there telling me that essentially if I would
16 give this information to them or write this down about
17 charges on somebody that was already incarcerated for
18 murder because of fingerprints that they found at the
19 crime scene --

20 MS. WILLIAMS: Your Honor, I object to hearsay,
21 anything the police told him.

22 THE COURT: I will sustain your objection.

23 BY MS. BLANCHETTE:

24 Q. Mr. Gunnells, what was your understanding from law
25 enforcement that led you to give this statement? And you

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1 can't say what somebody else said. But what was your
2 understanding that was conveyed to you by law enforcement?

3 A. That the charges would have been dropped.

4 Q. And the charges against whom?

5 A. Nicky. Niconya.

6 Q. Okay. And if you could just explain to the Court who
7 is Niconya? Why does that matter?

8 A. That was my girlfriend at the time.

9 Q. Why was it important that her charges be dropped?

10 A. Because she was employed with Richland County.

11 Q. Mr. Gunnells, was it your understanding if I write
12 this statement with the information given to me by law
13 enforcement, my girlfriend's charges would be dropped?

14 A. Yes, ma'am.

15 Q. Was that your reasoning for giving this statement?

16 A. Yes, ma'am. And that's what I stated at my trial.

17 Q. Mr. Gunnells, you testified at the Jackson versus
18 Denno very briefly on that. And the Court decided that
19 the statement would be admitted; is that correct?

20 A. Yes, ma'am.

21 Q. Mr. Gunnells, I actually have one more question. If
22 you're saying what you didn't say -- I'm sorry -- what you
23 said in the statement is not the truth, why should the
24 Court believe you today?

25 A. I mean, if they would have weighed the factors of the

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1 case and understand what was told to me, if they go
2 through the trial transcript it will also say that law
3 enforcement was talking to me prior to the statement,
4 giving me information about the crime that happened.

5 And prior to this, prior to my arrest they had
6 somebody arrested who they said they found fingerprints at
7 the crime scene at whatever happened and they was
8 incarcerated for a murder charge, and that if I would give
9 them information about these people that the charges would
10 be dropped.

11 Q. And who was that person you're referring to?

12 A. They found fingerprints at the crime scene that
13 happened at that residence from Mr. Tivo Lee.

14 Q. When you gave this statement, were you informed that
15 Tivo Lee was saying you had no involvement?

16 A. No, ma'am.

17 Q. If you would have known that, would that have changed
18 the course of events in your dealings with law
19 enforcement?

20 A. Yes, ma'am.

21 Q. When you gave the statement, did you have an attorney
22 present?

23 A. No, ma'am.

24 Q. Now your attorney also made a motion, on page 152, to
25 suppress a pawn receipt. And, Mr. Gunnells, I'm going to

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1 show you this. Can you identify it for the record,
2 please?

3 A. Yes, ma'am. It's a copy of a pawn receipt.

4 Q. Okay. And this has your name at the top; is that
5 correct?

6 A. No, ma'am. It has my first and last name.

7 MS. BLANCHETTE: Your Honor, at this time I'd move
8 this pawn receipt in as Applicant's, or as Plaintiff's
9 Number Nine.

10 THE COURT: Without objection.

11 MS. WILLIAMS: It was an exhibit at the trial, Your
12 Honor. No objection.

13 (Thereupon, Plaintiff's Exhibit No. 9, pawn receipt,
14 was received into evidence.)

15 BY MS. BLANCHETTE:

16 Q. Mr. Gunnells, this is the pawn receipt that your
17 attorney was moving to suppress?

18 A. Yes, ma'am.

19 Q. And the investigators testified that they obtained
20 this pawn receipt from you when you were arrested; is that
21 correct?

22 A. Yes, ma'am.

23 Q. Is that what they testified to?

24 A. Yes, ma'am.

25 Q. And they testified that they had arrested you and

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1 searched you and didn't find it and then that you
2 voluntarily handed it over to them. Is that what they
3 testified to?

4 A. Yes, ma'am.

5 Q. Is that how it happened?

6 A. No, ma'am.

7 Q. Could you please explain?

8 A. From the time that I was arrested, I was thoroughly
9 searched and everything was emptied out of my pocket. I
10 was placed in restraints and black box and a lock.

11 And specifically the items that I had in my pockets, I
12 could go on the list, but whenever I went back and they
13 transported me to Bamberg County to the sheriff's
14 department, he said that I reached in my pocket and took
15 out a receipt and handed it to him and asked him, did he
16 want the original receipt. Which that's not possible. He
17 had already searched me. They knowed that I didn't never
18 have no receipt on me. And I couldn't reach in my
19 pocket. Being the way that I was restrained, I couldn't
20 move anyway. And he said that in his testimony.

21 Q. And your attorney actually argued that it should be
22 suppressed because it was the fruit of the poisonous tree,
23 the poisonous tree being your statement.

24 But this information that you just conveyed to the
25 Court, had you told your attorney about it?

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1 A. Yes, ma'am.

2 Q. Okay. Mr. Gunnells, can you identify this document
3 for the record, please?

4 A. Yes, ma'am. This is notes that I was writing while I
5 was at trial.

6 MS. BLANCHETTE: And, Your Honor, at this time I'd
7 move this in, these notes, as Plaintiff's Number 10.

8 THE COURT: Without objection?

9 MS. WILLIAMS: Without objection.

10 THE COURT: Okay.

11 (Thereupon, Plaintiff's Exhibit No. 10, Gunnells'
12 Handwritten notes from trial, was received into evidence).

13 BY MS. BLANCHETTE:

14 Q. And, Mr. Gunnells, these were notes you provided to
15 your attorney at the time that he was making these
16 arguments about suppressing the pawn receipt; is that
17 correct?

18 A. Yes, ma'am.

19 Q. Why did this pawn receipt matter in your case?

20 A. Because they said that it obtained (sic) items that
21 was from part of the home invasion.

22 Q. Okay. And on this pawn receipt, you've had a chance
23 to review it, are there other issues with it that your
24 attorney did not address as far as the information
25 contained on it?

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1 A. Yes, ma'am.

2 Q. And what is that?

3 A. I have -- well, not now, but when I had a valid South
4 Carolina driver's license, that's not my driver's license
5 number. That's not my Social Security number. That's not
6 my birth date. That's not my height, weight or race.

7 And to obtain or pawn something you have to present
8 valid identification and have a valid South Carolina
9 driver's license at that time.

10 Q. And that is not information your attorney provided to
11 the Court; is that correct?

12 A. No, ma'am.

13 Q. Now you've alleged in your amendment and you've asked
14 me to allege that your attorney failed to make a number of
15 pretrial motions and his failure to do so was detrimental
16 to your case; is that correct?

17 A. Yes, ma'am.

18 Q. Are you alleging today that he should have made a
19 motion to suppress the items taken when you were arrested?

20 A. Yes, ma'am.

21 Q. Mr. Gunnells, did the police claim and say at trial
22 that they actually obtained consent from your girlfriend
23 to take those items?

24 A. Yes, ma'am.

25 Q. And what was taken?

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1 A. On their paperwork they said they only took some
2 clothes and some shoes, but they took a whole lot more
3 than that.

4 Q. Okay. Do you know if your attorney ever spoke with
5 your girlfriend, Niconya Brooks, about the consent she
6 supposedly gave?

7 A. No, ma'am.

8 Q. Mr. Gunnells, could you identify what this document
9 appears to be for the record, please?

10 A. Yes, ma'am. It is a consent to search form given by
11 my girlfriend.

12 Q. And is it handwritten?

13 A. Yes, ma'am.

14 Q. And what's the date on it?

15 A. June the 4th, 2003.

16 MS. BLANCHETTE: Your Honor, at this time I'd move in
17 Plaintiff's Number 10.

18 THE COURT: Won't that be 11?

19 MS. BLANCHETTE: Is it 11? I said that as a
20 question.

21 THE COURT: And you did it very well as a question.
22 Plaintiff's 11 without objection.

23 (Thereupon, Plaintiff's Exhibit No. 11, Niconya
24 Brooks' statement, was received into evidence.)

25 BY MS. BLANCHETTE:

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1 Q. Did your attorney raise any issues regarding this
2 handwritten consent, the details, or calling Niconya
3 Brooks as a witness at your trial?

4 A. No, ma'am.

5 Q. Mr. Gunnells, when you were arrested did you have
6 jewelry on your hands?

7 A. Yes, ma'am.

8 Q. And who did that jewelry belong to?

9 A. Myself.

10 Q. Mr. Gunnells, can you identify this picture for the
11 record, please?

12 A. Yes, ma'am. That's a picture of me standing outside
13 of the residence when they had me handcuffed and shackled.

14 Q. And what is on your hands?

15 A. My rings.

16 MS. BLANCHETTE: Your Honor, at this time I'd move
17 this in as Applicant's Number 12.

18 MS. WILLIAMS: There's no objection to that, Your
19 Honor.

20 THE COURT: Plaintiff's Number 12.

21 (Thereupon, Plaintiff's Exhibit No. 12, photograph,
22 was received into evidence.)

23 BY MS. BLANCHETTE:

24 Q. And, Mr. Gunnells, is that the jewelry that you just
25 referenced?

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1 A. Yes, ma'am.

2 Q. Okay. And that jewelry was taken from you; is that
3 correct?

4 A. Yes, ma'am, along with the chain that was around my
5 neck.

6 Q. And if you could identify this document for the
7 record, please?

8 A. This is a receipt for property.

9 Q. And what is the property listed on here?

10 A. One gold chain, one gold wedding band, one man's gold
11 ring with a diamond in the center and one on both sides.

12 Q. Okay. Your Honor, at this time I'd move in this
13 receipt for property listing three pieces of jewelry as
14 the Applicant's Number -- Plaintiff's Number 13.

15 THE COURT: Okay. Number 13 without objection.

16 (Thereupon, Plaintiff's Exhibit No. 13, receipt for
17 property, was received into evidence.)

18 BY MS. BLANCHETTE:

19 Q. Mr. Gunnells, do you take serious issue with how the
20 investigation was handled in your case?

21 A. Yes, ma'am.

22 Q. Okay. And do you feel that's an issue that was
23 properly addressed by your attorney either prior to or
24 during your trial?

25 A. No, ma'am.

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1 Q. Okay. And one of your major concerns revolves around
2 this jewelry; is that correct?

3 A. Yes, ma'am.

4 Q. Could you please explain that to the Court based upon
5 those documents I provided you?

6 A. On the receipt for property it says the purpose for
7 which obtained, evidence in a burglary first and a
8 robbery. And it goes on to state the gold chain and two
9 rings. Then it says, on August the 14th, 2003, that these
10 items were released to Hallman Sease during a chain of
11 custody.

12 Q. And those items were released to Mr. Sease prior to
13 your trial?

14 A. Yes, ma'am. Went to trial in 2004.

15 Q. But at your trial, Mr. Sease testified about those
16 items and the State alleged that those were in fact his
17 items. But did they ever introduce them at trial?

18 A. No, ma'am.

19 Q. Okay. And did you ever try to obtain those items back
20 that were taken from you at your arrest?

21 A. Yes, ma'am. I actually was told by SLED Agent George
22 Darnell that if I could obtain or provide receipts for my
23 property that it would be returned back to me. And
24 whenever Niconya came down to retrieve my personal
25 belongings that they had took otherwise, she also provided

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1 SLED Agent Darnell --

2 MS. WILLIAMS: Your Honor, I believe that's outside of
3 his personal knowledge. I object to it on the basis of
4 Rule 602.

5 THE COURT: Your objection is sustained.

6 BY MS. BLANCHETTE:

7 Q. I'll be clear with my question, Mr. Gunnells. It was
8 your understanding that you could get that jewelry back.
9 Did you request that anyone go get that jewelry for you?

10 A. Yes, ma'am; twice.

11 Q. And who did you request do that?

12 A. The first time was Niconya and the second time was my
13 grandmother.

14 Q. Okay. And is your grandmother present here today?

15 A. Yes, ma'am.

16 Q. Your Honor, his grandmother has a medical condition
17 that does not allow her to testify but she is present in
18 the courtroom. She provided a very brief letter
19 explaining that she did in fact go try to get the
20 jewelry. I provided it to the State. It's my
21 understanding that --

22 MS. WILLIAMS: My understanding of this letter is she
23 doesn't say that she has any receipts, that she just went
24 there and told them this was his stuff. And she does not
25 have receipts when she goes there and that's my

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1 understanding of that letter.

2 THE COURT: Okay. Any objection?

3 MS. WILLIAMS: Other than that, I don't have a
4 problem.

5 THE COURT: Okay.

6 MS. BLANCHETTE: So in lieu of her testimony, I will
7 just admit this letter.

8 THE COURT: That would be Plaintiff's 14.

9 (Thereupon, Plaintiff's Exhibit No. 14, grandmother's
10 letter, was received into evidence.)

11 BY MS. BLANCHETTE:

12 Q. At the time that you sent Niconya to obtain your
13 items, you did have the receipts for those items; is that
14 correct?

15 A. Yes, ma'am. She provided the original receipts.

16 MS. WILLIAMS: Again, Your Honor, I would object to
17 the same, about what Niconya did on the basis of Rule
18 602. He doesn't have personal knowledge of what she did.

19 THE COURT: Again, sustained.

20 BY MS. BLANCHETTE:

21 Q. Just answer the question I'm going to ask. Did you
22 provide her with receipts when you requested that Niconya
23 go get your items?

24 A. Yes, ma'am.

25 Q. After she went down and made that request on your

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1 behalf, were those receipts provided back to you?

2 A. She had them.

3 Q. Since that time, have those receipts been made
4 available to you or do you have access to them now?

5 A. No, ma'am.

6 Q. Okay. A major issue that comes up at your trial is
7 the identification of you by the victim in court. And he
8 also did it in a second statement that he gave.

9 Did your attorney make any motions regarding
10 identification prior to the beginning of your trial?

11 A. I'm trying to understand exactly what you mean.

12 Q. I can rephrase my question. In the middle of your
13 trial your attorney made a motion regarding the victim's
14 identification of you.

15 A. Yes, ma'am.

16 Q. Was that an issue, one, that he actually addressed
17 with you before the trial or brought to the Court's
18 attention before the trial?

19 A. No, ma'am.

20 Q. Okay. And that identification involved the clothes
21 that were obtained from you in the search; is that
22 correct?

23 A. Yes, ma'am.

24 Q. Okay. Mr. Gunnells, could you identify this for the
25 record, please?

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1 A. Yes, ma'am. That is a receipt for property.

2 Q. And what's the property listed on this receipt?

3 A. Clothing belonging to me that was returned to Niconya
4 Brooks.

5 MS. BLANCHETTE: Your Honor, at this time I would move
6 this in as Applicant's Number 15.

7 THE COURT: Without objection.

8 MS. WILLIAMS: No objection.

9 (Thereupon, Plaintiff's Exhibit No. 15, receipt for
10 property, was received into evidence.)

11 THE COURT: All right. And, Ms. Blanchette, I hate to
12 break your chain of cross-examination here but can we take
13 a short break?

14 MS. BLANCHETTE: I would be happy to.

15 THE COURT: We're going to take a short break.

16 Mr. Gunnells, you may step down. You may not talk with
17 your attorney about your testimony or anything like that.
18 We're going to take a short break and then I'll bring you
19 back up here. You'll be back under oath when you come
20 back. Okay?

21 THE APPLICANT: All right.

22 THE COURT: We're going to take a five-minute break.
23 Thanks.

24 (Thereupon, a break was taken at 12:05 p.m. until
25 12:15 p.m., when the hearing resumed as follows:)

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1 THE COURT: Ms. Blanchette, sorry for the break. I
2 needed to make a phone call.

3 MS. BLANCHETTE: Perfectly fine. We have the rest of
4 the exhibits pre-marked.

5 THE COURT: Great. That is good. If I had known that
6 ahead of time, I would have given you more time.

7 Mr. Gunnells, if you'd get seated and pull back up,
8 please, sir. And Mr. Gunnells, you know you are still
9 under oath?

10 THE APPLICANT: Yes, sir.

11 THE COURT: And, Ms. Blanchette, you've gotten all the
12 other exhibits pre-marked now?

13 MS. BLANCHETTE: We do, Your Honor.

14 THE COURT: And Ms. Williams, you have reviewed those
15 exhibits?

16 MS. WILLIAMS: Yes, Your Honor. Just to, I guess, put
17 on the record what our -- that there are several
18 statements, things like that. We, you know, what we
19 agreed to is statements, reports, things like that,
20 they're not put in for the truth of the matter contained
21 therein, they're just put in for things that, you know,
22 the attorney had access to possibly use, then they are
23 admitted.

24 THE COURT: Thank you, ma'am. All right.
25 Ms. Blanchette?

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1 BY MS. BLANCHETTE.

2 Q. Mr. Gunnells, before the break I just introduced
3 Applicant's Number 15, a return receipt for property?

4 A. Yes, ma'am.

5 Q. And I'll just let you explain to the Court what you
6 would like regarding that information there on that
7 sheet.

8 A. I got two of them. You're talking about the one for
9 the jewelry or the one for the clothing?

10 Q. The one for the clothing property.

11 A. Yeah. What, what about it?

12 Q. Yes. What matters would you like to address with the
13 Court about that document there?

14 A. I mean, they're saying that there was clothing that
15 was returned to Niconya, clothing that was taken (sic)
16 from her residence. And I don't know what they returned
17 to her or what they took because I never seen anything.

18 All I know is when they took a basket, they took and
19 put a whole bunch of clothes in the basket and just put it
20 in the car. And when they returned to her I didn't know
21 nothing about nothing that was taken.

22 Then later on, come to find out that the items that
23 was taken out of my clothing that was at her residence was
24 taken to the victims to be identified as belonging to me.

25 Q. So this clothing was reported in fact during your

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1 case; is that correct?

2 A. Yes, ma'am.

3 Q. And is it something that you discussed with your
4 attorney prior to trial?

5 A. Yes, ma'am.

6 Q. Okay. And you shared with him your concerns and did
7 he make any pretrial motions regarding the clothing or the
8 use of the clothing by law enforcement or the return of
9 that clothing?

10 A. No, ma'am.

11 Q. Okay. And would that have also tied into a motion
12 regarding the search and seizure of your property?

13 A. Yes, ma'am.

14 Q. And that was a motion that was not made by your trial
15 attorney; is that correct?

16 A. No, ma'am.

17 Q. I'm sorry. My question was: That was a motion he did
18 not make; correct?

19 A. No, he did not make the motion.

20 Q. Okay. Now, you said the victims in this case included
21 Eunice Sease. She was one of the residents in the home;
22 is that correct?

23 A. Yes, ma'am.

24 Q. And she gave a statement in this case?

25 A. Yes, ma'am.

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1 Q. And she testified in your case; is that correct?

2 A. Yes, ma'am.

3 Q. I'm going to show you what's been pre-marked as
4 Plaintiff's Exhibit 16. Could you identify that for the
5 record, please?

6 A. Yes, ma'am. This is a statement given to the police
7 on May the 7th, 2003, by Eunice Sease.

8 MS. BLANCHETTE: And, Your Honor, at this time I'd
9 just move to admit that as Plaintiff's Number 16.

10 THE COURT: And I believe it's being admitted not for
11 the truth of the matter asserted but just as information;
12 is that correct?

13 MS. BLANCHETTE: That is correct, Your Honor.

14 THE COURT: Okay. With that stipulation it is
15 admitted. I'm sorry. Go ahead.

16 (Thereupon, Plaintiff's Exhibit No. 16, Eunice Sease's
17 statement, was received into evidence.)

18 BY MS. BLANCHETTE:

19 Q. Did you receive and review this statement with your
20 attorney prior to trial?

21 A. Yes, ma'am.

22 Q. Okay. And turning to her trial testimony, if you
23 could look at page 175. And specifically on lines 11
24 through 14, Ms. Sease describes that a black man came to
25 the door yelling US Marshals. And on page 180, when

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1 asked, on lines 10 and 11, she explains it was a black man
2 with all black on. Is that what the transcript reflects?

3 A. Yes, ma'am.

4 Q. If you could turn back to page 179 and look at lines
5 20 through 25. There she also describes a white guy being
6 present with red shorts on. Is that what she described?

7 A. I think she just says, I can remember red shorts with
8 white and black stripes down them and I can remember shoes
9 but I never did look and I could see a red bandana. I
10 never did look at the face because I kept my head in the
11 pillow praying to God that I would be safe.

12 Q. And if you could look at 182 lines 16 through 20?

13 A. Yes, ma'am.

14 Q. Does she indicate that that individual was in fact --
15 was white?

16 A. Yes, ma'am.

17 Q. Now in this statement she gave on 5-7, or I'm sorry,
18 on May 7th of 2003, does she mention one of the assailants
19 being white?

20 A. No, ma'am.

21 Q. And on page 206 when asked by your attorney she
22 acknowledges that her statement never mentions a white
23 person; is that correct?

24 A. Yes, ma'am.

25 Q. So in this statement given before your arrest there's

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1 no mention of a white person?

2 A. No, ma'am.

3 Q. And after your arrest and at trial Ms. Sease testifies
4 that there was a white individual in the house.

5 A. Yes, ma'am.

6 Q. Archie Stephen Sutton also testified at your trial?

7 A. Yes, ma'am.

8 THE COURT: I hate to break. Number 16, do I have a
9 copy?

10 MS. BLANCHETTE: You don't. I just saw it sitting on
11 my table.

12 THE COURT: Okay. Thank you, ma'am.

13 MS. BLANCHETTE: Thank you, Your Honor.

14 THE COURT: I'm sorry, Ms. Blanchette.

15 BY MS. BLANCHETTE:

16 Q. Archie Sutton also testified at your trial?

17 A. Yes, ma'am.

18 Q. And he was also present in the home when this crime
19 was committed; is that correct?

20 A. Yes, ma'am.

21 Q. Okay. Do you know how he's related to the Suttons
22 (sic) or why he was there?

23 A. I think whenever I was reading, it says he's like
24 their surrogate son or something.

25 Q. And did he give statements in your case?

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1 A. Yes, ma'am.

2 Q. Okay. I'm going to show you what's been pre-marked as
3 Plaintiff's Exhibit 17. Could you identify that for the
4 record, please?

5 A. Yes, ma'am. This is a statement given by Archie
6 Stephen Sutton.

7 Q. And what's the date on that statement?

8 A. May the 7th, 2003.

9 MS. BLANCHETTE: Your Honor, at this time I'd move
10 that in as Applicant's Number -- or Plaintiff's Number
11 17.

12 THE COURT: Okay. I believe it's, again, with the
13 same stipulation; is that correct, Ms. Blanchette?

14 MS. BLANCHETTE: That is correct, Your Honor.

15 THE COURT: Okay.

16 (Thereupon, Plaintiff's Exhibit No. 17, Archie.
17 Stephen Sutton's statement, was received into evidence.)

18 BY MS. BLANCHETTE:

19 Q. And I'm going to hand you what's been pre-marked as
20 Plaintiff's Exhibit 18. Could you describe what that is
21 for the record, please?

22 A. This is another statement given by Stephen Sutton.

23 Q. And what's the date on this statement?

24 A. The date says June the 11th, 2003.

25 MS. BLANCHETTE: Your Honor, at this time I'd move

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1 this in under the stipulations as Plaintiff's Exhibit 18.

2 THE COURT: Okay. All right. With the stipulations,
3 Numbers 17 and 18 are admitted.

4 (Thereupon, Plaintiff's Exhibit No. 18, Stephen
5 Sutton's statement, were received into evidence.)

6 BY MS. BLANCHETTE:

7 Q. Now when Mr. Sutton took the stand, on page 223, he
8 describes what he saw. And he says that there were two
9 guys with him and one in the other bedroom. Is that what
10 he testified to?

11 A. Yes, ma'am.

12 Q. And on page 215 he describes the two individuals that
13 were with him and the clothes that they had on. And on
14 page 231 he said that one of their faces was black. Is
15 that what he testified to?

16 A. Yes, ma'am.

17 Q. Now regarding the guy in the other bedroom, if you
18 could turn to page 226. He describes that individual as
19 having red shorts with white legs. Is that what he
20 testified to? And that's page 226 through 227.

21 A. Yes, ma'am.

22 Q. Now you have there in front of you Mr. Sutton's
23 statement given on March 7th of 2003. Your attorney asked
24 him about that statement on cross-examination and he
25 admitted that that statement had no mention of the person

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1 with red shorts or white legs. Is that what he admitted?

2 A. Yes, ma'am.

3 Q. And you've reviewed that statement. There is no
4 mention of this third person?

5 A. No, ma'am.

6 Q. And you were arrested on June 4th, 2003; is that
7 correct?

8 A. Yes, ma'am.

9 Q. And he gave a second statement then and that was dated
10 June 11th, 2003?

11 A. Yes, ma'am.

12 Q. And he explains in that statement that he was brought
13 down to law enforcement after your arrest, was shown
14 clothes that belonged to you. And then in the second
15 paragraph he identifies you as being present at the
16 robbery.

17 Is that the information contained in the statement in
18 front of you?

19 A. Yes, ma'am.

20 Q. Did you ever go over the second statement with your
21 attorney?

22 A. No, ma'am.

23 Q. And is it true that your attorney never mentioned the
24 second statement in his cross-examination of this witness?

25 A. No, ma'am.

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1 Q. Now he did not -- your attorney didn't mention it, but
2 the State did vaguely reference it, on page 243 through
3 244; is that correct? I'll give you a chance to look at
4 that.

5 And the State asked him and he says he did write a
6 statement where he identified the red shorts, which would
7 be the second statement?

8 A. Yes, ma'am.

9 Q. Do you have allegations today regarding your
10 attorney's failure to utilize this second statement?

11 A. Yes, ma'am.

12 Q. And what are those allegations?

13 A. Well, first, the items that was taken, the clothing
14 that was identified was taken to the victim's house.
15 Also -- and I don't see how you can identify a person by
16 their clothing.

17 Q. And is it apparent that he was shown that clothing and
18 told it belonged to you and as a result wrote this
19 statement?

20 A. Yes, ma'am.

21 Q. Okay. And is that a matter that you wanted your
22 attorney to bring to the attention of the Court and the
23 jury?

24 A. Yes, ma'am.

25 Q. And he did not do that on your behalf; is that

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1 correct?

2 A. No, ma'am.

3 Q. Mr. Gunnells, is there anything else regarding the
4 testimony or statement of Archie Stephen Sutton that you
5 would like to address?

6 A. I mean, as far as him changing statements from the
7 first time of the statement he said it was two black
8 males. And then after I was arrested and the police --
9 and he admitted, he said the police told him this stuff
10 they had received belonged to me.

11 Then he makes another statement and says my name after
12 the police told him it was my stuff that he had seen.

13 Q. Did your attorney make any objections during his
14 testimony regarding his identification of you?

15 A. No, ma'am.

16 Q. And the final victim that took the stand was Hallman
17 Sease; is that correct?

18 A. Yes, ma'am.

19 Q. And he testified, on page 256, looking at lines nine
20 through 11, that a tall black gentleman ordered him to the
21 floor.

22 A. Yes, ma'am.

23 Q. Is that what he testified to?

24 A. Yes, ma'am.

25 Q. Then if you could look at page 257 line 17 through

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1 22. He explains that another gentleman who was a white
2 male with red shorts came in and held a pistol to himself
3 and his wife. Is that what he testified to?

4 A. Yes, ma'am.

5 Q. Okay. On page 260, looking at lines 21 through 23, he
6 explains that the white guy is the one who took his
7 wedding band, his ring and his Clemson watch?

8 THE COURT: Hold on one second. What page are you
9 talking about?

10 THE APPLICANT: 260.

11 MS. BLANCHETTE: Your Honor, on page 260.

12 THE COURT: On page 260. I'm sorry.

13 MS. BLANCHETTE: And lines 21 through 23 specifically.

14 BY MS. BLANCHETTE:

15 Q. Now is that the jewelry that we've been discussing?

16 A. No, ma'am.

17 Q. Is that the issue around the jewelry that we've been
18 discussing?

19 A. Oh, yes, ma'am.

20 Q. And he testified that that jewelry was taken but it
21 was never introduced or had him identify it at trial; is
22 that correct?

23 A. No, ma'am.

24 Q. And at that time the jewelry that had been taken to
25 you had already been returned to your girlfriend, Niconya

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1 Brooks?

2 A. Yes, ma'am.

3 Q. So the jewelry that was taken from you -- I'm sorry.
4 Had been returned to Mr. Hallman Sease. So the jewelry
5 that was taken from you was in the possession of Hallman
6 Sease at the time of trial?

7 A. Yes, ma'am.

8 Q. Okay. Now, at that point, looking at page 273, your
9 attorney makes an objection to suppress the identification
10 of you by Mr. Sease and he argues there, beginning on page
11 273 through 277, that the basis of such objection is that
12 the identification was only made after he was told that
13 those clothes belonged to you by law enforcement. And he
14 also references a statement made by your aunt.

15 Had you discussed that issue with your attorney prior
16 to trial?

17 A. No, ma'am.

18 Q. Your attorney went on to argue that the identification
19 of you was so tainted that it should not be admitted. In
20 looking at page 276 through 278, the Court specifically
21 asks him if there was ever a photo or lineup ID to which
22 he answers no. And as a result they took some in-camera
23 testimony and then your attorney's motion was denied; is
24 that correct?

25 A. Yes, ma'am.

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1 MS. BLANCHETTE: Okay. And, Your Honor, at this point
2 I do have two legal arguments, to save time at the end,
3 regarding identification and the hand of one hand of all.
4 I'm not going to get into those legal arguments with my
5 client because they're matters that I can strictly address
6 to the Court.

7 THE COURT: And the Court will appreciate it.

8 BY MS. BLANCHETTE:

9 Q. Now, in making that argument did your attorney refer
10 to the statements made by Hallman Sease or Stephen Sutton?

11 A. Yes, ma'am.

12 Q. In making his motion to the Court asking that the
13 identification be suppressed, did he introduce those
14 statements and say there's differences in these
15 statements? Or did he just argue to the Court in general?

16 A. No, he just argued everything.

17 Q. Now Mr. Sease was allowed to testify in detail. And
18 he was asked by your attorney about his first statement.
19 Can you identify this for the record?

20 THE COURT: This is marked as Plaintiff's which?

21 MS. BLANCHETTE: This is pre-marked as Plaintiff's 19
22 subject to the prior stipulations.

23 THE COURT: Okay.

24 THE APPLICANT: Yes, ma'am. This is a statement given
25 by Hallman Sease.

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1 BY MS. BLANCHETTE:

2 Q. What is the date on the statement?

3 A. May the 7th, 2003.

4 MS. BLANCHETTE: Your Honor, at this time I would move
5 to admit it.

6 THE COURT: Subject to the stipulation that it's not
7 for the truth of the matter asserted.

8 (Thereupon, Plaintiff's Exhibit No. 19, Hallman
9 Sease's statement of May 7, 2003, was received into
10 evidence.)

11 BY MS. BLANCHETTE:

12 Q. And, Mr. Gunnells, I'm going to provide you this to
13 identify for the record. This has been pre-marked as
14 Plaintiff's Exhibit 20. What does that appear to be?

15 A. This is another statement given by Hallman Sease.

16 Q. And what's the date on the second statement?

17 A. August the 11th, 2003.

18 MS. BLANCHETTE: Your Honor, at this time I move to
19 admit this as Plaintiff's Number 20.

20 THE COURT: Again with the same stipulation, not for
21 the truth of the matter asserted; is that correct?

22 MS. BLANCHETTE: That is correct, Your Honor.

23 (Thereupon, Plaintiff's Exhibit No. 20, Hallman
24 Sease's statement of August 11, 2003, was received into
25 evidence.)

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1 BY MS. BLANCHETTE:

2 Q. Now regarding the first statement dated May 7, 2003,
3 there Mr. Sease describes two people. And he admits on
4 cross-examination that statement only references two
5 people.

6 Now, in the second statement he indicates that there's
7 a white individual and that's different from the first
8 statement; is that correct?

9 A. Yes, ma'am.

10 Q. And your attorney did point that out on cross-
11 examination on page 308 and 309. If you'll look there.

12 A. Yes, ma'am.

13 Q. But did he reference the second statement either to
14 the Court in his motion -- or, I'm sorry, in his motion to
15 suppress the identification?

16 A. No, ma'am.

17 Q. And the identification of you actually occurs in this
18 statement; is that correct?

19 A. Yes, ma'am.

20 Q. And he gives your name for the first time and explains
21 that he saw the clothing, was told it was yours and
22 identifies you then as being involved in this crime?

23 A. Yes, ma'am.

24 Q. Is there anything else, Mr. Gunnells, regarding the
25 testimony of Hallman Sease or his two statements that you

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1 would like to address with the Court today?

2 A. Yes, ma'am. I would just -- was -- I want to know why
3 they was never presented. The statements was never
4 presented to the jury at my trial where they could see, I
5 guess, what you would call inconsistencies in the
6 statement, where at one point in the statement it says it
7 was two males from all three victims and then it changes
8 after I was arrested to include three or four people that
9 was there.

10 And then after they admit at my trial that the police
11 told them it was my property and it was my stuff that it
12 was me, they go on to change it and include my name in the
13 statement. And it was never presented at my trial.

14 Q. And instead of pushing you or asking you to cooperate
15 with the police, is that the avenue you wanted your
16 attorney -- is that an avenue you wanted your attorney to
17 pursue?

18 A. Yes, ma'am.

19 Q. Okay. Now, Debra Meyers also testified. And who is
20 Debra Meyers? How do you know her?

21 A. That's my father's sister.

22 Q. Where does she live?

23 A. She lived in Ehrhardt.

24 Q. Did you know she was going to testify against you at
25 your trial?

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1 A. No, ma'am.

2 Q. Mr. Gunnells, I'm going to hand you what's been
3 pre-marked as Plaintiff's Exhibit 21. Could you identify
4 that for the record, please?

5 A. Yes, ma'am. This is a statement from Debra Meyers.

6 Q. And what's the date on the statement?

7 A. August the 14th, 2003.

8 MS. BLANCHETTE: Your Honor, at this time I'd move
9 this in, the statement in as Applicant's Number 21.

10 THE COURT: Again, with the same stipulation?

11 MS. BLANCHETTE: Yes, Your Honor.

12 THE COURT: Okay. Note, without objection with the
13 same stipulation, it can go in.

14 (Thereupon, Plaintiff's Exhibit No. 21, Debra Meyers'
15 statement, was received into evidence.)

16 BY MS. BLANCHETTE:

17 Q. Mr. Gunnells, did you review this statement with your
18 attorney prior to trial?

19 A. Yes, ma'am.

20 Q. And in reviewing it did you understand that she was
21 going to testify against you to the information contained
22 in this statement?

23 A. No, ma'am.

24 Q. And in this statement she does mention your cousin and
25 the State did allege that your cousin, her son, had

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1 exchanged phone calls with you and provided you
2 information about where the Seases lived. Is that what
3 the State alleged?

4 A. Yes, ma'am.

5 Q. Was your cousin ever charged?

6 A. No, ma'am.

7 Q. Okay. Now, she testifies in great detail about your
8 involvement in this case and her knowledge of it. But
9 specifically, if you could look at page 324, there a
10 proffer is done to determine if she can testify about an
11 admission you supposedly made about talking to the victim,
12 knowing he did not believe in banks and that he kept a lot
13 of money in his house.

14 The Judge overruled your attorney and found that that
15 admission was not coming in for the truth of the matter.
16 Did you understand otherwise? Did you think your
17 admission was coming in as the truth?

18 A. Yes, ma'am. I didn't, I didn't understand at the time
19 what they was going to, what the argument was. Like I
20 still really don't understand those legal terms, so I
21 didn't really understand what was going on as far as she
22 was concerned.

23 Q. And do you think the jury was able to differentiate
24 her saying that you made this admission as not being the
25 truth? Do you think the jury was able to differentiate as

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1 the Judge's ruling did, that she's saying you said this
2 but it's not being introduced as the truth?

3 A. Oh yes, ma'am. I don't think they understood it.

4 Q. Okay. And was that issue raised on your appeal?

5 A. No, ma'am.

6 Q. Now, she essentially is allowed to testify about you
7 getting a ride from the victim, that he told you he didn't
8 believe in banks and kept all his money in his home, and
9 that you essentially admitted that you were planning this
10 to her. Did that occur?

11 A. No, ma'am.

12 Q. Okay. And were you aware of prior to her testimony
13 that she was going to be allowed to get on the stand and
14 claim that you made this admission to her?

15 A. No, ma'am.

16 Q. She also testified, on page 333, that the victim told
17 her who robbed him. Were you aware that your aunt was
18 going to testify to that at trial?

19 A. No, ma'am.

20 Q. Okay. And was that prejudicial to you?

21 A. Yes, ma'am.

22 Q. Okay. Now, beyond your statement, was your aunt
23 really the only other person that clearly connected you to
24 this robbery?

25 A. Yes, ma'am.

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1 Q. Okay. Is there anything else regarding your aunt's
2 testimony or her statement that you would like to address?

3 A. No, ma'am.

4 Q. Okay. Mr. Gunnells, you're getting kind of quiet.
5 Are you doing okay or do you need a break?

6 A. Yeah, I'm just trying to keep up with what you're
7 saying.

8 Q. Okay. Please let me know if you need me to slow
9 down. Okay?

10 A. All right.

11 Q. Now the SLED agent that testified at trial was Agent
12 Darnell. Do you recall that?

13 A. Yes, ma'am.

14 Q. Okay. And I'm going to show you what's been
15 pre-marked as Plaintiff's Exhibit 22. And what type of
16 document does this appear to be?

17 A. This is SLED forensic crime scene notes.

18 Q. What's the date at the top of this?

19 A. May the 6th, 2003.

20 MS. BLANCHETTE: Your Honor, at this time I'd move
21 this in as Plaintiff's Exhibit 22.

22 THE COURT: Plaintiff's Number 22. Without
23 objection?

24 MS. WILLIAMS: We have the same stipulation.

25 THE COURT: With the same stipulation, okay. Thanks.

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1 (Thereupon, Plaintiff's Exhibit No. 22, SLED crime
2 scene notes, was received into evidence.)

3 BY MS. BLANCHETTE:

4 Q. Now if you could look at this report. The second
5 sentence says, I spoke with SA, which would be SLED Agent
6 George Darnell, who advised that three unknown black males
7 did break into blank by kicking in the front door.

8 Did you review this report with Mr. Wilson prior to
9 trial?

10 A. No, ma'am. I never seen this.

11 Q. Okay. In here it states that the assailants were
12 three unknown black males; is that correct?

13 A. Yes, ma'am.

14 Q. When Agent Darnell took the stand, did your attorney
15 ever ask him about this report that indicates that he said
16 that three unknown black males committed this crime, not
17 two black males and one white male?

18 A. No, ma'am.

19 Q. Okay. And when Agent Darnell is on the stand, on page
20 344, Mr. Gunnells, he explained that he went to a Bush
21 River Road pawnshop, found out that you had pawned the
22 speakers in question and got them via incident report.

23 Did your attorney ever investigate the procedures used
24 to obtain that evidence that supposedly elicited your
25 verbal statement that was used at trial?

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1 A. No, ma'am.

2 Q. And he also testifies on page 352 lines 19 through 23
3 over your attorney's objection that you gave them that
4 pawn receipt during transport; is that correct?

5 A. Yes, ma'am.

6 Q. No. I'm sorry. Is that correct information? Did you
7 give them that receipt?

8 A. Oh. No, ma'am.

9 Q. Okay. He also talks about obtaining the jewelry from
10 you and the clothes from you including a pair of Shack
11 shoes that were used. But were there any matches made to
12 those shoes?

13 A. No, ma'am.

14 Q. And then through Agent Darnell your statement was
15 published; is that correct?

16 A. Yes, ma'am.

17 Q. And if you could look specifically at page 371. If
18 you could look at lines 18 through 25, and it carries over
19 to the next page.

20 He does explain that he showed the victims the
21 clothing items taken from you, and as a result of showing
22 them that clothing they gave the statements identifying
23 you; is that correct?

24 A. Yes, ma'am.

25 Q. And you may have mentioned it earlier but just

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1 speaking about forensic evidence in this case, Agent
2 Squire testified from SLED. And on page 412 and 414 he
3 testified that they found prints that matched Tivo but no
4 prints that matched you; is that correct?

5 A. Yes, ma'am.

6 Q. So the State had no forensic evidence to tie you to
7 this crime?

8 A. No, ma'am.

9 Q. Mr. Gunnells, I'm going to address the close of your
10 case, closing arguments. But is there anything else from
11 the trial portion that you'd like to bring to the Court's
12 attention or anything else regarding the testimony, the
13 events of your trial that I've overlooked to ask you
14 about?

15 A. I mean, like, the only issue that I could have seen
16 that would have been anything beneficial would have been
17 if I would have had a witness present at my trial for my
18 benefit, that it would have changed, possibly could have
19 changed the way people looked at the whole situation.

20 And I was never given the opportunity. Basically I
21 didn't know what was going on as far as the police was
22 concerned and all, the solicitor talking about testifying
23 against co-defendants and all. I didn't know what the
24 situation was but I told them I didn't want nothing to do
25 with none of that because I didn't have nothing to do with

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1 none of that. I didn't know nothing about it.

2 And I was being forced by other means to say that.

3 Q. And, Mr. Gunnells, I was going to ask you about it in
4 a minute, but I'll ask you now. You've heard the
5 testimony of Mr. Lee today?

6 A. Yes, ma'am.

7 Q. Was that information you knew at the time of your
8 trial?

9 A. No, ma'am.

10 Q. If you would have known that information, would you
11 have asked your attorney to utilize Mr. Lee?

12 A. Yes, ma'am.

13 Q. Okay. And is there anything else regarding Mr. Lee's
14 testimony or your attorney's failure to utilize him, we
15 don't know if your attorney knew it or not at this point,
16 that you'd like to explain to the Court?

17 A. No, ma'am.

18 Q. Okay. So that information is newly discovered to you;
19 is that correct?

20 A. Yes, ma'am. I've never, I've never had no opportunity
21 to talk to him or see him or meet him or nothing dealing
22 with that. I never knowed nothing about the other case
23 that was presented. The only thing I knew that they say
24 they had him locked up in Richland County for a murder
25 charge but I was housed in Bamberg County all the way to

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1 my trial.

2 Q. And that kind of begs the question then. Why did you
3 mention him in your statement?

4 A. The police told me that they had his fingerprints,
5 that he was locked up in Richland County on a murder
6 charge.

7 Q. Now at the end of your -- the State's case, your
8 attorney made a directed verdict argument on page 424
9 through 425.

10 I'm sorry. That might be the wrong page cite.

11 I'm sorry. It's page 425 lines eight through 11.

12 There your attorney makes a directed verdict motion on
13 all the charges. And he says he won't argue because the
14 Court's heard all the testimony.

15 Did you think your attorney or do you think your
16 attorney should have presented an argument on your behalf
17 at that point?

18 A. Yes, ma'am.

19 Q. Okay. And by not making an argument, did he lessen
20 your chances of getting that issue raised on appeal?

21 A. Yes, ma'am.

22 Q. Okay. Let's look at the State's closing argument for
23 a minute. On page 441, the solicitor's making her closing
24 argument. If you look at line 19 she says, they ain't no
25 bad law enforcement in this one.

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1 Do you disagree with that statement?

2 A. Yes, ma'am.

3 Q. Why, Mr. Gunnells?

4 A. Because of the whole, the totality of the
5 circumstances, the way everything was done and presented.
6 It wasn't done right, not in my eyes. I don't know law.
7 I can't state no laws about it, but the way it was done
8 wasn't right.

9 Q. And do you feel that your attorney effectively
10 presented that issue to the Judge or the jury on your
11 behalf?

12 A. No, ma'am.

13 Q. Now she goes on to explain, on page 436 and 442, and
14 I'll just briefly summarize, that you called your cousin
15 for directions as a part of the conspiracy, you conspired
16 with your cousin. Was there ever any testimony or
17 statements or charges related to your cousin?

18 A. No, ma'am.

19 Q. And your cousin would be Debra Meyers' son, one of the
20 main witnesses against you; is that correct?

21 A. Yes, ma'am.

22 Q. And she's the one that essentially said you admitted
23 the planning of this crime?

24 A. Yes, ma'am.

25 Q. And in saying that, did she ever mention that you were

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1 conspiring with her son in committing this crime?

2 A. No, ma'am.

3 Q. Now, you asked that I obtain a copy of your cell phone
4 records to be able to establish today that those phone
5 calls were never made?

6 A. Yes, ma'am.

7 Q. And after submitting a subpoena on your behalf, we
8 received a response; is that correct?

9 A. Yes, ma'am.

10 Q. Mr. Gunnells, could you identify this for the record,
11 please? It's been pre-marked as Applicant's 23.

12 A. Yes, this is a subpoena to AT&T.

13 Q. And is this their response cover sheet, it indicates?

14 A. Yes, ma'am.

15 MS. BLANCHETTE: Your Honor, at this time I'd move in
16 this response cover sheet from AT&T as Applicant's Number
17 23.

18 THE COURT: All right. Any objection?

19 MS. WILLIAMS: No, Your Honor. Just for the record,
20 Ms. Blanchette and I discussed this ahead of time, that
21 she would not need to bring the records custodian in on
22 this matter.

23 THE COURT: All right. Number 23 is in evidence.

24 (Thereupon, Plaintiff's Exhibit No. 23, AT&T response
25 cover sheet, was received into evidence.)

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1 BY MS. BLANCHETTE:

2 Q. And, Mr. Gunnells, does this response indicate that
3 AT&T was unable to provide us with any response to our
4 request?

5 A. Yes, ma'am.

6 Q. So, I was not able to get those phone records for you;
7 is that correct?

8 A. Yes, ma'am.

9 Q. Is that a matter that Mr. Wilson looked into for you
10 or do you know if he tried to obtain those phone records
11 to refute the State's position about those phone calls?

12 A. No, ma'am.

13 Q. But that was an essential part of the State's closing
14 argument; is that correct?

15 A. Yes, ma'am.

16 Q. Okay. Now, on page 451, during your attorney's
17 closing argument he said that, look at Mr. Gunnells'
18 statement and he told you what he did via that statement.

19 Were you on board with that defense?

20 A. Excuse me?

21 Q. Were you on board with the defense of, please look at
22 Mr. Gunnells' statement, what he says in his statement is
23 what he did?

24 A. No, ma'am.

25 Q. And why were you not on board with that defense or

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1 argument?

2 A. Because I'm still trying to understand the fact that,
3 the whole statement, period. He's saying if I did
4 something I submitted (sic) doing it, but it still wasn't
5 circumstances of going about how the statement was
6 obtained.

7 Q. And you don't agree with that statement as being the
8 truth or the admission of what you did in this case?

9 A. No, ma'am.

10 Q. Now during the course of the jury's deliberations,
11 your attorney had to leave; is that correct? He had some
12 motions and needed to be in another courtroom?

13 A. Yes, ma'am.

14 Q. You were left with standby counsel. Do you remember
15 who that was?

16 A. I think that was his partner, Steven Chandler.

17 Q. And did you know Mr. Chandler from some previous
18 encounter?

19 A. He was the solicitor on my case when it first came.

20 Q. And when Mr. Chandler was with you, that's when the
21 jury returned their verdicts on several of those being not
22 guilty and then the guilty charges we're here about today;
23 is that correct?

24 A. Yes, ma'am.

25 Q. And so you waited until the next morning to hear

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1 motions since your attorney had to leave?

2 A. Yes, ma'am.

3 Q. Okay. If you could turn to page 489 where your
4 attorney does make those motions. He renews his directed
5 verdict argument but as we just talked about, he made no
6 argument on directed verdict; is that correct?

7 A. Yes, ma'am.

8 Q. And he also renews his argument on the evidentiary
9 issues and the judge denied that; is that correct?

10 A. Yes, ma'am.

11 Q. And he indicated that he would file a written motion
12 on your behalf?

13 A. Yes, ma'am.

14 Q. At that time, did your attorney raise any issues about
15 the fact that you had been tried under a hand of one hand
16 of all, but yet the jury had rendered not-guilty verdicts
17 on a number of your charges?

18 A. No, ma'am.

19 Q. And did he raise any issues regarding the
20 identification or any of the other matters that we've
21 talked about today?

22 A. No, ma'am.

23 Q. Now, did you have a subsequent post-trial
24 reconsideration or a new-trial hearing?

25 A. Yes, ma'am.

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1 Q. And that was held January 17th, 2007?

2 A. Yes, ma'am.

3 Q. Okay. Mr. Gunnells, I'm going to provide you a copy
4 of that transcript. And it's my understanding the Court
5 has a copy also?

6 MS. WILLIAMS: May not be in his packet. I'm sorry.

7 MS. BLANCHETTE: We can copy it.

8 MS. WILLIAMS: I can get one later actually.

9 THE COURT: Okay. If you would, wouldn't mind handing
10 that up. Okay.

11 (Document handed to the Judge.)

12 THE COURT: I can use this as mine? Ms. Williams, I
13 can use that as mine?

14 MS. WILLIAMS: Yes, sir. You can keep it. I'm sure
15 she's going to give me a copy later.

16 THE COURT: All right. Thank you, Ms. Blanchette.

17 BY MS. BLANCHETTE:

18 Q. And just to summarize, since the Court has a copy of
19 that transcript. What happens is your attorney explains
20 that you had sent him a letter asking to withdraw your
21 motion to reconsider. And he explained that he had hoped
22 you would cooperate and you were going to. So essentially
23 he would agree with your decision.

24 Why did you send your attorney that letter and ask him
25 to withdraw your motion to reconsider?

JAMES ALLAN GUNNELLS - DIRECT

1 A. Because after I was sentenced I was told that I would
2 be given a hearing for reconsideration. And as you can
3 see the dates on it, it was, like, three years later and I
4 still hadn't heard nothing as far as, I met -- Chris
5 Wilson came one time to see me while I was at Lieber
6 Institution.

7 And basically the only way that the State would
8 reconsider any type of sentencing is if I was going to go
9 and testify against my supposed-to-be co-defendant. And I
10 told him that I didn't want nothing to do with that.

11 And as time progressed, it went all the way to 2007
12 and I just wrote a paper that says, you know, it's so much
13 time gone by, I haven't heard nothing. Nobody saying
14 nothing to me, nobody's telling me what's going on, then
15 I'll just go ahead and withdraw that motion and file my
16 appeal.

17 Q. So this motion, this is a combination of the two of
18 you being on a different page when it came to what the
19 strategy was?

20 A. Yes, ma'am.

21 Q. And he explains to the Court in that transcript, on
22 page six, that you had gone up to Richland County to
23 testify against Frederick Culler. Did you ever testify
24 against Frederick Culler?

25 A. No, ma'am.

JAMES ALLAN GUNNELLS - DIRECT

1 Q. Did you ever have any intention of testifying against
2 Frederick Culler?

3 A. No, ma'am.

4 Q. Now, here Judge Nicholson was very kind and on page
5 seven through eight he kind of pleads with you. He says
6 he'd be happy to hear the motion. He remembers the case.
7 Are you sure you want to do this. But he tells you he
8 can't do it that day because the solicitor's not present.

9 Did you understand what Judge Nicholson was saying to
10 you?

11 A. No, ma'am.

12 Q. Okay. And the whole time you were waiting you
13 actually filed an appeal and a PCR before this motion was
14 ever heard; is that correct?

15 A. Yes, ma'am.

16 Q. And you dismissed the motion just so you could get
17 some finality in your case, not because you did not want
18 -- or, not because you didn't want Judge Nicholson to
19 reconsider your case?

20 A. Yes, ma'am.

21 Q. All right. And did you follow that question? That
22 was a little the confusing.

23 A. Yeah. You asked me did I file the motion, did I
24 withdraw it to get something final. Knowing what's going
25 on in my case, basically.

JAMES ALLAN GUNNELLS - DIRECT

1 Q. Yes.

2 A. Yes.

3 Q. Okay. And you've also -- we've raised in your
4 amendment some issues of ineffective assistance of
5 appellate counsel but as I've already told the Court,
6 there are several legal issues in your case, two
7 specifically, that if the Court allows I will argue to the
8 Court. And that deals with ineffective assistance of
9 appellate counsel also; is that correct?

10 A. Yes, ma'am.

11 Q. Now, Mr. Gunnells, we have prepared a long time for
12 today. This is your one day in court to raise every
13 issue.

14 Is there anything else that you would like to tell the
15 Court?

16 A. I think you pretty much covered it all.

17 Q. Okay. And just going back to the Tivo Lee issue. If
18 you would have known what Mr. Lee said today, would you
19 have given that statement to law enforcement?

20 A. No, ma'am.

21 Q. Okay.

22 MS. BLANCHETTE: I have no further questions at this
23 time.

24 THE COURT: All right. Cross-examination.

25 Ms. Williams.

JAMES ALLAN GUNNELLS - CROSS

CROSS-EXAMINATION

1

2 BY MS. WILLIAMS:

3 Q. Mr. Gunnells, would you agree with Mr. Lee that y'all
4 met in July 2003 at the Bamberg County Jail?

5 A. Yes, ma'am. I seen him once.

6 Q. You saw him once there?

7 A. Yeah.

8 Q. Were y'all friendly when y'all were in jail together?

9 A. No.

10 Q. Not as friendly as you were during the break today at
11 court?

12 MS. BLANCHETTE: Your Honor, I'd object.

13 THE COURT: Sustain the objection. Go ahead. Ask.

14 BY MS. WILLIAMS:

15 Q. And if you had known about your aunt's statement,
16 would you have pled guilty or just proceeded to trial like
17 you did?

18 A. I still would have went to trial.

19 MS. WILLIAMS: I don't have any other questions.

20 THE COURT: Before you do anything on redirect, I got
21 a couple of questions. All right. And if you don't want
22 him to answer any of these questions, if you'll just let
23 me know. Okay. Ms. Blanchette?

24 You don't have to stand up. I just want to make sure
25 you heard what I said.

JAMES ALLAN GUNNELLS - COURT'S EXAM

1 MS. BLANCHETTE: Yes, I did. And I will interject if
2 needed.

3 THE COURT: All right.

4 EXAMINATION

5 BY THE COURT:

6 Q. When was the first time you ever met Mr. Lee?

7 A. When they had brought him to the county jail to serve
8 warrants on him.

9 Q. And that would have been about July of 2003?

10 A. I was arrested June, so between June and July 2003.

11 Q. Okay. All right. Now, you never talked with him
12 about this case?

13 A. No, sir. They had us on different sides of the jail.
14 I was already on one side of the jail. He came to the
15 other side.

16 Q. Okay. Well, I understand that they brought you in
17 like that, but while y'all were in jail --

18 A. No, I think they transported him down, brought him
19 down here, served him with warrants and took him back to
20 Richland County Jail. I was in Bamberg County Jail until
21 my trial.

22 Q. And you said he was in Bamberg County Jail when he was
23 here earlier this morning; right?

24 A. I think that was just for serving warrants and sent
25 him back to Richland County.

JAMES ALLAN GUNNELLS - COURT'S EXAM

1 Q. So you never talked to him then?

2 A. No, sir.

3 Q. Okay. Now, tell me why you didn't want to talk to the
4 solicitor's office.

5 A. Because I had no information to give to them. They
6 was telling me that, like I told you whenever she asked me
7 about indictments, she told me if I ever wanted to see the
8 streets as a free man the last years of my life that I
9 would cooperate with her. If not, then I was going to die
10 in prison.

11 Q. Okay. All right. And why did you not testify?

12 A. I had nothing to tell --

13 Q. So you could correct the statement then; couldn't you?

14 A. Because they was talking about bringing up records and
15 stuff and I didn't want them to even look, like, no type
16 of guilty-ness towards me, period, dealing with that type
17 of crime.

18 Q. Okay. And your attorney went over with you the fact
19 that if you didn't testify and put up any defense he got
20 to argue the last; right?

21 A. No, I didn't --

22 Q. Didn't go into that?

23 A. No, sir.

24 Q. Okay. But you didn't want to correct anything wrong
25 with the statement that they had already gone over?

JAMES ALLAN GUNNELLS - REDIRECT

1 A. The Judge told me that if I would even get up there,
2 if I was to answer one question that I had no right to
3 plead the Fifth to one question and not the rest of them.
4 If I answered one question, I'd a had to answer everything
5 and I didn't think that was necessary.

6 If I had to answer one part of it, I'd be asked a
7 bunch of questions that really weren't relevant to the
8 case. That would have made me look even more guilty than
9 what, all the other charges was against me.

10 So I didn't think it would be beneficial for me to
11 have to answer one question and not the rest of them.

12 THE COURT: Thank you, sir. All right.

13 MS. BLANCHETTE: One follow up, Your Honor.

14 THE COURT: Yes, ma'am.

15 REDIRECT EXAMINATION

16 BY MS. BLANCHETTE:

17 Q. Mr. Gunnells, you didn't take the stand in front of
18 the jury but you did take the stand during the Jackson
19 versus Denno hearing; is that correct?

20 A. Yes, ma'am.

21 Q. And at that point it was your understanding that the
22 State -- or, I'm sorry, the Judge could have suppressed
23 your statement and then the State would not have been
24 allowed to use it?

25 A. Yes, ma'am.

1 Q. So you took that opportunity to attempt to address the
2 problems with that statement, but were you able to go into
3 all the matters that you've gone in today?

4 A. No, ma'am.

5 Q. And is that a result of lack of preparation with your
6 attorney?

7 A. Yes, ma'am.

8 MS. BLANCHETTE: Your Honor, I have no further
9 questions.

10 THE COURT: Anything on recross?

11 MS. WILLIAMS: Nothing further, Your Honor.

12 THE COURT: All right. You may step down.

13 THE APPLICANT: Thank you.

14 THE COURT: Thank you, Mr. Gunnells.

15 THE APPLICANT: All right. Thank you.

16 THE COURT: You can call your next witness,
17 Ms. Blanchette.

18 MS. BLANCHETTE: Your Honor, I have no further
19 witnesses.

20 THE COURT: Okay.

21 MS. BLANCHETTE: I do have argument as I've already
22 referenced on the legal issues. I just wanted to make
23 sure that I put on the record that we would move pursuant
24 to the Rule 15-B to amend any issues that may have come
25 out through the testimony or evidence, especially as to

1 the testimony of Tivo Lee and Attorney Chris Wilson.

2 THE COURT: Okay. With regard, the testimony of
3 Mr. Lee, any objection to the amendment?

4 MS. WILLIAMS: I just assume that that's the, you
5 know, that this would be newly-discovered evidence and if
6 for reasons through Chris's testimony she had a basis for
7 ineffective counsel she would raise that at this hearing.

8 And I do understand that there are two additional
9 arguments that she has discussed with me, that she would
10 need to be putting on the record regarding the
11 confession. And those are preserved for Mr. Gunnells.

12 THE COURT: All right. Anything else?

13 MS. BLANCHETTE: Just to clarify. In the amendment we
14 raised it as an issue, ineffective assistance of counsel.
15 As to Mr. Tivo Lee, it's issue to number two. So the
16 amendment on the record would strictly be if Mr. Wilson's
17 testimony makes it more a matter of newly-discovered
18 evidence.

19 THE COURT: Okay. Thank you, ma'am.

20 MS. BLANCHETTE: Thank you.

21 THE COURT: And no other witnesses then?

22 MS. BLANCHETTE: No other witnesses, just the
23 argument.

24 THE COURT: Yes, ma'am. All right. Ms. Williams?

25 MS. WILLIAMS: Your Honor, the State would call Chris

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1 Wilson.

2 THE COURT: Okay. Mr. Wilson.

3 JAMES CHRISTOPHER WILSON, having been duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Please have a seat on witness box and
6 state your full name.

7 THE COURT: Get comfortable.

8 THE WITNESS: I will. Thank you.

9 THE COURT: And pull up close so we can hear you.

10 THE WITNESS: James Christopher Wilson, but I go by
11 Chris.

12 THE COURT: All right. Ms. Williams?

13 DIRECT EXAMINATION

14 BY MS. WILLIAMS:

15 Q. Mr. Wilson, can you tell me briefly about your legal
16 practice and legal experience?

17 A. I became a member of the bar in 1994. I started a law
18 practice in 1995, worked for a law firm for about three
19 years, opened up my own practice in 1998. And I've been
20 in private practice for myself since then and in the
21 practice of law since July of 1995.

22 There was a period of time -- I've done a lot of
23 personal injury work, a lot of criminal defense work, real
24 estate work, domestic work. There was a period of time,
25 maybe in early 2000 through about 2002 or 2003 that I did

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1 the Bamberg County Public Defender criminal cases on a
2 part-time contract basis.

3 I think this was one of the cases I received -- I was
4 appointed to when I was a public defender and it was one
5 of the cases that remained with me after I was the public
6 defender.

7 Q. So it would be safe to say that you've tried numerous
8 criminal cases and appeared in general sessions court in
9 South Carolina numerous times?

10 A. A great many times and a great many cases.

11 Q. All right. Mr. Gunnells has discussed at great length
12 about your preparations and investigations prior to
13 trial. Can you tell me about when -- do you recall about
14 when you first met with him and kind of what your
15 preparation and investigation consisted of?

16 A. I would. I first met with Mr. Gunnells shortly after
17 receiving paperwork that I was appointed to represent
18 him. It would have been sometime around the middle, first
19 part of June, right after he was arrested. I would have
20 met with him at the Bamberg County Detention Center.

21 At that point in time I wouldn't have had a whole lot
22 of information about his case, maybe a copy of the
23 warrants at the most and an appointment paper. And I
24 would have gone in -- I would have went in and spoke with
25 him about the charges that we had at that point in time.

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1 There were some charges that were later added. I
2 think by the time I first met with him I had everything,
3 all of the warrants for all of the charges. And I would
4 have told him what he was charged with and that I had been
5 appointed to represent him. And that he needed to speak
6 with me and me only about his case, not to talk with law
7 enforcement any further and that as I obtained information
8 about his case we would discuss it.

9 We -- I would have met with him over the course of the
10 next year and three months on a great number of occasions
11 to discuss what evidence was obtained in his case, what
12 was provided to me by the State, by law enforcement, what
13 I would have found out through any investigation that I
14 did in this case or that I had done in this case.

15 I had some forensic information in his case reviewed
16 by Don Gurnt who was formerly employed with SLED. And I
17 would discuss with Mr. Gunnells what Mr. Gurnt's opinions
18 were and what information Mr. Gurnt provided.

19 I talked with Mr. Gunnells on a number of occasions
20 about what he was facing. I advised him of the charges
21 that he had. You know, advised him of the maximum
22 penalties of each one of those charges, the elements of
23 those crimes.

24 We had a number of discussions. I heard his testimony
25 earlier. We had a number of discussions about plea

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1 possibilities and plea opportunities very early on.

2 Mr. Gunnells -- I was either told that he had a statement
3 or he had a copy of a statement that subsequently I got in
4 the SLED package. And it was pretty clear very early on
5 that Mr. Gunnells had given a statement that was very
6 incriminating as to his involvement in this.

7 And short of being able to do anything to, to contest
8 or undo that statement, it would have been difficult to
9 provide what I thought would be a viable or successful
10 defense for Mr. Gunnells.

11 So I did talk with him on a number of occasions about
12 plea possibilities, plea opportunities, arranged for him
13 to meet with the solicitor one time. I think he cancelled
14 that meeting or refused to participate in that meeting.

15 And then, you know, I, I would have met with him to
16 prepare his case for trial and go through all of the
17 evidence that we had. I would have provided him the SLED
18 package that was given to me. I received it October the
19 1st of 2003 and provided it to him at the Bamberg County
20 Jail shortly thereafter that had all of the, you know,
21 information included in the attachments which is a lot of
22 the statements and information that we've talked about
23 today.

24 Photographs are not part of their package but they
25 generally provide me with photographs, any photographs.

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1 And I take those photographs and go over those photographs
2 with the person that I'm representing and then I give
3 those back to the solicitor.

4 So, I mean, I'll be glad to go through it in more
5 detail but...

6 Q. All right. Tell me, what did Don Gurnt specifically
7 review for you in this case?

8 A. Mostly what I had Don Gurnt look at was some footprint
9 information. I can't remember every specific of what Don
10 looked at, but most of what it was dealt with the
11 footprint information that was recovered from the front
12 door of the Seases' home. I think there were three
13 footprints on the front door.

14 And I had -- was provided some SLED testing results
15 that were done in that regard and got that information to
16 Mr. Gurnt, asked him to take a look at it to see if we had
17 any way of contesting or trying to deal with, with that
18 issue.

19 As I recall, there was no definitive match to the
20 Shack shoes or the white Shack shoes that were
21 Mr. Gunnells'. I don't believe there was a definitive
22 match to those shoes, but I had Don look at any issues in
23 that regard.

24 Q. So it was consistent with those shoes, but no way one
25 could say these particular shoes --

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1 A. Correct.

2 Q. -- it could have been any different size Shack shoes?

3 A. Correct. Yeah. They could not make one of the prints
4 definitively match Mr. Gunnells' shoes, but it was
5 consistent. And I had Mr. Gurnt look at that.

6 Q. And so it's your testimony today that the statements,
7 the written statements of Mr. Sease, Ms. Sease,
8 Mr. Sutton, Debra Meyers would have been reviewed with
9 your client?

10 A. Correct. As well as his statement, the SLED report,
11 any of the ballistics information -- not ballistics, any
12 of the forensics information that I had, the pawn ticket.
13 Everything that was provided to me by SLED was provided to
14 Mr. Gunnells and then discussed with Mr. Gunnells at the
15 time that we would have been talking about his case and at
16 the time that we would have been preparing for trial.

17 Q. Okay. Mr. Gunnells mentioned some issues with the
18 pawn ticket this morning. Were those issues discussed
19 with you prior to the trial?

20 A. They were not. I had provided Mr. Gunnells a, by
21 delivery to the jail, the SLED incident report which --
22 excuse me, the SLED package which contained the incident
23 report that laid out how Mr. Gunnells was initially
24 arrested and laid out how Mr. Gunnells was brought down to
25 Bamberg.

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1 I believe Darnell's agents, you've been calling him
2 Darnell, but it's George Darnell. Darnell's his last
3 name. I believe Agent Darnell's information in his report
4 and his testimony was that they had gone to Columbia.
5 They had located Mr. Gunnells coming into his girlfriend's
6 apartment's parking lot.

7 They made an arrest. He had on the jewelry. They
8 took photographs of the jewelry that was later identified
9 as belonging to Mr. Sease, the victim. They brought
10 Mr. Gunnells back to Bamberg. They had already determined
11 that he had pawned the speakers and an amplifier, I think,
12 that were taken as a part of this incident. And they had
13 obtained those from the pawnshop. I think the, one of the
14 victims gave them some serial numbers that they tracked
15 and traced and ultimately recovered.

16 Agent Darnell said that he had placed those in his
17 office where when Mr. Gunnells walked into his office
18 after being arrested that would be the first thing that he
19 would see.

20 Agent Darnell said that it wasn't to elicit a
21 response. I didn't -- that didn't make sense to me so we
22 brought that issue up at trial. But he said in his report
23 and I know he testified that upon Mr. Gunnells being
24 brought in and seeing those items he said, oh SH, you got
25 me and pulled the pawn receipt out of his -- said, do you

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1 want the pawn receipt and pulled the pawn receipt out of
2 his pocket.

3 That was information that Mr. Gunnells and I had prior
4 to his case going to trial. That was information we would
5 have discussed in our meetings at the jail. That was
6 information that came to light during the Jackson V Denno
7 hearing.

8 Mr. Gunnells did not tell me any differently until he
9 gave me -- and I don't know what exhibit it is, but he
10 gave me a statement that he hand wrote that's -- I'll take
11 a look. It's Plaintiff's Exhibit Number 10.

12 He -- this was after the trial began, after the
13 Jackson V Denno hearing was done and after the evidence
14 had been submitted in. This was -- I don't remember if it
15 was in the second day or the third day of trial, but this
16 was a statement that he gave me after the trial had begun,
17 and after had proceeded beyond the points of that
18 information. And this is where he says that he didn't
19 give him the pawn receipt. And that's the first I heard
20 of that.

21 Mr. Gunnells -- during our meetings, Mr. Gunnells'
22 description of his involvement in this matter to me
23 changed at varying points and times. Never did he say
24 that he wasn't involved. Never did he say that he wasn't
25 there. He changed his levels of involvement to be that

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1 he, that he, you know, took them there and set it up but
2 wasn't supposed to go in. Then it was that he didn't know
3 there were as many guns as there were.

4 His -- his -- his conversations with me changed a
5 variety of times and hence my -- I mean, I advise all my
6 clients they got a right to a trial. I advise all my
7 clients that I'll do everything I can do to defend them as
8 best as I can.

9 But in Mr. Gunnells' case, I felt like that he did not
10 have as strong a case as you'd like to have to go to trial
11 and advised him accordingly, and told him that he needed
12 to consider the plea options.

13 Q. All right. I'm going to try to backtrack through a
14 couple of things based on what you just said. I'm going
15 to show you a SLED division investigative file and what
16 this is is actually a summary. Does not have any actual
17 attachments with it. It just has summaries of what each
18 attachment is.

19 I want to ask you if that's what you've been referring
20 to in saying that you provided Mr. Gunnells a SLED package
21 with attachments. Does that look like the summary? The
22 attachments aren't with it, but --

23 A. Yeah. This is the summary and it has an attachment
24 summary that has 32 attachments and all 32 of those
25 attachments are provided with what I get from SLED.

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1 MS. WILLIAMS: I would like to move this summary in,
2 understanding that there were attachments to it but just
3 the summary portion of this. And it's not being offered
4 for any truth, just as to what Mr.--

5 THE COURT: What he received.

6 MS. WILLIAMS: Yes.

7 THE COURT: Okay. So this will be State's One. Any
8 objection?

9 MS. BLANCHETTE: Just one concern, Your Honor. It
10 says James Allan Smith instead of James Gunnells on this
11 report. I'd just like that clarified maybe through some
12 questioning. And as long as it's not being admitted for
13 the truth of the matter. There's a lot of hearsay
14 contained in here.

15 THE COURT: Oh, I'm sure. All right. Admitted under
16 that stipulation. Okay. And if you clear up the
17 Smith-Gunnells issue.

18 MS. WILLIAMS: I sure will.

19 THE COURT: State's One. Okay.

20 (Thereupon, State's Exhibit No. 1, SLED summary, was
21 received into evidence.)

22 BY MS. WILLIAMS:

23 Q. Mr. Wilson, there is an annotation on the front. It
24 says, this was received October 3rd, 2003, from Agent
25 Darnell. Is that to you; is that correct?

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1 A. That's my handwritten notes, just to say when I got
2 it.

3 Q. Okay. And do you have a copy of this particular
4 handwritten report in your file of James Gunnells?

5 A. Yes.

6 Q. Okay. And did you represent anybody named James Allan
7 Smith? Know who James Allan Smith is?

8 A. No, I see now where it says James Allan Smith, but I
9 mean, I don't know who that was or what it was.

10 Q. And the victim, the other name, Tivo Richard Lee,
11 Frederick Alexander Culler, those were other individuals
12 involved in this case, alleged to be involved?

13 A. Correct.

14 Q. And the victims who are listed there, those are the
15 alleged victims in this case?

16 A. Correct.

17 Q. Was there ever anything to your recollection that
18 involved a person named James Allan Smith as opposed --

19 A. No, I don't recall representing anybody named James
20 Allan Smith or recalling a James Allan Smith's name ever
21 being involved in this case in any way, shape or form.

22 MS. WILLIAMS: Does that clear up what you need
23 somewhat?

24 MS. BLANCHETTE: Yes. I think that's sufficient. I
25 just wanted to make sure the record was clear.

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

2 BY MS. WILLIAMS:

3 Q. It is your testimony that you provided this to Mr --
4 and discussed with Mr. Gunnells this report along with the
5 attachments?

6 A. I did. I have a letter in my file where I sent it to
7 him just a couple days after getting it. It was hand-
8 delivered to him over at the Bamberg County Jail. That
9 contains the Debra Meyers' statement that he referenced,
10 we went over earlier.

11 Q. In your discussions with Mr. Gunnells, at any point
12 did he deny knowing Tivo Lee?

13 A. He did not.

14 Q. Did he deny being present at this incident?

15 A. He did not. He actually told me that he bought the
16 jewelry that was on him when he was arrested from Tivo
17 Lee. That was the jewelry that was taken from Mr. Sease.

18 And I asked him how did he end up with the jewelry if
19 he wasn't involved in taking it or he wasn't there. He
20 said he paid Tivo Lee \$250 for it and took it and got it.

21 Q. And, did you make any attempts to speak with Mr. Lee
22 as part of your investigation in this case?

23 A. I spoke with Mr. Lee's attorney Stone (sic), I think
24 it's Sherri Stone (sic) out of Augusta. At one point in
25 time there was a concern about whether they were all three

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1 going to be tried together or whether they were going to
2 try Mr. Culler and Mr. Lee and Mr. Gunnells separately.
3 And I spoke with Ms. Stone (sic) in that regard and about
4 what her client might or might not say.

5 Q. And did she give you any information as to what her
6 client would possibly say, anything?

7 A. Not anything about what he would say and not that he
8 would say that Mr. Gunnells was not there. That was not
9 anything Mr. Gunnells had ever told me, that he wasn't
10 there for me to pursue.

11 Q. Okay. And I'm going to apologize because I think I am
12 going to be skipping around here a little bit, just trying
13 to clarify a few points.

14 But Mr. Sease in his identification, he testified at
15 trial that he had identified a white gentleman, Debra
16 Meyers' nephew, the night that this happened. Is that
17 consistent with your recollection of the transcript and
18 any statements from the file that you would have?

19 A. Yeah. I think Mr. Gunnells -- excuse me, Mr. Sease,
20 as I recall, he testified at trial that, and it might have
21 been in one of the in-camera hearings where we contested
22 the identification issue, that he did recognize
23 Mr. Gunnells by his hair and some other identifying
24 characteristics as I recall but that he did recognize him
25 that night but that he did not call him out that night

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1 while the incident was taking place, that he did tell SLED
2 about that that night, and -- but it was not in his first
3 statement to SLED but once he was shown the clothes, the
4 red baggy shorts, that he did identify Mr. Gunnells by
5 name.

6 And I don't know if that was as a result of them
7 telling them Gunnells or him actually using Gunnells'
8 name.

9 Q. And I'm going to refer you to page three of the SLED
10 investigative summary, the last sentence on the second
11 paragraph. Mr. Sease stated that a white male with
12 braided hair had been staying with Debra Meyers on US 601
13 not far from his residence and traveled with a black
14 female in an older model Rodeo truck.

15 Would that be consistent with the way Mr. Gunnells was
16 described otherwise?

17 A. I'm sorry. That's on page three?

18 Q. Page three, last sentence of the second paragraph.

19 A. Yes. And as I recall Mr. Sease testified -- yeah,
20 Mr. Sease, the victim, testified that he had actually
21 picked Mr. Gunnells and another male up who were turkey
22 hunting out in the area behind his property just a few
23 days before this incident. And that he had picked
24 Mr. Gunnells and that person up.

25 And I don't think they had had a whole lot of

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1 interaction, and they might have even had, as I recall,
2 the turkey hunting camouflage on that they would have worn
3 but that he had had some -- he had crossed paths with
4 Mr. Gunnells for lack of a better term just a few days
5 before. And that's how he described him.

6 Q. In addition to Mr. Gunnells' statement, did you have
7 any information from SLED regarding a lineup wherein
8 Mr. Gunnells selected Tivo Lee as one of the folks in the
9 lineup?

10 A. I did. It was -- I think he identified Tivo Lee by
11 name in his statement that was given, in his written
12 statement that was given, you know, several hours after
13 his, Mr. Gunnells' initial arrest.

14 Q. That was in June 2003?

15 A. Correct.

16 Q. Okay.

17 A. And then also they provided a photo lineup, they being
18 SLED, provided a photo lineup about Mr. Lee and I think
19 that was something that Mr. Gunnells had involvement in.

20 Q. On page nine, possibly refresh your memory in that
21 regard, the second paragraph.

22 A. Yes. I mean, they had a lineup and I think, as I
23 recall, Mr. Gunnells picked Tivo's photograph out of the
24 lineup as being one of the other people involved in the
25 Sease home invasion.

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1 Q. And was it ever alleged that -- did Mr. Gunnells ever
2 tell you that the police had provided him this information
3 and told him who to identify in that lineup?

4 A. No, no, he did not. And I've been involved in false
5 confession cases before. And I've tried a murder case
6 that involved a confession that my client said was false,
7 that he was given the information to write according to
8 the police.

9 I know how to ask those questions and I know how to
10 handle those kind of cases, and I know what experts to
11 hire and involve in those kind of cases. And there was no
12 indication from Mr. Gunnells that his statement and what
13 he wrote upon being arrested was, was not accurate or that
14 somehow the police coerced him or forced him or provided
15 him the information.

16 The only thing that he told me in regards to the
17 statement was that he was told they would dismiss his
18 girlfriend's charges which I think were some minor
19 unrelated charges maybe in a different county, that they
20 would work to get those dismissed if he told them what
21 happened and that's what we brought out in the Jackson V
22 Denno pretrial hearing.

23 Q. So based on your prior success with false confession
24 defense, would you have explored that had Mr. Gunnells
25 brought that to your attention?

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1 A. Had Mr. Gunnells told me that that statement was not
2 accurate or was not correct or that he was provided
3 information or somehow coerced or tricked into giving that
4 statement other than what I just said, I would have
5 pursued it.

6 Q. Mr. Gunnells presented to the Court a speedy trial
7 motion that he had filed. Had you been representing him
8 at that time?

9 A. I had been.

10 Q. Probably about a year, would that be accurate?

11 A. That sounds about right.

12 Q. Had y'all ever talked about a speedy trial?

13 A. We did not. He -- I told him that there would be a
14 point in time that the solicitor was not looking at this
15 case, you know, being around very long before it was tried
16 for the simple fact that it was a serious case.

17 He was in the Bamberg County Jail. They don't like to
18 house too long there if they can help it. And, but we did
19 not discuss him wanting or him filing -- I think he filed
20 that pro se and the clerk didn't really do anything with
21 it because it wasn't filed by his attorney or the Court
22 didn't do anything with it because it wasn't filed by his
23 attorney.

24 I think he was mostly wanting to get a bond. I think
25 he was mostly wanting to get his bond reheard because he

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1 had been denied bond before I was appointed to represent
2 him and as I recall I took him back before the Court
3 trying to get a bond set. And I think he wanted to try to
4 get bond.

5 Q. You practice fairly regularly in general sessions
6 court in the Second Circuit. Would that be accurate?

7 A. Not as much today as I did four or five years ago, but
8 yes.

9 Q. Are you aware of the practices of the grand jury
10 meeting and when they meet compared to a term of court --

11 A. I do.

12 Q. -- that would be on the indictment?

13 A. In Bamberg County they normally meet either the
14 Thursday or Friday before a term of court starts. And
15 you'll oftentimes see indictments that say, you know,
16 during the week of such-and-such date but the true bill
17 will actually be a couple days before that. They call the
18 grand jury in a few days before and they true bill a
19 number of the cases that are going to go to court the
20 following week.

21 Q. So based on your experience, that would not have been
22 a red flag to you in the indictments?

23 A. It wasn't to me, no. I mean, I heard Mr. Gunnells
24 say -- talking about the indictments. I heard
25 Mr. Gunnells say that I never reviewed or went over the

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1 indictments with him.

2 I can't remember if this was before the rule changed
3 where the solicitor held onto the indictments until they
4 got ready to call them or it was after the time where the
5 solicitor actually had to file those with the clerk of
6 court.

7 But I always and would have in Mr. Gunnells' case
8 obtained the indictments and gone through the indictments
9 with him, showing him what he was indicted for, the vague
10 allegations that the indictment contained, the fact that
11 it would have been true billed.

12 And we would have previously discussed what would have
13 been the maximum possible punishment for each one of
14 those. But I go through the indictments in every single
15 case, plea or trial, with my client, even if it's at the
16 courthouse, you know, right before we get started if
17 that's the first time that I'm able to obtain them and do
18 so.

19 Q. Mr. Gunnells had said that you did not make an
20 argument for a directed verdict in his case. Can you tell
21 me why that would have been?

22 A. Well, the only real basis for a directed verdict
23 motion that we would have had would have been that the
24 evidence didn't rise to the level that would allow the
25 Court to submit that evidence to a jury.

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1 That was the only basis for a motion that I felt
2 appropriate and that I recall considering.

3 And my experience with, you know, Judge Nicholson and
4 the judges in our state is they know the standards of law
5 and they know the requirement that there just be a mere
6 amount of evidence to submit the case to the jury.

7 And I think I noted to the Court that I wouldn't argue
8 because he had heard the evidence and would be able to
9 make that ruling. I didn't feel it necessary to belabor
10 the law that the judge already knows and the evidence that
11 he had already heard.

12 Q. So, you did not feel -- you felt that there were --
13 there was at least some evidence to support the charges
14 that had been presented whether it was believable or not,
15 but there was evidence that was presented?

16 A. I felt that was the way the Judge was most probably
17 going to see it but I did the motion to allow the Judge to
18 be the person to make that call. That was obviously his
19 province to make that ruling.

20 Q. Did you discuss with Mr. Gunnells the possibility of
21 him testifying at trial?

22 A. I talked to him. Yes, I did.

23 Q. Can you tell me a little bit about those discussions
24 and considerations in making your recommendations?

25 A. I don't recall Mr. Gunnells' prior record as I sit.

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1 here today but I do recall -- as I recall he had a prior
2 record. And I would have advised him that if he testified
3 that the solicitor could use his prior record to impeach
4 him if it was appropriate, that a judge would have to
5 decide that first. We'd have to have a hearing in front
6 of a judge to decide what could be used or not used to
7 impeach him.

8 I would have told him that if he testified that he
9 would not have been able to pick and choose which
10 questions he wanted to answer and which ones he didn't.
11 Once he started testifying he would have had to answer all
12 their questions or try to answer all their questions.

13 And I would have told him the statement that he gave,
14 the written statement and the oral statements that they
15 said he made would have been able to be used, you know, to
16 impeach him. I would have told him it was his ultimate
17 decision to make -- his ultimate decision to make that.

18 I would have told him that if he testified, if he did
19 not testify that the Court would instruct the jury that
20 his failure to testify could not be, you know, prejudicial
21 or held against him. It wasn't something they would
22 consider.

23 And I also told him that, you know, he had to make
24 that ultimate decision but that, you know, and likely,
25 that, that -- usually in these type cases, especially when

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1 there's a statement already into evidence that the jury
2 was going to, you know, want to hear from the Defendant as
3 to, you know, what's your defense.

4 But, but that it was his ultimate decision whether to
5 testify or not and he decided not to testify.

6 Q. And you conducted some pretty extensive cross-
7 examination. Do you recall using the prior statements
8 that Mr. Sease had given as well as Mrs. Sease and Steve
9 Sutton in your cross-examination?

10 A. I do. I mean, I remember using their statements to
11 point out that they had not identified the person that was
12 alleged to be Mr. Gunnells as a white person initially.

13 I don't think I put their statements into evidence.
14 And I think I crossed -- and I don't remember, I'd have to
15 look back in the transcript but I think Mr. Sutton and
16 Ms. Eunice Sease never identified James Gunnells
17 specifically.

18 Ms. Eunice I don't think identified him at all.
19 Mr. Sutton just identified the person with the red baggy
20 shorts. Mr. Sease actually identified Mr. Gunnells
21 specifically by either name or pointing at him in the
22 courtroom.

23 And I think when I crossed Mr. Sease, I brought out
24 that he didn't do that initially to law enforcement; that
25 that was after they showed him the red baggy shorts that

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1 they obtained that they said belonged to Mr. Gunnells.

2 Q. And you even brought up with Mr. Sease that those
3 weren't necessarily the red shorts but they looked like
4 those; correct?

5 A. Correct. Yeah. I don't think it ever was -- I don't
6 think the issue ever was whether -- I mean, the red shorts
7 I think went into evidence. And I don't think the issue
8 was ever the red shorts.

9 It was whether those looked like the red shorts or
10 were the red shorts that the person was wearing. I don't
11 think the red shorts had anything to do with the ultimate
12 identification or would have had anything to do with a
13 jury's determination.

14 I mean, it wasn't the -- it wasn't the red shorts
15 themselves to me, it was the fact that they were used to
16 identify Mr. Gunnells which is why we moved to suppress
17 that in-court identification.

18 I mean, all of this is stuff that Mr. Gunnells and I
19 would have talked about, you know, in some detail prior to
20 trial.

21 Q. All right. Did you --

22 A. I mean, I don't go -- I mean, there's no way I can
23 discuss every potential issue that might arise in front of
24 a Court with a client prior to trial but I would've
25 discussed with him, you know, this issue of identification

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1 prior to trial.

2 Q. Would you discuss typically -- you made a motion about
3 the indictments. Would that have been something that you
4 would have discussed prior to trial?

5 A. I don't believe that I would have been able to talk to
6 Mr. Gunnells about the indictments until right before
7 trial started.

8 So, I know that we talked about that I would contest
9 the warrants or the indictments any way that I could. And
10 the specifics of that probably didn't get discussed with
11 him in the jail but at the courthouse, because it wasn't
12 something that I would've had a lot of information on
13 until we got to the courthouse. But it was something I
14 had already prepared and researched and would discuss with
15 him before I made the motion.

16 Q. Did you ever discuss with him your closing argument
17 and the, I guess, just the general tact you would take in
18 your closing to the jury regarding his statement?

19 A. I mean, I discussed with him -- yes. I discussed with
20 him that we had an extremely difficult time with that
21 statement being into evidence and his decision not to
22 testify, that, that we had an extremely difficult time
23 trying to either put up a defense that, you know, would be
24 viable in front of the jury or contesting the State's lack
25 of evidence.

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1 I mean, you know, to try to get up and argue that
2 there was, you know, the lack of proof beyond a reasonable
3 doubt, that either one or both of those was going to be
4 extremely difficult. And as I'd said, his statements to
5 me about his involvement had changed throughout the time
6 that I represented him up until the time, you know, we
7 were in trial.

8 And I think, I think somewhere in the statement he
9 makes the statement that he was pulled into the house,
10 that he kicked the door and then kind of stood there and
11 then either Mr. Lee or Mr. Culler pulled him into the
12 house. You know -- and I would have gone through all of
13 that with him.

14 MS. WILLIAMS: I beg the Court's indulgence.

15 THE COURT: Take your time.

16 MS. WILLIAMS: Just trying to cover various points.

17 (Pause.)

18 BY MS. WILLIAMS:

19 Q. With regards to the verdict wherein Mr. Gunnells was
20 acquitted of some of the charges, found guilty of others,
21 did you consider moving for a new trial or making any
22 argument about inconsistency in those verdicts?

23 A. No. I mean, I didn't make the motion so I obviously
24 didn't consider that it was an inconsistent verdict.

25 I mean, there was testimony from Mr. Sease and from

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1 Ms. Sease, I believe, that the person with the red baggy
2 shorts was in the bedroom whenever the victim, Mr. Sutton,
3 was struck in the back of the head.

4 And, I mean, I understand the hand of one is the hand
5 of all theory that the State put forward which I think
6 they were entitled to do so in this kind of case.

7 The fact that the jury found him not guilty of the
8 assault and battery with intent to kill or the kidnapping
9 of Mr. Sutton, I think those were the ones that he was
10 found not guilty on, there was no evidence put in front of
11 the jury that Mr. Gunnells was in that room either when
12 Mr. Sutton was held, or maybe there was some evidence that
13 initially he may have been in there but not when
14 Mr. Sutton was hit.

15 And, you know, a motion -- you know, the
16 inconsistency -- I mean, he was acquitted on those
17 charges. There was no reason for me to move with respect
18 to those charges. And I didn't consider it inconsistent
19 that he had been convicted on the other ones. I didn't
20 make the motion though.

21 Q. Tell me about the motion for reconsideration of
22 sentence, the basis for that.

23 A. I did, I did make the post-trial motion. The way I
24 always do it and the way I, I looked back at the
25 transcript. When I make my post-trial motions I always

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1 tell the Court, I want to make my post-trial motions,
2 renew my motion for directed verdict and I want to make a
3 post-trial motion for a new trial based on all of the
4 other issues that I've raised during this trial.

5 And I think I spoke with the Court in the transcript
6 and renewed the basis for that new-trial motion as being
7 the identification issue and all of the other bases that
8 we raised.

9 So, I did address those issues in post-trial motions
10 with the Court but not the -- the only thing that they've
11 raised, that Mr. Gunnells' lawyer has raised that I didn't
12 consider and I didn't think was appropriate was the
13 inconsistent -- some argument about being an inconsistent
14 verdict since he was only convicted on some but not all,
15 even though the State argued the hand of one.

16 The other post-trial motion was the motion for
17 reconsideration. I had had extensive discussions with
18 Mr. Gunnells, as I've said, about the difficulties with
19 his case. And I had spoken with him extensively about
20 considering some cooperation with the State.

21 And there were varying times where he indicated he
22 wanted to do that, and then times that he didn't. Insofar
23 as, even one time I had the solicitor come over from Aiken
24 to Bamberg to meet with us at the jail and either on her
25 way here or right when she got here, I think he decided

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1 that he didn't want to talk.

2 I asked Judge Nicholson at the bench with the
3 solicitor present, if I would file a motion for
4 reconsideration of sentence would he allow us to let that
5 be held in abeyance until such time as Mr. Gunnells could
6 consider whether or not he wanted to cooperate.

7 And, if not, we'd move forward on the motion for
8 reconsideration. And if he did, then we'd move forward on
9 the motion for reconsideration with at least some
10 potential of maybe having the Court reconsidering
11 lessening the sentences.

12 At this point -- at the point in time when
13 Mr. Gunnells was convicted, Mr. Lee and Mr. Culler had not
14 been to trial nor pled on these charges. I think Mr. Lee
15 pled in 2008 as I heard earlier. And I don't even know
16 about Mr. Culler's charges at this point in time.

17 But at the time that Mr. Gunnells was convicted and we
18 were standing in front of Judge Nicholson in October of
19 2004, having been sentenced, neither one of those two had
20 been to court and Mr. Gunnells had already provided
21 Mr. Lee's name in a statement.

22 He is, as I understand, Mr. Gunnells is the link that
23 allowed those two to be arrested on these charges because
24 he gave up their names after he was arrested. And the
25 solicitor had some interest in still prosecuting them in

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1 Bamberg County. And I wanted to give Mr. Gunnells the
2 opportunity that if he wanted to reconsider his position
3 and testify, that he would have the opportunity to do
4 that.

5 That's why I filed the motion for reconsideration.
6 He -- it lingered around for a long period of time because
7 their charges weren't resolved for a long period of time.

8 There was -- I think he, he did file an appeal on his
9 own that was found to be not timely because the motion for
10 reconsideration was pending and he filed a PCR that was
11 dismissed.

12 And then at some point in time, I got a letter from
13 him -- I did go see in him in prison one time to ask him
14 about, you know, what he wanted to do. And then at some
15 point in time after that I got a letter from him saying
16 that he wanted to drop the motion for reconsideration.

17 So I got him in front of Judge Nicholson. I advised
18 against that. I told him to at least let me argue the
19 motion for reconsideration of sentence and see if the
20 judge would reduce the sentences even though without any
21 change there was probably not much chance of that, but he
22 wanted to withdraw his motion.

23 Q. You said there wasn't much change. Was there anything
24 specifically other than the cooperation that you had in
25 mind to argue for reconsideration of the sentence?

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1 A. I thought about other things and considered other
2 options, you know, whether it might be something to do
3 with, you know, him or how he was doing or, you know, any
4 of those regards, you know, whether there was some, you
5 know, change in him or anything like that, but felt like
6 at the end of the day the only real way to get the Court
7 to reconsider his sentence would have been if the
8 solicitor said yes, Your Honor, we really want you to
9 reconsider his sentence. And the only way to get that was
10 to, was for him to be cooperating with the State.

11 I mean, I didn't think there was a whole lot of
12 potential for success without that.

13 Q. And just to clarify. The transcript does not reflect
14 a directed verdict motion. You said that you felt like
15 there was evidence on each charge and you did not make
16 that motion; is that correct?

17 A. I made the motion for a directed verdict at the close
18 of the State's case. I just didn't make a long-winded
19 argument citing cases and the evidence that the Judge had
20 already heard.

21 I said, Your Honor, I make a motion at this point for
22 directed verdict. I think I said something to the effect
23 of, I won't belabor the argument and the Court said, I'm
24 going to deny your motions; or he asked me, did I have any
25 argument and I might have said, not at this time.

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1 I don't remember the exact wording, but it's in the
2 transcript.

3 MS. WILLIAMS: I believe that's all I have. Thank
4 you.

5 THE COURT: Thank you, Ms. Williams. Ms. Blanchette,
6 do you want to take a break or are you fine?

7 MS. BLANCHETTE: If we could just take a short break
8 to use the restroom that would be fine.

9 THE COURT: Okay. I figured I'd ask. We're going to
10 take a short break. Mr. Wilson, while we're on break you
11 may not talk to anybody about your testimony but you may
12 step down.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you, sir.

15 (Thereupon a break was taken at 2:48 p.m., and at
16 2:56 p.m. the hearing resumed as follows:

17 THE COURT: Ms. Blanchette?

18 MS. BLANCHETTE: Thank you, Your Honor.

19 THE COURT: Mr. Wilson, you know you're still under
20 oath.

21 THE WITNESS: Yes, sir.

22 THE COURT: Ms. Blanchette.

23 CROSS-EXAMINATION

24 BY MS. BLANCHETTE:

25 Q. Mr. Wilson, I'm just going to try to go over some

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1 issues that I mentioned with my client that I just haven't
2 heard you address yet.

3 You heard my client testify today and you heard
4 Mr. Lee testify today. If you would have had the
5 information that Mr. Lee testified to, in your legal
6 opinion could it have changed the outcome of Mr. Gunnells'
7 trial?

8 A. I don't know, not with the statement that Mr. Gunnells
9 had given. It would've depended on a lot of things about
10 Mr. Lee that I don't know, plus his prior record, what
11 kind of witness would he make. Mr. Gunnells had given a
12 statement indicating his involvement there. I don't know
13 that it would have changed anything.

14 I mean, Mr. Lee, you know, Mr -- at that point in
15 time, Mr. Lee would have had these same pending charges
16 against him unless he and his lawyer would have worked out
17 a deal with the solicitor to dismiss them and give him
18 immunity which I doubt if he was testifying for
19 Mr. Gunnells would have happened.

20 Q. Did you investigate or look into the possibility of
21 either calling Mr. Lee or Mr. Culler once it was
22 determined they were not going to be tried jointly with
23 your client?

24 A. I had -- no, not calling them as witnesses. I had
25 some conversation with Ms. Stone (sic) and I think

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1 Mr. Culler was represented by Mr. Longshore or something
2 to that effect in Columbia. And I can't say I can
3 remember having conversation with him, but I know who he
4 was.

5 So I had had some conversation with Ms. Stone (sic).
6 I didn't know of anything that Mr. Lee could have provided
7 that would be of benefit to Mr. Gunnells. So I didn't
8 have any intentions of calling him as a witness.

9 Q. Would Mr. Lee's information that he provided today
10 have been helpful with your negotiations with the State?

11 A. I don't -- I can't say that. I mean, it depends on
12 whether they would have wanted to believe it or not.

13 Q. Okay.

14 A. I mean, if they believed that Mr. Lee was just saying
15 what he can now say without recourse on these charges,
16 then, no, it would have been of no benefit. If they would
17 have believed he was actually telling the truth, then
18 maybe, but I don't think there's any way you can say that.

19 Q. And the credibility of what Mr. Lee would have to say,
20 that would have been actually left to the jury at trial;
21 is that correct?

22 A. Ultimately if he had testified, yes.

23 Q. Okay. And so is it fair to say that that, the
24 information that Mr. Lee gave today be would be considered
25 new to you? That was not something known to you at the

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1 time of trial?

2 A. It was not anything that Mr. Gunnells had told me that
3 he was not there -- Mr. Gunnells had never told me that he
4 was not there. And I had spoken to Mr. Lee's lawyer and
5 she had not told me that Mr. Gunnells would -- that
6 Mr. Lee would testify to that. So the fact that Mr. Lee
7 would say that was new to me. The fact that Mr. Gunnells
8 claimed to not be there was nothing I had ever heard
9 before.

10 Q. And when Mr. Gunnells testified about your attempts to
11 get him to cooperate with the State as part of your plea
12 negotiations, he mentioned that he felt he had been
13 threatened by the solicitor about, if he wanted to see the
14 last days of his life on the streets he needed to
15 cooperate.

16 Do you remember those conversations occurring or were
17 you part of those?

18 A. Unless it was -- unbeknownst to me, Mr. Gunnells never
19 spoke to Solicitor Morgan except for at the courthouse
20 when trial started. I mean, I don't -- I never heard a
21 statement like that made, but he would have never met or
22 seen her until we were at the courthouse in October of
23 2004 when the trial started because the one time I had
24 arranged for me and him and her to meet at the jail, that
25 was cancelled. I don't think they ever met that day.

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1 Q. And that's just based upon your memory? You don't
2 have any documentation --

3 A. Yeah.

4 Q. -- or --

5 A. No, I'm just telling you the best I can remember.

6 Q. Okay. But he did speak to her the day of trial. So
7 if the comments he was referring to were the day of trial,
8 do you remember kind of having a last-ditch effort to get
9 a plea in this case before trial?

10 A. What date -- I think -- I don't know that we had any
11 plea negotiations at the courthouse, on the courthouse
12 steps, so to speak, or that day.

13 I think the last-ditch efforts to negotiate a plea
14 were four or five days prior to trial because after that
15 it was pretty clear that everybody needed to be finishing
16 up their trial preparation.

17 Q. Turning to the trial, you made a motion at the
18 beginning of the trial regarding the sufficiency of the
19 armed robbery indictment which was on one of the
20 indictments he was found guilty on.

21 A. Correct.

22 Q. That was not raised on an appeal. In your opinion,
23 was that a meritorious issue that should have been in
24 front of the appellate court?

25 A. I mean, I raised it to the trial court. I can't speak

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1 to the appeal. I don't know how I could speak to the
2 appeal. I raised it to the trial court.

3 I think I raised it and the fact that it wasn't
4 specific as to what items he took from the Seases, I think
5 it just said goods and moneys and the Court -- I had a
6 case that really wasn't on point but I was trying to make
7 an analogy. And the Court decided that they would allow
8 the State to amend the indictment over my objection.

9 Whether or not that was raised or should have been
10 argued on appeal, I'll leave it to the appellate lawyers.

11 Q. Do you recall why you didn't make a pretrial motion
12 regarding the search including the jewelry and clothing
13 that were taken during that search?

14 A. The jewelry was taken from Mr. Gunnells when he was
15 arrested. It was in plain view when he was arrested.
16 They said he had it on his hands and the necklace on his
17 neck. I think there are even photographs to that effect.

18 So the jewelry and the necklace were, you know, in
19 plain view and taken from him when he was arrested.

20 You asked me about some other items.

21 Q. The clothing.

22 A. The clothing. Ms. Brooks, his girlfriend, had given
23 consent to law enforcement to search her apartment. And
24 in my discussions with Mr. Gunnells, I had provided him
25 the SLED report that had her written consent to the

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1 search. And, you know, she indicated that he had been
2 living there for some several months but she gave consent
3 to law enforcement to search.

4 The clothes were not -- the pants themselves, as I
5 said, weren't the big issue, whether they were
6 identifiable or not specifically, the specific ones, but
7 the fact that they looked like what that person was
8 wearing was an issue.

9 Q. And speaking of that, when you made your motion to
10 suppress the in-court identification of Mr. Hallman Sease,
11 the Court asked you directly if there was a prior
12 out-of-court ID, and, correct me if I'm wrong, but on your
13 direct today you said that after being shown those clothes
14 they identified Mr. Gunnells.

15 Is that not an out-of-court identification?

16 A. I don't think it's an identification. As I
17 understood, the Court was asking me about where you say,
18 yes, it's that person sitting right there or, yes, it's
19 that person I see in that photo lineup right there.

20 Mr. Hallman Sease -- they -- my understanding is law
21 enforcement went to Mr. Sease and Ms. Sease and whoever
22 else and said, these red baggy shorts were taken from
23 James Gunnells. And they said, yes, that's the shorts
24 that person had on and identified James Gunnells by the
25 shorts.

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1 And by the fact that they were taken by Gunnells, not
2 that he had ever been identified by face prior to being in
3 the courtroom which is why I made the motion.

4 The first time somebody's identified in the courtroom,
5 if it's overly suggestive or improper, then the Court
6 should exclude that first time, in-court identification.

7 Q. And during the in-camera hearing of Mr. Sease, during
8 that same motion hearing, he explained that he did make an
9 identification of the Defendant after he was told that
10 Mr. Gunnells had been arrested with the items, much like
11 you just said. But in your opinion, that does not qualify
12 as an identification of Mr. Gunnells?

13 A. I didn't take it as -- you're asking me about what the
14 Court asked me, if there was a prior identification and I
15 said no?

16 Q. Yes.

17 A. I did not take that as being an identification such as
18 a photo lineup or picking someone out in a courtroom or in
19 a stand-up lineup that I thought the Court would have been
20 asking me about.

21 Q. But would you agree that prior to the showing of those
22 clothes and the telling that these belonged to
23 Mr. Gunnells, the statements given by Steve Sutton and
24 Mr. Sease did not identify Mr. Gunnells? Then the second
25 statement saying, we've seen these clothes and James

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1 Gunnells committed this crime.

2 A. Correct.

3 Q. Those second statements only came after the victims
4 were shown those clothes and told they belonged to
5 Mr. Gunnells. Would you agree with that?

6 A. Yes, except for Mr. Sease testified that he had known
7 who the person was and told SLED who that person was the
8 night of incident, but it did not show up in any written
9 statement of Mr. Sease's until that second, August
10 the-whatever-date, 2003 statement.

11 Q. In arguing the suppression of the identification, why
12 did you not -- after the Court specifically asked you, on
13 page 278, if you had any exhibits, why did you not provide
14 him the two statements to show the differences in the
15 statements as a result of the identification of the
16 clothes?

17 A. Can you tell me what page that was again, please?

18 Q. 278. And I'll double-check that.

19 A. Okay.

20 THE COURT: Do you need a copy of the transcript to
21 look at?

22 THE WITNESS: I've got one they gave me. Thank you.

23 THE COURT: Okay.

24 THE WITNESS: (Reviewing transcript). Okay.

25 BY MS. BLANCHETTE:

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1 Q. And just to give you some context, it appears you
2 marked Ms. Meyers' statement and introduced that --

3 A. Correct.

4 Q. -- on page 277 to -78. But my question is: Why did
5 you not utilize the two statements of the victim?

6 A. Well, Mr. Sease testified in camera. And I think we
7 went through that issue with him. And I had also already
8 told the Court, without any objection from the solicitor,
9 and it's on page 275, I think that's me talking. It is.
10 Page 275, line two, I say: In that statement he doesn't
11 identify the person as being white. He just says baggy
12 pants, and that's the only description.

13 It's not until August of 2003, that law enforcement --
14 it's not until August 11th of 2003, that Mr. Sease
15 identifies to law enforcement at least as far as I'm
16 aware, it's not until August 11, 2003, that Mr. Sease
17 identifies to law enforcement that Mr. Gunnells, as being
18 this person.

19 That's after law enforcement has shown Mr. Gunnells --
20 I mean, shown Mr. Sease the materials they've recovered
21 from Mr. Gunnells' girlfriend's apartment.

22 So I had already told the Court all of the things that
23 were in those statements that were the bases for our
24 objections to the identification issue. And I didn't see
25 any need to put the statements in to say what I had

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1 already told the Court that the solicitor didn't contest.

2 Q. Okay. This issue, the issue of the identification,
3 was raised on appeal. And it was raised as a meritorious
4 issue by Mr. Gunnells' appellate defender.

5 In her response to her argument, the State provided a
6 progeny of cases involving the fact that clothing doesn't
7 have the same due process considerations and procedural
8 requirements as the identification of a person.

9 Was the issue in this case about the identification of
10 the clothing? Or, was the issue about the resulting
11 identification of Mr. Gunnells from the clothing?

12 And if you need me to rephrase that, please let me
13 know.

14 A. Yeah. I'm not quite sure I follow you.

15 Q. On appeal, the State argued that the identification of
16 clothing doesn't have the same protections as the
17 identification of a person because it's massed produced.

18 A. Okay.

19 Q. Now that was the issue as argued by the State. My
20 question to you: Was the issue at trial about the
21 identification of the clothing, that there needed to be a
22 lineup of the clothing? Or, was the issue that the ID of
23 Mr. Gunnells was tainted by the police saying, this is his
24 clothing?

25 A. The issue was that the clothing led to the

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1 identification of Mr. Gunnells. And that the first time
2 that any witness was going to identify Mr. Gunnells by
3 saying, that's him, was in the courtroom which would have
4 been improper, which I thought was improper or overly
5 suggestive which is why I made the motion.

6 Q. Okay. So you would agree it was not an issue of you
7 need to bring in five pair of red shorts to make sure it's
8 the proper red shorts that are being identified?

9 A. No, I don't think so. I mean, I think it would have
10 been impossible to ever say that was the exact pair of
11 shorts. It could have been, that looks like the pair of
12 shorts.

13 I mean, somebody could have said, yes, that's the pair
14 of shorts, but it would have been impossible for anybody
15 to truly say that.

16 Q. And you made an objection to the testimony of Debra
17 Meyers. And the State argued that it was not being
18 admitted for the truth of the matter. What she was going
19 to say and what was characterized as an alleged admission
20 by Mr. Gunnells, it wasn't being introduced to the jury
21 for the truth of the matter.

22 Do you agree with that characterization?

23 A. I don't -- it's not my place to decide what the State
24 argues or doesn't argue in support of their motions.

25 The statement -- Mr. Gunnells had supposedly said

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1 something to Ms. Meyers about Mr. Sease and having a lot
2 of money and having businesses. And I felt like those
3 statements were harmful to Mr. Gunnells' case.

4 And the only basis for objecting to those statements
5 was to try to move those statements as hearsay statements
6 or some other kind of inadmissible statement. They
7 weren't made to law enforcement, so I couldn't move, you
8 know, in regards to those grounds.

9 I think Ms. Morgan said something about it wasn't
10 offered for the truth of the matter asserted. Whether or
11 not that's the case, I don't know. The Court found that
12 it was an admission, that he had made an admission and
13 that it was admissible in those regards; not because it
14 wasn't true or not because it wasn't offered for the truth
15 of the matter asserted, but because it was an admission by
16 the Defendant.

17 Q. And you would defer to the transcript as to the
18 Court's actual ruling on that?

19 A. Yeah. Sure.

20 Q. In the State's closing argument, they go into detail
21 about how he called his cousin, who would be Debra Meyers'
22 son, for direction to the Seases' home. And they even
23 state at one point that he conspired with his cousin.

24 Did you ever look into why his cousin was not charged
25 or anything regarding this cousin?

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1 A. The answer to the question, no. I don't remember
2 there being testimony or evidence of him making contact
3 with his cousin other than it might have been his cousin
4 that he was with when Mr. Sease picked them up turkey
5 hunting a few days before.

6 And I won't sit here and say I know that they were the
7 same people, but I don't remember his cousin being an
8 issue. And if the solicitor argued it, then I don't
9 recall that being an issue to her argument.

10 Q. So it was not a matter that you discussed with
11 Mr. Gunnells that he allegedly made these phone calls to
12 the cousin to locate the Seases' residence?

13 A. Can I have just one moment?

14 Q. Yes.

15 A. That he made phone calls to his cousin to locate their
16 house; is that what you're asking?

17 Q. Yes.

18 A. Ms. Blanchette, unless it's in his statement or unless
19 it's in one of these incident reports that's in the SLED
20 package, I --

21 Q. I believe it is. If you look at 442 line eight, I
22 believe she's summarizing his statement at that point in
23 her closing argument.

24 A. She's summarizing James' statement?

25 Q. Yes.

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1 A. Okay. He, he does say something in his statement
2 about, so when I talked to my cousin and found out about
3 it, then I told Tivo. And he goes on.

4 And we would have talked about it in that context but
5 not about trying to subpoena records or phone records
6 about where or how he talked to his cousin, no.

7 Q. In your experience, was this case unique in that the
8 State was alleging throughout that he had conspired with
9 these others, and they even named Frederick Culler,
10 Mr. Lee and the cousin, to commit all these crimes?

11 Is it unique to you at all that the State didn't call
12 Mr. Culler, Mr. Lee or the cousin to testify about their
13 involvement in this conspiracy?

14 A. I don't recall any of the allegations or any of the
15 push from the State to be, he conspired with his cousin.
16 The conspiracy was with Mr. Lee, or any conspiracy was
17 with Mr. Lee and Mr. Culler.

18 And, no, it did not surprise me that they did not call
19 them to testify. They were both facing the same charges.
20 They were both still pending and active charges. The
21 solicitor's statement in the closing, she over-spoke or
22 miss spoke.

23 Q. And, specifically, in her closing argument on page 445
24 and then 446, she says that Mr. Gunnells conspired to
25 commit all these crimes. So she's arguing hand of one

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1 hand of all and accomplice liability.

2 A. What page?

3 Q. 445 and 446.

4 A. Okay.

5 Q. And she argues on 445, just kind of summarizing, that
6 he conspired to commit all the crimes. He needs to be
7 found guilty of all the crimes.

8 And then on 446 she goes into an explanation that she
9 understands he could only steal one truck but under the
10 State's theory he'd be guilty of stealing both trucks.

11 And I'll give you a chance to look over that if you'd
12 like.

13 A. Okay. I mean, that was their theory. It doesn't mean
14 the jury has to find according to their theory, but, yes,
15 their theory was they, all three -- their theory was that
16 Mr. Gunnells knew the people, knew the place, took these
17 guys there and they all conspired to go in and rob all
18 three, rob them all at gunpoint or whoever was there and
19 did so. Yeah, that was their theory.

20 Q. And based upon the verdicts, do you think the jury
21 accepted that theory?

22 A. With regards to a number of the indictments, but not
23 all of them.

24 Q. And did you see any reason to raise any arguments
25 regarding a material variance in the proof or the fact

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1 there was no evidence to support the convictions as the
2 State's theory was based solely upon conspiracy and that
3 is, appears to be not what the jury found?

4 A. On which indictments?

5 Q. As to the verdict.

6 A. On which indictments?

7 Q. I'm sorry. As to the whole verdict. Did you see any
8 reason to ask the Judge to set aside the verdict, move for
9 a new trial based upon either a material variance in the
10 proof or that there was no evidence to support the
11 convictions that, the State's theory, was brought under
12 the hand of one hand of all and that clearly wasn't
13 accepted by the jury?

14 A. No, not on the -- not on the charges that he was
15 indicted and convicted of. And there was no reason for me
16 to bring a motion for a new trial on charges that he was
17 acquitted of.

18 Q. Right. My question, maybe I need to clarify it. You
19 filed motions in this case. I believe it was actually
20 called a motion to reconsider, but you also did a motion
21 for a new trial the next morning.

22 A. Correct.

23 Q. Would that have been an argument you would have
24 considered bringing?

25 A. I don't -- I'm sorry. I don't follow what you're

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1 asking me. You're asking me if I considered asking for a
2 motion for a new trial on the charges that were in the
3 indictments that he was convicted of. I did make a motion
4 for a new trial on a number of grounds.

5 And you're asking me if I considered making a motion
6 for a new trial on the fact that those guilty verdicts
7 were inconsistent with the not guilties that he had on the
8 other indictments?

9 Q. You could call it inconsistent verdict if you'd like,
10 or that there was a material variance from the proof to
11 the actual verdict in this case?

12 A. I did not consider that there was a material variance
13 from the proof to the verdicts. It made -- even though
14 the State argued hand of one hand of all and that was
15 their basis for convicting Mr. Gunnells or wanting the
16 jury to convict Mr. Gunnells of everything that took place
17 or that allegedly took place in that house that night, the
18 evidence before the jury was that Mr. Gunnells or whoever
19 the person with the red baggy shorts on was in the bedroom
20 with Mr. and Ms. Sease when Mr. Sutton was struck in back
21 of the head. That was the basis for the assault and
22 battery with intent to kill.

23 So there was some basis although, you know, or some,
24 you know, reason there that the jury might have found him
25 not guilty on that charge and the other ones also. I

1 think one of them was kidnapping with Mr. Sutton that he
2 was found not guilty of.

3 Q. So there was no reason -- I'm just summarizing what
4 you said. There was no reason to call the verdicts into
5 question in front of the Court in your mind?

6 A. Not for any reason other than the ones I made the
7 motion on.

8 MS. BLANCHETTE: Okay. Your Honor, I have no further
9 questions.

10 THE COURT: Anything on redirect?

11 MS. WILLIAMS: No, Your Honor.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you.

14 THE COURT: Any other further witnesses from the
15 State?

16 MS. WILLIAMS: Nothing further, Your Honor.

17 THE COURT: All right. Anything from the defense?

18 MS. BLANCHETTE: Your Honor, when we resumed I forgot
19 to ask if Mr. Tivo Lee could be released. I'm not going
20 to call him.

21 THE COURT: You're not going to call Mr. Lee?

22 MS. BLANCHETTE: I am not.

23 THE COURT: Are you going to call Mr. Lee?

24 MS. WILLIAMS: Oh, no. I stood up because I guess I
25 should have added this in with the State's case. I was

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1 going to try to get the plea transcript from Mr. Lee's
2 guilty plea transcript. I have no reason to think it does
3 or does not have any impeachment value, but I'd like to at
4 least look at it. And I think we agree on that.

5 THE COURT: Okay. And I will hold and -- and you'll
6 hold Mr. Lee pending a review of that?

7 MS. WILLIAMS: Well, no, I'll just let the Court know
8 if there's anything in that transcript. I'll share that
9 transcript with Ms. Blanchette, also.

10 THE COURT: Mr. Lee, you're excused. Now, you want to
11 recall Mr. Gunnells?

12 MS. BLANCHETTE: Recall Mr. Gunnells very briefly.

13 THE COURT: Okay. Mr. Gunnells.

14 JAMES ALLAN GUNNELLS, having been previously sworn,
15 testified further under oath as follows:

16 THE COURT: All right. Mr. Gunnells, pull up. Okay.
17 Mr. Gunnells, you remember you are still under oath.

18 THE APPLICANT: Yes, sir.

19 THE COURT: Okay. Ms. Blanchette.

20 REBUTTAL - DIRECT EXAMINATION

21 BY MS. BLANCHETTE:

22 Q. Mr. Gunnells, you heard the testimony of your
23 attorney, Mr. Wilson; is that correct?

24 A. Yes, ma'am.

25 Q. And let me show you here what's previously been marked

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1 as Applicant's -- Plaintiff's Exhibit 10.

2 A. Yes, ma'am.

3 Q. And in Plaintiff's Exhibit 10, does it reference
4 information regarding how you obtained the speakers and
5 jewelry in this case?

6 A. Yes, ma'am.

7 Q. And what does that say there on that document?

8 A. Well, whenever he was testifying he called out
9 peoples' names. I never did that. It's written right
10 here where I wrote.

11 This says that I told him that I bought everything for
12 \$250. It doesn't say where he got it. It said that I
13 specifically bought these items from Tivo Lee. I didn't
14 say that. I said in my writing, that's my writing. I
15 said, yeah, that I bought all these items for \$250 from
16 somebody in the apartment complex which is written in the
17 statement. It didn't say nothing about me naming Tivo
18 Lee.

19 Q. Okay. And Mr. Wilson also testified that at some
20 point you had been presented a photo lineup of Mr. Lee and
21 you identified him in that lineup. Is that what you
22 recall occurring?

23 A. No, I know after the first, whenever I first got
24 arrested and I wrote the statement on myself, whenever
25 they called me, they called me, some investigators came

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1 from Richland County with a bunch of pictures and tried to
2 present it to me and told me who they was. It had two
3 names. And he was, like, this is the two people right
4 here. And asked me did I know who they was.

5 And I said no I didn't know who they was. But then he
6 pointed, saying this is him, this is who Tivo Lee is and
7 this is who Frederick Culler is. There were two different
8 sheets with nine pictures on them. And I said all right,
9 okay, then that's who that is and that's who that is.

10 That was after I was already told about the
11 fingerprints that's found, he was arrested in Richland
12 County for murder charges, and everything else that went
13 along with the situation with the first statement that I
14 wrote on myself.

15 Q. Is there anything else you'd like to add regarding
16 either of those issues?

17 A. No, ma'am.

18 MS. BLANCHETTE: Your Honor, I have no further
19 questions at this point.

20 THE COURT: Anything on cross?

21 REBUTTAL - CROSS-EXAMINATION

22 BY MS. WILLIAMS:

23 Q. Did you sign a piece of paper that said that you
24 picked out pictures, you picked out certain pictures as
25 people who committed crimes?

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1 A. That was shown to me by two investigators from
2 Richland County. But it doesn't say -- it was never
3 notarized, never signed, nothing. It just had a signature
4 on it saying it was me. I never signed none of that.

5 Q. So --

6 A. I was never given the same paperwork with two, two
7 names and it didn't never have no date on it. It just
8 said that I had signed it the day after I was arrested by
9 two investigators from Richland County.

10 Q. So this isn't your signature on this piece of paper
11 right here?

12 MS. BLANCHETTE: Your Honor, I would just ask to have
13 the opportunity to review that briefly before showing it
14 to my client.

15 THE COURT: Okay.

16 MS. WILLIAMS: Sure.

17 (Pause.)

18 MS. BLANCHETTE: Your Honor, obviously if the State
19 attempts to introduce it, I'll probably have an objection
20 but I think she's free to ask questions.

21 THE COURT: We'll deal with the objection later then.

22 BY MS. WILLIAMS:

23 Q. Is that your signature on this sheet of paper here?

24 A. Yes, ma'am.

25 Q. Okay. So you just told me you didn't sign anything

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1 but you did?

2 A. No, I said it wasn't never dated. You asked me a
3 question and I answered it.

4 Q. It's not dated at the top of the page?

5 A. The paper -- what I told you was the investigators
6 came to me and brought me pictures and told me who these
7 people was. It didn't have no names on it. The man said
8 this is who this man right here is, this is who this right
9 here is.

10 Q. Do you see any names of these people on this piece of
11 paper here?

12 A. No, I told you; he told me that. I just told you
13 about SLED, Agent Darnell.

14 Q. So you just signed this because --

15 A. No. He told me who the person was. He pointed it out
16 to me. It was nine pictures on each paper, on the two
17 pieces of paper. And the lines with pictures and he
18 pointed to them and asked me, do I know who this is. I
19 said no. He told me, well this is this man right here.
20 And then the other page, this is this man right here.

21 Q. And you initialed next to the pictures that he told
22 you to initial by?

23 A. Yeah.

24 Q. So basically you're just saying that he had you sign
25 this, you picked these people out because he made you do

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1 it?

2 A. That's who he told me did it. That's who he said he
3 had the information on.

4 Q. And he made you sign this piece of paper. Did you
5 read it?

6 A. Did I read it?

7 Q. Uh-huh.

8 A. I mean, it wasn't nothing on it really to read.

9 Q. I would certainly like to move these in as part of --
10 it was an attachment to the report.

11 THE COURT: Ask him if he's seen those pictures or
12 not, if you'll do that.

13 MS. WILLIAMS: Yes, sir.

14 THE COURT: Ask him if he's seen the pictures and then
15 I'll hear your objection.

16 BY MS. WILLIAMS:

17 Q. There's actually two sets of pictures, one with an
18 initial next to photo number two. Is that the lineup that
19 you were shown, Mr. Gunnells?

20 A. Yes, ma'am.

21 Q. And then another set of photos with six pictures. I
22 believe there are initials next to photo number five.

23 A. Yes, ma'am.

24 THE COURT: Okay. And those are the lineups you were
25 shown?

1 THE APPLICANT: Yes, sir.

2 THE COURT: Okay. All right. Yes, ma'am?

3 MS. BLANCHETTE: Your Honor, I would object because I
4 can't come up with a reason besides that -- these are
5 being introduced besides for the truth of the matter
6 asserted. The State is trying to show that my client, his
7 testimony was not correct and that he has been shown these
8 lineups. And these documents are being used then for the
9 truth of the matter asserted.

10 We don't have the SLED agents here to authenticate
11 these documents. I think it may be coming from
12 Mr. Wilson's file and I haven't been provided a copy of
13 those. So I'm just a little bit at a loss here as to
14 these documents.

15 THE COURT: I'm going to note your objection. I'm
16 going to overrule it. He's identified those pictures that
17 he looked at. So you can make copies as mark those as
18 State's Exhibit Number Two and your objection to that will
19 be noted on the record.

20 MS. BLANCHETTE: Are they being introduced for the
21 truth of the matter or as prior to the --

22 THE COURT: They're introduced to show that he was
23 shown those and he marked them and now he's testified as
24 to why he marked them.

25 MS. BLANCHETTE: Thank you, Your Honor.

1 THE COURT: Thank you.

2 (Thereupon, State's Exhibit No. 2, two photo lineups,
3 was received into evidence.)

4 MS. WILLIAMS: That's all.

5 THE COURT: All right. Anything else? Anything
6 else? That's it?

7 MS. WILLIAMS: That's all.

8 THE COURT: Anything on redirect?

9 MS. BLANCHETTE: No, Your Honor.

10 THE COURT: Okay. You may step down. Thank you.

11 Y'all have given me plenty to read and I appreciate
12 that. What I will do is I'll read over the transcript and
13 read over everything and I'll get back to you all with my
14 decision.

15 Do you want to give me -- did you say you have some
16 arguments?

17 MS. BLANCHETTE: I do. I have two legal issues that I
18 didn't address with my client. I can treat it like an
19 oral argument and do it --

20 THE COURT: What I'd rather you do, rather than do
21 five minutes or less if you've got it written down you can
22 just give it to me.

23 MS. BLANCHETTE: I just have it written in note form
24 for myself, Your Honor, but I do have all the cases that I
25 was going to refer to. I can hand those up and give you a

1 brief explanation as to why.

2 THE COURT: That would be great.

3 MS. BLANCHETTE: The first cases that I'm going to hand
4 up deal with the issue of, I believe it could be
5 characterized as newly-discovered evidence regarding
6 Mr. Lee's testimony.

7 I'll be providing a case of Johnson versus Catoe.
8 Just very briefly there, this case involved a stay of
9 execution heard in the South Carolina Supreme Court's
10 original jurisdiction. There the majority of the Court
11 held that because the co-defendant had given several prior
12 inconsistent statements, had had a history of mental
13 health issues and had testified on various events to
14 various factors, that they were going to deny the claim of
15 newly-discovered evidence as a credibility issue.

16 Interestingly, both Justice Waller and Pleicones
17 dissented. Specifically, looking at that dissent, Justice
18 Waller stated that: To deny Johnson a new trial in the
19 face of a confession by someone who is admittedly present
20 when a murder was committed would constitute a denial of
21 fundamental fairness shocking to the universal sense of
22 justice.

23 And Justice Pleicones in his dissent cited to Arizona
24 versus Fulminante, and if the Court doesn't mind I'll just
25 briefly read this. There he said, a confession, citing to

1 Arizona versus Fulminante, a confession is like no other
2 evidence. Indeed the defendant's own confession is
3 probably the most probative and damaging evidence that can
4 be admitted against him. The admission of a defendant
5 came from the actor himself most knowledgeable and
6 unimpeachable source of information about his past.
7 Certainly a confession can have a profound impact on the
8 jury so much so that we can't justifiably doubt its
9 ability to put it out of their minds even if told to do
10 so.

11 And here he's addressing that the admission by the
12 co-defendant needs to be addressed by the jury to
13 determine if it's credible or not.

14 And they both dissented on those grounds. So I would
15 just submit that case in support of the fact that
16 Mr. Lee's confession today needs to carry weight. It is a
17 matter that should be addressed by a jury who is the
18 proper entity to determine his credibility.

19 I'm not here saying he's perfect or has a great
20 record. But in comparison to Hess, I would say he does
21 not have the same issues with his credibility that were
22 involved in the Johnson versus Catoe case.

23 So I'd just ask the Court to consider that when
24 considering Mr. Lee's testimony.

25 I have a copy of Lounds versus State. It just deals

1 generally with ineffective assistance of counsel. And it
2 goes to a majority of the claims we've raised today.

3 THE COURT: Okay.

4 MS. BLANCHETTE: As to the two issues I didn't
5 specifically address with my client, the first is the
6 identification issue. The Court has heard a lot about the
7 victims' testimony so I'm not going to go back over that.

8 What I haven't told the Court about is the appellate
9 procedures in this case. On appeal, the appellate defense
10 argued for Mr. Gunnells whether or not the trial court
11 erred in failing to suppress the State's identification of
12 him when it was suggestive and unreliable. And there they
13 relied heavily upon Biggers and argued that a Biggers
14 hearing should have been held.

15 Now in the State's brief they focus on a recent
16 Supreme Court case of State versus Lewis that said there's
17 no Biggers hearing needed if there's no prior out-of-court
18 ID.

19 But they also did focus a majority of their argument,
20 which it's my understanding the Court will have a copy, on
21 the fact that the identification of physical evidence
22 doesn't have the same concerns or procedural safeguards as
23 the identification of a defendant or a person.

24 The problem is, here the issue is not the
25 identification of physical evidence. So we do have an

1 argument in our amendment that the issue was
2 mischaracterized on appeal and not properly addressed on
3 appeal.

4 THE COURT: Ms. Blanchette, you did say they
5 petitioned for cert; right?

6 MS. BLANCHETTE: They did petition for certiori and
7 there they actually finally started to get the issue
8 right.

9 It was argued there that the prior idea of the
10 clothing amounted to a prior out-of-court ID. And the
11 issue was clarified on cert, but looking at the arguments
12 as presented to the Court of Appeals and considering that
13 cert was denied, we have raised that issue that the
14 argument was mischaracterized.

15 The cases that I'll be handing to the Court are State
16 versus Lewis which I've already referenced which was
17 relied upon by our appellate court in rendering their
18 decision.

19 I'll also be providing a copy of Turner versus RSW.
20 It's actually a case out of -- it's a case out of North
21 Dakota but it's a very interesting case in that it
22 distinguishes the Lewis case and goes through all the
23 reasons why all the other states, and specifically North
24 Dakota are not going to follow the Lewis decision.

25 In there the Court found that you must apply the

1 Biggers factors to an in-court ID.

2 I'll also be handing up a copy of Brooks versus the
3 State of Indiana. There it discusses how the viewing of
4 evidentiary items such as clothing are not subject to due
5 process consideration, no lineup is needed. But that's
6 not the issue here.

7 And the Court goes into what is a confrontation. And
8 they determine that a confrontation is not an identity of
9 clothing.

10 But here the case doesn't involve a confrontation or
11 just the identity of clothing. We would argue that as a
12 result of the police making the suggestive comments, this
13 is Mr. Gunnells' clothing, that is the only way they got
14 the identification of Mr. Gunnells.

15 And in Brooks the Court goes in and explains that
16 suggestiveness is heightened by police telling a witness
17 that a person who has been arrested and charged with a
18 crime is present. Such a comment needlessly decreases the
19 fairness of the ID process.

20 So there they address the fact that they said, we have
21 a person arrested and we arrested him with these items.

22 And the Court there found, why do you even need to say
23 that. Let the witness make a fair assessment of the
24 evidence and identify the person fairly.

25 And then also I'll hand up a copy of Simmons versus

1 United States. There it also deals with how
2 misidentification risk is heightened if the police tell
3 the witness that they have other physical evidence that
4 ties the person to the crime.

5 And that's exactly what happened here.

6 So we have a two-fold issue here. One, the defense
7 counsel should have more thoroughly argued this issue on
8 the Applicant's behalf and, two, that appellate counsel
9 mischaracterized the issue.

10 If the Court doesn't have any questions on
11 identification, I'll move to the last issue.

12 THE COURT: Move to the last issue.

13 MS. BLANCHETTE: The second issue, Your Honor, is
14 somewhat confusing and vague. I tried to ask Mr. Wilson
15 some questions about it, but here the indictments alleged
16 that my client committed these crimes along with others.

17 I've already referenced some of the State's closing
18 argument, but they clearly say that conspiracy requires
19 two or more people. And on page 436 they talked to his
20 cousin and conveyed the information to Tivo Lee.

21 She also says that, but for the Defendant, Tivo Lee
22 would have never been in Bamberg. And then they go into
23 how they refer to 'they' for all crimes and that you need
24 to convict him of all crimes. The State clearly argued
25 hand of one hand of all on page 444 through 446.

1 Now, here the verdict, as we've already addressed,
2 there was a number of not guilties and all those were the
3 matters involving Stevie Sutton and there was a number of
4 guilties. I'll be handing up a case of State versus
5 Crawford. That deals with conspiracy.

6 And here, interestingly, Mr. Gunnells was found guilty
7 on the conspiracy charge but specifically lists the armed
8 robbery and the assault and battery with intent to kill
9 but he was not found guilty of assault and battery with
10 intent to kill.

11 I'll also be handing up two cases regarding the hand
12 of one hand of all theory; State versus Thompson, which
13 clearly sets up hand of one hand of all, that under the
14 accomplice liability theory acts committed by one
15 co-defendant can be imputed to all defendants making him
16 guilty of any acts done incidental to the execution of a
17 common scheme or plan which was the State's theory.

18 And then Barber versus State is a recent 2011 decision
19 by our Court and -- our Supreme Court, and that deals with
20 whether or not the hand of one hand of all instruction
21 should be given if the State has met their proof for that
22 instruction.

23 What's interesting in that, even though they go
24 through that and that's not specifically the issue here,
25 the Court held there that the sum of the evidence

1 presented by the State supported the conclusion that the
2 hand of one hand of all instruction should be given. But
3 here no one established that the defendant was acting with
4 the co-defendants. They didn't call any of those
5 co-defendants. The State just kept saying it and nor did
6 the jury convict him under the theory.

7 So our position is that is a question the defense
8 counsel should have raised at some point in the trial,
9 especially after the verdicts were rendered.

10 I'll be handing up a copy of State versus Evans which
11 deals with a material variance that I went into with
12 defense counsel.

13 And then finally regarding the verdict, just in full
14 disclosure, I'm handing up a copy of State versus Garrett
15 and State versus Alexander. Those cases do say that in
16 South Carolina we will no longer file the rule prohibiting
17 inconsistent verdicts.

18 But, in State versus Garrett the Court made it clear
19 that if there's no evidence to support a conviction, a new
20 trial still must be granted. So they're not following the
21 per se rule but it's saying the Court still has discretion
22 to grant a new trial if there are inconsistent verdicts.

23 Just going back, Your Honor, I'm sorry, on the ID
24 issue, I'll also be handing up two other cases I failed to
25 mention. Johnson versus Ross, which also deals with a

1 substantial risk of misidentification if they give them
2 other evidence of the defendant's guilt; and State versus
3 Byars. In there an attorney -- that's a recent 2011 case
4 out of our Supreme Court.

5 And there the co-defendant testified that via a police
6 report he learned that the defendant was involved in the
7 crime. And there the attorney moved to strike it as
8 hearsay and our Court agreed and determined that he should
9 be given a new trial.

10 Even though it's not specifically on point, I'm giving
11 the Court a copy of State versus Byars because it's very
12 interesting if you look at the facts of this case and then
13 you look at the facts of State versus Byars and the
14 outcome of that.

15 But I have copies of all those cases and I can provide
16 this in writing if the Court would like.

17 THE COURT: You can just give me the copies. Thank
18 you, ma'am.

19 All right. What I'll do is I'll read everything over
20 and I'll get back. What am I waiting on?

21 MS. WILLIAMS: The guilty plea transcript and I'll
22 share that with Ms. Blanchette and if there's anything,
23 we'll work it out, Your Honor.

24 THE COURT: All right. I'm waiting on the guilty plea
25 transcript?

1 MS. WILLIAMS: Yes, Your Honor.

2 THE COURT: Okay. Thank you.

3 END OF CASE: 2:41 p.m.

4 CERTIFICATE OF REPORTER

5

6 STATE OF SOUTH CAROLINA)

7

8 COUNTY OF AIKEN)

9

10 I, Cheri L. Young, Registered Professional Reporter
11 and Official Court Reporter for the State of South
12 Carolina, Second Circuit-At Large, do hereby certify that
13 the foregoing is a true, accurate and complete transcript
14 of record of the proceedings had and evidence introduced
15 in the hearing of the captioned case, relative to appeal,
16 in the Court of Common Pleas for Bamberg County, on the
17 27th day of January, 2012.

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

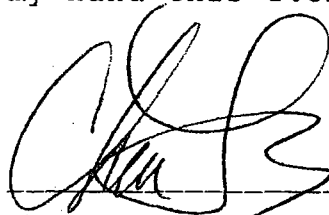
20 I have hereunder set my hand this 14th day of
21 September, 2012.

22

23

24

25



Cheri L. Young, RPR
Official Court Reporter

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

REC'D 697-
10/3/03
from Agent
Darnell (TL)
C. Wilson
RS By
Sled



STATE'S
EXHIBIT

INVESTIGATIVE FILE

A TRUE COPY

Attest: B. H. Hines
CLERK OF COURT
BAMBERG COUNTY, SC

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

September 16, 2003

INVESTIGATIVE REPORT

TO: File 31-03-0046

FROM: Senior Agent George W. Darnell GWD

RE: Burglary First Degree, Armed Robbery, Assault and Battery with Intent to Kill, Grand Larceny, Kidnapping and Two Counts of Grand Larceny of a Motor Vehicle

James Allan Smith, Tivo Richard Lee, Fredrick Alexander Culler(s)
Halmon Eugene Sease, Eunice Halmon Sease, Archie Steven Sutton (v)

COUNTY: Bamberg

Introduction

On May 6, 2003, at approximately 00:21hrs. Bamberg County Sheriff Ed Darnell requested the assistance of this Agency with the investigation of a Home Invasion that occurred on Monday night, May 5, 2003 at approximately: 23:38hrs. at the residence of Halmon Eugene Sease, 983 Ashton Road, Ehrhardt, SC. (Attachment 1) At the direction of Capt. L. C. Knight, SLED, Senior Agents George W. Darnell and Ed Carroll were assigned to this investigation.

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BAMBERG COUNTY SC

History

On May 5, 2003, at approximately 23:38 hours, the front door of the Sease residence was kicked in and three male suspects entered the residence armed with handguns, yelling, "U. S. Marshalls." They stole Halmon Sease's jewelry valued at \$2,000.00, \$350.00 cash and his 2000 Dodge truck valued at \$21,000.00. The suspects hit Steve Sutton in the head with the barrel of a handgun and stole his 1994 Chevrolet truck valued at \$7,500.00. The suspects tied Sutton, Halmon Sease, and Eunice Sease's arms and legs and left them helpless.

Summary

On May 6, 2003, Senior Agents Darnell and Carroll met with Bamberg County Sheriff Ed Darnell and Deputies Chad Dilling and Ben Hay. They advised Agents Darnell and Carroll that Archie Steve Sutton, W/M, DOB: November 8, 1976; Social Security Number: 263-75-2615; Telephone: 803-267-6904; was an employed by Halmon Sease at Ehrhardt Motor Company. They also advised that Sutton lived with the Seases and had been hit in the head with a gun. They stated that the Colleton County Rescue Squad was transporting him to the Colleton County Emergency Room. (Attachment 2)

Deputy Dilling stated that the suspects had taken Halmon Sease's jewelry consisting of a gold chain, gold wedding band, and a man's diamond ring with one diamond on top and two on the sides. They also took Sease's red 2000 Dodge truck bearing SC Tag No. 819 CSE, registered to Ehrhardt Motor Company along with a bag containing \$350.00 cash and a 25 caliber auto pistol that was in the truck. (Attachment 3)

Deputy Dilling stated that the suspects also took a red 1994 Chevrolet truck bearing SC Tag No: FM 80886 registered to Ehrhardt Motor Company, but belonging to Steve Sutton. This vehicle had a set of big stereo speakers, an amplifier and expensive radio in it. Deputy Dilling was in the process of entering the vehicles in NCIC. (Attachment 4)

S/A's Michael Squire and Phillip Coonfield, SLED Forensics, arrived to process the crime scene. S/A's Darnell and Carroll interviewed Eunice H. Sease, W/F, DOB: January 1, 1941; Social Security Number: 248-66-5339; and Telephone Number: 803-267-6904. Mrs. Sease stated that

she had just taken a bath and heard a terrible noise at the front door. She went to the end of the hallway to see what it was and saw a tall man dressed in black with a gun in his hand. Mrs. Sease asked him what he wanted and he made her get down on the floor and crawl down the hallway. The suspect kept asking her where her husband was and she crawled into the bedroom. Mrs. Sease woke Mr. Sease up and the suspect made him get down on the floor with her lying face down. She stated that the suspect stated that we had three businesses and had money. He kept asking where the safe was and they told him that they didn't keep money at home. He threatened to kill them and they begged him not to. Mrs. Sease stated that another suspect came into the room wearing red shorts with a bandana on his head and had kinky hair around his ears. The tall suspect left the room and the other made Mr. Sease get up and took his jewelry and made him get back down. The suspects then tied them up with Mr. Sease's neckties and left. Mrs. Sease managed to get loose and untied Mr. Sease and then they saw Sutton lying in the hallway with his head bleeding. (Attachment 5)

S/A's Darnell and Carroll interviewed Halmon Sease, W/M, DOB: August 3, 1940, Social Security Number: 245-60-3075, and Telephone: 803-267-6904. Mr. Sease stated that at approximately 11:00 p.m., a black male approximately 6 feet 2 to 4 inches tall, thin build came into his bedroom and made him get down on the floor face down. The suspect kept threatening to kill him if he didn't tell where the safe or the money was. Mr. Sease stated that the suspect knew that he had three businesses and had money. Then, another suspect came in the room that was short and wearing red baggy shorts, braided hair, light skin, possibly a white male and put a gun to Mr. Sease's head. He threatened to kill him also. Mr. Sease kept telling him that he had no money in the house, but that a bag of money and his billfold were outside in his truck. The second suspect then left and went outside with another suspect and they stole his and Sutton's trucks. The tall thin suspect stayed in the house, holding the gun on Mr. Sease and his wife and the other two went outside. The tall thin suspect was the one that hit Sutton in the head. The suspects came back inside and tied the three of them up. Mr. Sease stated that a white male with braided hair had been staying with Debra Myers on U. S. 601, not far from his residence and traveled with a black female in an older model green Rodeo truck. (Attachment 6)

Sutton was treated and released from the hospital and returned home. S/A's Darnell and Carroll interviewed Sutton. Sutton stated that at approximately 10:45 to 10:50 p.m., he was in the living

room on the couch trying to go to sleep when he heard the front door being kicked in. There was a black man yelling, "U. S. Marshal's, Get on the floor." Two black men came in the living room and told Sutton "U. S. Marshals, Get Up." One of them was heavy set with a deep voice and was wearing black windbreaker pants. The other one was about 5 feet 7 inches tall, small built and looked young. He had a red scarf covering his face and when he went to get Sutton up, it fell down, but he immediately pulled it up. Sutton stated that when he got up, they asked him where his father was and he told them in the bedroom. Sutton proceeded through the kitchen and when he got to the hallway, Mrs. Sease was crawling into Mr. Sease's bedroom. They told Sutton to get down on the floor and tied him up. They asked Sutton if there was a safe in the house and he told them no. At first, he could see Mrs. Sease through the crack in the door and when he attempted to look up, one of them hit him in the head with a gun. Sutton stated that he could see Mrs. Sease then because he lunged forward. One of them had on a pair of brown with beige trim Eddie Bauer hiking boots and baggy shorts. They tied his hands behind his back. Mr. Sease told them the money was in the door panel in his truck and the keys were in it. About three minutes later, he heard the truck going toward the front of the house. Sutton stated that Mrs. Sease got untied and then untied Mr. Sease. Mrs. Sease then helped him to get untied and they went outside and waited for help to arrive. (Attachment 7)

Donald Brant called the Sheriff's Office at approximately 10:23 a.m. on May 6, 2003 stating that he had discovered two red trucks on Mayflower Road, Olar, SC, near his fishpond. S/A's Darnell and Carroll were notified by the Sheriff's Office and responded to the scene. S/A's Darnell and Carroll interviewed Donald Brandt, W/M, Address: 246 Post Lane, Olar, SC 29843. Brandt stated that he had seen the vehicles earlier on the dirt road sitting side by side and thought someone was checking on some new trees. Brandt came back through about 20 minutes later and realized the Chevrolet truck was running. Brandt then noticed a billfold on the ground and discovered it belonged to Halmon Sease. At the request of S/A Darnell, Brandt furnished a written statement to Deputy George Folk. (Attachment 8)

S/A Darnell requested that Halmon Sease send his wreckers to the scene and tow the trucks to his shop. Mr. Sease put them in a shed and Lt. Tom Darnell and S/A Jeff Crooks, SLED Forensics, came and processed the vehicles.

On May 7, 2003, Halmon Sease contacted S/A's Darnell and Carroll and advised that Debra Myers had stopped by his car lot to check on him. Mr. Sease told her that the white male suspect was her nephew or a twin to him. He described his clothing, etc. and Debra Myers stated that Jamie Gunnells had worn some red shorts when he was at her home. Mr. Sease also reported that his 25 cal. pistol was missing from his truck, but couldn't provide a serial number. Also missing were a camouflage hat and bandanas.

S/A's Darnell and Carroll contacted Debra Marie Myers, W/F, DOB: February 1, 1967; Social Security Number: 249-59-8974; Address: Main Street, McKinsey Station, Ehrhardt, SC,, Telephone Number: 803-267-2395 and she agreed to meet with them at the Sheriff's Office Substation in Ehrhardt. Myers stated that her nephew, James (aka Jamie) Gunnells, had stayed at her house April 27, 2003 until May 4, 2003. She stated that Mr. Sease had described Gunnells to her just as he pictured him the night of the incident. Myers stated that she knew that it had to be Gunnells because of the clothing description and hair. Myers stated that her son, Frankie Myers and Gunnells had been turkey hunting that Wednesday night prior to the incident and were walking home and Mr. Sease gave them a ride home. Myers stated that Gunnells told her that night that Mr. Sease was crazy because he didn't believe in banks and kept his money at home. Myers told Gunnells that Mr. Sease had too many businesses to keep his money at home. Myers stated that last summer, Gunnells came down from Columbia to go fishing in the Brandt pond and brought a tall, skinny, black male and a short, stocky, black male with him. Myers stated that Gunnells and his girlfriend "Nicki" had a green truck, similar to a blazer, and lived near the fair grounds in Columbia, SC. Myers stated that she had some telephone numbers for them at her house. Myers stated that she would furnish a written statement later. (Attachment 9)

S/A's Darnell and Carroll followed Myers home and she furnished the following telephone numbers: 803-782-6703 home, 803-237-5472 and 803-318-9833 cellular numbers.

On May 8, 2003, Steve Sutton contacted S/A's Darnell and Carroll stating he needed to talk with them. S/A's Darnell and Carroll met with Sutton at the Sease residence. Sutton stated that he had gone to the car lot today to check on his truck and his 28inch, 10k gold chain, box speakers, and Jensen amplifier were missing. Sutton had located the box the amplifier was purchased in and furnished a Serial Number: S/MA0201005628, Model Number: M/JXP 720, 720 Watts.

On May 12, 2003, S/A Darnell contacted SLED Intelligence and provided the home telephone number for "Nicki." They were able to give her true name and address as follows: Niconya Brooks, 4000 Plowden Road, Apartment 31B, Columbia, SC.

On May 14, 2003, Debra Myers advised S/A's Darnell and Carroll that the Barnwell City Police Department, prior to this incident, had arrested Gunnells and Brooks in Barnwell, SC. S/A Carroll contacted Barnwell Police Chief Todd Gantt and Chief Gantt confirmed that they were arrested for Contributing to the Delinquency of a Minor. Chief Gantt furnished photographs of both subjects and a copy of the incident report to S/A Carroll. (Attachment 10)

On May 15, 2003 S/A Darnell gained information through the News Media that Richland County Sheriff's Office, Columbia, SC had a home invasion similar to this incident. S/A Darnell contacted Lt. Stan Smith, Richland County Sheriff's Office and provided him with the information on Jamie Gunnells and Niconya Brooks.

On May 16, 2003 Lt. Brown, R. C. S. O. contacted S/A Darnell and advised that they had checked out the information, but at that time, they didn't believe Gunnells and Brooks were involved in their incident. Lt. Brown provided a S. C. Tag Number 373 LWG that was on a green Rodeo parked at the apartment. The vehicle was registered to a Mary Brooks, 730 Colleton Street, Columbia, S. C. (Attachment 11)

On June 3, 2003, S/A Darnell received information from Debra Myers that Niconya Brooks had called stating that she and Gunnells were arguing with each other again. Myers asked her if she knew if Gunnells had stolen the radio out of her son Christopher's truck when they were in Ehrhardt. Myers stated that Gunnells had put a stereo system in her Rodeo, but needed some money and pawned it. Brooks stated that Gunnells pawned it at a PawnShop on Bush River Road in Columbia, SC near a car wash and restaurant.

On June 4, 2003, S/A's Darnell and Carroll located First Cash Pawn Shop at 520 Bush River Road, Columbia, SC. S/A's Darnell and Carroll spoke with Monique Gardner, DOB: April 20, 1981; Social Security Number: 250-91-4881; Telephone Number: 803-750-5626, a clerk in the shop. S/A's Darnell and Carroll provided her with Gunnells' name and Gardner found it in the

computer. Gardner stated that Gunnells' had pawned a Jensen amplifier, box speakers, and a JVC radio and player on May 22, 2003. Gardner located these items in the store room and the serial number of Sutton's amplifier matched with the one at the Pawn Shop. S/A Darnell provided Gardner with a copy of the Bamberg County Sheriff's Office incident report and she released the items.

S/A's Darnell and Carroll met with Bamberg County Magistrate Danny Singleton and obtained an Arrest Warrant for Burglary 1st Degree on James Allan Gunnells .

S/A's Darnell and Carroll contacted S/A Richard McDermott, SLED Midlands, and Richland County Deputy Warren C. Godson to assist in the arrest of James Allan Gunnells, W/M, DOB: May 21, 1978; Social Security Number: 251-39-9917; Address: 4000 Plowden Road, Apartment 31B, Columbia, SC. Gunnells was arrested as he rode through the apartment complex with Niconya Brooks in her 1997 green Rodeo on Plowden Road where they were living.

(Attachment 12)

Niconya Brooks signed a Consent to Search for S/A's Darnell, Carroll, McDermott and Deputy Godson to search her apartment. **(Attachment 13)**

Gunnells already had his clothes packed up in a plastic container. Gunnells stated that he was moving out from Brooks. S/A Darnell confiscated the container of clothes and a pair of white and silver Shaq tennis shoes. S/A Darnell also confiscated a gold chain, gold wedding band, gold man's ring with a diamond in the center and two on the side, and two other gold rings that Gunnells was wearing.

S/A's Darnell and Carroll transported Gunnells to the Bamberg County Sheriff's Office where he, after being advised of his rights under Miranda, gave a written statement as to his involvement at the Sease residence on May 5, 2003. Gunnells stated that he was staying with his cousin Chris in Ehrhardt. Chris was telling him about how much money his boss had. Gunnells stated that Chris also told him that his boss had a safe in the house. Gunnells stated that he was talking on the phone with his friend Tivo Lee at the time and he, Lee, overheard them talking. Gunnells stated that Lee started asking him questions about what they were talking about.

Gunnells stated that he would find out about it and tell him when he got back to Columbia. Gunnells stated that when he got back home, Lee came over to his apartment and asked him about where the house was. Gunnells stated that Lee told him that he wanted him to go with him so Gunnells could show him where the house was. The next night, Lee picked him up around 7:00 p.m. to go to Ehrhardt. Gunnells stated that Lee had a guy named "Fred" and another guy that he didn't know with him. When they got down there, Gunnells called Chris on his cell phone and asked where the road was. Chris told him the road was where they had been turkey hunting when he, Gunnells, was in Ehrhardt. Gunnells stated that they went by the house and he saw Mr. Sease's truck there. They went down the road and came back by the house and saw another truck and car there. They went down the road and waited on the truck and car to leave, but they never did leave. Lee got out of the car and walked to the house and came back saying there were two men in the house. They then decided to go back and kick the front door in. The three of them kicked the door in and "Fred" ran in first yelling to get down. (Attachment 14)

Gunnells also gave S/A's Darnell and Carroll his copy of the Pawn receipt from First Cash Pawn where he pawned the radio, speakers, and amplifier. (Attachment 15)

S/A's Darnell and Carroll met with Halmon Sease and he identified his jewelry.

On June 5, 2003, S/A's Darnell and Carroll interviewed and obtained a written statement from Niconya Lasha Brooks, B/F, DOB: July 8, 1969; Social Security Number: 250-55-9428; Address: 4000 Plowden Road Apt. 31B, Columbia, SC; Telephone Number: 803-318-9833. Brooks stated that she and Gunnells had been living at 4000 Plowden Road for about 7 months. Brooks stated that Gunnells came home about 2 1/2 months ago around 4:30 or 5:00 a.m. with some speakers and an amplifier. Gunnells showed her some jewelry, a necklace and four rings, none of which she was familiar with. Gunnells had pawned the jewelry, but on June 4, 2003, he got it back from the pawnshop. Brooks looked at the speakers, radio, and amplifier in S/A Darnell's office and stated that they were installed in her vehicle, then taken to the pawnshop. (Attachment 16)

S/A Darnell contacted Richland County Sheriff's Office and advised that Gunnells was in custody at the Bamberg County Detention Center. S/A Darnell received a call from Inv.

Isenhoward, Richland County Sheriff's Office, wanting to know if he and Inv. Branham could come interview Gunnells. Isenhoward stated that he would bring a photo lineup with Fredrick Culler and Tivo Lee's picture in it.

Investigators Isenhoward and Branham interviewed Gunnells and he picked out Tivo Lee and Fredrick Culler as the persons with him at the Sease residence. Gunnells couldn't identify the fourth suspect. (Attachment 17)

Inv. Isenhoward advised that they had Tivo Lee in custody at the Richland County Detention Center.

On June 12, 2003, S/A Darnell met with Steve Sutton and Halmon Sease and had them to look through Gunnells clothing to see if they recognized any of the clothing. Sutton identified the Shaq shoes, red and white with black striped shorts that were worn by the white suspect. Also a pair of black pants that looked like the ones that the black male approximately, 5 ft. 9in. to 6 ft. 1 inch had on. (Attachment 18)

Halmon Sease identified the same clothing as Sutton identified. Sease also identified his camouflage hat. (Attachment 19)

On June 13, 2003, S/A's Darnell and Carroll met with Inv. Isenhoward and served arrest warrants on Tivo Richard Lee, B/M, DOB: December 12, 1974; Social Security Number: 248-37-4335; Address: 525 Scarsdale Drive, Columbia, SC, and attempted to interview him, but he refused. (Attachment 20)

On June 13, 2003, S/A Darnell had Deputy George Folk, Bamberg County Sheriff's Office to serve additional warrants on James Allan Gunnells. (Attachment 21)

S/A Darnell turned Gunnells' Shaq shoes over to S/A Michael Squire, SLED Latent Prints, for comparison. (Attachment 22)

S/A Darnell entered Fredrick Alexander Culler, B/M, DOB: March 9, 1972; Social Security Number: 247-41-0189; Address: 8491 Old Percival Road, Columbia, SC into NCIC.

On June 17, 2003, S/A Darnell arraigned Gunnells and Magistrate Singleton denied bond pending a bond hearing on the Burglary 1st before a Circuit Court Judge.

On June 20, 2003, S/A Darnell arraigned Tivo Lee and Judge Singleton denied bond pending a bond hearing before a Circuit Court Judge on the Burglary 1st.

On July 10, 2003, Gunnells was taken before Judge Barber of the Second Judicial Circuit and he denied bond.

On July 15, 2003, S/A Darnell was notified by the Bamberg County Dispatch that Cumberland County Sheriff's Office, Fayetteville, NC, had Fredrick Alexander Culler in custody.

On July 16, 2003, S/A Darnell contacted Deputy Knight at Cumberland County Sheriff's Office and faxed copies of the warrants on Culler. Deputy Knight advised that Richland County had also contacted them reference Culler and would have first option on extradition.

On July 22, 2003, Richland County Sheriff's Office extradited Culler.

On July 28, 2003, S/A's Darnell and Carroll transported Culler to Bamberg County where he, after acknowledging his rights under Miranda, denied any knowledge of this incident and requested an attorney. S/A Carroll served the arrest warrants on Culler and he was arraigned. Magistrate Singleton denied bond pending a bond hearing before a Circuit Court Judge on the Burglary 1st. S/A Darnell obtained a search warrant from Magistrate Singleton to confiscate Culler's shoes for comparison by SLED Latent Prints. (Attachment 23)

On July 29, 2003, S/A Darnell had S/A Michael Squire look at Culler's shoes. S/A Squire stated they were the wrong sole pattern. S/A Darnell returned the shoes to Culler at the Richland County Detention Center. (Attachment 24)

S/A's Michael Squire and Darnell obtained Major Case Prints from Culler and Lee at the Richland County Detention Center.

On August 4, 2003, S/A Darnell requested copies of Richland County's warrants on Tivo Lee and Fredrick Culler from Inv. Kevin Isenhoward. (Attachment 25)

As of this report date, a fourth suspect hasn't been identified.

A copy of this report will be submitted to Solicitor Barbara Morgan, Second Judicial Circuit, for her review and any action she deems appropriate.

GWD:tmb
Attachments

PHOTO LINE-UP

06/05/03

(DATE)

AGENT DARNELL (SLED)

On this date Investigator(s) ISENHOWER BRANHAM showed
me 6 pictures at Bamberg County Sheriff's Dept.
(location)

I picked out a picture (#2)
(identify photo)

which is the person (male/female, white (black), who committed the crime of

Robbery at 783 Ashlar Rd
(type of crime) (location)

Lowndes, SC 29082 (Bamberg Co.) on 05-05-03
(date of incident)

I hereby swear and certify the above is the truth.

[Signature]

(signed)

4000 Plowden Rd. Col. SC
(address)

803-782-6703
(bus) (phone) (res)

Sworn and subscribed to before me,
this _____ day of _____ 19 _____.

STATE'S
EXHIBIT

Notary Public for South Carolina

A TRUE COPY

Attest [Signature]
CLERK OF COURT
BAMBERG COUNTY, SC



37076

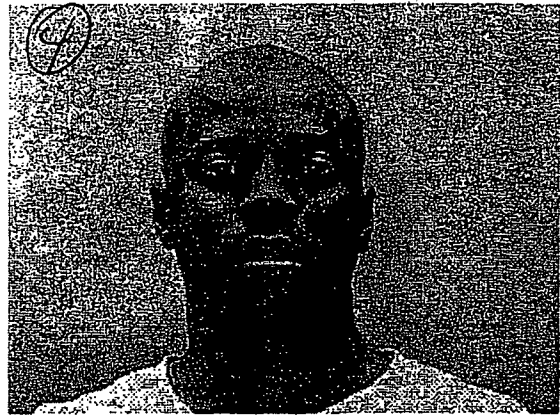


86

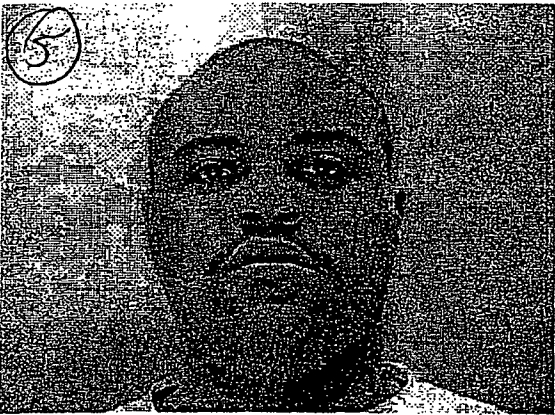
38783



43546



63965



66741



73427

PHOTO LINE-UP

06-05-03
(DATE)

On this date Investigator(s) ISENHOWARD BRANHAM ^{AGENT DARNELL (RED)} showed
me 6 pictures at Bamberg Co. Sheriff's Office.
(location)

I picked out a picture (#5)
(identify photo)

which is the person (male/female, white/black), who committed the crime of
Robbery at 983 Ashton Rd
(type of crime) (location)
Lodge, SC. 29082 (Bamberg Co) on 05-05-03
(date of incident)

I hereby swear and certify the above is the truth.

[Signature]
(signed)
4000 Snowden Rd Apt. 31-B Cbk. SC
(address)
803-782-6703
(bus) (phone) (res)

Sworn and subscribed to before me,
this _____ day of _____ 19 _____.

Notary Public for South Carolina

A TRUE COPY

Attest. [Signature]
CLERK OF COURT
BAMBERG COUNTY, SC



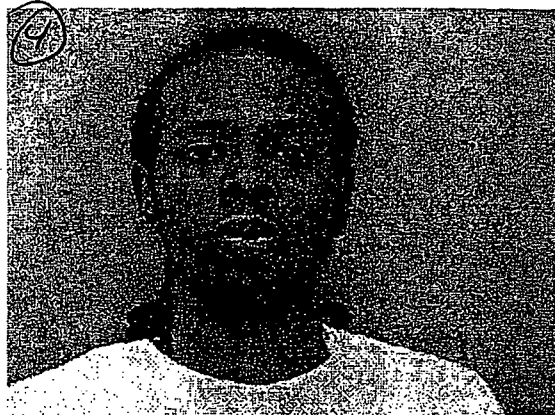
34568



38844



40282



51109



56541

56



63811

DOCKET NO. 2004-GS-05- U 70

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

March 8, TERM 2004

THE STATE
vs.

TIVO RICHARD LEE

WITNESSES

Darnell - S.L.E.D.

ARREST WARRANT NUMBER

G822169

ACTION OF GRAND JURY

True bill

Foreperson of Grand Jury

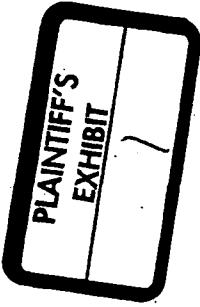
Date: 3/5/04

VERDICT

A TRUE BILL

Foreperson of Petit Jury

Date:



FILED
BAMBERG COUNTY
2004 FEB -8 PM 1:59

JAMES P. HARRIS
CLERK OF COURT
BAMBERG, SC

A TRUE COPY

Attest: *J.B. Harris*
CLERK OF COURT
BAMBERG COUNTY, SC

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0026

Class FEL-C(M)

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

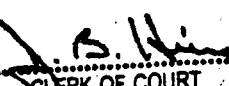
ARMED ROBBERY

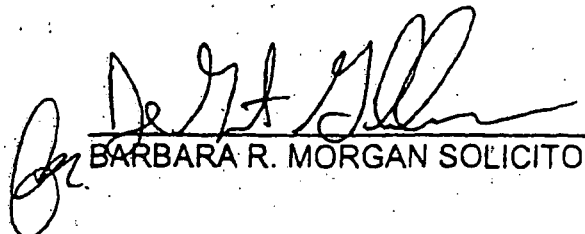
That **TIVO RICHARD LEE** did, along with others, in Bamberg County on or about May 5, 2003, while armed with a deadly weapon, feloniously take from the person or presence of Hallman Sease, by means of force or intimidation goods or monies of Hallman Sease at his residence located at [REDACTED] all in violation of §16-11-330, 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.

A TRUE COPY

Attest


CLERK OF COURT
BAMBERG COUNTY, SC


BARBARA R. MORGAN SOLICITOR

WITNESSES

Darnell - S.L.E.D.

FILED
BAMBERG COUNTY
2008 FEB - 8 PM 1:59

ARREST WARRANT NUMBER

G822169

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2004-GS-05-045

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

March 8, TERM 2004

THE STATE

VS.

TIVO RICHARD LEE

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0026

Class FEL-C(V)

1 WAIVE RESIGNMENT

TO THE GRAND JURY

Two per

A TRUE COPY

Attest:
S. B. Kim
CLERK OF COURT
BAMBERG COUNTY, SC

A TRUE COPY

Attest:
S. B. Kim
CLERK OF COURT
BAMBERG COUNTY, SC

FILED
BAMBERG COUNTYSTATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT 2006 FEB -8 PM 1:59

JULY 11 2006
CLERK OF COURT
BAMBERG, SC

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of
Bamberg County present upon their oath:

ARMED ROBBERY

That TIVO RICHARD LEE did, along with others, in Bamberg County on or about
May 5, 2003, while armed with a deadly weapon, feloniously take from the person or
presence of Hallman Sease, by means of force or intimidation goods or monies of
Hallman Sease at his residence located at [REDACTED], all
in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

A TRUE COPY

Attest

J. B. Hinn
CLERK OF COURT
BAMBERG COUNTY, SC

Against the peace and dignity of the State and contrary to the statute in such
case made and provided.

A TRUE COPY

Barbara R. Morgan
BARBARA R. MORGAN SOLICITOR
J. B. Meador

WITNESSES

Darnell - S.L.E.D.

ARREST WARRANT NUMBER

3822154

ACTION OF GRAND JURY

True bill

VERDICT

Signature of Grand Jury
Date: 3/5/04

Signature of Petit Jury
Date:

DOCKET NO. 2004-GS-05-040

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

March 8, TERM 2004

THE STATE

VS.

TIVO RICHARD LEE

Indictment for

BURGLARY IN THE FIRST DEGREE

SC Code: 16-11-311(A)(3)

CDR Code: 079

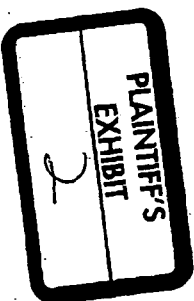
Class FEL-EX(MV)

A TRUE COPY

Attest: J. M. Kline
CLERK OF COURT
BAMBERG COUNTY, SC

A TRUE COPY

Attest: J. S. Kline
CLERK OF COURT
BAMBERG COUNTY, SC



FILED
BAMBERG COUNTY
2004 FEB -8 PM 1:58

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT

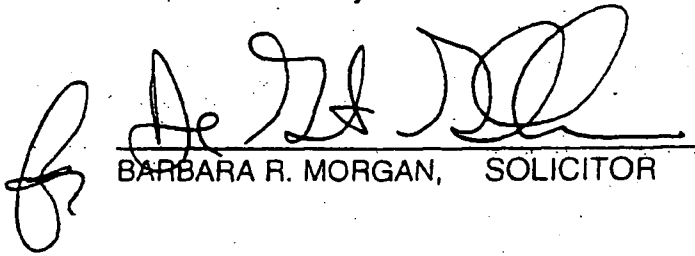
At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

BURGLARY IN THE FIRST DEGREE

That TIVO RICHARD LEE did, along with others, in Bamberg County on or about May 05, 2003, willfully and unlawfully enter the dwelling of Hallman Sease located at [REDACTED] [REDACTED] without consent and with the intent to commit a crime therein and the Defendant did enter while armed with a firearm and did enter in the nighttime, all in violation of §16-11-311, *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.

ALBINE COBY
7-2-14
BAMBERG COUNTY SC


BARBARA R. MORGAN, SOLICITOR

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05-04D

The State of South Carolina

County of Bamberg

I WAIVE PRESENTMENT
TO THE GRAND JURY
Two Lee

COURT OF GENERAL SESSIONS

March 8, TERM 2004

ARREST WARRANT NUMBER

G822154

THE STATE

vs.

ACTION OF GRAND JURY

TIVO RICHARD LEE

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

BURGLARY IN THE FIRST DEGREE

SC Code: 16-11-311(A)(3)

CDR Code: 079

Class FEL-EXM(V)

Foreperson of Petit Jury

Date:

FILED
BAMBERG COUNTY
2004 FEB -8 PM 1:58

A TRUE COPY
J. B. [Signature]
CLERK OF COURT
BAMBERG COUNTY, SC

A TRUE COPY
J. B. [Signature]
CLERK OF COURT
BAMBERG COUNTY, SC

FILED
BAMBERG COUNTY

STATE OF SOUTH CAROLINA)

INDICTMENT 2008 FFR-8 PM 1:58

COUNTY OF BAMBERG)

JAN 10 2008
CLERK OF COURT
BAMBERG, SC

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of
Bamberg County present upon their oath:

BURGLARY IN THE FIRST DEGREE

That TIVO RICHARD LEE did, along with others, in Bamberg County on or about May
05, 2003, willfully and unlawfully enter the dwelling of Hallman Sease located at [REDACTED]
[REDACTED] without consent and with the intent to commit a
crime therein and the Defendant did enter while armed with a firearm and did enter in
the nighttime, all in violation of §16-11-311, Code of Laws of South Carolina (1976), as
amended.

A TRUE COPY

Attest

J. B. Hines

CLERK OF COURT
BAMBERG COUNTY, SC

Against the peace and dignity of the State, and contrary to the statute in such
case made and provided.

Barbara R. Morgan / J. B. Hines
BARBARA R. MORGAN, SOLICITOR

COUNTY OF BAMBERG FILED
STATE VS. BAMBERG COUNTY

INDICTMENT/CASE#:

GS- 05 - 040TIVO R. LEE

7009FFR - R PH 0:58 AWW#

6822154AKA: _____
Race: B Sex: M Age: 33
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____Date of Offense: 5/5/03
S.C. Code §: 16-11-311(A)(3)
CDR Code #: 0101719☐ CASE RESTORED
☒ SENTENCE SHEET
☒ PLEA ☐ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: BURGLARY 1st
in violation of § 16-11-311(A)(3) of the S.C. Code of Laws, bearing CDR Code # 0101719☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense ☒ Defendant Waives Presentment to Grand Jury. TL (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

for
Barbara Morgan
SolicitorTivo Lee
DefendantTL
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 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. CREDIT TIME FROM 5/29/2003.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Heard, ☒ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100 \$
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§56-5-2995 (DUI Assessment)	\$12 \$
§35-13 (Public Def/Prob)	\$500 \$
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$
§50-21-114(BUI Breath Test Fee)	\$50 \$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$ 3.75
TOTAL	\$128.75

Barbara A. Scott/HF
Clerk of Court/ Deputy ClerkCourt Reporter: Shappard

SCCA 217 (9/2006)

Attest: B. Hines
CLERK OF COURT
BAMBERG COUNTY, SC

A TRUE COPY

CLERK OF COURT
BAMBERG COUNTY, SC

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: PAY COURT COSTS w/in 18 mo.
OF BEGINNING COMMUNITY SUPERVISION☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE William P. HinesCase Code: 2101510Sentence Date: Febr. 5, 2008

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

722
COUNTY OF BAMBERG FILED
STATE VS. BAMBERG COUNTY
TIVO R. LEE 2008 FEB 8 PM 1:59
AKA: _____
Race: _____ Sex: _____ Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

04 INDICTMENT/CASE#: 045
GS-05-045
A/W#: 6822169
Date of Offense: 5/5/03
S.C. Code §: 16-11-0330
CDR Code #: 0101216
☐ CASE RESTORED
☒ SENTENCE SHEET
☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: ARMED ROBBERY

in violation of § 16-11-0330 of the S.C. Code of Laws, bearing CDR Code # 0101216

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense ☒ Defendant Waives Presentment to Grand Jury. TL (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State. Josh Kendrick
20413 Concur Lexington, SC

ATTEST:

For Barbara Morgan
Solicitor

Tivo Lee
Defendant

TL
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 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. CREDIT TIME FROM 5/29/2003

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §47-25-135

SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Heard, ☒ Waived, ☐ Ordered

Total \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ ☒
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§35.13 (Public Def/Prob) \$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ ☒
§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
3% to County (if paid in installments) \$ 375
TOTAL \$ 128.75

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: SAME AS 04-GS-05-040

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

Barbara A. Scott
Clerk of Court/ Deputy Clerk

Court Reporter: Sheppard

A TRUE COPY

PRESIDING JUDGE

Judge Code:

Sentence Date:

Attest: J. S. H.
CLERK OF COURT

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05-021

The State of South Carolina

County of Bamberg

FILED
BAMBERG COUNTY

MARCH 8 - 2 PM 2:00

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

ARREST WARRANT NUMBER

G822150

A TRUE COPY

THE STATE
vs.

TIVO RICHARD LEE

Y61 Pnos

I pled to AR & B1st
20 years sentence

J. B. Kim
CLERK OF COURT
BAMBERG COUNTY, SC

[Signature]
Foreperson of Grand Jury
Date: 3/5/04

VERDICT

Indictment for

ASSAULT AND BATTERY WITH
INTENT TO KILL

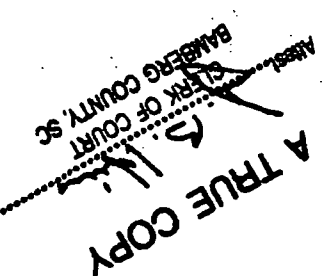
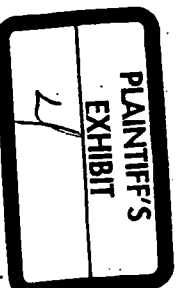
SC Code: 16-3-620

CDR Code: 014

Class: FEL-CV

Foreperson of Petit Jury

Date:



STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

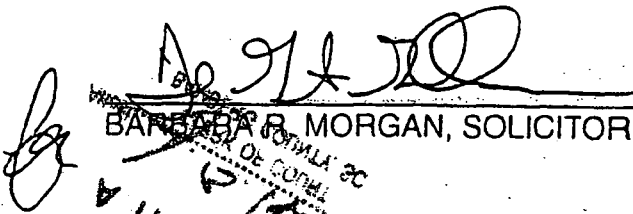
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That JAMES TIVO RICHARD LEE did, along with others, in Bamberg County on or about May 5, 2003, with malice aforethought commit an assault and battery upon one Steve Sutton with intent to kill the said victim. All in violation of §16-03-620 of 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.


BARBARA R. MORGAN, SOLICITOR

NOTARY SC
DE CORNELIUS

TRUE COPY

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05-041

The State of South Carolina

County of Bamberg

A TRUE COPY

Attest: *J. R. King*
 CLERK OF COURT
 BAMBERG COUNTY, SC

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

ARREST WARRANT NUMBER

G822157

THE STATE

vs.

TIVO RICHARD LEE

FILED
 BAMBERG COUNTY
 2004 MAR -8 PM 2:00

ACTION OF GRAND JURY

True bill

NRP's

Plead to AR & B/S
 20 yr. sentence

[Signature]
 Foreperson of Grand Jury
 Date: 3/5/04

VERDICT

Indictment for

POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT

CRIME

SC Code: 16-23-490

CDR Code: 549

Class FEL-F

A TRUE COPY

Attest: *[Signature]*
 CLERK OF COURT
 BAMBERG COUNTY, SC

Foreperson of Petit Jury
 Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BAMBERG)

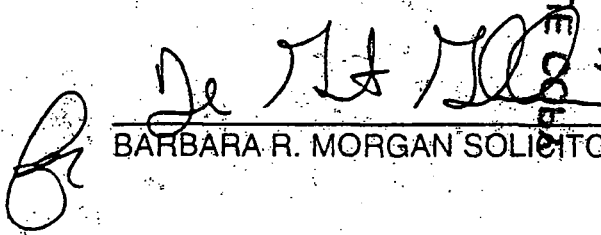
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That TIVO RICHARD LEE did, along with others, in Bamberg County on or about May 5, 2003, while committing the crime of armed robbery, a crime of violence, have in his possession a handgun, shotgun or rifle, all in violation of Section 16-23-490, 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.


 BARBARA R. MORGAN SOLICITOR

BAMBERG COUNTY, SC
 CLERK OF COURT
 /s/ [Signature]
 A LINE COPY

WITNESSES

Darnell - Sled

DOCKET NO: 2004-GS-05 - 042

A TRUE COPY

The State of South Carolina

County of Bamberg

[Signature]
CLERK OF COURT
BAMBERG COUNTY, SC

ARREST WARRANT NUMBER

G822159

ACTION OF GRAND JURY

True bill

[Signature]
Foreperson of Grand Jury
Date: 3/5/04

VERDICT

COURT OF GENERAL SESSIONS

March 8, TERM 2004

THE STATE
vs.

TIVO RICHARD LEE

N d P 10s

*A Pled to related charges
of B1st & AK - 20yrs*

[Signature]
2/8/08

Indictment for

GRAND LARCENY, >\$1000 BUT
<\$5000

SC Code: 16-13-30(B)(1)
CDR Code: 478
Class FEL-F

Foreperson of Petit Jury
Date:

FILED
BAMBERG COUNTY
2008 FEB -8 PM 2:00

A TRUE COPY

[Signature]
CLERK OF COURT
BAMBERG COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

GRAND LARCENY, >\$1000 BUT <\$5000

That TIVO RICHARD LEE did, along with others, in Bamberg County on or about May 5, 2003, feloniously take and carry away the goods of Hallman Sease, valued at more than One Thousand Dollars, described as follows: jewelry, currency and a firearm, with intent to deprive the owner permanently of such property, all in violation of §16-13-30, *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.


BARBARA R. MORGAN, SOLICITOR

VERIFIED
JUNE 11 2004
CLERK OF COURT
BAMBERG COUNTY, SC

WITNESSES

Darnell - Sled

ARREST WARRANT NUMBER

G822164

ACTION OF GRAND JURY

True bill

VERDICT

Foreperson of Grand Jury
Date: 3/5/04

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-05 - 043

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

March 8, TERM 2004

THE STATE

VS.

TIVO RICHARD LEE

NO Bias

A plea to

20 years

18/57 \$ 112

BM

Indictment for

LARCENY/GRAND, \$5000/MORE

SC Code: 16-13-30

CDR Code: 479

Class FEL-E

A TRUE COPY

FILED
BAMBERG COUNTY, SC
2004 FEB -8 PM 2:00

A TRUE COPY

Attest: 
CLERK OF COURT
BAMBERG COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

LARCENY/GRAND,\$5000/MORE

That TIVO RICHARD LEE did in Bamberg County along with others, on or about May 05, 2003, feloniously take and carry away a 1994 Chevrolet truck valued at more than Five Thousand Dollars, belonging to Hallman Sease with intent to deprive the owner permanently of such property. All in violation of §16-13-30, 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.


BARBARA R. MORGAN SO. CITIZEN

CLERK OF COURT
BAMBERG COUNTY, SC

731

WITNESSES

Darnell - Sled

ARREST WARRANT NUMBER

G822165

ACTION OF GRAND JURY

True bill

Foreperson of Grand Jury
Date: 3/5/04

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-05-044

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

March 8, TERM 2004

THE STATE

vs.

TIVO RICHARD LEE

761 Pm

Please to related charge
of 1st & 2nd year

2/8/04

Indictment for

LARCENY/GRAND, \$5000/MORE

A TRUE COPY

2/8/04

2004 FEB - 8 PM 2:00

FILED
BAMBERG COUNTY

A TRUE COPY

Attest

CLERK OF COURT
BAMBERG COUNTY, SC

2/8/04

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

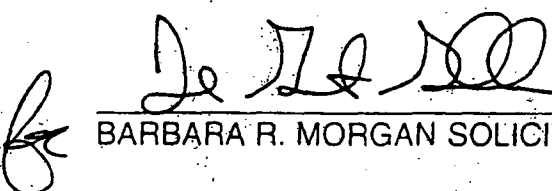
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

LARCENY/GRAND,\$5000/MORE

That TIVO RICHARD LEE did, along with others, in Bamberg County on or about May 05, 2003, feloniously take and carry away a 2000 Dodge Truck valued at more than Five Thousand Dollars, belonging to Hallman Sease with intent to deprive the owner permanently of such property. All in violation of §16-13-30, 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.


BARBARA R. MORGAN SOLICITOR

COPIES
BAMBERG COUNTY SC
CLERK OF COURT
A THOMSON
COPY

WITNESSES

Darnell - S.L.E.D.

ARREST WARRANT NUMBER

3822177

ACTION OF GRAND JURY

True bill

[Signature]
Foreperson of Grand Jury
Date: *3/5/04*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-05- *046*

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

THE STATE
vs.

TIVO RICHARD LEE

Not Pias
Δ plead to related charges
of AR & B's

Indictment for
KIDNAPPING

SC Code: 16-03-910
CDR Code: 0095
Class FEL-A

A TRUE COPY

[Signature]
CLERK OF COURT
BAMBERG COUNTY, SC

FILED
BAMBERG COUNTY
MAR 8 2004
MAR 8 2004

A TRUE COPY

Attest: *[Signature]*
CLERK OF COURT
BAMBERG COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

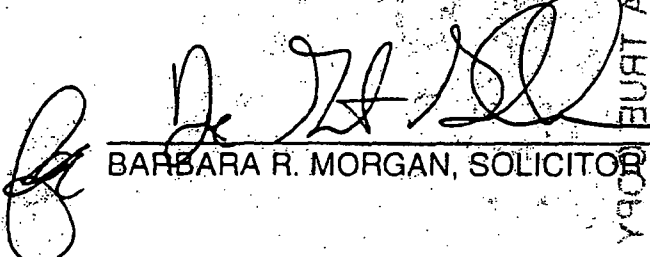
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

KIDNAPPING

That TIVO RICHARD LEE did in Bamberg County on or about May 5, 2003 unlawfully seize and confine the victim Hallman Sease without authority of law, all in violation of §16-03-910 of 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.


BARBARA R. MORGAN, SOLICITOR

ALBUE
COBY

BAMBERG COUNTY SC
CLERK OF COURT

WITNESSES

Darnell - S.L.E.D.

ARREST WARRANT NUMBER

3822178

ACTION OF GRAND JURY

True b.11

[Signature]
Foreperson of Grand Jury
Date: 3/5/04

VERDICT

DOCKET NO. 2004-GS-05-047

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

THE STATE

vs.

TIVO RICHARD LEE

Yol Rios

Advised to AR & B, 187
26 years
BBM

Indictment for

KIDNAPPING

SC Code: 16-03-910

CDR Code: 0095

Class FEL-A

A TRUE COPY
Attest *J.S. Wynn*
CLERK OF COURT
BAMBERG COUNTY, SC

FILED
BAMBERG COUNTY
2004 FEB -8 PM 2:00

A TRUE COPY

Attest *[Signature]*
CLERK OF COURT
BAMBERG COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

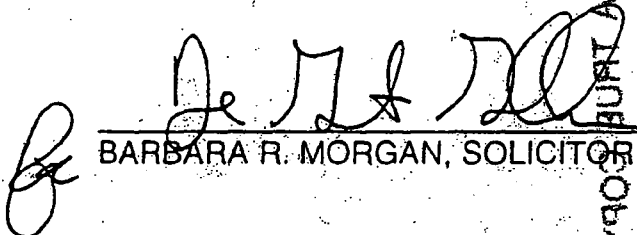
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

KIDNAPPING

That TIVO RICHARD LEE did in Bamberg County on or about May 5, 2003 unlawfully seize and confine the victim Steve Sutton without authority of law, all in violation of §16-03-910 of 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.


BARBARA R. MORGAN, SOLICITOR

BAMBERG COUNTY, SC
CLERK OF COURT
J. H. HARRIS

WITNESSES

Darrell - S.L.E.D.

ARREST WARRANT NUMBER

G822179

ACTION OF GRAND JURY

True bill

[Signature]
Foreperson of Grand Jury
Date: 3/5/04

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2004-GS-05-048

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

THE STATE

vs.

TIVO RICHARD LEE

No 1 Pros

Accused to AR & B
20 years

Indictment for
KIDNAPPING

SC Code: 16-03-910
CDR Code: 0095
Class FEL-A

A TRUE COPY
Attest *J. S. Hines*
CLERK OF COURT
BAMBERG COUNTY, SC

FILED
BAMBERG COUNTY
MAR 8 2004 PM 2:00

A TRUE COPY

Attest *J. S. Hines*
CLERK OF COURT
BAMBERG COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

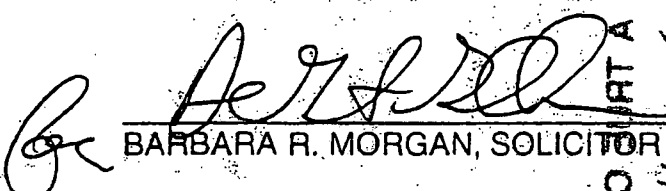
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

KIDNAPPING

That TIVO RICHARD LEE did in Bamberg County on or about May 5, 2003 unlawfully seize and confine the victim Eunice Ann Sease without authority of law, all in violation of §16-03-910 of 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.


BARBARA R. MORGAN, SOLICITOR

A TRUE
COPY

BAMBERG COUNTY, SC
CLERK OF COURT

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05-044

The State of South Carolina

County of Bamberg

A TRUE COPY

Attest: *J. S. Kline*
CLERK OF COURT
BAMBERG COUNTY, SC

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

ARREST WARRANT NUMBER

DIRECT

THE STATE
vs.

TIVO RICHARD LEE

True bill

ACTION OF GRAND JURY

[Signature]
Foreperson of Grand Jury

Date: *3/5/04*

VERDICT

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410

CDR Code: 049

Class FEL-F

A TRUE COPY

Attest: *[Signature]*
CLERK OF COURT
BAMBERG COUNTY, SC

Foreperson of Petit Jury
Date:

FILED
BAMBERG COUNTY
2004 FEB - 8 PM 2:00

20 years
2/8/08

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

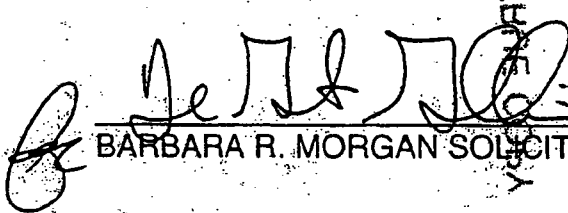
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

CRIMINAL CONSPIRACY, C/L CONSPIRACY DEFINED

The Defendant, **TIVO RICHARD LEE** did in Bamberg County, on or about May 5, 2003, willfully and unlawfully unite, combine, conspire, confederate, agree and have tacit understanding with others for the purpose of committing the crime(s) of Armed Robbery and/or Assault and Battery with Intent to Kill, in violation of Section 16-17-410, 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.


BARBARA R. MORGAN SOLICITOR

FILED
MAR 11 2004
CLERK OF COURT
BAMBERG COUNTY, SC

State v. James Gunnells

741

received 3-17-04

State of South Carolina }
County of Bamberg } IN the COURT of
GENERAL SESSIONS

State of South Carolina } #1) Dismissal of charges
V. } #2) Bond ORDER

James Allen Gunnells } #3) Speedy Trial

WARRANT NOS: G822151,

G822156, G822160, G8221161,

G822163, G822166, G822180,

G822181, G822182, G822117.

PLAINTIFF'S
EXHIBIT

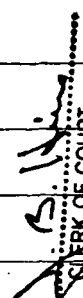
5

THESE motions ARE BEING filed by
myself, JAMES ALLEN GUNNELLS, AN INMATE AT
the BAMBERG County Detention Center.

#1) I HAVE BEEN INCARCERATED without
bond SINCE MY ARREST ON MAY, 05, 03. I
INITIALLY had a bond set AND due to a
violation of my rights it was DENIED. There
for I AM turning to the courts for proper
PROCEDURES AND hope my REQUESTS will
BE ANSWERED. #2) I AM ASKING that I BE
RELEASED ON all charges pending trial upon
the posting of bond.

I ALSO ask that the ABOVE charges
BE dismissed due to frivolous EVIDENCE
AND COERSION of the STATE. THE STATE
clearly shows a lack of EVIDENCE AND

A TRUE COPY

Attest: 
CLERK OF COURT
BAMBERG COUNTY, SC

P.G.2.

IS VIOLATING MY RIGHTS AS A CITIZEN OF THE UNITED STATES BY NOT TRYING TO RESOLVE THIS MATTER AS QUICKLY AS POSSIBLE WHICH FALLS UNDER COURT RULE GUIDELINES.

J THIS LEAVES ME FILING FOR A FAST AND SPEEDY TRIAL. IN THE CASE THAT NOTHING IS DONE BY THE STATE, I HAVE MADE THIS MY FINAL REQUEST TO SET A TIME LIMIT ON THE PERIOD OF TIME THE STATE HAS TO TRY THESE ACCUSATIONS.

I HOPE THE MOTIONS ARE PUT INTO EFFECT BY THE COURTS AND I RESPECTFULLY APPRECIATE YOUR TIME AND COOPERATION.

Respectfully,

DATE: 3-17-04

MR. JAMES A. GUNNELLS
James Gunnells

September 13, 2004



James Alan Gunnells
Bamberg County Detention Center
Bamberg, SC 29003

Re: State v. James Alan Gunnells
Warrant No.: G822151, G822156, G822160, G822161, G822163,
G822166, G822180, G822181, G822182 and G822117

Dear Mr. Gunnells:

Please allow this letter to confirm our September 8, 2004 meeting wherein you informed me that you have no desire to "deal" (meaning i.e. – give information, take polygraph, plea bargain with Solicitor, testify if needed) unless the Solicitor will tell you up front exactly how much time you would serve in connection with the above matters. As I informed you at our meeting, the Solicitor will not agree to proceed in that manner. If we cannot make some progress on this case, you will go to trial in October 2004 and if convicted, face the very serious and lengthy imprisonment times we discussed. Unless we can engage in some meaningful plea negotiation, the Solicitor intends to call your case for trial in October 2004. As of this date, you have informed me that you are not interested in any such negotiation under these parameters.

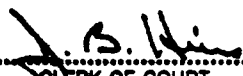
Please contact me immediately if this is not correct or if you have any questions.

Sincerely,

J. Christopher Wilson

JCW:gs

A TRUE COPY

Attest: 
CLERK OF COURT
BAMBERG COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

PERSONALLY appeared before me JAMES ALLAN GUNNELLS who states:

"My name is JAMES ALLAN GUNNELLS My address is _____

Date of Birth _____ Social Security Number: _____ Phone Number _____

I completed the 12th grade in school, and I can cannot read and write."

Before answering any questions or making any statements ED CARROLL, GEDIGE DARNIEL

a person who identified himself as SLED AGENT

duly warned and advised me, and I know and understand that I have the following rights: That I have the right to remain silent and I do not have to answer any questions or make any statements at all; that any statement I make can and will be used against me in a court or courts of law; that I have the right to consult with a lawyer of my own choice before or at anytime during any questioning or statements I make; that if I cannot afford to hire a lawyer, I may request and have a lawyer appointed for me by the proper authority before or at anytime during any questioning or statements that I make, without cost or expense to me; that I can stop answering any questions or making any statements at any time that I choose, and call for the presence of a lawyer to advise me before continuing any more questioning or making any more statements, whether or not I have already answered some questions or made some statements.

I do not want to talk to a lawyer, and I hereby knowingly and purposely waive my right to remain silent, and my right to have a lawyer present while I make the following statement to the aforesaid person, knowing that I have the right and privilege to terminate any interview at any time hereafter and have a lawyer present with me before answering any more questions or making any more statements, if I choose to do so.

I declare that the following voluntary statement is made of my own free will without promise or hope of reward, without fear or threat of physical harm, without coercion, favor, without leniency or offer of leniency, by any person or persons whomsoever.

I was talking to my cousin (CHRISTIAN) about where he worked at and who he worked for. And he was telling me about how much money that his boss had. We were just talking about his boss having a lot of money, but I was on the phone with someone I know from Columbia at the time (time) and he overheard my cousin talking about a safe being in his boss's house, also about a bag of money being inside the safe. When he overheard my cousin, he asked me about it and I said I didn't know anything about it. So later on I talked to my cousin and found out about it. I when I talked to him later he told me that my cousin said and I told him he asked me where it was at (house) and I said I didn't know, so I asked my cousin and he told me where it was at. I told him and he said he was going to come down there to see it. I stayed for a week at my Aunt's house and was leaving on the weekend when he would be home. He said he would talk to me when I got home, it was important. So I SEEN him when he came to my house in Columbia and he asked me what was the deal with my cousin's boss. We talked about it and he asked me to show him where the house was at. He said that he would pick me up the next day to go with him to the house in EARTH. Later the next night at about 10pm

I have read each page of this statement consisting of _____ page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct. I further certify that I made no request for the advice or presence of a lawyer before or during any part of this statement, nor at any time before it was finished did I request that this statement be stopped. I also declare that I was not told or prompted what to say in this statement.

This statement was completed at 11:42 P.M. on the 4th day of June 192003

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS 4th DAY OF June 2003

George W. Daniel
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 8/25/2007



Signature of person giving voluntary statement

NESS: Ed Carroll

WITNESS: George W. Daniel

I certify that I have been given a copy of this statement consisting of 4 pages.

VOLUNTARY STATEMENT
SUPPLEMENTAL

James Quan Gunnells

Statement of, Continued.

HE CAME to pick me up. HE HAD another guy with him that we call Fred with him and another guy that I didn't know. So we started to pick down there and that's when he said that all I had to do was show him the way to the house and he would do the rest, that I was going to just sit in the car and wait on him. WHEN we got down there I called my cousin from my cell phone and asked him what road it was to get to the house and he told me that it was where we went turkey hunting where I was down there. So we went down the road and I saw his truck in the driveway, we road past and came back to see it again and that's when we saw another truck & car parked at the house, two asked me who they was and I said I didn't know, so we left and went down the street and turned around to park. WE sat there for a while and watched the house until the car left, and was waiting on the truck to leave. WE sat for about 45 minutes when two said he was getting tired of waiting. The other two guys agreed and two got out of the car to go look at the house while we waited. They came running back and got in the car saying that some guys were walking around inside the house. Two got mad and started talking a gun at me saying that he didn't come all the way down there for nothing and I told him that I didn't have nothing to do with it. HE got out of the car and said he was going to go by his self. HE came back and said that he was going to go in the house and he wanted me to go with them. HE said that one was going to kick the door open and run in the house. When we got to the door he told me to help kick the door, he said for 3 people to kick the door and one run in the house. So I went on the porch with them and stood there while Fred opened the screen door and locked it so it would stay opened, then two said that we would all kick the door when he wanted to go. HE counted to 3 and we all kicked the door but it didn't come open so we kicked it two more times and it did break open. Fred was the first one in the house and he started yelling in the get down on the floor. HE ran toward the back of the house and grabbed a woman and threw her on the floor, two and the other guy ran in behind Fred & told me to come on, I hesitated and two grabbed my arm and pulled me into the house, he said to go with Fred in the

VOLUNTARY STATEMENT
SUPPLEMENTALJames Allen Connolly
Statement of, Continued.

back of the house and that's when the lady was trying to use the phone and Fred took the phone from her and threw it. The other two guys had grabbed a guy and brought him to a bedroom in the back of the house where the other two people were. Then they started going through the house and asking the guy where was his safe and money, the guy kept saying he didn't have no money, then they threw the guy and woman on the floor and told them he better give up the money or they was going to kill his wife, he kept saying he didn't have no money and he didn't know what they were talking about and two came back from the other room and told them all to get face down on the floor. He grabbed the man on the bed and threw him on the floor and told his wife he was going to shoot him in the head and she said that they didn't have a safe and they keep their money in the bank, that's when they told me that if my cousin was lying they was going to shoot me. The man said he didn't want to die, that's when Fred got the other guy in the back with his gun, he told me to get out of the house and look in the trunk for some money. He gave me some keys and told me to go so I got out of the house and looked for the truck. I saw a red truck so I opened the door and started looking in the truck for something, then two ran out the house and told me that I was looking in the wrong truck that the other truck was the one with the money in it, so I got out of the truck and ran over to another red truck where two was looking for the money. I opened the passenger door and started to look around, that's when he said he had found some money in a brown bag and he said that he was going to take the truck with him, so he said get the car back come down there, but when I was leaving to get the car Fred called two and he said to hold on for a minute, so I stood by the porch and waited until they came out and the other guy ran to one truck and got in and he drove off down the road then two & Fred went back into the house and came out and went to the other truck and told me to get in this car and follow them. I ran and got the car and followed them down the road

VOLUNTARY STATEMENT
SUPPLEMENTAL

JAMES MIAW CUNELLI

Statement of, Continued.

until the stop sign where they was asking which way to go, they yelled for me to lead the way, so I took off and they followed me down the road, I pulled over when we got out of town and asked them where we was going, they said they needed to get rid of the trucks and they wanted me to show them where to go, so we drove until I saw a dirt road that I knew, so we turned down there and drove down it for a while until we couldn't see no lights and I stopped the car, then they got out of the trucks and said that they were going to check them again to see if they could find anything else that they might have left in the trucks. They took the money out of the one truck and took the rear speakers and amplifier out of the other one then they jumped in the car and told me to get in the back, and asked me how to get out of there. We then was on our way back to Colu when he opened the bag of money and started to count it out, he turned towards me and said that there was only a couple of hundred dollars in the bag and that he done came down and it for nothing, so every one was mad about the money and started arguing about it. We eventually got back to Colu, and I told them that I was ready to go back home, and when we got back to my house they said that since there wasn't any money hardly to split, that they would give me some jewelry & the speakers and amplifier, so I took them and went into my house, and I stayed there for a minute and waited on them to leave and then I walked to the park so I could clear my head and ask for my forgiveness. Then I went back home and went to sleep. (S)

[Signature]

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

A TRUE COPY

Attest: *[Signature]*
CLERK OF COURT
BAMBERG COUNTY, SC

February 26, 2004

INVESTIGATIVE REPORT

RULE 5
TO *B. Simmons*
DATE *3/29/04*
Δ Culler

RULE 5
TO *S. Stone*
DATE *3/29/04*
Δ Lee

RULE 5
TO *C. Wilson*
DATE *3/29/04*
Δ Gunnells

TO: File 31-03-0046

FROM: Senior Agent George W. Darnell *[Signature]*

RE: Burglary 1st Degree, Armed Robbery, Assault and Battery with Intent to Kill,
Grand Larceny, Kidnapping and Two Counts of Grand Larceny of a Motor
Vehicle

James Allan Gunnells, Tivo Richard Lee, Fredrick Lee Culler(s)
Halmon Eugene Sease, Eunice Sease, Archie Steven Sutton (v)

COUNTY: Bamberg

Introduction

This is an Addendum to the Investigative Report dated September 16, 2003.

PLAINTIFF'S
EXHIBIT

8

History

On June 4, 2003, Senior Agents George Darnell and Ed Carroll arrested James Allan Gunnells in
Columbia, S.C.



An Accredited Law Enforcement Agency

P.O. Box 21398 / Columbia, South Carolina 29221-1398 / (803) 737-9000 / Fax (803) 896-7041

Summary

On June 4, 2003, S/A Darnell and Carroll arrested James Allan Gunnells at his residence , Columbia, S. C. and transported him to the Bamberg County Sheriff's Office.

When S/A Darnell and Carroll arrived at the Sheriff's Office they carried Gunnells to S/A Darnell's Office to interview him. Once Gunnells entered the office he observed the Jensen amplifier and box speakers stolen from Steven Sutton's Chevrolet truck. Gunnells remarked "Au shit, you got me"! Gunnells then asked where S/A's Darnell and Carroll got the amplifier and speakers. S/A's Darnell and Carroll advised him that they came from First Cash Pawn Shop in Columbia, S.C. Gunnells stated that he might as well give S/A's Darnell and Carroll the original pawn receipt and did furnish it. S/A's Darnell and Carroll asked Gunnells if he was willing to furnish a written statement reference the Incident at the Sease's residence on May 5, 2003. Gunnells stated that he might as well because we had him. Gunnells furnished a written statement ~~admitting to his involvement in the Incident and named his codefendants. This~~ statement is attachment 14 in the initial Investigative Report.

GER (Last Name First)

UNNELLS, JAMES AX
000 PLOWDEN RD APT 31B
COLUMBIA, SC 29205

GUNNELLS

ORIGINAL LOAN NO. 1443		1443	
PAWNSHIP	DATE PAID	THE MAKE	DATE DUE
SOLD	05/22/03	15:18	06/22/03
AMOUNT FINANCED The amount of cash advanced or credit extended by the pawnshop		120.00	
FINANCE CHARGE The amount of the finance charge on the cash advanced by the pawnshop		25.50	
TOTAL OF PAYMENTS Amount required to redeem items of cash due by the pawnshop		145.50	
ANNUAL PERCENTAGE RATE The cost of your credit is a yearly rate based on the amount financed		255.00	
PAYMENT SCHEDULE NO. 1		145.50	
PREPAYMENT You may prepay your loan at any time without penalty. The amount of the prepayment will be credited to your account.			
DRIVERS LIC. NO.	SEX	RACE	AGE
D-0023134654	M	B	24
HGT.	WT.	HAIR	EYES
5-0	145	BROWN	BROWN
DATE OF BIRTH	SOCIAL SECURITY NUMBER		
08/21/78	251399799		
Amount of the cash advanced	Amount of the finance charge	Amount of the prepayment	Amount of the balance due
120.00	25.50	0.00	145.50

Please give article(s) pawned by me to the bearer of this ticket.

I represent the above listed collateral as wholly owned and unencumbered and I acknowledge receipt of a true copy of this contract. Pledged items redeemable only by the person who pawned them, unless this ticket is properly endorsed.

ORIGINAL PLEDGER'S SIGNATURE

DATE

X

PLEDGER'S SIGNATURE

See Reverse Side For Terms And Conditions

Res. Phone (803) 782-6703

Has serial number been altered?

Yes No X

Any evidence of third party ownership?

Yes No X

Special Markings: NO

Engravings: NC

Any other identifiers or unusual characteristics?

Yes No X

If yes, seller/pledger ownership verified by

On this date I request that items listed on this ticket and ticket # be split into separate pawn transactions and I understand that this splitting will cost me dollars in additional interest.

X

PLEDGER'S SIGNATURE

X

PAWNBROKER'S SIGNATURE

A TRUE COPY

Attest: J. S. Hill
CLERK OF COURT
BAMBERG COUNTY, SC

PLAINTIFF'S
EXHIBIT

9

he said I gave him the receipt, I didn't have
 no property, he took it from the house.
 Didn't tell me why I was arrested until I got
 to bamberg. Don't say I said I bought all
 for 250 dollars, handwriting. he said it
 took 1 1/2 hrs. but it was like 4-5 hrs.
 Told me to write ^{STATEMENT} so my ~~girl's~~ charge
 would get dropped in barnwell county.
 It got dropped afterwards, mine was still
 pending. How did a burglary 1st warrant
 get obtained for speakers & amplifier.
 I never said anything about on shit.

He told me that I was the reason Stone
 was still alive. & about the 3 k.

A TRUE COPY

[Signature]
 Clerk of Court
 Bamberg County, SC

PLAINTIFF'S
 EXHIBIT

10

June 4, 2003

I Quanya Sasha Brooks do
 hereby give permission to Agent Rick
 McDermott, Ed Carroll and George
 Darnell with the South Carolina
 Law Enforcement Division along with
 Warren Gadsden with the Richland
 County Sheriff's Office to search
 my apartment located at [REDACTED]
 [REDACTED] This permission is
 given without pressure or coercion
 and of my own free will.

Quanya Sasha Brooks

Warren G. Gadsden
Ed Carroll

George W. Darnell

Ed S. [REDACTED]

6-4-03 1549



A TRUE COPY

Attest: J. B. [REDACTED]
 CLERK OF COURT
 BAMBERG COUNTY, SC



PLAINTIFF'S
EXHIBIT
12

A TRUE COPY

Attest. *J. S. Hines*
CLERK OF COURT
BAMBERG COUNTY, SC.

RECEIPT FOR PROPERTY		SLED CASE NUMBER 31-03-0046		
S.C. LAW ENFORCEMENT DIVISION		LOCATION		
S/A George W. Darnell		Ehrhardt Motor Company		
Name of Person Property is Obtained From		Address (Includes Zip Code)		
☐ Owner ☒ Other James A. Gunnells				
Location of Property				
On his person.				
Purpose for Which Obtained				
Evidence in a Burglary 1st. and Robbery.				
Item Nr.	Quantity	DESCRIPTION OF ARTICLES		
1	1	Gold chain		
2	1	Gold Wedding band		
3	1	Man's gold ring with a diamond in the center and one on each side.		
A TRUE COPY Attest: CLERK OF COURT BAMBURG COUNTY, SC				
I Certify That I Have Received The Articles Listed Above				
Date August 14, 2003	Name Halmon E. Sease	Signature <i>Halmon E. Sease</i>		
CHAIN OF CUSTODY				
ITEM NR	DATE	RELINQUISHED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
1,2,3	8/14/03	Name S/A George W. Darnell	Name	RETURN TO OWNER
		Signature <i>George W. Darnell</i>	Signature	
		Name	Name	
		Signature	Signature	
		Name	Name	
		Signature	Signature	
		Name	Name	
		Signature	Signature	

**PLAINTIFF'S
EXHIBIT**

13

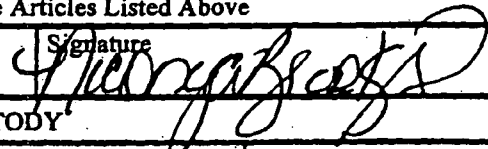
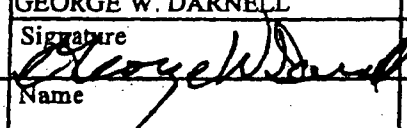
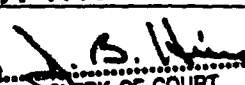
Edwards, J.C.
Jan. 04, 2012

Mr. Blanchett,
When I went to Bamberg to get the
Jewelry they had that James Gunnell
said he had receipts for they wouldn't
let me have it - I am James Gunnell's
grandmother Janie Cottle -

Janie Cottle

A TRUE COPY
Attest: *[Signature]*
CLERK OF COURT
BAMBERG COUNTY, SC



RECEIPT FOR PROPERTY		SLED CASE NUMBER 31-03-0046	
S.C. LAW ENFORCEMENT DIVISION		LOCATION	
S/A GEORGE W. DARNELL		Bamberg County Sheriff's Office	
Name of Person Property is Obtained From		Address (Includes Zip Code)	
☒ Owner ☐ Other <u>JAMES A. GUNNELLS</u>			
Location of Property			
SAME AS ABOVE			
Purpose for Which Obtained			
AS EVIDENCE			
Item Nr.	Quantity	DESCRIPTION OF ARTICLES	
1		BASKET OF ASSORTED CLOTHING BELONGING TO JAMES GUNNELLS AND BEING RETURNED TO NICONYA BROOKS.	
			
I Certify That I Have Received The Articles Listed Above			
Date 6/29/03	Name NICONYA BROOKS	Signature 	
CHAIN OF CUSTODY			
ITEM NR	DATE	RELINQUISHED BY	RECEIVED BY
1	6/29/03	Name GEORGE W. DARNELL	Name
		Signature 	Signature
		Name	Name
		Signature	Signature
		Name	Name
		Signature	Signature
		Name	Name
		Signature	Signature
			PURPOSE OF CHANGE OF CUSTODY RETURN TO OWNER'S GIRLFRIEND A TRUE COPY  Clerk of Court BAMBERG COUNTY SC

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, Eunice H. Sease am not under arrest for, nor am I being detained for

any criminal offenses concerning the events I am about to make known to SA ED CARROLL / SA G.W. DARNOLD
I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for
whatever purposes it may serve.

I am 62 years of age, and I live at Ehrhardt, S.C.

I can cannot read and write and completed the 12th grade in school. DOB: _____

I had just taken a bath & heard a terrible noise at my front door when I got to the end of hall way. When I got to end of hall way, I heard & saw a tall black, dressed man with a pistol in his hand. He said: U.S. Marshall. I said to him: What do you want, who do you want. He said to me, get down - I crawl down the hall toward my bedroom ~~room~~, he said where is your husband. I tried to stall him, I told him I didn't know then I continued to my bedroom, he was still coming behind me. When I got to bedroom, I woke Hallman up, I said to him, don't say a word, we have been broken into, he has a gun - then he made Hallman & me get on floor face down. He kept asking for money & where is the safe - we told him we didn't have safe. ~~we don't~~ we keep money here - I told them he made deposits every day. He said you have 3 businesses, we had money he told Hallman, I give you 2 seconds, I will kill you - then another slim boy with red shorts, red highlights, Bandana & head cord up. I think tennis shoes. Kinky hair around the ears. He was nervous & jump from one drawer with a gun ~~screamed~~ tacked - then the one in blue ~~ES~~ left room. He got Hallman jewelry - the one in red shorts - he tacked him then 4 of lay back down - I kept begging them not

I have read each page of this statement consisting of Two page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 12:45p M. on the 7th day of May, 2003

SWORN TO AND SUBSCRIBED TO BEFORE ME THIS 7th DAY OF May, 2003

A TRUE COPY

Signature of person giving

George W. Darnold
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/25/2007

B. H. H. WITNESS:
CLERK OF COURT
BERG COUNTY WITNESS:



I certify that I have been given a copy of this statement consisting of 2 pages. Eunice H. Sease

VOLUNTARY STATEMENT
SUPPLEMENTALEunice H. Hease

Statement of, Continued.

to kill me, we have the most beautiful
grand children, please don't kill us.
Hallman also begged please to kill us.
Hallman told them he had sharp money
in his pocket out behind shirt & keys
was in it too - Then they tied us up
with neckties - I ask them don't pull on
my arm, it my rotatory cuff is torn - so
he didn't tie me tight - After they tied
us up, they left, we lay there ~~until~~ ^{until} ~~about 45~~
until we thought they had ~~left~~ - left.
Hallman whispered can you get untied, I got
untied ~~at 5:00~~ then got him loose too - we
still was quiet until we thought
they had gone - Then I saw Steve laying
in hall with the blood up his
head on floor - I untied him and
we quietly got up and got to phone
& Hallman call 911 E.S.

Eunice H. Hease

Signature of person giving voluntary statement

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, Archie Steven Sutton am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to SA ED CARROLL SA GEORGE DANNE. I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 26 years of age, and I live at _____

I can ~~cannot~~ read and write and completed the 12th grade in school. DOB: 11-8-76

SSN-1

Monday 5th 2003

About 10:45-10:50 I heard the front door fly off its hinges. There was a black man yelling the word "Marshall". Get on the floor. I was laying on the couch in the living room trying to get to sleep. They came in the two black men, and told me to get up. Marshall. So I got up and I position the men in the living room. One heavy set man with the deep voice was at my feet. The other young fellow was standing at the white reclining chair in front of the T.V. assassination. Heavy set fellow wearing Navy Blue or Black windbreaker pants with the deep voice. Second - was of 5'7" small built and look young. He had a red scarf covering his face, but when he went to get me up, it pulled down. He automatically pulled it back up. When I got off the couch they ask me where your father. I said in the back room. So I put my hands behind my back and proceeded through the kitchen. When I went to go down the hallway "Mrs. Dease was crawling on her hands and knees. When she went in Mr. Dease bed room they told me to get down. So I got down on the floor. They tied my feet together to start with. Then they ask my if we had a safe in the house and I told them no. I could see Mrs. Dease through the crack of the door to start with, then the kid Mr. Dease and I went to look up, and that's when someone hit me in the head with the gun. I could not see Mrs. Dease then because I layed down about a foot. I was bleeding very bad by that time. So I laid right there and did not move. I recognize a Eddie Brown Pickin book that was Brown leather and had Brown tian and the boy had a big curve with a pair of huggie pants on. Then they tied my hands behind my back. Mrs. Dease the the money was in his trunk door panels and ask about the keys. They were in it. About 3 mins I heard the front door in front of the house. Mrs. Dease was the first one to get outside. Then she got the Dease vehicle.

I have read each page of this statement consisting of Two page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 11:53 AM on the 7th day of May, 2003.

Archie Steven Sutton

Signature of person giving voluntary statement

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS 7th DAY OF May, 2003

A TRUE COPY

George W. Danne
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/31/2007

Attest: S. H. H. WITNESS:
CLERK OF COURT
BAMBERG COUNTY, SC WITNESS: ASS

I certify that I have been given a copy of this statement consisting of 2 pages.

VOLUNTARY STATEMENT
SUPPLEMENTALArchie Steve Little

Statement of, Continued.

Then Mrs. Deane wiped out and ask me if I thought they were gone. I said they
 put for a few more minutes, so we did. Mrs. Deane look out and said they gone.
 As he proceed to go to the kitchen, I was still on the porch in the hall way with my
 feet tied together still. When they made sure "Mr & Mrs Deane" I got nervous by
 myself. I got up and they were looking for a telephone, and I said my cell phone is
 by the couch. We used it first, then call Deputy. Then
 we discover the kitchen wall where we still stay, and we used it to finish
 getting help. Then we all got outside on the back porch and waited for help to
 arrive. Richard Oakes and Steven Chausman carried me to ~~Callahan~~ Bullator
 Hospital for treatment. I.D.

Archie Steve Little

Archie Steve Little
 Signature of person giving voluntary statement

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, Steve Latta am not under arrest for, nor am I being detained for
any criminal offenses concerning the events I am about to make known to Sgt. L. W. Darnell
I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for
whatever purposes it may serve.

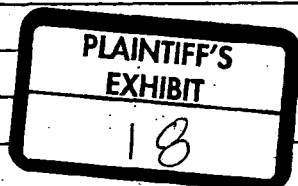
I am 26 years of age, and I live at c
I can ~~read~~ read and write and completed the _____ grade in school. DOB: 11-8-76

George
On June 6, 2003 I was contacted by ~~Shirley~~ Darnell I went
to the sheriff department to pick up some clothing that James Duane
was wearing. I was able to pick out these clothing: White/Silver
SHAG shoes, Red/white/black striped shorts that he had, the black
pants that was found was on the color yellow that is about 5-9-6-12

Before the incident Duane was at Steve Latta house
lifting weights with me. That was the first time that I seen
him up close. That was before this incident happen. I I

A TRUE COPY

Attest... B. Latta
CLERK OF COURT
BAMBERG COUNTY, SC



Steve Latta

I have read each page of this statement consisting of 1 page(s), each page of which bears
my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 6:25 PM on the 11th day of June, 2003

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS 11th DAY OF June, 2003

George L. Darnell
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/25/2007

Signature of person giving voluntary statement

WITNESS:

WITNESS:

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, HALLMAN E. SEAS am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to SLAED CARROLL / 19 GEORGE DAVIS. I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 62 years of age, and I live at Ashton Rd.
I can ~~cannot~~ read and write and completed the 12 grade in school. DOB: 8-3-1940
SSN - [REDACTED]

on MAY 5-03 Time 11:00 Black Male Approx 204 Tall & Weight
Told me get up out bed + Lay Down. I Lay Down on my side
and he told me to get Face Down and I will Kill You and
I did. he kept saying were in the Money or Safe and I
told him I didn't have any Money in my house. he
said do you got Money are Safe in your house. Because
you have 3 other Business. he said if you got Money
if you don't tell me I will Kill you. I kept saying please
Don't Kill Me. I will ^{got money} give you anything I got if you
Don't Kill Me. Then a person came in on me and gun
to my head I will kill you if you don't tell me where the
Money is. He kept saying over & over. Again then they
started to strip my bed room. Then he took my jewelry
me. Ring Neckles and put in his pocket. he was Short Red
prints they were Baggy. The Tall One in tall kept pistol
me the old time. Then the Short with Red prints came
me & he said I want your Money or the Safe Walte and
I said I didn't have in Money in house one Walte & he
put pistol to my head and said I will Kill you in
Two second if you don't tell me where the Money is
I said I have a Bag of Money in my bed room in your
& Bill Folly in truck. I said the Bag is full of Money
Then he left & went out side & one more person went with him
They stole my pick & Stump Sutton. Pk. Truck

have read each page of this statement consisting of Two page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 11:20 AM on the 7th day of May, 2003.

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS 7th DAY OF May, 2003

A TRUE COPY

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 8/25/2007

Attest:

CLERK OF COURT
BAMBERG COUNTY, SC

WITNESS:

WITNESS:

Signature of person g

PLAINTIFF'S
EXHIBIT

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I certify that I have been given a copy of this statement consisting of 2 pages. Hallman E. Seas

SUPPLEMENTAL

Hollman E. Sears

Statement of, Continued.

The person that hit Steve in Head with is Pistol
The Tall Thin Black Male. He had a Black Ban Danna in
Faso Dress All Black. But Not To of Head No More.
He stayed in House when the two other person went out
Side. He held Pistol on me + my wife + still the old times
They were gone. I look Back in App. Two Minutes he was
gone. We lay still for App. 2-3 minutes before we move
Then my wife said she good get loose and I said
Try to get loose + Can't get loose + She did then
said there until me. one had Red Ban Danna + the
other had a Black BAN DANNIA. The money in my Truck was
App. 1250.00 in Cash All in one Dollar Bills + \$10.00
They Used My Neck Ties + To Tie my hand + Feet + my wife +
Steve Sutter Ties + Belts in Steve. HEB

Hollman E. Sears

Signature of person giving voluntary statement

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, Hallman E. SEASE am not under arrest for, nor am I being detained for

any criminal offenses concerning the events I am about to make known to SA W. Darnell
I understand I am free to walk away without saying anything, and I volunteer the following information of my own free will, for
whatever purposes it may serve.

I am 42 years of age, and I live at Ehrhardt SC
I can cannot read and write and completed the 12th grade grade in school. DOB: 8-3-40

I looked through the clothing on August 11, 2003 at the
Sled Office in Bamberg, SC. This happened the same
day that he was picked up. I recognized the
clothes as follows:

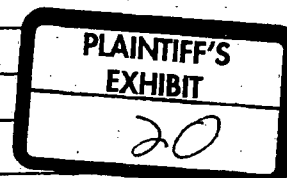
The red shorts with the red stripes were
similar to the one that the white suspect wore
the night of the accident. The white suspect took
my jewelry off.

The black pants that were shown in Gunnells
clothes were similar to the tall black
suspect (6'3 or 6'4.)

In the clothing of James Gunnells, my camouflage
hat was found in his clothing.

The day that James Gunnells was caught by
the sled, my diamond ring, my wedding band
and my necklace was on James Gunnells
body. This was the day that he was arrested.

A TRUE COPY



I have read each page of this statement consisting of 1 page(s), each page of which bears
my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

This statement was completed at 6:30 p M. on the 11th day of Aug., 20 03

SWORN TO AND SUBSCRIBED TO BEFORE
ME THIS 11th DAY OF January 20 03

W. Darnell
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/25/2007

Hallman E. Sease
Signature of person giving voluntary statement

WITNESS: W. Darnell

WITNESS: W. Darnell

I certify that I have been given a copy of this statement consisting of

pages

I certify that I have been given a copy of this statement consisting of 2 pages. John M. [Signature]

VOLUNTARY STATEMENT
SUPPLEMENTALDebra Myers

Statement of, Continued.

Last summer, a tall skinny and a short "stocky" black males came down from Columbia with Jamie to go fishing. They went fishing in the Brant pond.

Jamie had a girlfriend name Nikki who has been to my house also. She drives a green vehicle similar to a Blazer. Nikki told me that she worked as a guard in a prison. Jamie and Nikki told me that they lived in Columbia near the fair grounds.

Nikki called me on June 3rd and we were just talking. She told me about her and Jamie were arguing. I asked Nikki by any chance, did Jamie take Chris's radio?? She said that she wasn't sure but Jamie had put A system in her truck. Nikki told me that Jamie needed money. Nikki said that Jamie needed money so he took the system out of her car and went and pawned it. Nikki gave me directions on how to go to the pawn shop so if I wanted to go and see if it was Chris's system or not. She told me go to Bush River Road in Columbia and on the right it was a car wash and restaurant. It was like a plaza and that it would be the Pawn Shop right there I called Mr. George and told him what Nikki had told me.

Debra Myers

Signature of person giving voluntary statement

763

Laboratory Case No: L0304589
Agency: Bamberg Cnty Sheriff's Dept.
County: Bamberg



SLED FORENSIC SERVICES
LATENT PRINT AND CRIME SCENE DEPARTMENT

CRIME SCENE NOTES

PAGE

05-06-03

Upon this Agent's arrival on the scene. I spoke with S/A George Damell who advised that three unknown black males did break into [REDACTED] by kicking in the front door. Once inside the residence the subjects tied the victims up with neck ties and belts and placed them in the master bedroom area. The subjects looked in several draws and took some jewelry located in different dressers through out the residence. Once leaving the house the subject took two trucks that were located in the back yard, a Chevy and a Dodge. No further info was available on the trucks at the time of this report.

VICTIMS:

Eugene Sease

Eunice Ann Sease

Archie Steven Sutton - this victim was hit in the head with a gun

A TRUE COPY

Attest:

J. S. [Signature]
CLERK OF COURT
BAMBERG COUNTY, SC

EVIDENCE COLLECTED:

Partial Footwear impressions located near the barn in back - photo's, scale, cast, collected
Partial Footwear impressions located on the front door photo's, scale, black powder, gel lift, collected.

One price tag marked "Peebles" collected from back bedroom across from the master bedroom.

One belt and eleven ties collected from master bedroom area

One red bag marked "Steeles" collected from master bedroom

ITEMS/Area Dusted

Entry point of the subject's

Cordless phone head set

All draws and dressers in the areas that the subjects went into

All photos were taken by Agent Phillip Coonfield





**AT&T Subpoena Center
RESPONSE COVER SHEET**

1 ATT Plaza
208 South Akard Street - 10th Floor - M
Dallas, TX 75202
Phone 1-800-291-4952 Facsimile 877-971-6093

**To: TRICIA A BLANCHETTE
LAW OFFICE OF TRICIA A BLANCHETTE
PO BOX 12725
COLUMBIA, SC 29211**

File Code: 1044285

From: CG

**Phone Number: (803) 988-8070
Fax Number: 1(803) 988-8070**

**Request Dated: 11/3/2011
Received On: 11/9/2011**

**Number of Pages:
Date: 1/4/2012**

If you are not already doing so, please begin addressing all legal requests to AT&T. Additionally, effective immediately, please fax all legal requests for **WIRELESS** numbers to AT&T at 1-877-971-6093. For more efficient and faster response, please provide an email address on future requests.

- -A database search by the mobile number provided (803)237-5472 for James Allan Gunnells was completed and no results were found. We have no information responsive to your request.

A TRUE COPY

Attest: *[Signature]*
CLERK OF COURT
BAMBERG COUNTY, SC

**PLAINTIFF'S
EXHIBIT**

23

CONFIDENTIALITY NOTICE

This cover sheet, and any document which may accompany it, contains information from the National Compliance Center which is intended for use only by the individual to whom it is addressed, and which may contain information that is privileged, confidential and/or otherwise exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the person responsible for delivering this message to the intended recipient, any review, disclosure, dissemination, distribution, copying or other use of this message or its substance is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone to arrange for the return of this communication to us at our expense. Thank you.

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U	R	C	O

FILED
BAMBERG COUNTY IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

C.A. NO. 2010-CP-05-72

James Gunnells, #305475

2013 AUG 13 AM 9:47
JAMES L. HARRIS
CLERK OF COURT
BAMBERG, SC

Applicant

ORDER OF DISMISSAL

VS

State of South Carolina,

Respondent.

This matter is before this Court by way of an application for post-conviction relief (PCR) filed April 5, 2010. The State made its return on October 20, 2010. A hearing into the matter was convened at the Aiken County Courthouse on January 27, 2012. Applicant was present and represented by Tricia A. Blanchette, Esquire. The State was represented by Assistant Attorney General Mary Williams of the Office of the South Carolina Attorney General.

Applicant testified on his own behalf, as did his co-defendant, Tivo Lee. Testifying for the State was Applicant's trial counsel, James Christopher Wilson, Esquire. This Court also had before it all the exhibits admitted at the PCR hearing, the pleadings of both parties, including Applicant's amendments and memorandum, the Clerk of Court's records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the transcript of Applicant's trial.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Bamberg County Clerk of Court's orders of commitment. Applicant was indicted at the

March 2004 term of the Bamberg County Grand Jury for first degree burglary (2004-GS-05-19), assault and battery with intent to kill (2004-GS-05-20), possession of a weapon during a violent crime (2004-GS-05-21), armed robbery (2004-GS-05-23), conspiracy (2004-GS-05-29) two counts of grand larceny (2004-GS-05-24, 25), and three counts of kidnaping (2004-GS-05-26,27,28). As previously mentioned, James Christopher Wilson, Esquire, represented Applicant.

Applicant was tried by jury on October 12-15, 2004. The jury acquitted Applicant of ABWIK, both counts of larceny, and one count of kidnapping, but found Applicant guilty of the remaining counts. The Honorable J.C. Nicholson sentenced Applicant to life imprisonment for first degree burglary, and a consecutive term of thirty years imprisonment for armed robbery. Judge Nicholson sentenced Applicant to concurrent terms of thirty years imprisonment for each count of kidnapping, five years imprisonment for possession of a weapon during the commission of a violent crime, and five years imprisonment for conspiracy.

Counsel filed a motion to reconsider the sentence on October 15, 2004. A hearing was convened on January 17, 2007 and Judge Nicholson issued an order on February 13, 2007, which was filed April 20, 2007, in which he found Applicant knowingly and voluntarily withdrew the motion against advice of counsel.

Applicant appealed the conviction and sentence, which was affirmed by the South Carolina Court of Appeals. State v. Gunnells, Op. No. 2009-UP-35 (S.C. Ct. App., filed January 14, 2009). Applicant's petition for rehearing was denied and the South Carolina Supreme Court denied the petition for writ of certiorari on October 7, 2009. LaNelle C. Durant, Esquire, represented Applicant on appeal.

ALLEGATIONS

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel;
2. Ineffective assistance of appellate counsel; and
3. After discovered-evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented 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).

Ineffective Assistance of Counsel

Applicant makes various allegations of ineffective assistance of counsel. The burden of proof is on the applicant in a PCR proceeding to prove the allegations in his application. Bell v. State, 321 S.C. 238, 467 S.E.2d 926 (1996); Rule 71.1(e), SCRPC.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). In order to prove prejudice, an applicant must show that but for counsel's errors, there is a reasonable probability the result at trial would have been different. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability

sufficient to undermine confidence in the outcome of the trial. Id. Where trial counsel articulates a valid reason for employing certain trial strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992).

This Court will now address each allegation of ineffective assistance of trial counsel below:

Failure to prepare and investigate prior to trial

Applicant alleges that trial counsel failed to investigate and prepare for trial. Applicant also alleges trial counsel failed to inform him of the State's evidence and witnesses that would be used against him at trial. Counsel's testimony contradicts these assertions: Counsel testified that he went through discovery and the evidence with Applicant and that counsel had multiple discussions with Applicant. Applicant gave different versions of his degree of involvement in the case, but never suggested he was not present during the crime or was not involved. Counsel testified that he sought assistance from a former SLED agent in assessing the forensic evidence. Counsel noted that Applicant gave a highly incriminating statement to law enforcement and thought that finding a viable defense to the charges would be difficult. This is why he suggested to Applicant that he consider cooperating with the State. However, Applicant did not want to cooperate.

This Court finds Applicant's testimony is not credible. On the other hand, this Court finds counsel's testimony highly credible and gives it great weight. This Court finds counsel was well-prepared for this case, made numerous motions in an attempt to keep out harmful evidence, and was put in a position of defending Applicant without a viable defense. This Court notes a

wide variance between Applicant's version of events surrounding the charges and the discussions Applicant had with Counsel. Based on the information Applicant provided to Counsel and the purported information that he did not provide to Counsel, this Court finds that Counsel's performance was not deficient.

Further, Applicant has not met his burden of proving prejudice. Aside from providing testimony from his co-defendant, which will be addressed below, Applicant failed to provide any evidence establishing prejudice from the alleged lack of investigation or preparation. Applicant also failed to show prejudice from counsel's alleged failure to inform Applicant of the State's evidence or witnesses. Accordingly, these allegations are denied. Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant is not entitled to relief where applicant failed to show how additional preparation would have any possible effect on trial).

Failure to investigate or utilize co-defendant Tivo Lee as a witness

Applicant alleges that counsel should have interviewed or called Tivo Lee as a witness. Applicant claims to not know Tivo Lee. Further, Applicant presented Lee as a witness, who claimed that Applicant had no involvement in the burglary. Lee testified that he has already pled guilty to the burglary charge, which is run concurrently with his conviction for voluntary manslaughter from Richland County that he is currently serving. Lee admitted at the PCR hearing that he no longer has pending charges from the incident and has nothing to lose from testifying.

Counsel testified that at the time of Applicant's trial, Lee's charges were still pending. Counsel testified that he contacted Lee's attorney and discussed the case with her. Lee's attorney never indicated that Lee would be willing or able to provide any helpful testimony in Applicant's

defense. Further, Applicant never indicated that he did not know who Lee was or that Applicant was not present at the burglary. Lee was identified as a suspect in the case based on Applicant's statement to law enforcement implicating Lee.

This Court is troubled by Lee's testimony and Applicant's decision to present this witness. This Court does not find Lee to be a credible witness and does not believe that his testimony at the PCR hearing is an accurate representation of what Lee would have been willing to testify to at trial, if he were to testify at all. Further, this Court finds Counsel's testimony on this issue to be highly credible and gives it great weight. This Court notes Counsel was in contact with Lee's attorney and that she never gave an indication that Lee could aid Applicant's defense. Finally, this Court notes that Counsel is not required to be clairvoyant and know that Lee, allegedly, would be a beneficial witness. Thornes v. State, 310 S.C. 306, 426 S.E.2d 764 (1993) (counsel not required to be clairvoyant and know that victim who gave a damaging statement to law enforcement would have provided beneficial testimony to his client).

This Court finds that Counsel was not deficient for failing to call Lee as a witness. Further, this Court finds that Lee's testimony would not have changed the outcome of trial, even if this Court were to believe that Lee would have provided this testimony at the time of trial. This Court does not believe Lee is a credible witness. This Court finds that Applicant has not met his burden of proving either prong of Strickland. Applicant's claim of after-discovered evidence concerning Lee's testimony will be discussed later.

Indictments

Applicant alleges that Counsel failed to discuss the indictments with Applicant and the possibility of a pre-trial motion concerning the indictments. Counsel testified that he did discuss

the indictments with Applicant, as well as the elements of the offense. Counsel moved to quash the armed robbery indictment based on the description of items stolen. Counsel did not consider there to be any defects in the indictments warranting an additional pre-trial motion. This Court agrees and finds that this claim is without merit. This Court finds that Applicant has not met his burden of proof regarding this allegation and has not met either prong of Strickland.

Failure to prepare Applicant to testify for Jackson v. Denno hearing

Applicant alleges Counsel failed to prepare him to testify during the Jackson v. Denno hearing. This allegation is without merit. Applicant alleges that law enforcement told him what to say and supplied the names of his co-defendants. Counsel testified that Applicant never told him that Applicant was coerced into making the statement or that law enforcement supplied him with the content. This Court finds Counsel's testimony credible and does not find Applicant's testimony credible. This Court finds that Applicant has failed to show Counsel's performance was deficient or that Applicant was prejudiced by an alleged deficiency. This Court denies this allegation.

Pawn receipt

Applicant alleges Counsel's performance was deficient for failing to move to suppress a pawn receipt. At trial, the testimony was that Applicant voluntarily provided law enforcement with a pawn receipt for items that were stolen from the residence. At the PCR hearing, Applicant claimed that he never gave law enforcement the pawn receipt. Counsel testified that Applicant never denied that he gave law enforcement the pawn receipt until the middle of trial, after the pretrial motions, when he handed Counsel a note.

Applicant's changing version of events and delayed disclosure of information were not

helpful to Counsel in presenting a defense. Further, this Court does not believe any suppression motion regarding the pawn receipt would likely be successful. Whether or not Applicant actually produced the pawn receipt or whether he was in possession of the pawn receipt was a question for the jury. Also, this Court simply finds Applicant's credibility too suspect to believe his exculpatory explanations as to the receipt. For Counsel and this Court, Applicant's version of events constitutes a moving target. Counsel's performance was not deficient, nor was Applicant prejudiced by any alleged deficiency. This allegation is denied.

Pre-trial motions

Applicant alleges that counsel failed to raise pre-trial motions on identification, seized evidence, and a statement made by Applicant to his aunt, Debra Meyers. These allegations are without merit. First, Counsel did move to suppress the in-court identifications and was unsuccessful. Applicant's argument is that Counsel should have argued this motion in more detail and utilized statements from victims to demonstrate that the identifications were tainted by law enforcement's conduct. Applicant also argues counsel's arguments on the identification were untimely. This Court disagrees with Applicant's assertion that rephrasing or augmenting the arguments counsel did present would have a reasonable probability of altering the result. This Court also would not that the Court of Appeals did review the identification and ruled on the merits, indicating a lack of prejudice from any possible preservation issues. Further, this Court finds counsel argued the motion to suppress the identification artfully and competently. See Yarborough v. Gentry, 540 U.S. 1, 6, 124 S.Ct. 1, 157 L.Ed.2d 1 (2003) ("[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). Counsel was not ineffective in this

regard and his performance in challenging the identifications did not fall below professional norms. Further, this Court finds that Applicant was not prejudiced by the alleged deficiencies of counsel.

Second, Applicant failed to show an argument not advanced by counsel in the suppression of evidence would have any likelihood of success at trial. Applicant failed to meet his burden of proof under Strickland as to this issue.

Finally, Counsel objected to Applicant's statement to Meyers on the grounds of hearsay, ~~and~~ ^{offered} ~~the matter~~ ^{but} ~~and~~ ^{to show motive} and the trial court found it was admissible, as it was not for the truth of asserted, and to show motive and knowledge. Meyers testified that Applicant, after having been given a ride by the victim, indicated that Applicant did not believe in banks and kept his money at home. This Court does not find counsel was ineffective in this regard. These allegations are all denied.

Failure to utilize inconsistent statements

Applicant alleges that Counsel was ineffective in utilizing inconsistent statements by the State's witnesses. This Court notes that Counsel conducted vigorous cross-examination of the State's witnesses and utilized written statements to this end. This Court finds that Counsel's performance was not deficient. Further, this Court finds that Applicant failed to prove any prejudice from the alleged deficiency that would be sufficient to alter the outcome of trial. This allegation is denied.

Failure to present a viable directed verdict argument

Applicant alleges counsel was ineffective for failing to offer a viable directed verdict argument. However, Applicant failed to offer a viable directed verdict argument in making this claim. Counsel testified that the evidence presented was sufficient for a judge to deny the motion

for directed verdict, but that he made a broadly based motion so the trial court could make the decision. This Court finds that Applicant failed to show that Counsel's performance was deficient and further finds that Counsel articulated valid trial strategy concerning this motion. Further, this Court finds that Applicant has completely failed to offer a viable alternative to Counsel's strategy that would have any likelihood of success. Accordingly, this Court finds that Applicant has failed to meet his burden of proving either prong of Strickland.

Inconsistent verdicts

Applicant alleges that Counsel was ineffective for failing to move for a new trial based on inconsistent verdicts. Counsel testified that he did not find the verdicts to be inconsistent. In particular, Counsel noted that Applicant was not present in the room when one of the victims was assaulted, which led to the ABWIK charge. And while the State's theory of the case included guilt under accomplice liability, Counsel noted that the jury was free not to accept this theory completely.

Further, the rule against inconsistent verdicts has been abolished. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). This Court finds counsel's performance is not deficient and that his professional judgment on this issue is sound. Additionally, as such a motion would not have any merit, this Court finds that Applicant was not prejudiced by the alleged deficiency. This allegation is denied.

Motion to reconsideration of sentence

Following the trial and sentencing hearing, Counsel filed a motion to reconsider the sentence. There was a significant delay in having this motion heard. However, Applicant indicated he wished to withdraw the motion and Counsel advised against him withdrawing the

motion. However, against Counsel's advice, Applicant withdrew the motion. Judge Nicholson found the withdrawal was freely and voluntarily made. This Court finds that Applicant failed to present any evidence that Counsel's performance was deficient. Counsel is not in control of the scheduling of motions and advised Applicant against withdrawal. Further, Applicant has failed to show prejudice in that he has failed to show any likelihood that he would have received a reduced sentence. Finally, Applicant waived the hearing against Counsel's advice. This Court finds that Applicant has failed to show that he did not freely and voluntarily waive his right to have the motion heard, as found by Judge Nicholson. This Court finds that Applicant has not met his burden of proving Counsel was ineffective.

Ineffective Assistance of Appellate Counsel

Applicant alleges he received ineffective assistance of appellate counsel. Applicant essentially argues that appellate counsel should have argued that the in-court identifications of Applicant by two of the victims should have been suppressed and that appellate counsel, who challenged the identification, should have framed the issue differently. This Court, in reviewing appellate counsel's brief, does not find that she rendered deficient performance. Appellate counsel advanced the theory that both victims' in court identification was made suggestive by law enforcement when law enforcement showed them clothes seized from Applicant. Applicant alleges that appellate counsel should have argued that the out-of-court identification of clothes was an identification of Applicant. This Court believes that framing this issue would not alter the result, since Applicant was not wearing the clothes when they were shown to the victims. This Court believes that notwithstanding Applicant's arguments, State v. Lewis, 354 S.C. 222, 580 S.E.2d 149 (2004) still controls the result, as Applicant was not identified by a suggestive

out-of-court procedure, but by a first-time in-court procedure. This Court finds appellate counsel's performance was within the range of professional norms and was not deficient. Additionally, this Court finds that Applicant was not prejudiced by the alleged deficiency. Accordingly, this Court denies this allegation.

Further, Applicant alleges that appellate counsel's performance was deficient for failing to raise the issue of whether the trial court erred in allowing the State to amend the indictment for armed robbery to include a description of items taken. At trial, counsel candidly admitted he was provided the SLED report that gave him notice of the items alleged to be taken, but did object to the amendment. Tr. pp. 148-150. However, the trial court properly granted the State's motion to amend the indictment. State v. Johnson, 314 S.C. 161, 165, 442 S.E.2d 191, 194 (Ct. App. 1994) (noting that the State is allowed to amend an indictment at trial so long as it does not alter the nature of the crime charged in the indictment). Since the issue is without merit, appellate counsel was not deficient nor was Applicant prejudiced by failure to raise this issue.

After-discovered evidence: Tivo's testimony

At the hearing, Applicant framed his co-defendant's testimony as after-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, 299 S.E.2d 854 (1983).

Granting a motion on after-discovered evidence is not favored. State v. Needs, 333 S.C.

134, 158, 508 S.E.2d 857, 869 (1998).

The credibility of newly discovered evidence is for the trial court to determine. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977). "In this post-trial setting, our jurisprudence recognizes the gate-keeping role of the trial court in making a credibility assessment." State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009). In the instant case, the PCR court fills the role of fact-finder when after-discovered evidence is raised as a collateral attack in a PCR application.

First, this Court does not believe that the co-defendant constitutes after-discovered evidence. Applicant was aware of the co-defendant's existence and counsel was in contact with co-defendant's counsel. Further, whether co-defendant would take the blame for the crime and concomitantly exonerate Applicant was information that was available at the time of trial. It is just doubtful, and unbelievable, that his co-defendant would have done so.

Further, as this Court noted above, this Court did not find the co-defendant's testimony credible or an accurate representation of what he would have testified to at trial. This Court finds the co-defendant, identified as a participant in Applicant's statement to law enforcement, would not have made a credible witness for the trial, even if he testified identically as he did at the PCR hearing. This Court does not find that his testimony would change the result if a new trial was held. Accordingly, this allegation is denied.

CONCLUSION

Based on 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



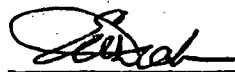
with prejudice.

This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on an applicant's behalf.

IT IS THEREFORE ORDERED:

1. The application for Post-Conviction Relief is denied with prejudice;
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 8th day of August, 2013.



Edgar W. Dickson
Presiding Judge
2nd Judicial Circuit

Orangeburg, South Carolina

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05-067

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

ARREST WARRANT NUMBER

DIRECT

THE STATE
vs.

ACTION OF GRAND JURY

James Allen Gunnells

Truebill

Folger
Date: 3/5/04

VERDICT

guilty

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410

CDR Code: 049

Class FEL-F

Forfeiture of Grand Jury
Date: 10-14-04

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

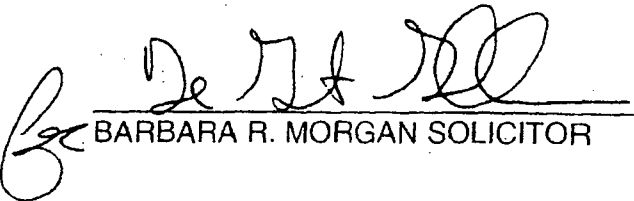
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

CRIMINAL CONSPIRACY, C/L CONSPIRACY DEFINED

The Defendant, James Allen Gunnells did in Bamberg County, on or about May 5, 2003, willfully and unlawfully unite, combine, conspire, confederate, agree and have tacit understanding with others for the purpose of committing the crime(s) of Armed Robbery and/or Assault and Battery with Intent to Kill, in violation of Section 16-17-410, 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.


BARBARA R. MORGAN SOLICITOR

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05-028

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

ARREST WARRANT NUMBER

3822182

THE STATE

VS.

JAMES ALLAN GUNNELLS

ACTION OF GRAND JURY

Trueball

[Signature]
Foreperson of Grand Jury

Date: 3/5/04

VERDICT

guilty

Indictment for

KIDNAPPING

SC Code: 16-03-910

CDR Code: 0095

Class FEL-A

[Signature] Grand 10-14-04
Foreperson of Petit Jury
ate:

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

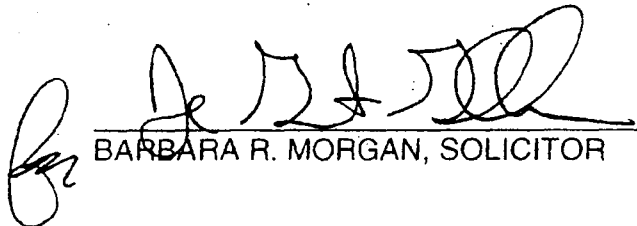
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

KIDNAPPING

That JAMES ALLAN GUNNELLS did in Bamberg County on or about May 5, 2003 unlawfully seize and confine the victim Eunice Ann Sease without authority of law, all in violation of §16-03-910 of 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.


BARBARA R. MORGAN, SOLICITOR

ARREST WARRANT

G-822182

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofBambergTHE STATE
againstAddress: Lowndesville, James AllenPhone: 7Sex: M Race: W Height: 5'7"

DL State:

Agency ORI #: 2500020000Prosecuting Agency: WCSProsecuting Officer: S/A George DarrellOffense: KidnappingOffense Code: 0095Code/Ordinance Sec: 16-3-910This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe 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 JAMES ALLEN GUNDELIS
on 6-13-03

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofBamberg

Personally appeared before me the affiant

being duly sworn deposes and says that defendant

did within this county and state on 5-5-03State of South Carolina (or ordinance of W County/ ☐ Municipality of Bamberg) violate the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE:

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts.

AFFIDAVIT

S/A George DarrellJAMES A. GUNDELIS

who

Kidnapping

SEE Attached Affidavit

Sworn to and subscribed before me
on 6-10-03

Signature of Affiant

Affiant's Address

Signature of Issuing Judge

Affiant's Telephone

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofBamberg

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 5-5-03 defendant JAMES A. GUNDELISdid violate the criminal laws of the State of South Carolina (or ordinance of W County/ ☐ Municipality of Bamberg) as set forth below:

DESCRIPTION OF OFFENSE:

KidnappingNow, 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

Judge's Telephone

Judge Code: 1010Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA**AFFIDAVIT****COUNTY OF BAMBERG**

OCA# 31-03-0046

Personally appeared before me, a magistrate of this County, one **GEORGE W. DARNELL, SLED**who first being duly sworn, deposes and says that **JAMES ALLAN GUNNELLS**

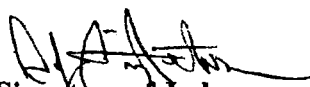
did within this County and State on the 5th Day of May 2003
 violate the criminal laws of the State of South Carolina in the following particulars:

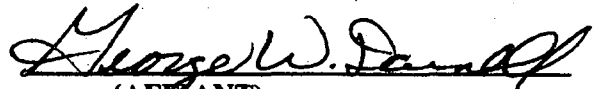
DESCRIPTION OF OFFENSE
KIDNAPPING
 VIOLATION OF SECTION 16-3-910

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on or about May 5, 2003, at approximately 11:38p.m., while at HALMAN EUGENE SEASE'S residence, located at _____ in the County of Bamberg, State of South Carolina the defendant **JAMES ALLAN GUNNELLS** and co-defendants did commit the offense of **KIDNAPPING**, in violation of section 16-3-910 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully, unlawfully, and feloniously restrict the movements of EUNICE ANN SEASE by tying her hands and feet leaving her helpless. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
 this 10th day of JUNE
 2003.


 Signature of Judge


 (AFFIANT)

Address: 5290 Rivers Ave., Suite 201
 N. Charleston, S. C. 29406
 Phone: 843-554-7396

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05-027

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

ARREST WARRANT NUMBER

1822181

THE STATE
vs.

ACTION OF GRAND JURY

true bill

JAMES ALLAN GUNNELLS

Representative of Grand Jury
date: 3-5-04

VERDICT

not guilty

Indictment for
KIDNAPPING

quies Grant 10-14-04

Deposition of Petit Jury
date:

SC Code: 16-03-910

CDR Code: 0095

Class FEL-A

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

KIDNAPPING

That JAMES ALLAN GUNNELLS did in Bamberg County on or about May 5, 2003 unlawfully seize and confine the victim Steve Sutton without authority of law, all in violation of §16-03-910 of 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.


BARBARA R. MORGAN, SOLICITOR

ARREST WARRANT

G-822181

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofBarndollarTHE STATE
against

Address:

Greenville, James Allen

Phone:

Sex: M Race: W Height: 5'7" Weight: 170DL State: SC DL:

DO

Agency Unit: SS005000

Prosecuting Agency:

Prosecuting Officer:

Offense:

Offense Code: 0095Code/Ordinance Sec: 16-3-910This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe 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 JAMES ALLEN GUNDELLE
on 5-13-83

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofGreenville

Personally appeared before me the affiant

being duly sworn deposes and says that defendant

did within this county and state on 5-5-83State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Barndollar) violate the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE:

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

AFFIDAVIT

Sgt. Ernest Barndollar

who

James A. Gundelle5-5-83State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Barndollar)KidnappingSEE ATTACHED AFFIDAVITSworn to and subscribed before me
on 5-5-83

Signature of Affiant

Affiant's Address:

Signature of Issuing Judge

(L.S.)

Affiant's Telephone

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofGreenville

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

If appearing from the above affidavit that there are reasonable grounds to believe that
on 5-5-83 defendant James A. Gundelle
did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Barndollar) as set forth below:

DESCRIPTION OF OFFENSE:

KidnappingNow, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address:

Judge's Telephone

Signature of Issuing Judge

Judge Code: 1021

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF BAMBERG

OCA# 31-03-0046

Personally appeared before me, a magistrate of this County, one **GEORGE W. DARNELL, SLED**who first being duly sworn, deposes and says that **JAMES ALLAN GUNNELLS**

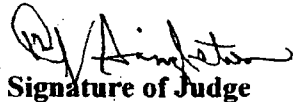
did within this County and State on the 5th Day of May 2003
 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
KIDNAPPING
 VIOLATION OF SECTION 16-3-910

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on or about May 5, 2003, at approximately 11:38p.m., while at HALMAN EUGENE SEASE'S residence, located at _____, S. C in the County of Bamberg, State of South Carolina the defendant **JAMES ALLAN GUNNELLS** and co-defendants did commit the offense of **KIDNAPPING**, in violation of section 16-3-910 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully, unlawfully, and feloniously restrict the movements of **STEVE SUTTON** by tying his hands and feet leaving him helpless. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
 this 10th day of June
 2003.


 Signature of Judge


 (AFFIANT)

Address: 5290 Rivers Ave., Suite 201
 N. Charleston, S. C. 29406
 Phone: 843-554-7396

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05-026

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

ARREST WARRANT NUMBER

G822180

THE STATE
vs.

JAMES ALLEN GUNNELLS

ACTION OF GRAND JURY

True bill

[Signature]

Foreperson of Grand Jury
Date: 3/5/04

VERDICT

guilty

Indictment for
KIDNAPPING

SC Code: 16-03-910
CDR Code: 0095
Class FEL-A

Teague Grant 10-14-04
Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

KIDNAPPING

That JAMES ALLEN GUNNELLS did in Bamberg County on or about May 5, 2003 unlawfully seize and confine the victim Hallman Sease without authority of law, all in violation of §16-03-910 of 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.


BARBARA R. MORGAN, SOLICITOR

ARREST WARRANT

G-822180

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofBarrowTHE STATE
againstAddress: Goodwells, James Allen 15Phone: SSSex: M Race: W Height: 5' 11" Weight: 178DL State: SC DL #DOB: 10-13-03 Agency ORI # 350052000Prosecuting Agency: BeesdProsecuting Officer: Sgt. Robert GoodwellsOffense: KidnappingCode/Ordinance Sec. 16-3-910 Offense Code: 2095This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe 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 James Allen Goodwells
on 6-13-03

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofBarrowPersonally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on 5-5-03State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Barrow)
in the following particulars:

DESCRIPTION OF OFFENSE:

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts

AFFIDAVIT

Signature of Affiant: Sgt. Robert Goodwells who

violates the criminal laws of the

KidnappingSEE Attached AffidavitSworn to and subscribed before me
on 6-10-03Signature of Affiant: James A. Goodwells
Affiant's Address: 5252 ...
Signature of Issuing Judge (L.S.): James A. Goodwells
Affiant's Telephone: ...

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofBarrow

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 5-5-03 defendant James A. Goodwells
did violate the criminal laws of the State of South Carolina (or ordinance of Barrow) as set forth below

DESCRIPTION OF OFFENSE:

KidnappingNow, 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.): James A. GoodwellsJudge's Address: ...Judge's Telephone: ...Judge Code: 6210Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF BAMBERG

OCA# 31-03-0046

Personally appeared before me, a magistrate of this County, one **GEORGE W. DARNELL, SLED**who first being duly sworn, deposes and says that **JAMES ALLAN GUNNELLS**

did within this County and State on the 5th Day of May 2003
 violate the criminal laws of the State of South Carolina in the following particulars:

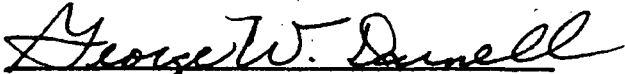
DESCRIPTION OF OFFENSE
KIDNAPPING
 VIOLATION OF SECTION 16-3-910

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on or about May 5, 2003, at approximately 11:38p.m., while at HALMAN EUGENE SEASE'S residence, located at S. C in the County of Bamberg, State of South Carolina the defendant **JAMES ALLAN GUNNELLS** and co-defendants did commit the offense of **KIDNAPPING**, in violation of section 16-3-910 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully, unlawfully, and feloniously restrict the movements of Halman Sease by tying his hands and feet leaving him helpless. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
 this 10th day of June
 2003.


 Signature of Judge


 (AFFIANT)

Address: 5290 Rivers Ave., Suite 201
 N. Charleston, S. C. 29406
 Phone: 843-554-7396

WITNESSES

Darrell - Sled

DOCKET NO. 2004-GS-05 - 025

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

March 8, TERM 2004

ARREST WARRANT NUMBER

G822166

THE STATE

vs.

James Allen Gunnells

ACTION OF GRAND JURY

March 11

Forfeiture of Grand Jury
Date: 3/5/04

VERDICT

Not guilty

LARCENY/GRAND, \$5000/MORE

Indictment for

SC Code: 16-13-30

CDR Code: 479

Class FEL-E

Requests Grant 10-14-04

Forfeiture of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

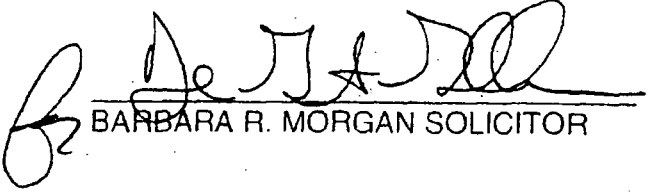
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

LARCENY/GRAND,\$5000/MORE

That James Allen Gunnells did in Bamberg County along with others, on or about May 05, 2003, feloniously take and carry away a 1994 Chevrolet truck valued at more than Five Thousand Dollars, belonging to Hallman Sease with intent to deprive the owner permanently of such property. All in violation of §16-13-30, 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.


BARBARA R. MORGAN SOLICITOR

ARREST WARRANT

G-822166

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of
 BAMBERG

 THE STATE
 against

GUNNELLS, JAMES ALLAN

Address

Phone

Sex: M

DL State

DOB:

Prosecuting Agency:

Prosecuting Officer:

Offense:

Code/Ordinance Sec:

 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of

 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 GUNNELLS, JAMES ALLAN
 on 6-13-03

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

DANNY J. SINGLETON

P O BOX 187

BAMBERG, SC 29003

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of
 BAMBERG

AFFIDAVIT

 Personally appeared before me the affiant
 being duly sworn deposes and says that defendant
 did within this county and state on 05/05/03

 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of
 BAMBERG

 in the following particulars:
 DESCRIPTION OF OFFENSE: GRAND LARCENY
 COMMON LAW

 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:

 SEE ATTACHED AFFIDAVIT
 SEE ATTACHED AFFIDAVIT

 Sworn to and subscribed before me
 on 6-10-03

 Signature of Affiant
 (L.S.)

 Signature of Issuing Judge
 Affiant's Telephone

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 BAMBERG

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 05/05/03 defendant GUNNELLS, JAMES ALLAN
 did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of BAMBERG) as set forth below:

 DESCRIPTION OF OFFENSE: GRAND LARCENY
 COMMON LAW

 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

Judge's Telephone

 Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF BAMBERG

OCA# 31-03-0046
INV. George W. Darnell, SLED

Personally appeared before me, a magistrate of this County, one S/A George W. Darnell
who first being duly sworn, deposes and says that JAMES ALLAN GUNNELLS

did within this County and State on the 5th day of May, 2003
violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
GRAND LARCENY OF A MOTOR VEHICLE,
COMMON LAW

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on May 5, 2003 at approximately 11:38 p.m. while at Ehrhardt, S.C. which is located in the County of Bamberg, State of South Carolina one James Allan Gunnells did commit the offense of **GRAND LARCENY OF A MOTOR VEHICLE**, in violation of the Common Law of the South Carolina Code of Laws of 1976, as amended. In that he did willfully, unlawfully, and feloniously take, steal, and drive away one 1994 Cheverolet Truck, Red in color South Carolina tag# valued at approximately \$ 7500.00 with the intent to permanently deprive the rightful owner, Ehrhardt Motor Co., Halman Sease. All against the law, peace, and dignity of the state of South Carolina.

Sworn to and Subscribed before me
this 10th day of June
2003.



Signature of Judge



(AFFIANT)

5290 Rivers Avenue, Suite 201
American Red Cross Bldg.
N. Charleston, S. C. 29406
Phone: 843-554-7396

WITNESSES

Darnell - Sled

DOCKET NO. 2004-GS-05 - 024

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

March 8, TERM 2004

ARREST WARRANT NUMBER

G822163

THE STATE

vs.

James Allen Gunnells

ACTION OF GRAND JURY

Truebill

Foreperson of Grand Jury
Date: 3/5/04

VERDICT

Not guilty

LARCENY/GRAND, \$5000/MORE

Indictment for

SC Code: 16-13-30

CDR Code: 479

Class FEL-E

Foreperson of Petit Jury
Date: 10-14-04

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

LARCENY/GRAND,\$5000/MORE

That James Allen Gunnells did, along with others, in Bamberg County on or about May 05, 2003, feloniously take and carry away a 2000 Dodge Truck valued at more than Five Thousand Dollars, belonging to Hallman Sease with intent to deprive the owner permanently of such property. All in violation of §16-13-30, 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.


BARBARA R. MORGAN SOLICITOR

ARREST WARRANT

G-822163

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
 BAMBERG

 THE STATE
 against

 GUNNELLS, JAMES ALLAN
 Address:

 Phone: _____ SSN: _____
 Sex: M Race: W Height: 5'07" Weight: 110
 Df State: SC DL # _____

 Df _____ Agency ORI #: SC0050000
 Prosecuting Agency: BAMBERG SHERIFF DEPT
 Prosecuting Officer: S/A GEORGE DARNELL
 Offense: GRAND LARCENY

 Code/Ordinance Sec. COMMON LAW Offense Code: 09B

 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 GUNNELLS, JAMES ALLAN
 on 6-13-03

 Signature of Constable/Law Enforcement Officer: for

RETURN WARRANT TO:

 DANNY J. SINGLETON
 P O BOX 187
 BAMBERG, SC 29003

 STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
 BAMBERG)

AFFIDAVIT

 Personally appeared before me the affiant S/A GEORGE DARNELL who
 being duly sworn deposes and says that 05/05/03 GUNNELLS, JAMES ALLAN the criminal laws of the
 did within this county and state on 05/05/03 BAMBERG the criminal laws of the

 State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of _____)
 in the following particulars: GRAND LARCENY
 DESCRIPTION OF OFFENSE: GRAND LARCENY (MOTOR VEH)
COMMON LAW

 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:

 SEE ATTACHED AFFIDAVIT
 SEE ATTACHED AFFIDAVIT

 Sworn to and subscribed before me
 on 6-10-03

 Signature of Affiant George Darnell

 Signature of Issuing Judge for (L.S.)

Signature of Issuing Judge _____ (L.S.)

Affiant's Telephone _____

 STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
 BAMBERG)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 05/05/03 defendant GUNNELLS, JAMES ALLAN
☒ County/ ☐ Municipality of BAMBERG) as set forth below:
 did violate the criminal laws of the State of South Carolina (or ordinance of _____)

 DESCRIPTION OF OFFENSE: GRAND LARCENY
COMMON LAW GRAND LARCENY (MOTOR VEH)

 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 for (L.S.)

Judge's Address _____

Signature of Issuing Judge _____

Judge's Telephone _____

 Judge Code: 626

Issuing Court _____

☒ Magistrate

☐ Municipal

☐ Circuit

DANNY J. SINGLETON

ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF BAMBERG

OCA# 31-03-0046
INV. George W. Darnell, SLED

Personally appeared before me, a magistrate of this County, one S/A George W. Darnell
who first being duly sworn, deposes and says that James Allan Gunnells

did within this County and State on the 5th day of May, 2003
violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
GRAND LARCENY OF A MOTOR VEHICLE,
COMMON LAW

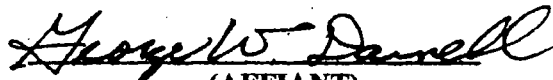
The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on May 5, 2003 at approximately 11:38 p.m. while at _____, S.C.
which is located in the County of Bamberg, State of South Carolina one James Allan Gunnells
did commit the offense of **GRAND LARCENY OF A MOTOR VEHICLE**, in violation of the
Common Law of the South Carolina Code of Laws of 1976, as amended. In that he did willfully,
unlawfully, and feloniously take, steal, and drive away one 2000 Dodge Truck, Red and Silver in
color South Carolina valued at approximately \$
14,000.00 with the intent to permanently deprive the rightful owner, Ehrhardt Motor Co., Halman
Sease. All against the law, peace, and dignity of the state of South Carolina.

Sworn to and Subscribed before me
this 10th day of Sept.
2003.



Signature of Judge


(AFFIANT)

5290 Rivers Avenue, Suite 201
American Red Cross Bldg.
N. Charleston, S. C. 29406
Phone: 843-554-7396

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05-022

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

March 8, TERM 2004

ARREST WARRANT NUMBER

G822161

THE STATE
vs.

JAMES ALLEN GUNNELLS

ACTION OF GRAND JURY

truebill

Foreperson of Grand Jury
Date: 3-5-04

VERDICT

guilty

Indictment for
ARMED ROBBERYSC Code: 16-11-0330
CDR Code: 0026
Class FEL-CV)Teague Grant 10-14-04
Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

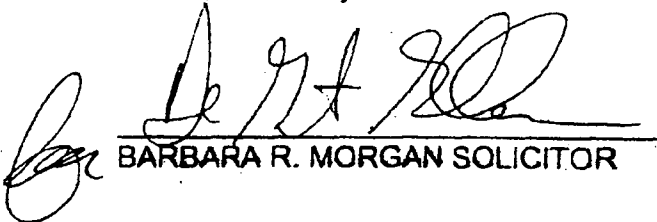
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

ARMED ROBBERY

That JAMES ALLEN GUNNELLS did, along with others, in Bamberg County on or about May 5, 2003, while armed with a deadly weapon, feloniously take from the person or presence of Hallman Sease, by means of force or intimidation, ^{jewelry 2003} goods or monies of Hallman Sease at his residence located at South Carolina, all in violation of §16-11-330, 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.


BARBARA R. MORGAN SOLICITOR

ARREST WARRANT

G-822161

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

BAMBERG

THE STATE

against

GUNNELLS, JAMES ALLAN

ID

Phone: SSN

Sex: M Race: W Height: 5' 07" Weight: 178
DL State: SC DL #

DOB: Agency ORI #: SC00510000

Prosecuting Agency: BAMBERG SHERIFF DEPT

Prosecuting Officer: S/A GEORGE DARNELL

Offense: ARMED ROBBERY

Offense Code: 026

Code/Ordinance Sec. 16-11-330

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe 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 GUNNELLS, JAMES ALLAN
on 6-13-03

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

DANNY J. SINGLETON

P O BOX 187

BAMBERG, SC 29003

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

BAMBERG

Personally appeared before me the affiant

S/A GEORGE DARNELL

GUNNELLS, JAMES ALLAN

who

being duly sworn deposes and says that

05/05/03

did within this county and state on

BAMBERG the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of

BAMBERG

DESCRIPTION OF OFFENSE: ARMED ROBBERY
16-11-330I 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:
SEE ATTACHED AFFIDAVIT
SEE ATTACHED AFFIDAVIT

Sworn to and subscribed before me

Signature of Affiant

6-9-03

Affiant's Address:

Signature of Issuing Judge

(L.S.)

Affiant's Telephone

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

BAMBERG

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 05/05/03 defendant GUNNELLS, JAMES ALLAN
did violate the criminal laws of the State of South Carolina (or ordinance of☒ County/ ☐ Municipality of BAMBERG) as set forth below:
DESCRIPTION OF OFFENSE: ARMED ROBBERY

16-11-330

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

Judge's Telephone

Judge Code: 6-26

Issuing Court:

☒ Magistrate☐ Municipal☐ CircuitDANNY J. SINGLETON
ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF BAMBERG

OCA# 31030046

SLED AGENT GEORGE W. DARNELL

Personally appeared before me, a magistrate of this County, one S/AGeorge W. Darnell who, first being duly sworn, deposes and says that JAMES ALLAN GUNNELLS did within this County and State on the 5th day of May, 2003 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

ARMED ROBBERY

VIOLATION OF SECTION

16-11-330

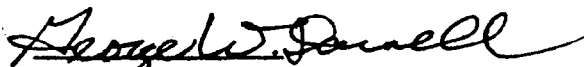
The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts.

That on May 5, 2003 at approximately 11:38 p.m. while at the Halman Sease residence, located at 983 Ashton Road, Ehrhardt, S.C. in the County of Bamberg, State of South Carolina one James Allan Gunnells, did commit the offense of ARMED ROBBERY in violation of section 16-11-330 of the South Carolina Code of Laws of 1976. In that the defendant did willfully, unlawfully, and feloniously while armed with a Gun rob Halman Sease of his jewelry which he, James Allan Gunnells had in his possession when he was arrested valued at app: \$2000.00 and \$350.00 in currency. All against the law, peace, and dignity of the State of South Carolina.

Sworn to and Subscribed before me

this 9th day of June 03


Signature of Judge


(AFFIANT)

5290 Rivers Avenue
American Red Cross Building
Suite 301
N. Charleston, S. C. 29406
Phone: 843-554-7396

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05-021

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

ARREST WARRANT NUMBER

G822156

THE STATE
vs.

ACTION OF GRAND JURY

James Allen Gunnells

Truckell

Foreperson of Grand Jury
Date: 3/5/04

VERDICT

guilty

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT

CRIME

SC Code: 16-23-490

CDR Code: 549

Class FEL-F

For person of Petit Jury
10-14-04

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That James Allen Gunnells did, along with others, in Bamberg County on or about May 5, 2003, while committing the crime of armed robbery, a crime of violence, have in his possession a handgun, shotgun or rifle, all in violation of Section 16-23-490, 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.


BARBARA R. MORGAN SOLICITOR

ARREST WARRANT

G-822156

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofBambergTHE STATE
againstAddress: Buddell's James AllenPhone: SSN Sex: M Race: W Height: 5'11" Weight: DL State: SC DL DOB: Agency OR Prosecuting Agency: BSCBProsecuting Officer: S/A George BuddellOffense: Possession of Firearm During Commission of Violent CrimeCode/Ordinance Sec. 16-33-A90 Offense Code: 1245This 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 JAMES ALLEN GUNNELLS
on 6-13-03Signature of Constable/Law Enforcement Officer RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofBambergPersonally appeared before me the affiant S/A George Buddell
being duly sworn deposes and says that defendant James A. Gunnells
did within this county and state on 5-5-03State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Bamberg)
in the following particulars:
DESCRIPTION OF OFFENSE: Possession of Firearm During Commission of Violent CrimeI 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:

SEE Attached Affidavit

AFFIDAVIT

Sworn to and subscribed before me
on 6-9-03Signature of Issuing Judge (L.S.)Signature of Affiant George A. Buddell
Affiant's Name
Affiant's Telephone

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality ofBamberg

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 5-5-03 defendant James A. Gunnells
did violate the criminal laws of the State of South Carolina (or ordinance of Bamberg) as set forth below:DESCRIPTION OF OFFENSE: Possession of Firearm During Commission of Violent CrimeNow, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.Judge's Address: Signature of Issuing Judge (L.S.)Judge Code: 624Judge's Telephone Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF BAMBERG

OCA# 310030046

Personally appeared before me, a magistrate of this County, one S/A George W. Darnell (SLED) who, first being duly sworn, deposes and says that (name of the defendant)

JAMES ALLAN GUNNELLS

did within this County and State on 5th day of May 2003, violate the criminal laws of the State of South Carolina in the following particulars:

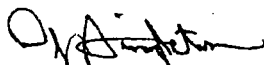
DESCRIPTION OF OFFENSE

POSSESSION OF A FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME
VIOLATION OF SECTION 16-23-490

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on or about May 5, 2003 at app: 11:38 p.m JAMES ALLAN GUNNELLS along with co-defendants did violate section 16-23-490 of the South Carolina Code of Laws of 1976, as amended, to wit: **POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME**. In that the defendant did willfully, unlawfully and feloniously have in his possession and under his control, firearms while committing the crimes of Burglary 1st.degree and Armed Robbery at the residence of Halman Eugene Sease located a
All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 9th day of June
2003.


Signature of Judge


(AFFIANT)

5290 Rivers Avenue Suite 201
American Red Cross Bldg.
N. Charleston, S. C. 29406
Phone: (843) 554-7396

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05-020

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

MARCH 8, TERM 2004

ARREST WARRANT NUMBER

G822151

THE STATE

vs.

JAMES ALLEN GUNNELLS

ACTION OF GRAND JURY

Truebill

Folgerperson of Grand Jury
Date: 3/5/04

VERDICT

Not guilty

Indictment for

ASSAULT AND BATTERY WITH
INTENT TO KILL

SC Code: 16-3-620

CDR Code: 014

Class FEL-C(V)

Request Grant 10-14-04

Folgerperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

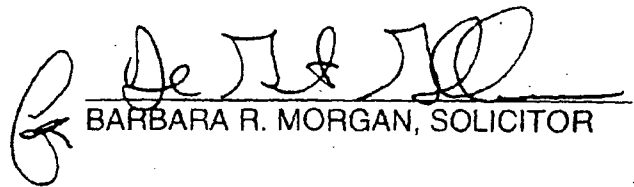
INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That JAMES ALLEN GUNNELLS did, along with others, in Bamberg County on or about May 5, 2003, with malice aforethought commit an assault and battery upon one Steve Sutton with intent to kill the said victim. All in violation of §16-03-620 of 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.


BARBARA R. MORGAN, SOLICITOR

ARREST WARRANT

G-822151

STATE OF SOUTH CAROLINA

☒ County of BAMBERG Municipality of BAMBERG
THE STATE
against

GUNNELLS, JAMES ALLAN

Phone: _____ SSN: _____

Sex: M Race: W Height: 5'07" Weight: 178DOB: 01 Agency ORI #: SC00050000Prosecuting Agency: BAMBERG SHERIFF DEPTProsecuting Officer: S/A GEORGE DARNELLOffense: A&B WITH INT. TO KILCode/Ordinance Sec. 16-3-620 Offense Code: 014This 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 GUNNELLS, JAMES ALLAN
on 6-13-03

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:

DANNY J. SINGLETON

P O BOX 187

BAMBERG, SC 29003

STATE OF SOUTH CAROLINA
☒ County of BAMBERG Municipality of BAMBERG

AFFIDAVIT

Personally appeared before me the affiant S/A GEORGE DARNELL whobeing duly sworn deposes and says that defendant GUNNELLS, JAMES ALLAN whodid within this county and state on 05/05/03 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of BAMBERG)in the following particulars: A&B WITH INT. TO KILDESCRIPTION OF OFFENSE: A&B WITH INT. TO KIL

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:

SEE ATTACHED AFFIDAVIT
SEE ATTACHED AFFIDAVITSworn to and subscribed before me _____
6-10-03 Signature of Affiant George Darnell

Affiant's Address _____

Signature of Issuing Judge _____ (L.S.)

Affiant's Telephone _____

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of BAMBERG

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 05/05/03 defendant GUNNELLS, JAMES ALLANdid violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of BAMBERG) as set forth belowDESCRIPTION OF OFFENSE: A&B WITH INT. TO KIL
16-3-620Now, 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 P O BOX 187Judge Code: 626 Judge's Telephone _____Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

DANNY J. SINGLETON

ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF ORANGEBURG

OCA# 31-03-0046

SLED AGENT GEORGE W. DARNELL

Personally appeared before me, a magistrate of this County, one GEORGE W. DARNELL who being duly sworn, deposes and says that JAMES ALLAN GUNNELLS did within this County and State on the 5th day of May 2003 did violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

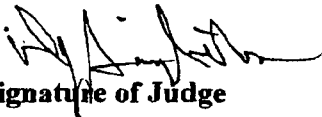
ASSAULT AND BATTERY WITH INTENT TO KILL

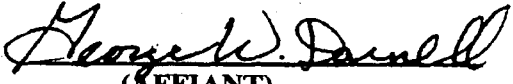
16-3-620

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on May 5, 2003 at approximately 11:38 p.m., while at Halman Eugene Sease's residence, at t, S. C., in Bamberg County, State of South Carolina the aforesaid, one JAMES ALLAN GUNNELLS, along with co-defendants did commit the offense of ASSAULT AND BATTERY WITH INTENT TO KILL, in violation of section 16-3-620 of the South Carolina Code of Laws of 1976, as amended. In that he did willfully and feloniously beat STEVE SUTTON, a resident at the Sease residence in the head with the butt of a pistol threatening his life to tell where the cash money was in the residence while they were committing the offense of Armed Robbery. All this done against the form of the Statute and against the peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 10th day of June
2003


Signature of Judge


(AFFIANT)

5290 Rivers Ave. Suite 201
American Red Cross Bldg.
N. Charleston, S. C. 29406
843-554-7396

WITNESSES

Darnell - S.L.E.D.

DOCKET NO. 2004-GS-05 - 019

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

March 8, TERM 2004

ARREST WARRANT NUMBER

G822117

THE STATE
vs.

ACTION OF GRAND JURY

True bill

JAMES ALLEN GUNNELLS

Foreperson of Grand Jury
Date: 3/5/04

VERDICT

Guilty

Indictment for
BURGLARY IN THE FIRST DEGREE

SC Code: 16-11-311(A)(3)

CDR Code: 079

Class FEL-EXM(V)

Requester Grant
Foreperson of Petit Jury
Date: 10/14/04

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT

At a Court of General Sessions, convened on March 8, 2004 the Grand Jurors of Bamberg County present upon their oath:

BURGLARY IN THE FIRST DEGREE

That JAMES ALLEN GUNNELLS did, along with others, in Bamberg County on or about May 05, 2003, willfully and unlawfully enter the dwelling of Hallman Sease located at , South Carolina, without consent and with the intent to commit a crime therein and the Defendant did enter while armed with a firearm and did enter in the nighttime, all in violation of §16-11-311, *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.


BARBARA R. MORGAN, SOLICITOR

ARREST WARRANT

G-822117

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

BAMBERG

THE STATE
against

GUNNELLS, JAMES ALLAN

Address:

Phone: _____

Sex: M Race: W Hgt: 5' 10" 7" Wght: 178

DL State: SC MI

DO _____ Agency ORI #: SC00510000

Prosecuting Agency: BAMBERG SHERIFF DEPT

Prosecuting Officer: S/A GEORGE DARNELL

Offense: BURGLARY 1ST DEGREE

Code/Ordinance Sec. 16-11-311 Offense Code: 039E

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 GUNNELLS, JAMES ALLAN
on 05/05/03
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

DANNY J. SINGLETON
P O BOX 187
BAMBERG, SC 29003

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

BAMBERG

AFFIDAVIT

Personally appeared before me the affiant S/A GEORGE DARNELL

being duly sworn deposes and says that defendant GUNNELLS, JAMES ALLAN

did within this county and state on 05/05/03 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of BAMBERG)

in the following particulars:
DESCRIPTION OF OFFENSE: BURGLARY 1ST DEGREE
16-11-311

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:
SEE ATTACHED AFFIDAVIT
SEE ATTACHED AFFIDAVIT

Sworn to and subscribed before me
on 05-05-03

Signature of Affiant
George D. Darnell

Affiant's Address

Signature of Issuing Judge (L.S.)

Affiant's Telephone 602-0000

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

ARREST WARRANT

BAMBERG

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 05/05/03 defendant GUNNELLS, JAMES ALLAN

☒ County/ ☐ Municipality of BAMBERG) as set forth below:

DESCRIPTION OF OFFENSE: BURGLARY 1ST DEGREE

16-11-311

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
Judge's Telephone
Issuing Court, ☒ Magistrate ☐ Municipal ☐ Circuit

DANNY J. SINGLETON
ORIGINAL

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF BAMBERG

OCA# 31030046
INV. DARNELL, G. W., SLED

Personally appeared before me, a magistrate of this County, one S/a George W. Darnell
who first being duly sworn, deposes and says that

James Allan Gunnells

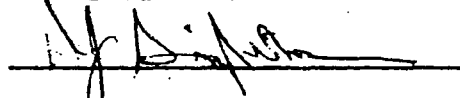
did within this County and State on the 5th Day of May
2003 violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE
BURGLARY, FIRST DEGREE
VIOLATION OF SECTION 16-11-311

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on May 05, 2003, at approximately 11:38 pm, while at [redacted] located within the County of Bamberg, State of South Carolina, the defendant, one James Allan Gunnells, did commit the offense of **BURGLARY, FIRST DEGREE**, in violation of section 16-11-311 of the South Carolina Code of Laws of 1976, as amended. In that the defendant, did willfully, unlawfully, and feloniously force entry into the aforesaid location, without the owners consent; with the intent to commit a crime therein. Facts to establish the aforesaid are on the above the above date James Allan Gunnells along with Co- Defendants did kick the front door of the residence of Hallman Sease armed with a handgun and did commit an armed robbery therein. James Allan Gunnells along with Co- Defendants stole two trucks from the residence of Hallman Sease. These trucks were recovered approximinatly 5 miles from the residence of Hallman Sease. One of the said trucks belonged to a resident of the Sease home, Steve Sutton. Investigation revealed that a Jensen Amplifier was stole from Sutton's truck. Sutton furnished a serial number for the amplifier. The serial number is as follows: MA0201005628. The amplifier was recovered from the First Cash Pawnshop located at [redacted] Columbia, SC. The amplifier was pawned by above defendant on May 22, 2003. Witnesses to prove the same. All against the law, peace, and dignity of the state of South Carolina.

Sworn to and Subscribed before me
this 4th day of June 2003


Signature of Judge


(AFFIANT)

5290 River's Ave, Suite 201
AmericanRedCrossBldg.
N. Charleston, S. C. 29406
Phone: 843-554-7396

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

James Gunnells, 305475,

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO.
2010-CP-05-072MOTION AND ORDER INFORMATION
FORM AND COVER SHEETFILED
BAMBERG COUNTY
JAMES D. HERS
CLERK OF COURT
BAMBERG, SC
JAN 18 PM 12:01

Plaintiff's Attorney:
Tricia A. Blanchette, Bar No. 74904
Address:
PO Box 12725
Columbia, SC 29211
phone: 803-988-0008 fax: 803-988-8070
e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:
Mary S. Williams, Bar No.
Address:
PO Box 11549
Columbia, SC 29211
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Amendment to Application for Post Conviction Relief

Estimated Time Needed: 4 hours Court Reporter Needed: ☒ YES / ☐ NO**SECTION II: Motion/Order Type**

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

January 11, 2012

Date submitted

SECTION III: Motion Fee☐ PAID - AMOUNT:

- ☒ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support
 (check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
 reduced to writing from motion made in open court per judge's instructions
 Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ **MOTION FEE COLLECTED:** _____
☐ **CONTESTED - AMOUNT DUE:** _____

STATE OF SOUTH CAROLINA)

COUNTY OF BAMBURG)

James Gunnells, #305475,)

v.)

State of South Carolina,
Respondent.)IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2010-CP-05-0072

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEFFILED
BAMBERG COUNTY
2012 JAN 13 PM 12:01
JAMES B. HIER
CLERK OF COURT
BAMBERG, SC

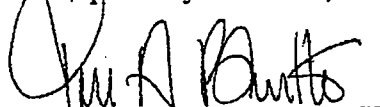
The Applicant, by and through his Attorney, Tricia A. Blanchette, would amend his Application for Post Conviction Relief filed on April 5, 2010, by adding the following specific allegations to his original allegation of ineffective assistance of trial counsel:

1. Ineffective assistance of trial counsel for failure to prepare and investigate prior to trial, including failure to communicate and prepare Applicant for trial.
2. Ineffective assistance of trial counsel for failure to investigate and utilize witnesses, specifically, co-defendant Tivo Lee.
3. Ineffective assistance of trial counsel for failure to prepare and effectively present pre-trial motions on the Applicant's behalf. Specifically, but not limited to the following:
 - a. Failure to discuss indictments and pre-trial motion regarding sufficiency of the indictment with Applicant;
 - b. Failure to prepare Applicant to testify for Jackson v. Denno hearing;
 - c. Failure to discuss and properly present a motion to suppress pawn receipt;
 - d. Failure to raise pre-trial motions on matters such as identification, suppression of items taken during search, and suppression of comments allegedly made by Applicant to Debra Meyers.
4. [Ineffective assistance of trial counsel for failure to inform Applicant of the State's evidence and witnesses against him] Failure to make necessary objections and effectively utilize inconsistent written statements during the testimony of the victims and State's lay witnesses.
5. Ineffective assistance of trial counsel for failure to properly argue the suppression of Applicant's identification by the victim's through the

identification of clothing items identified by law enforcement as belonging to Applicant. Failure to raise suggestive and improper conduct by law enforcement.

6. Ineffective assistance of trial counsel for failure to present a viable directed verdict argument.
7. Ineffective assistance of trial counsel for failure to move for a new trial pursuant to the inconsistent jury verdicts in light of the charges being brought under the legal theory of "hand of one is the hand of all".
8. Ineffective assistance of counsel for failure to have the Motion for Reconsideration of Sentence heard in a timely manner and failure to communicate with Applicant and prepare him for said hearing. Failure to prepare an argument regarding the inconsistent verdicts under "hand of one is the hand of all", the conspiracy verdict and the identification of Applicant for the court's reconsideration. Failure to ensure that Applicant's withdrawal of said Motion was knowingly and voluntarily entered.
9. Ineffective assistance of appellate counsel for failure to properly raise the identification issue on appeal and failure to respond to the State's argument on appeal.
10. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal, including but not limited to pre-trial motions, trial objections and motions.
11. Pursuant to Rule 15(b), SCRCP, the Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

Respectfully submitted,



Tricia A. Blanchette
Attorney for the Applicant
Post Office Box 12725
Columbia, South Carolina 29211

January 11, 2012
Columbia, SC

STATE OF SOUTH CAROLINA)

COUNTY OF BAMBERG)

James Gunnells, 305475,
Applicant,)

v.)

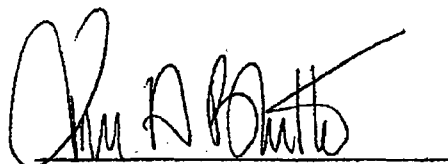
State of South Carolina,
Respondent.)IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2010-CP-05-072

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for the Applicant, hereby certify that I placed in the United States Mail this 11th day of January 2012, a copy of an Amendment to Application for Post Conviction Relief, to Mary Williams of the Attorney General's Office, at:

Office of the Attorney General
ATT: Mary Williams, Ast. AG
P.O. Box 11549
Columbia, SC 29211-1549



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008
Attorney for the Applicant

January 11, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BAMBERG	)	SECOND JUDICIAL CIRCUIT
	)	
James Gunnells, #305475,	)	2010-CP-05-0072
Applicant,	)	
v.	)	
	)	MEMORANDUM OF LAW
State of South Carolina,	)	
<u>Respondent.</u>	)	

This matter comes before the Court by way of an Application for Post Conviction Relief filed on April 5, 2010. On January 13, 2012, Applicant, through counsel, submitted an Amendment to Application for Post Conviction Relief. An evidentiary hearing was convened on January 27, 2012 at the Aiken County Courthouse in front of the Honorable Edgar W. Dickson. The Applicant was present and was represented by Tricia A. Blanchette, Esquire. The Respondent was represented by Mary S. Williams, Assistant Attorney General.

At the conclusion of the evidentiary hearing, PCR counsel informed the Court that she had cases to submit for the Court's review, along with an oral argument on several legal issues contained in Applicant's Amendment. Thereafter, PCR counsel briefly provided an argument, which is addressed in more detail below.

DISCUSSION OF THE LAW ADDRESSED AT THE EVIDENTIARY HEARING

At the conclusion of the evidentiary hearing, PCR counsel provided brief argument on the following issues, contained in the Amendment: 1) Ineffective assistance of trial counsel for failure to properly argue the suppression of Applicant's identification by the victim's through the identification of clothing items identified by law enforcement as belonging to Applicant. Failure to raise suggestive and improper conduct by law enforcement 2) Ineffective assistance of trial counsel for failure to move for a new trial pursuant to the inconsistent jury verdicts in light of the charges being brought under the legal theory of "hand of one is the hand of all;" 3) Ineffective

assistance of counsel for failure to have the Motion for Reconsideration of Sentence heard in a timely manner and failure to communicate with Applicant and prepare him for said hearing. Failure to prepare an argument regarding the inconsistent verdicts under "hand of one is the hand of all", the conspiracy verdict and the identification of Applicant for the court's reconsideration. Failure to ensure that Applicant's withdrawal of said Motion was knowingly and voluntarily entered; 4) Ineffective assistance of appellate counsel for failure to properly raise the identification issue on appeal and failure to respond to the State's argument on appeal.

Several of the above stated issues are derived from the identification of Applicant by the victims in their second statements and at trial. Applicant through the trial transcript and evidentiary hearing exhibits explained that Archie Steven Sutton gave a written statement on May 7, 2003 and June 11, 2003. In his first statement, Mr. Sutton did not mention a third person nor did he mention seeing white legs, which he testified to on direct. Transcript pp. 223, 226, 232-9. Only after Applicant was arrested on June 11, 2003, did Mr. Sutton provide a second statement with the details given in court. Furthermore, in the second statement Mr. Sutton admitted that he was told by police that the clothes he viewed belonged to Applicant before he made his identification of the clothes or of Applicant by name. In support of his argument of ineffective assistance of counsel, Applicant and PCR counsel explained that trial counsel made no motion to suppress the identification of the Applicant through the clothing items prior to trial, made no objections during Mr. Sutton's testimony and failed to utilize the second statement in his cross-examination of Mr. Sutton.

Turning to the statements and testimony of Halman Sease, Applicant explained that Mr. Sease gave two statements, dated May 7, 2003 and June 11, 2003, to law enforcement. In his first statement, Mr. Sease described only two perpetrators and did not mention a third white male

until his second statement given after Applicant's arrest. Transcript p. 307-9. After Mr. Sease testified about a white male with red shorts that took his jewelry, trial counsel moved to suppress or exclude the in court identification of Applicant. Transcript pp. 257, 260, 272. Trial counsel argued that the in court identification was tainted since the pre-court identification process was impermissibly suggestive. Transcript p. 274. He argued that Mr. Sease only identified Applicant after he was told by law enforcement that clothes were taken from Applicant matching his description. Transcript pp. 273-4. When asked by the trial court, counsel acknowledged that there was not a photo line-up but Mr. Sease identified Applicant by name in his statement and to Debra Meyers (trial witness and Applicant's aunt). Transcript pp. 276-77. Even after being asked for any further exhibits, counsel failed to introduce the statements of Mr. Sease for the court's consideration. Transcript p. 277-8. During his in camera testimony, Mr. Sease recalled picking out a hat and shorts from clothes that he was told were taken from Applicant when he was arrested. Transcript pp. 286-7. He readily admitted that he had not identified Applicant to law enforcement prior to being informed that Applicant was arrested with the clothes he was shown by law enforcement. Transcript p. 287. At the conclusion of the in camera testimony, the trial court denied Applicant's motion. Transcript p. 288. On cross-examination, Mr. Sease admitted that law enforcement told him that the clothing items were taken from Applicant and he only identified Applicant to law enforcement after viewing the clothes. Transcript pp. 310-11.

On appeal, Lanelle C. Durant submitted a merits brief, which argued: "The trial court erred in failing to suppress Sease's identification of Appellant where the identification was suggestive and unreliable and where the error was harmless." In support of this argument, appellate counsel argued pursuant to Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375 (1972) that the identification should have been suppressed. After conceding that State v. Lewis, 354 S.C. 222,

580 S.E.2d 149 (2004), held that Biggers was not applicable to a first time in court identification, counsel errantly argued "the State treated the identification of the clothing worn by Gunnells as it would the identification of a person since the victim Sease did not see the robber's face."

Appellant's Brief p. 7.

In response, the State's brief focused on Lewis and relied upon a long line of cases to support their argument that clothing is mass produced and presents no inherent risk of misidentification. Respondent's Brief p. 12-13. Unfortunately, appellate counsel failed to distinguish the cases relied upon by Respondent since those cases involved the identification of vehicles, weapons and a camper – not clothing. The South Carolina Court of Appeals affirmed pursuant to Lewis, which was upheld by the South Carolina Supreme Court.

By way of his Amendment and as argued at the evidentiary hearing, Applicant submits that trial and appellant counsel were ineffective for failing to properly argue that the Mr. Sutton and Mr. Sease identified Applicant through their second statements only after the highly suggestive viewing of the clothing items. Prior to the highly suggestive identification of the clothing that resulted in the identification of Applicant via written statements, the victims had provided no evidence of probative value to implicate Applicant. PCR counsel argued that it is well established that the chance of misidentification is heightened and fairness is called into question when law enforcement needlessly informs a victim that a person has been arrested or there is evidence connecting a person to a crime. See Brooks v. Indiana, 560 N.E.2d 49 (Sup. Ct. IN 1990) and Simmons v. United States, 390 U.S. 377, 88 S.Ct. 967 (1968). Here, both victim witnesses admitted that they were informed that the clothing they were shown was obtained from James Gunnells when he was arrested. Thereafter, both victim witnesses provided a second statement identifying Applicant, an identification clearly omitted in their first statements.

Unfortunately, both trial and appellate counsel failed to argue that the identification was not a mere identification of mass produced clothing but was an out of court written identification of Applicant which was tainted by suggestive law enforcement procedures. As a result, both the trial and appellate courts found that Biggers does not apply to a prior out of court identification and the actual issue was not ruled upon by either court.

Unlike the instant case, in State v. Byers, 392 S.C. 438, 710 S.E.2d 55 (2011), defense counsel moved to strike a co-defendant's testimony implicating defendant when co-defendant testified that he knew defendant was involved from reviewing police reports and another co-defendant's statement. On appeal, the South Carolina Supreme Court found that it was prejudicial error to admit the testimony identifying defendant since it reasonably affected the outcome of the trial. Id. at 448, 710 S.E.2d 60. Applicant argues that trial and appellate counsel's failure to properly address and argue the issue involving the suggestive out of court identification of Applicant reasonably affected the outcome of his trial.

Turning to the remaining issues that were listed as follows: 1) Ineffective assistance of trial counsel for failure to move for a new trial pursuant to the inconsistent jury verdicts in light of the charges being brought under the legal theory of "hand of one is the hand of all," and 2) Ineffective assistance of counsel for failure to have the Motion for Reconsideration of Sentence heard in a timely manner and failure to communicate with Applicant and prepare him for said hearing. Failure to prepare an argument regarding the inconsistent verdicts under "hand of one is the hand of all", the conspiracy verdict and the identification of Applicant for the court's reconsideration. Failure to ensure that Applicant's withdrawal of said Motion was knowingly and voluntarily entered. These issues were addressed at the evidentiary hearing in connection

with the conspiracy charge and the state's pursuit of the case under the hand of one is the hand of all legal theory.

As to the conspiracy charge, the State explained during closing argument that conspiracy requires two or more people and Applicant talked to his cousin and conveyed the information to Tivo Lee. Transcript p. 436. The State surmised that but for Applicant, Tivo Lee would not have been in Bamberg. Interestingly, neither Applicant's cousin nor Tivo Lee were called as witnesses by the State at trial. At the evidentiary hearing, Tivo Lee was called as a witness for Applicant. Mr. Lee unequivocally testified that Applicant was not involved in the crimes at issue and he obtained the information needed to commit the crimes without the assistance of Applicant. Nevertheless, trial counsel allowed the State to argue that Mr. Lee could not have committed the crimes without Applicant even though he had not investigated or attempted to utilize the testimony of Mr. Lee. Testimony, heard by this Court, that amounts to a confession and exculpatory evidence for Applicant. Regarding Mr. Lee's confession to this Court, the Supreme Court of the United States has held:

A confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him. The admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so.

Arizona v. Fulminante, 499 U.S. 279, 296, 111 S.Ct. 1246, 1257 (1991) (Internal citations and punctuation omitted). See Johnson v. Catoe, 345 S.C. 389, 401, 548 S.E.2d 587, 593 (2001) (Pleicones, J., dissenting).

To prove a conspiracy, the State must show two or more people, which can be unnamed, intended to act together for their shared mutual benefit within the scope of the conspiracy charged. State v. Crawford, 362 S.C. 627, 608 S.E.2d 886 (Ct. App. 2005). Even though it is

not required that one be found guilty of the completed act to be found guilty of conspiracy, it is interesting that Applicant was not found guilty of the Assault and Battery with Intent to Kill, which was included in the conspiracy charge. Applicant submits that it is obvious from the jury's verdict that they did not accept the State's arguments in total and Applicant submits that it was highly prejudicial when counsel failed to specifically address the State's unsupported arguments regarding the conspiracy that took place between Applicant's cousin, Applicant and Tivo Lee. Furthermore, Applicant submits that counsel's failure to investigate Tivo Lee's position and/or utilize his testimony was prejudicial and highly outcome determinative.

Turning to the State's case under the hand of one theory, Applicant's indictment alleged that he "along with others" committed the offenses of Burglary, First Degree, Assault and Battery with Intent to Kill (Steve Sutton), Possession of a Weapon during the Commission of a Violent Crime, Armed Robbery, Grand Larceny (Dodge truck), Grand Larceny (Chevy Truck), Kidnapping (Hallman Sease), Kidnapping (Steve Sutton), and Kidnapping (Eunice Sease). Throughout the trial, it was clear that the State was proceeding on these charges under the legal theory of hand of one is the hand of all. During the State's closing argument, the State informed the jury that the kidnappings and armed robbery all occurred at the same time, referred to "they" for all the crimes, argued under hand of one that Applicant was guilty of committing all the crimes, and conceded that Applicant could only steal one truck but was guilty of stealing both. Transcript pp. 437, 441, 444-46. Despite making this argument, the jury returned not guilty verdicts on the charges of Assault and Battery with Intent to Kill, Grand Larceny (two counts), and Kidnapping (Steve Sutton).

It is well established that under an accomplice liability or hand of one theory, any acts committed by a co-defendant are imputed on the defendant making him guilty of any acts done

incidental to the execution of the common scheme or plan. See State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2007). Here, the State clearly argued that Applicant was guilty of all the charges under this theory, yet the jury clearly rejected the theory and found him not guilty on four charges. Unfortunately, trial counsel failed to recognize the material variance between the proof and the charges and failed to argue such on directed verdict, failed to object to the hand of one instruction given to the court or address it during the post trial motions. See State v. Evans, 322 S.C. 78, 470 S.E.2d 97 (1996).

In Barber v. State, 393 S.C. 232, 712 S.E.2d 436 (2011), the South Carolina Supreme Court addressed whether the lower court erred in giving a hand of one / accomplice liability instruction to the jury over counsel's objection. After considering that all three of co-defendants testified against the defendant, the Court held that the sum of the evidence presented by the State and the defense supported a conclusion that the defendant was acting with the other men during the robbery. Id. at 237, 712 S.E.2d at 439. Unlike Barber, here, Applicant contends that the State failed to establish such a conclusion and it is clear that the jury recognized this failure even though trial counsel did not. As a result, Applicant submits that trial counsel was ineffective for failing to argue to the court on directed verdict, regarding the jury charge and in post trial motion that the State did not establish that he was acting with his co-defendants nor did the jury convict him under the State's flawed theory.

Regarding the jury's verdicts, Applicant submits that trial counsel should have also raised the inconsistent nature of the verdicts to the trial court. When trial counsel was given the opportunity to raise the issue during a post trial motion and at a hearing held three years later, he did not. Instead, he assisted Applicant in withdrawing his Motion for Reconsideration. At the

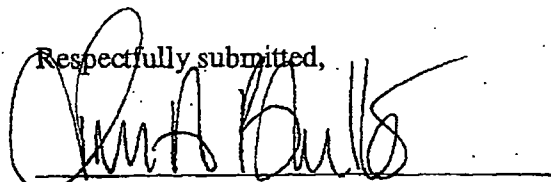
evidentiary hearing, Applicant testified that counsel failed to meet with him and properly prepare for the motion, so he felt his only option was to withdraw the motion and move on with his case.

It must be conceded that the South Carolina Supreme Court has abolished the blanket rule prohibiting inconsistent verdicts, specifically inconsistent verdicts between co-defendants jointly tried. See State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991), State v. Garrett, 350 S.C. 613, 567 S.E.2d 523 (Ct. App. 2002). Despite the Court's reversal of a new trial on the basis of inconsistent verdicts in Garrett, the Court made it clear that if there is no evidence to support a conviction a new trial must be granted. 350 S.C. at 619, 567 S.E.2d at 526. Here, counsel did not give the court the opportunity to properly consider if there was evidence to support the guilty verdicts in light of the not guilty verdicts. Simply put, the verdicts rendered by the jury did not make sense in light of the State's theory of the case, but counsel did make that argument at any stage of the trial or during the motion hearing three years later. Applicant submits that trial counsel's actions were not strategic but were an omission that was highly prejudicial to Applicant.

CONCLUSION

In conclusion, Applicant would respectfully request that this Court consider all the testimony and exhibits presented at the evidentiary hearing, fully review the trial transcript and the above arguments. Applicant would further request that this Court grant his Application for Post Conviction Relief.

Respectfully submitted,



Tricia A. Blanchette
Attorney for Applicant

March 7, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

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Appeal from Bamberg County

**ATTORNEY GENERALS
OFFICE**

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ALLEN GUNNELLS,

APPELLANT.

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in failing to suppress Sease's identification of Appellant where the identification was suggestive and unreliable and where the error was not harmless?

STATEMENT OF THE CASE

On March 8, 2004, the Bamberg County Grand Jury indicted James Allen Gunnells for burglary first degree Indictment #2004-GS-05-019; possession of a weapon during the commission of a crime of violence indictment # 2004-GS-05-021; armed robbery indictment # 2004-GS-05-023; kidnapping two counts indictments #2004-GS-05-026 and 028; criminal conspiracy indictment # 2004-GS-05-029. Gunnells proceeded to trial on October 12-14, 2004 before the Honorable J.C. Nicholson and a jury. The jury found him guilty on all counts and Judge Nicholson sentenced gunnells to life on the burglary first degree; five years on the weapons charge; 30 years on the armed robbery, thirty years on each of the kidnapping charges, and five years on the conspiracy charge. The armed robbery was to run consecutively to the other charges and all of the other charges were to run concurrently to each other. Gunnells through his counsel filed a motion for reconsideration of the sentence on October 14, 2004 but withdrew that motion on January 17, 2007. A notice of intent to appeal was filed on January 29, 2007 on Gunnells behalf. The Court of Appeals requested that all parties submit a memorandum to the court regarding the issue of whether the appeal was timely and proper since Gunnells had filed an appeal pro se on November 2, 2005 which was dismissed. On February 23, 2007, the court of Appeals issued an order allowing Gunnells' appeal to proceed. This appeal follows.

ARGUMENT

The trial court erred in failing to suppress Sease's identification of Appellant where the identification was suggestive and unreliable and where the error was not harmless.

FACTS

Gunnells and two co-defendants were charged with kicking down the door of the home of an older married couple and their surrogate son about 11:30 on the evening of May 5, 2003 while all three were at home and entering their home brandishing guns. (ROA p. 2, lines 1-12). The victims were made to stay on the floor and keep their heads down. (ROA p. 99, lines 17-21). The three defendants kept threatening the victims asking for money. (ROA p. 101 - p. 103, lines 1-5). Finally Sease told them there was money in his truck and the three defendants left taking the truck. (ROA p. 103, lines 1-5, p. 114, lines 11-23).

Sease testified that he talked to the police that night and told them he thought one of the robbers may be related to Debra Meyers who lived nearby. However, he did not tell them a name as he said he did not know his name then. (ROA p. 126, lines 6-11, p. 128, lines 5-7). However, defense counsel stated that when Sease gave a statement to police two days later he only told them the robber had on baggy shorts. (ROA p. 117, lines 15-23). In his testimony during the trial, Sease testifies that the robber in question was wearing a bandana over his face, a scarf, red shorts, braided hair, white shoes and had white skin. (ROA p. 147, lines 1-5, p. 129, line 2, p. 156, line 24). Sease admitted on cross that he was just looking at that pistol and could not see anything and could not identify anything. (ROA p. 156, lines 14-15, p. 157, lines 7-11). He could not even tell if that robber had on a shirt. (ROA 146, lines 19-22).

Three months later on August 11, 2003, law enforcement took clothing they had recovered from the apartment of Gunnells' girlfriend to Sease for any identification. Sease said it was a bunch of clothing and that he selected the red baggy shorts and a hat that were like the ones he said Gunnells was wearing the night of the robbery. (ROA p. 129, lines 3-22).

The police told him the clothes belonged to James Gunnells and he then identified Gunnells. (ROA p. 130, lines 13-24, p. 153, 2-25). Sease admitted that he knew at the time he identified the clothing that the clothes belonged to Gunnells. (ROA p. 153, lines 17-20). Then for the first time Sease told law enforcement that that robber was white after Gunnells had been arrested. (ROA p. 152, lines 1-15)

During the trial, Gunnells' counsel objected to any in-court identification of Gunnells by Sease on the grounds that the pre-identification process was so suggestive that it tainted any in-court identification and created the problem of an irreparable misidentification. (ROA p. 120, lines 8-12). There was no photo lineup but counsel argued that the identification of the clothing was suggestive because Sease was told the clothing belonged to James Gunnells. (ROA p. 118, lines 15-25, p. 119, lines 17). After an in camera hearing, the Judge denied counsel's motion to suppress any in court identification. (ROA p. 122, lines 22, p. 131, line 12).

DISCUSSION

In Neil v. Biggers the United States Supreme Court named a two prong process to determine if an out-of-court identification was admissible: (1) if the identification process was unduly suggestive and (2) if the identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Neil v. Biggers, 409 U.S. 188, 93 S.Ct.

375, 34 L.Ed.2d 401 (1972), State v. Lewis, 354 S.C. 222, 580 S.E.2d 149 (2004), State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000), State v. Brown, 356 S.C. 496, 589 S.E.2d 781 (2003). An in-court identification of an accused is inadmissible if an out-of court identification was so unduly suggestive that it created a very substantial likelihood of irreparable misidentification. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001). Neil v. Biggers cites five factors to determine reliability: (1) opportunity of witness to view criminal at time of crime (2) witness' degree of attention (3) accuracy of witness prior description of criminal (4) level of certainty by witness at time of confrontation (5) length of time between crime and confrontation. Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375, 34 L.Ed.2d 401 (1972).

Although the South Carolina Supreme Court said in State v. Lewis, 354 S.C. 222, 580 S.E.2d 149 (2004) that Neil V. Biggers does not apply to a first time in-court identification because the judge is present and can adequately address relevant problems; the jury is present to witness the identification, rather than merely hearing testimony about it, and cross-examination offers defendants an adequate safeguard against suggestive examinations. However, in Gunnells' case, the State treated the identification of the clothing worn by Gunnells as it would the identification of a person since the victim Sease did not see the robber's face. When Gunnells was arrested, a "bunch" of clothing was seized and taken to Sease to identify similar to the process used in a photo lineup. At the least, the identification of the clothing was an action by the state which would trigger the factors cited in Neil V. Biggers for reliability. Hence these factors are reviewed in Gunnells case for reliability and suggestibility of the identification.

The victim-witness Sease did not see the robber's face and could only see his shorts. He could not even tell if the robber was wearing a shirt but said he could see the bandana. This alone lends doubt to his credibility because he should have been able to tell if the robber were wearing a shirt if he could tell he had a bandana over his face. As far as Sease's attention, he testified that he could not see anything as he was focused on the gun. His attention was on the gun and not the details of the robber. Sease's prior description until Gunnells was arrested was simply that the robber wore baggy shorts and maybe that he had braids. Then when Gunnells was arrested Sease decides that the robber is white. Sease seemed certain that the clothing he selected was that worn by the robber. However, it would be irresponsible to think that Gunnells was the only person in that area with a pair of red baggy shorts. There is no special factor identified in the shorts to make them unique. The length of time between the robbery and Sease's identification of the clothing was approximately three months. This is more than sufficient time to dampen a person's memory of the clothing.

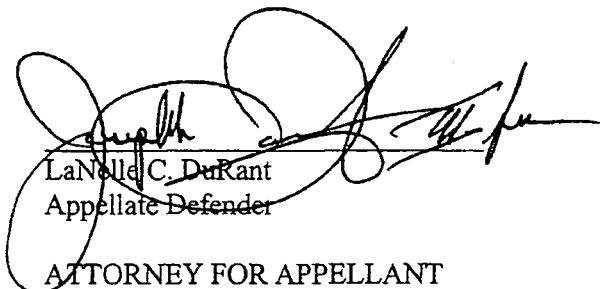
The out of court identification of the clothing worn by the robber which was the link to identifying the robber was unduly suggestive because law enforcement told Sease that the clothing was from Gunnells at the time of identification thereby tainting the identification process. There is the danger of misidentification simply because there is the very strong likelihood that there is more than one pair of red baggy shorts since no special feature of the shorts was identified.

For the above reasons, the conviction should be vacated.

CONCLUSION

Based on the above, Gunnells' conviction should be vacated.

Respectfully submitted,



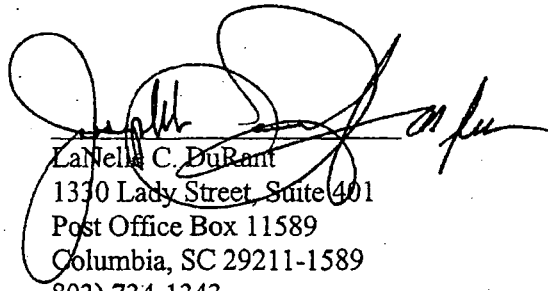
LaNelle C. DuRant
Appellate Defender
ATTORNEY FOR APPELLANT

This 27th day of September, 2007.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

September 27, 2007



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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Bamberg County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

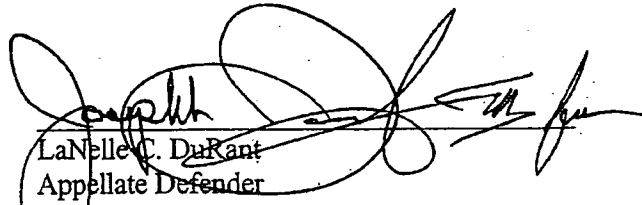
V.

JAMES ALLEN GUNNELLS,

APPELLANT

CERTIFICATE OF SERVICE

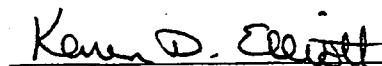
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Norman Mark Rapoport, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 27th day of September, 2007.



LaNelle C. DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of September, 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 Bamberg County
J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMES ALLEN GUNNELLS,

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Other Authority:

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by allowing the in-court identification of Gunnells?

STATEMENT OF THE CASE

Respondent concurs with the Statement of the Case of Appellant James Allen Gunnells (Gunnells).

STATEMENT OF FACTS

Sixty-four-year-old Halman Sease and his wife of forty-five years, Eunice, live about two miles outside of Erhardt, in Bamberg County. (R. 14-16, 93-95). Nobody else lives close to their house. (R. 16-17, 115).

Late in the late evening on May 5, 2003, Eunice heard a "terrible noise" while she was in the bathroom getting ready for bed that "sounded like something bursting in the door." She went down the hallway to investigate. Eunice turned on the light and saw "a black man disguised and he had a pistol in his hand and he says, U.S. Marshall." The man ordered her to "get down." (R. 17-18, 39-41).

Halman was asleep in the bedroom at the time with the television on. (R. 19, 98, 143). Eunice repeatedly screamed for Halman to wake up, but he did not respond. The man then forced Eunice to crawl to the bedroom door with a gun to her head. (R. 19). Halman testified he was awakened when the door "just flew open." Halman saw his wife on the floor. Eunice told him they were being robbed and they needed to cooperate. Eunice was forced to lie on her stomach on the bedroom floor behind the door. Halman was forced to lie on the floor next to the bed. The robber pointed the gun at them. (R. 19-22, 41-43, 98-100, 143-44).

At the same time, a Caucasian man also entered the bedroom with a gun. He wore red shorts with black stripes and tennis shoes. He also wore a red bandana and had "braided" hair. He demanded money from the safe and threatened to kill them. Halman told him there was no money in the house, but the Caucasian robber said: "Well I know you do got money

in the house. Because you own three businesses.”¹ Halman and Eunice begged for their lives. (R. 22-25, 45-48, 51, 100-02, 144, 146-47, 150). This robber went “back and forth . . . jumping around in the drawers, pulling out the drawers,” looking for things. (R. 26, 47, 101-02, 144-45). He put a gun to Halman’s head and told him, “I’m going to blow your brains out. I’m going to give you two to three seconds to tell me where the safe is at and where the money is at.” Halman said only the Caucasian robber spoke to him. Halman told him there was a bag of money in his truck, along with the keys.² The Caucasian robber stole Halman’s rings, a watch, and the necklace he was wearing. The robbers then tied up Halman and Eunice in the bedroom with neckties and belts. (R. 25-28, 30-31, 45-48, 51, 102-07).

Eunice and Halman managed to free themselves and they telephoned the police. (R. 29, 39, 106-11). They testified there were three robbers in the house. (R. 38, 45, 102, 145-46).

Eunice testified the first assailant wore black clothing and “something that was dark” covering his face. (R. 18, 40). Although Eunice kept her head on the floor, she stated “I was still peeping up and down,” and she was able to see what was going on. (R. 19-25, 43-47, 51). Halman said he had a black scarf or bandana over his face. (R. 99-100).

Halman identified Gunnells in court as one of the robbers. (R. 138).³ Halman

¹Halman testified he owns car businesses in Erhardt and Hampton. He also runs a Dollar Store in Erhardt and farms “a little bit on the side” on several farms he owns. (R. 94-95).

²Halman testified he had “approximately \$250, \$350” inside a brown paper bag in his truck. (R. 106).

³Halman’s in-court identification of Gunnells is the sole Issue on appeal.

testified he saw Gunnells around town in the weeks before the robbery. (R. 132). Halman saw Gunnells at the nearby home of Debra Meyers. (R. 133-34, 156-57). Only five days before the robbery, Halman gave Gunnells and Meyers' son a ride home. They told Halman they had been hunting behind his house. (R. 134-36, 155, 158-59). Halman testified that shortly after the robbery, he told the police he thought he recognized the Caucasian robber and that he lived with Meyers. (R. 136, 155-56). A few days later, Halman talked with Meyers about the robbery. He said to her, "if it wasn't [Gunnells], it was his twin brother" who robbed him. (R. 137, 156, 168).

Twenty-six-year-old Steven Sutton lived with Halman and Eunice since he was a teenager. They considered him their son. (R. 14-15, 54, 96). Steven testified he watched television on the den couch shortly before eleven o'clock, when "I heard someone hollering, U.S. Marshall, get on the floor." He said someone then came up behind him and told him to put his hands behind his back. (R. 55-56). Steven got up and off the couch. He saw someone next to the door "and it was strictly black." There was another man in front of the television with a blue bandana. Steven testified the bandana fell off, but "he snatched it up real quick." Steven testified both men were black and wore dark clothes. They were also armed. (R. 57-59, 71-75, 85).

Steven walked through the kitchen and down the hallway with two robbers behind him.⁴ He saw Eunice crawl on the floor toward her bedroom. Steven walked past the bathroom and he was ordered to lie down on his stomach. Steven could then see Halman and

⁴Steven was at the other end of the house when the robbers first entered the house. (R. 20).

----- Eunice on the floor in their bedroom. He heard "draws opening, like jewelry being clanged together and you know, people running around." (R. 59-61, 63, 73-74, 79).

Steven testified he was "pistol whipped" because he moved around when his neck started to bother him. Steven said he "played dead," because he "was bleeding pretty bad." Steven testified he was still able see the robbery and he overheard the robbers' threats to kill the victims. (R. 61-63, 65-66, 70, 79-81). Steven was also tied up. Steven said Halman and Eunice untied him after the robbers left. (R. 29, 64, 110). One of the robbers Steven saw in the bedroom was a Caucasian with red shorts. (R. 69-71, 81, 85).

Debra Meyers testified Gunnells is her nephew. Gunnells often stayed at her house. She said Gunnells went home with his girlfriend the day before the robbery. He had been at her house for a week. (R. 162-65). Meyers recalled the Wednesday before when Halman dropped Gunnells and her son off at the house after they went hunting. (R. 165-66). Meyers testified Gunnells talked to her about Halman. Gunnells remarked that Halman "don't believe in banks" and he kept money at home. (R. 165-67, 169-70).

SLED Agent George Darnell spoke with the victims shortly after the robbery. (R. 172). The robbers stole Halman and Steven's trucks. (R. 65-67, 112-14). A short time after the robbery, the police recovered the trucks near a pond. The engine in one of the trucks was still running. (R. 174-75). Halman's wallet and credit cards were on the ground. (R. 138-39, 175-76).⁵ A handgun and camouflage clothes inside the truck were stolen. (R. 139, 176). A set of speakers and an amplifier were missing from Steven's truck. (R. 68, 177-78). Darnell

⁵Halman explained that he put his money in a hidden compartment of the wallet, so it was not stolen. (R. 139).

also spoke with Meyers about Gunnells a few days later based on Halman's description of one of the robbers. (R. 177).

In June, the police received information that the speakers and the amplifier stolen from Steven's truck had been located at a pawn shop in Columbia. Store records showed Gunnells sold these items. (R. 178-80). A warrant was then obtained to search the Richland County apartment shared by Gunnells and his girlfriend. (R. 180-81). Gunnells arrived with his girlfriend while the police were there. He was arrested and informed of his rights. (R. 181-82). At the time of his arrest, Gunnells was wearing Halman's stolen rings and necklace. (R. 183-84). The police also gathered articles of clothing from the apartment which belonged to Gunnells, including shoes, red shorts, and a bandana. (R. 185). Halman, Eunice, and Steven later identified the shorts and bandana as the same ones worn by the Caucasian assailant. (R. 50-51, 87, 89-91, 141-42, 146-47, 152-53). A camouflage hat stolen from Halman's truck was also seized from Gunnells' apartment. (R. 139-40).

When Gunnells was transported by the police to Bamberg County, "he was more or less running his mouth, shooting the bull." Once in Bamberg, Gunnells saw the recovered speakers and amplifier in the office. (R. 186-87). The police told Gunnells they found the items in a pawn shop and that he pawned them. Gunnells then handed the police the original pawn shop receipt. (R. 187-90).

The police again informed Gunnells of his rights. Gunnells waived his rights and provided a written statement to the police. (R. 190-93). In his statement, Gunnells admitted he talked with Meyers' son about how much money Halman had in his house. Gunnells said he was on the telephone with someone in Columbia named "Tivoe," who overheard the

conversation. Gunnells talked with Tivoe about it. Gunnells said Tivoe told him that he planned to rob Halman and he wanted Gunnells to take him to Halman's house. He stated that the next day, Tivoe and two accomplices picked him up and they drove to Halman's house. Tivoe told Gunnells to show him the house and "he would do the rest." Tivoe had a gun. Gunnells claimed he planned to sit in the car and wait for them. However, once they got there, Gunnells said Tivoe forced him to go with them. Gunnells admitted he and the others then kicked in the front door to the house. One of the other men yelled, "police, get down on the floor." Gunnells said Tivoe grabbed him by the arm and pulled him inside. Gunnells claimed he watched while the others assaulted the victims and threatened to kill them if they did not hand over the money. Gunnells stated Tivoe told him to leave the house and look inside the truck for the money, but Tivoe then found the money in the other truck. Tivoe and the others stole the trucks. Gunnells said he left in the car. They abandoned the trucks along a dirt road, where they took out the rear speakers and amplifier. Gunnells drove them back to Columbia. Tivoe and his friends split up the money, but they were mad because there was not a lot of it. They gave Gunnells some jewelry, the speakers, and the amplifier. (R. 196-202).

The front door of the house was kicked in. (R. 31, 33-34, 226-27). The police were able to compare three footprint impressions on the door with the shoes seized from Gunnells' apartment. (R. 226-235, 242). One of the impressions on the door was consistent with the type of shoes seized from Gunnells' apartment. (R. 240-43).

ARGUMENT

The trial judge did not err by allowing the in-court identification of Gunnells, because the identification was reliable under the circumstances. (Gunnells' Issue).

Halman Sease testified *in camera* he had worked with Debra Meyers' son and he had seen Gunnells at her home when he dropped her son off. Halman had also seen Gunnells "around town a lot." Halman recalled that on the Wednesday before Monday evening, he picked up Gunnells and Meyers' son along the road near his house. They told Halman they had been hunting. Halman took them to Meyers' house. (R. 123-24).

Halman testified he "knew it the night of the robbery" that Gunnells was one of the robbers. Halman explained:

... I wouldn't say nothing because I figured if I would have said something he would have probably shot me, but I recognized him . . . He was running around in my room. When he would bend over, you could see the braided hair and I had seen that plenty of times when I would go up to Ms. Debra's house and I know . . .

(R. 124-25, 127-28).

Halman testified he told Meyers the day after the robbery, "if that wasn't your cousin or whoever it was, that was his twin brother that robbed us." (R. 125, 130-31). He also told the police that day he was "99 percent sure it was him. And I told them where I had seen him at . . ." (R. 126, 128).

Halman stated, "I knew him by face." Halman explained he did not know Gunnells' name, so he did not provide a name to the police. He said nobody gave him Gunnells' name at the time. (R. 126-28). Further, he testified nobody suggested Gunnells' involvement to him. Halman stated, "I'm the one that started that night and told SLED." (R. 126-27).

Gunnells said that after he identified the clothing seized by the police,⁶ the police told him the items were recovered from Gunnells. (R. 129-30).

Gunnells moved to exclude Halman's in-court identification. (R. 118-20). The trial judge denied Gunnells' motion to suppress. (R. 131).

On appeal Gunnells argues the trial judge erred in denying his motion to suppress the in-court identification, because Halman's identification was unreliable and was the result of a suggestive pretrial procedure.

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 625 S.E.2d 216 (2006); State v. Wood, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004). On appeal, the appellate court is limited to determining whether the trial judge abused his discretion. State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998); State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005). This same standard of review applies to preliminary factual findings in determining the admissibility of certain evidence in criminal cases. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001). The appellate court cannot re-evaluate the facts based on its own view of the preponderance of the evidence but must simply determine whether the trial judge's ruling is supported by any evidence. Id. In order for an error of law to warrant reversal, the error must result in prejudice to the appellant. State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000).

⁶As previously noted, Halman had already spoken to the police about his identification of the robber. The police got their first break in the case when they recovered some stolen items pawned by Gunnells at a Columbia pawn shop. They subsequently obtained a warrant for Gunnells' apartment and seized several items, including some clothing which they later showed to Halman.

—Generally, the decision to admit an eyewitness identification is in the trial judge's discretion and will not be disturbed on appeal absent an abuse of discretion or the commission of prejudicial legal error. State v. Brown, 356 S.C. 496, 589 S.E.2d 781, 784 (Ct. App. 2003)[citing State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000)]. A criminal defendant may be deprived of due process of law by an identification procedure that is unnecessarily suggestive. Brown, 589 S.E.2d at 784 [citing State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999)].

It is well settled that reliability is the linchpin in determining the admissibility of identifications and suggestiveness alone does not mandate the exclusion of evidence. Brown, 589 S.E.2d at 785 [citing Manson v. Brathwaite, 432 U.S. 98 (1977); State v. Stewart, 275 S.C. 447, 272 S.E.2d 628 (1980); State v. Blassingame, 338 S.C. 240, 525 S.E.2d 535, 541 (Ct. App. 1999); Patterson, 522 S.E.2d at 852]. To determine whether an identification is reliable, it is necessary to consider the following factors: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the amount of time between the crime and the confrontation. Neil v. Biggers, 409 U.S. 188, 199-200 (1972); State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257, 263 (Ct. App. 2000). The corrupting effect of a suggestive identification is to be weighed against these factors. Id., 538 S.E.2d at 263. After the trial judge determines the witness's identification is reliable, the witness is permitted to testify before the jury. Id.

In State v. Lewis, 363 S.C. 37, 609 S.E.2d 515, 517-18 (2005), the trial judge refused

to conduct an *in-camera* hearing to determine the reliability of the identification before the defendant was identified in court. The Supreme Court held the Neil v. Biggers analysis will not be extended to protect criminal defendants against identifications that occur for the first time in court and where there was no pretrial identification procedure.

In the present case, the identification procedure employed did not involve the classic confrontation between Halman and Gunnells, or a viewing of Gunnells' photograph in a lineup. The police only called upon Halman to identify clothing they had seized. He did not identify Gunnells. The police informed Halman the clothing belonged to him after it was identified by him. Clothing is mass-produced, and its identification does not present the inherent risk of misidentification of unique human beings within the protective scope of Biggers and Simmons v. United States, 390 U.S. 377 (1968). While the pretrial identification of the clothing linked Gunnells to the crime, it was only circumstantial evidence and was for the jury to weigh. There is no authority to support Gunnells' claim of a due process right to reliable identification procedures extended beyond the normal authenticity and identification procedures for physical evidence offered by the prosecution. The proper manner for contesting Halman's identification of the clothing and his first-time in-court identification of Gunnells was through cross-examination at trial and not by suppression. Lewis, 609 S.E.2d at 518.

The great weight of authority holds the procedural safeguards of Biggers do not apply to the prior identification of physical evidence by a witness. See, e.g., Johnson v. Ross, 955 F.2d 178, 180-81 (2nd Cir. 1992); Inge v. Procunier, 758 F.2d 1010, 1014-15 (4th Cir. 1985); Johnson v. Sublett, 63 F.3d 926, 931 (9th Cir. 1995); State v. Roscoe, 145 Ariz. 212, 700 P.2d

1312, 1324 (1984); People v. Coston, 40 Colo. App. 205, 576 P.2d 182, 185 (1977); State v. Watson, 50 Conn. App. 591, 718 A.2d 497, 501-02 (1998); Dee v. State, 273 Ga. 739, 545 S.E.2d 902, 903 (2001); Brooks v. State, 560 N.E.2d 49, 57-58 (Ind. 1990); State v. Bruns, 304 N.W.2d 217, 219 (Iowa 1981); People v. Miller, 211 Mich. App. 30, 535 N.W.2d 518, 523 (1995); Hughes v. State, 735 So.2d 238, 261 (Miss. 1999); State v. Cyr, 122 N.H. 1155, 453 A.2d 1315, 1317-18 (1982); Commonwealth v. Carter, 271 Pa. Super. 508, 414 A.2d 369, 373 (1979); Inge v. Commonwealth, 217 Va. 360, 228 S.E.2d 563, 567 (1976); State v. King, 31 Wash. App. 56, 639 N.W.2d 809, 811-12 (1982).

Even if this Court determines to apply the Neil v. Biggers analysis to the present case, the trial judge did not err by allowing Halman's in-court identification, because the identification was reliable under totality of the circumstances. First, Halman testified he was able to view Gunnells in his bedroom during the course of the robbery although he was forced to lie on the floor. Second, because Halman was in fear of his life, his degree of attention to his surroundings was presumably more acute. State v. Ford, 278 S.C. 384, 296 S.E.2d 866 (1982); State v. Johnson, 318 S.C. 372, 458 S.E.2d 49 (Ct. App. 1995). Third, Halman's prior description of Gunnells was but one factor which the trial judge could weigh in light of the other factors. Halman testified the robbers were well-disguised, yet Halman's description of the robber - - the red shorts with black stripes, a red bandana, and white tennis shoes - - was consistent with clothing seized from Gunnell's apartment and later identified by him. See State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257, 264 (Ct. App. 2000)[finding witness's description of a defendant accurate as a whole despite witness's memory that the defendant had an Afro and wore boots when actually the defendant's hair was in plaits and

he wore tennis shoes]. Finally, Halman was certain about his identification. Gunnells fails to note Halman's *in camera* testimony, wherein Halman said he recognized Gunnells at the time of the robbery. Halman had seen Gunnells before and he even dropped Gunnells off at Meyers' house only five days before the robbery. Halman did not say anything to Gunnells during the robbery because he did not want to get shot. See State v. Washington, 323 S.C. 102, 473 S.E.2d 479, 482 (1996)[holding the witness's prior encounter with the defendant made her later identification of him more reliable]; see also In re Robert D., 340 S.C. 12, 530 S.E.2d 137, 141 (Ct. App. 2000)[noting "the rules regarding out-of-court identifications 'are designed for application where the accused and the victim are strangers to each other; they were never intended to apply where the victim knew the accused'"]. After the robbery, Halman told the police that he recognized the robber, but he did not know Gunnells by name. He told the police where he thought the robber could be found. Halman also told Meyers about Gunnells' involvement. Halman testified he was "99 percent sure" it was Gunnells who robbed him. He stated that nobody suggested Gunnells' involvement to him and testified, "I knew him by face."

Halman's in-court identification of Gunnells was, therefore, reliable under the totality of the circumstances and not tainted by the earlier identification of the clothing. The trial judge did not abuse his discretion by failing to suppress the in-court identification. Once reliability was established, it was properly left to the jury to determine the strength of Halman's testimony on the identification issue. See Stewart, 272 S.E.2d at 630.

Alternatively, this Court should consider any error concerning Halman's in-court

identification of Gunnells harmless.⁷ No definite rule of law governs finding an error harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. State v. Reeves, 301 S.C. 191, 391 S.E.2d 241 (1990); State v. Curry, 370 S.C. 674, 636 S.E.2d 649 (Ct. App. 2006). Whether an error is harmless depends on the particular facts of each case. State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315, 318-19 (2002)[quoting Delaware v. Van Arsdall, 475 U.S. 673, 684 (1986)]. “[T]he reviewing court must review the entire record to determine what effect the error had on the verdict.” Mizzell, 563 S.E.2d at 319 (internal quotations omitted). Error is harmless where it could not reasonably have affected the result of the trial. In re Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003). When guilt is conclusively proven by competent evidence such that no other rational conclusion could be reached, the appellate court will not set aside conviction for insubstantial errors not affecting the result. State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995).

In the present case, the admission of the in-court identification was harmless. Gunnells was wearing the jewelry stolen off of Halman when he was apprehended at his apartment. Gunnells also pawned the speakers and amplifier stolen out of Steven Sutton’s truck. Gunnells’ shoes were consistent with a footprint at the point of entry into the house. The clothing seized from Gunnells’ apartment was identified by two other victims as the

⁷In the Statement of Issue on Appeal and the argument heading, Gunnells states the trial judge’s failure to suppress Halman’s identification was not harmless error. (BOR at 3 & 5). However, Gunnells fails to argue this contention in his Brief. It is well-settled an assignment of error not argued in a brief is deemed abandoned. Rule 208 (b)(1)(D), SCACR; Video Gaming Consultants, Inc. v. South Carolina Dep’t of Revenue, 342 S.C. 34, 535 S.E.2d 642 (2000); Fields v. Fields, 342 S.C. 182, 536 S.E.2d 684 (Ct. App. 2000).

clothing worn by the Caucasian robber described by them. Finally, Gunnells admitted to the police he drove to the house with three other men, kicked in the door and entered the house, and he was present in the bedroom when the victims were robbed. Therefore, Halman's in-court identification of Gunnells was cumulative to independent and overwhelming evidence identifying him as one of the perpetrators. State v. Ramsey, 345 S.C. 607, 550 S.E.2d 294 (2001)[error in failing to hold *in camera* hearing regarding photographic identification was harmless error where there was other identification testimony at trial]; State v. Simmons, 308 S.C. 80, 417 S.E.2d 92, 94 (1992)[stating "if the identification is corroborated by either circumstantial or direct evidence, then the harmless error rule might be applicable"]; see also State v. Brown, 286 S.C. 445, 334 S.E.2d 816 (1985)[finding erroneous admission of doctor's testimony identifying the defendant as perpetrator of alleged sexual assault on a child, by means of relating child's statements, was harmless in light of cumulative evidence identifying the defendant as the perpetrator]; State v. Smith, 328 S.C. 622, 493 S.E.2d 506 (Ct. App. 1997)[holding admission of police chief's hearsay testimony identifying the defendant as the driver of a car was harmless in prosecution for driving under the influence, where the testimony was merely cumulative to other evidence, including two other officers, that the defendant admitted he was the driver].

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and convictions of the lower court should be affirmed.

Respectfully submitted,

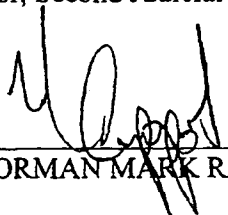
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September 27, 2007

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Bamberg County
J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMES ALLEN GUNNELLS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

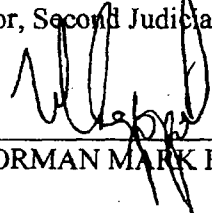
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ATTORNEYS FOR RESPONDENT

September 27, 2007

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THE STATE,

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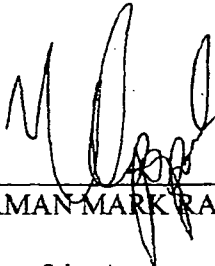
PROOF OF SERVICE

I certify that I have served the within Final Brief of Respondent on Appellant by depositing three (3) copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 27th day of September, 2007.



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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.

James Allan Gunnells,

Appellant.

Appeal From Bamberg County
J.C. Buddy Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2009-UP-035
Submitted January 2, 2009 – Filed January 14, 2009

AFFIRMED

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Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Senior Assistant Attorney General Norman Mark

Rapoport, all of Columbia; and Solicitor Barbara R. Morgan, of Aiken, for Respondent.

PER CURIAM: James Allan Gunnells was convicted of first-degree burglary, armed robbery, kidnapping, assault and battery with intent to kill, use of a firearm during the commission of a violent crime, and conspiracy. He received sentences totaling life plus thirty years' imprisonment. Gunnells now appeals his convictions and sentences, arguing the circuit court erred in admitting an eyewitness' first-time identification of him in court because the identification was suggestive and unreliable. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities: State v. Lewis, 363 S.C. 37, 42-43, 609 S.E.2d 515, 518 (2005) (declining to require trial courts to evaluate factors enunciated in Neil v. Biggers, 409 U.S. 188, 199 (1972), where first-time identifications take place in court because "the judge is present and can adequately address relevant problems; the jury is physically present to witness the identification, rather than merely hearing testimony about it; and cross-examination offers defendants an adequate safeguard or remedy against suggestive examinations"); State v. Butler, 353 S.C. 383, 388, 577 S.E.2d 498, 500 (Ct. App. 2003) (holding in criminal cases, the appellate court sits to review errors of law only).

AFFIRMED.

WILLIAMS, PIEPER, and GEATHERS, JJ., concur.

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

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Bamberg County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

Opinion No. 2009-UP-035 (S.C. Ct. App. filed 1/14/2009)

04-GS-05-019, 021, 023, 026, 028-029.

THE STATE,

RESPONDENT,

V.

JAMES ALLEN GUNNELLS,

PETITIONER

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

LANELLE CANTEY DURANT
Appellate Defender

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ISSUE PRESENTED

Did the Court of Appeals properly affirm the trial court's refusal to suppress Sease's identification of Appellant, where the identification was suggestive and unreliable and where the error was not harmless?

STATEMENT

On March 8, 2004, the Bamberg County Grand Jury indicted James Allen Gunnells for burglary first degree Indictment #2004-GS-05-019; possession of a weapon during the commission of a crime of violence indictment # 2004-GS-05-021; armed robbery indictment # 2004-GS-05-023; kidnapping two counts indictments #2004-GS-05-026 and 028; criminal conspiracy indictment # 2004-GS-05-029. Gunnells proceeded to trial on October 12-14, 2004 before the Honorable J.C. Nicholson and a jury. The jury found him guilty on all counts and Judge Nicholson sentenced gunnells to life on the burglary first degree; five years on the weapons charge; 30 years on the armed robbery, thirty years on each of the kidnapping charges, and five years on the conspiracy charge. The armed robbery was to run consecutively to the other charges and all of the other charges were to run concurrently to each other. Gunnells through his counsel filed a motion for reconsideration of the sentence on October 14, 2004 but withdrew that motion on January 17, 2007. A notice of intent to appeal was filed on January 29, 2007 on Gunnells' behalf. The Court of Appeals requested that all parties submit a memorandum to the court regarding the issue of whether the appeal was timely and proper since Gunnells had filed an appeal pro se on November 2, 2005 which was dismissed. On February 23, 2007, the Court of Appeals issued an order allowing Gunnells' appeal to proceed. On January 14, 2009, the Court of Appeals issued an opinion affirming the trial court. State v. Gunnells, Op. No. 2009-UP-035 (Ct. App. filed January 14, 2009). Appellate counsel filed a petition for rehearing on January 26, 2009. The Court of Appeals issued an order on February 26, 2009 denying the petition. This writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in affirming the trial court's refusal to suppress Sease's identification of Appellant, where the identification was suggestive and unreliable and where the error was not harmless.

Gunnells and two co-defendants were charged with kicking down the door of the home of an older married couple, Mr. and Mrs. Sease, and their surrogate son about 11:30 on the evening of May 5, 2003 while all three were at home, with the accused entering their home brandishing guns. (ROA p. 2, lines 1-12). The victims were made to stay on the floor and keep their heads down. (ROA p. 99, lines 17-21). The three defendants kept threatening the victims asking for money. (ROA p. 101 - p. 103, lines 1-5). Finally Mr. Sease told them there was money in his truck and the three defendants left taking the truck. (ROA p. 103, lines 1-5, p. 114, lines 11-23).

Mr. Sease testified that he talked to the police that night and told them he thought one of the robbers may be related to Debra Meyers who lived nearby. However, he did not tell them a name as he said he did not know his name then. (ROA p. 126, lines 6-11, p. 128, lines 5-7). However, defense counsel stated that when Sease gave a statement to police two days later he only told them the robber had on baggy shorts. (ROA p. 117, lines 15-23).

In his testimony during the trial, Sease testified that the robber in question was wearing a bandana over his face, a scarf, red shorts, braided hair, white shoes and had white skin. (ROA p. 147, lines 1-5, p. 129, line 2, p. 156, line 24). However, Sease admitted on cross that he was just "looking at that pistol" and could not see anything and could not identify anything. (ROA p. 156, lines 14-15, p. 157, lines 7-11). He could not even tell if that robber had on a shirt. (ROA 146, lines 19-22).

Three months later on August 11, 2003, law enforcement took clothing they had recovered from the apartment of Gunnells' girlfriend to Sease for any identification. Sease said it was a bunch of clothing and that he selected the red baggy shorts and a hat that were like the ones he said Gunnells was wearing the night of the robbery. (ROA p. 129, lines 3-22).

Only after the police told him the clothes belonged to James Gunnells did he identify Gunnells. (ROA p. 130, lines 13-24, p. 153, 2-25). Sease admitted that he knew at the time he identified the clothing that the clothes belonged to Gunnells. (ROA p. 153, lines 17-20). Only then for the first time Sease told law enforcement that that robber was white - after Gunnells had been arrested. (ROA p. 152, lines 1-15)

During the trial, Gunnells' counsel objected to any in-court identification of Gunnells by Sease on the grounds that the pre-identification process was so suggestive that it tainted any in-court identification and created the problem of an irreparable misidentification. (ROA p. 120, lines 8-12). There was no photo lineup, and counsel argued that the identification of the clothing was suggestive because the police told Sease the clothing belonged to James Gunnells. (ROA p. 118, lines 15-25, p. 119, lines 17). After an in camera hearing, the Judge denied counsel's motion to suppress any in court identification. (ROA p. 122, lines 22, p. 131, line 12).

In Neil v. Biggers, 409 U.S. 188 (1972), the United States Supreme Court named a two prong process to determine if an out-of-court identification was admissible: (1) if the identification process was unduly suggestive and (2) if the identification was nevertheless so reliable that no substantial likelihood of misidentification existed. Neil v. Biggers, Id.; State v. Lewis, 354 S.C. 222, 580 S.E.2d 149 (2004); State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000); State v. Brown, 356 S.C. 496, 589 S.E.2d 781 (2003). An in-court identification of an accused is inadmissible if an out-

of court identification was so unduly suggestive that it created a very substantial likelihood of irreparable misidentification. State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001). Neil v. Biggers, *supra*, cites five factors to determine reliability: (1) opportunity of witness to view criminal at time of crime (2) witness' degree of attention (3) accuracy of witness prior description of criminal (4) level of certainty by witness at time of confrontation (5) length of time between crime and confrontation. Neil v. Biggers, 409 U.S. 188, (1972).

The South Carolina Supreme Court said in State v. Lewis, 354 S.C. 222, 580 S.E.2d 149 (2004) that Neil v. Biggers does not apply to a first time in-court identification because the judge is present and can adequately address relevant problems; the jury is present to witness the identification, rather than merely hearing testimony about it, and cross-examination offers defendants an adequate safeguard against suggestive examinations.

However, in Gunnells' case, the State treated the identification of the clothing worn by Gunnells as it would the identification of a person since the victim Sease did not see the robber's face. When Gunnells was arrested, a "bunch" of clothing was seized and taken to Sease to identify similar to the process used in a photo lineup. At the least, the identification of the clothing was an action by the state which would trigger the factors cited in Neil v. Biggers for reliability. The police gratuitously and prejudicially told Mr. Sease the clothes belonged to Gunnells. Hence these factors must be reviewed in Gunnells case for reliability and suggestibility of the identification.

The victim-witness Sease did not see the robber's face and could only see his shorts. He could not even tell if the robber was wearing a shirt but said he could see the bandana. This alone lends doubt to his credibility because common sense dictates he should have been able to tell if the robber were wearing a shirt if he could tell he had a bandana over his face. As far as Sease's

attention, he testified that he could not see anything as he was focused on the gun. His attention was on the gun and not the details of the robber. Sease's prior description, until Gunnells was arrested, was simply that the robber wore baggy shorts and maybe that he had braids. Then when Gunnells was arrested Sease decides that the robber was white. Sease seemed certain that the clothing he selected was that worn by the robber.

However, it would be irresponsible to think that Gunnells was the only person in that area with a pair of red baggy shorts. There was no special factor identified in the shorts to make them unique. The length of time between the robbery and Sease's identification of the clothing was approximately three months. This is more than sufficient time to dampen a person's memory of the clothing.

The out of court identification of the clothing worn by the robber which was the link to identifying the robber was unduly suggestive because law enforcement told Sease that the clothing was from Gunnells at the time of identification thereby tainting the identification process. There is the danger of misidentification simply because there is the very strong likelihood that there is more than one pair of red baggy shorts since no special feature of the shorts was identified.

A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification. State v. Turner, 373 S.C. 121, 644 S.E. 2d 693 (2007).

The Court ruled that when a first time identification takes place in court, the trial court is not required to evaluate the factors enunciated in Neil v. Biggers, *supra*. However, although the trial court said this was a first time identification, Mr. Sease's prior identification of the clothing worn by

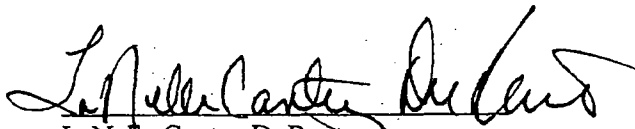
the robber was an out-of-court identification and was not reliable because the police told him who the clothes belonged to.

The trial court should have evaluated the identification of the clothing using the factors from Neil v. Biggers, supra.

CONCLUSION

Based on the above, certiorari should be granted and Gunnells' conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

This 23rd day of March, 2009.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Bamberg County

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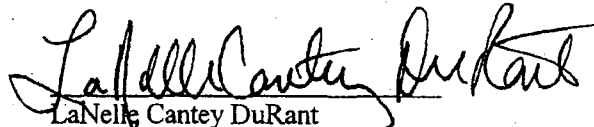
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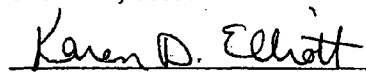
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix in this case have been served on Norman Mark Rapoport, Esquire this 23rd day of March, 2009. A copy of the petition for writ of certiorari has also been served on the SC Court of Appeals this 23rd day of March, 2009.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day
of March, 2009.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: March 19, 2017.