

VOL II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

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S.C. Supreme Court

CARMICHAEL FLOWERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000926

APPENDIX

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1 based on ownership or value of all damaged property,
2 question mark. What says the State in regard to that query?

3 MS. PARR: And the question again? Do we determine

4 ---

5 THE COURT: Let me read it to you. Do we determine
6 the value of the personal property based on ownership or
7 value of all damaged property, question mark. Here, I'll
8 let you lawyers take it. Ms. Bailiff, would you hand it to
9 the lawyers, let them both take a look at it.

10 (Attorneys confer.)

11 MS. PARR: Your Honor, the State would ask the value
12 of all damaged property.

13 THE COURT: All right. What do you say, Mr. Floyd?

14 MR. FLOYD: Your Honor, I think the statute makes it a
15 crime to damage the property of another, and certainly they
16 have to determine I think who the property belongs to based
17 on ownership. I mean, if they think some of the property
18 belongs to the defendant, which they obviously could, I
19 mean, I don't think it's against the law for him to destroy
20 his own property.

21 THE COURT: Ms. Solicitor, it says upon real property
22 of another. And I do agree with Mr. Floyd that it's not a
23 crime for him to destroy his own property. What about that?

24 MS. PARR: Your Honor, of course the State will abide
25 by the Court's ruling.

1 THE COURT: All right. The next question, will the
2 insurance company be reimbursed for any money paid out --
3 will they subrogate, question mark. And you know that
4 emanates from Gail P. Jones who is an insurance
5 representative. There's no doubt the etiology of that,
6 Mr. Floyd, you understand?

7 MR. FLOYD: Yes, sir, Your Honor, that was the name
8 that popped into my mind.

9 THE COURT: And sure enough, I thought about that.
10 When I was charging the jury I thought about that particular
11 matter and I said, no, I'm not going to comment on that
12 because that gets too close to the facts. And as you well
13 know the constitution in this state, not all state
14 constitutions have our provision that we have, the trial
15 judge shall not charge the jury on the facts as a trial
16 judge who does so commits an egregious error, which even
17 worse than being reversed.

18 What do you want me to tell them, Ms. Solicitor? Will
19 insurance company be reimbursed for any money paid out --
20 will they subrogate, question mark.

21 MS. PARR: Your Honor, of course the State doesn't
22 know. I guess it would be if the court ordered restitution
23 if but at this -- Your Honor, I don't know if that's a
24 question we can answer.

25 THE COURT: Well, Mr. Floyd, I want to hear you but

1 I'm thinking in my mind that is not the jury's business.

2 MR. FLOYD: I think you're right, Your Honor.

3 THE COURT: That's not their business at all.

4 MR. FLOYD: Absolutely.

5 THE COURT: Okay, all right. And the next one, quote,
6 we need the definition of kidnapping in writing for
7 discussion (Gail Jones). You lawyers well know this
8 probably by heart. The last case that dealt with that issue
9 is State versus Covert. I wrote Covert on behalf of Court
10 of Appeals way back, and Judge Short and I agreed to reverse
11 Covert based on this particular issue. We had a dissent but
12 then it went to the state supreme court and here's what the
13 state supreme court said. In that case the trial judge only
14 sent in the trafficking statute, just sent in the
15 trafficking statute. And of course they're requesting the
16 kidnapping. But in that case the trial judge sent in the
17 trafficking statute, nothing else, just the trafficking
18 statute. And I concluded that was an egregious and
19 reversible error because it didn't encompass all of the
20 charge in the case. Quote, Judge Short and Judge Anderson
21 found reversible error in the trial court submission to the
22 jury of the trafficking statute while Judge Goolsby found no
23 error. Since this case was tried and the appeal decided by
24 the Court of Appeals, we have held that it is within the
25 trial judge's discretion to submit its instructions on the

1 law to the jury in writing. State versus Turner. We
2 caution the Bench again. I want to repeat that. We caution
3 the Bench again, as we did in Turner, that this practice
4 should be used sparingly and only where it will aid the jury
5 and where it will not prejudice the defendant. It is never
6 appropriate however to give only part of the charge to the
7 jury as was done in this case. I repeat that last sentence.
8 It is never appropriate, however, to give only part of the
9 charge to the jury as was done in this case. End of quote.

10 Now having some years of age on my resume, I may not
11 understand some things but when it is written in direct
12 language with no ambivalence, equivocation or vacillation, I
13 tend to get it, which means I am not sending in the
14 kidnapping statute in this case by itself under no
15 circumstances. I can read that last sentence. You lawyers
16 understand that last sentence?

17 MS. PARR: I understand.

18 MR. FLOYD: Yes, sir, Your Honor.

19 THE COURT: Okay. Now what do you want me to tell
20 them? You want me to bring them out or write some notes on
21 these bill adieus? What says the State?

22 MS. PARR: Bring them out or just write notes. Your
23 Honor, I guess it might be better to bring them out.

24 THE COURT: Okay, bring them out. Here we go.
25

1 (WHEREUPON, the jury was returned to the courtroom at
2 approximately 3:34 p.m., and the following proceedings
3 commenced in open court.)

4 THE COURT: Madam Forelady, thank you for your notes.
5 And let me respond please in seriatim. First, will the
6 insurance company be reimbursed for any money paid out —
7 will they subrogate, question mark. That is not an issue
8 for you to decide and determine. That is not an issue for
9 you at all. If — and I emphasize if — and underline it,
10 Ms. Court reporter. If you find the defendant has committed
11 a violation of the law, I then have the right in regard to
12 sentencing in dealing with what is called restitution. The
13 law mandates a restitution hearing. At that time I would
14 consider the pros and cons of everything involved, but that
15 is not a matter for you. That is not a matter for you.
16 Please.

17 (Court's Exhibit Number 1 was marked
18 and made a part of the record.)

19 THE COURT: Do we determine the value of personal
20 property based on ownership or value of all damaged
21 property? The answer to that question is you determine the
22 value of the personal property based on ownership because
23 the statute says in the last five words, upon the property
24 of another. So under no circumstances can a person be
25 criminally responsible for damaging in his own property. I

1 mean, the law could care less in that regard. I'm not being
2 cavalier, but you have the right to do what you want to with
3 your own property. So the answer to the question is the
4 value of the property must be based on ownership because the
5 statute says upon the property of another.

6 (Court's Exhibit Number 2 was marked
7 and made a part of the record.)

8 THE COURT: We need definition of kidnapping in
9 writing for discussion (Gail Jones). Let me explain that to
10 you in great specificity. In days gone by I served as a
11 judge on the Court of Appeals in Columbia for 13 years and I
12 wrote certain opinions that were published as the law of the
13 state. And one was State versus Covert C-O-V-E-R-T. And in
14 State versus Covert I had the issue of a circuit judge
15 sending in to the jury a copy of a statute and not including
16 the whole charge. And the state supreme court said this,
17 said this, Judge Short and Judge Anderson found reversible
18 error in the trial court submission to the jury of the
19 trafficking statute while Judge Goolsby found no error.
20 Since this case was tried and the appeal decided by the
21 Court of Appeals we have held that it is within the trial
22 judge's discretion to submit its instructions on the law to
23 the jury in writing. State versus Turner. We caution the
24 Bench again as we did in Turner that this practice should be
25 used sparingly and only where it will aid the jury and where

1 it will not prejudice the defendant, period. It is never
2 appropriate, however, to give only part of the charge to the
3 jury as was done in this case, period; end of quote. So you
4 can see the state supreme court said you can't send in just
5 a piece of charge; can't do it that. Now what can I do? I
6 can give you the charge of kidnapping again. Would that
7 burden you, jurors, or would you like to just talk about it
8 some more. But I will give you the charge on kidnapping
9 right now if that's suitable.

10 THE FOREPERSON: That's what we need, sir.

11 THE COURT: All right. Deputy, once again, I don't
12 want anybody coming in. I don't want anybody going out,
13 period. Now this is serious business and I'm not interested
14 in people being entertained.

15 Kidnapping. The defendant is charged with kidnapping.
16 Section 16-3-- section 16-3-910 of the South Carolina Code
17 of Laws provides, quote: "Whoever shall unlawfully seize,
18 confine, inveigle, decoy, kidnap, abduct, or carry away any
19 other person by any means whatsoever without authority of
20 law is guilty of kidnapping. The State must prove beyond a
21 reasonable doubt the elements of kidnapping. That the
22 defendant did: (A) unlawfully seize, confine, inveigle,
23 decoy, kidnap, abduct or carry away any other person. The
24 definition of decoy is to lure success. Inveigling is
25 defined as enticing, cajoling, or tempting the victim

1 usually through some deceitful means such as false promises.

2 (B) by any means whatsoever, (c) without authority of law.

3 Kidnapping is the intentional taking of a person and

4 compelling her to be detained against her will. It is the

5 willful and unlawful seizing of a person against her will

6 with the intent to cause her to be confined, imprisoned, or

7 detained. It is false imprisonment with the element of

8 abduction added. The essence of the offense of kidnapping

9 is the unlawful holding of a person. An essential element

10 of the offense of kidnapping is that the taking of detention

11 of the person kidnapped is without lawful authority.

12 Kidnapping by the use of fraud, inveiglement, or enticing is

13 the obtaining of a false consent by means of deception. The

14 use of fraud as a substitute for force and effect in

15 kidnapping implies false and fraudulent representations

16 amounting substantially to a coercion of the will of the

17 kidnapped person. In determining whether the person was

18 coerced by fraud and inveiglement, the nature of the

19 artifice employed and the age, education, and condition of

20 the mind must be taken into consideration. Ordinarily a

21 false statement or representation is not in and of itself

22 sufficient to constitute fraud. In summary, kidnapping

23 occurs when a person unlawful seizes, confines, inveigles,

24 decoys, kidnaps, abducts, or carries away any other person

25 by any means whatsoever without authority of law.

1 Kidnapping is a continuing offense. The offense commences
2 when one is wrongfully deprived of her freedom and continues
3 until her freedom is restored.

4 Thank you very much. And once again, I'm here to
5 help. And I don't mind your notes at all. I'll respond.
6 Thank you.

7 (WHEREUPON, the jury was removed from the
8 courtroom at 3:39 p.m., and the following proceedings
9 commenced in open court.)

10 (Court's Exhibit Number 3 was marked
11 and made a part of the record.)

12 THE COURT: Any response from the State as to my
13 discussion to the jury in reference to these three queries?

14 MS. PARR: None from the State, Your Honor.

15 THE COURT: Defense?

16 MR. FLOYD: None, Your Honor.

17 THE COURT: All right. Counsel, once again, now we
18 have a note writing jury and so please stay close by.

19 (WHEREUPON, a recess was taken from the proceedings.)

20 THE COURT: The note from the jury reads, some members
21 of the jury need to listen to criminal domestic violence and
22 high and aggravated nature, period. Please define the
23 difference again, period. And so I'm going to just play
24 back the whole thing in regard when I first started criminal
25 domestic violence, okay? Lawyers, give me your attention

1 please now. I'm going to play back the exact charge rather
2 than having any change in verbiage or language. I'm going
3 to play it back haec verba. Everybody understand? Okay.
4 (WHEREUPON, the jury was returned to the courtroom at
5 approximately 4:45 p.m., and the following proceedings
6 commenced in open court.)
7 (Criminal domestic violence charge was played back for the
8 jury.)

9 THE COURT: Does that respond okay? Thank you.
10 (WHEREUPON, the jury was removed from the
11 courtroom at 4:53 p.m., and the following proceedings
12 commenced in open court.)

13 (Court's Exhibit Number 4 was marked
14 and made a part of the record.)

15 THE COURT: Any exceptions or objections from the
16 State?

17 MS. PARR: None from Defendant -- State, Your Honor.

18 THE COURT: From Defense?

19 MR. FLOYD: None, Your Honor.

20 THE COURT: Please stay close by, Counsel.

21 MR. FLOYD: Yes, Your Honor.

22 (WHEREUPON, a recess was taken from the proceedings.)

23 THE COURT: Folk, give me your attention. I have been
24 advised that the jury has reached a verdict. Obviously this
25 is a case where emotions may be involved, but I have a

1 strict policy of respecting the jury and their
2 constitutional role. They have decided the case. I have no
3 earthly idea what the decision is because it's theirs. But,
4 we respect the jury decision and I'm not going to let anyone
5 react to the jury decision in any form or fashion.

6 So deputies, I would ask you to be aware of the fact
7 that the jury is to be respected and I don't want any
8 reaction to the jury verdict, whatever it is. Does everyone
9 understand? If you do not understand slide your hand right
10 up and I will attempt to clarify or remove the ambiguity.
11 Everyone understand?

12 (There was no response.)

13 (WHEREUPON, the jury was returned to the courtroom at
14 approximately 5:20 p.m., and the following proceedings
15 commenced in open court.)

16 THE COURT: Ms. Clerk, you're recognized.

17 THE DEPUTY CLERK OF COURT: Madam Forelady, members
18 of the jury, have you agreed upon a verdict?

19 THE FOREPERSON: Yes, we have.

20 (Document tendered to the Court.)

21 THE DEPUTY CLERK OF COURT: State of South Carolina
22 versus Carmichael Trevon Flowers, indictment 2009-GS-21-126,
23 not guilty. Foreperson, Gail Jones.

24 THE COURT: That's on the -- identify the charge.

25 DEPUTY CLERK OF COURT: I'm sorry, Judge. Not guilty,

1 kidnapping. Dated July 22nd, 2009. Guilty of malicious
2 injury real property in the amount of 24,703-dollars and 49
3 cents. Signed, foreperson Gail Jones. Dated July 22nd,
4 2009. Guilty of malicious injury to personal property in
5 the amount of 11,346-dollars 0 cents. Foreperson, Gail
6 Jones. Dated July 22nd, 2009. Guilty of criminal domestic
7 violence. Signed foreperson, Gail Jones. Dated July 22nd,
8 2009.

9 Members of the jury, if this is your verdict please
10 raise your right hand.

11 (All jurors complied by raising their hand.)

12 DEPUTY CLERK OF COURT: That's all of them, Judge.

13 THE COURT: Let the polling reveal unanimity in the
14 jury verdict. Any further requests for individual voir
15 dire, Mr. Floyd?

16 MR. FLOYD: None from the Defense, Your Honor.

17 THE COURT: Thank you. Jurors, thank you very much
18 for deciding this case. Thank you for the time and talent
19 you bring to the task and thank you for being a part of the
20 court system.

21 (WHEREUPON, the jury was removed from the
22 courtroom, and the following proceedings
23 commenced in open court.)

24 THE COURT: All right. Motions, Mr. Floyd.

25 MR. FLOYD: Your Honor, on counts 1, 2 and 3 of the

1 indictment I would just renew my motions I previously made
2 for directed verdict on the same grounds I previously
3 stated, Your Honor.

4 THE COURT: The motion is made for a new trial in
5 regard to the same grounds heretofore stated, and I will
6 continue to make the same rulings and that is I concluded it
7 was a factual matter for the jury on each one of these
8 charges. And it is so ordered.

9 MR. FLOYD: Thank you, Your Honor.

10 THE COURT: All right. And bring him forward for
11 sentencing.

12 MS. PARR: Your Honor, I am doing sentencing sheets so
13 if I can ---

14 THE COURT: Keep working on those. Is there a copy of
15 his past record that goes beyond the ten years that I
16 allowed?

17 MS. PARR: Yes, Your Honor, it's ---

18 THE COURT: May I see it please. All right, Mr. Floyd
19 and Mr. Flowers, let's review this past record for
20 sentencing purposes. For sentencing purposes the Court goes
21 beyond the ten year period. The ten year was the limitation
22 in regard to information submitted to the jury, but for
23 sentencing purposes I will consider his entire record in
24 regard to past law violations. And the record reveals a
25 rather extensive history of law violations. Mr. Floyd, if

1 you will help me in regard to these particular matters.

2 There are numerous traffic charges, traffic violations. The
3 first felony that I have is the felony charge. And what do
4 you say that felony charge was, Mr. Flowers?

5 THE DEFENDANT: National firearm violation.

6 THE COURT: I'm sorry? National firearms violation?

7 THE DEFENDANT: National firearms violation, yes, sir.

8 THE COURT: And what sentence did you get for that?

9 THE DEFENDANT: Well, the first one, I'm sorry.

10 THE COURT: First one.

11 THE DEFENDANT: First one is concealed weapon.

12 THE COURT: Concealed weapon. What did you get for
13 concealed weapon?

14 THE DEFENDANT: Hundred dollar fine.

15 THE COURT: Next charge, what did you get for that in
16 regard to the —

17 THE DEFENDANT: Six years.

18 THE COURT: Six years?

19 THE DEFENDANT: Yes, sir. It was indeterminate of
20 four to six years under youthful corrections act.

21 THE COURT: Four to six years?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Indeterminate.

24 MR. FLOYD: Yeah, indeterminate sentence, Your Honor.

25 THE COURT: And that specific charge now was the

1 felony gun charge?

2 MR. FLOYD: Yes, Your Honor, it was acquisition of
3 firearms selling without a license is what.

4 THE COURT: And that's four to six years. All right,
5 what is the next charge you have on your list?

6 MR. FLOYD: Your Honor, the next conviction that I
7 see -- and these aren't formatted the same as ours but I
8 think this is from California but it appears to me the next
9 conviction was for vandalism.

10 THE COURT: Vandalism?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You remember that?

13 THE DEFENDANT: Yes.

14 THE COURT: What did you get for that?

15 THE DEFENDANT: Looks like three days jail and twelve
16 months probation.

17 THE COURT: Okay.

18 THE DEFENDANT: Restitution.

19 THE COURT: What is the next charge?

20 MR. FLOYD: Your Honor, the next one that I see is
21 theft of personal property.

22 THE COURT: Theft of personal property?

23 MR. FLOYD: Yes, sir.

24 THE COURT: What did he get for that?

25 MR. FLOYD: It appears 24 months probation, five days

1 in jail.

2 THE COURT: Is that correct? 24 months probation?

3 THE DEFENDANT: And pending sentence suspended.

4 THE COURT: Okay. What's the next charge?

5 MR. FLOYD: Your Honor, the next one that I see is,

6 and it appears that these two go together so I'm going to

7 read them off together. It looks like they were done on the

8 same date may be.

9 THE COURT: Yes.

10 MR. FLOYD: It looks like a grand theft property and a

11 burglary second degree.

12 THE COURT: I think they're separate though, aren't

13 they, burglary plus grand theft?

14 MR. FLOYD: They are separate offenses but the dates

15 I'm looking at both have 2/23,1990 which I assume was his

16 —

17 THE COURT: Burglary?

18 MR. FLOYD: —disposition date. Burglary second

19 degree and grand theft property.

20 THE COURT: Is that correct, sir? Burglary second and

21 grand theft of personal property?

22 THE DEFENDANT: Yes, sir. That's what it looks like.

23 THE COURT: Is that right?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is that right?

1 THE DEFENDANT: Yes, sir.
2 THE COURT: Okay. What's the next one, Mr. Floyd?
3 MR. FLOYD: Your Honor, the next one appears to me to
4 be receiving stolen property.
5 THE COURT: All right. Where was that receiving
6 stolen property?
7 MR. FLOYD: Was that in California?
8 THE DEFENDANT: That was in California.
9 THE COURT: California.
10 MR. FLOYD: California, Your Honor.
11 THE COURT: What date was that?
12 THE DEFENDANT: Looks like 1991.
13 THE COURT: 1991 in California?
14 THE DEFENDANT: Yes, sir.
15 THE COURT: What sentence did you get for that charge?
16 THE DEFENDANT: It looks like 36 months and probation?
17 THE COURT: Thirty-six months?
18 MR. FLOYD: Probation, Your Honor.
19 THE DEFENDANT: Probation.
20 MR. FLOYD: He got four days in jail, 36 months
21 probation.
22 THE COURT: What's the next charge?
23 MR. FLOYD: The next one, Your Honor, I see is from
24 1991 as well and it appears to be — it just says burglary.
25 THE COURT: But it looks like it's a different

1 burglary charge.

2 MR. FLOYD: Yes, sir, from the first one.

3 THE COURT: What year was that burglary charge?

4 MR. FLOYD: The one that I just read was 1991.

5 THE COURT: Yeah.

6 MR. FLOYD: And it doesn't specify burglary second or
7 what it is, just says burglary.

8 THE COURT: That must have been the first burglary; is
9 that right?

10 MR. FLOYD: Well, the first burglary I read off
11 earlier —

12 THE COURT: Wasn't that burglary second?

13 MR. FLOYD: —was burglary second degree.

14 THE COURT: Yeah.

15 MR. FLOYD: Yes, sir.

16 THE COURT: Anyway, Mr. Flowers, you got two burglary
17 charges, right, that you were sentenced for?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: On different dates?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: What was the other burglary? When was it
22 dated?

23 MR. FLOYD: The first burglary, Your Honor?

24 THE COURT: Yeah.

25 MR. FLOYD: Was 1990.

1 THE COURT: 1990?

2 MR. FLOYD: Yes, Your Honor.

3 THE COURT: Okay. All right, what's the next charge?

4 MR. FLOYD: Your Honor, it appears 1998, which is the

5 offenses that we discussed this morning that you would allow

6 to be submitted to the jury. It was also a burglary second

7 degree and then a -- it appears to be some sort of forgery

8 charge, Your Honor. It mentions a card --

9 THE DEFENDANT: Credit card fraud.

10 THE COURT: Credit card forgery?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: But you had three different -- I mean,

13 you've had three different burglaries in the past; is that

14 correct?

15 THE DEFENDANT: That's correct.

16 THE COURT: Is that correct?

17 THE DEFENDANT: That's correct.

18 THE COURT: It is? Okay. Does that conclude it,

19 Counsel?

20 THE DEFENDANT: Yes.

21 MR. FLOYD: That's all that I see, Your Honor, unless

22 I have missed something.

23 THE COURT: Let me return this to the solicitor.

24 Well, to say the least there's a substantial record here in

25 regard to Mr. Flowers. Let me make sure everybody

1 understands before I pass the sentence. Of course the jury
2 found the lesser charge of criminal domestic violence and
3 the maximum on that is 30 days.

4 MR. FLOYD: Yes, Your Honor.

5 THE COURT: That's the maximum on criminal domestic
6 violence in regard to simple — what we call simple criminal
7 domestic violence is 30 days maximum.

8 MR. FLOYD: That's correct.

9 THE COURT: And so that's the maximum he can get on
10 that charge. Of course they found him not guilty of
11 kidnapping. In regard to malicious injury to real property
12 I can give him up to ten years and malicious injury to
13 personal property up to ten years.

14 MR. FLOYD: Yes, Your Honor.

15 THE COURT: So in to to he's facing a maximum sentence
16 of 20 years and 30 days.

17 MR. FLOYD: That's correct.

18 THE COURT: That's the maximum sentence.

19 MR. FLOYD: That's correct.

20 THE COURT: All right. Ms. Solicitor, you want to be
21 heard in regard to sentencing? The victim want to be heard?

22 MS. PARR: Yes, Your Honor. She —

23 THE COURT: Pass me the forms please.

24 MS. PARR: Ms. Cox is going to speak on behalf of
25 victim.

1 THE COURT: Once again, for the records purposes only
2 would you give us your full name.

3 INVESTIGATOR COX: Felicia Watson Cox.

4 THE COURT: All right, Ms. Cox, you're recognized.

5 INVESTIGATOR COX: Thank you, sir. I'm gonna speak on
6 behalf of the victim. She had written some stuff and she's
7 not able to get up and do this for herself. The thing she
8 wrote today was, I would like to request that the maximum
9 penalty be imposed on the defendant. I fear for my life,
10 the safety and lives of my loved ones. He's threatened my
11 life, and I have no doubt that he will follow through with
12 his threat and commit that he's committed on my phone, and
13 then when he said that it ain't over and the house that I
14 will never forget to this day. I don't want to have to live
15 my life looking over my shoulder and running in fear of him.

16 Obviously there was a lot of financial things that she
17 would be requesting restitution if or when that would be
18 applicable.

19 THE COURT: The problem with the restitution issue is
20 if I give him a lengthy jail sentence then you're talking
21 about restitution way down the road, which is off times
22 difficult to do deal with.

23 INVESTIGATOR COX: Yes, sir.

24 MS. PARR: Your Honor, I think she'd prefer to have
25 the lengthy jail sentence than restitution.

1 INVESTIGATOR COX: Yes, sir.

2 THE COURT: Anything further, Mr. Solicitor?

3 MS. PARR: There's nothing further, Your Honor. .

4 THE COURT: Mr. Floyd.

5 MR. FLOYD: Thank you, Your Honor. Your Honor
6 Mr. Flowers is a 54 years old now. He is -- I think he was
7 a native of Virginia; is that correct?

8 THE DEFENDANT: That's correct.

9 MR. FLOYD: And he lived out in California for a time.
10 As you can see from his record most of his criminal
11 violations are from the State of California. Of course you
12 heard a little history about how he came down here. He
13 doesn't have any family here, Your Honor. In fact, I think
14 really the only family he has left is his mother who's of
15 course elderly. He's 54 so I'm not sure how old she is but
16 I'm sure she's in her 70s. I've spoken to her on the phone
17 a number of times myself in relation to Mr. Flowers and his
18 condition and that sort of thing because he did have some
19 health problems. That's his only family, Your Honor, only
20 family he has.

21 Your Honor, I understand, you know, we just went over
22 his record. I understand that obviously there are a number
23 of offenses on there although I would point out, you know,
24 the last one was ten years ago. And before that one closest
25 to that was eight years before that. I think the majority

1 of it came in a cluster back in the 70s and 80s maybe when
2 he was a little younger. So he has gone extended period of
3 time without any brushes with the criminal justice system,
4 Your Honor. Your Honor, without the family around it's kind
5 of hard to talk people and get to know somebody, Their
6 impressions of him. Of course I talked directly to him, you
7 know, on a number of occasions and have had the opportunity
8 to get to know him in that setting. I will say, you know,
9 to me he's been very polite and he's been cooperative to me
10 and as far as I know my office staff.

11 Your Honor, I did go into his neighborhood and speak
12 to a number of people that live by him or his neighbors as
13 well as Mr. White. He went with me and Mr. White spoken to
14 a number of them as well. And I had several of them tell
15 me and Mr. Frank had several tell him or that in fact he
16 mentioned it to me this morning that, you know, Mr. Flowers
17 is a good neighbor to those people and that lived on his
18 street. They said that I think we saw a bunch of clothes in
19 the house and they said that, you know, he was very generous
20 about giving people clothes when they didn't have the money
21 for them or giving people transportation when they didn't
22 have it and even give them food, Your Honor. I mean, I do
23 think that he has empathy for other people. I understand
24 he's been found guilty for of these offenses today. I think
25 that some people undergo a personality change when they

1 drink or use that sort of substance. Alcohol is just like a
2 drug to a lot of people, just as bad as crack cocaine, and I
3 think he may be one of those people. I think the person
4 whose voice I heard on that CD leaving those voice mail
5 messages didn't sound like the same person that I heard the
6 neighbors describe; I'll put it that way. He didn't sound
7 like the same person that I've talked to and have, you know,
8 had a number of meetings with.

9 But Your Honor, we would certainly ask that you be as
10 merciful as you can be and consider certainly a concurrent
11 sentence in the case. I would -- I computed the number of
12 days that he's been --

13 THE COURT: How long has he been in jail?

14 MR. FLOYD: It's -- I count 293 days, Your Honor.

15 THE COURT: 293 days?

16 MR. FLOYD: Yes, Your Honor.

17 THE COURT: Well, under the statute and under the law
18 he gets credit for that, 293 days. That credit is to be
19 given and I'm going to make sure it's written on the
20 sentencing form.

21 Mr. Flowers, you want to tell me anything?

22 THE DEFENDANT: No more than I was kind of upset you
23 didn't give me my California versus Feretta motion.

24 THE COURT: I'm sorry, what?

25 THE DEFENDANT: I said I was upset that you didn't

1 give me my motion for California versus Feretta.

2 THE COURT: Well ---

3 THE DEFENDANT: But other than that, Your Honor, you
4 know, this is isolated, you know, incident. I think I'm
5 better off being single from now on. I don't have any
6 animosity towards her. As far as I'm concerned it's over;
7 it's done with. I'd like to move on with my life, and
8 there's fifty other states I can go to to do that. And if
9 it pleases you, Your Honor, I'd just like to just move on.

10 THE COURT: From the State standpoint, Ms. Solicitor,
11 I want to make sure that we communicate in regard to this
12 restitution. Now obviously the restitution issue is lurking
13 out there. But in terms of long jail sentences I've already
14 said on the record and I'll repeat again, that it's very,
15 very difficult in terms of a lengthy prison sentence to deal
16 with restitution after the person gets to the point of
17 eligibility for parole. And so are you stating on the
18 record now that we simply do not need to visit the issue of
19 restitution and that simply is ---

20 MS. PARR: That is correct. That is what ---

21 THE COURT: ---sustained and ---

22 MS. PARR: That is what ---

23 THE COURT: Both insurance company and the victim just
24 lives with that loss?

25 MS. PARR: Yes, Your Honor. Of course the insurance

1 company is not our concern. Our concern is the victim and
2 the victim has indicated that's what she would like s,he
3 would like.

4 THE COURT: What my concern is with everything insofar
5 as restitution issues.

6 MS. PARR: They can deal with that after the sentence
7 if that's.—

8 THE COURT: Ms. Cox.

9 INVESTIGATOR COX: Yes, sir.

10 THE COURT: Do you concur now that insofar as the
11 restitution is concerned that I simply do not deal with that
12 and proceed with sentencing without restitution?

13 INVESTIGATOR COX: Yes, sir.

14 THE COURT: And you speak on behalf of the victim in
15 that regard too?

16 INVESTIGATOR COX: Yes, sir. Yes, sir.

17 THE COURT: I will state this on the record in regard
18 to sentencing. After 30 years on the Bench I'm the longest
19 serving judge in the state. I hope I don't look that old.
20 But be that as it may, the most difficult part of this
21 position is sentencing because everyone knows more about
22 sentencing than the judge. Everybody knows what to do.
23 Everybody knows what should have been done, and everybody
24 has a notion and idea of what's fair and just. And not many
25 people agree with the judge. That's just the way life is,

1 and that's the way it continues to be as I serve.

2 There are several factors that are involved in
3 sentencing. One is the past record, the past history, and
4 the past record of an individual must be considered. All of
5 the literature on sentencing emphasizes the past record of
6 an individual, the so-called recidivism factor. In
7 addition, the facts and circumstances of the offense must be
8 considered. Further, the impact upon the victim must be
9 considered. Additionally, the deterrent aspect in regard to
10 this defendant and other defendants in reference to this
11 kind of criminal activity. And finally, the aspect of
12 societal expectations in regard to conforming conduct to the
13 norms without criminal behavior.

14 For the record, the malicious injury to real property
15 is the most extensive damage I have ever seen in this charge
16 in 30 years. I have never seen more extensive damage done
17 to real property by a defendant, and certainly that must be
18 considered. Certainly that must be evaluated in regard to
19 the fact that the jury has found him guilty of that charge
20 and guilty of this malicious injury to the real property in
21 this case. In regard to the malicious injury to personal
22 property, that rises also to the level of probably at least
23 the second or third mathematical computation in regard to
24 malicious injury to personal property, once again found by
25 the jury. In regard to the criminal domestic violence, only

1 30 days is involved in that regard because that's what the
2 law says. That's what the statute says. But in totality
3 I've done what I believe to be the right thing. And even
4 though sentencing is difficult, even though sentencing is
5 imbued with the fact that most people are going to do a
6 major critique, I live with that. And I must do my duty,
7 and I must do what I believe to be right. And I'm going to
8 do what I believe to be right now in this case, and then I'm
9 going to lay my head on the pillow and sleep like a log
10 because it must be done. And I'm going to do it.

11 Malicious injury to real property, the sentence of the
12 Court is the defendant is committed to the State Department
13 of Corrections for a term of ten years. The sentence of the
14 Court on malicious injury to personal property, the
15 defendant is committed to the State Department of
16 Corrections for a term of five years and that is consecutive
17 to the sentence on malicious injury to real property. The
18 sentence of the Court in regard to criminal domestic
19 violence is 30 days, and that is consecutive to the other
20 two sentences. And it is so ordered and the court recesses
21 for the day. Thank you.

22

23 (WHEREUPON, court was adjourned.)

24 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina,
this 26th day of December, 2009.

Frances Betty Lay

FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

FORM 5

2012 CP 212215

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of Florence

#335945

Carmichael T. Flowers

Full name and prison number (if any) of Applicant

v.

State of South Carolina

CERTIFIED: A TRUE COPY

Carmichael T. Flowers

APPLICATION FOR

CLERK OF COURT CP POST-CONVICTION RELIEF
FLORENCE COUNTY, S.C.FILED
AUG 22 PM 4:04
CLERK OF COURT
FLORENCE COUNTY, S.C.**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 Evans Correctional Institution
610 HWY 9W Bennettsville S.C. 29512.
2. Name and location of Court which imposed sentence Florence County
General Session Court.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-21-126
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 22, 09; 10 years (MIRP) Consecutive.
- (b) July 22, 09, 5 years (MIPP) Consecutive.
- (c) July 22, 09; 30 days (CDV) Consecutive.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty yes
- (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. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Judgment Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 25, 2011/Remittitur sent on September 21, 2011.
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished opinion No. 2011-UP-404
- 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) See Attachment Sheet
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment Sheet
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

- i. _____
- 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?

N/A

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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) These grounds were not ripe for Federal Review.

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? yes

(c) your sentencing? _____

(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?

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. Attorney Scott Floyd, Bx N, City-County Complex Florence S.C. 29501.

ii. Attorney Wanda H. Carter, 1330 Lady Street, Suit 401 Columbia S.C. 29201-3332

iii. _____

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

i. Trial

ii. Direct Appeal

iii. _____

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

(1) Conviction for count one within Indictment No. 2009-GS-21-126,
Vacated.

(2) Conviction for count two within indictment 2009-GS-21-126,
Vacated.

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

No. _____

STATE OF SOUTH CAROLINA)

County of Marlboro)

VERIFICATION

I, CARMICHAEL T. FLOWERS #355945, 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.

Carmichael T. Flowers

SWORN to and subscribed before me this 21st
day of August, 2012.

Cin. J. Hays (L.S.)
Notary Public

My Commission Expires: Feb. 9th, 2020

2012 AUG 22 PM 4:04
COMM. REC'D - 355945
ECCP & G
FLORENCE COURT

FILED

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

I, Carmichael T. Flowers #335945, 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.

SWORN or affirmed to and subscribed before me this
21st day of August, 2012.

Cia. A. Hines
Notary Public

My Commission Expires: Feb. 9th, 2020

[Signature]
Applicant

2012 AUG 22 PM 4: 04
CORIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

Carmichael T. Flowers, #335945)
Applicant,)
VS.)
State of South Carolina,)
Respondent.)
_____)

(P C R

ATTACHMENT

SHEARIN

FILED
2012 AUG 22 PM 4:04
CONNIE REEL-SHEARIN
COP & GS
FLORENCE COUNTY, SC

Now comes the above named applicant as pursuant § 17-27-80; S.C. Code of Laws; Article 1 section 14; S.C. Constitution, and respectfully moves this Honorable Court to fully be heard.

(9) State concisely the grounds on which you base your allegation that you are being held in custody inlawfully?

A: INEFFECTIVE ASSISTANCE OF COUNSEL (Issue 1 Through 2)

B: INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL(Issue 1 Through2)

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

CARMICHAEL T. FLOWERS, #335945

APPLICANT,

VS.

STATE OF SOUTH CAROLINA,

RESPONDENT.

(P C R)

ATTACHMENT SHEET

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

A: INEFFECTIVE ASSISTANCE OF COUNSEL

ISSUE I.

The Applicant argues that his conviction for count one within indictment number 2009-GS-21-126, is in violation of his Six and Fourteenth Amendment guaranteed by the United States Constitution, due to trial counsel's failure to subpoena two witnesses in his favor who's testimony would have not only substantiated the dilapidated conditions of said real property at the time of it's initial purchase, but also would have substantiated Applicant's personal labor and construction of said real property which contributed to the very estimates of claims and damages for which the applicant now stands convicted.

As substantiated by the record, the Applicant testified at his trial and informed the court as to the fact that he and Nat Mitchell along with a third party, labored and reconstructed said real property. (see, Trial Trans pg.396 lines 22-25 Through pg.327 lines 1-25, Through pg.398 lines 1-14).

Wherefore, the Applicant argues had his trial counsel not been ineffective in calling forth the testimony of relevant and credible witnesses in his favor, the testimonies of both Nathaniel Mitchell and Larry Brown, would have been offered at his trial and there exist a reasonable probability the jury would have deduced there from there testimonies mitigating evidence which would have exonerated the applicant from being held criminally liable in regards to count one within indictment number 2009-GS-21-126.

The sixth Amendment right to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and introduction of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence. State V. Graham, 444 S.E.2d 525 (1994). see also, State V. Compton, 623 S.E.2d 661 (S.C.200).

Sixth Amendment right to notice, confrontation and compulsory process, taken together, guarantee that criminal charge may be answered in manner now considered fundamental to fair administration of American justice, through calling and interrogation of favorable witnesses, cross examination of adverse witnesses, and orderly introduction of evidence; In short, the Sixth Amendment constitutionalizes right to an adversary criminal trial to make defense as we know it. Faretta V. California, 95 S.Ct. 2525 (1975).

Evidence is relevant if it tends to establish or make more or less probable some matter at issue upon which it directly or indirectly bears. State V. Schmidt 342 S.E.2d 401 (1986).

Evidence which assist a jury at arriving at the truth of an issue is relevant and admissible unless other wise incompetent. Toole V. Salter, 154 S.E.2d 434 (1967). see also, State V. Beck, 536 S.E.2d 679 (S.C. 2000).

To establish ineffective assistance of counsel, petitioner must show counsel's representation fell below an objective standard of reasonableness and but for counsel's errors there is a reasonable probability the result would have been different. Martinaz V. State, 403 S.E.2d 113 (1991).

As to allegations of ineffective assistance of counsel, a post-conviction relief applicant must first show his counsel's representation fell below an objective standard of reasonableness and then show he was prejudiced by the substandard performance. Cooper V. Moor, 569 S.E.2d 330 (S.C.2002).

Wherefore, based on the aforementioned facts, the Applicant is confident he can meet his burden of proving ineffective assistance of counsel and request an evidentiary hearing for the purpose of proving the same.

A: INEFFECTIVE ASSISTANCE OF COUNSELISSUE II.

The Applicant argues that his conviction for count two within indictment number 2009-GS-21-126, is in violation of his Sixth and Fourteenth Amendment right guaranteed by the United States Constitution, due to trial counsel's failure to subpoena duces tecum and or request Janel Namias, (State's Lead Witness), to produce actual and factual receipts' which not only would have substantiated personal ownership of said destroyed personal property, but also would have substantiated the value of said property for the purpose that the jury could have made a factual determination and finding of fact in regards to criminal liability rather than, as in the case of Applicant, the juries finding of fact and guilt was base and determine from no more than a self prepared document which was forged and solely manufactured by the State's lead witness.

Moreover, the Applicant argues his trial counsel was ineffective for failing to object to these highly prejudicial self prepared documents' being submitted into evidence. The Applicant further argues, these documents' are no more than false claims of ownership and opinionated estimates of claims and damages.

" Opinion of owner as to cost of repairs, was inadmissible in prosecution for criminal damage to property." Johnson V. State 274 S.E.2d 778.(1980,). "Testimony of owner of property as to his opinion of value of property, is inadmissible in evidence as it has no probative value." Holbrook V. State 308 S.E.2d 869 (1983). "When sentence imposed by court upon defendant's conviction of malicious damage to personal property could only be sustained if damage [amounted to statutory amount or more], and state in attempting to prove such damage beyond a reasonable doubt relied on written estimates as well as photographs depicting damage, probability of prejudice from hearsay estimates required a new trial". State V. Wright 221 S.E.2d 840 (S.C.1976).

As substantiated by the trial transcript, the Applicant testified at his trial. Therefore, trial counsel was aware of the

fact that all the furniture was either collected out of dumpsters and or purchased from yard sale and refinished by the Applicant.(see Trial Trans. pg. 415 lines 16-25,see also pg. 416 lines 1-23). Wherefore, Applicant argues trial counsel was ineffective for failing to request the States' Lead Witness to produce actual receipt's which would have substantiated personal ownership and value of said damaged property.

Thus, trial counsel's failure to object to said prejudicial documents', (Exhibit' A -J), has resulted in the Applicant being criminally convicted of malicious injury to personal property that, not only was his own personal property, but also,did not amount to the statutory required amount to make it a criminal offense.

"Failure to object to impermissible evidence, constituted ineffective assistance of counsel".Mithell V. State 379 S.E.2d 123(1989). see also, 424 S.E.2d 477 (1992). "Trial counsel's failure to object, constituted ineffective assistance and warranted a new trial".High V. State,386 S.E.2d 463 (S.C.1989).

For an Applicant to be granted as a result of ineffective assistance of counsel, he must show both; (1) that his counsel failed to render reasonably effective assistance prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland V. Washington,104 S.Ct. 2052,(1984). In order to prove prejudice, an Applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry V. State,386 S.E.2d 624 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial."Johnson V. State,480 S.E. 2d 733 (1997).

Wherefore, the Applicant is confident that he can meet these well established prongs to show ineffective assistance of counsel and is deserving of an evidentiary hearing to prove the same.

B. INEFFECTIVE ASSISTANCE OF APPELLANT COUNSEL:

- * 1. FAILURE TO RAISE THE OBJECTION TO THE INTRODUCTION OF THE GUN WITHOUT IDENTIFYING THE CHAIN OF CUSTODY.
- * 2. FAILURE TO RAISE THE ISSUE OF THE INTRODUCTION OF THE TEXT MESSAGES WITHOUT PROVIDING AUTHENTICATION.

LAW/ANALYSIS

Ineffective Assistance of Counsel extends to both Trial and Appellant Counsel. STRICKLAND V. WASHINGTON 104 S.Ct. 2852, Also, TUCKER V. CATO 221 F. 3d. 600. Further, the Supreme Court exist only for correction of legal errors in law cases and is confined to record made by litigate at trial Walter v. Kirkwood 40 S.E.2d. 795. The Court can not consider facts which do not appear in transcript of record In re. Wilcox 169 S.E. 2d. 890

Ineffective Assistance of Appellant Counsel may be shown if Defendant can proof that Counsel omitted obvious and strong issue while pursuing significantly weaker issues Moultries v. U.S. 147 F Supp2d. 405.

B-1. APPELLANT COUNSEL WAS INEFFECTIVE FOR NOT RAISING THE ISSUE DEALING WITH THE INTRODUCTION OF THE GUN WITHOUT PROVIDING THE CHAIN OF CUSTODY, WHILE OBJECTED TO AT TRIAL AND ISSUES RAISED WERE "SIGNIFICANTLY WEAKER".

Appellant Counsel was Constitutionally Ineffective when raising issue that were clearly either not appealable and/or without merit. As outlined in State v. Chisolm 584 S.E.2d. 401. A complete chain of custody tracing "Possession" from the evidence's initial control to it's final analysis must be established as far as practicable Chisolm Supra. It was never alleged that Appellant harmed anyone with a weapon, nor was there any direct evidence that Appellant threatened anyone with a "Handgun", therefore it was totally improper for this evidence to be introduced as it would not be relevant. Further, The State

would have been required to provide as trial counsel correctly pointed out the as the chain of custody existed State v. Hatcher 681 S.E. 2d. 925. Trial Counsel put forth the argument that the police had searched the said truck and found nothing and then "days" later the alleged victim called the police back and said that the gun was in the truck. When the police had just days earlier searched the same truck to no avail, and then the alleged victim calls back because she says she has located the "gun" is not credible. Further, when the State introduced this item they failed to provide the chain of custody Hatcher Supra. While Counsel timely objected. This evidence was clearly prejudicial and had absolutely no probative value. Further, When the "Chain" of Custody had not been established the evidence was clearly inadmissible, and the issues raised by Appellant Counsel was clearly "Significantly weaker". Moultrees Supra.

B-2. APPELLANT COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE THE ISSUE OF THE ADMISSION OF THE "TEXT" MESSAGES, WITHOUT BEING AUTHENTICATED.

South Carolina Rules of Court (SCRCP 44) Specifically mandates that the only way to authenticate an official document, the evidence must be either presented by official publication thereof or by a copy attested by the officer having legal custody of the record or by direct testimony to verify the contents of the copy. South Carolina Rules of Court Rule 44, and, S.C. Code Ann. § 19-5-10 Provides in part "only admissible by submitting a certified as correct in accordance with Rule 902 or Testified to be correct by witness who has compared it with the original." When the records failed to mention what would constitute verification as to the phone's ownership, who specifically sent the text messages, certified copy authenticating the document, and the state failed to provide any official from the "company" to verify it's Authentication the record was clearly inadmissible. see Gripps v. Drygers 94 S.E.2d. 225. When Appellant Counsel submitted issues that were not preserved and/or

was harmless, the Petitioner did not have a single meritorious issue in front of the Court on direct appeal. Most issues raise an issue of Judicial Discretion, However, this issue raises an issue of a mechanical failure based on the Court allowance of evidence without the procedural mandates of Authentication of the document before determination of admissibility, see Gripps v. Driggers 94 S.E. 2d. 225.

As the Court knows, the Victim testified to the circumstances of the crime. The evidence was introduced to bolster the testimony of the victim, as the secondary evidence itself was not verified it impermissible shifted the burden of proof to the defendant to prove that the matter asserted was infact not true. Sandstrom v. Montana 99 S.Ct. 2450(1979) To the Contrary, the piece of paper containing the alleged text messages could have been a typed self generated document that was constructed before trial to assist in the lie perpetrated. Considering after arrest the alleged victim concocted this imaginary text message sheet along with the apparent list of items missing where the alleged victim could not remember where she bought almost everything in her house, but vividly remembered the amount she paid as to support her almost 30,000.00 claim while not remembering where she bought any item. conveniently done as to hide her tracks. The motive of the alleged victim should have been put in issue by the defense, where she stood to benefit as a result of this conviction. the insurance company paid her almost \$30,000.00. In short, The admissibility of the text messages were both not corroborated by authentication, and, Defense failed to show that this alleged victim had a huge motive for concocting this elaborate story. if the items were not hers she stood not to be paid the enormous insurance claim. The record was totally void of any evidence that the alleged victim in this case that any of the items listed at trial belonged to her, she could not produce not one receipt. Jackson v. Virginia 99 S.Ct. 2781 . The Petitioner would Respectfully Submit that Appellate Counsel was clearly ineffective for not raising the issue of the admissibility of the "Text Messages", where the State failed to provide Authentication

of the supposed Text , That was self-serving at best. The Petitioner Respectfully Request in this specific issue that this Court rule that Appellate Counsel was ineffective in not presenting a meritorious issue to the Court for their consideration.

CONCLUSION

Based on the foregoing the Applicant is entitled to a new trial.


Carmichael Flowers

SWORN TO BEFORE ME

THIS 21st DAY OF August, 2012.



Notary Public for South Carolina

My Commission Expires Feb 9th, 2020

Aug. 19TH 2012

Mr. Carmichael T. Flowers #335945

EVANS Corr. Inst.

610 HWY # 9 WEST, F1-B-123A

BENNETTSVILLE, SC 29512

FILED
2012 AUG 22 PM 4:03
CONNIE REEL-SHEARIN
CCJ & GS
FLORENCE COUNTY, SC

THE HON. CONNIE REEL-SHEARIN

Clerk of Court

City - County Complex

180 N. IRBY STREET, MSC-E

Florence, SC 29501

DEAR Clerk,

PLEASE FIND ENCLOSED A P.C.R. Application AND
ATTACHMENTS.

Please SEND ME A STAMPED filed copy.

Consideration given THIS REQUEST will be
greatly appreciated, (THANKS).Sincerely, I Am
Carmichael Flowers

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Carmichael T. Flowers, 335945

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-21-2215

RETURN

Respondent, making its Return to the Application for post conviction relief (PCR) filed August 22, 2012, would respectfully show this Court:

L

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the March 2009 term of the Florence County Grand Jury for malicious injury to real property and malicious injury to personal property and criminal domestic violence high and aggravated nature and kidnapping (2009-GS-21-126). Scott Floyd, Esquire, represented Applicant.

On July 22, 2008, the Applicant was tried and found not guilty of kidnapping, guilty of criminal domestic violence, and not guilty of criminal domestic violence of high and aggravated nature, and guilty of both malicious injury charges. The Honorable Ralph King Anderson sentenced Applicant to ten years imprisonment on the malicious injury to real property charge, to ten years consecutive on the malicious injury to personal property charge, to thirty days consecutive on the

CDV charge. Applicant filed timely notice of intent to appeal and his conviction was affirmed by order filed August 25, 2011.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available, the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Ineffective Assistance of Appellate counsel"

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel 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).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance 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.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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.

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

V.

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

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
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12/14, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

IN THE COURT OF COMMON PLEAS

2012-CP-21-2215

CARMICHAEL T. FLOWERS, #335945

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:

Steven M. Calcutt, Esquire
315 West Pine St.
Florence, SC 29503

DATED this 14TH day of December, 2012.


Norma Bigbee, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA
2 COUNTY OF FLORENCE

IN THE CIVIL COURT

3
4
5 CARMICHAEL T. FLOWERS,

6 Plaintiff,

7 -vs-

8 STATE OF SOUTH CAROLINA,

9 Defendant.

TRANSCRIPT OF RECORD

12-CP-21-2215

10
11 February 10, 2014
12 Florence South Carolina

13
14 B E F O R E:

15 HONORABLE MICHAEL G. NETTLES, Judge.
16
17

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

19 TRISTAN M. SHAFFER , Esquire
20 Attorney for the Plaintiff

21 JOSHUA L. THOMAS, Asst. Attorney General
22 Attorney for the State

23
24 L. COCONUT PANTSARI, R.P.R.
25 Circuit Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 (The following proceedings are reported on
2 February 10, 2014).

3 THE COURT: This is Case Number
4 2012-CP-21-2215.

5 MR. SHAFFER: Your Honor, I was informed of
6 something yesterday that doesn't seem like it would be
7 relevant in this court; but it actually is, given the
8 facts of this case.

9 My understanding is Mr. Flowers had actually
10 moved for --

11 THE COURT: All right. Would you identify
12 yourself for the court reporter.

13 MR. SHAFFER: Oh, I'm sorry, Your Honor. It's
14 Tristan Shaffer.

15 THE COURT: All right, Mr. Shaffer. Thank
16 you.

17 MR. SHAFFER: Mr. Flowers had actually filed
18 for divorce against the victim in this case. There is a
19 filing -- I learned of this yesterday. I knew that
20 there were some civil filings because he had sent me
21 copies of them.

22 I was unaware of -- I guess I need to give you
23 a little bit of background so you understand what's
24 going on here. He was accused of essentially destroying
25 real property and personal property.

1 He is serving 15 years for that of his -- what
2 he contends to be a common-law wife. At trial she
3 wasn't really presented as a common-law wife, more so as
4 a girlfriend or someone he lived with. His contention
5 is that they were actually married.

6 ~~He actually filed for divorce from her, which~~
7 ~~there is a filing downstairs that I would like to go~~
8 take a look at. It would probably take me 15 minutes to
9 review to determine whether or not, you know, I know it
10 well enough to go forward with the case.

11 Like I said, Your Honor, I learned of this
12 yesterday. I knew sort of the background of it, but I
13 didn't realize he had actually filed for divorce. I
14 would like to see the family court file before I move
15 forward.

16 THE COURT: I'll tell you what. We will
17 proceed forward, and we will put everything on the
18 record that I need to make a decision. We'll hold the
19 record open for the balance of the day for you to have
20 an opportunity to review the file, make a copy of
21 whatever you need, and show it to the State; and then
22 we'll supplement the record in that regard.

23 MR. SHAFFER: Okay. Thank you, Your Honor.

24 THE COURT: Very good. I'll be glad to hear
25 from the State. Of course, it's their application.

1 They have the burden of proof; but if you'd like to say
2 something before we get started, I'll be glad to hear
3 from you.

4 MR. THOMAS: Your Honor, I'll just give a
5 brief history of the case. This is Carmichael Flowers
6 versus the State of South Carolina. It's Case Number
7 2012-CP-21-2215.

8 Mr. Flowers was indicted in March of 2009 for
9 malicious injury to real property, malicious injury to
10 personal property, criminal domestic violence of a high
11 and aggravated nature, and kidnapping.

12 He was represented on those charges by
13 Mr. Scott Floyd. He went to trial on July 20th through
14 22nd of 2009. The jury convicted him of malicious
15 injury to real property, malicious injury to personal
16 property, and simple criminal domestic violence.

17 The Honorable Ralph King Anderson, Jr.
18 sentenced him to ten years on the real property damage
19 charge, five years on the personal property charge, and
20 30 days on the CDV. All of those were to run
21 consecutive.

22 An appeal was filed, was perfected by Wanda H.
23 Carter of the Office of Appellate Defense with an Anders
24 brief. The Court of Appeals dismissed that in an
25 unpublished opinion 2011-UP-404.

1 He filed this PCR on August 22, 2012, alleging
2 ineffective assistance of counsel. He is represented by
3 Tristan Shaffer, and the State is ready to proceed.

4 THE COURT: All right. Mr. Shaffer, you are
5 recognized.

6 MR. SHAFFER: Thank you, Your Honor. At this
7 time, we would call Scott Floyd.

8 THE COURT: Mr. Floyd, please come forward.
9 I'm going to ask you to place your left hand on the
10 Bible and raise you're right hand as the clerk
11 administers the oath.

12 (The witness comes forward.)

13 SCOTT POSTON FLOYD, being
14 first duly sworn, testifies as follows:

15 THE CLERK: Please be seated and state your
16 full name for the record.

17 THE COURT: All right. Mr. Floyd, when you
18 pull up to that microphone, speak loudly, clearly, and
19 slowly so we can hear everything you have to say. Let's
20 start with that full name.

21 THE WITNESS: Scott Floyd.

22 THE COURT: Do you have a middle name?

23 THE WITNESS: My middle name is Poston, Your
24 Honor.

25 THE COURT: Poston, Scott P. Floyd.

1 DIRECT EXAMINATION

2 BY MR. SHAFFER:

3 Q Good morning, Mr. Floyd.

4 A Good morning.

5 Q You are currently the Public Defender for the
6 Twelfth Judicial Circuit; correct?

7 A I am.

8 Q And you represented Carmichael Flowers at trial?

9 A I did.

10 Q Can you tell us a little bit about your preparation
11 for his trial?12 A Well, I spoke with Carmichael personally. We went
13 over his discovery materials together. Mr. Frank
14 White and I -- who at that time Mr. White was my
15 investigator -- he and I went out and interviewed
16 certain people that Mr. Flowers indicated might be
17 helpful to him.18 We talked to the witnesses together and, you
19 know, other than speaking with Mr. Flowers and
20 speaking to the witnesses and going over his
21 discovery materials, I think that's it.22 Q Could you give us a brief factual description of
23 the allegations against him?24 A If I recall, he was charged with kidnapping, CDV
25 high and aggravated, and malicious injury to real

1 property and personal property. I believe that was
2 everything that he was indicted for, if I recall.

3 I think -- and I can't remember the lady's
4 name off the top of my head -- but the alleged
5 victim in the case alleged that he held her against
6 her will inside of a bedroom with a weapon at his
7 disposal; that he threatened her life, I believe is
8 what she said; and that eventually she was able to
9 remove herself from that situation.

10 Also, the allegations were that he did damage
11 to -- I think more the interior -- of the house
12 that she lived in and also personal items in the
13 house.

14 Q Just for clarification, that was not at the -- the
15 damage to the home and the personal property was
16 not while she was present; correct?

17 A That is correct. I think that's correct.

18 Q Okay. And you said that you had gone over the
19 discovery with him?

20 A Right.

21 Q And did you talk -- well, was there a plea offer in
22 the case?

23 A Yes, there was.

24 Q What was the plea offer in this situation?

25 A I don't remember, but I have my file there. I

1 think it's probably in my file.

2 MR. SHAFFER: Your Honor?

3 THE COURT: Yes.

4 MR. SHAFFER: May I actually hand him the
5 file?

6 THE COURT: Yes, sir.

7 BY MR. SHAFFER:

8 Q (Hands to witness.)

9 A I think there was -- if I recall, I think there was
10 like maybe a cap of six. That's what I want to
11 think. I'm going to see if anything is written
12 down in the file.

13 Q Okay.

14 A (Pause.) Okay. I've glanced through the Rule 5s
15 that we have in our file, and I do not see where
16 Ms. Parr sent a written plea offer.

17 Q Okay. Would you disagree if I said that there was
18 an offer to dismiss the kidnapping plea and
19 straight up to every other charge?

20 A I wouldn't disagree with that, no.

21 Q Okay.

22 A I certainly would not.

23 Q And you had informed him of this offer?

24 A If there was an offer in writing, then I'm sure I
25 showed it to him, yes.

1 Q Okay.

2 A I was unable to locate it in this file.

3 Q And I would have cut you off a little bit earlier,
4 but you mentioned a cap of six, which might have
5 changed things to me.

6 A Sure. I'm just going from memory on this now, but
7 I do believe she made that offer --

8 Q Okay.

9 A -- at some point.

10 Q Whenever you were talking to him about the plea
11 offer and the choices of going to trial versus
12 pleading, did you talk to him about any strategy
13 you would take? Any defenses for trial?

14 A Yes. I know with regards to the personal property
15 issues, the destruction of the personal property,
16 we discussed that. He denied doing all the damage
17 because I think his allegation was that the house
18 was left open and that there were other people who
19 might have entered in and done, you know, some
20 destruction to the property and/or the house.
21 Basically that it was left open and unguarded for a
22 period of time and basically it was ransacked.
23 Okay.

24 In regards to the CDV and kidnapping portion
25 of the allegations, I believe Mr. Flowers denied it

1 happened. It's as simple as that. That was his
2 defense. He denied it.

3 Q Okay. And do you recall whether there was a phone
4 conversation that was heard by the police between
5 Mr. Flowers and the alleged victim?

6 A A phone conversation?

7 Q Or a phone message.

8 A I think there might have been a voicemail message
9 or something of that nature. I think it was more
10 of a message, yeah. I don't know that it was a
11 conversation.

12 Q And the phone message, do you recall what it said
13 from Mr. Flowers?

14 A No, I don't.

15 Q Okay. Was there an allegation that essentially he
16 claimed to have done damage to the home? He told
17 her that he had damaged the home?

18 A Yes, I think so. I mean, it was either by voice
19 message or maybe even text message. There may have
20 been allegations that text messages were sent as
21 well.

22 Q What did he tell you about the home and who it
23 actually belonged to? Did he mention anything
24 about who the home belonged to or the property?

25 THE COURT: Let me interrupt you so I can get

1 the facts straight. Are you saying that there was
2 evidence of a voicemail or text message where your
3 client admitted to doing some of the damage?

4 MR. SHAFFER: Yes, Your Honor. That's
5 correct.

6 THE COURT: Okay.

7 MR. SHAFFER: That came out at trial. There
8 was a voicemail message.

9 THE COURT: Okay. Very good.

10 MR. SHAFFER: I think it was intercepted by
11 the police when she went to the police station. That
12 was at least the testimony at trial.

13 THE COURT: Okay.

14 BY MR. SHAFFER:

15 Q And did he ever mention anything about the home
16 being his? Did he ever make that claim to you or
17 it was partially his?

18 A Yes, he did.

19 Q Okay. He was living there at the time; correct?

20 A He was.

21 Q Okay. And he told you that they were -- him and
22 the alleged victim were actually married or in some
23 sort of common-law marriage; is that correct?

24 A That's correct.

25 Q Could you tell us what you told him about that,

1 whether or not --

2 A Well, I told him -- I think in the beginning he had
3 a belief, which is a very common belief amongst the
4 public, that if you live together for a certain
5 period of time, then you're married.

6 My understanding is that's incorrect. I think
7 for there to be a common-law marriage, you have to
8 have a present intention to be married to each
9 other; and it has to be a mutual intention. Okay.
10 Then on both party's part, there is a holding forth
11 to the public that: Hey, we're married.
12 Certainly, we discussed all that.

13 I may not have stated completely the law on
14 common-law marriage. It's been awhile since I've
15 been down in family court, but that's just the
16 basics that I remember.

17 Q Okay. And did you tell him whether or not if they
18 were married, that might establish some sort of
19 defense for the property?

20 A I told him that certainly if he had an interest in
21 the property that it could affect the value of what
22 he destroyed. I mean, certainly if you own
23 property and you want to destroy it and if it's
24 your property, then as far as I know, that's your
25 business. So insofar as he had an interest in it,

SCOTT FLOYD -- DIRECT -- MR. SHAFFER

1 I guess he would have a right to destroy his
2 interest. So we did discuss that.

3 Q Did he tell you anything about himself holding --
4 the two of them holding themselves out to be
5 married?

6 A Well, he told me, yes, that he told everybody, you
7 know, This is my wife.

8 Q Okay.

9 A Or he always introduced her as his wife or
10 whatever. That's what he said.

11 Q Okay. Did he ever tell you that she denied being
12 his wife or that she --

13 A He didn't tell me that.

14 Q Okay. But she did outside -- in court she did?

15 A I think she did. If I recall, I think she denied
16 it.

17 Q Now, whenever you were going through and preparing
18 for trial, did you see or did you ever see...

19 MR. SHAFFER: Actually, can I have this
20 marked?

21 THE COURT: Yes.

22 (Applicant Exhibit Number 1 is marked for
23 identification.)

24 BY MR. SHAFFER:

25 Q I'm showing you what's been marked as Applicant's

1 Exhibit 1 for purposes of identification. Can you
2 identify that? Have you ever seen that document
3 before?

4 A This appears to be an estimate from the insurance
5 adjustor who evaluated the property damage claim
6 that was made on the house by the alleged victim in
7 this case. I believe that this is the work product
8 that he produced after he toured the house.

9 Q And do you -- other than the highlighting and a
10 couple small pencil marks in there, is that a true
11 and accurate depiction of that document as provided
12 to you in discovery?

13 A If you'll give me one second, I might be able to
14 find the one that I have.

15 Q Okay.

16 A Or the one that I was given in discovery, and we'll
17 put them side by side. I feel sure that that was
18 probably the one I was provided. Yeah, that
19 appears to be it.

20 Q Okay. Now, in reference to that, there is a
21 mention of french doors; correct?

22 A Excuse me?

23 Q Well, first of all, could you turn to the last page
24 of the document.

25 A I will.

1 Q Well, what was the total loss as given by the
2 adjustor?

3 A He put the total loss at 24,703.

4 Q And that's the same loss that was found by the
5 jury; correct?

6 A I don't remember the exact amount that the jury
7 found.

8 Q Okay.

9 A But I don't dispute that if it was written on the
10 verdict sheet.

11 Q If you could, look at the first page. I believe
12 there is mention of french doors. Do you see that?

13 THE COURT: Let me ask you. You asked a
14 question that seemed to indicate that the criminal jury
15 was called upon to determine the amount of damages?

16 MR. SHAFFER: Yes.

17 THE COURT: I don't believe they did that; did
18 they?

19 MR. SHAFFER: They did.

20 THE COURT: They did?

21 MR. SHAFFER: Yes, Your Honor.

22 THE COURT: How did they do that? They did a
23 verdict -- I mean, like an interrogatory?

24 MR. SHAFFER: Yes, Your Honor. On the verdict
25 sheet, they didn't list it as above this amount. It

1 said guilty or not guilty of malicious injury to
2 personal property or real property and then said the
3 amount. It was basically a blank. I believe that's how
4 Judge Anderson set it up.

5 THE COURT: All right. Very good.

6 MR. THOMAS: Your Honor, if I may. There is a
7 copy of the verdict form in the packet I gave you.

8 THE COURT: All right. Very good.

9 A Back to your question, yes, I see what you're
10 talking about in relation to the french doors.

11 Q Do you recall where in the house the french doors
12 were?

13 A I certainly don't.

14 Q Okay. You were provided a number of pictures in
15 discovery; correct?

16 A Yes, I was.

17 Q And the pictures, they did a fairly thorough job of
18 taking pictures throughout the house, correct?

19 A It appeared that they did, yeah.

20 Q Okay. Do you see anywhere that there were french
21 doors inside that house?

22 A I'm not looking at the pictures. To be honest with
23 you, I'm not sure what a french door is.

24 Q Okay.

25 THE COURT: It's a double door with windows in

1 it, I believe.

2 BY MR. SHAFFER:

3 Q Based off the judge's description, do you see any
4 double doors with windows in it in those pictures?

5 A I'm not looking at any pictures.

6 Q You have your file there; correct?

7 A Well, I have a file here. I'm not sure, after
8 earlier, how complete it is.

9 Q I'm sorry. I had forgotten about this until just
10 now. I meant to go over this exhibit a little
11 while ago.

12 A You know, I think that your photos might be on
13 disc.

14 Q Okay.

15 A I believe.

16 THE COURT: In order to expedite the thing, if
17 you have a picture of some french doors, why don't you
18 show to him and ask him about it.

19 MR. SHAFFER: Your Honor, there are no french
20 doors. That's the allegation. There are no french
21 doors.

22 BY MR. SHAFFER:

23 Q On Applicant's 1 do you...

24 MR. SHAFFER: I apologize, Your Honor. Beg
25 the Court's indulgence.

1 (Pause.)

2 BY MR. SHAFFER:

3 Q I'm showing you page 3 of Plaintiff's Exhibit 1,
4 Applicant's Exhibit 1. Under the subset of the
5 kitchen, do you see where it lists an electric
6 range as being lost?

7 A I see where it says replace electric range, yes,
8 standard grade.

9 Q Do you recall whether or not the range in the
10 kitchen was electric or gas, the range that was
11 allegedly damaged?

12 A I don't recall.

13 Q Okay. Do you recall if the applicant told you that
14 it was a gas range, but that it was broken to begin
15 with?

16 A No, I don't recall.

17 Q Okay. But that would indicate that they replaced
18 it with an electric range; correct?

19 A According to this sheet, yes.

20 Q And they determined the value according to that
21 sheet, the jury did?

22 A Yeah, and I do think that the adjustor testified.
23 I think he did during the trial.

24 Q During the trial?

25 A I think he did. I'm not sure. I can't remember.

SCOTT FLOYD -- DIRECT -- MR. SHAFFER

1 Q Okay.

2 A It's been awhile, but I thought I remembered him
3 testifying.

4 Q Do you recall pointing out to the jury that some of
5 the items -- at least some of the items -- on that
6 list were not in the home?

7 A I don't recall if I did or if I didn't.

8 Q Okay. Now, whenever you decided to go forward with
9 the trial, what did you inform him your trial
10 strategy was going to be? I mean, did you say,
11 We're going to argue this or anything like that or
12 did you tell him what you were planning on arguing?

13 A I don't remember telling him beforehand, going into
14 that much detail.

15 Q But at trial you didn't argue that he actually
16 owned the property; did you?

17 A I did not.

18 Q Okay. And you didn't request any instruction for
19 common-law marriage or anything like that; did you?

20 A I did not.

21 Q I guess I'll ask the question the Attorney
22 General's Office will ask, which is why?

23 A Sure. Well, certainly, his -- when I say his, I
24 mean, Mr. Flowers, the petitioner in this case --
25 his position was that they were husband and wife,

1 which was fine. That's what he maintained.

2 But other than his word, I could not come up
3 with any proof -- and this included talking to
4 people that he directed me to or at least one
5 person he directed me to in regards to this case --
6 that we could actually prove a holding out on her
7 part.

8 She denied it, I believe, that they were
9 husband and wife. Her side of the story was they
10 lived together, and there were no joint tax returns
11 filed. There were no bank accounts in both of
12 their names according to what he told me. When I
13 say he, I mean, Mr. Flowers.

14 The taxes on the house were in her name alone.
15 The deed to the house was in her name alone. I
16 mean, there was no -- there was no record of a
17 holding out as far as I could discover, other than
18 just what he said.

19 THE COURT: You say there were no joint tax
20 returns?

21 THE WITNESS: Not that I recall, Your Honor.
22 That was -- I had no evidence of them.

23 BY MR. SHAFFER:

24 Q Now, you mentioned that you had talked to a couple
25 of people about this that he had directed you to.

1 Who did you talk to?

2 A There was a male who was a friend of his; and I
3 believe in my fumbling, I ran across the witness
4 list a little earlier when I was going through this
5 file.

6 I can't recall his name, but he was someone
7 that Mr. Flowers directed me to; and Mr. Flowers
8 felt he might be helpful to his cause in some way,
9 shape, or form.

10 THE COURT: Do you have that witness list in
11 your discovery?

12 THE WITNESS: I do. In fact, I've just got it
13 in my hand.

14 THE COURT: Very good. I was thinking if you
15 had it, rather than...

16 MR. SHAFFER: The applicant has it. I'll try
17 to refer the exhibits through him.

18 THE WITNESS: The gentleman that I'm speaking
19 to, there are a number of males listed on that list. I
20 don't remember off the top of my head the one that I'm
21 referring to, but Mr. Flowers indicated that they were
22 very close friends and associated with one another a
23 good bit. I think we served him with a subpoena. I'm
24 just having a hard time recalling his name at the
25 moment.

1 BY MR. SHAFFER:

2 Q Is it Mr. Mitchell?

3 A Nat Mitchell? It could have been Mr. Mitchell.

4 Q If you could, could you read off the names that are
5 on your witness list.

6 A Yeah. I have a Julia Smith. I have a Nat Mitchell
7 and that's N-A-T, Nat. I have a Jason K. -- middle
8 initial K. -- Jacobs. I have a Starling Burgess.
9 I have a Joe Burgess, and I have a Leroy Brown.

10 THE COURT: Starling Burgess. Who else?

11 THE WITNESS: Joe Burgess and Leroy Brown.

12 BY MR. SHAFFER:

13 Q Now, you had mentioned that you talked to one of
14 his friends that you were considering calling as a
15 witness?

16 A Right.

17 Q The one that could be Nat Mitchell?

18 A Right.

19 Q Could you tell us what the substance of your
20 conversation was and why you chose to not call him?

21 A Yes. Mr. Frank White and I actually talked to him
22 together. When I asked Mr. Mitchell what he knew
23 about all these allegations in this whole situation
24 and if he could tell me anything that would be
25 helpful to Mr. Flowers, he said that -- it was

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1 right around when this incident was alleged to have
2 happened -- that Mr. Flowers became very angry with
3 him when he spoke to him.

4 He accused Mr. Mitchell of having an affair
5 with the alleged victim in this case and that he
6 was insanely jealous and that he was making
7 basically threats against him. So I didn't think
8 that he was going to be very helpful, given the
9 allegations in this case.

10 Q And you also talked to another witness --
11 correct -- a female?

12 A The female was Starling Burgess. She appeared in
13 this courthouse. I think she was served with a
14 subpoena. She came up here, and I actually spoke
15 to her before the trial.

16 We were in the process of getting ready to
17 pick the jury, I think; but she came up here that
18 day that we were supposed to pick the jury. I
19 spoke to her, and I asked her if she knew
20 Mr. Flowers.

21 She said yes. I asked her if she was aware of
22 a bunch of people going into the house after the
23 cops had been there and left the house open, taking
24 things out of the house, and that sort of thing, if
25 she saw any neighbors and that sort of thing.

1 Her response to me was, I like Mr. Flowers a
2 lot and pretty much. If you need me to say
3 something on his behalf like that, I'll say it.
4 That's pretty much what she said. I said -- I
5 thanked her for coming and I dismissed her.

6 Q Okay. Now, you ended up calling three witnesses or
7 two witnesses; correct?

8 A I don't remember.

9 Q You called the defendant; correct?

10 A Oh, yes, I do remember calling him to testify.

11 Q And you had one other witness who was Mr. Jason
12 Jacobs; right?

13 A If he's in the transcript, then I called him.

14 Q Okay. Do you recall any of the other witnesses,
15 talking to them, or your decision not to call them?

16 A It seems like -- it may have been Mr. Jacobs who
17 was actually an inmate down at the Florence County
18 Detention Center when I talked to him. I remember
19 going down there and speaking to him.

20 I believe he was in the work camp portion of
21 the detention center at that time. Mr. Mitchell, I
22 think we talked to him, Ms. Burgess. The others
23 listed on here, I don't have a specific memory of
24 talking to them.

25 Q Okay.

1 A And I don't know that we were able to locate all of
2 them. I do recall Mr. White and I looking in that
3 neighborhood for a certain individual in a
4 particular house that we never could find. I can't
5 tell you right now which of those people might have
6 been put on this list. At any rate, I don't
7 remember talking specifically to any of the others.

8 Q Okay. Now, with the close of the case when the
9 jury was deliberating, they came back with a
10 question; correct? Do you recall?

11 A I don't remember.

12 Q Do you remember the subrogation question?

13 A I don't remember.

14 Q Do you recall making any objections to the
15 supplemental charge?

16 A I don't recall.

17 THE COURT: It has been awhile since this
18 trial. It might be most efficient if you have an
19 allegation with regard to what he did or didn't, if you
20 have an recollection, why don't you tell him what the
21 transcript reflects and ask him why he did it or if he
22 recalls it or denies it.

23 MR. SHAFFER: Thank you, Your Honor.

24 THE COURT: Tell him what you know and ask him
25 why he did it. If that is true, then ask him why he did

1 it. It will probably be the best way to do it.

2 MR. SHAFFER: Thank you, Your Honor.

3 BY MR. SHAFFER:

4 Q Mr. Floyd, when the jury came back with a question
5 about -- with a question concerning subrogation by
6 the insurance company; correct?

7 A If that is in the transcript, then they did.

8 Q Okay.

9 A I don't specifically remember it, yes.

10 Q And they also came back with a question about
11 ownership. Do you recall that, whether it could be
12 determined by title or ownership in the property
13 with the loss?

14 A I don't remember it, but...

15 Q Do you recall making -- if I told you you didn't
16 make any objections to either of the statements
17 given, would you disagree?

18 A I would not.

19 Q Okay.

20 A If it's not in the transcript, I would not
21 disagree.

22 Q You did not do it.

23 MR. SHAFFER: Beg the Court's indulgence.

24 (Pause.)

25 BY MR. SHAFFER:

1 Q Mr. Floyd, in your file --

2 MR. SHAFFER: Your Honor, just give me a
3 second.

4 (Pause.)

5 MR. SHAFFER: I will get these marked.

6 (Applicant's Exhibit Number 2 is marked for
7 identification.)

8 BY MR. SHAFFER:

9 Q I'm showing you what's been marked Applicant's
10 Exhibit 2, which should be a personal property
11 inventory. Do you recall if that's the same
12 personal property inventory that was provided to
13 you in discovery?

14 A I think it was.

15 Q Okay.

16 A When I was looking through my discovery earlier, I
17 didn't review each page; but I saw something that
18 was formatted like this, yes.

19 Q It appears to be?

20 A Yes.

21 MR. SHAFFER: Your Honor, I think that I did
22 not move them both into evidence. I know I didn't move
23 1 into evidence.

24 THE COURT: Okay. Well, if you want to do
25 that, now would be the time to do it.

1 MR. SHAFFER: Your Honor, we would actually
2 move for both 1 and 2 to be introduced into evidence.

3 THE COURT: Any objection from the State?

4 MR. THOMAS: I would just ask that we take a
5 look at it to make sure it's the exact same copy.

6 THE COURT: Okay.

7 MR. THOMAS: If it is, then no.

8 (Pause.)

9 MR. THOMAS: Okay. That is a correct copy.

10 (Appellant's Exhibits Number 1-2 are received
11 into evidence.)

12 BY MR. SHAFFER:

13 Q And the total on that would be -- if you look at
14 those pages, I'll go ahead and tell you what my
15 total is, which is 18,910.

16 A Okay.

17 Q The jury didn't find that total amount; did they?

18 A No, I don't think so.

19 Q Okay. Do you know why they wouldn't have done
20 that? Do you know what evidence was presented that
21 would have caused that?

22 A I don't remember.

23 Q Okay. Do you recall whether or not the applicant
24 had made any statements to you about things he
25 would like argued off of there? The things that

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1 were inconsistent with -- do you recall him telling
2 you about a bed?

3 A I don't remember.

4 Q Okay.

5 MR. SHAFFER: No further questions, Your
6 Honor.

7 THE COURT: I just have one question for
8 clarification; and, of course, the State is going to
9 have an opportunity to examine him. But in looking at
10 the -- I have not seen the pictures themselves -- but in
11 looking at the pictures themselves, was the damage
12 significant to the real property and the personal
13 property?

14 THE WITNESS: Yes, Your Honor. I mean, there
15 was drywall that was smashed in. There were commodes
16 that were busted. Sinks that were busted.

17 THE COURT: Apparently the stove was busted?

18 THE WITNESS: Your Honor, I don't remember the
19 stove specifically; but it did not look good in the
20 pictures.

21 THE COURT: And they have mentioned some
22 discrepancy maybe between the estimate and what might
23 have actually transpired; but in your examination of the
24 pictures and the inventory, do they seem to be somewhat
25 consistent, although they might not be exactly right?

1 Were they consistent?

2 THE WITNESS: Your Honor, just from what I
3 could see in the pictures, nothing jumped out at me as
4 being way out of line.

5 THE COURT: All right. Very good.

6 The State is recognized.

7 MR. THOMAS: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. THOMAS:

10 Q Good morning, Mr. Floyd.

11 A Good morning.

12 Q Just some background information. How long have
13 you been practicing law?

14 A Since 1988. I'm sorry. I can't tell you the
15 number of years off the top of my head, over 25.

16 Q It's safe to say you have been the Public Defender
17 here for awhile?

18 A Yes, it will soon be two years in March.

19 Q How many opportunities did you have to meet with
20 Mr. Flowers before the trial?

21 A A number of times down at the detention center. He
22 was -- if I recall, I don't think he was ever out
23 on bond while this was pending. So I do recall
24 seeing him a number of times down at the detention
25 center.

1 Q Do you feel like you met with him enough in light
2 of the charges that he was facing?

3 A Yes.

4 Q And you said earlier that you filed a Rule 5 and
5 Brady motions?

6 A Yes.

7 Q And do you think the State's response to that was
8 complete?

9 A I believe so.

10 Q And you had an opportunity to review all the
11 State's discovery with Mr. Flowers?

12 A Yes.

13 Q And he gave you his version of events, which was
14 that he did not kidnap her? He did not hold her
15 against her will?

16 A That is correct.

17 Q And --

18 THE COURT: Say that again.

19 BY MR. THOMAS:

20 Q He gave you his version of events that he did not
21 hold her against her will?

22 A Yes, he did.

23 Q And he also told you that he did not destroy some
24 of the property?

25 A I believe he did, uh-huh.

1 Q And that he also owned -- or at least was a partial
2 owner of the house?

3 A He did.

4 Q By virtue of his common-law marriage?

5 A That was his contention.

6 Q Did you have an opportunity to discuss with him the
7 elements of the offenses he was facing?

8 A Yes.

9 Q And any possible defenses he may have?

10 A Yes.

11 Q What were his defenses? What did you think were
12 viable defenses?

13 A Well, once again, his defense to the CDVHAN and the
14 kidnapping charges, I mean, he simply denied it.
15 He said it didn't happen. So in that sense, it was
16 his word.

17 You know, as far as the destruction of the
18 property, I think that he maintained that some
19 other people had access to the house and that they,
20 in fact, committed some of the destruction, at
21 least some of it; and also as we discussed earlier,
22 the marriage, the common-law marriage.

23 Q But through your independent investigation, you
24 couldn't find any witnesses that could testify to
25 other people coming in and out of the house?

1 A No. The person that came up here in response to
2 the subpoena, which was Ms. Burgess, she pretty
3 much offered to perjur her self for Mr. Flowers
4 and I dismissed her.

5 Q So it was basically safe to say it was his word
6 against the victim's?

7 A Correct.

8 Q Did he ever give you any leads to investigate,
9 other than those potential witnesses that we
10 discussed earlier?

11 A I don't recall any, other than the witnesses that I
12 named earlier.

13 Q And just for the record, those are on the trial
14 transcript on page 8, starting at lines 15, I
15 believe, is when Judge Anderson read the witness
16 list out?

17 A If that's in the transcript, then yes.

18 THE COURT: He read out what again?

19 MR. THOMAS: Your Honor, on page 8 of the
20 transcript, lines 15, they provided a witness list to
21 Judge Anderson. It's in the record. I don't know that
22 we have an actual copy of the list, but Judge Anderson
23 did read it when he was voir diring the jury.

24 BY MR. THOMAS:

25 Q You said you and your investigator, Mr. White,

1 actually went out and performed a search for
2 witnesses, tried to find people to speak to you on
3 Mr. Flowers's behalf?

4 A Yes.

5 Q Regarding any -- you said there were no written
6 plea offers, but you do recall sort of a plea
7 discussion you had with Ms. Parr?

8 A Well, I thought that there was a written plea
9 offer. I could not find it in this file in front
10 of me, but apparently there was one. There was, in
11 fact, a written one. I just could not locate it in
12 this file.

13 Q But you said --

14 A But I did have discussions with her as well.

15 Q Do you recall conveying that plea offer to
16 Mr. Flowers?

17 A I'm sure I relayed any plea offer to Mr. Flowers,
18 yes.

19 Q Do you remember if he ever at any point told you he
20 wanted to plead guilty to these charges?

21 A No. Quite the opposite, he was always adamant with
22 me that he wanted to go to trial.

23 Q He testified at trial on his own behalf that there
24 were other people coming in and out of the house?

25 A I don't remember exactly what his testimony was;

1 but if that's in the transcript, then yes.

2 Q And he also testified that he did some work on the
3 house, made some of the improvements to it?

4 A I think he did testify to that, yes.

5 Q And the victim testified basically -- a summary of
6 her testimony -- is that there was no common-law
7 marriage. They didn't hold themselves out. Is
8 that accurate?

9 A I think so, pretty much.

10 Q You had an opportunity before trial to review the
11 adjustor's estimate; didn't you?

12 A Yes, I think that was sent to me in discovery.

13 Q And you also had a chance to review the pictures of
14 the damage?

15 A Yes.

16 Q And correct me if I'm wrong, but the lower level
17 for a felony malicious damage to property charge
18 such as this, it was anything over \$5,000 worth of
19 damage?

20 A I think that's correct. I think this case was
21 before sentencing reform in 2010, I believe. I
22 can't remember if they changed those numbers since
23 then; but at any rate, I think at the time that was
24 correct. I don't have a 2009 code sitting here in
25 front of me, but I believe that's right.

1 Q I think you're right, but it's two to ten now?

2 A I think they might have changed the valuations on
3 that.

4 Q But regardless at the time, the amount of damage
5 was well over \$5,000; wouldn't you say?

6 A Well, according to their evidence, correct, uh-huh.

7 Q And in terms of, I guess, the value of some double
8 doors and an oven, do you think those would be
9 worth \$19,000?

10 A No, I don't think so.

11 THE COURT: Of course, he doesn't know what a
12 french door is.

13 THE WITNESS: You're right, Your Honor.

14 BY MR. THOMAS:

15 Q The defendant, Mr. Flowers, gave a statement to the
16 police while he was incarcerated; didn't he?

17 A If I recall, I think he did, yes.

18 Q To the best of your recollection, in that statement
19 he didn't affirmatively deny doing any damage to
20 the home?

21 A You know, I have not listened to that statement in
22 so long. I mean, I don't deny that he -- if he
23 didn't deny it, I haven't listened to it; and I
24 don't remember what he said or did not say.

25 Q But do you recall at least the testimony at trial

1 from the two officers who interviewed him basically
2 that he acknowledged doing some damage to the
3 property and that he was concerned about his
4 relationship with the victim?

5 A Yes. I mean, I don't deny that.

6 Q I know you don't have the transcript in front of
7 you, but would you believe me if I told you that on
8 page 470, around line 17 through 25, you told the
9 jury that there was some conflicting testimony on
10 who owned what property?

11 A Okay.

12 Q So you basically argued to the jury that they had
13 to determine who owned the property; correct?

14 A If that's what I said, yes.

15 Q And on page 505 of the transcript, Judge
16 Anderson -- this is after the jury came back and
17 asked the question about who owned the property --
18 Judge Anderson told the jury that you can't be
19 found guilty of destroying your own property. Does
20 that ring a bell?

21 A I believe that he did.

22 Q And the judge also informed the jury on page 503
23 that they were not to consider whether the
24 insurance made any payments on this claim; is that
25 correct? Or do you recall that?

1 A I think that he did.

2 Q And you reviewed all -- these are the last
3 questions -- you reviewed all the voicemails and
4 the text messages that the defendant allegedly
5 sent. You reviewed those before trial; didn't you?

6 A Yes.

7 Q Thank you, Mr. Floyd.

8 MR. THOMAS: That's all I have.

9 THE COURT: Redirect?

10 MR. SHAFFER: A few questions, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. SHAFFER:

13 Q Mr. Floyd, you mentioned his defense was that he
14 didn't do the damage or at least some of it?
15 That's what your testimony was; correct?

16 A I believe that's correct.

17 Q And at least some of it, essentially he was saying
18 he did some of the damage but not all of it; right?

19 A I think so.

20 Q Okay. So, I guess, evaluation would have been
21 important to determine how much damage he did
22 versus the other people?

23 A Yes, I suppose so.

24 Q Now, you had subpoenaed Julia Smith; right?

25 A Excuse me?

SCOTT FLOYD -- REDIRECT -- MR. SHAFFER

- 1 Q You subpoenaed Julia Smith; correct?
- 2 A Julia Smith, yes, I did.
- 3 Q And you mentioned Nathaniel Mitchell as well;
- 4 correct?
- 5 A Yes, I did.
- 6 Q And Leroy Brown?
- 7 A Yes.
- 8 Q Starling Burgess?
- 9 A Correct.
- 10 Q Michael A. Williams and Jason Jacobs. Can you tell
- 11 us whether any of those witnesses would have said
- 12 anything about the condition of the home prior to
- 13 that day, I guess, of the incident?
- 14 A Not that I recall, but I...
- 15 Q And as the attorney general pointed out, the --
- 16 well, I guess I should ask this: Do you think that
- 17 it would be good impeachment to impeach the
- 18 adjustor based off of things that were included in
- 19 his report that were not in the house prior?
- 20 A If there are items that were not in the house that
- 21 he had listed on his report?
- 22 Q Yeah.
- 23 A Yes, I would think so.
- 24 Q Because it would impeach him -- correct -- to show
- 25 that he might --

1 A Sure.

2 Q -- not have done the greatest job?

3 A Uh-huh.

4 Q It might also show that somebody is lying; correct?

5 A That's correct.

6 Q Okay. It might show that the victim was lying;
7 correct?

8 A Possibly.

9 MR. THOMAS: Your Honor, I'm going to object
10 to the leading. It's gone too far.

11 THE COURT: I'll allow it, go ahead.

12 BY MR. SHAFFER:

13 Q And actually, Mr. Flowers, do you recall him
14 telling you about -- or saying that this
15 essentially was an insurance fraud scheme by her?

16 A No.

17 Q You don't recall him ever saying that?

18 A No, I don't.

19 Q Okay. And you argued who owned the property;
20 correct?

21 A If it's in the transcript, then yes, I did.

22 Q Okay. But you never argued that he could have
23 owned it through common-law marriage?

24 A I don't think I did.

25 Q You don't recall that?

SCOTT FLOYD -- REDIRECT -- MR. SHAFFER

1 A I don't recall that.

2 Q Okay.

3 MR. SHAFFER: No further questions.

4 THE COURT: All right. Anything further from
5 the applicant?

6 MR. SHAFFER: Nothing further, Your Honor.

7 THE COURT: Anything from the State?

8 MR. THOMAS: Not from this witness, Your
9 Honor.

10 THE COURT: Okay. You may step down,
11 Mr. Floyd.

12 THE WITNESS: Yes, sir.

13 THE COURT: Thank you, Mr. Floyd.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: You are free to leave.

16 (The witness leaves the witness stand.)

17 THE COURT: Anything further?

18 MR. SHAFFER: Your Honor, one more.

19 THE COURT: I would be glad to hear anybody
20 you would like to call.

21 MR. SHAFFER: We have one more case with
22 Mr. Floyd as well.

23 THE COURT: Well, he is in the courthouse. If
24 you can kind of stay close, Mr. Floyd. You can stay
25 with us or let us know where to get you when the next

1 one comes up.

2 THE WITNESS: I'll be right here, Your Honor.

3 MR. SHAFFER: The applicant calls Carmichael
4 Flowers to the stand.

5 THE COURT: Mr. Flowers, if you can please
6 come forward and place your left hand on the Bible and
7 raise your right hand as the clerk administers the
8 oath.

9 (The witness comes forward.)

10 CARMICHAEL T. FLOWERS, being
11 first duly sworn, testifies as follows:

12 THE CLERK: Please be seated and state your
13 name for the record.

14 THE WITNESS: My name is Carmichael T.
15 Flowers.

16 THE COURT: All right. Mr. Flowers, I'm going
17 to ask you to speak up loudly, clearly, and slowly so we
18 can hear everything you have to say.

19 THE WITNESS: Yes, sir.

20 THE COURT: Let's start with your full name
21 again.

22 THE WITNESS: Carmichael T. Flowers.

23 THE COURT: Thank you, Mr. Flowers.

24 All right. Mr. Shaffer, you are recognized.

25 MR. SHAFFER: Thank you, Your Honor. If I

CARMICHAEL FLOWERS -- DIRECT -- MR. SHAFFER

1 may, would you mind if I handed him up his notes?

2 THE COURT: Certainly.

3 MR. SHAFFER: He has done quite a bit of work
4 on this case.

5 DIRECT EXAMINATION

6 BY MR. SHAFFER:

7 Q All right. Mr. Flowers, where do you currently
8 reside?

9 A Ridgeland, South Carolina.

10 Q Okay. And you're currently doing?

11 A Fifteen years.

12 Q Plus 30 days?

13 A Plus 30 days, yes, sir.

14 Q If you could tell us how you met the alleged
15 victim.

16 A We met in New Jersey at UPS.

17 Q Okay.

18 A In 2004.

19 Q Were you working there?

20 A Yes, sir.

21 Q And was she?

22 A Yes, sir.

23 Q At some point you became involved romantically;
24 correct?

25 A Yes, sir.

1 Q When was that?

2 A I would say about a month after I had been on the
3 job after I had met her. She worked upstairs over
4 top of me in human resources and we became
5 romantically involved.

6 Q And then at some point you ended up moving in with
7 her; right?

8 A What consequently happened was Ms. Namias had a
9 falling out with UPS and one of the managers. She
10 had accused this manager of having a baseball at
11 her.

12 I didn't believe it because the baseball bats
13 are mounted on the wall. They are autographed by
14 some Yankees, Red Sox, you know, various ones. I
15 just couldn't find that. If she had said a golf
16 club, yes.

17 Q Okay.

18 A So anyway she went on and got leave, disability,
19 saying that it was stress leave, and that stress
20 leave went to disability. At that point when she
21 left UPS, we both left. She moved to my hometown
22 of Virginia Beach with me.

23 Q Okay. And how did you come to live in South
24 Carolina?

25 A We discussed flipping houses, and I knew how to do

1 some construction work and remodel things. We
2 wanted to have an entrepreneurship. I wanted to do
3 remodeling houses. I wanted my own business and
4 this was an opportunity.

5 Q Okay.

6 A For both of us.

7 Q Was she married at this time?

8 A Yes, sir.

9 Q Do you know if she was going through a divorce?

10 A She was married for 18 years, and I knew her
11 husband. I met her husband. I didn't know him
12 personally, but I met him several times and their
13 children; and she eventually got divorced in '07.

14 Q Where were y'all living whenever she got divorced?

15 A We were living on Homestead Street in Florence. I
16 don't recall the correct address. I think it was
17 1501.

18 Q After that did your relationship become more
19 involved after the divorce?

20 A Well, we were already involved as you could
21 possibly get at that point. We did -- we had
22 checking accounts together. We had a vehicle, a
23 \$34,000 vehicle, together in each other's name.
24 She received her mail in my box, my PO box, and we
25 attended church together.

1 Q And what name did she go by around your
2 neighborhood?

3 A She went by Ms. Flowers and they called her
4 Ms. Flowers.

5 Q And did she ever stop and correct anyone and say,
6 No, we're not married?

7 A Never to my knowledge, no.

8 Q Do you recall at any point her saying that -- or
9 going by Ms. Flowers, basically holding herself out
10 to anyone as being married?

11 A I believe a couple of times we talked to realtors.
12 She said, I'll send my husband out or I'll send
13 Flowers out or whatever. I worked for several
14 realtors in Florence.

15 Q So she referred to you as her husband?

16 A Occasionally, yes.

17 Q Was that during the time that y'all were living
18 together?

19 A Yes, sir.

20 Q Okay. Was that after the time that she was
21 divorced?

22 A Yes, sir.

23 Q Okay. So she actually said that. Do you recall
24 telling your attorney that?

25 A I mentioned it to Mr. Floyd, and he advised me when

1 I asked him, I said, Well, what is the theory of
2 what we're going to do in trial? He told me, he
3 says, I guess we're going to -- equity would be our
4 argument.

5 I had no -- you know, I didn't question him
6 anymore. I mean, it was on a Saturday. He took
7 the pictures and he left. I assumed that's what we
8 were going to argue.

9 Q Okay. Now, when you got to trial, do you know what
10 he meant by -- did he explain anything further
11 about what he meant by equity?

12 A No, he didn't.

13 Q Okay.

14 A Never said anything about equity. I never heard
15 anymore about equity. Some of the questions that
16 he did ask to Ms. Namias sounded like it could have
17 been a civil case rather than a criminal case to
18 me; but, you know, I don't know.

19 Q Okay. And do you recall telling him about -- well,
20 did you have a chance to review your discovery
21 prior to trial?

22 A The discovery?

23 Q Yeah.

24 A He never went over the discovery with me. The only
25 thing he even went over was these pictures.

1 Q Did you ever look at the valuation prior to trial?

2 A The valuation was on his desk. Which document are
3 you talking about?

4 Q The real property evaluation.

5 A The real property, no, sir.

6 Q Did you ever look at the personal property
7 evaluation?

8 A No, sir.

9 Q So you never saw those prior to going to trial?

10 A Never saw them.

11 Q Did you see them at trial?

12 A I believe he had them and they were introduced
13 into -- as exhibits in this case, but I didn't have
14 a clue --

15 Q Okay.

16 A -- what was on them.

17 Q Did you see any of the pictures prior to going to
18 trial?

19 A Yes, sir. He brought some pictures to the jail,
20 and I viewed them. When we got to court, there
21 were some subparts to those pictures that I didn't
22 see or had never seen; and I brought that to his
23 attention.

24 It was at some point in time that I became
25 frustrated with him. I asked him, I said, Where

1 did these pictures come from? I let him know that
2 the damage in those pictures I didn't do. He kind
3 of just went on to trial.

4 Q Okay. So you informed him that the damage, you
5 didn't do. Can you specifically state what parts
6 you

7 A Oh, there were holes in the living room wall. I
8 remember telling him that the kitchen, the electric
9 stove, was coming out anyway. We had a buyer for
10 the house.

11 Q Was it an electric stove or a gas stove?

12 A It was a gas stove.

13 | Q Okay.

14 A But it shows up as an electric one on this paper.
15 But anyway it leaked gas and it was coming out.
16 The gentleman that was buying the house had asked
17 that we put in a 220, asked me would I put in a 220
18 for him and just leave the space open. That's
19 basically why the stove looks the way it does.

20 Q Okay. But you're saying that you didn't actually
21 do that to the stove?

22 | A No.

23 Q And do you recall leaving a voicemail on her phone?

24 A I remember leaving several voicemails or texts or
25 something to that effect.

1 Q And one of those voicemails, you mentioned a value
2 of damage that you did to the property; correct?

3 A I think that I have the document here. It says
4 \$55,000. That was the sale of the house. We were
5 selling the house for \$55,000. The victim's
6 advocate took that and ran with it as me saying it
7 was damaged. It was \$55,000 that we were saying --
8 I was saying to her we're losing \$55,000 here on
9 this house because you're acting up basically.

10 Q And that's because of the fact that it was not
11 sold?

12 A Right, right. It hadn't been sold at that point.

13 Q Okay. Now, the condition in the photos, you told
14 Mr. Floyd was not the condition that you left the
15 house in; correct?

16 A Beg your pardon?

17 Q You said that some of the photos showed more damage
18 than the house was in?

19 A Right. That's correct.

20 Q Now, what damage did you do to the house basically?

21 A I broke out the living room window -- it's called a
22 picture window -- and some damage in the bathroom
23 and basically that was it. The living room,
24 kitchen, and that was it.

25 Q Were there any french doors in that home?

1 A No, sir, there was no french doors.

2 Q Anything like french doors in the home?

3 A There were some louver doors that go across the
4 closet. They are attached by pins, one at the top
5 and one at the bottom. They are spring released.
6 They were taken off the little pivots that they sat
7 in, and they were on the floor.

8 When you hear -- when you read the transcript,
9 the adjustor made a point of saying that they were
10 smashed all to pieces. That's not so. They are
11 laying -- you can see them in the pictures.

12 Q Now, you've had a chance since then to look over
13 the valuation of the property, Applicant's Exhibit
14 1; correct?

15 A Which one?

16 Q The real property.

17 A The real property, yes, sir.

18 Q And you stated that's not -- well, tell us what you
19 think about that. Is that an accurate depiction of
20 the damage that you did to the property?

21 A No, sir. The drywall in the living room, if I had
22 broke that drywall with an ax, it would have went
23 from one side of the living room to the other.

24 Q I'm not asking you to justify it.

25 A Okay.

1 Q I'm just saying what damage on that sheet or that
2 is listed on that sheet that you didn't do?

3 A A lot of it. The carpets, I didn't do anything to
4 the carpets. The windows that they claim were
5 broken, there was only one window broken; but there
6 was a replacement for vinyl windows throughout the
7 house.

8 Q Okay. If you could actually go through it and let
9 us know which ones.

10 A Could you get my glasses, please?

11 Q Oh, yes.

12 A (Hands to witness.) Thank you. Okay. The first
13 one that they have on this sheet, page 1, is the
14 master bedroom. It looks like they've got a
15 half-inch drywall hung and fired and taped and the
16 cost for labor and the drywall, a ceiling fan.

17 Q And that's something you did not do; correct?

18 A That is something I didn't do.

19 Q Okay. We're just asking about things you did not
20 do.

21 A Okay. The french doors I didn't do. The vinyl
22 casement window or the window that they replaced, I
23 didn't break. Carpet, I don't know anything about
24 the carpet being messed up or having to be
25 replaced. The master bedroom plywood, looks like

1 there was some paneling -- oh, I'm sorry, this is
2 the dining room.

3 Q Okay.

4 A The dining room. There is nothing in the dining
5 room that I did. Over to page 2, it looks like the
6 dining room again. Like I said, there was
7 nothing -- this is the bedroom -- I'm sorry --
8 bedroom two. Again, there's nothing in there that
9 I did. That was the office. That was our office.

10 Q So you did nothing in bedroom two?

11 A No, sir.

12 Q Nothing in the dining room?

13 A No, sir.

14 Q Go ahead.

15 A The living room. As I said, I broke out the
16 casement window.

17 Q What did you not do that's on that list?

18 A The carpet, the ceiling fan. That's about it.

19 Q Okay. Go ahead.

20 A The next one is the kitchen. Again, I never broke
21 a window in the kitchen. The kitchen cabinets are
22 still on the wall as far as I know according to the
23 pictures that we have. The countertop, I had never
24 changed the countertop.

25 Q What happened to the kitchen cabinet doors?

- 1 A I took them off.
- 2 Q What do you mean you took them off?
- 3 A I took a screwdriver, a screw gun, and took them
- 4 off and laid them on the floor. I believe it was
- 5 only two doors that I took off.
- 6 Q Okay.
- 7 A That's about it. The bath and a half, I broke the
- 8 toilet in the bathroom.
- 9 Q Okay. What did you not do that is on the list?
- 10 A Everything but the toilet.
- 11 Q Everything but the toilet?
- 12 A Yes, sir.
- 13 Q Okay.
- 14 A And this looks like -- okay. We are on page 4.
- 15 We're going to the bath, the main bathroom, it
- 16 looks like. The sink, I broke the bowl.
- 17 Q Okay. So you did break the sink bowl --
- 18 A In the main bathroom.
- 19 Q -- in the main bathroom?
- 20 A Yes, sir, we didn't have a medicine cabinet
- 21 recessed.
- 22 Q Okay. So you never even had a medicine cabinet?
- 23 A Never had a medicine cabinet. We did not have a
- 24 bathtub surround, fiberglass.
- 25 Q What was the bathtub like in that bathroom?

1 A It was a steel blue bathtub, and I believe it's
2 still there.

3 Q Did you do any damage to the steel blue bathtub?

4 A No, sir.

5 Q Okay.

6 A And the last page is page 5 and it's in the closet.

7 I didn't do anything to the closet.

8 Q Now, you testified that you didn't see that sheet
9 prior to trial?

10 A No, sir.

11 Q Or at trial?

12 A No, sir.

13 Q Would you have pointed out some of those things
14 that you did not do to Mr. Floyd had you seen it?

15 A Yes, sir. You know, I believe that the pictures --
16 when the adjustor got on the stand and he gave his
17 testimony, I told Mr. Floyd that some of the things
18 that he is testifying to, it's not even reflected
19 in the pictures; but he didn't do anything about
20 it.

21 Q Okay.

22 A It's kind of moot.

23 Q And some of those are actually upgrades to the
24 home?

25 A The vinyl windows are definitely an upgrade. If I

1 broke out a glass window, you're talking about a
2 pane that runs about maybe two dollars at the most;
3 but the frame itself, the wooden frame as opposed
4 to vinyl, that's definitely an upgrade.

5 Q And the jury found the value based off of that
6 sheet; correct?

7 A Yes, they did, and the labor costs that's involved
8 here.

9 Q And the labor that you had done -- whenever y'all
10 bought the house, how much labor did you do on the
11 house?

12 A Oh, my gosh, quite a bit, quite a bit of labor. We
13 spent \$25,000 on the house purchase wise and had it
14 appraised for 44,000. So that gives you some idea
15 as to how much work had to be done.

16 Q Now, what was the plan whenever you sold the home?
17 Were y'all going to use that money together or how
18 was it going to be?

19 A We were already looking at another house at that
20 point. I was going out to crawl under the next
21 house, so to speak, that the realtor had picked
22 out; and I never made it. So I really don't know
23 what her plans was, but I do know that we were
24 going to purchase another house.

25 Q And as we stated before, you said that you held

1 yourself out to be married to her; correct?

2 A Yes, sir.

3 Q And she did to you?

4 A Yes, sir. As a matter of fact, in August of '08,
5 she asked me, she said, I'm ready for the rings.

6 Q Okay. Now, tell me this. I know that you have
7 done quite a good bit of work on this. Are there
8 any allegations I have not raised that you wanted
9 me to raise?

10 A Like I said, I don't know if the Court knows this,
11 but the labor costs involved in repairing this
12 house or in his estimate is not part of the element
13 of the offense. This Exhibit Number 2 --

14 Q So you're saying the argument you wanted me to
15 raise is that the valuation shouldn't include any
16 labor costs?

17 A Right. And Mr. Floyd never interviewed this guy to
18 even find out if this gentleman had a license. I
19 had to go and backtrack and find out that he had a
20 license, which is no big deal; but he never even
21 questioned this guy. He never cross examined this
22 guy.

23 He was able to get on the stand and describe
24 how the house looked when he came out, and his
25 description of the house versus the pictures was

1 like night and day.

2 Had my attorney cross examined this man, it's
3 a possibility the jury may have had another idea or
4 taken another look at things; but that's moot at
5 this point.

6 Q Now, did the -- you stated that the pictures you
7 saw did not reflect the damage --

8 A That he described.

9 Q -- that you did yourself or that he described?

10 A That he described.

11 Q Okay.

12 A When you look at the transcript and his testimony
13 and the pictures, they're like night and day.

14 Q Okay.

15 MR. SHAFFER: Your Honor, if we could do this,
16 I don't know if you would prefer us doing it as a batch.
17 He has a stack of pictures that were taken, essentially
18 the pictures that were provided in discovery. I was
19 going to see if we could actually introduce those and
20 let him point out what he --

21 THE COURT: Have you shown them to the State?

22 MR. SHAFFER: I can show them to him.

23 THE COURT: All right.

24 (Attorneys confer.)

25 MR. SHAFFER: Your Honor, I think we actually

1 have a stipulation where we don't need to introduce
2 these. Most of these were introduced at trial, which I
3 believe we're going to stipulate that eventually -- he's
4 going to go through some of them. I don't have the
5 exhibits up here, Your Honor.

6 If we can go through them with him, but he's
7 going to talk about some of the things which can be seen
8 on the exhibits. If you would prefer, I can get the
9 exhibits up here, I imagine, fairly quickly. It's
10 just...

11 THE COURT: All right. We'll proceed forward.

12 MR. SHAFFER: Thank you.

13 BY MR. SHAFFER:

14 Q Now, if you will, let us know what --

15 MR. THOMAS: Your Honor, if I may. I think
16 what Mr. Shaffer would like to do is let's mark these as
17 identification purposes only so that the record will
18 reflect what he's looking at. If Your Honor wants to
19 review actual originals, those are in the clerk's file.
20 We can provide those.

21 THE COURT: Counsel, approach the bench.

22 MR. SHAFFER: Thank you, Your Honor.

23 (Whereupon there is a bench conference off the
24 record.)

25 THE COURT: Mr. Shaffer, I'll put that on the

1 record what was discussed here at the bench. I think
2 that the applicant has established in great detail that
3 he maintains that the damage that was done to the house
4 was significantly less than what was in the inventory,
5 and that is substantiated by the pictures. I think
6 that's been made clear.

7 He has been very articulate in that regard.
8 Also, the pictures, I think that we're going to allow
9 those in as a collective exhibit; and I can also review
10 those as good as anybody.

11 I can look and see what he has laid out for
12 me. I don't think it's necessary for him to go through
13 each one but feel free to do whatever you want to in
14 that regard. I'm just saying that I'm very clear that
15 he maintains that the inventory is inconsistent with
16 what he says he did and inconsistent with the pictures.

17 MR. SHAFFER: Okay. Thank you, Your Honor.
18 What I'll do, I believe that most of these were
19 introduced on the record which should be available at
20 the clerk's office. If you prefer --

21 THE COURT: I don't have a problem with you,
22 since you're sitting there and he's looked at them here
23 and you're looking at them, you can make those as a
24 Court's exhibit to the PCR hearing.

25 MR. SHAFFER: Thank you, Your Honor. I

1 appreciate that.

2 THE COURT: Very good.

3 (Court's Exhibit Number 1 is marked for
4 purposes of the record.)

5 MR. SHAFFER: No further questions, Your

6 Honor.

7 THE COURT: Do you have any questions?

8 MR. THOMAS: Briefly if it please the Court:

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. THOMAS:

12 Q Mr. Flowers, how many meetings did you have with
13 Mr. Floyd before the trial?

14 A Mr. Floyd came into the county jail to check on my
15 health, and that was it. He called at my
16 persistence because I continued to call the Public
17 Defender's Office and ask that I got some help from
18 somewhere.

19 Because at that time the jail wasn't doing
20 what they were supposed to do for my health. He
21 then at some point came out, of course, we know on
22 a Saturday and brought those pictures.

23 So I'm counting two. The investigator came
24 once. I was -- I talked with the investigator, and
25 I talked twice with Mr. Floyd; and I believe there

1 was one other time he appeared at the bond hearing.

2 THE COURT: So that was three times?

3 THE WITNESS: That was three times I remember
4 that I spoke with him.

5 BY MR. THOMAS:

6 Q During those meetings you gave him your version of
7 events for that night; isn't that correct?

8 A No, he never asked me. I tried to talk to him
9 about it, and there was things missing from the
10 file or information that he didn't have. He didn't
11 have time.

12 I got frustrated with him. I called and I
13 repeatedly, repeatedly asked, Please, take
14 Mr. Floyd off my case. Is it possible that I could
15 have another attorney? I just wanted the Public
16 Defender off my record because I had such a bad
17 time with him.

18 Q You made a motion to dismiss him right before
19 trial; didn't you?

20 A I tried.

21 Q You withdraw that motion though; isn't that
22 correct?

23 A I withdraw that motion because Judge King said I
24 wasn't going to get another attorney. At that
25 point we were in the middle, I believe, of a Denno

1 hearing or right after the Denno hearing.

2 These things, you know, you have to prepare
3 for. I didn't understand that I wasn't going to
4 get time to prepare for a trial or whether I was
5 going to give -- be given any help as far as
6 another attorney to kind of watch over me at that
7 point. So I was -- I didn't have a choice but to
8 go to trial with him.

9 Q Did you ever discuss with Mr. Floyd the elements of
10 the crimes you were charged with?

11 A Yes, I did.

12 Q Did you ever discuss any possible defenses?

13 A First of all, I'd like to put on the record that
14 Mr. Floyd never, ever told me about this plea deal.
15 When I got the plea offer, I was already
16 incarcerated. I was already at Lee County. I was
17 sitting in my cell.

18 I went through the package that his office
19 sent. I found the paper in there. I actually
20 wrote on that paper, I never saw this until now. I
21 never knew anything about a plea deal. Now, what
22 was your question, sir?

23 Q Did you give him any leads to investigate?

24 A I didn't give him any leads. I gave him witnesses
25 that were there. I told him about the woman that

1 lived across the street who was in my driveway.
2 She was supposed to have -- he was supposed to have
3 made sure that she was in court.

4 She never showed up. Her name was Vaughn. I
5 believe we found her name and she was a woman that
6 my common-law wife and I was talking to in the
7 driveway that morning.

8 That's how that argument started. I was
9 accused of having something to do with this woman.
10 That's how the argument started. That's how the
11 fight started. That's how the house got tore up.

12 Q So you did have an argument and a fight that led to
13 you tearing up the house?

14 A With this woman, this other woman, an argument. I
15 wasn't fighting.

16 Q You were acquitted of the CDVHAN and the kidnapping
17 charges; weren't you?

18 A Sir?

19 Q You were acquitted of the CDV and kidnapping
20 charge?

21 A I was acquitted of the kidnapping, but the CDV high
22 and aggravated nature was a lesser-included offense
23 with the CDV, which Scott Floyd never -- he should
24 have dropped it down to a simple assault because
25 they're both the same.

- 1 Q So it should have been a simple assault --
- 2 A Should have been.
- 3 Q -- because you did, in fact, assault the victim?
- 4 A It's alleged that I did. I believe we have
- 5 pictures and I would disagree, but the pictures are
- 6 here.
- 7 Q Is it safe to say you had a business relationship
- 8 with the victim as well?
- 9 A Yes, sir.
- 10 Q And she was still married when you first moved in
- 11 together?
- 12 A Yes, sir.
- 13 Q She paid all the bills?
- 14 A No, sir, she moved in with me in Virginia Beach.
- 15 Q When you moved into the house in South Carolina,
- 16 you two were still -- she was still married to her
- 17 other husband; correct?
- 18 A Yes, at the rental. Yes.
- 19 Q She paid all the bills for that house on Dixie
- 20 Street; correct?
- 21 A On Dixie Street, no, sir. I believe if we refer to
- 22 the transcript, she says that we paid the bills.
- 23 Q The house was in her name?
- 24 A Yes, sir.
- 25 Q And she paid the taxes on it?

1 A I believe so, yes, sir. At that point there were
2 no taxes to be paid until December, I believe.

3 Q You said in August of '08, she told you she was
4 expecting a ring? You hadn't proposed to her at
5 that point?

6 A Proposed? No, sir, I didn't.

7 Q You had an opportunity to testify at trial;
8 correct?

9 A Yes, sir.

10 Q You told the jury basically what you just told us,
11 what you thought you were responsible for, maybe
12 not in as much detail; but you told the jury what
13 damage you thought you were responsible for?

14 A I was never asked. Mr. Floyd used my notes to
15 question me on the stand.

16 Q He used your notes to question you?

17 A Yes, sir.

18 Q So it's safe to say that the questions that were
19 asked were the ones you wanted to be asked?

20 A No, sir, I sat at the table with him and made
21 notes. If you look at the transcript, it wasn't
22 decided whether I would take the stand or not. As
23 a matter of fact, they asked me twice, I believe,
24 would I take the stand. I said I'll hold off until
25 later.

1 At some point in time when I did decide to
2 take the stand, Mr. Floyd gets up and he takes my
3 notes off of my tablet; and he asked me a few
4 questions. That was about it before I was cross
5 examined by the State.

6 Q But you had -- you did testify that you did some of
7 the work on the house?

8 A Yes, that's in the record, sir; and it was
9 established early by the victim.

10 Q You also said in your statement to the police
11 earlier that you cut yourself while you were taking
12 the ax to the house?

13 A No, sir, that's -- that's the victim's advocate
14 statement. She came into the jail. She asked me
15 to sign a piece of paper, Miranda warnings. I
16 signed it. I talked to her. She never bothered to
17 reduce my statement to writing or recording.

18 Q Did you ever smoke in the house?

19 A Smoke?

20 Q Yeah, cigarettes.

21 A Yeah.

22 Q Wouldn't that have been dangerous with a leaky gas
23 stove?

24 A We knew there was a pilot light that wouldn't
25 working, and there was gas in it.

1 Q Thank you.

2 MR. THOMAS: That's all the questions I have,
3 Your Honor.

4 THE COURT: Anything further?

5 MR. SHAFFER: Nothing, Your Honor.

6 THE COURT: All right. You may step down.

7 THE WITNESS: Thank you.

8 THE COURT: Anything further from the
9 applicant? You can step down.

10 THE WITNESS: If you don't mind, I need to add
11 one other thing.

12 THE COURT: Well, the rules are such that, you
13 know, they have to ask questions; and he has to have an
14 opportunity to object.

15 THE WITNESS: All right.

16 THE COURT: Very good. Thank you.

17 (The witness leaves the witness stand.)

18 MR. SHAFFER: Your Honor, at this time
19 essentially, you know -- well, I guess there's several
20 claims that were raised. Two of them I'd like to touch
21 on. We don't have any further witnesses by the way,
22 Your Honor. Did I say that?

23 THE COURT: That was my question. We're going
24 to proceed forward here momentarily. I'm asking: Does
25 that conclude your case?

1 MR. SHAFFER: Yes, Your Honor.

2 THE COURT: With the exception of the family
3 court record?

4 MR. SHAFFER: That's correct.

5 THE COURT: All right. Very good. All right.

6 Anything from the State?

7 MR. THOMAS: Nothing from the State, Your
8 Honor.

9 THE COURT: All right. What we're going to do
10 is we're going to go forward, and I'll hear from you
11 with regard to each one of your grounds. We're going to
12 do them one at a time. I'm going to hear the State's
13 response. Let's start with the plea deal.

14 MR. SHAFFER: Your Honor, the plea, I don't
15 think we actually made that out, Your Honor, the plea
16 deal. I don't think there's actually a ground for PCR
17 based on that.

18 I know that I mentioned it briefly. I wasn't
19 mentioning it for the purpose of -- essentially the plea
20 offer, there is no prejudice to it because of the fact
21 that his plea offer is worse than what he would have
22 gotten, you know, what he ended up getting convicted of,
23 Your Honor.

24 THE COURT: Okay.

25 MR. SHAFFER: His plea was straight up to --

1 basically just drop the kidnapping and straight up to
2 the CDVHAN, malicious injury to personal property and
3 real property.

4 THE COURT: So you're abandoning the plea deal
5 grounds? Is that what you want to do?

6 MR. FLOWERS: I understood that there was a
7 cap of six.

8 THE COURT: I'm asking you: Are you
9 abandoning that particular allegation of ineffective
10 assistance of counsel?

11 MR. SHAFFER: Your Honor, well it --

12 MR. FLOWERS: I'm not going to abandon any of
13 it.

14 THE COURT: All right. Very good. Then I'll
15 be glad to hear any argument that you have in that
16 regard.

17 MR. SHAFFER: Thank you, Your Honor. If you
18 find his statement concerning six years being credible,
19 which, I mean, that's uncontroverted, so it really
20 shouldn't be.

21 But if there was a cap of six years, then
22 also -- I certainly think that we would have grounds for
23 it. I'm not sure if he was 100 percent clear on that.
24 I apologize. If he was clear on it, maybe I
25 misunderstood him.

1 THE COURT: Very good. What do you have to
2 say about the allegations of ineffective assistance that
3 arises out of the plea deal?

4 MR. THOMAS: First, Your Honor, I'd just point
5 out that wasn't plead in the application.

6 THE COURT: Well, ineffective assistance was;
7 wasn't it?

8 MR. THOMAS: It was, Your Honor, but the
9 specific instances of ineffective assistance were
10 failure to investigate and call witnesses and establish
11 the value.

12 THE COURT: All right. Well, to the extent
13 that they have allowed -- or gone into it -- we need to
14 address it.

15 MR. THOMAS: I understand, Your Honor. My
16 position on that would be Mr. Floyd testified that he
17 conveyed the plea offer to the applicant.

18 He also -- even if there was some discrepancy
19 on what the actual plea offer was, Mr. Floyd was very
20 clear that the applicant never wanted to plead and
21 insisted upon a trial from the get-go. That would be
22 our position.

23 THE COURT: Essentially, the State's position
24 is that he communicated all plea deals to him and they
25 were rejected, and he wanted to go to trial. Is that

1 the State's position?

2 MR. THOMAS: That's correct, Your Honor. I
3 believe Mr. Floyd's testimony was very credible to that
4 effect.

5 THE COURT: And the next issue that was pled
6 had to do with failure to investigate; is that correct?

7 MR. SHAFFER: That's correct, Your Honor.

8 THE COURT: All right. I'll be glad to hear
9 you in that regard.

10 MR. SHAFFER: There was the question
11 concerning bond. The witness said that essentially all
12 this started from, he obviously had some people -- he
13 obviously had the ability to go subpoena people. He
14 did.

15 He testified to that. He didn't state whether
16 or not bond had -- what he said or whether he attempted
17 to follow up on that lead, it was given to him by his
18 client.

19 There is also an issue with the other --

20 THE COURT: Let me ask you this. You had
21 mentioned that the -- you sort of made the blanket
22 allegation that there were some witnesses that would
23 have said some things. Isn't it incumbent upon you to
24 proffer whatever they would say?

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

1 THE COURT: All right. But we don't have any
2 of those witnesses or what they might have said?

3 MR. SHAFFER: Yes, Your Honor, that is
4 correct.

5 THE COURT: All right. Very good. I'll be
6 glad to hear from you in any other respects.

7 MR. SHAFFER: Thank you, Your Honor.
8 Regarding the -- we went into a little bit more detail
9 than I intended to on the value that was actually -- you
10 are talking about with respect to any other issues?

11 THE COURT: Failure to investigate is what
12 we're on right now.

13 MR. SHAFFER: The other issue is regarding
14 the -- essentially, really one of the key things that I
15 think any criminal defense attorney should do is go over
16 the discovery with their client and determine whether or
17 not they admit or deny the allegations.

18 You know, we went through line by line.
19 There's quite a few things that he said he didn't do.
20 Well, if Mr. Floyd never showed him that document, never
21 talked to him about it, then obviously he wouldn't have
22 been able to follow up and make those allegations. I
23 think that's incorporated into the investigation prong
24 as well, Your Honor.

25 THE COURT: Very good. All right. What do

1 you have to say about failure to investigate?

2 MR. THOMAS: Regarding the failure to
3 investigate, Your Honor, I believe Mr. Floyd testified
4 that he did, in fact, review the State's recovery with
5 the applicant. He said he reviewed the pictures and the
6 estimates beforehand.

7 You know, the applicant, he said -- or
8 basically the applicant said, Yes, I admit to doing some
9 of that damage but not all of it, and some other people
10 did that. They presented that theory at trial.

11 Furthermore, Your Honor, I think the testimony
12 and the evidence at trial was very clear. There was an
13 extensive amount of damage done to this house. The
14 things that the applicant claimed at trial that he did
15 not cause certainly did not rise to the level to get it
16 below the \$5,000 threshold. So there's facts --

17 THE COURT: Essentially what you're saying
18 it's the amount of damage and whether or not they
19 believed he did it was a question of fact for the jury.
20 You're saying they weighed in on it? Is that what your
21 position is?

22 MR. THOMAS: Absolutely, Your Honor. That is
23 evidenced by the fact that on the personal property
24 charge, the submission said about 18,000. The jury came
25 back with 11,000.

1 So they obviously believed part of his
2 testimony that he didn't destroy necessarily -- or that
3 he owned some of the property or he didn't destroy it or
4 whatever the case may be. So it's a question of fact
5 for the jury, yes, Your Honor.

6 Your Honor, I'd also point out that the
7 applicant hasn't presented any evidence of what the
8 actual value would have been had he done an
9 investigation into the value himself.

10 THE COURT: All right. And the next ground
11 that was pled from the State was what?

12 MR. THOMAS: Your Honor, I think he also had
13 -- I think it's kind of part and parcel of the way he
14 pled it was that Mr. Floyd was ineffective for not
15 making the State prove the value of the property that
16 was destroyed. I think that's part and parcel. I'll
17 let Mr. Shaffer clean it up if you would like.

18 MR. SHAFFER: Your Honor, that's fairly close
19 to what we talked about, which goes into the
20 investigation. It also sort of goes into the
21 communication with your client when you are going over
22 the discovery and the evidence against him.
23 Essentially, it's the same allegation, Your Honor.

24 THE COURT: Okay. Let me ask y'all a very
25 interesting question, and I want to hear what y'all have

1 to say about it. It's probably more of an academic
2 argument than anything else.

3 But here recently the Supreme Court, as I
4 recall -- and I don't have the name of the case but I
5 remember reading it -- is where a mother and a son owned
6 a house together.

7 I think maybe they inherited it, and they had
8 property where they were joint tenants or either the
9 wife had the life interest and the son had the remainder
10 interest, but both of them had legal title because they
11 inherited it.

12 The mother -- the son obviously had a drinking
13 and a drug problem. The mother banished the son from
14 the house which he owned. He comes back later and
15 breaks into what essentially was his house. The Supreme
16 Court said that you can break into a house that you own
17 and can be convicted of burglary.

18 How do you think that affects what we've got
19 here? Or does it?

20 MR. SHAFFER: Your Honor, I think --

21 THE COURT: Have you read that case?

22 MR. SHAFFER: Yes, Your Honor. I read it a
23 couple of years ago. I think it's out of Charleston.

24 THE COURT: First of all, do you think they
25 were right?

1 MR. SHAFFER: Do I think that they were right?
2 Your Honor, I think that they make the law of this
3 State.

4 THE COURT: That's probably a pretty good
5 response.

6 MR. SHAFFER: Your Honor, I think their
7 decision in that case -- and it has been awhile since I
8 read it -- but it hinges on burglary being a crime, you
9 know, essentially against habitation versus not --
10 versus against, you know, property itself.

11 THE COURT: Right.

12 MR. SHAFFER: I think that's sort of what they
13 hinged it on.

14 THE COURT: Well, the momma was living in his
15 house but at any rate, go ahead.

16 MR. SHAFFER: And the son wasn't. I think
17 that's sort of what they relied on. You can't
18 burglarize the house that you live in, but you can
19 probably burglarize a house that somebody else lives in
20 even if you own it. You know, I think that's sort of
21 the holding. It has been awhile since I read it.

22 In this case though the issue is a little bit
23 different because of the fact that if they were
24 common-law married, you know, there obviously was some
25 sort of -- if that was -- say it would have been argued

1 and say the judge would have charged the law on
2 common-law marriage, then the jury would have had to
3 consider whether or not he actually owned the property
4 based off of that, which he could have an ownership
5 interest in the property based off of that.

6 Clearly, I think you can destroy property you
7 own, but you might not be able to -- you know, if you're
8 not living in the property, you could have burglarized
9 it; but I think certainly he was living there. He had
10 an ownership interest in it, and he could have destroyed
11 it. So I think it is distinguishable in that case.

12 THE COURT: What do you have to say about
13 breaking into your own house and how that might affect
14 this case?

15 MR. THOMAS: I think Mr. Shaffer summarized it
16 very well. From my recollection of the case -- and it
17 has been a while -- it's a crime against the person.
18 It's a crime against privacy. It's not a crime against
19 possession or ownership.

20 I think applying that to the facts of this
21 case, the fact that he owned or that he may have had
22 some possessory interest in the house because he lived
23 there doesn't eliminate the fact that he still destroyed
24 parts of the houses.

25 If that house were to be sold, the deed was in

1 her name. All the tax money had been paid by her. If
2 the house had been sold, any devaluation of the property
3 would have fallen on her shoulders because he had no
4 financial stake in this case.

5 So I think this crime is basically the
6 opposite of what the burglary case would have been in
7 which you have to have an ownership interest in the
8 property to be able to destroy it. You can't just have
9 a privacy interest. I live there; therefore, I can
10 destroy it.

11 That would be like me saying I live in my
12 apartment. I can tear the walls down. That's not the
13 way it works. I think, again, whether he had any
14 ownership interest in it as far as the personal
15 property, that's a jury question. The jury had that in
16 front of them and they found that he did not.

17 THE COURT: All right.

18 MR. SHAFFER: Your Honor, on that point -- and
19 I guess the jury might have been able to make a decision
20 based off of that -- but the problem is they weren't
21 given the tools to do it.

22 They weren't given a charge on whether or
23 not -- the definition of common-law marriage. They
24 weren't given a charge on the fact that essentially
25 marital property, whenever you buy something for the

1 purposes of the marriage and it's gone in together for
2 that purpose -- and I'm not a family court lawyer so I
3 might be misstating a couple of things -- but
4 essentially if in the course of a marriage you buy a
5 piece of property and you do things to that property and
6 you fix it up for the purposes of that marriage, then it
7 becomes marital property. They weren't given the tools
8 to make that decision.

9 THE COURT: Do you think in this setting it
10 would be incumbent upon you to establish by a
11 preponderance of the evidence at least that there was a
12 common-law marriage?

13 MR. SHAFFER: Your Honor, I think that -- I
14 actually don't think that. I think that it would be
15 sufficient to raise whether or not a jury could have
16 found it.

17 Because I'm not saying that -- well, in a way
18 I am -- but I think that it essentially goes back to
19 ineffective assistance of counsel: Would it or could it
20 have reasonably made a difference in the outcome of the
21 case had the jury known that he could have ownership
22 possession of the property?

23 I think that it could have made a difference
24 in the outcome of the case. I think that's what I have
25 to establish, which, you know -- because I guess almost

1 you would have to find -- I mean, they would have to
2 find beyond a reasonable doubt that he didn't own the
3 property. So I don't think it's necessary for
4 preponderance of the evidence then.

5 THE COURT: I'm talking about for this
6 proceeding.

7 MR. THOMAS: For this proceeding I think I had
8 to establish --

9 THE COURT: This is a civil proceeding and
10 whether or not you have met your burden of proof to show
11 that there was some ineffective assistance and that it
12 would have made a difference, I think.

13 MR. SHAFFER: Yes, Your Honor. That I guess
14 is exactly what it is. I have to prove whether or
15 not -- or whether there is a reasonable likelihood that
16 the jury might have found something differently if they
17 were given those tools.

18 If they were given the charge on whenever you
19 hold yourself out as being married when you're
20 cohabiting, you're considered married by law. The
21 definition of marital property, I think that could have
22 actually made the difference between, you know, finding
23 him guilty.

24 THE COURT: What do you think of the fact that
25 they asked? They were clearly -- obviously it had been

1 put before the jury because they asked the question
2 about that. The response to the inquiry, as I recall,
3 was that you can't destroy property that belongs to you.

4 So to some extent you agree that that was
5 litigated and put before the jury? Wouldn't you agree?

6 MR. SHAFFER: Yes, Your Honor. But what
7 wasn't put before the jury was the inability to make
8 that jump between: Oh, yeah, I worked on the property.
9 I live there -- to -- I have an ownership interest.

10 They weren't given the law concerning that.
11 They weren't allowing them to make that jump to
12 ownership. I think it was certainly important based off
13 of the fact they asked that question. They weren't
14 given the tools to make the jump. They weren't given
15 the instruction to make the jump.

16 THE COURT: Very good. Yes, sir.

17 MR. THOMAS: Your Honor, I'd just point out
18 the applicant's testimony today was that they were still
19 living -- they began living together while her prior
20 marriage had not been decreed final yet.

21 It's been awhile since I've done family law --
22 I haven't since I've been with the bar -- but I'm pretty
23 sure you can't begin a new marriage, common law or
24 statutory, while you're engaged in a prior marriage.
25 Again, she testified at trial they never held themselves

1 out.

2 THE COURT: You would agree that maybe it
3 could evolve?

4 MR. THOMAS: I think so, Your Honor, but I
5 also think Mr. Floyd's testimony was he investigated
6 this aspect of it. He couldn't find anyone, other than
7 the applicant himself, who would testify to them holding
8 themselves out together.

9 THE COURT: All right. And I think you
10 pointed out that there was a contemplation that they
11 weren't married because she had asked for the ring. Is
12 that correct?

13 MR. THOMAS: That's correct, Your Honor.

14 THE COURT: That would be inconsistent with
15 them having been married.

16 MR. THOMAS: That would be evidence there was
17 no marriage entered into, yes, sir.

18 THE COURT: All right. Anything further?

19 MR. SHAFFER: The only thing I would like to
20 say is that, you know, obviously, she can't enter a
21 common-law marriage while they were married. That's why
22 I asked him: Did you hold yourself out? Were y'all
23 living together at the time? Yes.

24 Was that during the time that she was married
25 or after the time she got the divorce? And he said yes.

1 So I think there is testimony they could have entered
2 into it afterwards.

3 THE COURT: All right. We're going to recess
4 until 2:00 o'clock. I'm going to ask that you and the
5 attorney general go and have an opportunity to take a
6 look at the documents that you want, and I've given you
7 leave to supplement the record in that regard.

8 I'll ask that y'all do that before 2:00, and
9 you indicated it will only take about 10 or 15 minutes.
10 I'm going to allow you to do that. But if it's
11 something that you want to introduce into evidence, run
12 it by him; and if we need to supplement it with
13 testimony briefly at 2:00 o'clock, we'll do that.

14 MR. THOMAS: Thank you, Your Honor.

15 MR. SHAFFER: Thank you, Your Honor.

16 THE COURT: Anything further from either side
17 at this time?

18 MR. THOMAS: Not at this moment, Your Honor.

19 MR. SHAFFER: Nothing, Your Honor.

20 THE COURT: Very good. All right. We'll
21 stand at ease.

22 (Whereupon there is a luncheon recess.)

23 THE COURT: We're back on the record with
24 regard to Mr. Flowers.

25 MR. SHAFFER: Yes, Your Honor. The applicant

1 has nothing to submit. I believe the State might
2 though.

3 MR. THOMAS: At this time, Your Honor, we went
4 downstairs. We did review his file. I had a certified
5 copy of the order in his divorce case, Carmichael T.
6 Flowers versus Janelle Namias, Docket Number
7 2009-DR-21-2600. At this time I'd move to introduce
8 that as State's Exhibit Number 1.

9 THE COURT: All right. The essence or the
10 significance of your offering it is what?

11 MR. THOMAS: Your Honor, on page 2 of the
12 order, it's paragraph 7 of findings of fact, including
13 law, Judge Moorehead finds that a valid common-law
14 marriage did not exist between the parties; therefore,
15 no divorce or equitable distribution may be ordered by
16 the Court. I'd just submit it before the Court, Your
17 Honor.

18 THE COURT: Very good.

19 MR. SHAFFER: In brief response.

20 THE COURT: Now, that was before the trial?

21 MR. SHAFFER: This was after, Your Honor.

22 THE COURT: After the trial?

23 MR. SHAFFER: Yes, Your Honor. I think in
24 this document, certainly in the divorce, he had the
25 burden of proving it by a preponderance of the

1 evidence.

2 In this case, I think that the State -- in the
3 criminal case, the underlying criminal case -- the State
4 had the burden of showing that it was not his property
5 because I think that would have created an actual, you
6 know, a defense.

7 THE COURT: I don't know. I think that what
8 they had to do was show that it was the victim's
9 property; and then the burden would shift to you to
10 prove otherwise, I would think.

11 MR. SHAFFER: I would just -- I understand the
12 reason you have for that. I respectfully disagree and
13 would just like to make the argument for the record,
14 Your Honor.

15 THE COURT: Very good.

16 MR. THOMAS: Your Honor, may I approach and
17 just get this marked?

18 THE COURT: Yes.

19 (State's Exhibit Number 1 is received into
20 evidence.)

21 MR. THOMAS: Your Honor, I'll -- may I
22 approach?

23 THE COURT: Yes.

24 MR. THOMAS: I'll pass this up to you.

25 THE COURT: Very good. We'll make that a part

1 of the record.

2 MR. THOMAS: We'll move to have that admitted
3 as part of the record.

4 THE COURT: Anything further with regard to
5 Mr. Flowers?

6 MR. SHAFFER: Nothing, Your Honor.

7 THE COURT: All right. I'm not going to rule
8 on this matter. I'm actually going to draft this order;
9 so I'm not going to put that additional burden on you.

10 MR. SHAFFER: Thank you, Your Honor.

11 MR. THOMAS: Very well, Your Honor.

12 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had, as reported by Karen Ambroziak, and transcribed by me to the best of my ability, and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Civil Court for Florence County, South Carolina, on the 10th day of February, 2014.

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

July 17, 2014

s/L. Coconut Pantsari

Court Reporter

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RAMSEY ADJUSTMENT SERVICE, INC.

POST OFFICE BOX 6904

FLORENCE, SC 29502

Office: (843) 665-4451

FAX: (843) 664-0302

Estimate

Claim No. CLM0069073

File No. 308-3026-2-C3	Date of Loss 10/03/2008	Report First	Report Date 10/17/2008	Adjuster Corbett E. Byrd
Insured Janet Namias	Address PO Box 4741 Florence, SC 29502	Office	Home	FAX
Loss Address	803 Dixie Street Florence, SC 29501			
Contact	Address			FAX
Claimant	Address	Office	Home	FAX

Dwelling

Limit: \$80,000.00 Deductible: \$1,000.00

Master Bedroom

Floor 24.89 SY Wall 480 SF Ceiling 224 SF Floor Perim. 60 FT Ceiling Perim. 60 FT

Room-standard Length 16.00 FT, Width 14.00 FT, Height 8.00 FT

Operation	Qty	Unit	Description	Cost	RC	DEP	AC
Minimum	1	EA	1/2" Drywall, hung & fire taped only	150.00	150.00	30.00	120.00
Paint	224	SF	Acoustic ceiling texture, 2 coats	0.95	212.80	42.56	170.24
Remove	240	EA	1/2" Drywall, hung & fire taped only	0.20	48.00	9.60	38.40
Replace	240	SF	1/2" Drywall, hung & fire taped only	1.45	348.00	69.60	278.40
Paint	480	SF	Drywall or Plaster, 2 coats	0.65	312.00	62.40	249.60
Remove	1	EA	Ceiling fan with light, economy grade	10.62	10.62	2.12	8.50
Replace	1	EA	Ceiling fan with light, economy grade	289.38	289.38	57.88	231.50
Remove	1	EA	French doors, paint-grade wood	5.00	5.00	1.00	4.00
Replace	1	EA	French doors, paint-grade wood	245.00	245.00	49.00	196.00
Paint	1	EA	Door, Folding, 2 coats	50.00	50.00	10.00	40.00
Replace	2	EA	Vinyl casement window, 30" wide, 48" tall	300.00	600.00	120.00	480.00
Remove	24.89	SY	Carpet, standard grade	1.16	28.87	10.10	18.77
Replace	27.88	SY	Carpet, standard grade	22.97	640.40	224.14	416.26

Master Bedroom Totals:

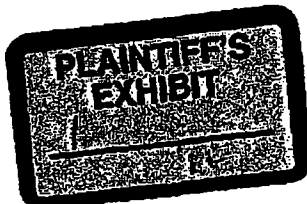
2,940.07 688.40 2,251.67

Dining Room

Floor 14.22 SY Wall 384 SF Ceiling 128 SF Floor Perim 48 FT Ceiling Perim. 48 FT

Room-standard Length 16.00 FT, Width 8.00 FT, Height 8.00 FT

Operation	Qty	Unit	Description	Cost	RC	DEP	AC
Remove	1	EA	1/2" Drywall ceiling, hung & fire taped only	12.21	12.21	2.44	9.77
Replace	1	SF	1/2" Drywall ceiling, hung & fire taped only	87.79	87.79	17.56	70.23
Paint	128	SF	Acoustic ceiling texture, 2 coats	0.95	121.60	24.32	97.28
Remove	384	SF	Plywood paneling, 1/4", birch	0.17	65.28	13.06	52.22
Replace	403.2	SF	Plywood paneling, 1/4", birch	2.83	1,141.06	228.21	912.85
Remove	1	EA	Light fixture, Double hanging, standard grade	1.96	1.96	0.39	1.57
Replace	1	EA	Light fixture, Double hanging, standard grade	93.17	93.17	18.63	74.54
Replace	1	EA	Vinyl casement window, 30" wide, 48" tall	300.00	300.00	60.00	240.00
Remove	14.22	SY	Carpet, standard grade	1.16	16.50	1.65	14.85
Replace	15.93	SY	Carpet, standard grade	22.97	365.91	36.59	329.32



Estimate

Claim No. CLM0069073

File No 308-8026-2-CB	Policy No HOM1114509	Date of Loss 10/03/2008	Report First	Report Date 10/17/2008	Adjuster Corbett E. Byrd
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Dining Room Totals: 2,205.48 402.85 1,802.63

Bedroom 2

Floor 24 SY Wall 480 SF Ceiling 216 SF Floor Perim. 36316 FT Ceiling Perim 36316 FT

Room-standard Length 18.00 FT, Width 12.00 FT, Height 8.00 FT

Room-standard Length 18.128.00 FT, Width 0.00 FT, Height 0.00 FT

Operation	Qty	Unit	Description	Cost	RC	DEP	AC
Paint	216	SF	Acoustic ceiling texture, 2 coats	0.95	205.20	41.04	164.16
Remove	240	EA	1/2" Drywall, hung & fire taped only	0.20	48.00	9.60	38.40
Replace	240	SF	1/2" Drywall, hung & fire taped only	1.45	348.00	69.60	278.40
Paint	480	SF	Drywall or Plaster, 2 coats	0.65	312.00	62.40	249.60
Remove	1	EA	Ceiling fan with light, economy grade	10.62	10.62	2.12	8.50
Replace	1	EA	Ceiling fan with light, economy grade	289.38	289.38	57.88	231.50
Replace	2	EA	Vinyl casement window, 30" wide, 48" tall	300.00	600.00	120.00	480.00
Remove	24	SY	Carpet, standard grade	1.16	27.84	9.74	18.10
Replace	26.88	SY	Carpet, standard grade	22.97	617.43	216.10	401.33

Bedroom 2 Totals: 2,458.47 588.48 1,869.99

Living Room

Floor 21.33 SY Wall 448 SF Ceiling 192 SF Floor Perim. 56 FT Ceiling Perim. 56 FT

Room-standard Length 16.00 FT, Width 12.00 FT, Height 8.00 FT

Operation	Qty	Unit	Description	Cost	RC	DEP	AC
Minimum	1	EA	1/2" Drywall ceiling, hung & fire taped only	150.00	150.00	30.00	120.00
Paint	192	SF	Acoustic ceiling texture, 2 coats	0.95	182.40	36.48	145.92
Remove	1	EA	1/2" Drywall walls, hung & fire taped only	24.24	24.24	4.85	19.39
Replace	1	SF	1/2" Drywall walls, hung & fire taped only	175.76	175.76	35.15	140.61
Paint	448	SF	Drywall or Plaster, 2 coats	0.65	291.20	58.24	232.96
Remove	1	EA	Ceiling fan with light, economy grade	10.62	10.62	2.12	8.50
Replace	1	EA	Ceiling fan with light, economy grade	289.38	289.38	57.88	231.50
Replace	1	EA	Vinyl casement window, 30" wide, 48" tall	300.00	300.00	60.00	240.00
Replace	1	EA	Vinyl sliding window, 72" wide, 48" tall	500.00	500.00	100.00	400.00
Remove	21.33	SY	Carpet, standard grade	1.16	24.74	8.66	15.08
Replace	23.89	SY	Carpet, standard grade	22.97	548.75	192.06	355.69

Living Room Totals: 2,497.09 585.44 1,911.65

Kitchen

Floor 14.67 SY Wall 368 SF Ceiling 132 SF Floor Perim. 46 FT Ceiling Perim. 46 FT

Room-standard Length 12.00 FT, Width 11.00 FT, Height 8.00 FT

Operation	Qty	Unit	Description	Cost	RC	DEP	AC
Paint	132	SF	Drywall or Plaster, 2 coats	0.60	79.20	15.84	63.36
Paint	368	SF	Drywall or Plaster, 2 coats	0.60	220.80	44.16	176.64
Replace	1	EA	Vinyl casement window, 30" wide, 48" tall	250.00	250.00	50.00	200.00

Estimate

Claim No. CLM0069073

File No		Policy No	Date of Loss	Report	Report Date	Adjuster		
308-8026-2-CB		HOM1114509	10/03/2008	First	10/17/2008	Corbett E. Byrd		
Remove	25 EA	Kitchen cabinet, Upper, standard grade			5.81	145.25	36.31	108.94
Replace	25 LF	Kitchen cabinet, Upper, standard grade			119.19	2,979.75	744.94	2,234.81
Remove	12 LF	Kitchen cabinet, Lower, standard grade			6.05	72.60	18.15	54.45
Replace	12 LF	Kitchen cabinet, Lower, standard grade			118.95	1,427.40	356.85	1,070.55
Remove	1 SF	Countertop, Plastic laminate, flat-laid			46.32	46.32	9.26	37.06
Replace	1 SF	Countertop, Plastic laminate, flat-laid			203.68	203.68	40.74	162.94
Remove	1 EA	Sink, Kitchen, Stainless steel, 19" by 18" single-bowl			7.31	7.31	1.46	5.85
Replace	1 EA	Sink, Kitchen, Stainless steel, 19" by 18" single-bowl			292.69	292.69	58.54	234.15
Remove	1 EA	Range hood, standard grade			15.58	15.58	3.12	12.46
Replace	1 EA	Range hood, standard grade			164.42	164.42	32.88	131.54
Remove	1 EA	Range, Electric, standard grade			15.62	15.62	3.90	11.72
Replace	1 EA	Range, Electric, standard grade			534.38	534.38	133.60	400.78
Remove	1 EA	Refrigerator of capacity, standard grade			11.74	11.74	2.94	8.80
Replace	1 EA	Refrigerator of capacity, standard grade			588.26	588.26	147.06	441.20
Remove	14.67 SY	Vinyl floor, standard grade			3.41	50.02	17.51	32.51
Replace	16.43 SY	Vinyl floor, standard grade			23.76	390.38	136.63	253.75
Remove	1	backer board, std			0.00	0.00	0.00	0.00
Replace	1 SF	backer board, std			250.00	250.00	50.00	200.00

Kitchen Totals: 7,745.40 1,903.89 5,841.51

Bath, Half

Floor 6.22 SY Wall 288 SF Ceiling 56 SF Floor Perim. 36 FT Ceiling Perim 36 FT

Room-standard Length 4.00 FT, Width 14.00 FT, Height 8.00 FT

Operation	Qty	Unit	Description	Cost	RC	DEP	AC
Paint	288	SF	Drywall or Plaster, 2 coats	0.65	187.20	37.44	149.76
Remove	1	EA	Light fixture, Bowl-shade, standard grade	5.87	5.87	1.17	4.70
Replace	1	EA	Light fixture, Bowl-shade, standard grade	105.32	105.32	21.06	84.26
Remove	1	EA	Sink, Bathroom, Self-rimming stainless steel, oval	3.81	3.81	0.76	3.05
Replace	1	EA	Sink, Bathroom, Self-rimming stainless steel, oval	196.19	196.19	39.24	156.95
Remove	1	EA	Toilet, standard grade	5.65	5.65	1.13	4.52
Replace	1	EA	Toilet, standard grade	194.35	194.35	38.87	155.48
Clean	56	SF	Flooring, tile floor	0.25	14.00	1.40	12.60
Replace	1	EA	Vinyl casement window, 18" wide, 36" tall	200.00	200.00	40.00	160.00

Bath, Half Totals: 912.39 181.07 731.32

Miscellaneous

Operation	Qty	Unit	Description	Cost	RC	DEP	AC
Remove	2	EA	Entry door, Steel, standard grade	5.51	11.22	2.24	8.98
Replace	2	EA	Entry door, Steel, standard grade	244.39	488.78	97.76	391.02
Remove	2	EA	Storm/screen door, metal, standard grade	4.53	9.06	1.81	7.25
Replace	2	EA	Storm/screen door, metal, standard grade	245.47	490.94	98.19	392.75

Estimate

Claim No. CLM0069073

File No.	Policy No.	Date of Loss	Report First	Report Date	Adjuster	
308-8026-2-CB	HOM1114509	10/03/2008		10/17/2008	Corbett E. Byrd	
Paint	2	Doors, std	65.00	130.00	25.00	104.00
Charge	1	As nessary, nessary <i>PLUMBING</i>	375.00	375.00	75.00	300.00
Charge	1	as nessary, nessary <i>Electric</i>	375.00	375.00	75.00	300.00
Fee	1 EA	Debris hauling, By pick-up truck, per load	700.00	700.00	140.00	560.00
Fee	1 EA	Building permit, for job \$10,001 to \$20,000	100.00	100.00	10.00	90.00
Charge	1 SF	Cover opening, install temporary framing and cover opening	250.00	250.00	25.00	225.00
Remove	1 LF	Base Molding, Base shoe, 3/4", finger-joint pine	58.76	58.76	11.75	47.01
Replace	1.07 LF	Base Molding, Base shoe 3/4", finger-joint pine	191.24	204.63	40.93	163.70
Charge	1	Molding, std <i>PAINT</i>	100.00	100.00	10.00	90.00
Miscellaneous Totals:				3,293.39	613.68	2,679.71

Bath

Floor 3.89 SY Wall 192 SF Ceiling 35 SF Floor Perim. 24 FT Ceiling Perim. 24 FT

Room-standard Length 7.00 FT, Width 5.00 FT, Height 8.00 FT

Operation	Qty	Unit	Description	Cost	RC	DEP	AC
Remove	1	EA	1/2" Drywall ceiling, hung & fire taped only	18.00	18.00	1.80	16.20
Replace	1.15	SF	1/2" Drywall ceiling, hung & fire taped only	132.00	151.80	15.18	136.62
Paint	35	SF	Drywall or Plaster, 2 coats	0.60	21.00	4.20	16.80
Paint	192	SF	Drywall or Plaster, 2 coats	0.65	124.80	24.96	99.84
Remove	1	EA	Light fixture, Bowl-shade, standard grade	5.87	5.87	1.17	4.70
Replace	1	EA	Light fixture, Bowl-shade, standard grade	105.32	105.32	21.06	84.26
Remove	1	EA	Sink, Bathroom, Self-rimming stainless steel, oval	3.81	3.81	0.76	3.05
Replace	1	EA	Sink, Bathroom, Self-rimming stainless steel, oval	196.19	196.19	39.24	156.95
Remove	1	EA	Toilet, standard grade	5.65	5.65	1.13	4.52
Replace	1	EA	Toilet, standard grade	194.35	194.35	38.87	155.48
Remove	1	EA	Bathlup surround, Fiberglass, standard grade	20.99	20.99	4.20	16.79
Replace	1	EA	Bathlup surround, Fiberglass, standard grade	479.01	479.01	95.80	383.21
Remove	1	LF	Cabinet, Bathroom vanity, standard grade	6.04	6.04	1.21	4.83
Replace	1	LF	Cabinet, Bathroom vanity, standard grade	118.96	118.96	23.79	95.17
Remove	1	EA	Medicine cabinet, Recessed, standard grade	11.95	11.95	2.39	9.56
Replace	1	EA	Medicine cabinet, Recessed, standard grade	105.54	105.54	21.11	84.43
Charge	1		Repair, repair	50.00	50.00	5.00	45.00
Remove	35	SF	Vinyl floor, standard grade	0.38	13.30	4.66	8.84
Replace	39.2	SF	Vinyl floor, standard grade	2.64	103.49	36.22	67.27

Bath Totals:				1,736.07	342.75	1,393.32
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Hall

Floor 4 SY Wall 208 SF Ceiling 36 SF Floor Perim. 26 FT Ceiling Perim. 26 FT

Room-standard Length 9.00 FT, Width 4.00 FT, Height 8.00 FT

Operation	Qty	Unit	Description	Cost	RC	DEP	AC
Minimum	1	EA	1/2" Drywall, hung & fire taped only	150.00	150.00	30.00	120.00
Paint	36	SF	Drywall or Plaster, 2 coats	0.65	23.40	4.68	18.72

Estimate

Claim No. CLM0069073

File No	Policy No	Date of Loss	Report First	Report Date	Adjuster	
308-8026-2-CB	HOM1114509	10/03/2008		10/17/2008	Corbett E. Byrd	
Paint	208 SF	Drywall or Plaster, 2 coats	0.65	135.20	27.04	108.16
Remove	4 SY	Carpet, standard grade	1.16	4.64	1.62	3.02
Replace	4.48 SY	Carpet, standard grade	22.97	102.91	36.02	66.89
Hall Totals:				416.15	99.36	316.79

Closet

Floor 7.33 SY Wall 368 SF Ceiling 66 SF Floor Perim. 46 FT Ceiling Perim. 46 FT

Room-standard Length 6.00 FT, Width 8.00 FT, Height 8.00 FT

Room-standard Length 6.00 FT, Width 3.00 FT, Height 8.00 FT

Operation	Qty	Unit	Description	Cost	RC	DEP	AC
Paint	66	SF	Acoustic ceiling texture, 2 coats	0.95	62.70	12.54	50.16
Paint	368	SF	Drywall or Plaster, 2 coats	0.65	239.20	47.84	191.36
Remove	7.33	SY	Carpet, standard grade	1.16	8.50	2.98	5.52
Replace	8.21	SY	Carpet, standard grade	22.97	188.58	66.00	122.58
Closet Totals:					498.98	129.36	369.62

	RC	R DEP	NR DEP	ACV
Dwelling Loss:	24,703.49	5,535.28	0.00	19,168.21
Totals:	24,703.49	5,535.28	0.00	19,168.21

Maximum Recoverable Depreciation	5,535.28
→ Total Loss	24,703.49 ←
Less Deductible Applie	1,000.00
Total Clai	23,703.49
Less Recoverable Depreciation	5,535.28
ACV Clai	18,168.21

①



Living Room

AVAILABLE RECEIPTS OR OTHER EVIDENCE OF OWNERSHIP:

1'S SIGNATURE

Jack Harris

DATE: 10/13/78

TOTAL :-

740

180

565

②

Hall

AVAILABLE RECEIPTS OR OTHER EVIDENCE OF OWNERSHIP:

ED'S SIGNATURE: James Navarro

DATE: 10/20/07

TOTALS:

85

17

28

(3)

Jm A Belkorn

INSURED'S STATEMENT OF CLAIM

TY	ARTICLE* Complete description, model number, serial number, brand name, etc.	WHERE PURCHASED	WHEN PURCHASED MO. - YEAR		COST	DEPRECIATION	VALUE AT TIME OF LOSS
	Machine	Home	1 yr		100 ⁰⁰	10	70
	different phone	different place	1 1/2 yrs		125 ⁰⁰	20	80
	7'x5'	Lowes	1 yr		90 ⁰⁰	20	70
	Desk	Home Depot	1 1/2 yrs		120 ⁰⁰	25	125
	Book shelf	office house	6 mos		50 ⁰⁰	10	40
		Lowes	1 yr		15 ⁰⁰	5	10
		office house	1 yr		50 ⁰⁰	10	40
		Home Depot	1 yr		300 ⁰⁰	50	250
	Clock	Home Depot	1 yr		25 ⁰⁰	5	25
	lamp	Home Depot	6 mos		100 ⁰⁰	20	80
	lamp	Home Depot	1 yr		15 ⁰⁰	5	15
	telephone	Home Depot	6 mos		20 ⁰⁰	5	15

AVAILABLE RECEIPTS OR OTHER EVIDENCE OF OWNERSHIP:

ED'S SIGNATURE: Jm A Belkorn

DATE: 10/10/05

TOTALS:

1005

185

820

EXHIBIT D

(4)

Bath Inl

INSURED'S STATEMENT OF CLAIM

IT	ARTICLE* Complete description, model number, serial number, brand name, etc.	WHERE PURCHASED	WHEN PURCHASED MO. - YEAR		COST	DEPRECIATION	VALUE AT TIME OF LOSS
	Shower Curtain + Liner	Kohls	6 mos		20 ⁰⁰	5	15
	shower rod	Kohls	6 mos		15 ⁰⁰	5	10
	2 shower organizers	Lowe's	1 yr		50 ⁰⁰	10	40
	Bath mat	Kohls	6 mos		10 ⁰⁰	2	8
	Bath rugs	Kohls	6 mos		25 ⁰⁰	5	20
	Back of toilet organizer	Kohls	6 mos		10 ⁰⁰	2	8
	rolling cart full of personal products	Various	1 yr		150 ⁰⁰	25	125
	vanity full of personal care products	Various	1 yr		200 ⁰⁰	50	150
	over the door rack	Kohls	6 mos		\$10 ⁰⁰	2	8
	towels	Kohls	1 yr		\$100 ⁰⁰	20	80
	wash cloths	Kohls	1 yr		50 ⁰⁰	10	40
	hand towels	Kohls	1 yr		75 ⁰⁰	25	50
	Wall mirror	don't know	1 yr		100 ⁰⁰		
	light fixture	Lowe's	1 yr		20 ⁰⁰		
AVAILABLE RECEIPTS OR OTHER EVIDENCE OF OWNERSHIP:					715	161	554
INSURED'S SIGNATURE: <u>Janel Warriso</u>					DATE: <u>10/2/07</u>		
					TOTAL:		

Dining Room

538

EXHIBIT F

(6)

Master Bed

INSURED'S STATEMENT OF CLAIM

ARTICLE* Complete description, model number, serial number, brand name, etc.	WHERE PURCHASED	WHEN PURCHASED MO. - YEAR		COST	DEPRECIATION	VALUE AT TIME OF LOSS
1 King Bed mattresses, headboard don't remember	don't remember	6 mos		1500 ⁰⁰	250	1250
hope chest	don't remember	1 yr		100 ⁰⁰	20	80
sets of Bedding	Various stores	6 mos		300 ⁰⁰	50	250
Pillows	sams club	6 mos		40 ⁰⁰	10	30
comforters, shams + skirt	Various places	6 mos		200 ⁰⁰	50	150
Jewelry Armoire	don't know	3 mos		250 ⁰⁰	50	200
Night stands	Furniture whse	3 mos		200 ⁰⁰	50	150
Lamps	different places	1 yr		100 ⁰⁰	25	75
dressers (1 w/ mirror)	Jacobus Furniture	1 1/2 yrs		800 ⁰⁰	100	700
entertainment center	Furniture whse	6 mos		500 ⁰⁰	100	400
32" TV	don't remember	1 yr		300 ⁰⁰	50	250
DVD Player	circuit city	6 mos		40 ⁰⁰	10	30
VCR	don't know	2 yrs		50 ⁰⁰	10	40
All my clothes	different places	1 yr		1000 ⁰⁰	1000	1000
AVAILABLE RECEIPTS OR OTHER EVIDENCE OF OWNERSHIP:				6500	1775	4725
INSURED'S SIGNATURE: <u>James Varnum</u>				DATE: <u>10/20/11</u> TOTAL \$:		

(ceiling fan)

(1)

Masker bed 2

INSURED'S STATEMENT OF CLAIM

QTY	ARTICLE* Complete description, model number, serial number, brand name, etc.	WHERE PURCHASED	WHEN PURCHASED MO. - YEAR		COST	DEPRECIATION	VALUE AT TIME OF LOSS
	all my jewelry 8 drawers	different places	3 1/2 yrs		1000 ⁰⁰	200	800
	all my perfume	different places	3 1/2 yrs		250 ⁰⁰	50	200
	clocks	Disney + Sears	1 1/2 yrs		100 ⁰⁰	25	75
	pictures	different places	1 yr		50 ⁰⁰	10	40
	all my shoes	different places	1 yr		400 ⁰⁰	200	200
	shoe racks	different places	1 yr		50 ⁰⁰	10	40
	DVDs	various places	1 1/2 yrs		600 ⁰⁰	200	400
	VHSs	various places	1 1/2 yrs		150 ⁰⁰	50	100
	CD's + rack	various places	2 yrs		300 ⁰⁰	150	150
	mini blinds	Lowes	1 yr		30 ⁰⁰	10	20
	smaller jewelry boxes	don't remember	1 yr		50 ⁰⁰	10	40
	purses	various places	1 yr		400 ⁰⁰	50	350
	sewing machine + ^{box} of supplies	don't remember	1 1/2 yrs		200 ⁰⁰	50	150
	digital camera	don't know	2 yrs		400 ⁰⁰	100	300
AVAILABLE RECEIPTS OR OTHER EVIDENCE OF OWNERSHIP:					6730	2465	4265

O'S SIGNATURE:

Jill Norman

DATE:

12/20/07

TOTALS:

8

Bath $\frac{1}{2}$ ✓

INSURED'S STATEMENT OF CLAIM

365	92	213
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AVAILABLE RECEIPTS OR OTHER EVIDENCE OF OWNERSHIP:

D'S SIGNATURE: Jord Naimo

DATE: 10/25/72

TOTAL 5-

EXHIBIT I

(9)

INSURED'S STATEMENT OF CLAIM

Q	ARTICLE* Complete description, model number, serial number, brand name, etc.	WHERE PURCHASED	WHEN PURCHASED MO. - YEAR		COST	DEPRECIATION	VALUE AT TIME OF LOSS
	microwave	Kohls	1 YR		200 ⁰⁰	50	150
1	Blender		1 YR		20 ⁰⁰	2	18
	food processor		1 1/2 YR		50 ⁰⁰	10	40
	can openers		1 YR		30 ⁰⁰	5	25
	Coffee Pot		1 YR		50 ⁰⁰	10	40
	plates		1 YR		5 ⁰⁰	7	
	Cups		1 YR		5 ⁰⁰	25	50
	knives		1 YR		15 ⁰⁰		
	bowls		1 YR				
	serving plates + bowls		1 YR		15 ⁰⁰	20	80
	microwave cart	don't remember	2 YRS		150 ⁰⁰	50	100
	pots + pans	Kohls	1 YR		200 ⁰⁰	50	150
	rock pots		1 YR		50 ⁰⁰	10	40
	Deep Fryer		1 YR		15 ⁰⁰	10	65
	AVAILABLE RECEIPTS OR OTHER EVIDENCE OF OWNERSHIP:				1000	242	758
	Q'S SIGNATURE: <u>Genel Hammond</u>		DATE: <u>12/5/71</u>	TOTAL:			

EXHIBIT J

10

Kitchen 2

INSURED'S STATEMENT OF CLAIM

ARTICLE* Complete description, model number, serial number, brand name, etc.	WHERE PURCHASED	WHEN PURCHASED MO. - YEAR		COST	DEPRECIATION	VALUE AT TIME OF LOSS
waffle Iron	Kohls	10 mos		25 ⁰⁰	10	20
mini blind	Lowe's	1 yr.		15 ⁰⁰	5	10
Silverware + sharp knives	Kohls	1 yr.		40 ⁰⁰	10	40
Food-can, fresh + frozen + dry different places	different places	1 month		500 ⁰⁰	100	400
spices	grocery store	3 months		40 ⁰⁰	10	40
coffee mugs	different places	1 yr.		75 ⁰⁰	25	50
glasses + wine glasses	Kohls	1 yr.		50 ⁰⁰	10	40
Bread Box	Kohls	1 yr.		30 ⁰⁰	5	25
measuring cups + bowls	Kohls	1 yr.		50 ⁰⁰	10	40
Kitchen towels + cloths	Kohls	1 yr.		30 ⁰⁰	5	25
paper plates, towels, paper	Sam's Club	1 month		50 ⁰⁰	10	40
plastic cups + silverware	Sam's Club	1 month		30 ⁰⁰	5	25
personal pictures	antique store	1 yr.		200 ⁰⁰	5	15
luggage	different places	2 yrs.		125 ⁰⁰	20	80
AVAILABLE RECEIPTS OR OTHER EVIDENCE OF OWNERSHIP:				1080	230	850

SIGNATURE

Dorel V. Varnier

DATE: 10/20/08

TOTAL

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Carmichael T. Flowers

Plaintiff,

v.

Janel Namias,

Defendant.

FILED

2010 DEC -3

IN THE FAMILY COURT OF THE
TWELFTH JUDICIAL CIRCUIT

CCCP & GS
Docket No. 2009-DR-21-2600
FLORENCE COUNTY, SC

ORDER

ATTORNEY FOR PLAINTIFF:
Pro Se

HEARING DATE:
November 8, 2010

ATTORNEY FOR DEFENDANT:
E. Michael Pinilla

JUDGE:
The Honorable Arthur E. Morehead, III

GUARDIAN AD LITEM:
n/a

COURT REPORTER:
Krystal J. Smith

This matter was before the Court pursuant to the Plaintiff's Summons and Complaint that was filed on November 11, 2009. The Defendant was properly served with the Plaintiff's Summons and Complaint on September 16, 2010. The Defendant filed an Answer and Counterclaims on October 5, 2010. This hearing was initially scheduled for October 11, 2010 and subsequently continued to November 8, 2010. The Plaintiff was provided with Notice of this Final Hearing and the South Carolina Department of Corrections transported him to the Florence County Courthouse pursuant to an Order of Transportation filed with this Court. Present at the hearing were the Defendant and her attorney, E. Michael Pinilla. The Plaintiff appeared *Pro Se*.

STATE'S
EXHIBIT

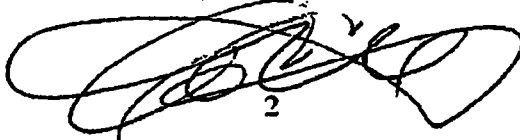
CERTIFIED: A TRUE COPY

Connie Ral-Shearia

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

BASED UPON THE TESTIMONY AND ARGUMENTS PRESENTED, AS WELL AS THE ENTIRE FILE IN THIS MATTER, I MAKE THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) The Plaintiff is a resident of the State of South Carolina.
- (2) The Defendant is a citizen and resident of Florence County, South Carolina, and has so resided for more than one (1) year prior to the commencement of this action.
- (3) This is a final hearing regarding issues of common law marriage and dissolution of marriage.
- (4) The Court has jurisdiction over the parties and the subject matter of this action and venue in Florence County is proper.
- (5) The Plaintiff requested the divorce of a common law marriage and the distribution of property. The Plaintiff indicated the following in his pleadings and testimony: that Plaintiff and Defendant began to cohabitate as Husband and Wife, in 2004, in the State of New Jersey; That in 2006, Plaintiff and Defendant continued to live together as Husband and Wife when they moved to Virginia Beach, Virginia; That also in 2006, the Plaintiff and Defendant moved to a rental property located on Homestead Street in Florence, South Carolina; That in 2007, the Plaintiff ^{and} Defendant jointly purchased, as Husband and Wife, a property located at 803 Dixie Street in Florence, South Carolina, and; That in 2008, the Plaintiff and Defendant jointly purchased, as Husband and Wife, a timeshare located at Atlantic Avenue, Virginia Beach, Virginia.
- (6) The Defendant denied all of the Plaintiff's allegations and asserted, an affirmative defense, that the Plaintiff and Defendant were not common law married. The Defendant also requested a restraining order and attorney's fees.
- (7) **COMMON LAW MARRIAGE:** I find that a valid common law marriage did not exist between the parties; therefore, no divorce or equitable distribution pursuant to the laws of South Carolina may be ordered by this Court. The law of whether a valid common law marriage exists is well defined in our state. The issue before the Court during this hearing has been litigated in: Kirby v. Kirby, 241 S.E.2d 415(1978), Owens v. Owens, 466 S.E.2d 373 (Ct. App. 1996), Yarbrough v. Yarbrough, 314 S.E.2d 16 (Ct. App. 1983), and Prevatte v. Prevatte, 377 S.E.2d 114 (Ct. App. 1989).

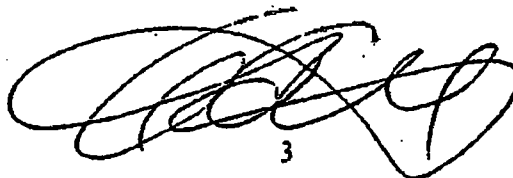


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All of these cases clearly require the Plaintiff to prove by the greater weight of the evidence that the parties were married by common law.

- (8) I find that the Plaintiff has failed to meet his burden of proof. The Plaintiff's own statements that he and the Defendant held themselves out as Husband and Wife are not sufficient to show that a common law marriage existed. The Defendant, in her case in chief, denied that the parties held themselves out as Husband and Wife. Additionally, the Defendant clearly refuted the Plaintiff's testimony that the parties began cohabitating as Husband and Wife, in the year 2004, in the State of New Jersey. Defendant's Exhibit Three shows that the Defendant did not even have capacity to marry until May of 2007, when a Final Judgment of Divorce was entered in the State of New Jersey. Defendant's Exhibit Three clearly shows that in 2004, 2005, and 2006, the parties could not have been married. Furthermore, Defendant's Exhibit One refutes the Plaintiff's claim that the parties jointly purchased a home located at 803 Dixie Street in Florence, South Carolina. Defendant's Exhibit One lists the Deed of this property solely in Defendant's name. Likewise, in Defendant's Exhibit Two, the timeshare purchased, in 2008, in Virginia Beach, Virginia, is solely in the Defendant's name and lists her as "a single woman." The testimony of both the Plaintiff and the Defendant confirms that the parties did not file joint tax returns and no children were born from their relationship. Finally, the Defendant presented her brother as a witness who testified that he never saw nor heard the parties hold themselves out as Husband and Wife.

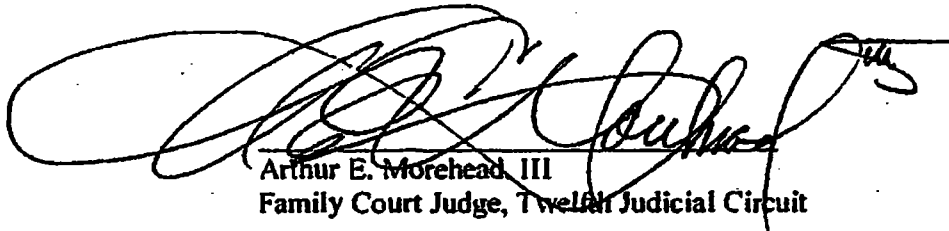
- (9) **JURISDICTION:** I find that this Court does not have jurisdiction to apportion or divide any property of the parties because the totality of the evidence establishes that these parties were not common law married. However, this Order does not prohibit the Plaintiff from seeking a cause of action against the Defendant in a court with proper jurisdiction.



3

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

- a. The parties in this matter are not now nor have they ever been common law married; and
- b. The Complaint of the Plaintiff is hereby dismissed.

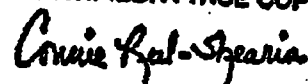
IT IS SO ORDERED!

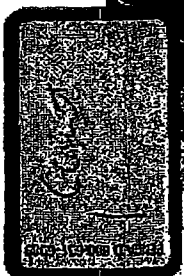
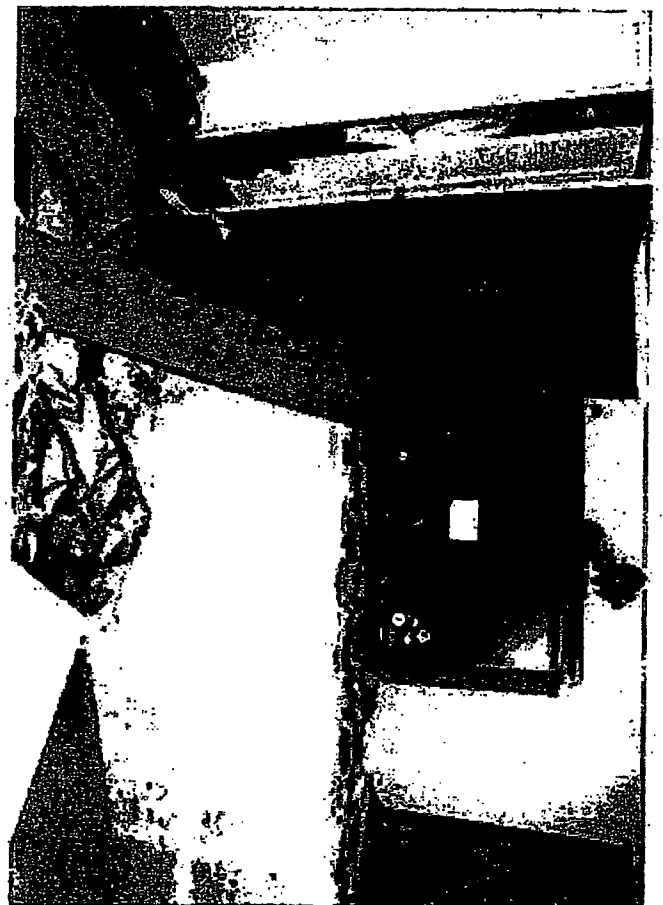
Arthur E. Morehead, III
Family Court Judge, Twelfth Judicial Circuit

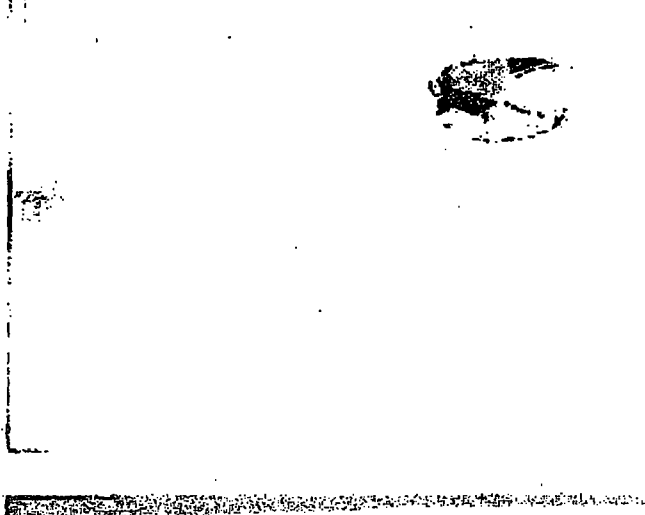
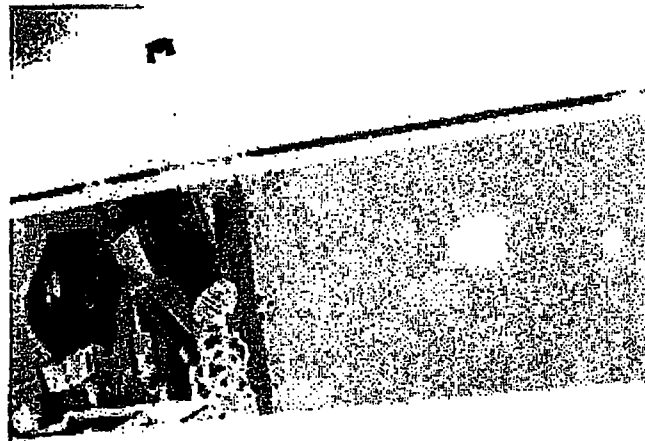
Florence, South Carolina

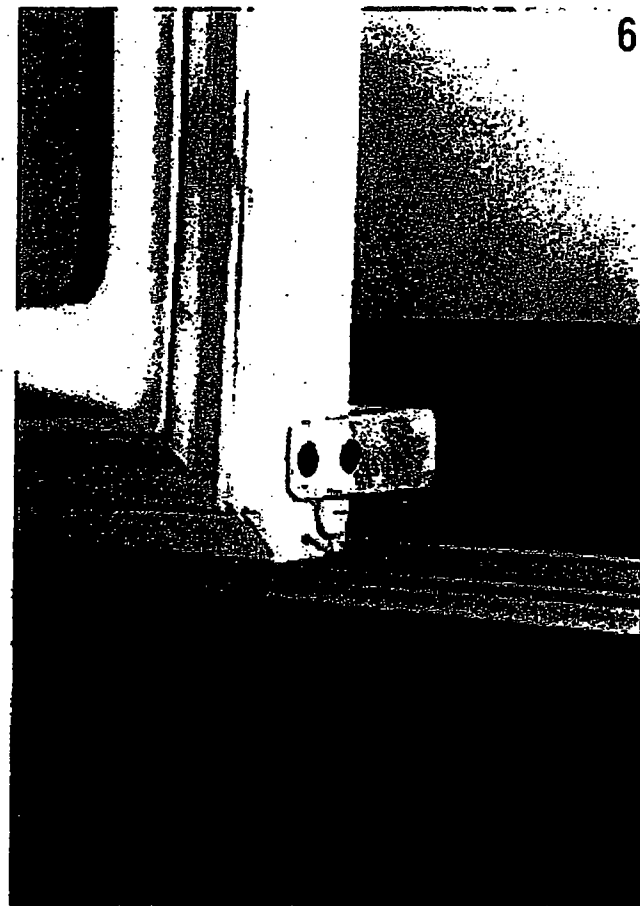
December 1, 2010

Failure to comply with the terms of this Order may constitute Contempt of Court and may be punishable by a fine, a public work sentence or by imprisonment, or a combination thereof, in the discretion of the Court, but not to exceed imprisonment for one (1) year, a fine of \$1,500.00, a public work sentence not to exceed 300 hours or any combination thereof, as provided by S.C. Code Section 63-3-620.

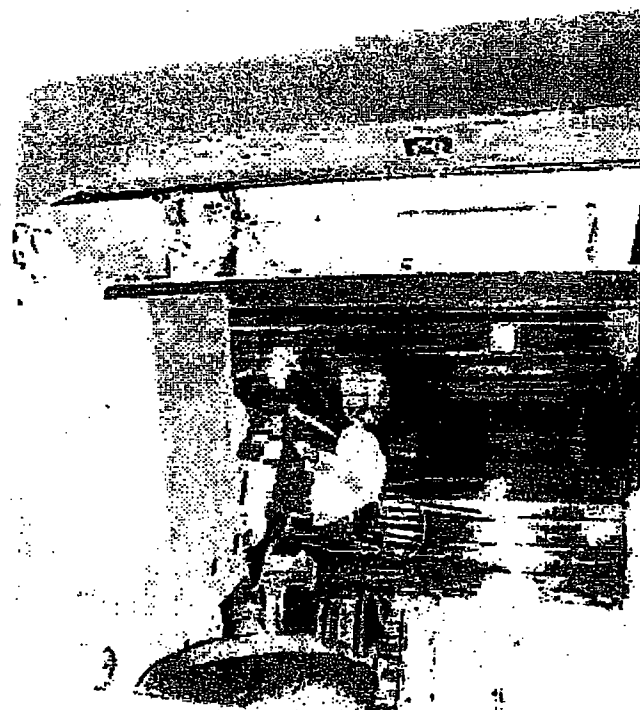
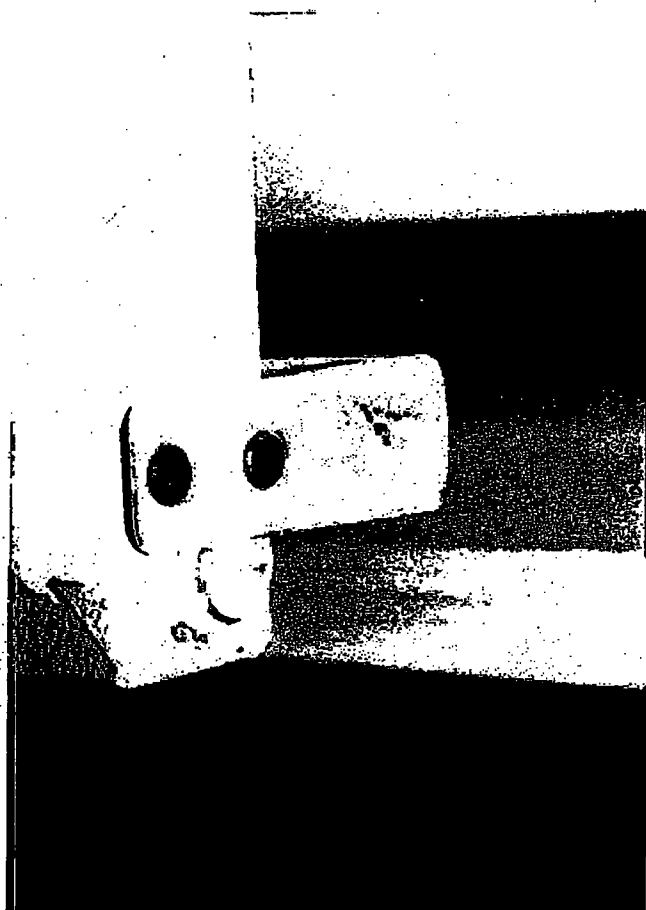
CERTIFIED: A TRUE COPY**CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.**





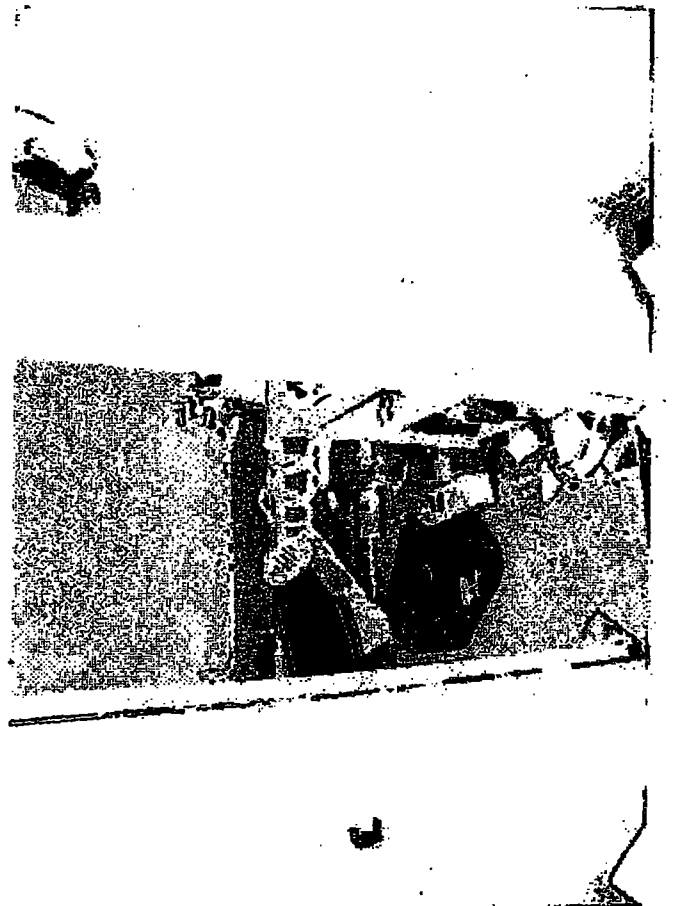


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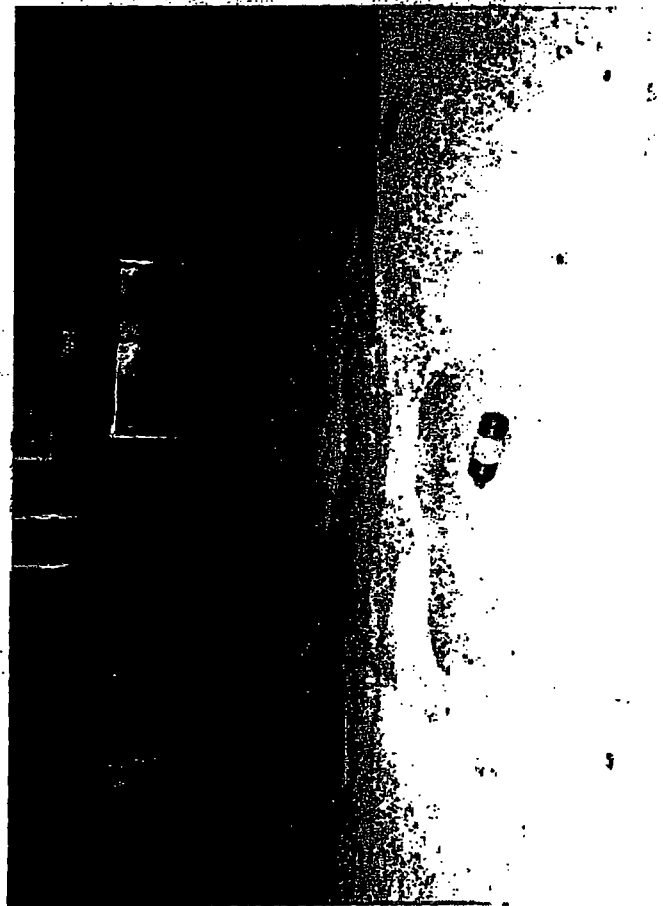
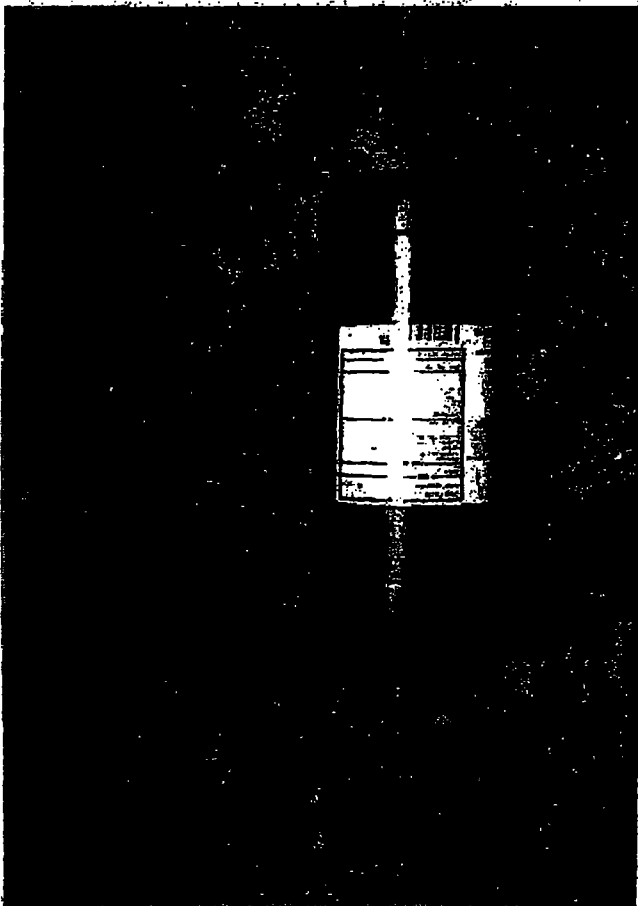
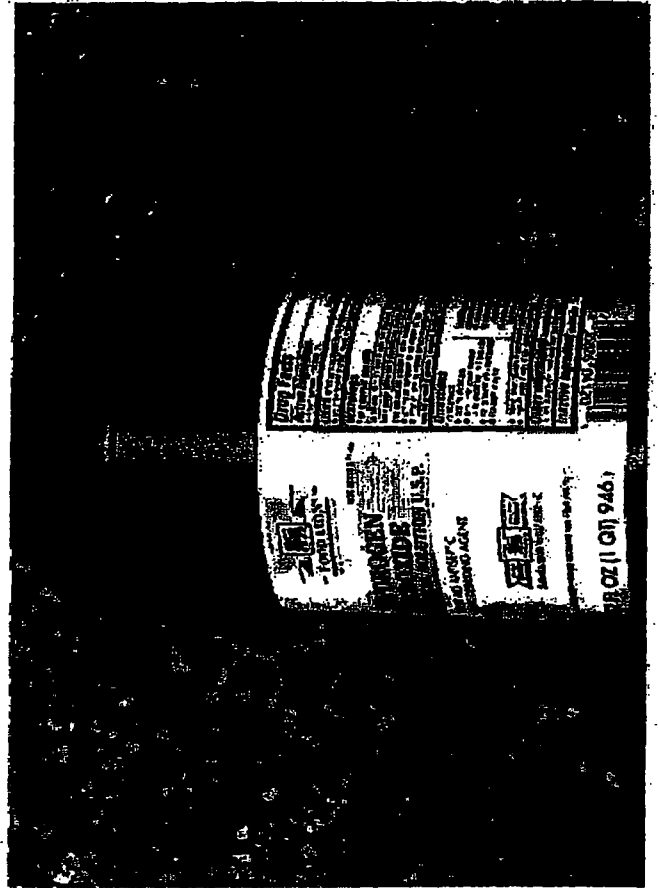


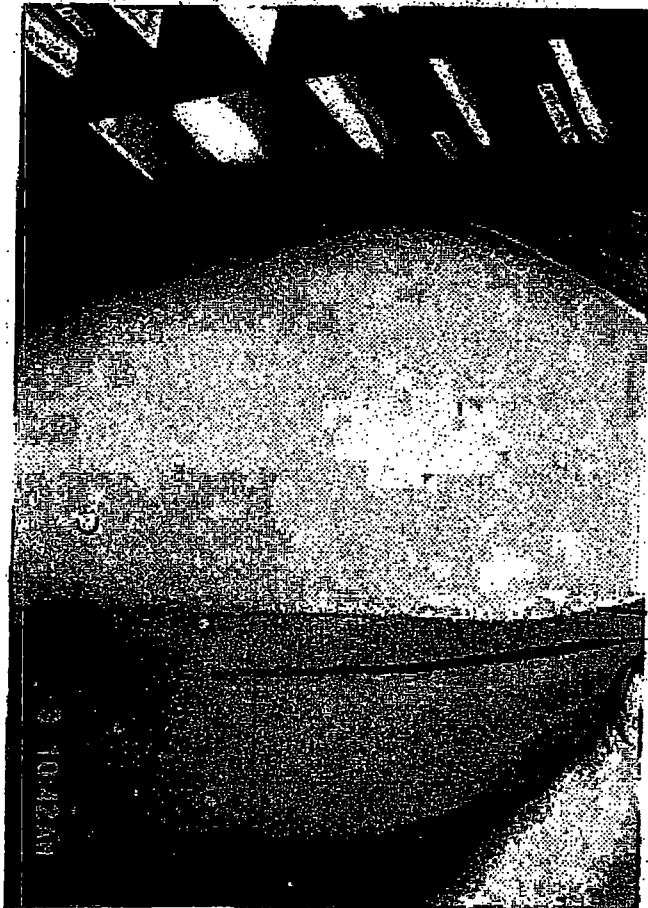


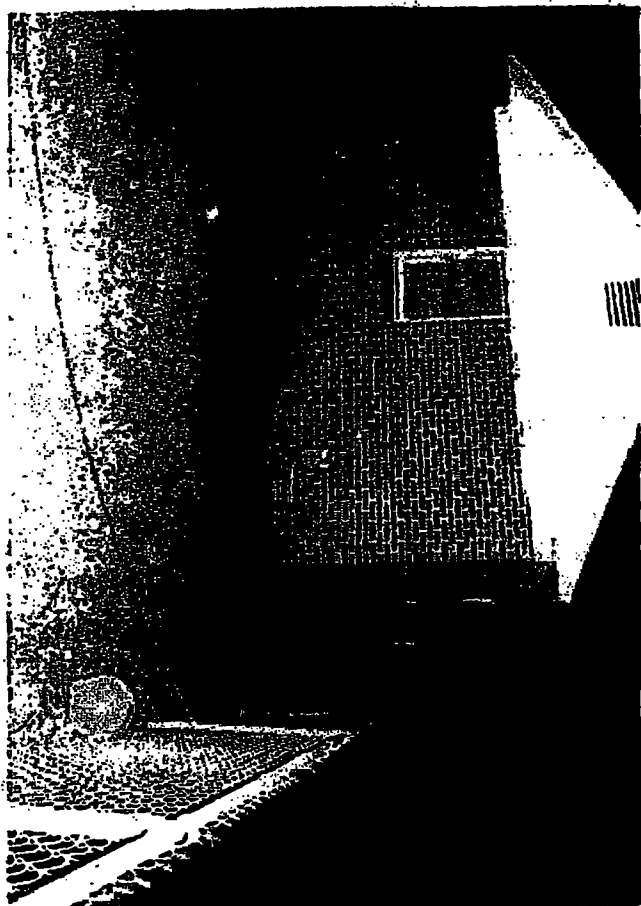


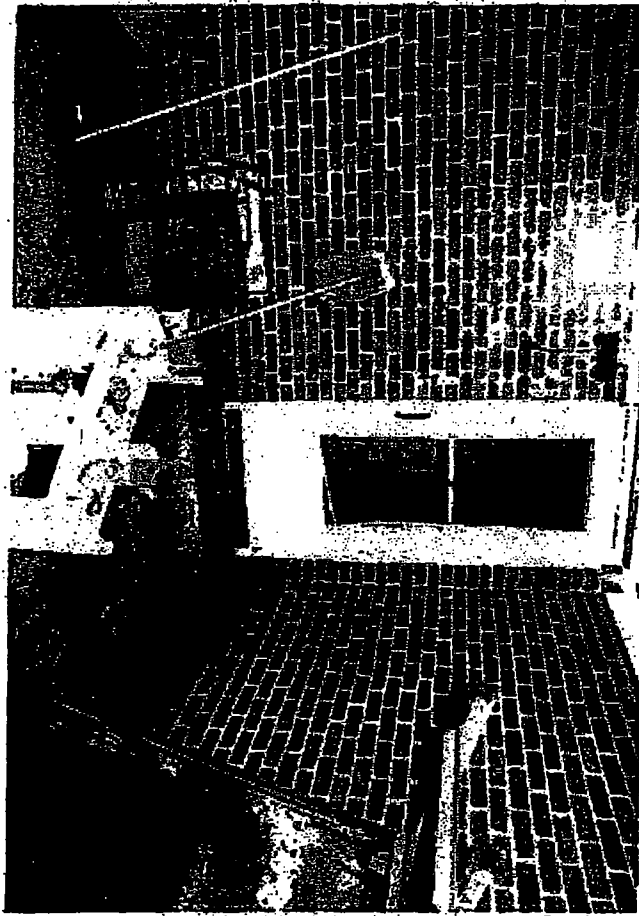


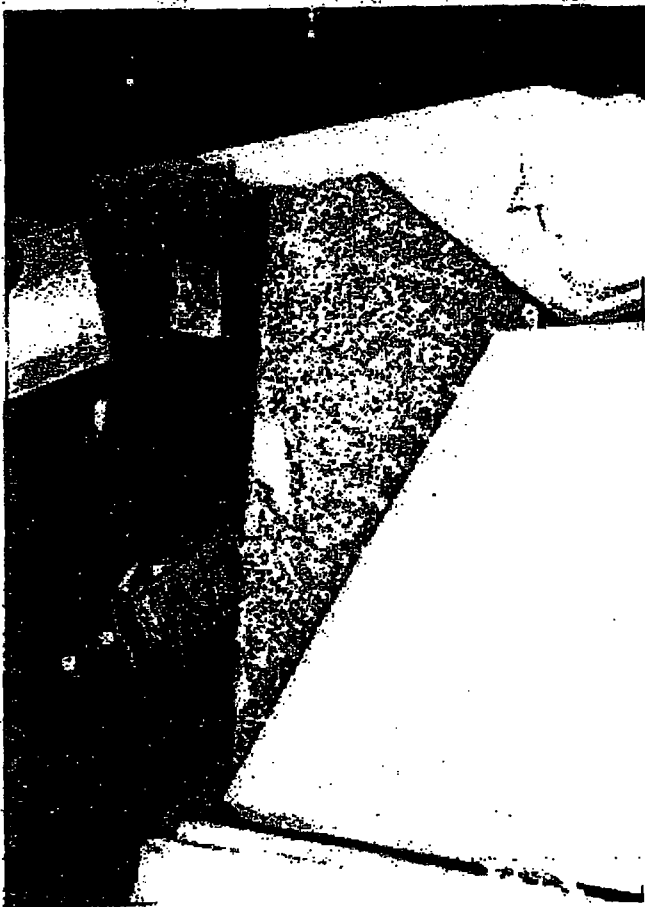






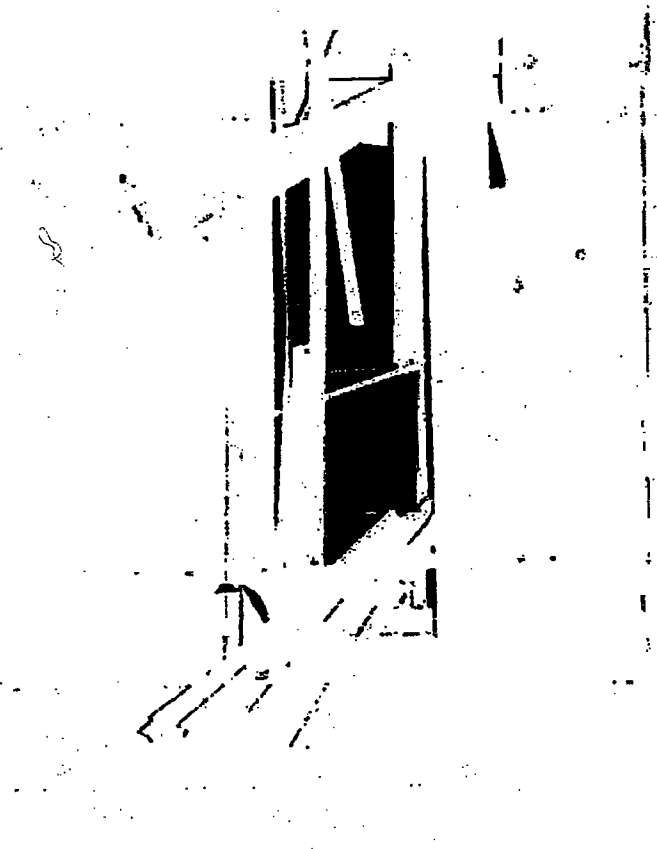


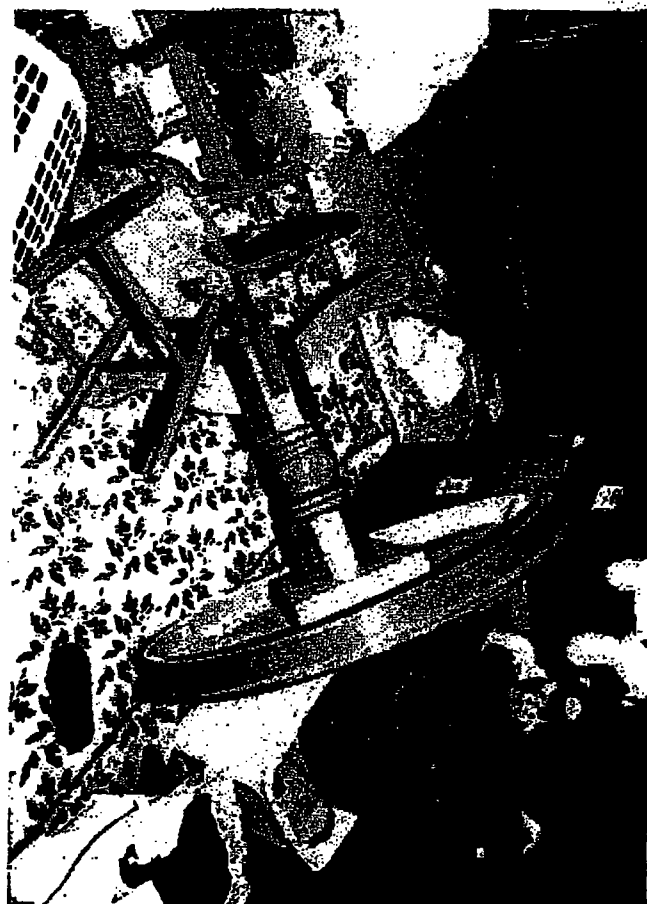


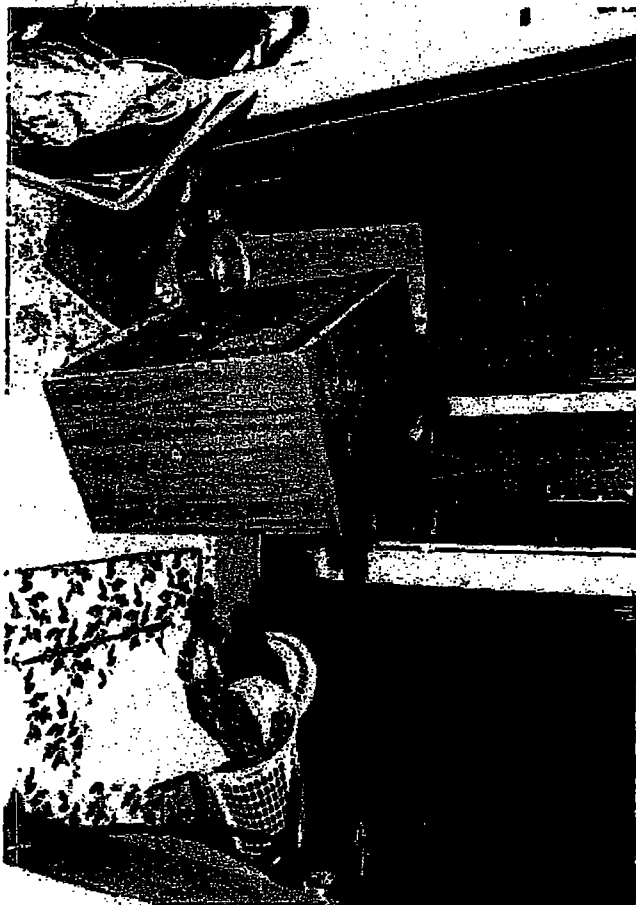
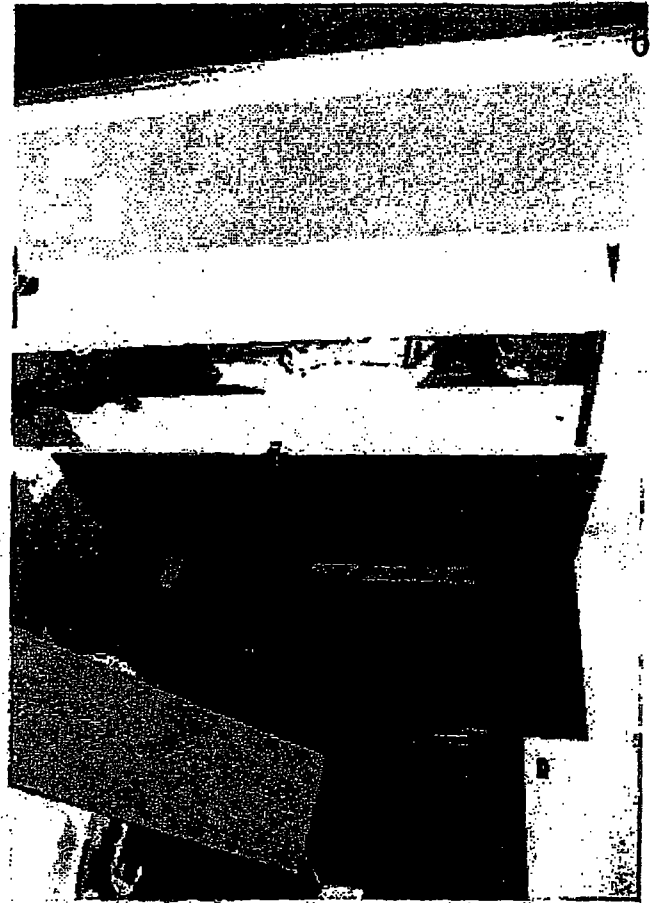


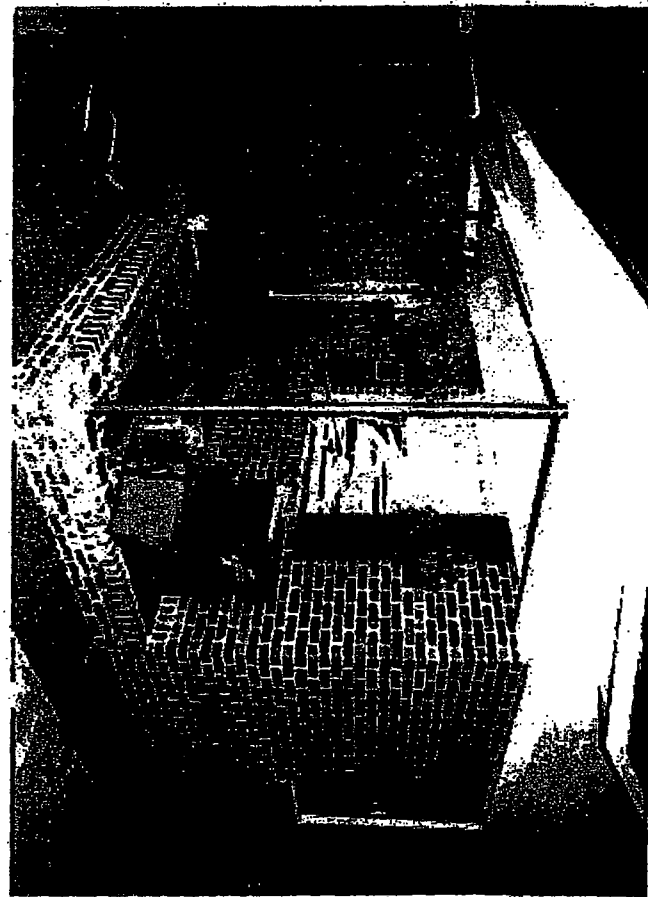


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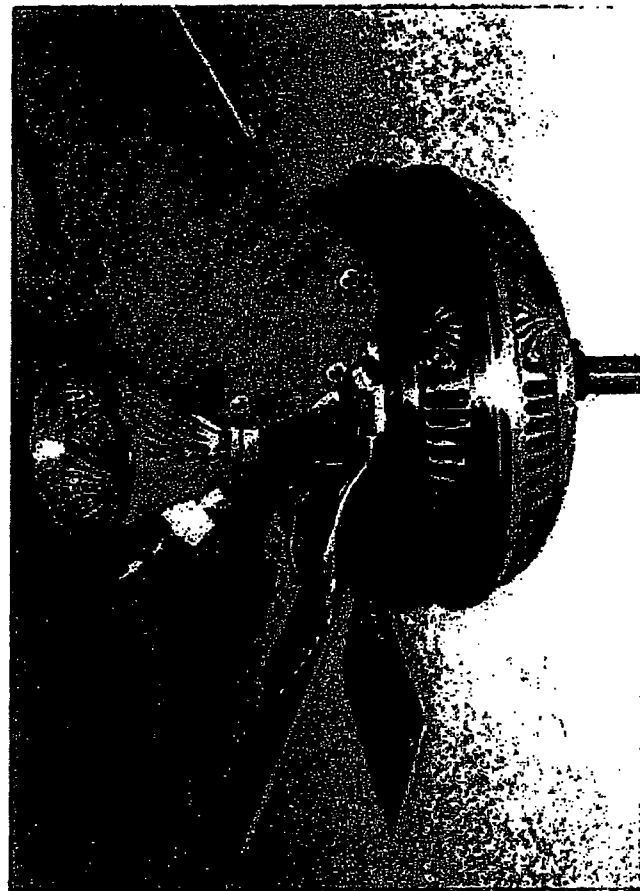
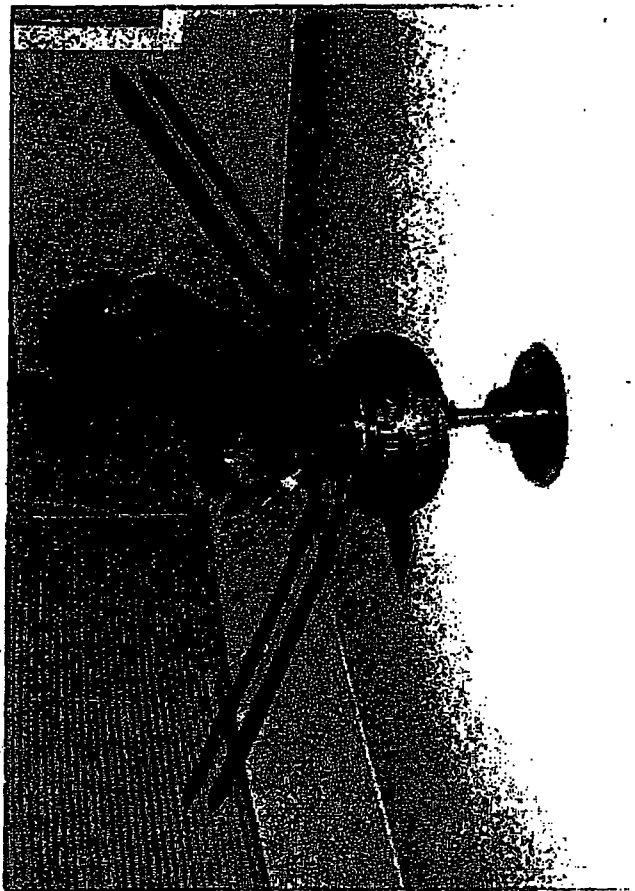






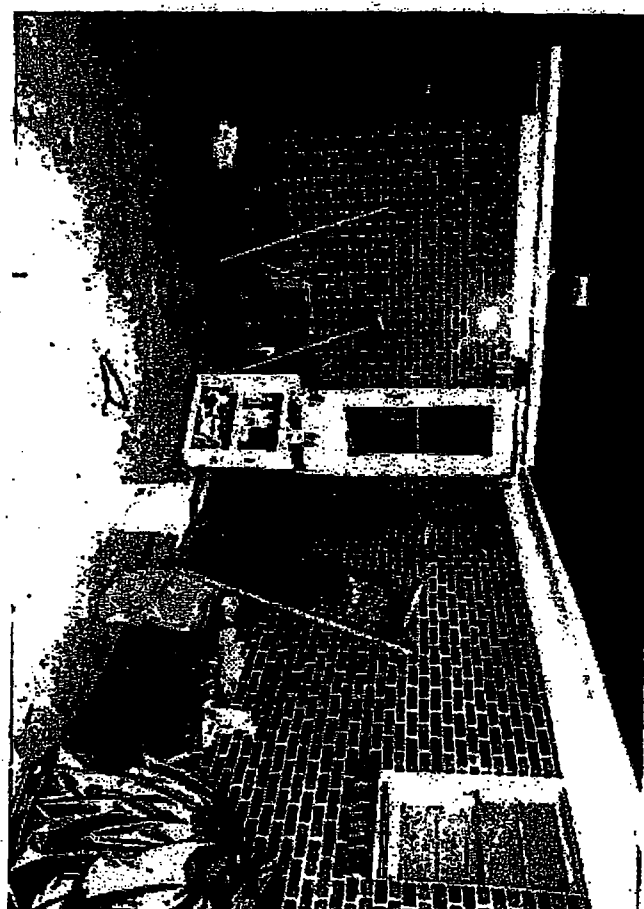




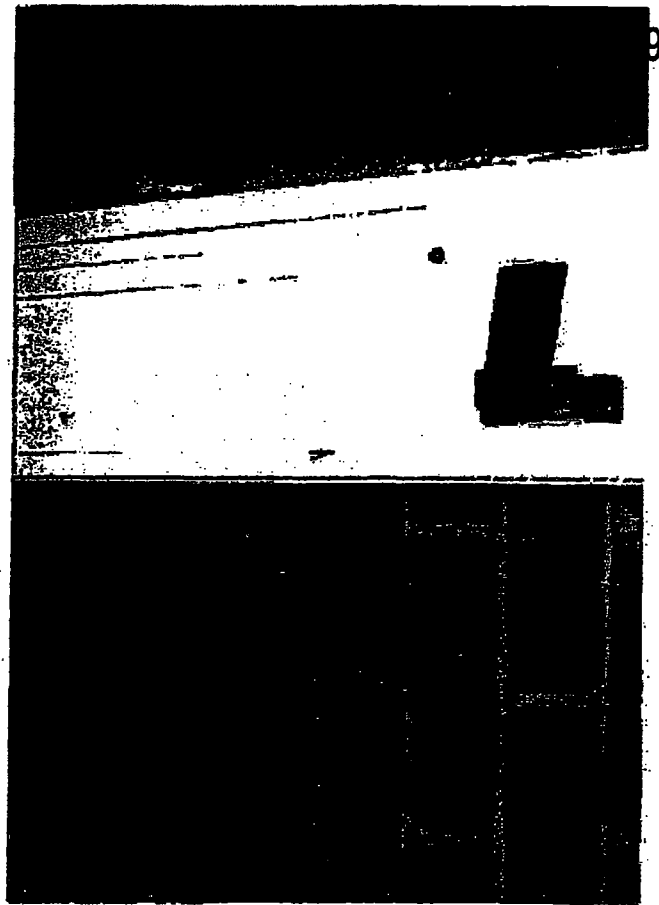
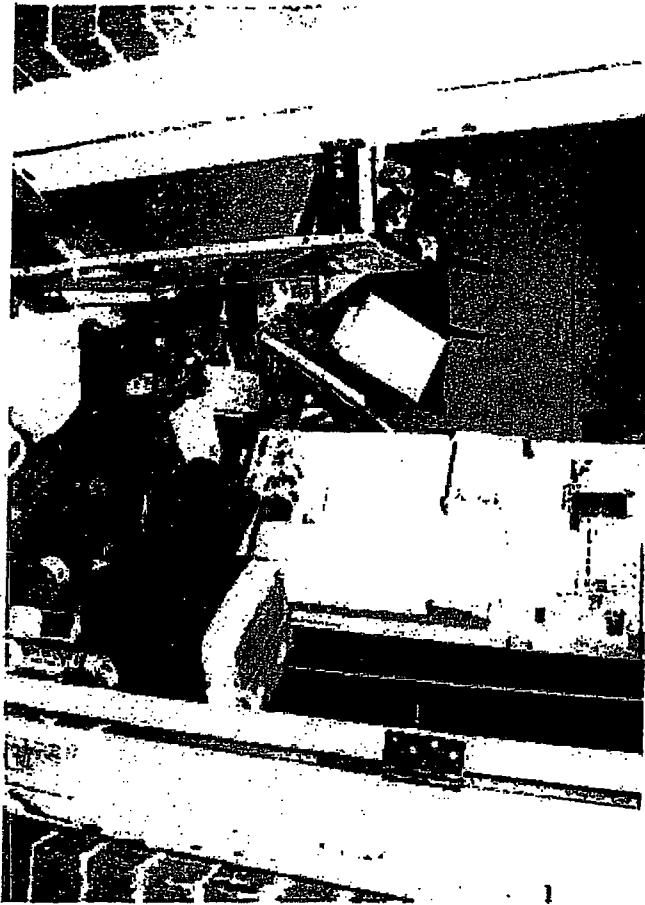




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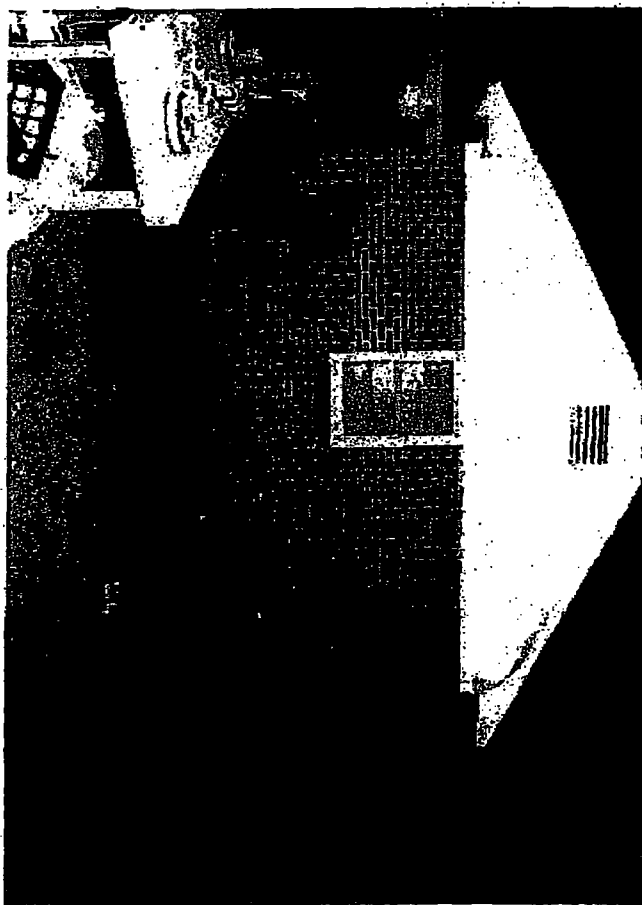
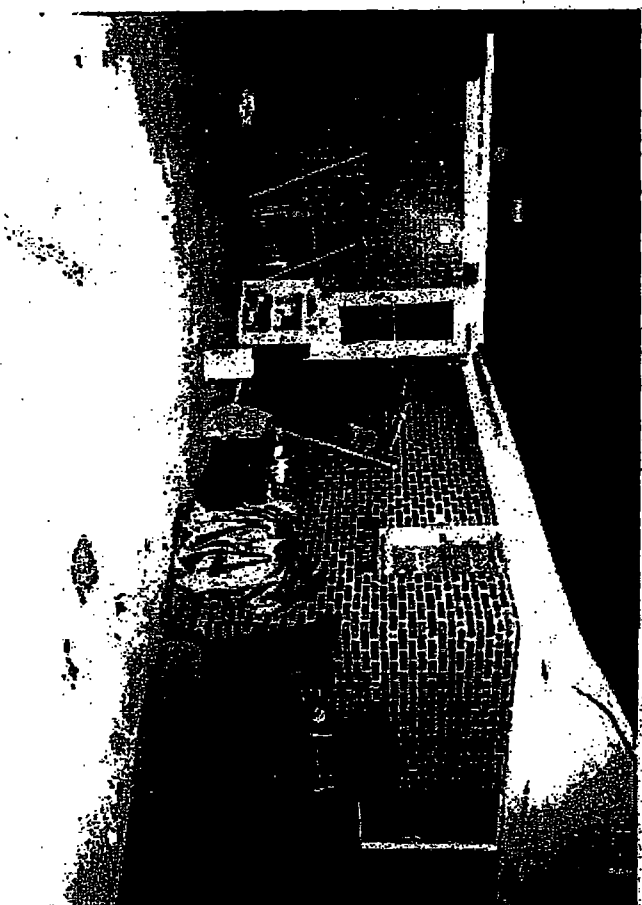


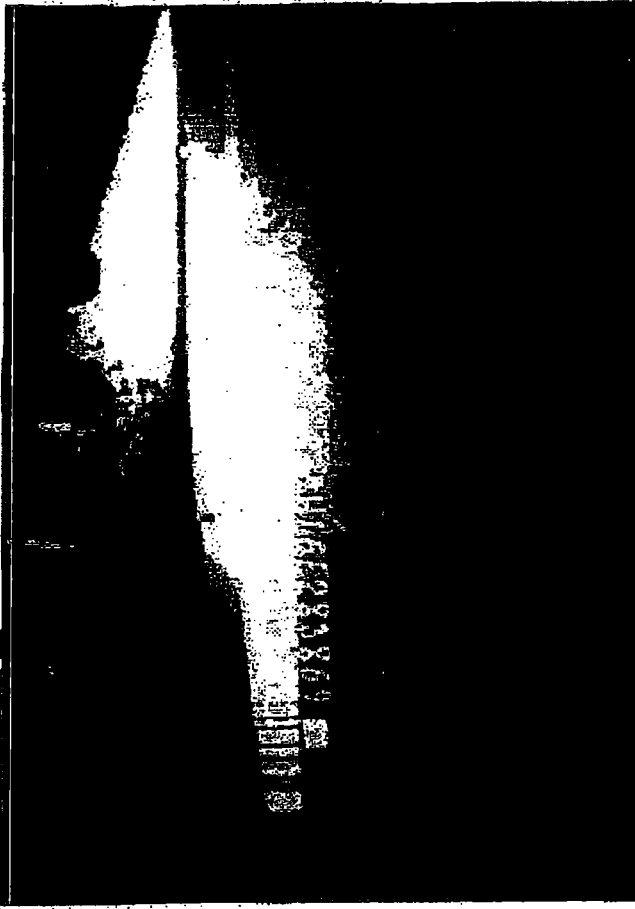


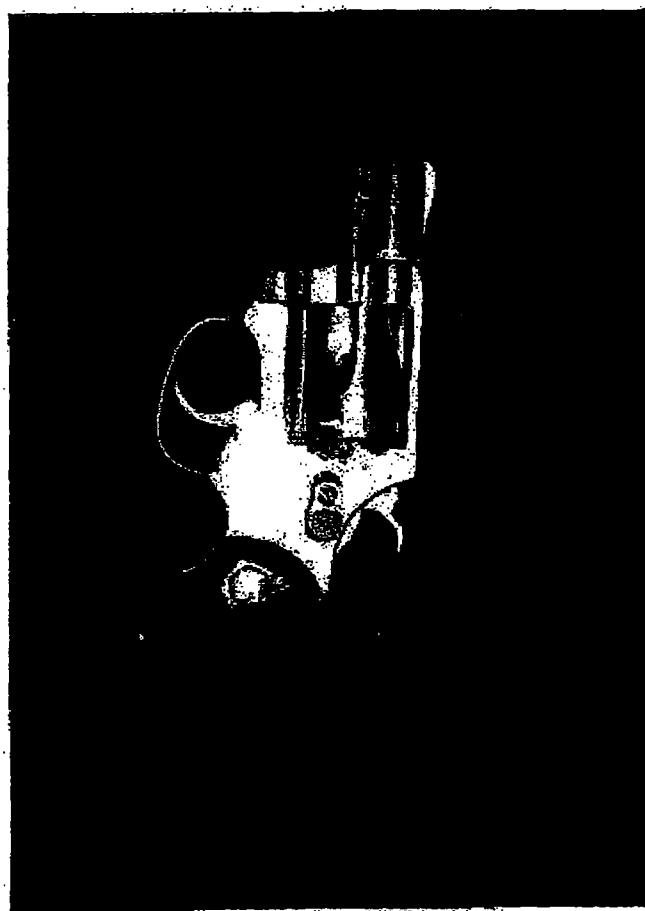


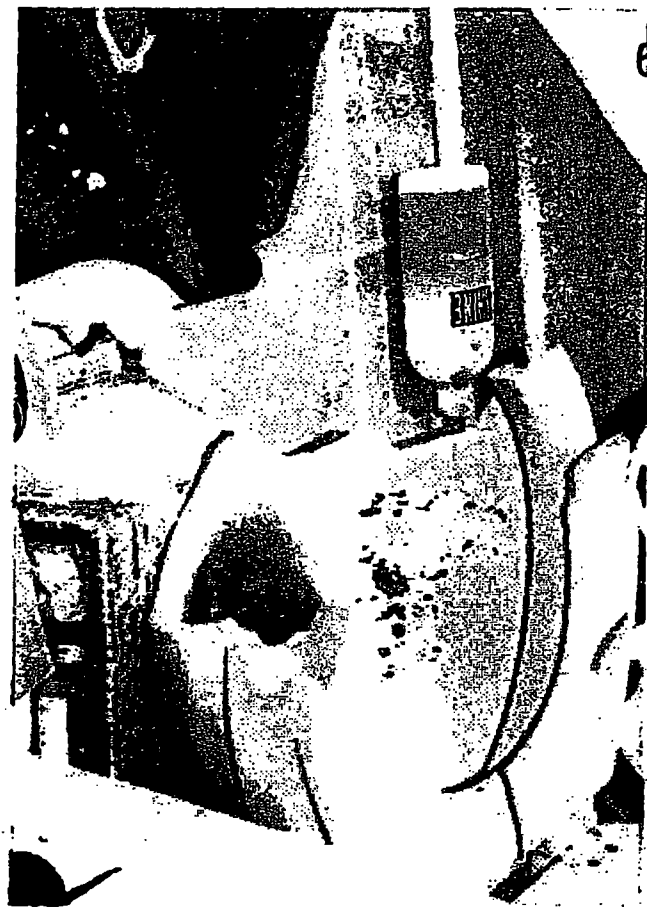
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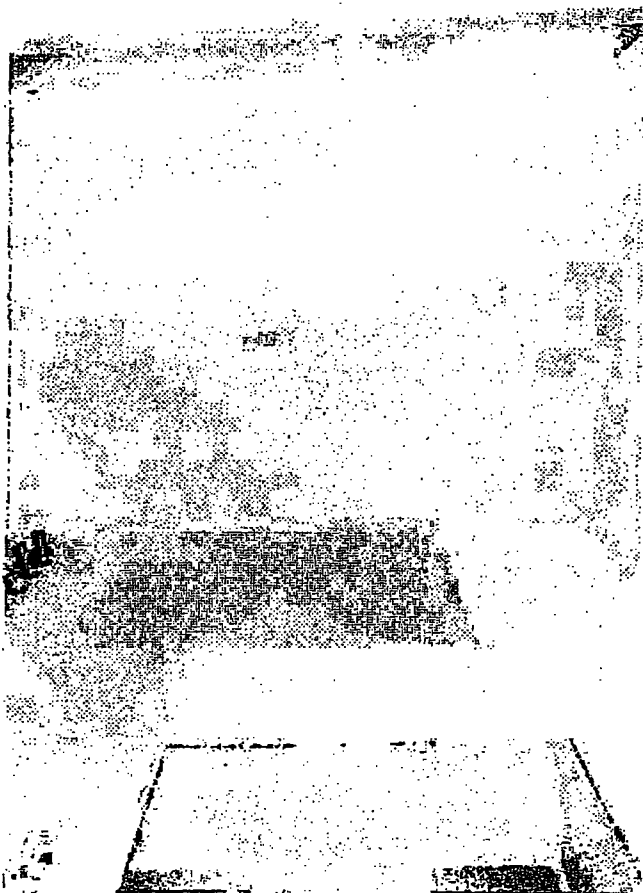




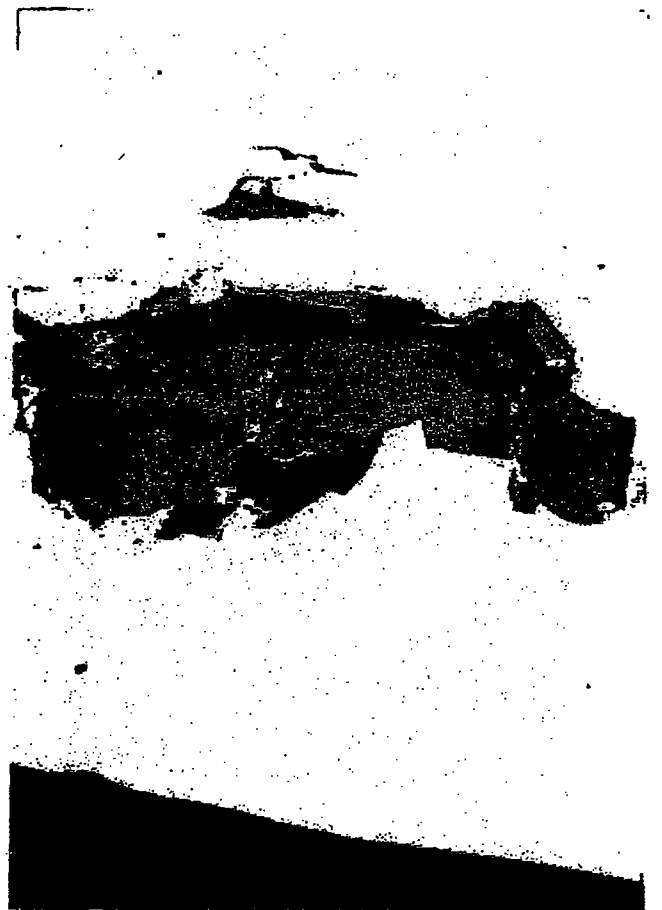
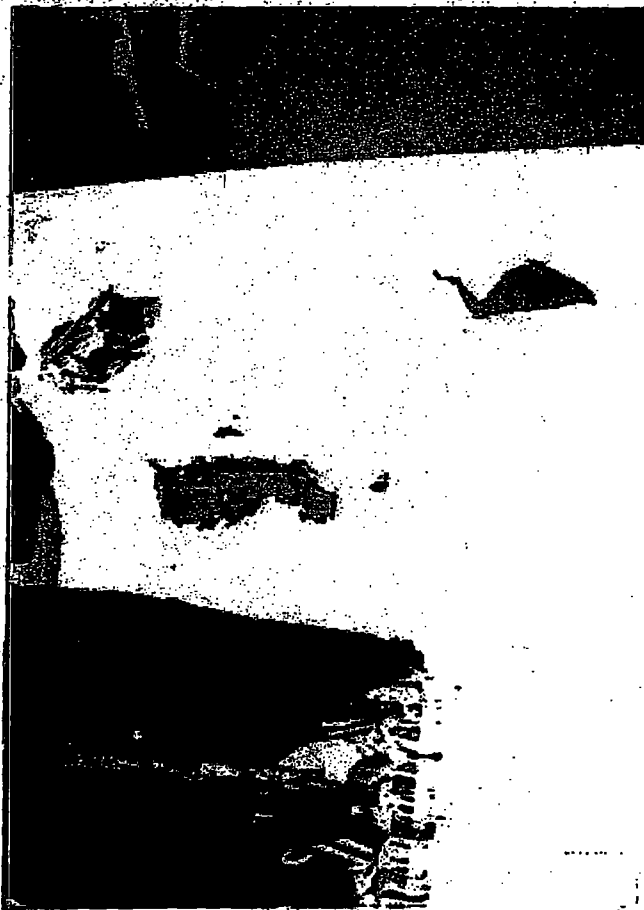


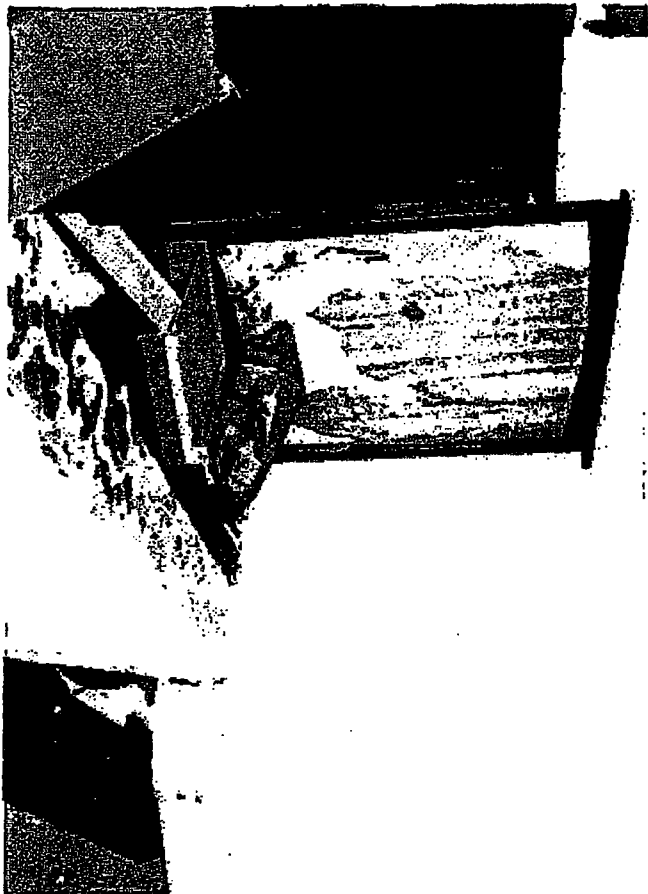


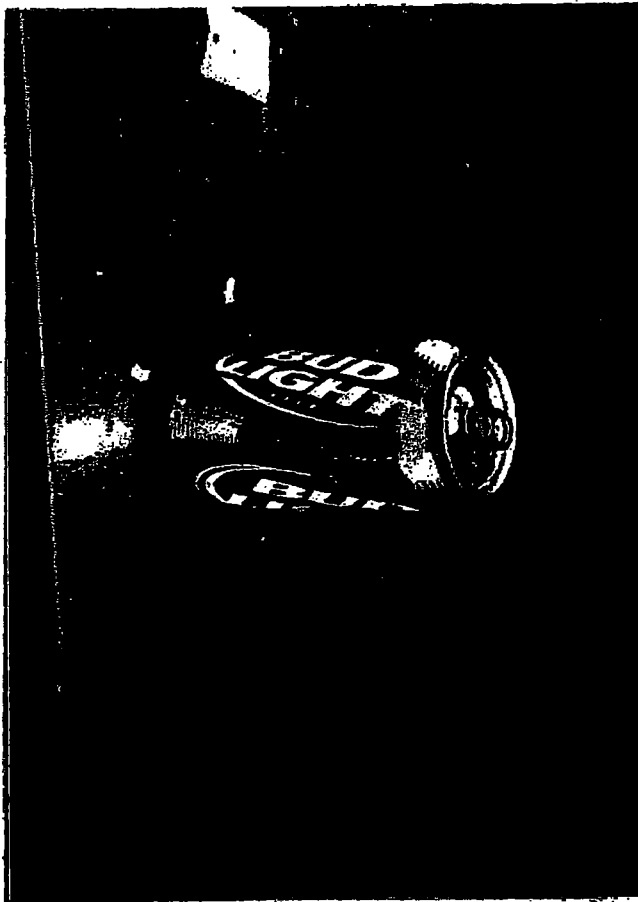
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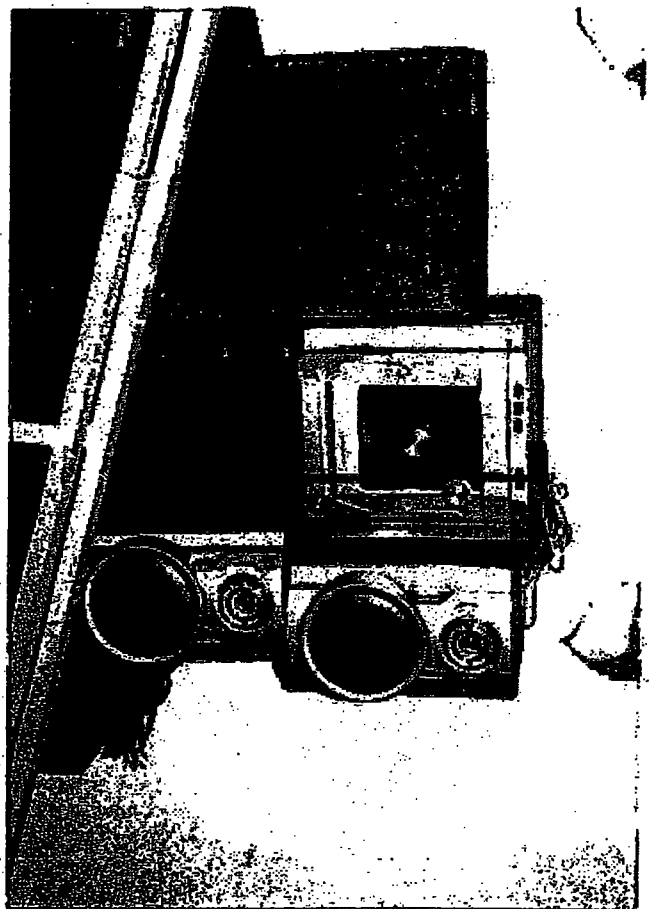


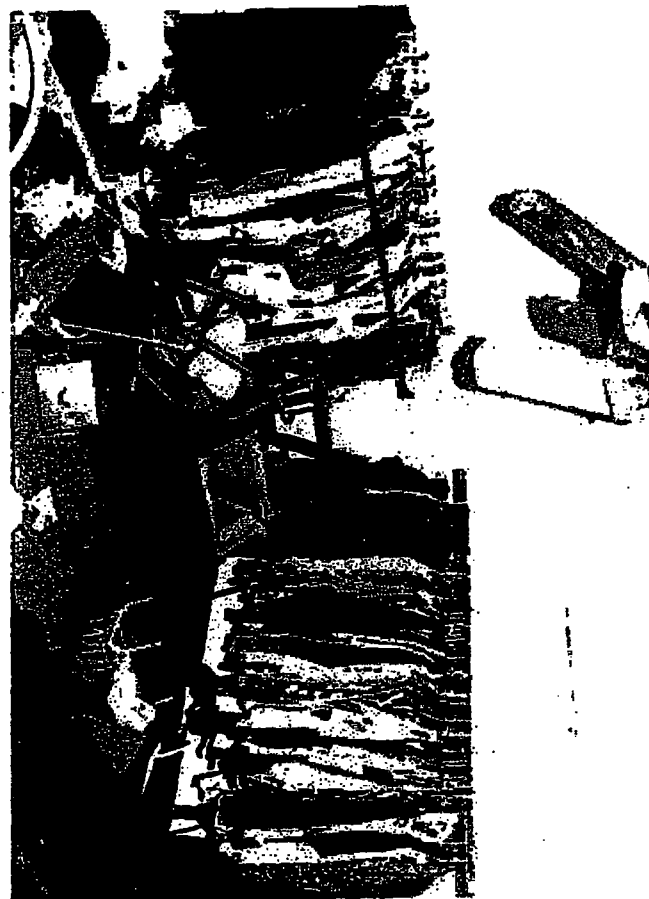


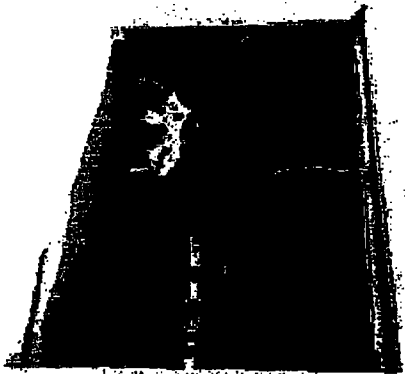
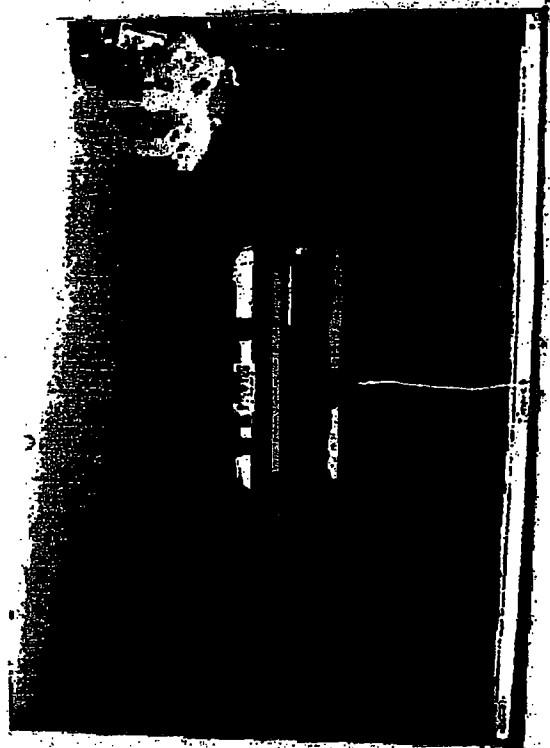


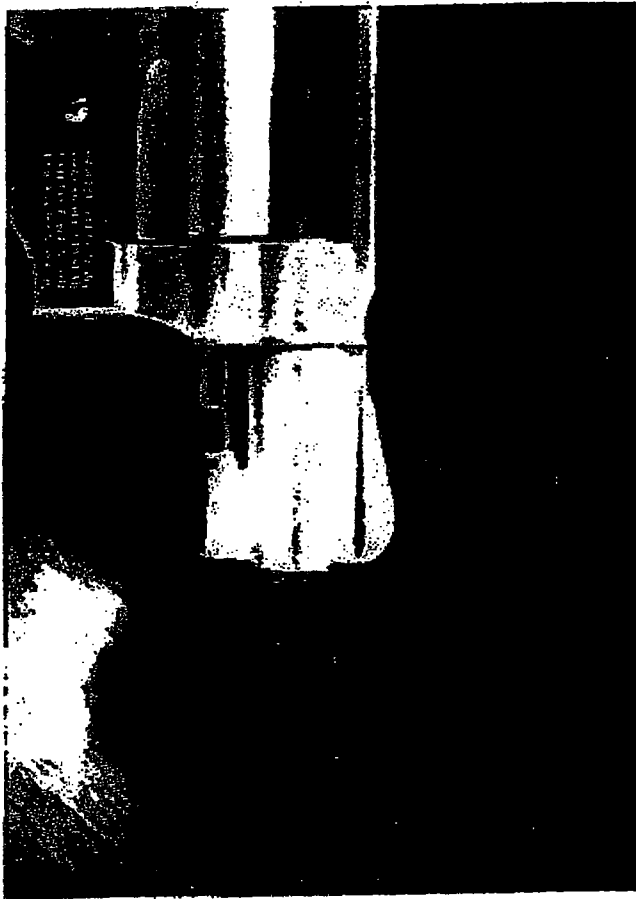


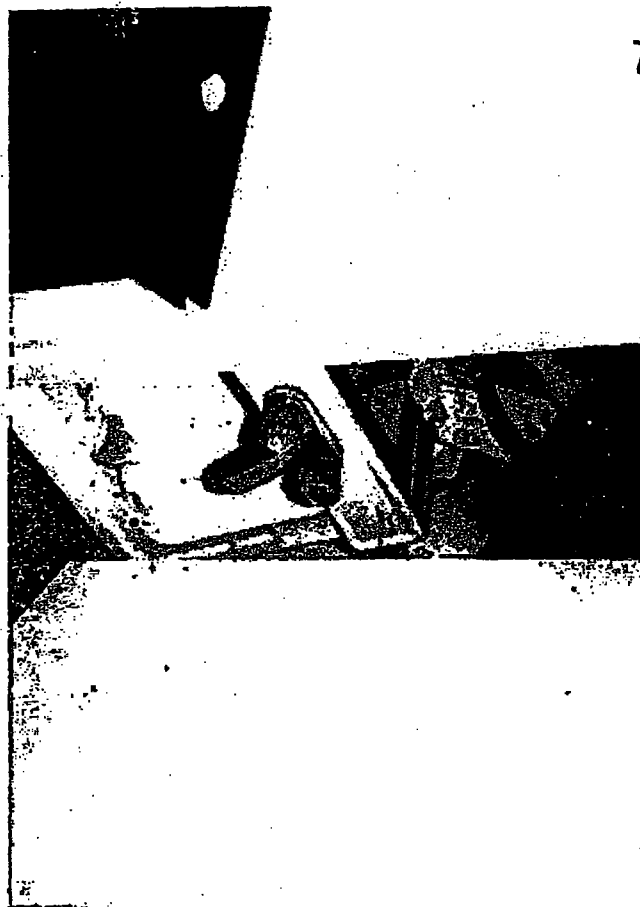


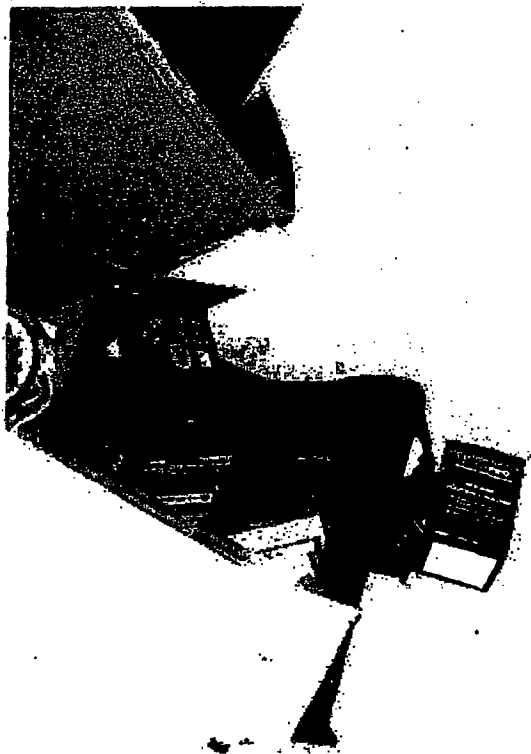
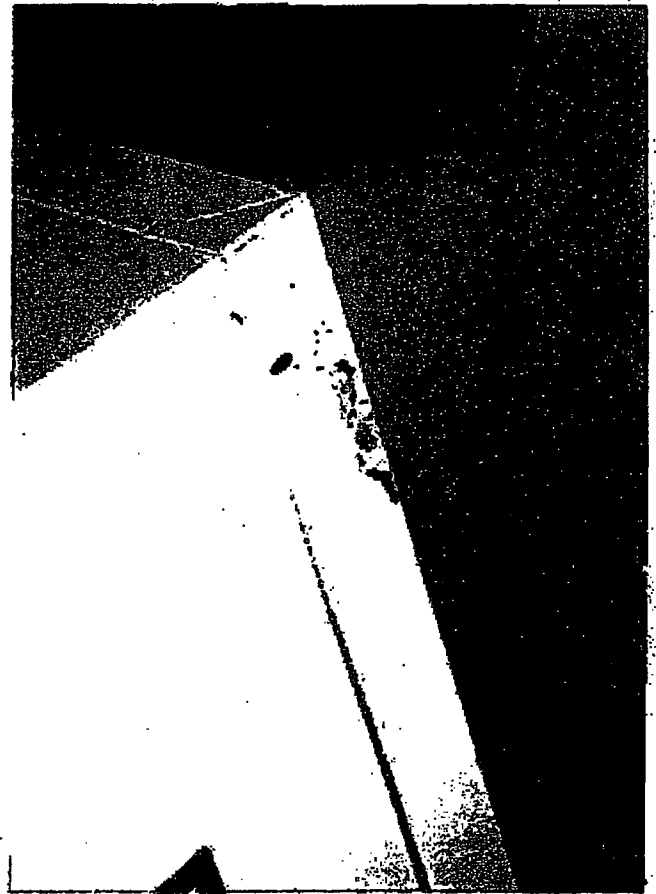
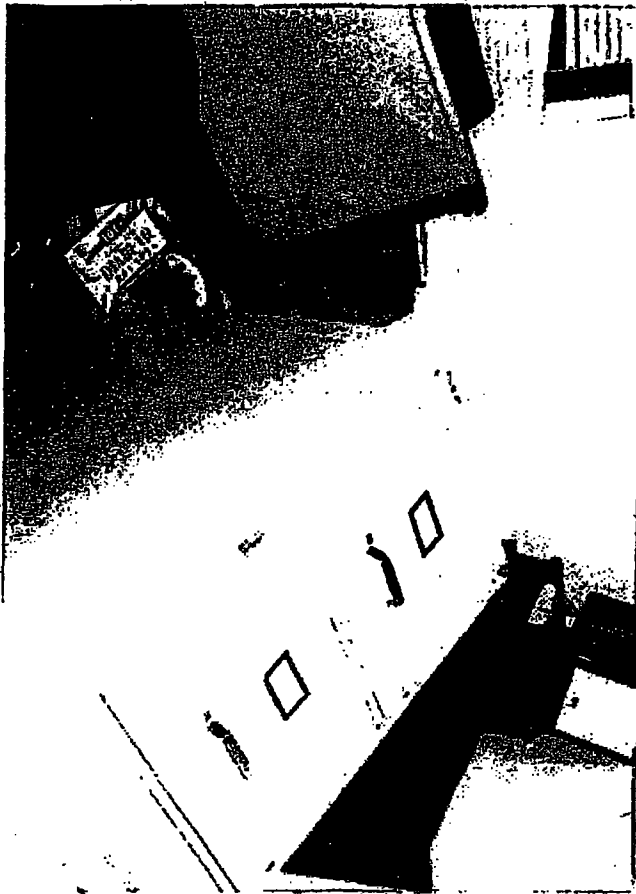


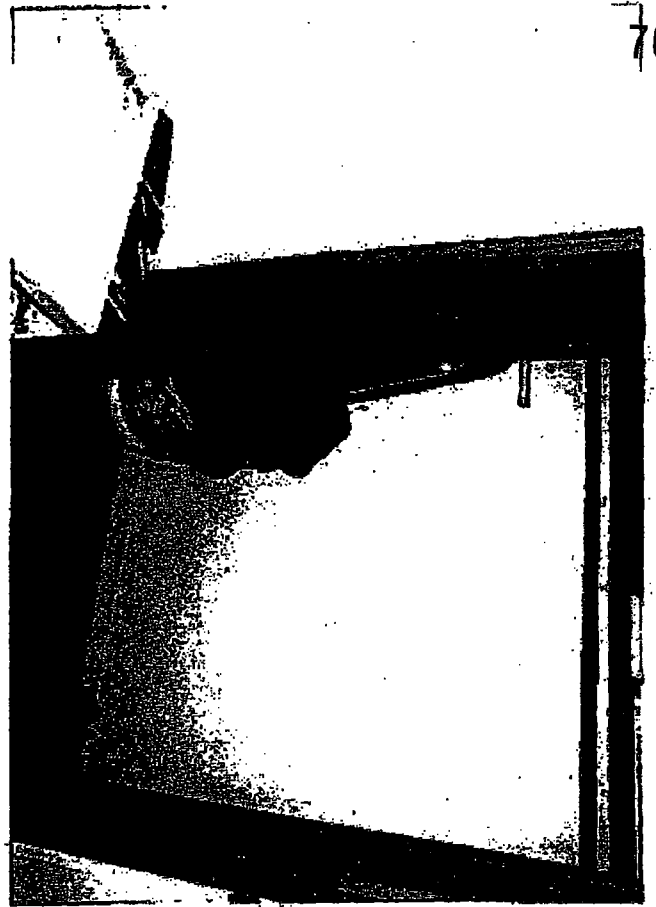
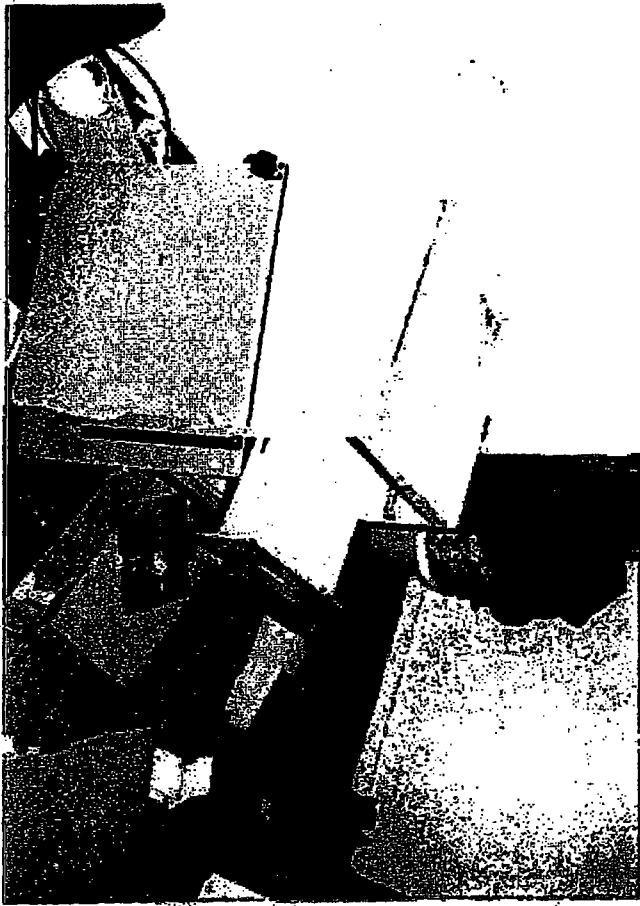












FLORENCE POLICE DEPARTMENT
CRIME SCENE UNIT

CASE #: 2008-009887

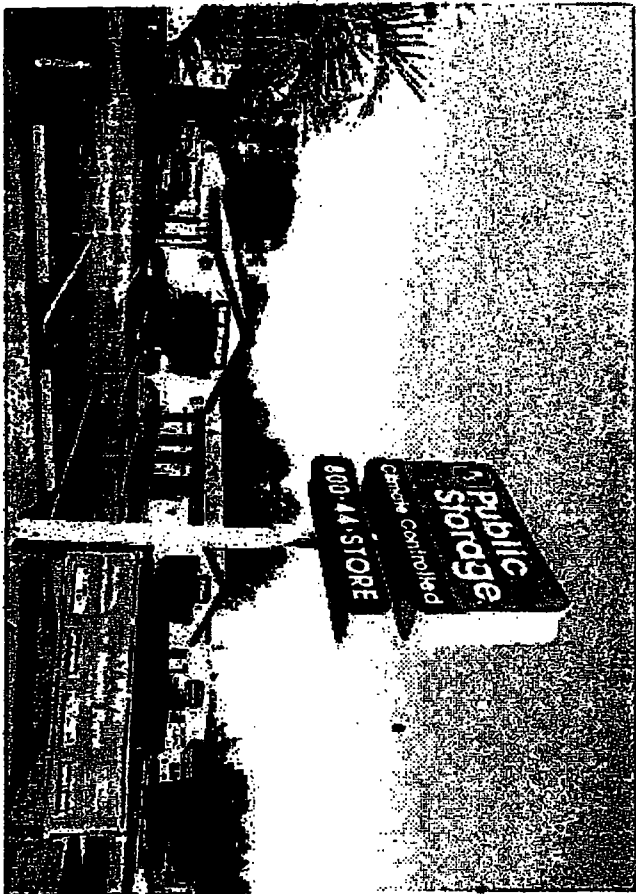
INCIDENT TYPE: CDV-Vandalism

LOCATION: 753 N. CASHADA
Evidence Recovery

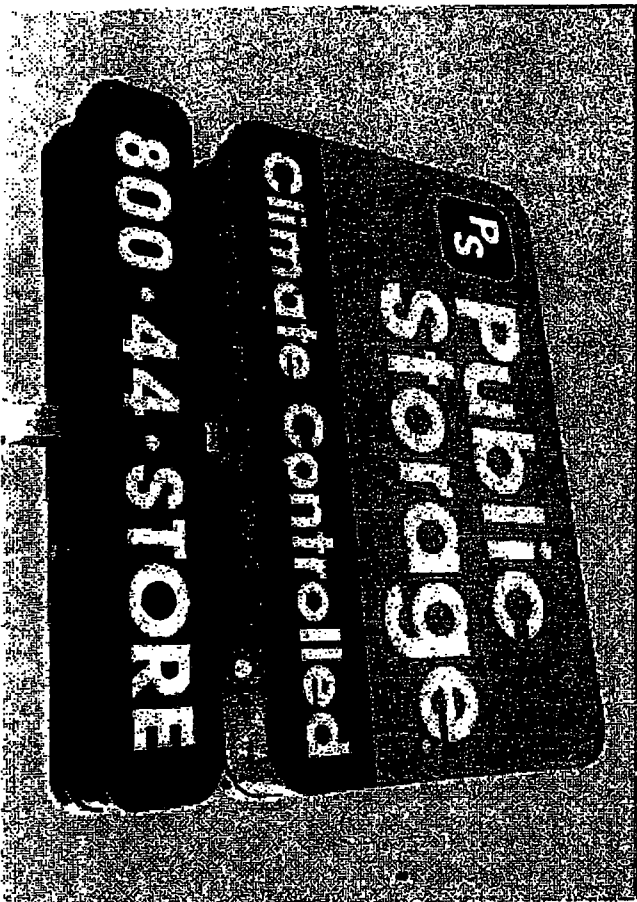
DATE / TIME: 10-06-08 / 1020

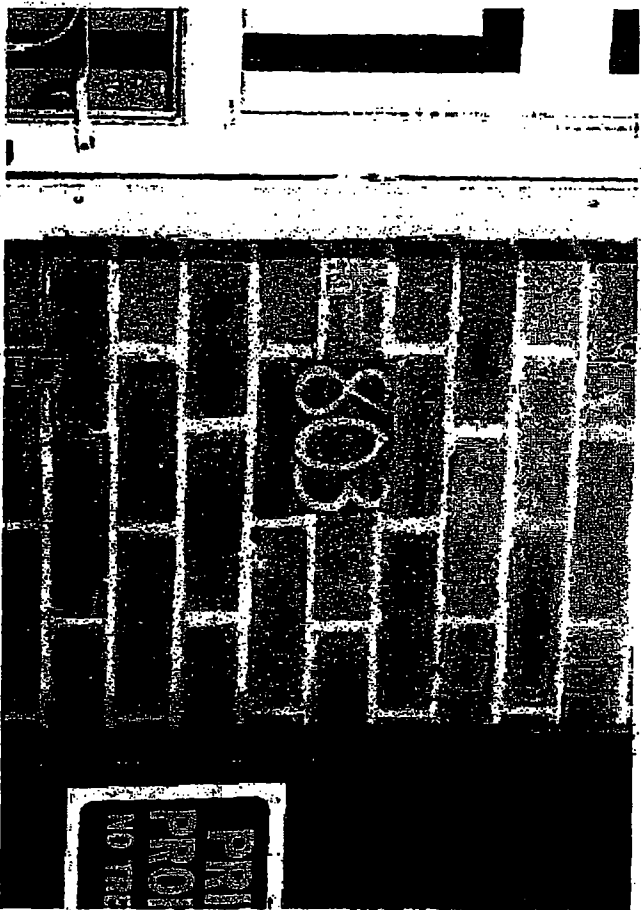
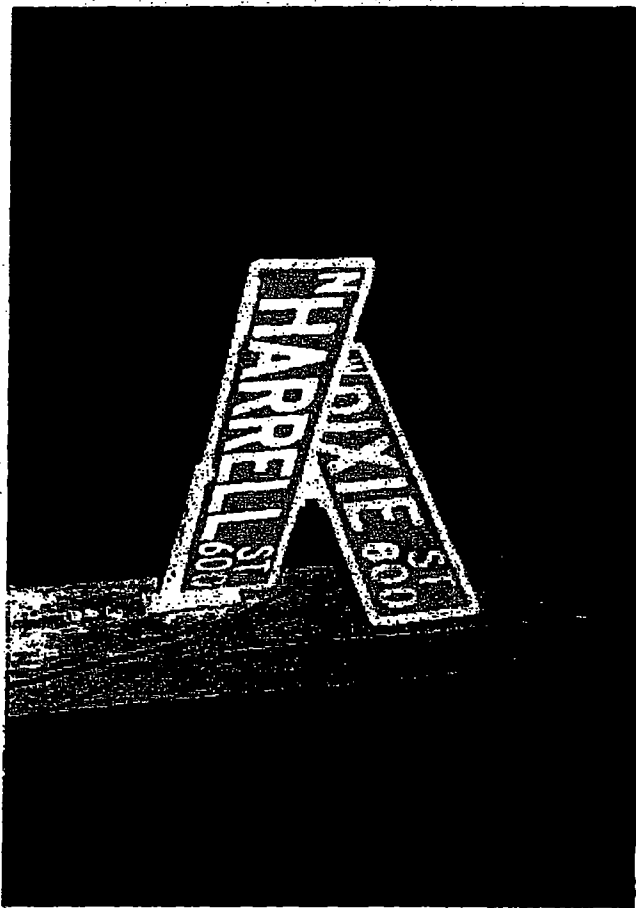
INVESTIGATOR: WHA F. Cox

PHOTOGRAPHER: WHA T. Myers



ISA



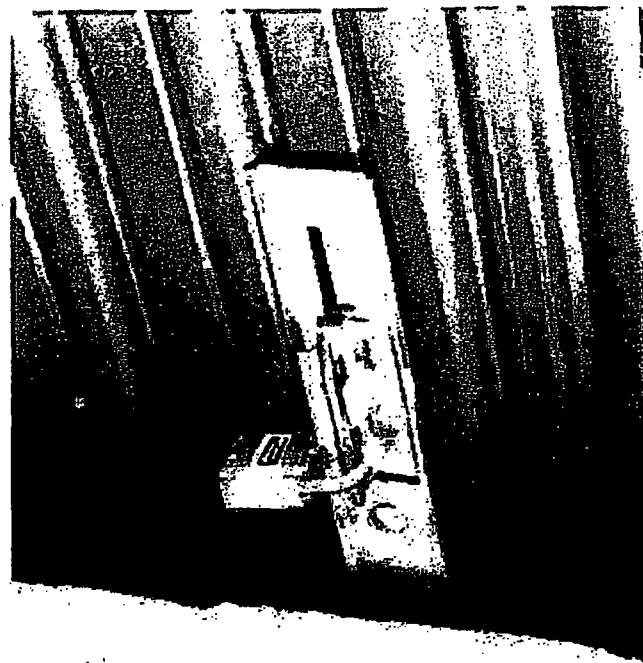
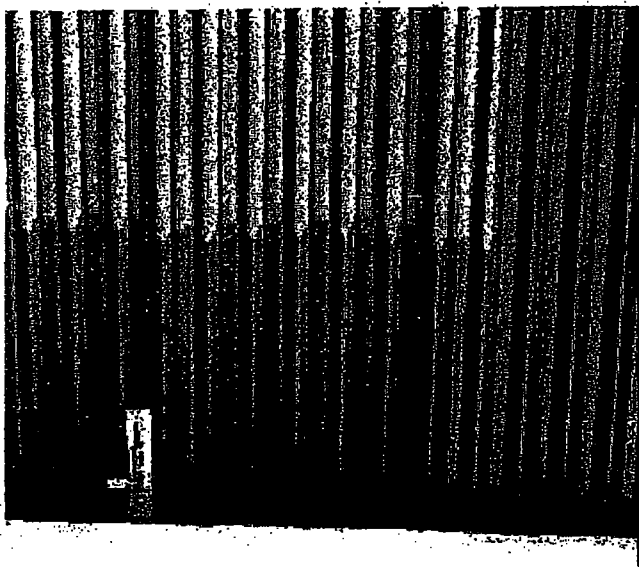


FLORENCE POLICE DEPARTMENT
CRIME SCENE UNIT

CASE #: 08 - 009870
INCIDENT TYPE: HAND TO HAND TRANSFER/POSSESSION
LOCATION: 803 Dixie St
DATE / TIME: 10-03-08 / 2320
INVESTIGATOR: PO F. Cox
PHOTOGRAPHER: INV. T. MYERS



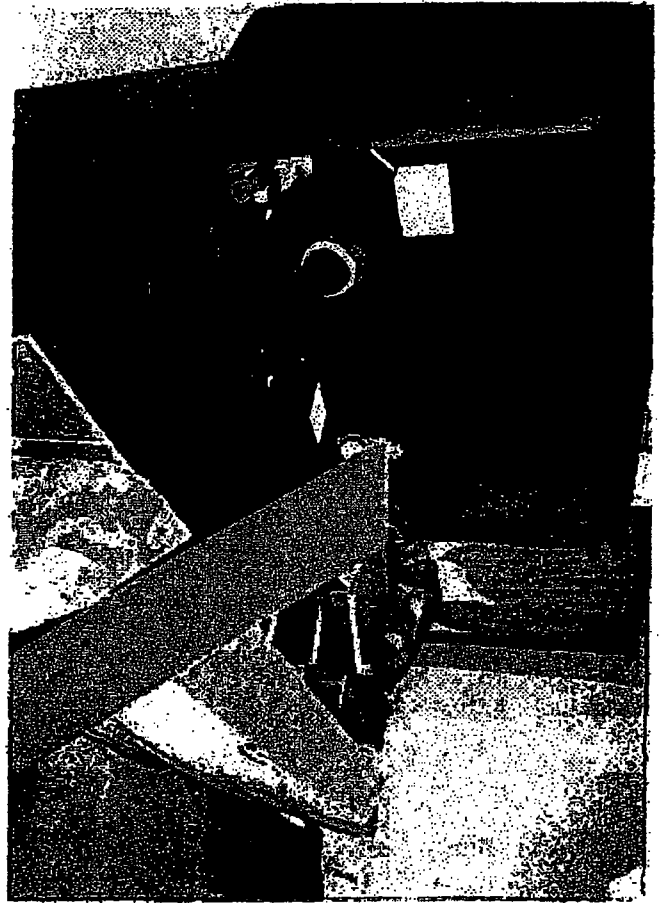
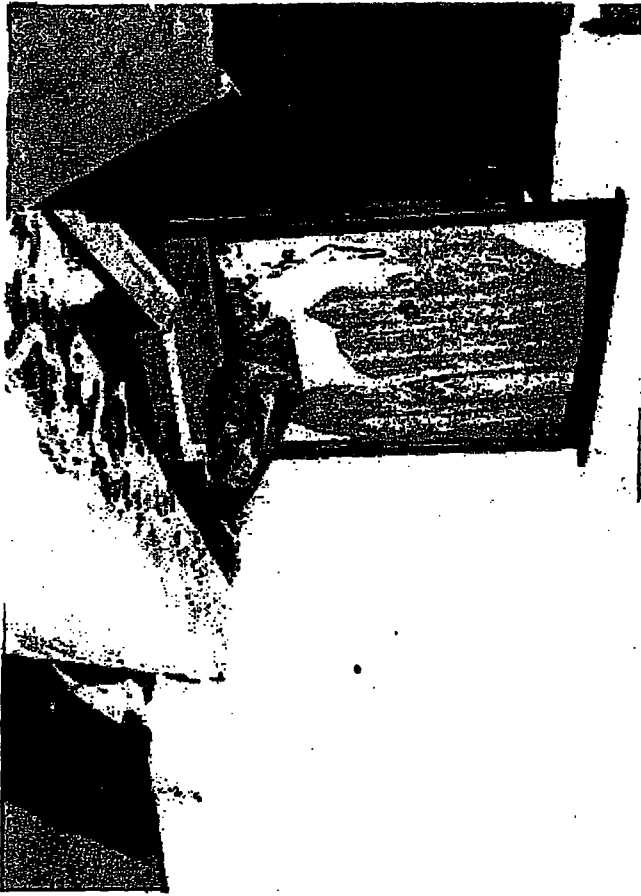
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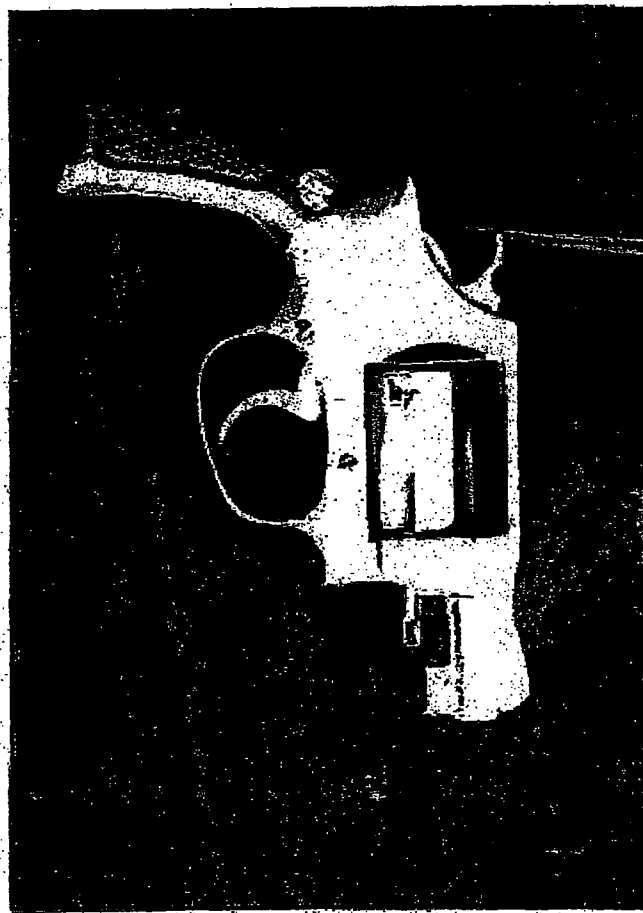
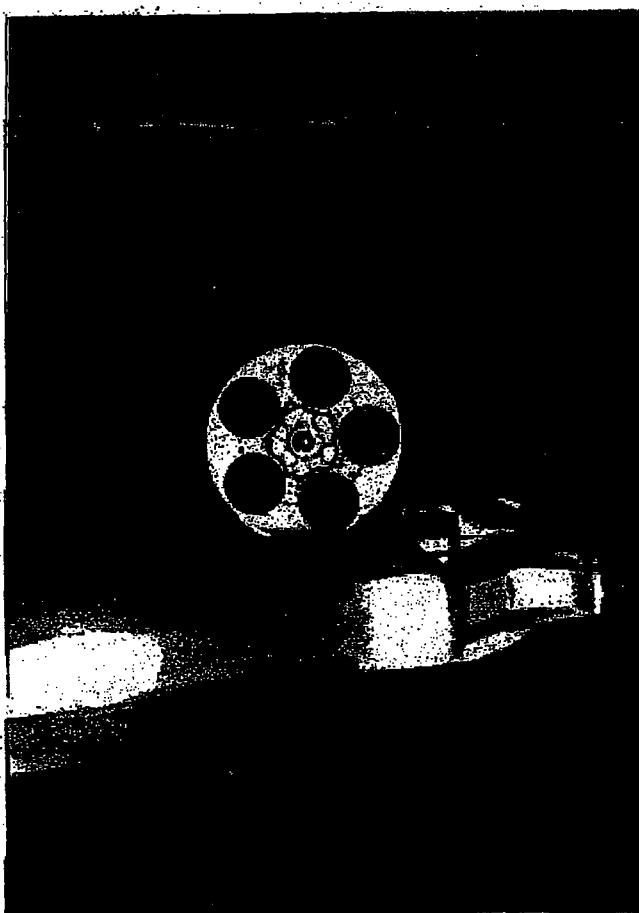
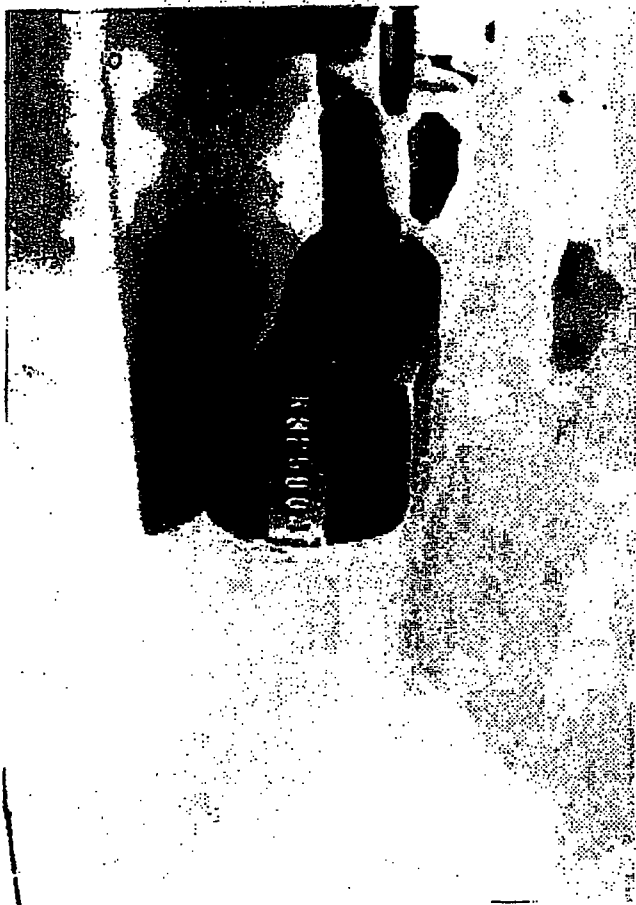


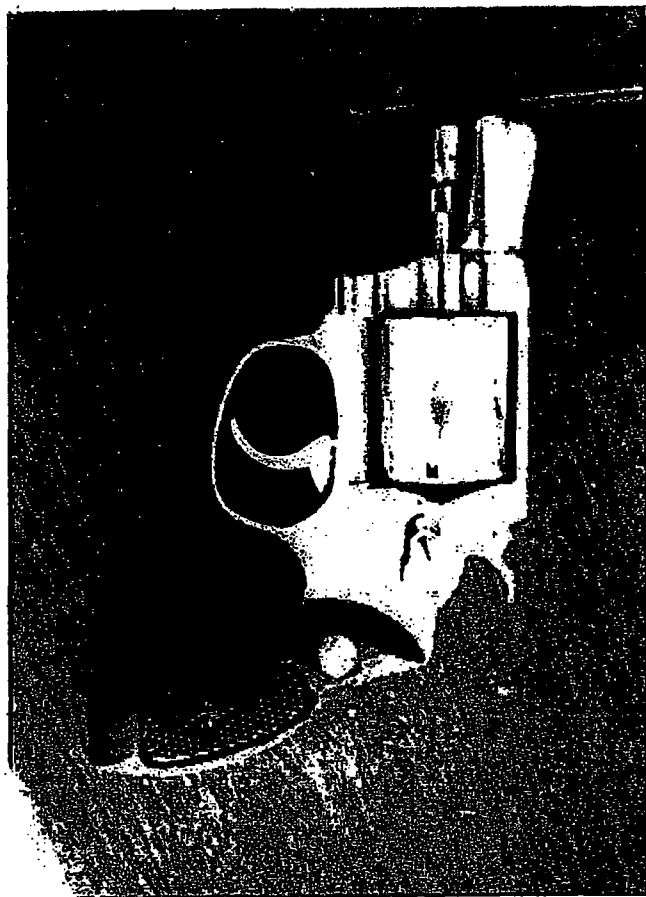


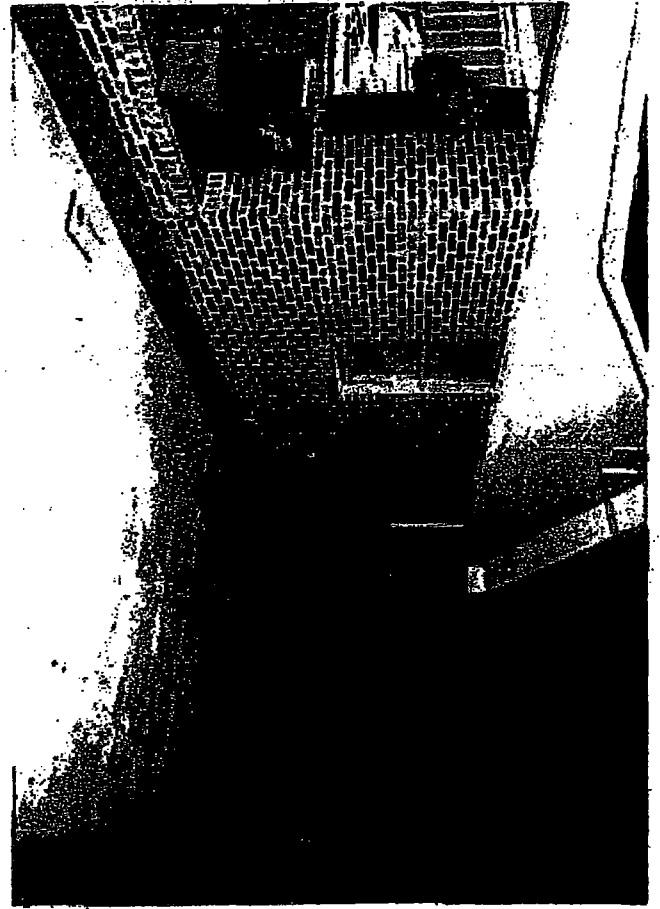
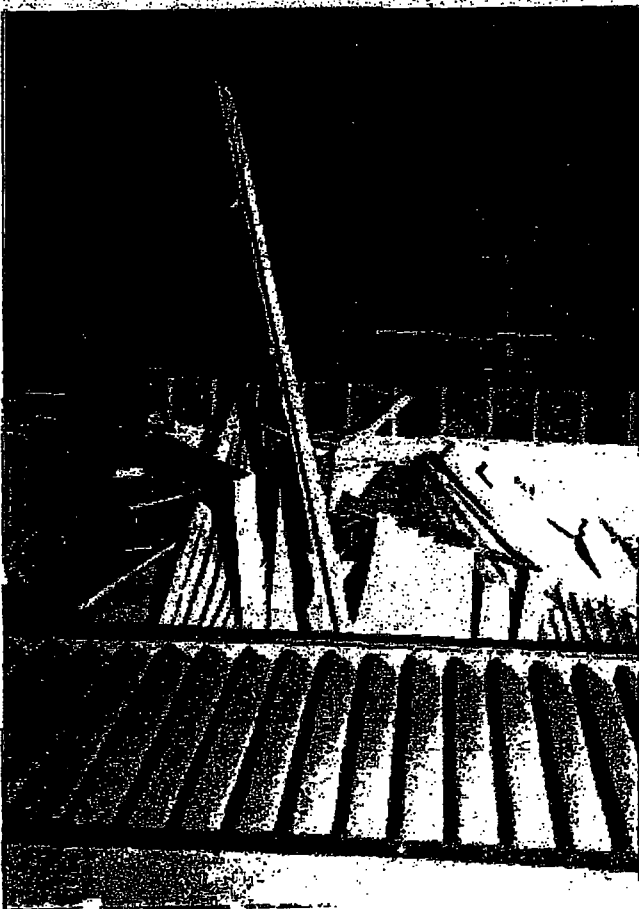
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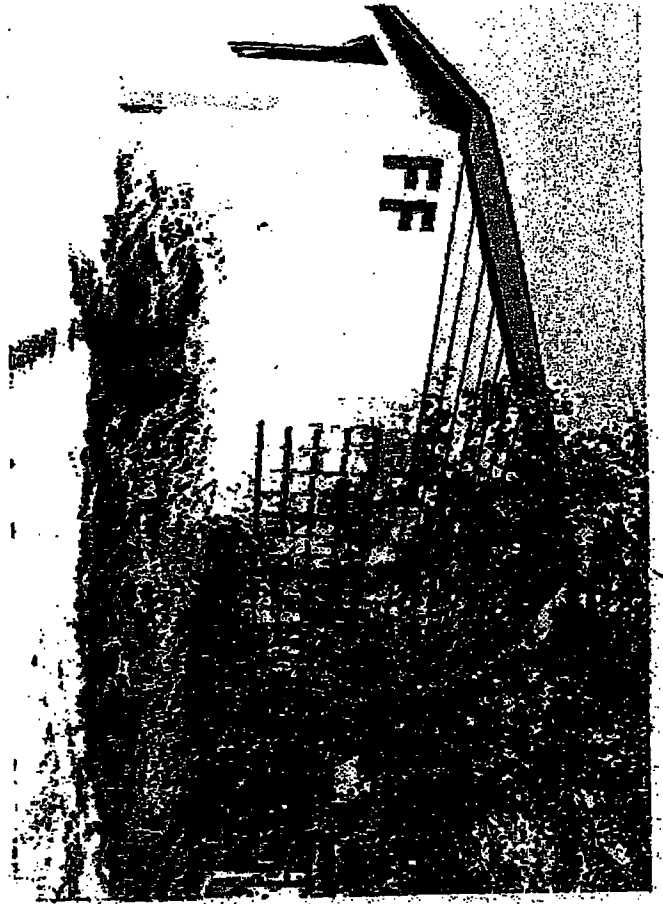
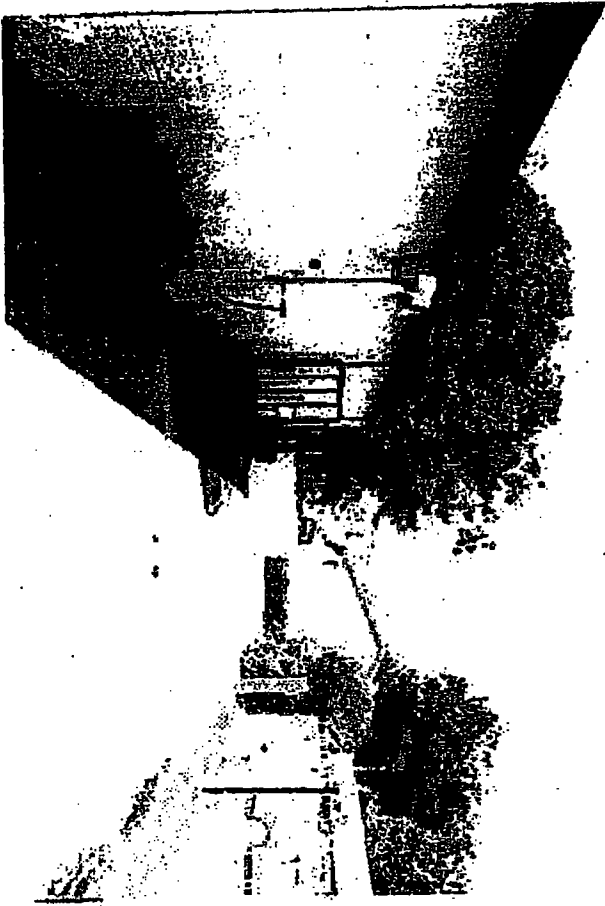




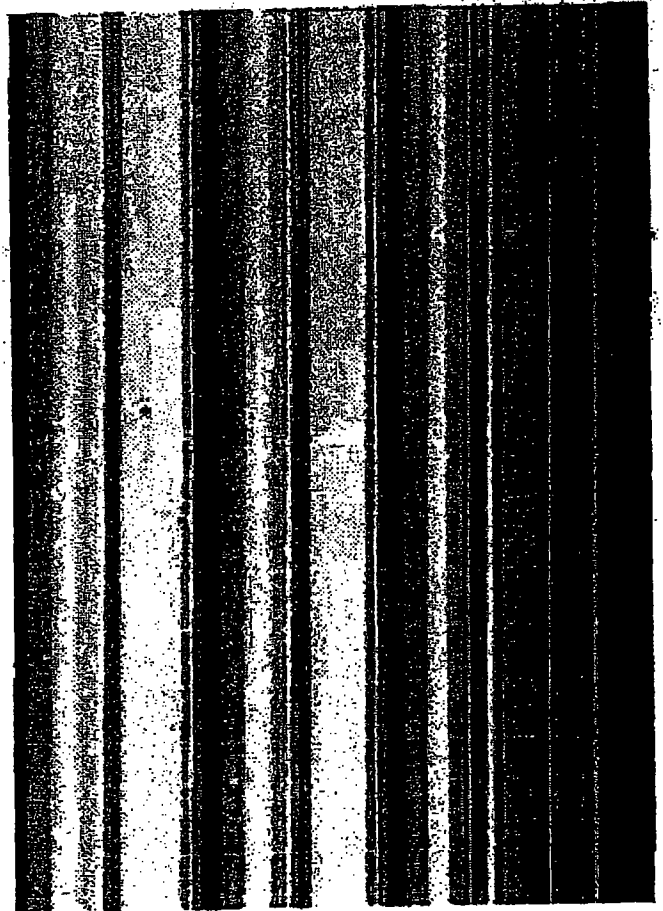
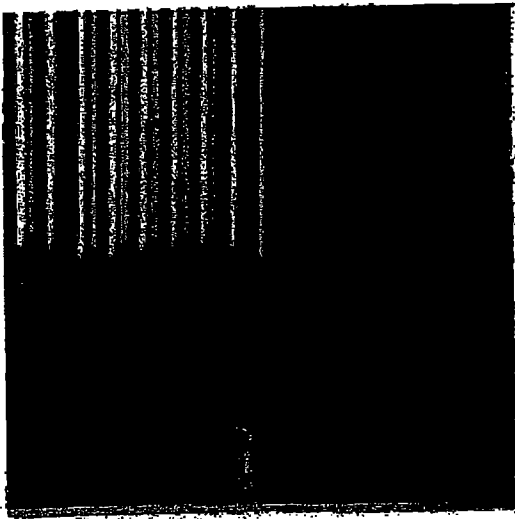








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17c



STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

CARMICHAEL TREVON FLOWERS,
335945,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA)

Respondent.)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

CASE NUMBER: 2012-CP-21-02215

ORDER

FILED
2014 MAR 10 AM 11:05
CONNIE REEL-SHEARIN
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC

This matter is before the Court by way of an Applicant for Post-Conviction Relief (PCR) filed on June 17, 2011, by Carmichael Trevon Flowers (Flowers). The State of South Carolina (Respondent) filed a Return to Applicant's PCR application on or about August 22, 2012. The Court convened a hearing in Florence County on February 10, 2014, at which time Flowers was present and represented by Tristan M. Shaffer, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's office, represented Respondent.

BACKGROUND

Flowers was indicted at the March 2009 term of the Florence County Grand Jury for malicious injury to real property, malicious injury to personal property, criminal domestic violence of a high and aggravated nature, and kidnapping (2009-GS-21-00126). Subsequently, the court appointed Scott Floyd, Esquire, to represent Flowers. In July 2008, a jury found Flowers not guilty of kidnapping, criminal domestic violence of a high and aggravated nature, but guilty of the lesser-included offense of criminal domestic violence, and guilty of both malicious injury charges.

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

The Honorable Ralph King Anderson sentenced Flowers to the following consecutive terms of imprisonment: ten years on the malicious injury to real property charge; five years on the malicious injury to personal property charge; and thirty days on the CDV charge. Flowers appealed his conviction; however, the court of appeals affirmed his conviction in August 2011. Flowers remains incarcerated by the South Carolina Department of Corrections.

ISSUES PRESENTED

Flowers alleges in his application that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of [Trial] Counsel"; and
2. "Ineffective Assistance of Appellate Counsel."

STANDARD OF REVIEW

The Sixth Amendment of the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amen. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.E.2d 674 (1984); Holden v. State, 393 S.C. 565, 713 S.E.2d 611 (2011). A defendant is also entitled to effective assistance of appellate counsel. Tisdal v. State, 357 S.C. 474, 594 S.E.2d 166 (2004).

In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, 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, 80 L.E.2d at 692; 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.E.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland, 80 L.E.2d 674). 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.

SUMMARY OF TESTIMONY

Flowers testified that his trial counsel was ineffective for the following: (a) failed to notify Flowers of a plea offer; (b) failed to investigate; and (c) failed to raise common law marriage defense.

First, Flowers stated that Floyd never discussed the State's plea offer. Floyd, an attorney with twenty-six years of experience, testified that he always discusses plea offers, written and oral, with defendants. While Floyd could not produce a written plea offer from his file, he averred that he is confident that he discussed the State's offer to dismiss the kidnapping charge with Flowers. The Court also heard testimony that Flowers denied the kidnapping and criminal domestic violence charges in their entirety, developed a defense strategy with Floyd prior to trial, supplied Floyd with potential witnesses, and remained adamant about proceeding to trial.

Second, Flowers claimed that Floyd failed to investigate the allegations and potential witnesses. Flowers stated that he provided Floyd with the names of several potential witnesses that could aid in his defense at trial. Specifically, Flowers mentioned, *inter alios*; Starling Burgess, Nat Mitchell, Jason Jacobs, Leroy Brown, and a woman simply referred to as Von. Flowers contended that these witnesses, if called to testify, would have testified in support of Flowers' defense to the CDV and malicious injury charges. The Court also heard testimony that Floyd met with Flowers on multiple occasions prior to trial to discuss Flowers' charges, their elements, and potential defenses. Flowers admitted that he damaged the inside of the home, but maintained that he was only responsible for a portion of the damage.

Third, Flowers sought to mitigate the extent of the alleged damage that he and the victim married by common law, and as such, he could not be found guilty of the malicious injury charges. Flowers testified that he cohabited with the victim—while she was still married—in South Carolina starting in 2007. He claimed that they shared checking accounts, the title to a vehicle, and a P.O. Box; and held themselves out as a married couple by, *inter alias*, attending church together and referring to each other as husband and wife when meeting with realtors. However, the Court discovered that the victim always maintained that she was not married to Flowers, that she stated to Flowers in 2008 that she was "ready for the rings," and that Floyd was unable—after speaking to every witness Flowers provided and in conducting his own investigation—to find a witness that would corroborate this claim.

ANALYSIS

The Court has reviewed the record in its entirety, heard the testimony and arguments presented at the PCR hearing, and reviewed the relevant case law. The Court has further had the opportunity to observe each witness who testified at the hearing and to pass upon his or her

credibility, weighing the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

I. Ineffective Assistance During Plea Negotiations

A defendant is entitled to effective assistance of counsel during plea negotiations as well as at trial. Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). The Supreme Court of South Carolina recently adopted a case-by-case approach in determining whether counsel's failure to inform defendant of a plea bargain prejudices the defendant. Davis v. State, 381 S.C. 601, 675 S.E.2d 416 (2009). In *Davis*, the court determined that a case-by-case approach would help the courts achieve the ultimate goal of assessing whether but for counsel's deficient performance a defendant would have accepted the State's proposed plea-bargain and that the defendant would have benefitted from the offer. *Id.* In doing so, the court concluded that a defendant is still required to establish actual prejudice. *Id.*

In the case at hand, even assuming *in arguendo* that Floyd did not discuss the State's plea offer with Flowers, the Court finds Flowers claim for relief is without merit. The Court reaches this conclusion for several reasons. First, Flowers never averred that he would have accepted a plea offer in this case. Secondly, it appears that Flowers discussed the kidnapping charge with Floyd prior to trial and denied his involvement. Thirdly, this Court finds Floyd's testimony that he discussed the plea offer with Flowers credible. Finally, unlike the defendant in *Davis*, Flowers cannot argue that he was prejudiced by proceeding to trial; it appears that the plea offer only concerned the kidnapping charge, was an offer for a six-year sentence, and the jury found Flowers not guilty with respect to the kidnapping charge. Therefore, Flowers' is denied relief under this claim.

II. Ineffective Assistance for Failing to Investigate

Flowers claims that Floyd was ineffective for failing to interview and call several witnesses, and failing to investigate the evaluations the State presented to establish the extent of damage done to the victim's real and personal property. This Court finds this allegation is without merit.

To establish counsel failed to prepare adequately for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result)); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Additionally, an applicant's testimony regarding what a witness would have testified to at trial is insufficient to meet burden of showing prejudice in counsel's failure to call witness. Glover v. State, 218 S.C. 496, 458 S.E.2d 538 (1995).

Here, it is uncontroverted that Floyd searched for every witness Flowers named; many of whom Floyd found and interviewed. It appears that Floyd subpoenaed several of these witnesses for Flowers' trial. It further appears that Floyd, bound by ethics, dismissed one potential witness because she offered to perjure herself on Flowers' minutes before Flowers' trial. This Court finds that Floyd, despite the allegation, reviewed the State's pictures and estimates with Flowers prior to trial. Moreover, at Flowers' PCR hearing, Flowers did not present any evidence or a witness regarding an alternative evaluation for the damage he did or did not cause, or his

ownership interest in any real or personal property he was convicted of damaging. Instead, Flowers only suggested that the figures used to calculate the destruction he caused were inflated and his friends Nat Mitchell and Leroy Brown would have testified that had an ownership interest in some of the property. Therefore, this Court finds that Flowers has failed to overcome the burden of proof necessary for this Court to grant relief.

III. Ineffective Assistance Regarding Common Law Marriage Claim

Flowers asserts that he and the victim were married under common law. As such, Flowers contends that Floyd was deficient for failing to investigate or establish this mitigating fact at trial.

To establish counsel failed to prepare adequately for trial, applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel more fully prepared. Jackson, 329 S.C. 345, 495 S.E.2d 768; Moorehead, 329 S.C. 329, 496 S.E.2d 415. An applicant's testimony regarding what a witness would have testified to at trial is insufficient to meet burden of showing prejudice in counsel's failure to call witness. Glover, 218 S.C. 496, 458 S.E.2d 538. Additionally, in order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing. Id.

Here, Flowers testified that he believed he and the victim were married under common law. In support of this claim, Flowers stated that the couple held themselves out as married to the public, shared several bills and a P.O. Box, and cohabited for several years. Floyd testified that Flowers claimed to be married to the victim by common law in their initial meeting. However, Floyd also testified that, knowing the legal elements required for common law marriage, was skeptical of the veracity of Flowers' claim. Nonetheless, Floyd investigated this

matter; still, he found neither viable proof nor a witness to corroborate Flowers claim. It also appears the victim vehemently denied a marriage, common law or otherwise, to Flowers at trial. While not dispositive—but certainly supportive of Floyd's understanding of the law—the Court notes that this issue was adjudicated soon after Flowers' trial; The Honorable A. E. Morehead III found that a common law marriage did not exist between Flowers and the victim in this matter. Therefore, because Flowers did not present any evidence and Floyd thoroughly investigated the veracity of Flowers' claim of common law marriage, this Court denies Flowers' request for relief.

IV. All Other Allegations

As to any other allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Flowers failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Flowers has abandoned any such allegations.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant Carmichael Trevon Flowers has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, the Court denies and dismisses with prejudice this application for post-conviction relief.

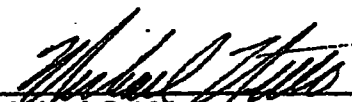
The Court notes that Flowers must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to

seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. This Court directs Applicant to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

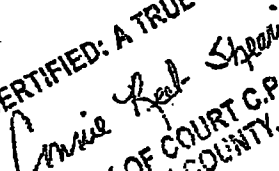
1. That the Application for Post-Conviction Relief is DENIED.
2. That Applicant be remanded to the custody of the Department of Corrections to complete the remainder of his sentence.

AND IT IS SO ORDERED this 7 day of March, 2014.


 Michael G. Nettles
 Presiding Judge, Twelfth Judicial Circuit


 _____, South Carolina

FILED
 2014 MAR 10 AM 11:05
 CONNIE REEL-SHEARIN
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

2011 SEP 23 PM 12:23
CUNNINGHAM, JUDGE
FLORENCE COUNTY, SC

The State,

Respondent,

v.

Carmichael Trevon Flowers,

Appellant.

Appeal From Florence County
Ralph King Anderson, Jr., Special Circuit Court Judge

Unpublished Opinion No. 2011-UP-404
Submitted August 15, 2011 – Filed August 25, 2011

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, all of
Columbia; and Solicitor Edgar L. Clements, III, of
Florence, for Respondent.

PER CURIAM: Carmichael Trevon Flowers appeals his convictions for malicious injury to real property, malicious injury to personal property, and criminal domestic violence, arguing the trial court erred in allowing his trial counsel to continue to represent him after he indicated a desire to waive his right to counsel and proceed pro se. Additionally, Flowers asserts numerous pro se arguments. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

HUFF, PIEPER, and LOCKEMY, JJ., concur.

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

WITNESSES
LT. JAMES RODGERS FPD

Cox

PROS: PSP

D/O: 10-02-2008;10-03-2008

ARREST WARRANT NO.

J398903 (1); J398904 (2); J398902 (3);

J398905 (4).

ACTION OF GRAND JURY

TRUE BILL

Don Schaffer
Foreman of Grand Jury

VERDICT

DOCKET NO. 2009 - GS - 21 - 00126

The State of South Carolina,

County of FLORENCE

PSP

COURT OF GENERAL SESSIONS

MARCH TERM 2009

THE STATE

vs.

CARMICHAEL TREVON FLOWERS

Indictment for

MALICIOUS INJURY TO
REAL PROPERTY
AND
MALICIOUS INJURY TO PERSONAL
PROPERTY
AND CRIMINAL DOMESTIC VIOLENCE
HIGH AND AGGRAVATED NATURE
AND
KIDNAPPING

CERTIFIED: A TRUE COPY
CLERK OF COURT C.P. & S.C.
FLORENCE COUNTY, S.C.

FILED

2009 MAR -5 PM 4:38

CONNIE REEL-SHEPARD
CLERK C.C.P. & G.S.
FLORENCE COUNTY, S.C.

INDICTMENT FOR

STATE OF SOUTH CAROLINA	)	MALICIOUS INJURY TO REAL PROPERTY AND
	)	MALICIOUS INJURY TO PERSONAL PROPERTY AND
COUNTY OF FLORENCE	)	CRIMINAL DOMESTIC VIOLENCE HIGH AND
		AGGRAVATED NATURE AND KIDNAPPING

At a Court of General Sessions, convened on MARCH 05, 2009, the Grand Jurors of FLORENCE

County present upon their oath:

COUNT ONE - MALICIOUS INJURY TO REAL PROPERTY

That CARMICHAEL TREVON FLOWERS did in FLORENCE County on or about October 03, 2008, violate Section 16-13-0520(B)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did wilfully, unlawfully and maliciously injure and/or damage real property, to-wit: house, windows, walls and bathroom fixtures owned by Janel Namias thereby damaging same in an amount greater than five thousand dollars.

COUNT TWO - MALICIOUS INJURY TO PERSONAL PROPERTY

That CARMICHAEL TREVON FLOWERS did in FLORENCE County on or about October 03, 2008, violate Section 16-11-0510(B)(1) of the Code of Laws of South Carolina (1976), as amended, in that he did wilfully, unlawfully and maliciously injure and damage personal property owned by Janel Namias to-wit: furniture, appliances, household goods and personal items thereby damaging same in an amount in excess of five thousand dollars.

COUNT THREE - CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED NATURE

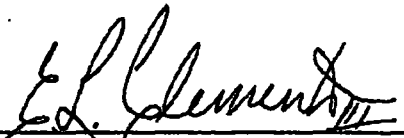
That CARMICHAEL TREVON FLOWERS did in FLORENCE County on or about October 02, 2008, violate Sections 16-25-0065 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did commit the offense of criminal domestic violence of a high and aggravated nature upon a family or household member, to-wit: Janel Namias constituting an unlawful act of violent injury to the person of the said Janel Namias accompanied by circumstances of aggravation, to-wit: in that the said CARMICHAEL TREVON FLOWERS did assault Janel Namias whom he cohabited with by grabbing a bat and hammer and threatened her while refusing to let her leave the residence.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MALICIOUS INJURY TO REAL PROPERTY AND MALICIOUS INJURY TO PERSONAL PROPERTY AND CRIMINAL DOMESTIC VIOLENCE HIGH AND AGGRAVATED NATURE AND KIDNAPPING WITH THE AFORESAID NAME(S) OF CARMICHAEL TREVON FLOWERS SHOWN THEREON:

COUNT FOUR - KIDNAPPING

That CARMICHAEL TREVON FLOWERS did in FLORENCE County on or about October 02, 2008, violate Sections 16-03-0910 and 16-01-0060 of the Code of Laws of South Carolina (1976), as amended, in that he did unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Janel Namias by any means whatsoever, without authority of law and by the use of force.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SOLICITOR



RECEIVED

SEP 14 2011

TORNEY GENERAL

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
WWW.SCCOURTS.SC

September 12, 2011

REMITTITUR

The Honorable Connie Reel-Shearin
180 N. Irby St., MSC-E, Rm. B11
Florence, SC 29501-3456

Re: The State v. Flowers, Carmichael Trevon
2009-GS-21-00126

Dear Ms. Reel-Shearin:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

Renee S. Johnson
Administrative Specialist

VAG/tj

cc: Carmichael Trevon Flowers # 335945
Deputy Chief Appellate Defender Wanda H. Carter
Assistant Deputy Attorney General Salley W. Elliott
Edgar Lewis Clements, III, Esquire

FILED
SEP 23 PM 2:23
CLERK OF COURT
FLORENCE COUNTY, SC

CERTIFIED MAIL
CLERK OF COURT
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA

COUNTY OF
STATEFlorencevs.
Carmichael Trevon Flowers

AKA:

Race:

Sex: M

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

In disposition of the said indictment comes now the Defendant who was

TO:

In violation of §

16-25-20(A)

of the S.C. Code of Laws, bearing CDR Code #

2671☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45

The charge is:

☐ As indicated,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury,

(defendants initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 180 days ~~180 days~~ ☐ 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: consecutive to the other sentences.☐ 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.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____Attend Voc. Rehab. ☐

Recipient: _____

May serve beginning _____

Substance Abuse Counseling ☐

*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	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47-12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7(SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code/

Sentence Date

Clerk of Court/Deputy Clerk
Court Reporter: Floris Day

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATEFlorence

AKA:

Race:

DOB:

Address:

City, State, Zip:

DL#

SID#

In disposition of the said indictment comes now the Defendant who was

INDICTMENT/CASE#:

-GS-

09 - 21 - 12

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

SENTENCE SHEET

TO: Malicious Injury to Personal Property > \$200 0-10 yrs
 In violation of § 16-11-510 (b)(1) of the S.C. Code of Laws, bearing CDR Code # 0494
☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
 (CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicated, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendants initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]4342

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of Five (5) 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: Malicious injury to real property
☐ 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.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

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	_____
\$56-1-286 (DUI Breath Test)	\$25	_____
\$47.12 (Public Def/Prob)	\$500	_____
\$14-1-212 (Law Enforce. Funding)	\$25	_____
\$14-1-213 (Drug Court Surcharge)	\$100	_____
\$50-21-114 (BUI Breath Test Fee)	\$50	_____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	_____
\$90.7(SCCJA Surcharge)	\$5	_____
3% to County (if paid in installments)	_____	_____
TOTAL	\$	<u>5.00</u>

Clerk of Court/Deputy Clerk
 Court Reporter: [Signature]

Obtain _____ days/hours Public Service Employment

Attend Voc. Rehab. Or Job _____

May serve _____ days/hours Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ Beginning _____
 \$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 \$47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge [Signature]
 Judge Code: _____
 Sentence Date July 22, 2009

STATE OF SOUTH CAROLINA

COUNTY OF
STATEFlorence

VS.

Carmichael Trevon Flowers

AKA:

Race:

M

Sex:

M

Age:

54

DOB:

SS#:

A

Address:

City, State, Zip:

DL#

SID#

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO:

42 Malicious Injury Real Property > \$2000 0-10/09In violation of § 16-11-520(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0416☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicated, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (defendants initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]4342

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10/10 years or ☐ under the Juvenile Code Act not to exceed 10 years and to pay a fine of \$ 2000; provided that upon the service of 10 days/months/years and or payment of \$ 2000; plus costs and assessments as applicable, the balance is suspended with probation for 10 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:Malicious Injury to Person and Property☐ 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.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

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	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7(SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$ <u>5.00</u>

Clerk of Court/Deputy Clerk

Court Reporter:

[Signature]
[Signature]Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing ☐

Fine may be paid in install, consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$600; be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

July 22, 2009