

||| G

EXhibit



I N D E X

| <u>WITNESS/DESCRIPTION</u> |                   |       |          |          | <u>PAGE NO.</u> |
|----------------------------|-------------------|-------|----------|----------|-----------------|
|                            | DIRECT            | CROSS | REDIRECT | RE CROSS |                 |
|                            | Frederick Howell  |       |          |          |                 |
| Ms. Joyner                 | 5                 |       |          | 27/59    |                 |
| Ms. Williams               |                   | 23    |          |          |                 |
|                            | Richard Gustafson |       |          |          |                 |
| Ms. Joyner                 | 29                |       |          | 50       |                 |
| Ms. Williams               |                   | 47    |          |          |                 |
| The Court                  | 53                |       |          |          |                 |
| Decision by the Court      |                   |       |          |          | 62              |
| Certificate Page           |                   |       |          |          | 64              |

DIRECT EXAMINATION BY MS. JOYNER - RICHARD GUSTAFSON 31

1 represent him on that prior ---

2 A No. I'm sorry ---

3 Q --- date.

4 A I'm -- I'm looking at a file -- I believe there was  
5 some other stuff. But as far as when the actual  
6 appointment for when the burglary came up, I have no idea  
7 when it was, ma'am.

8 Q But it would have been after March 31 ---

9 A Clearly.

10 Q --- 2005.

11 A Yes, ma'am.

12 Q And he pled guilty on August 18, 2005?

13 A Yes, ma'am. August 18, 2005, in front of Judge  
14 Williams; 22 years.

15 Q Okay. Did you have adequate time to properly  
16 investigate this case?

17 A Yes, ma'am.

18 Q What did your investigation entail?

19 A Meeting with the client. I think I went to the scene  
20 with an investigator. Reviewing the evidence that the  
21 solicitor's office had. I know there was some discussion  
22 -- there was a possible *Brady* violation with regards to  
23 some letters that the defendant had sent. The solicitor  
24 had access to them.

25 And then eventually, too, we -- we had a bit of a

DIRECT EXAMINATION BY MS. JOYNER - RICHARD GUSTAFSON 32

1 battle getting to see the videotape. And then arranging,  
2 not just for me to see it, but also for the defendant to  
3 see it as well when I saw it.

4 Q Do you remember when you actually saw it?

5 A The videotape?

6 Q Yes.

7 A I've got that was on August 3 of 2005.

8 Q And so a couple of weeks before this trial?

9 A Yes, ma'am.

10 Q And that was the first time you reviewed it?

11 A That was the first time I was -- well, that was the  
12 first time I saw it with the client. Yes, ma'am. There  
13 had been discussion before that, and that was when we  
14 first saw the tape. That's correct.

15 Q Okay. So that was the first time both you and he saw  
16 it.

17 A Yes, ma'am.

18 Q Okay. Did you see it more than once?

19 A I saw it a couple of times, I know I've got here.

20 Q Okay. What other days did you review it?

21 A Well, that day. I spent some time watching it.

22 Q Okay. Did you have a copy of it yourself, or you just  
23 viewed it in the solicitor's office?

24 A I was not provided a copy. I remember it was on their  
25 TV in their office.

DIRECT EXAMINATION BY MS. JOYNER - RICHARD GUSTAFSON 33

1 I know that we watched it without the solicitor being  
2 present. I think at some point in time he did come in, or  
3 have one of his assistants come in.

4 Q Mr. Howell indicated in his testimony that the  
5 videotape appeared not to depict the entire time span that  
6 this burglary occurred. He indicated that what he viewed  
7 was 1:04/1:05; and that the robbery occurred at 1:35. Is  
8 that your recollection as well?

9 A My recollection of the exact timing, no, ma'am. I  
10 remember what the video depicted, and it -- and I remember  
11 that very clearly. And I would say that the video -- you  
12 know, it's quality was very clear. But as far as the time  
13 and the exact time on the incident report, no, ma'am. I  
14 don't recall that.

15 Q Did you take notes concerning the videotape when you  
16 were reviewing it?

17 A Certainly.

18 Q Did you record the times that the video tape started  
19 and ended?

20 A If you'll bear with me ---

21 Q Sure.

22 A --- I'll be happy to look.

23 (Brief pause as the witness reviews documents.)

24 A I have to say that I'm sure I did. As I look in my  
25 file, it is somewhat organized, I guess because of the

DIRECT EXAMINATION BY MS. JOYNER - RICHARD GUSTAFSON 34

1 age, and the fact that it was prepped for trial, because  
2 he pled the morning before trial.

3 I know I took notes of it and I know I studied it for  
4 some time. But I don't have my exact notes of the tape in  
5 front of me, because I've got some things as far as trial.

6 Q And according to Mr. Howell's testimony, do you  
7 remember the videotape showing both him outside of the --  
8 the alleged building or -- or residence or whatever it's  
9 going to be characterized as -- and it showing an actual  
10 crime in progress?

11 A No, ma'am. I don't recall the outside of the  
12 building. What I recall was what was videotaped from  
13 cameras inside the structure, primarily the front -- I  
14 think it was the front two rooms.

15 What it is is it's kind of a converted house-type  
16 structure. Okay. And you have two main rooms there. And  
17 the videotapes or the video cameras, if you will -- which  
18 we can assume the tapes came from -- were inside the  
19 structure.

20 Q Wasn't there an indication that the cameras were on  
21 the outside? Was that -- wasn't that part of the  
22 discussion on the record?

23 A There may have been discussion with regards to that,  
24 ma'am. What I remember being the most difficult evidence  
25 for us to deal with -- well, quite frankly the evidence I

DIRECT EXAMINATION BY MS. JOYNER - RICHARD GUSTAFSON 35

1 didn't really have an answer to deal with, was the tape of  
2 a figure alleged to be my client on the inside of the  
3 structure, primarily the front two rooms, where you saw an  
4 individual matching his physical description, as well as  
5 several facial shots.

6 Q So what precisely did the video depict? Did it show a  
7 crime being committed?

8 A It showed a young gentleman of my client's physical  
9 stature -- structure, build, what have you -- walking  
10 through the residence or the structure, if you will --  
11 converted house, if you will -- removing some items from  
12 the walls, having a flashlight.

13 At one point, I believe it was either a stool or a  
14 chair, I don't recall which, the person in the film got up  
15 on it and -- and the face was very close to the camera. I  
16 mean, the only thing we didn't have was a smile.

17 Like I said the -- as I recall, the quality was not  
18 granule; it was very clear. And I think that, basically,  
19 you had -- I think it was two cameras from different  
20 angles inside the structure. And that -- that was really  
21 problematic for us.

22 Q Who -- who made the positive identification of your  
23 client?

24 A As I recall the identification issue primarily came  
25 from -- I -- I'm not sure his rank at the time -- but Rene

DIRECT EXAMINATION BY MS. JOYNER - RICHARD GUSTAFSON 36

1 Williams, who was an officer with the Sheriff's  
2 Department.

3 Q Was he the investigator involved with this case?

4 A Yes, ma'am.

5 Q How did he identify --

6 A Well, they had the -- the videotape; they had prints;  
7 and I think they had some prior dealings unfortunately.

8 Q When you say the "print," were prints analyzed?

9 A All I know is they had some prints. The solicitor  
10 brought it to my attention. I discussed it with the  
11 client. Yeah. Apparently they had some prints.

12 Q But were they analyzed by SLED and came back as a  
13 match to your client?

14 A I'm not sure if SLED did it, if the Sheriff's  
15 Department did it, or who did it. But they had his prints  
16 in the house.

17 Q It wasn't an analysis that matched your client though.

18 A They pulled off prints.

19 Q Uh-huh.

20 A They said they were his, and they were from the  
21 structure.

22 Q No. But I'm saying were they evaluated by someone --  
23 by a professional and indicated that they matched your  
24 client's?

25 A All I can tell you, if they had them, they were

DIRECT EXAMINATION BY MS. JOYNER - RICHARD GUSTAFSON 37

1 analyzed. I'm not sure what department did it. Okay.

2 But they did have them.

3 Q But it came back as a positive identification?

4 A Yes, ma'am. That was something that they used in  
5 identifying -- or alleging that my client was the  
6 defendant -- or the culprit.

7 Q Didn't your client indicate to you and didn't the  
8 solicitor indicate on the record that the person in the  
9 video had gloves on?

10 A I don't recall gloves. I recall the general build and  
11 description fitting my client or looking very similar.  
12 And then, of course, the -- the one camera shot where  
13 there was a facial shot that was very, very, very bad;  
14 very prejudicial for us.

15 Q Do you have a positive analysis indicating those  
16 prints belonged to your client? I didn't see any in  
17 regards to the material I reviewed. Do you have that in  
18 your file?

19 A No, ma'am. And I don't have any stills of the  
20 videotape as well.

21 Q Not the videotape. I'm ---

22 A No. I said both. Both -- I -- are negative. That's  
23 correct.

24 Q So your recollection that the fingerprints matched  
25 your client, what is that based on?

DIRECT EXAMINATION BY MS. JOYNER - RICHARD GUSTAFSON 38

1 A My review of the file. That was one of the -- that  
2 was one of the items they were going to use in identifying  
3 my client as well as what the officer was going to testify  
4 and -- where I came up with that was in reviewing what I  
5 was going to argue in pre-trial motions.

6 Q Did -- did they turn over a copy of the analysis to  
7 you?

8 A I did not have an analysis in the file.

9 Q So there is no analysis in the file.

10 A I don't have one, no.

11 Q Okay. Did you provide your client with a copy of one?

12 A You know, I -- I listened to his testimony as far as  
13 when he was provided with discovery. I know that I  
14 provided him with -- him with a great deal of information  
15 during the case. And I know he got a copy of the file  
16 afterwards. I can't tell you what specifics he got,  
17 whether he got a copy of the analysis of the fingerprints  
18 or stills or what have you. I -- I just can't tell you  
19 that. I know he got a lot of stuff ---

20 Q Well ---

21 A --- from the file.

22 Q Okay. Because he's indicated he did not get a copy of  
23 the analysis. He had no indication that his fingerprints  
24 were positive at the scene, or whether there was an  
25 analysis done. But ...