

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Orangeburg County

S.C. Supreme Court

Diane Schafer Goodstein, Circuit Court Judge

ANTHONY BRITT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000634

APPENDIX

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COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

CASE NO. 2009-GS-38-0331

)
)
) TRANSCRIPT OF RECORD

) DATE:
) AUGUST 6, 2009 &
) AUGUST 13, 2009

HONORABLE EDGAR W. DICKSON, PRESIDING JUDGE

DONALD SORENSON, ESQUIRE
ASSISTANT SOLICITOR
FOR THE STATE

BRADLEY HUTTO, ESQUIRE
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I N D E XPAGE

EXAMINATION BY THE COURT:

ANTHONY BERNARD BRITT

4

SENTENCE OF THE COURT

21

1 DATE:

2 AUGUST 6, 2009

3 SOLICITOR SORENSON: IF IT PLEASE
4 THE COURT, YOUR HONOR.

5 THE COURT: YES, SIR.

6 SOLICITOR SORENSON: BEFORE YOU IS
7 ANTHONY BERNARD BRITT PLEADING GUILTY ON INDICTMENT
8 2009-GS-38-331, ONE COUNT OF BURGLARY IN THE FIRST
9 DEGREE.

10 CLERK: SIR, RAISE YOUR RIGHT HAND.
11 (Whereupon, Anthony Bernard Britt
12 is duly sworn.)

13 CLERK: PLEASE BE SEATED.

14 THE COURT: ALRIGHT.

15 (NOTE: Blank lines on this page do not indicate any
16 part of record has been omitted. Headers on testimony
17 pages and hard page breaks between testimony are now
18 required by the Court. See next ensuing page for
19 sequential continuation of record.)

EXAM - ANTHONY BERNARD BRITT BY THE COURT

4

EXAMINATION OF ANTHONY BERNARD BRITTBY THE COURT:

Q. GOOD MORNING, MR. BRITT.

A. GOOD MORNING.

Q. HOW ARE YOU?

A. I'M ALRIGHT.

Q. ALRIGHT. MR. BRITT I AM TOLD THAT YOU ARE HERE TO
PLEAD GUILTY TO THE CHARGE OF BURGLARY, FIRST
DEGREE. IS THAT CORRECT?

A. YES, SIR.

Q. ALRIGHT. SO, YOU'VE BEEN REPRESENTED BY MR.
HUTTO?

A. YES, SIR.

Q. HE'S GONE OVER THESE CHARGES WITH YOU?

A. YES, SIR.

Q. AND YOU'VE GONE OVER THE POSSIBLE SENTENCE?

A. YES, SIR.

Q. WHICH YOU KNOW GOES FROM FIFTEEN TO LIFE?

A. YES, SIR.

Q. DO YOU UNDERSTAND THAT?

A. YES, SIR.

Q. HE'S GONE OVER WHAT YOUR CONSTITUTIONAL RIGHTS
ARE?

A. YES, SIR.

Q. DO YOU UNDERSTAND YOU'VE GOT A CONSTITUTIONAL

EXAM - ANTHONY BERNARD BRITT BY THE COURT

5

1 RIGHT TO A JURY TRIAL?

2 A. YES, SIR.

3 Q. ON THIS CHARGE?

4 A. YES, SIR.

5 Q. DO YOU WANT A JURY TRIAL?

6 A. NO, SIR.

7 Q. OKAY. HAS ANYBODY PROMISED YOU ANYTHING TO GET
8 YOU TO PLEAD GUILTY HERE TODAY?

9 A. NO, SIR.

10 Q. HAS ANYBODY THREATENED YOU TO GET YOU TO PLEAD
11 GUILTY HERE TODAY?

12 A. NO, SIR.

13 Q. ARE YOU DOING THIS OF YOUR OWN FREE WILL AND
14 ACCORD?

15 A. YES, SIR.

16 Q. MR. HUTTO HAS EXPLAINED EVERY, ALL OF THIS TO YOU?

17 A. YES, SIR.

18 Q. ARE YOU SATISFIED WITH HIS SERVICES AS YOUR
19 ATTORNEY?

20 A. YES, SIR.

21 Q. ALRIGHT. MR. BRITT, THE INDICTMENT THAT I HAVE IS
22 INDICTMENT NUMBER 2009-GS-38-331. IT IS AN
23 INDICTMENT AGAINST YOU FOR BURGLARY, FIRST DEGREE.
24 IT WAS TRUE BILLED BY THE GRAND JURY ON MARCH THE
25 FOURTH, TWO THOUSAND AND NINE. AND MR. BRITT, IT

EXAM - ANTHONY BERNARD BRITT BY THE COURT

6

1 ALLEGES THAT YOU DID, IN ORANGEBURG COUNTY, ON OR
2 ABOUT DECEMBER TENTH, TWO THOUSAND AND SEVEN,
3 WILLFULLY AND UNLAWFULLY ENTER THE DWELLING OF
4 LAVERNE BLEWER, JR., WITHOUT CONSENT, WITH THE
5 INTENT TO COMMIT A CRIME THEREIN, AND THAT YOU DID
6 TAKE FROM THE DWELLING A DEADLY WEAPON, ALL IN
7 VIOLATION OF THE LAWS OF THE STATE OF SOUTH
8 CAROLINA. DO YOU UNDERSTAND THE FACTS CONTAINED
9 IN THIS INDICTMENT?

10 A. YES, SIR.

11 Q. ALRIGHT, SIR. HOW DO YOU PLEAD TO THE CHARGE OF
12 BURGLARY, FIRST DEGREE?

13 A. GUILTY.

14 Q. ALRIGHT.

15 MR. SORENSON.

16 SOLICITOR SORENSON: MAY IT PLEASE
17 THE COURT, YOUR HONOR, THIS OFFENSE OCCURRED BACK IN THE
18 EVENING OF DECEMBER TENTH, TWO THOUSAND SEVEN. THE
19 VICTIMS IN THIS CASE, MR. AND MRS. LAVERNE BLEWER, THEY
20 HAD RETURNED HOME THAT NIGHT ABOUT EIGHT:TWENTY OR SO IN
21 THE EVENING, PULLED INTO THEIR CAR PORT. THEY WERE IN
22 THE PROCESS OF JUST KIND OF RUNNING TO GET MR. BLEWER'S
23 MEDICATION THAT HE HAD TO TAKE, AND THEY WERE GOING TO
24 HEAD BACK OUT TO WAL-MART, WHEN THEY NOTICED THAT THEIR
25 CAR -- THE DOOR LEADING FROM THEIR CARPORT INTO THEIR

EXAM - ANTHONY BERNARD BRITT BY THE COURT

7

1 HOUSE, THE GLASS HAD BEEN BROKEN OUT OF IT. AT THAT
2 POINT IN TIME THE POLICE WERE CALLED, RESPONDED OUT
3 THERE, AND FOUND THAT THEY HAD -- AFTER THEY KIND OF DID
4 AN INVENTORY OF THINGS MISSING. THERE WERE SEVERAL
5 THOUSAND DOLLARS WORTH OF JEWELRY THAT WAS TAKEN FROM
6 THE HOME ALONG WITH NINE DIFFERENT FIREARMS, SEVERAL
7 RIFLES, A COUPLE OF SHOT GUNS AND A COUPLE OF HAND GUNS
8 THAT WERE TAKEN FROM THE RESIDENCE. ALSO WHEN THE
9 POLICE RESPONDED AND PROCESSED THE SCENE THEY FOUND WHEN
10 THE PERSON HAD THROWN A PORTION OF A TRAILER HITCH
11 THROUGH THE WINDOW AND THEN REACHED IN AND UNLOCKED THE
12 DOOR, THEY HAD APPARENTLY CUT THEMSELVES, AND THEY FOUND
13 SEVERAL DROPS OF BLOOD IN THE KITCHEN AREA RIGHT BY THE
14 DOOR, AND ALSO SOME MORE BLOOD KIND OF BACK ON A GUN
15 CABINET WHERE SEVERAL OF THE WEAPONS HAD BEEN REMOVED
16 FROM BACK IN ONE OF THE BACK BEDROOMS. AT THAT POINT IN
17 TIME THOSE SWABS, THEY TOOK SEVERAL SWABS THAT WERE SENT
18 OUT TO SLED FOR A DNA ANALYSIS TO BE DONE ON THOSE
19 SWABS. IN THE MEANTIME, IN JANUARY OF TWO THOUSAND
20 EIGHT, ABOUT A MONTH LATER, THIS DEFENDANT WAS FOUND TO
21 BE IN POSSESSION OF ONE OF THE WEAPONS THAT WAS TAKEN
22 DURING THE BURGLARY. IT WAS A THIRTY-EIGHT CALIBER
23 REVOLVER THAT HAD SOME ENGRAVING ON IT WITH THE VICTIM'S
24 NAME, WITH MR. BLEWER'S NAME ON THE WEAPON. THAT GUN
25 WAS FOUND IN COLUMBIA IN A VEHICLE THAT HE WAS DRIVING.

EXAM - ANTHONY BERNARD BRITT BY THE COURT

8

1 HE WAS CHARGED AND ULTIMATELY ENDED UP PLEADING GUILTY
2 TO UNLAWFUL CARRYING OF A PISTOL FOR THAT CHARGE IN
3 COLUMBIA. HE HAD SEVERAL OTHER CHARGES STEMMING OUT OF
4 THAT THAT WERE DISMISSED. IN THE MEANTIME, SHORTLY
5 AFTER THAT THE STATE LAW ENFORCEMENT SENT A REPORT TO
6 PUBLIC SAFETY INDICATING THAT THEY HAD GOTTEN A DNA
7 PROFILE OFF OF THOSE SWABS, HAD RUN IT THROUGH THE
8 CODAS, THE DNA DATA BASE, AND CAME BACK WITH A HIT WHICH
9 HAPPENED TO BE MR. BRITT. HE WAS ARRESTED AT THAT POINT
10 IN TIME, WE SUBSEQUENTLY HAD A SCHMERBER HEARING AND GOT
11 ANOTHER DNA SAMPLE THAT WAS SUBSEQUENTLY ALSO COMPARED,
12 AND THEY DID MATCH BOTH OF THOSE SWABS, LIKE ONE IN
13 SOMETHING TRILLION. ADDITIONALLY, THERE WERE SEVERAL
14 LATENT FINGERPRINTS THAT WERE TAKEN OFF OF A JEWELRY
15 BOX, AND ONE OF THOSE LATENT PRINTS WAS MATCHED UP TO
16 MR. BRITT ALSO.

17 BESIDES THAT ONE WEAPON THAT WAS
18 RECOVERED IN COLUMBIA, NONE OF THOSE OTHER ITEMS HAVE
19 EVER BEEN RECOVERED, ANY OF THE JEWELRY OR ANY OF THE
20 OTHER EIGHT FIREARMS.

21 I'VE SPOKEN TO MR. BLEWER THIS
22 MORNING AND MET WITH BOTH OF THEM LAST WEEK, AND MR.
23 BLEWER KNEW THAT THIS PLEA WAS GOING THIS MORNING. I
24 INFORMED HIM, AS WE TALKED TO YOUR HONOR BACK IN
25 CHAMBERS, THAT WHAT WE WOULD BE ASKING YOU TO DO AT THIS

EXAM - ANTHONY BERNARD BRITT BY THE COURT

9

1 POINT IN TIME IS WITHHOLD SENTENCING ON MR. BRITT, AND
2 I KNOW MR. HUTTO HAS A REQUEST THAT HE BE ABLE TO
3 REPORT, I BELIEVE, ON MONDAY, IS THAT CORRECT?

4 AT THIS POINT IN TIME I'M GOING TO LEAVE THAT UP TO YOUR
5 HONOR. BUT THERE ARE SOME OTHER MATTERS AS WE DISCUSSED
6 WITH YOUR HONOR IN CHAMBERS THAT WE NEED TO TAKE CARE OF
7 BETWEEN NOW AND HOPEFULLY THE FIRST OF NEXT WEEK WHEN WE
8 COME BACK BEFORE YOUR HONOR FOR SENTENCING NEXT WEEK.

9 THE COURT: ALRIGHT, SIR. BUT WHAT
10 YOU'RE TELLING ME TODAY IS, YOU WANT TO GO FORWARD TODAY
11 AND ACCEPT HIS PLEA, WITHHOLD SENTENCING, AND THEN
12 DECIDE ABOUT HIS REQUEST? HE'S GOT TO REQUEST - - -

13 MR. HUTTO: BASICALLY, YOUR HONOR,
14 THEN HAVE US, HE WOULD REPORT ON MONDAY AND AT THAT TIME
15 BE INTERVIEWED BY THE LOCAL POLICE HERE, AND BASED ON
16 THAT INFORMATION COME BACK FOR SENTENCING.

17 THE COURT: AND HE IS OUT ON BOND
18 RIGHT NOW?

19 MR. HUTTO: HE IS OUT ON BOND, AND
20 HAS BEEN COOPERATIVE WITH MY OFFICE, AND I'VE ALWAYS
21 BEEN ABLE TO GET IN TOUCH WITH HIM, HE'S COME TO COURT
22 AND TO MY OFFICE WHEN HE'S SUPPOSED TO.

23 THE COURT: HE'S BEEN OUT ON BOND
24 FOR HOW LONG, JUST ROUGHLY?

25 MR. HUTTO: SINCE FEBRUARY.

EXAM - ANTHONY BERNARD BRITT BY THE COURT

10

1 THE COURT: HAS HE GOTTEN INTO ANY
2 TROUBLE SINCE FEBRUARY?

3 MR. HUTTO: NO, SIR. AND HE
4 UNDERSTANDS, OF COURSE, IF HE MISSES, IF HE DOESN'T COME
5 IN ON MONDAY LIKE HE'S SUPPOSED TO, YOU WOULD TAKE THAT
6 INTO ACCOUNT IN YOUR SENTENCING IN ADDITION.

7 Q. AND THAT WAS YOUR UNDERSTANDING?

8 A. YES, SIR.

9 Q. DO YOU UNDERSTAND THAT IF I GO ALONG WITH SENATOR
10 HUTTO'S REQUEST AND ALLOW YOU TO COME BACK IN HERE
11 MONDAY FOR SENTENCING, IF I DON'T SEE YOU - - -

12 A. I, YOU AIN'T EVEN GOT TO SAY NO MORE.

13 Q. DO YOU UNDERSTAND?

14 A. YES, SIR.

15 Q. IT WILL NOT BE GOOD.

16 MR. HUTTO: AND YOUR HONOR, JUST TO
17 BE CLEAR, WE MAY NOT ACTUALLY BE ABLE TO SENTENCE HIM ON
18 MONDAY, DEPENDENT ON - - -

19 THE COURT: I'LL BE HERE ALL WEEK.

20 MR. HUTTO: OKAY.

21 THE COURT: AS LONG AS THE
22 SOLICITOR'S OFFICE DOESN'T COME TELLING ME, HE'S GONE,
23 I'M FINE.

24 MR. HUTTO: HE'S ACTUALLY GOING TO
25 REPORT TO THE DETENTION CENTER AT THREE O'CLOCK ON

EXAM - ANTHONY BERNARD BRITT BY THE COURT

11

1 MONDAY, AND THAT WAY THEY CAN BRING HIM OVER HERE
2 WHICHEVER DAY WE DECIDE TO ACTUALLY DO THE SENTENCING.
3 AND THAT'S ALSO WHERE WE'LL HAVE HIM AVAILABLE SO WE CAN
4 DO THE INTERVIEW.

5 Q. MR. BRITT, IS THAT WHAT YOU UNDERSTAND?

6 A. YES, SIR.

7 Q. AND DO YOU KNOW WHERE THE DETENTION CENTER IS?

8 A. YES, SIR.

9 Q. YOU'RE NOT GOING TO HAVE ANY PROBLEMS GETTING
10 THERE ON MONDAY AFTERNOON?

11 A. NO, SIR.

12 Q. OKAY. ALRIGHT, MR. BRITT, YOU'VE HEARD WHAT THE
13 SOLICITOR HAS TOLD ME ABOUT THE FACTS IN THIS
14 CASE?

15 A. YES, SIR.

16 THE COURT: MR. SORENSON, DOES HE
17 HAVE A PRIOR RECORD?

18 SOLICITOR SORENSON: HE DOES, YOUR
19 HONOR, A PRETTY SUBSTANTIAL FOR HIS AGE.

20 THE COURT: WELL, I'LL GET TO THAT
21 IN MY SENTENCING. THAT'S OKAY, I'LL GET TO THAT.

22 SOLICITOR SORENSON: PART OF THE
23 BASIS OF IT BEING A BURGLARY, FIRST, BUT HE DOES HAVE
24 THREE PRIOR BURGLARY, SECOND, CONVICTIONS.

25 THE COURT: OKAY. WELL, I'LL GET

EXAM - ANTHONY BERNARD BRITT BY THE COURT

12

1 INTO THAT WHEN WE ADDRESS IT AT SENTENCING. OKAY.

2 Q. MR. BRITT, DO YOU UNDERSTAND WHAT THE SOLICITOR
3 HAS TOLD ME ABOUT THESE CHARGES?

4 A. YES, SIR.

5 Q. OKAY. DO YOU UNDERSTAND THAT, WELL, I'LL JUST
6 FOREWARN YOU THAT WHEN YOU'RE SENTENCED YOU'LL
7 HAVE TEN DAYS FROM THE SENTENCING DATE IN WHICH TO
8 FILE A NOTICE OF INTENT TO APPEAL IF YOU CHOOSE TO
9 DO SO. OKAY?

10 A. OKAY.

11 Q. REGARDING THE SENTENCING, I MEAN, REGARDING
12 PLEADING GUILTY HERE TODAY, AFTER YOU'VE HEARD
13 WHAT THE SOLICITOR SAID, DO YOU STILL WISH TO GO
14 FORWARD WITH THIS PLEA

15 A. YES, SIR.

16 Q. THAT'S A YES?

17 A. YES, SIR.

18 Q. OKAY.

19 THE COURT: ALRIGHT, SIR. I FIND
20 THAT YOUR DECISION TO PLEAD GUILTY IS FREELY,
21 VOLUNTARILY AND INTELLIGENTLY MADE. I FIND THAT YOU'VE
22 HAD THE ADVICE AND COUNSEL OF A COMPETENT ATTORNEY WITH
23 WHOM YOU'VE TOLD THIS COURT YOU ARE SATISFIED. I FIND
24 THAT THERE IS A FACTUAL BASIS FOR YOU TO PLEAD GUILTY TO
25 THIS CHARGE, AND I WILL ACCEPT YOUR PLEA OF GUILTY.

13

1 AND MR. HUTTO, WHAT I WILL DO IS, I
2 WILL ALLOW HIM TO REPORT TO THE DETENTION CENTER ON
3 MONDAY, AND I WILL DEFER SENTENCING UNTIL, YOU KNOW, YOU
4 COME BACK BEFORE ME ON THAT.

5 AND MR. BRITT, DO YOU UNDERSTAND,
6 YOU -- I KNOW YOU'VE BEEN ON BOND SINCE FEBRUARY,
7 HAVEN'T GOTTEN INTO ANY TROUBLE. DON'T MAKE THIS A BAD
8 WEEKEND FOR YOU.

9 DEFENDANT BRITT: YES, SIR.

10 THE COURT: OKAY. ALRIGHT, SIR.
11 THANK YOU.

12 AND I WANT TO MAKE SURE, HE'S GOT TO
13 REMAIN ON BOND UNTIL THE TIME HE REPORTS.

14 MR. HUTTO: YES, SIR.

15 THE COURT: OKAY. I JUST WANTED TO
16 GET THAT ON THE RECORD AND MAKE SURE THAT'S CLEAR.

17 THANK YOU, SIR.

18 (Recess for the day on this case.)

19 DATE:

20 AUGUST 13, 2009

21 SOLICITOR SORENSON: ANTHONY BRITT.

22 YOUR HONOR, THIS IS 2009-GS-38-331.

23 MR. BRITT, YOUR HONOR, PLED GUILTY BEFORE YOU LAST
24 THURSDAY, MAYBE, WEDNESDAY OR THURSDAY, ON ONE COUNT OF
25 BURGLARY, FIRST DEGREE, AND WE'RE HERE FOR PURPOSES OF

1 SENTENCING. IF I COULD, I IMAGINE I PUT PROBABLY A
2 FACTUAL BASIS ON THE RECORD LAST WEEK, BUT IF I COULD
3 JUST ADDRESS A COUPLE OF THINGS, YOUR HONOR, BEFORE YOU
4 HEAR FROM MR. HUTTO. THE VICTIMS IN THE CASE, MR. AND
5 MRS. LAVERNE BLEWER, ARE SEATED ON THE FRONT ROW, YOUR
6 HONOR. THIS OCCURRED, YOUR HONOR, IN THEIR HOME BACK
7 IN, ON [REDACTED] HERE IN THE CITY LIMITS OF ORANGEBURG
8 BACK IN DECEMBER OF TWO THOUSAND SEVEN. AND AT THAT
9 TIME, YOUR HONOR, THEY HAD STOLEN FROM THEIR HOME DURING
10 THIS BURGLARY, THERE WERE NINE FIREARMS THAT ARE WERE
11 TAKEN. IT LOOKS LIKE ONE, TWO -- THREE OR FOUR HAND
12 GUNS, A COUPLE OF RIFLES AND A COUPLE OF SHOT GUNS,
13 ALONG WITH ABOUT TEN THOUSAND DOLLARS WORTH OF JEWELRY,
14 SEVERAL, I MEAN, AS FAR AS RINGS, NECKLACES, THINGS LIKE
15 THAT. SOME OF THEM THINGS THAT WOULD HAVE KIND OF
16 SENTIMENTAL VALUE AS FAR AS LIKE HIGH SCHOOL RING.
17 ADDITIONALLY, MR. BLEWER HAS TOLD ME AS FAR AS THE
18 FIREARMS THAT WERE TAKEN, ONE OF THEM WAS A SHOT GUN
19 THAT HIS SON BOUGHT WITH HIS OWN MONEY WHEN HE WAS
20 YOUNGER, SOMETHING THAT COULD NEVER BE REPLACED, YOUR
21 HONOR.

22 AS I TOLD YOUR HONOR LAST WEEK, OUT
23 OF ALL THE ITEMS THAT WERE TAKEN, THERE WAS ABOUT NINE
24 PIECES, NINE OR TEN PIECES OF JEWELRY AND THE NINE
25 FIREARMS, THERE'S ONLY ONE ITEM THAT'S EVER BEEN

1 RECOVERED, AND THAT WAS A THIRTY-EIGHT CALIBER SMITH AND
2 WESSON REVOLVER THAT HAD SOME PERSONAL ENGRAVING OF MR.
3 BLEWER THAT MR. BRITT WAS FOUND WITH IN COLUMBIA ABOUT
4 A MONTH AFTER THIS INCIDENT.

5 MR. BRITT'S PRIOR RECORD, YOUR
6 HONOR, HE DID ULTIMATELY PLEAD GUILTY TO UNLAWFUL
7 CARRYING OF A PISTOL STEMMING OUT OF THAT INCIDENT, IT
8 LOOKS LIKE BACK IN AUGUST OF LAST YEAR. ADDITIONALLY,
9 YOUR HONOR, FROM RICHLAND COUNTY ALSO HE HAS THREE
10 COUNTS OF BURGLARY IN THE SECOND DEGREE CONVICTIONS AND
11 TWO COUNTS OF LARCENY THAT WENT WITH THOSE BURGLARIES.
12 THOSE, YOUR HONOR, WERE ALL FROM TWO THOUSAND SIX,
13 SEPTEMBER OF TWO THOUSAND SIX, AND HE DID RECEIVE A TEN
14 YEAR ACTIVE SENTENCE ON THOSE CHARGES. YOUR HONOR,
15 OBVIOUSLY, HE IS ACCEPTING RESPONSIBILITY AND PLEADING
16 GUILTY. PART OF THE REASON WHY WE HAD WITHHELD
17 SENTENCING WAS TO GIVE HIM AN OPPORTUNITY TO TALK --
18 EXCUSE ME -- WITH PUBLIC SAFETY, AND DETECTIVE MIKE
19 SMALLS IS HERE IN THE COURTROOM WITH ME TODAY.
20 DETECTIVE SMALLS HAS HAD AN OPPORTUNITY TO TAKE A
21 WRITTEN STATEMENT FROM MR. BRITT AND I BELIEVE TO SPEAK
22 WITH HIM ON AT LEAST ONE OTHER OCCASION. HE HAS -- IN
23 THE STATE'S OPINION, YOUR HONOR, HE HAS PROVIDED SOME
24 INFORMATION THAT AT LEAST GIVES THEM SOME LEADS TO
25 FOLLOW UP ON ON OTHER PERSONS' POTENTIAL INVOLVEMENT NOT

1 ONLY WITH THE BURGLARY BUT ALSO IN DISPOSING OF THE
2 ITEMS AFTERWARDS. I THINK LOOKING IT HE MAY HAVE
3 MINIMIZED HIS OWN INVOLVEMENT A LITTLE BIT IN THE
4 BURGLARY, ITSELF, BUT AT THIS POINT IN TIME I HAVE NO
5 REASON TO DISPUTE THE INFORMATION HE PROVIDED AS FAR AS
6 THE POSSIBLE CO-DEFENDANTS' INVOLVEMENT, AND PUBLIC
7 SAFETY WILL BE FOLLOWING UP ON THAT INFORMATION.

8 I DON'T BELIEVE EITHER MR. OR MRS.
9 BLEWER WANT TO ADDRESS THE COURT. I MEAN THEY,
10 OBVIOUSLY, THEY, YOU KNOW, THIS HAS HAD A PRETTY LARGE
11 EFFECT ON THEM. I MEAN, THEY, NOT ONLY THESE ITEMS THAT
12 WERE TAKEN AND NOT RECOVERED, BUT I MEAN, THEY CAME HOME
13 AND BASICALLY FOUND THEIR, YOU KNOW, WINDOW BROKEN OUT
14 OF THEIR DOOR, BLOOD IN THEIR HOUSE, AND THEIR HOUSE
15 KIND OF RANSACKED WITH, YOU KNOW, AS I SAID, FIREARMS
16 TAKEN ALONG WITH A LOT OF JEWELRY WITH SENTIMENTAL
17 VALUE, AND THE INSURANCE, UNFORTUNATELY, DIDN'T COVER
18 ALL OF IT EITHER, AND THEY DID GET REIMBURSED FOR SOME
19 OF THE ITEMS, BUT THEIR POLICY LIMITS DIDN'T COVER
20 EVERYTHING THAT WAS TAKEN. SO, THEY ARE OUT FINANCIALLY
21 BUT ALSO AS FAR AS PEACE OF MIND, SOMETHING THEY'LL
22 NEVER GET BACK.

23 THE COURT: ALRIGHT. AND MR. AND
24 MRS. BLEWER I APPRECIATE Y'ALL COMING DOWN HERE.. I
25 UNDERSTAND YOU NOT WANTING TO SPEAK. IF IT'S ANY

1 CONSOLATION TO Y'ALL, I HAVE BEEN ROBBED BEFORE WHILE WE
2 WERE ON VACATION ONCE. I KNOW EXACTLY WHAT YOU, ABOUT
3 THE VIOLATION, AND WHEN HE MENTIONED THE THING ABOUT
4 YOUR CLASS BEING GONE, THAT'S THE THING I MISSED THE
5 MOST OUT OF WHAT WAS STOLEN OF OUR JEWELRY AND THINGS
6 LIKE THAT. SO, I DO UNDERSTAND WHAT YOU'RE GOING
7 THROUGH. AND SO, I APPRECIATE YOUR COMING DOWN HERE.
8 OKAY?

9 ALRIGHT, MR. HUTTO, LET ME HEAR FROM
10 YOU.

11 MR. HUTTO: THANK YOU, YOUR HONOR.
12 YOUR HONOR, OF COURSE, HE'S IN HIS YOUNG TWENTIES, AND
13 SO FOR THAT HE'S OBVIOUSLY HAD THESE PRIOR BURGLARIES
14 AND THAT'S WHAT MAKES THIS BURGLARY, FIRST. HE REALIZES
15 HE'S FACING POTENTIALLY UP TO LIFE IN PRISON AND A
16 MINIMUM OF A FIFTEEN YEAR SENTENCE. BUT WHEN CONFRONTED
17 WITH THE OPTION TO GO FORWARD WITH THE TRIAL OR NOT HE
18 DID COME FORWARD AND PLEAD GUILTY, YOUR HONOR. AND HE
19 ALSO AGREED THAT HE WOULD TALK TO THE OFFICERS ABOUT --
20 BECAUSE SOME OF THE, OR MOST OF THE -- ALMOST ALL OF THE
21 ITEMS HAD NOT BEEN RECOVERED, AND GAVE THEM THE
22 INFORMATION HE HAD THAT MIGHT LEAD TO THEIR RECOVERY,
23 AND HE HAS DONE THAT, AND TO ACCOUNT OF THE OFFICERS,
24 GIVEN A TRUTHFUL STATEMENT BASICALLY OF WHAT HAPPENED,
25 HOW IT HAPPENED, AND WHERE THE ITEMS ENDED UP, AND ALSO

1 GIVEN SOME MORE INFORMATION THAT MAY LEAD TO THEIR
2 RETURN. AND WE THINK THAT, YOU KNOW, WE KNOW IT'S GOING
3 TO BE A SUBSTANTIAL SENTENCE EVEN IF HE JUST GOT THE
4 MINIMUM, AND HE'S NOT GOING TO BE OUT UNTIL HE'S, YOU
5 KNOW, FORTY YEARS OLD. SO, I WOULD JUST ASK YOU TO
6 CONSIDER THAT HE DID TAKE RESPONSIBILITY, HE CAME
7 FORWARD, HE PLED GUILTY. HE DID GO FURTHER THAN THAT,
8 AND YOU KNOW, HE WAS FROM THE BEGINNING TOLD HE HAD THE
9 RIGHT TO REMAIN SILENT, HE DIDN'T HAVE TO SAY ANYTHING.
10 AND SO, HE INITIALLY EXERCISED THAT RIGHT UNTIL THE
11 QUESTION WAS ASKED, DO YOU WANT A TRIAL OR A PLEA, AND
12 HE SAID, I'M GOING TO PLEA, AND THEN I'LL GO AHEAD AND
13 TELL WHAT I KNOW, AND HE'S DONE THAT. SO, WE THINK YOU
14 SHOULD CONSIDER UNDER THE CIRCUMSTANCES THOSE FACTORS.
15 WE WOULD ASK THAT, IT'S A FIFTEEN YEAR SENTENCE THAT'S
16 REQUIRED, WE'D ASK THAT YOU'D CONSIDER GIVING HIM THAT
17 SINCE HE HAS COME FORWARD, ADMITTED HIS INVOLVEMENT,
18 ADMITTED HIS GUILT, GIVEN SOME INFORMATION THAT
19 HOPEFULLY WILL LEAD TO SOME FURTHER RECOVERY OF THE
20 ITEMS. SO, YOU KNOW, HE'S A BRIGHT YOUNG GUY, AND HE'S
21 JUST GOTTEN IN WITH THE WRONG CROWD. AND HE KNOWS THAT
22 A LOT OF HIS IMPORTANT YOUNG YEARS NOW WILL BE TAKEN
23 AWAY FROM HIM, AND THAT'S A SHAME BECAUSE HE PROBABLY
24 HAD SOME POTENTIAL OTHERWISE. BUT HE ALSO HAS DONE
25 WRONG AND KNOWS HE'S GOT TO PAY FOR THAT. WE WOULD ASK

1 YOU TO TAKE ALL THAT INTO ACCOUNT WHEN YOU PASS YOUR
2 SENTENCE.

3 THE COURT: ALRIGHT. MR. BRITT, YOU
4 CAN TALK WITH YOUR ATTORNEY BEFORE YOU ANSWER ANY OF MY
5 QUESTIONS OR ANYTHING LIKE THAT, BUT DO. I SEE, YOU'VE
6 GOT A HAIR CUT SINCE I SAW YOU LAST WEEK.

7 DEFENDANT BRITT: YES, SIR.

8 THE COURT: ALRIGHT, SIR.

9 MR. HUTTO: AND YOUR HONOR, I WANTED
10 TO -- I DON'T MEAN TO INTERRUPT YOU BUT I DO WANT YOU TO
11 REMEMBER, YOU TOLD HIM TO COME BACK ON MONDAY, AND HE
12 REPORTED, AND HE'S DONE EVERYTHING THAT -- AND THAT WAS
13 THE OTHER THING YOU HAD - - -

14 THE COURT: THAT'S RIGHT. YOU
15 REPORTED ON TIME?

16 DEFENDANT BRITT: I BEEN THERE
17 BEFORE TIME.

18 THE COURT: ALRIGHT, SIR. YOU
19 DIDN'T GET INTO ANY TROUBLE OVER THE WEEKEND?

20 DEFENDANT BRITT: NO, SIR.

21 THE COURT: OKAY. YOU KNOW, I'VE
22 GOT TO TELL YOU, I APPRECIATE YOU ACCEPTING
23 RESPONSIBILITY, BUT YOU DO UNDERSTAND THAT YOU ARE NOT
24 GOING TO BE REWARDED FOR DOING WRONG.

25 DEFENDANT BRITT: I UNDERSTAND.

1 THE COURT: OKAY. ALRIGHT, SIR.
2 BUT I DO APPRECIATE YOU HELPING LAW ENFORCEMENT ALSO.
3 AND MR. SORENSON, WE DIDN'T HAVE ANY
4 LEADS WITHOUT HIM?

5 SOLICITOR SORENSON: WE DIDN'T EVEN
6 KNOW ACTUALLY THERE WAS ANYBODY ELSE INVOLVED. I ONLY
7 KIND OF HAD THAT FEELING JUST FROM THE GET GO, JUST FROM
8 THE AMOUNT OF ITEMS THAT WERE TAKEN THAT IT SEEMED LIKE
9 THERE HAD TO BE MORE THAN ONE PERSON INVOLVED.

10 THE COURT: AND ALL - - -

11 SOLICITOR SORENSON: AND OTHER THAN
12 THAT THERE WAS NO OTHER, THERE WAS NOBODY ELSE'S BLOOD,
13 NOBODY ELSE'S FINGERPRINTS OR ANYTHING LIKE THAT FOUND
14 AT THE SCENE. SO, - - -

15 THE COURT: AND ALSO, THE ONLY WAY
16 WE'RE GOING TO BE ABLE TO FIND OUT WHO'S FENCING THESE
17 THINGS IS WITH HIS HELP, IS THAT CORRECT, IF THAT TURNS
18 OUT TO BE ACCURATE?

19 SOLICITOR SORENSON: YES, SIR.

20 THE COURT: ANYTHING ELSE FROM THE
21 STATE?

22 SOLICITOR SORENSON: THE ONLY OTHER
23 THING, I GUESS, AS FAR AS HIS PRIOR RECORD AND HIS PRIOR
24 BURGLARIES, THOSE WERE ALL DWELLINGS ALSO. THEY WERE
25 BURGLARY, SECONDS, THE DWELLINGS.

21

1 THE COURT: MR. HUTTO, ANYTHING
2 ELSE?

3 MR. HUTTO: NO, SIR.

4 THE COURT: ALRIGHT, MR. BRITT, I DO
5 APPRECIATE YOU TAKING RESPONSIBILITY AND HELPING OUT,
6 YOU KNOW, BUT YOU KNOW, YOU'VE GOT TO LEARN YOU CAN'T
7 BURGLARIZE. DO YOU UNDERSTAND THAT? I MEAN, YOU CANNOT
8 GO INTO OTHER PEOPLE'S HOUSES. IT DOESN'T BELONG TO YOU,
9 IT'S NOT YOURS TO TAKE. I HOPE THIS INFORMATION WILL
10 HELP THE BLEWERS RECOVER SOME OF THEIR PROPERTY, I HOPE
11 WE CAN, BECAUSE THAT WOULD BE -- I KNOW IT'S IMPORTANT
12 TO THEM. IT'S IMPORTANT TO THE COURT.

13 SENTENCE OF THE COURT:

14 ANYWAY, THE SENTENCE OF THIS COURT
15 IS THAT YOU ARE COMMITTED TO THE STATE DEPARTMENT OF
16 CORRECTIONS FOR A PERIOD OF SIXTEEN YEARS.

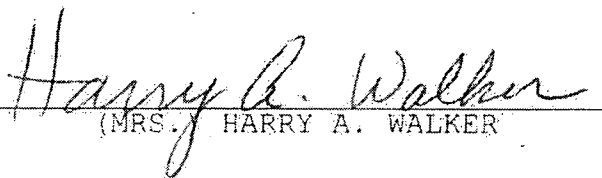
17 ALRIGHT, SIR, GOOD LUCK TO YOU.

CERTIFICATE

I, THE UNDERSIGNED, MRS. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE SIXTH DAY OF AUGUST, 2009, AND THE THIRTEENTH DAY OF AUGUST, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: AUGUST 30, 2010


(MRS.) HARRY A. WALKER

STATE OF SOUTH CAROLINA)

County of Orangeburg)2010-CP-38-1105
IN THE COURT OF COMMON PLEASAnthony Bernard Britt
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

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 Lieber Correctional Inst. P.O. Box 205
Ridgeville S.C. 29472 Orangeburg
2. Name and location of Court which imposed sentence Berkley County
Court of General Sessions
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) 09-65-38-0331- Burglary 1st Degree

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 13, 2009 - 16 years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ☒

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) No issues preserved for appeal do

- (b) to the Counsel's failure to object
 (c) _____

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

- (a) Ineffective Assistance of Counsel
 (b) Due-Process Violation
 (c) Trial Court Lacked Subject Matter Jurisdiction

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

- (a) The Counsel was ineffective by failing to object to enhanced sentence.
 (b) Applicant's 14th Amend. right to due process was violated
 (c) Trial court lacked subject matter jurisdiction.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? _____

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. N/A
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. N/A
 iii. _____

- iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

N/A

- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

N/A

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

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

N/A

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?

NO

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

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____

N/A

- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

N/A

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) Claims are to be brought under PCR
 (b) _____
 (c) _____

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

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

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. ~~Bradley Hutto~~
Bradley Hutto, S.C.
 ii. Bar.
 iii. _____

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

i. Bradley Hutto - arraignment and plea
 ii. Bradley Hutto - Sentencing
 iii. _____

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

Vacate of Sentence and conviction for
New Trial

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Berkeley)

VERIFICATION

I, Anthony Bernard Britt, 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.

Anthony Britt

SWORN to and subscribed before me this 2nd
 day of August, 2010.

Ludwin Bryant (L.S.)
 Notary Public

My Commission Expires: May 26, 2020

FILED
 CLERK OF COURT
 WILKINSON COUNTY
 AUG 3 2010

2010 AUG - 3 P 12:50

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

I, Anthony Bernard Britt, 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.

Anthony Britt
Applicant

SWORN or affirmed to and subscribed before me this
2nd day of August, 2010.

Ludrea B. Bryant
Notary Public

My Commission Expires: May 26, 2020

2010 AUG -3 P 12:50
FILED FOR RECORD
CLERK OF COURT
ORANGE COUNTY, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2010-CP-38-1105
	)	
Anthony Bernard Britt, # 317524,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 3, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. The Applicant was indicted for Burglary – First Degree (2009-GS-38-0331). Brad Hutto, Esquire, represented him. On August 6, 2009, the Applicant pled guilty and sentencing was deferred. On August 13, 2009, he was sentenced by the Honorable Edgar W. Dickson to confinement for a period of sixteen (16) years. Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Orangeburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. "Ineffective assistance of counsel."
 - a. "...failing to object to enhanced sentence."
2. "Due process violation."
 - a. "Applicant's 14th Amend. Right to due process was violated."
3. "Trial court lacked subject matter jurisdiction."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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, 466 U.S. 668. 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 plea 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the

Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The Applicant has claimed that the trial court lacked subject matter jurisdiction. Defects in the indictment do not affect subject matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); See also U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). See also S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. See Gentry, 363 S.C. 93, 610 S.E.2d 494; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994). In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. See S.C. Code §§ 17-27-45, -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), overruled in part by Gentry, 363 S.C. 93, 610 S.E.2d 494. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, 363 S.C. at 101, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. Applicant’s

conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held solely on the issue of ineffective assistance of counsel.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

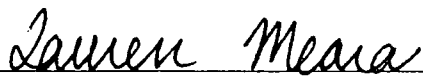
January 7, 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ORANGEBURG	)	
	)	
	)	2010-CP-38-1105
	)	
ANTHONY BERNARD BRITT, 317524	)	
	)	
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:

**Victor Li, Esquire
Law Office of Victor Li
2113 Park St.
Columbia, SC 29201-2139**

DATED this 7th day of January, 2011.


Lauren Meara, Legal Assistant
For Respondent

1 State of South Carolina) In the Court
2 County of Orangeburg) Of Common Pleas
3
4 Docket No. 2010-CP-38-01105
5
6 Anthony Britt,)
7 Applicant,)
8 vs.) Transcript of Record
9)
10 State of South Carolina,)
Defendant.)
11
12
13 October 29, 2013
14 St. George, South Carolina
15
16 B E F O R E:
17 The Honorable Diane S. Goodstein, Judge.
18
19 A P P E A R A N C E S:
20 Victor K. Li, Esquire
Attorney for the Applicant
21 Megan E. Harrigan, Assistant Attorney General
Attorney for the Respondent
22
23
24 Brenda J. Sigwald, Circuit Court Reporter
For the Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

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1 MS. HARRIGAN: May it please the Court?

2 THE COURT: Yes.

3 MS. HARRIGAN: Your Honor, the next matter is
4 Anthony Britt versus the State of South Carolina, Docket
5 No. 2010-CP-38-1105. Applicant was indicted during the
6 March 2009 term of the Orangeburg County Grand Jury for
7 burglary in the first-degree.

8 Applicant was represented by C. Bradley Hutto. On
9 August 6th, 2009, applicant appeared before the Honorable
10 Edgar W. Dickson and pled guilty as indicted.

11 Sentencing was deferred until August 13th, 2009,
12 when Judge Dickson sentenced the applicant to 16 years of
13 imprisonment. No direct appeal was taken. Applicant did,
14 however, file a timely application for post-conviction
15 relief on August 3rd, 2010, alleging ineffective assistance
16 of counsel in failing to object to the enhanced sentence,
17 due process violations, and that the Trial Court lacked
18 subject matter jurisdiction.

19 The State made its return on January 7th, 2011.
20 Applicant thereafter filed a pro se amended application on
21 November 12th, alleging ineffective assistance of counsel
22 for failing to investigate Rule 5 materials; for advising
23 the applicant to plead guilty; ineffective assistance of
24 counsel for failing to protect his Fourth Amendment right
25 against bodily intrusion; and ineffective assistance to

Anthony Britt - Direct Examination by Mr. Li

1 argue the denial of the State's Schmerber Motion. He is
2 represented in this action by Victor Li.

3 **THE COURT:** Okay. Mr. Li?

4 **MR. LI:** Thank you, Your Honor. I believe we'd
5 call Anthony Britt.

6 **THE COURT:** Okay. All right. You are Mr. Anthony
7 Britt?

8 **THE WITNESS:** Yes, ma'am.

9 **THE COURT:** All right. Mr. Britt, before you are
10 seated -- before you are seated:

11 **ANTHONY BRITT,**
12 having been duly sworn, testified as follows:

13 **THE COURT:** Very well, you may please be seated.
14 All right. Anthony is A-n-t-h-o-n-y?

15 **THE WITNESS:** Yes, ma'am.

16 **THE COURT:** And Britt has two T's?

17 **THE WITNESS:** Yes, ma'am.

18 **THE COURT:** All right. Your witness.

19 **MR. LI:** Thank you, Your Honor, may it please the
20 Court?

21 **THE COURT:** Yes.

22 **DIRECT EXAMINATION**

23 **BY MR. LI:**

24 **Q** Mr. Britt, where are you currently located?

25 **A** At Lieber Correctional Institution.

Anthony Britt - Direct Examination by Mr. Li

1 Q Okay. And how long have you been there?

2 A Since 2009.

3 Q Okay. And you are there because -- and you're
4 there because of a guilty plea; correct?

5 A Yes, sir.

6 Q All right. And who represented you on that guilty
7 plea?

8 A Bradley Hutto.

9 Q Okay. And what were you charged with?

10 A I was charged with burglary first-degree.

11 Q Okay. And when you filed this PCR, do you remember
12 what your claims were?

13 A Can you repeat that?

14 Q What were your claims for ineffective assistance of
15 counsel against Mr. Hutto?

16 A Well, my claims was that he never showed me my
17 motion.

18 Q Okay.

19 A I mean, because for the simple fact when I got --
20 when I got to Lieber, that's when I put in my PCR and
21 that's when I contact you and you sent me a motion which I
22 had never seen; and that's when I was aware that Mr. Brad
23 Hutto told me that the DNA that came back from the crime
24 scene came back to a pos -- came back positive to me.

25 But the SLED report that came back from the crime

Anthony Britt - Direct Examination by Mr. Li

1 scene came back to an unidentified male. Which I'm
2 innocent. I was already a convicted felon. So, therefore,
3 I don't understand how it might be me when it had come back
4 unidentified.

5 Q I understand. And then -- and really out -- out of
6 your whole PCR application, that's your main issue?

7 A Yeah.

8 Q And before you go on, I'm sorry, take us through --
9 you said you never got to see the motion? Your motion of
10 discovery?

11 A No, sir.

12 Q Okay. Take us through step by step your
13 interactions with Mr. Hutto from beginning to end as best
14 you can.

15 A All right. The first time I met Bradley Hutto, I
16 was in the County and he scheduled me for a bond hearing.
17 I mean, because I was being represented by Ms. Jillian
18 Ullman.

19 Q Okay.

20 A So that's when he got me the bond. When I got out,
21 I came to him and asked him how much does he charge. This
22 happened in like June. He tell me how much he charge and
23 whatever, so I put down a payment. So he told me that -- I
24 had a roll call hearing coming up, so he told me that he
25 wasn't going to make it because he had something that he

Anthony Britt - Direct Examination by Mr. Li

1 had to take care of, but he was going to have somebody step
2 in for him.

3 Well, when I went to roll call hearing, nobody was
4 there and I was still being represented by my public
5 defender.

6 Q Which is who?

7 A Jillian Ullman.

8 Q Okay.

9 A So the officer took me in the hallway and took my
10 DNA from me because I had a Schmerber Hearing earlier that
11 year in February.

12 Q You had an earlier Schmerber Hearing --

13 A In February.

14 Q When you were represented by the public defender.

15 A Yeah, I was represented by the public defender.

16 Q All right. Keep going at this hearing.

17 A All right. After that, it was just me and the
18 officer. He took my DNA and tell me I can go.

19 All right. Bradley Hutto informed me what -- that
20 the DNA came back positive. But the result that he's
21 telling me that it came back positive, there was no result
22 from that test in my motion, period.

23 Q Okay. And so I really want to take you back to the
24 Schmerber, this impromptu DNA taken at your roll call. No
25 attorney was present with you?

Anthony Britt - Direct Examination by Mr. Li

1 A No attorney was present, it was just me and the
2 officer.

3 Q Okay. And this officer, she was not -- as far as
4 you're concerned --

5 A It was a he.

6 Q It was a he. This officer as far as you're
7 concerned was he or she -- did he appear to be trained?

8 A In the hallway of a courtroom? Not like in here.
9 Like in a staircase. He took it in the staircase, to the
10 hall -- in the hallway. He took my DNA and tell me I can
11 go. It wasn't even a third party that even witness to see
12 that he did it correctly.

13 My lawyer wasn't even present and I told him that.
14 I said, man, my lawyer -- he said, Oh, he is not on file to
15 represent you. And I was like, How, it's a detainer (sic)
16 for him. I paid him.

17 Q Uh-huh.

18 A And they still made me give my DNA anyway.

19 Q And at that point, you didn't have -- you didn't
20 have counsel there to advise you?

21 A No, I didn't. No.

22 Q Okay. Now, after that, how many times did you meet
23 with Mr. Hutto? And tell me and kind of describe your
24 interactions with Mr. Hutto after that appearance date?

25 A All right. After that appearance date, I told them

Anthony Britt - Direct Examination by Mr. Li

1 about what happened.

2 Q Uh-huh.

3 A So he contact me, telling me that the DNA came back
4 positive and I don't think we should go to trial because if
5 we go to trial, you know that your charge carries up to a
6 life sentence or whatever. And I mean, from there forward,
7 I was like -- well, I talked to my family member and they
8 was like -- I was like, No, I want to go to trial and
9 they -- but my grandma, she was like, No, I don't want to
10 see you with a life sentence at the age of 19 --

11 Q Uh-huh.

12 A -- or 20. You know what I mean? So I was like,
13 okay. Okay. Like that.

14 So that's when Brad Hutto, we came up with the
15 agreement where he set up for a plea agreement or whatever
16 like that. But that was before the time, that I don't know
17 anything about the DNA because I'm going on his word. I
18 don't know anything about the DNA. He's telling me that
19 the DNA came back positive, but how could you say that when
20 you never seen the results from it.

21 He couldn't have thought -- he couldn't have took
22 the results from the prior one that they took at the crime
23 scene because that result never even had a chain of custody
24 attached to it. And it came back to an unidentified male.

25 Q Uh-huh.

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1 A You know what I mean? So the second test that
2 convicted me, there's no -- everything that I got in my
3 motion, you sent it to me. And Brad Hutto sent it to you.
4 So there should have been some type of results from that
5 DNA test. That second one. That was the second test that
6 convicted me.

7 Q And on that note --

8 MR. LI: Your Honor, if I could have this marked as
9 Exhibit A.

10 THE COURT: Show it to the other...

11 MS. HARRIGAN: May I have a brief moment, Your
12 Honor? This is the first time I've seen this document.

13 (WHEREUPON the Respondent's attorney was looking at
14 the document.)

15 MR. LI: I'm sorry, I thought this was included.

16 (WHEREUPON the attorneys were conferring.)

17 MR. LI: I would like to have this marked, Your
18 Honor.

19 (WHEREUPON Applicant's Exhibit No. 1 was marked for
20 evidence.)

21 MR. LI: Your Honor, if I may approach the witness?

22 THE COURT: You may. Absolutely may.

23 BY MR. LI:

24 Q Mr. Britt?

25 A Yes, sir.

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1 Q Does this document look familiar to you?

2 A Yes, sir.

3 Q If you could tell the Court what it is.

4 A All right. The form that is right here for the
5 record, it's the DNA SLED report. This form right here, it
6 came back from the SLED -- from the DNA that they took from
7 the crime scene. All right. The DNA that they took from
8 the crime scene --

9 THE COURT: Hold on one second. It's marked as
10 Applicant's --

11 THE COURT REPORTER: One.

12 THE COURT: One for identification purposes.

13 Any objection to it being admitted into evidence?

14 MS. HARRIGAN: I'd like to hear a little more
15 foundation of how he has seen this. I've never seen this
16 before and it doesn't have his name on it.

17 MR. LI: I'm sorry.

18 BY MR. LI:

19 Q When was the first time you saw this document?

20 A The first time I seen the document was when you
21 sent me my motion.

22 Q And this was -- and your alleged incident happened
23 on December 10th, 2007?

24 A Yes, in -- the incident happened December 10th,
25 2007. That report right there came back March 11, 2008.

Anthony Britt - Direct Examination by Mr. Li

1 Q And this -- you saw this the first time I sent
2 you --

3 A The first time you sent me that, I look at it and I
4 was like, Wow --

5 Q Wait just a -- when I say your packet of discovery,
6 this was a document that was included in that packet of
7 discovery, right?

8 A Yes, sir.

9 Q You've seen it before?

10 A Yes, sir. And that's the same copy that you got
11 from Brad Hutto.

12 Q Okay.

13 MR. LI: Your Honor, I'd move this into evidence.

14 MS. HARRIGAN: No objection, Your Honor.

15 THE COURT: All right. Very well. It's in
16 evidence as Applicant's 1.

17 (WHEREUPON Applicant's Exhibit No. 1 was entered
18 into evidence.)

19 BY MR. LI:

20 Q And in that DNA report of March 11, 2008, the
21 results came back -- what are the results of that?

22 A The results from the DNA test came back to an
23 unidentified male. But I was a convicted felon. I'm
24 already in the system.

25 Q So your DNA -- you're saying that your DNA is in

Anthony Britt - Direct Examination by Mr. Li

1 the system already?

2 A My DNA is in the system.

3 Q All right. And did -- did you ever sit down with
4 Mr. Hutto to discuss any of the evidence of the DNA?

5 A Well, when I sit down with him, he tell me only
6 thing they had was circumstantial evidence. You know what
7 I mean? He never tell me nothing about this DNA because we
8 were still waiting on the second result to come back. I
9 mean, so he never told me nothing about this DNA.

10 Now, I mean, so had he tell me something about this
11 DNA there's no way that I would have took a plea.

12 Q Right. So -- we want to get to that part. How
13 many times did you sit down with Mr. Hutto?

14 A No more than about two.

15 Q Two. And you paid him when?

16 A I paid him in June before I had my roll call
17 hearing.

18 Q Okay. Of two thousand --

19 A 2009.

20 Q 2009. And you pled guilty --

21 A In August of 2009 --

22 Q 2009.

23 A -- two months later.

24 Q Okay. And in those two months, in that span of
25 time, did you sit down in his office to discuss the

Anthony Britt - Direct Examination by Mr. Li

1 evidence that he had? You call it a motion, but let's call
2 it discovery.

3 A All right.

4 Q Did you ever sit down and flip through the pages
5 and touch the pages --

6 A Never, never.

7 Q Okay. Did he sit down and tell you this is the
8 DNA, this is a letter that they have?

9 A Never.

10 Q Okay. Well, you said -- did he write you a letter?
11 He wrote you a letter, right?

12 A Yeah, he -- that's how he informed me.

13 Q Okay.

14 A He wrote a letter saying that the DNA came back to
15 me, positive and that if I was to go to trial, that I would
16 get a life sentence and he didn't see no way that we could
17 go to trial and win it.

18 Q Got you. And did he ever show you the -- did he
19 ever show you a DNA report from April that said it did
20 match you?

21 A He never showed me that.

22 Q Okay.

23 A But the DNA test that came from April, it's the
24 same test as this one -- as the March 11 test. It's the
25 same exact test because they didn't take the second sample

Anthony Britt - Direct Examination by Mr. Li

1 until June.

2 Q When you're at your appearance and they took
3 your --

4 A Yes, this -- the March 11 sample and the April
5 sample is the same sample. It's the same test. But one of
6 them come unidentified and the next one came back positive.

7 Q And you felt that could be used at trial to lead
8 some -- to shed some doubt onto the validity of the --

9 A Yeah, because the motion -- that's when the motion
10 came for the second test. The motion hearing.

11 Q Uh-huh?

12 A So, I mean when I went for the motion hearing,
13 Jillian Ullman been my lawyer.

14 Q The public defender?

15 A The public defender. So I'm asking her why can't
16 you object to this and she was -- she was like, even if I
17 do they're still going to grant it. I have the order form
18 here.

19 Q I'm sorry, say that one more time.

20 A She was like, even if I do object to it, nine times
21 out of ten, they're still going to grant it.

22 Q Object to what?

23 A The order for the Schmerber Hearing.

24 Q Right. That's correct, that's right.

25 A All right. So when I asked her this, that's what

Anthony Britt - Direct Examination by Mr. Li

1 she telling me. But the judge told me that the DNA that
2 they took at -- from the crime scene couldn't have been
3 used against me because the chain of custody be broke. So
4 then, no telling what the officer that took the DNA from
5 the crime scene did with this evidence because there's no
6 proof that he was sent it to SLED.

7 Q You're talking about the original sample from the
8 cross-claim scene?

9 A Yeah, the original sample.

10 Q And did you and Mr. Hutto ever sit down and talk
11 and discuss this?

12 A I never knew nothing about it. The original
13 sample, until you sent me my report. And I never seen the
14 second sample. He just telling me, I'm going off the word
15 of them that this DNA came back positive. But I never even
16 seen the results from the test.

17 Q Uh-huh.

18 A And when I get my motion from you and you informed
19 me that everything I got I got from Mr. Hutto and I was
20 like, well, why is it a second sample in my motion?

21 Q Right. And that's why you filed an amended --

22 A Correct.

23 Q -- allegations in you're PCR?

24 A Correct. And another reason why I filed an
25 amendment for the second PCR because from the order, the

Anthony Britt - Direct Examination by Mr. Li

1 officer never has affidavit of search warrant to take my
2 DNA.

3 Q Tat courthouse?

4 A At the courthouse. He never had a motion to get
5 that -- to bring to the Court an order for them to
6 recommend for them to get my DNA. If never one was
7 attached to my order, the order form, the judge to sign off
8 of it.

9 Q Uh-huh.

10 A To get my DNA. The affidavit of search warrant
11 wasn't recommended. And the case law that they used it was
12 for a -- discretion case. That's dealing with alcohol.
13 This case -- my case have nothing to do with alcohol. Have
14 nothing to do with drunk driving.

15 Q I understand. So you met with Mr. Hutto roughly
16 two times then the third time was -- when was the third
17 time you met him?

18 A The third time I met him I was going to take a
19 plea.

20 Q Take a plea. How did you feel on the day of the
21 plea?

22 A I really didn't want to take the plea, but then he
23 was like, it will be in your best judgment if you give a
24 statement -- stuff like that. And I was like, no, I ain't
25 really want do is that because I don't really want to take

Anthony Britt - Direct Examination by Mr. Li

1 this plea, but I'm going by your judgment because you're
2 telling me that this DNA came bang positive. That's all
3 they had on me. That's all they had on me was this DNA
4 evidence.

5 Q And you felt like if you saw -- if you had seen the
6 discovery and especially if you had seen the March 11
7 report, that you would not have taken the plea?

8 A No, sir. I would not have taken the plea even if I
9 seen that this DNA came back unidentified, which I'm
10 already in the system. There's no way I would have took a
11 plea.

12 Q And you're in the system because of a prior
13 conviction?

14 A Yeah. I'm in the system for the prior conviction.

15 Q And when you're in the DOC, they take your
16 fingerprints --

17 A Yeah, because I was even on parole. When I know
18 this incident happened --

19 Q Uh-huh.

20 A -- I was on parole. And it never even popped up in
21 the computer as to me have a charge on me.

22 Q Right. Now, so at the plea, you felt that you were
23 doing it -- even though you didn't want to take it, you
24 took the plea based on the advice of Mr. Hutto --

25 A Yes, sir.

Anthony Britt - Direct Examination by Mr. Li

1 Q -- and on the information that you had at that
2 point?

3 A Yes, sir.

4 Q Okay.

5 A The information that he gave me that this DNA came
6 back to me.

7 Q All right. And this was just two months after?

8 A Two months after --

9 Q You paid him the money.

10 A -- after I had paid him the money.

11 Q Okay. Now, another thing I want to discuss is at
12 the plea, the judge asked you a series of questions, right?

13 A Yes, sir, he did.

14 Q And you didn't -- you didn't say anything at that
15 point. You didn't tell him -- you didn't say I'm not
16 guilty. You didn't say any of that stuff -- why is that?

17 A Because I went on the -- what my attorney telling
18 me. Because I felt that he had my best interest at heart.
19 So he's telling me -- is that you can't -- you can't win
20 the trial because your DNA came back positive.

21 Q Uh-huh.

22 A Well, had I known that this DNA didn't come back to
23 me and it came back to an unidentified male, yeah, I would
24 have insisted ongoing to trial. So I took a plea based on
25 what he's telling me.

Anthony Britt - Direct Examination by Mr. Li

1 Q And how did you feel when the judge asked you, is
2 anybody forcing you to plead guilty? Because I'm sure
3 Judge Dickson went over the colloquy (sic) of stuff at
4 that point.

5 A Yeah. I wanted to say -- I wanted to tell him, but
6 like I said, I was young at the time and I didn't know no
7 better. So I'm going on basically what my lawyer telling
8 me. And my lawyer is Brad Hutto. I mean that's
9 self-explanatory. That's self-explanatory.

10 Q He's a good lawyer?

11 A Yeah, he's a very good -- I mean from --

12 Q His reputation is --

13 A His reputation the immaculate.

14 Q It's immaculate.

15 A So basically I'm going by what he's telling me.

16 Q Right. But even though his reputation is
17 immaculate, your decision -- it would have factored in your
18 decision had you seen all the --

19 A That's right.

20 MS. HARRIGAN: Your Honor, I would object. These
21 are leading questions that are bordering on testifying.

22 THE COURT: All right. Don't lead.

23 MR. LI: I'm sorry.

24 BY MR. LI:

25 Q Would it have affected your decision as to whether

Anthony Britt - Direct Examination by Mr. Li

1 or not to plea?

2 A Yes, it would have. If he would have told me, I
3 would have insisted ongoing to trial.

4 Q Okay. And the last issue I want to bring up is,
5 there was some sort of deal or some sort of preferred
6 testimony that was given -- I think immediately before the
7 plea that you spoke with the officer?

8 A Yeah, because he informed --

9 MS. HARRIGAN: Your Honor, he's testifying. If he
10 could please ask questions.

11 MR. LI: I'm sorry.

12 BY MR. LI:

13 Q Did you speak with an officer prior to -- did you
14 speak with law enforcement prior to --

15 A Yeah, the only reason I did it was because of Brad
16 Hutto because he was -- he said it would look good -- if
17 you taking the plea, it would look good on your behalf.
18 But had I know any of this information that I know, I
19 wouldn't have done none of that. I wouldn't have even took
20 the plea. I would insist ongoing to trial. So therefore,
21 this never would have come. And he tell me to go with the
22 officer to do the -- he never was with me when they asked
23 me for my statement. He never was with me.

24 Q So you were -- were you alone?

25 A I was by myself.

Anthony Britt - Direct Examination by Mr. Li

1 Q Okay.

2 A And he tell me to contact him after I finished.

3 Q Okay. And how did you feel when you were talking
4 to the officer?

5 A The officer had to take my statement like three or
6 four times.

7 Q Why was that?

8 A I was nervous. I was like, I mean, what do you
9 really want me to do.

10 Q Uh-huh.

11 A I mean what do you want me to do. And then after I
12 did it, I get to the courthouse to take my plea. He's
13 still saying, well I don't think he's telling the truth. I
14 don't think there's enough. I mean, I'm doing this because
15 my lawyer -- this is what he advised me to do.

16 Q So were you telling the truth to the officer?

17 A Was I telling the truth?

18 Q Were you telling the truth?

19 A No, the only reason I did it was because my lawyer
20 informed me to do it. He said it would look good on me,
21 being that you taking a plea, the judge will take leniency
22 on you if you cooperate.

23 Q Is there anything else that you would like the say
24 about Mr. Hutto and how he was ineffective? This is your
25 opportunity.

Anthony Britt - Direct Examination by Mr. Li

1 A Yeah, I would just like the say, had Brad Hutto
2 informed me of everything that was against me, favorable
3 and infavorable, I would have insist on going to trial.
4 Had he investigated my case, then he would have seen that
5 this DNA came back unidentified. That already would have
6 throwed up a red flag because my record is in -- he would
7 have known he was an about convicted felon. I mean had he
8 did this, I wouldn't have never had -- insisted on taking a
9 plea. I would have recommended take a trial. But by him
10 telling me that this DNA came back positive, I took his
11 word for it because that's what I paid him to do. I'm not
12 a lawyer, so I don't know nothing about the law. So I
13 hired him to do that.

14 And what he telling me to plea on, obviously, he
15 never seen it because the first sample is didn't convict
16 me, the second sample did. But I never seen is results
17 from the second sample and if I don't have the result, how
18 can he say he seen the result. Everything I got, it came
19 from him.

20 Q All right.

21 MR. LI: No further questions.

22 THE COURT: Cross-examination.

23 MS. HARRIGAN: Yes, Your Honor.

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Anthony Britt - Cross-Examination by Ms. Harrigan

CROSS-EXAMINATION

1
2 BY MS. HARRIGAN:

3 Q Mr. Britt, when you testified on cross that you
4 only met -- or on direct examination, you only met with
5 Mr. Hutto twice, correct?

6 A Yes, ma'am.

7 Q Did that include any meetings at the courthouse
8 when you had any hearings or for your guilty plea?

9 A I met him once tat courthouse and that was the plea
10 arrangement.

11 Q So three times total you met with him in person?

12 A Yeah, one at the courthouse and -- first time I
13 seen him was to get him as my lawyer and then I seen him
14 one time after that and the next time I seen him I was
15 taking the plea.

16 Q And I believe you testified you never went over any
17 of your discovery with him?

18 A I never went over any of my discovery with him.

19 Q Did you discuss what was contained in the discovery
20 with him?

21 A He asked me -- I asked him -- he was like, man the
22 only thing they have on you is circumstantial evidence
23 because they had no witnesses, no statements, no none of
24 that. But he's saying that my DNA. But at the time we was
25 waiting on the results to come back. So they're telling me

Anthony Britt - Cross-Examination by Ms. Harrigan

1 that they have my DNA, that's not circumstantial evidence.

2 Q Did you discuss possible defenses with Mr. Hutto?

3 A He tells me that there's no way that we can go to
4 trial and beat it being that my DNA came back positive. He
5 said that he had even a couple of -- that look into it and
6 there's no way we could have went to trial and win.

7 Q Did you give him any leads or potential witnesses,
8 such as alibi witnesses for him to investigate?

9 A He never asked.

10 Q But you never gave him any?

11 A No, ma'am.

12 Q Did you discuss plea offers with Mr. Hutto?

13 A The reason why -- as the plea offer because he's
14 telling me that -- about this DNA, and I was like, well, I
15 mean if that's the case, if I can't win no trial, then get
16 me the less plea as possible. If you don't -- I'm going by
17 your judgment. You telling me I can't go to trial and win,
18 so give me the best guess possible.

19 Q You wanted as little time as possible?

20 A Yes, ma'am.

21 Q Was it your decision on the day of your plea to
22 plead guilty?

23 A It was his decision. I'm going by what he's
24 telling me. If you -- if my lawyer telling me that there's
25 no way that we can go to trial and the type of lawyer that

Anthony Britt - Cross-Examination by Ms. Harrigan

1 I have, I'm going to listen to him.

2 Q Do you recall telling the plea court while you were
3 under -- were you under oath during your guilty plea?

4 A Yes, ma'am.

5 Q Do you recall telling the plea court that you did
6 wish to enter a guilty plea?

7 A Yes, because I was on advisement of Mr. Brad Hutto.
8 He advised me to take the plea.

9 Q Do you recall telling the Court that you were
10 guilty?

11 A Yeah, because he advised me that the DNA came back
12 positive, 100 percent to me. But he never seen the
13 results, so -- because DNA is concrete evidence.

14 Q And you were under oath when you told the Court you
15 were guilty?

16 A Yes, ma'am, because that was before I knew anything
17 about my DNA coming back unidentified or before I never
18 seen the results from it.

19 Q So you were guilty?

20 A No, ma'am, I was not.

21 Q You lied under oath during your guilty plea?

22 A I didn't lie. I went on the -- I'm going by what
23 my attorney tell me. Had he showed me these papers right
24 here -- had he showed me these or had he showed me to tell
25 me that the DNA came back unidentified, no I would have

Anthony Britt - Cross-Examination by Ms. Harrigan

1 never took no plea.

2 Q But you do acknowledge that you told the Plea Court
3 while you were under oath that you were guilty, correct.

4 A I told him that on the -- on what my lawyer tell
5 me. My lawyer telling me that my DNA came back positive.
6 We can't win no trial, take the guilty plea.

7 Q But you're saying today you're not guilty, correct?

8 A Yes, ma'am.

9 Q So you were lying during your guilty plea to the
10 Court, under oath?

11 A Well, if that's what you call it, then, yeah, I'm
12 just going by what my lawyer tell me.

13 Q Do you recall agreeing with the facts that were
14 presented by the assistant solicitor during your guilty
15 plea?

16 A I never knew the facts. He just wrote -- basically
17 he read me what my warrant said.

18 Q Do you recall waiving your constitutional rights
19 during your guilty plea?

20 A Yes, ma'am, because I took a guilty plea and that
21 waived the constitutional rights. But had I know anything
22 about this DNA coming back unidentified or him never seeing
23 the second results from the test, yeah I would have
24 insisted on going to trial, wouldn't have been a guilty
25 plea.

Anthony Britt - Cross-Examination by Ms. Harrigan

1 Q Do you recall telling the Plea Court, Judge Dickson
2 that you were satisfied with Mr. Hutto's representation?

3 A Yes, ma'am, I did because I felt like he did the
4 best thing he could do, but when I got my motion a couple
5 of months later and I looked into it, and I was like, man,
6 why is the DNA coming back unidentified and how could he
7 take me -- how could he take me up to take a plea knowing
8 this.

9 Q Did Mr. Hutto review possible sentences for
10 burglary in the first-degree with you?

11 A Mr. Hutto explained to me when my DNA came back
12 positive, he said, man, if you go to trial and you lose on
13 that charge that I'm -- the charge that I was facing
14 carried 15 to life.

15 Q So he explained to you that burglary in the
16 first-degree carries a sentence of 15 years to mandatory
17 maximum of life?

18 A Yes, ma'am. He explained that -- when he told me
19 that the DNA came back positive. He tell me that, you go
20 to trial and you lose, that you'll probably be facing 15 to
21 life.

22 Q Did he explain to you that when you entered the
23 Court to plead guilty on August 6, 2009, it was without any
24 negotiations or recommendations from the State as to what
25 your sentence would be?

Anthony Britt - Cross-Examination by Ms. Harrigan

1 A No, ma'am.

2 Q He didn't tell you that your plea was straight up,
3 there was no defined sentence you'd receive?

4 A He tell me he was going the recommend for 15. I
5 never knew that I was going in front of a judge on an open
6 plea for a burglary first.

7 Q One of your allegations is that he didn't object to
8 sentencing enhancement, correct?

9 A No, I had amended that PCR. I had amended that
10 one.

11 Q This home invasion occurred at night, correct?

12 A No, it did not.

13 Q Around -- I think the State said around 8:30 p.m.
14 in December, correct?

15 A No, it did not.

16 Q You have a prior --

17 A On my warrant -- on my warrant it simply explains
18 that it happened at twelve during the day, but that's when
19 the victim came home and realized that the house was
20 burglarized.

21 Q So you wouldn't refute -- in the record it says
22 that the victims came home around 8:30 in December, which
23 is nighttime?

24 MR. LI: I object, Your Honor.

25 THE COURT: Why do you object?

Anthony Britt - Cross-Examination by Ms. Harrigan

1 **MR. LI:** My client is claiming he's innocent of
2 these charges and I'd ask that he not incriminate himself.

3 **MS. HARRIGAN:** He pled guilty under oath, Your
4 Honor, and he admitted a few moments ago that he lied under
5 oath to the Plea Court. He's under oath now. I'm asking a
6 question. If the transcript reflects, which it does, that
7 the incident occurred around 8:30 p.m. in December, which
8 is nighttime --

9 **THE WITNESS:** Well, I could show you my warrant --

10 **THE COURT:** No. Hold on. I've got to rule.

11 All right. And your objection to that is the Fifth
12 Amendment?

13 **MR. LI:** Yes, ma'am.

14 **THE COURT:** Okay. She's asking him for purposes of
15 whether he's telling the truth or not telling the truth on
16 the basis of the transcript. I'll allow it. You may
17 proceed.

18 **THE WITNESS:** But my warrant -- I have my warrant
19 right here. My warrant states something totally different
20 from eight o'clock; and the incident report that the
21 officers wrote on that states clearly that it happened
22 around noontime.

23 **BY MS. HARRIGAN:**

24 **Q** You have a prior record, correct?

25 **A** Yes, ma'am.

Anthony Britt - Cross-Examination by Ms. Harrigan

1 Q Including three prior burglary in the second degree
2 convictions, correct?

3 A Yes, ma'am.

4 Q So this was your fourth burglary conviction,
5 correct?

6 A No, ma'am. I would --

7 Q You have three prior, correct? Before this. This
8 is your fourth conviction for burglary?

9 A No, ma'am. I only been convicted one time for
10 burglary. That's my first -- when I caught my first
11 sentence was a ten-year nonviolent. So this, this charge
12 right here is my second conviction.

13 MS. HARRIGAN: Court's indulgence, Your Honor.

14 THE COURT: All right.

15 (WHEREUPON the attorneys were conferring.)

16 MS. HARRIGAN: May I approach, Your Honor?

17 THE COURT: I've got the transcript at page 15. It
18 says that Mr. Britt's prior record, Your Honor, he did
19 ultimately plead guilty to unlawful carrying of a pistol,
20 stemming out of that incident -- it looks like in August of
21 last year. Additionally, Your Honor, from Richland County
22 also, he has three counts of burglary in the second degree
23 convictions and two counts of larceny that went with those
24 burglaries.

25 MS. HARRIGAN: Yes, Your Honor, and that's the

Anthony Britt - Cross-Examination by Ms. Harrigan

1 portion that I was going the request him to read. Thank
2 you, Your Honor.

3 THE COURT: All right. The transcript says that at
4 page 15.

5 BY MS. HARRIGAN:

6 Q When you were arrested, you had one of the stolen
7 weapons on you, correct?

8 A Yes, ma'am.

9 Q And that actually had an engraving of the victim's
10 name on the handle, correct?

11 A And I got charged for receiving stolen goods for
12 that.

13 Q Yes or no. Was that a yes, you did have that
14 weapon --

15 A Yes, ma'am.

16 Q -- with the engraving?

17 A Yes, ma'am.

18 Q Okay. And you pled guilty to one count of unlawful
19 caring of a pistol for that, correct?

20 A Yes, ma'am. But that doesn't prove that I broke in
21 somebody's house and stole that gun.

22 Q And I believe your testimony on direct examination
23 that you had to give three or four different statements to
24 law enforcement because you were nervous, correct?

25 A Yes, ma'am.

Anthony Britt - Cross-Examination by Ms. Harrigan

1 Q And you testified that you were lying when you gave
2 those statements to law enforcement, correct?

3 A I testified that I went on what my attorney telling
4 me to do.

5 Q And lied in those statements, correct?

6 A He tell me to give a statement and that it would
7 look good when I go to court.

8 Q But you're saying now, today, under oath that those
9 statements were incorrect?

10 A Yes, ma'am.

11 Q Right?

12 A Yes.

13 Q So you lied in those statements?

14 A I did what my attorney tell me to do. If my
15 attorney tell me to plea under false information, I'm going
16 by what he telling me to do.

17 Q So your testimony today is that Senator Hutto asked
18 you to -- advised you to lie under oath during your guilty
19 plea and lie when you talked to law enforcement and gave
20 statements?

21 A Brad Hutto, he advised me to plea under some
22 information that he never had. Or excuse me. Under some
23 evidence --

24 Q In addition to the weapon that was found on you,
25 your fingerprints were found on the victim's jewelry box,

Anthony Britt - Cross-Examination by Ms. Harrigan

1 correct?

2 A I never had that in my motion.

3 Q Do you recall the State -- the assistant prosecutor
4 or assistant solicitor discussing that with the Court --
5 telling the Court during your guilty plea that your
6 fingerprints were found near the jewelry box where items
7 were stolen?

8 A He said that, but it's no proof of it. That's not
9 in my motion.

10 MS. HARRIGAN: Court's indulgence.

11 THE COURT: Okay.

12 BY MS. HARRIGAN:

13 Q Do you recall the State telling the Plea Court
14 during your guilty plea that your DNA matched a sample from
15 the State DNA data case during your guilty plea?

16 A Yes, ma'am. They said that, but the State -- then
17 they came back from the crime scene unidentified, so how
18 could that match to me?

19 Q And then the State moved for another DNA sample or
20 a buccal or a cheek swab from you, correct?

21 A Yes, and that's the one that Mr. Hutto wasn't
22 present for.

23 Q And you were represented by Public Defender Jillian
24 Ullman at that time, correct? Not Mr. Hutto?

25 A No, around the time that they took the DNA from me,

Anthony Britt - Cross-Examination by Ms. Harrigan

1 Brad Hutto was my attorney because they took it in June.

2 The Schmerber Hearing was in February. They never took it
3 then.

4 Q But during the Schmerber Hearing, you were
5 represented -- in February, you were represented by
6 Ms. Jillian Ullman of the public defender's office,
7 correct?

8 A Yes, ma'am. And in my -- there's my claim -- I
9 asked that Ms. Jillian Ullman be here so -- for ineffective
10 assistance of counsel also, because she was my initial
11 counsel. She was there for the motion hearing. He wasn't.

12 MS. HARRIGAN: Court's indulgence.

13 THE COURT: Okay.

14 BY MS. HARRIGAN:

15 Q So to the best of your recollection, you don't
16 recall that your fingerprints were found on the jewelry box
17 in the house?

18 A The motion never stated that.

19 Q Did Mr. Hutto ever tell you that?

20 A No, he didn't.

21 Q Do you recall the State saying that during your
22 guilty plea?

23 A The State said that, but the motion -- there's no
24 proof of it.

25 Q And again, when you were arrested in Richland

Anthony Britt - Cross-Examination by Ms. Harrigan

1 County, you had that stolen gun from the victim's house
2 that had the victim's name engraved on the handle, correct?

3 A Yes, ma'am. I had got caught with the weapon, but
4 that doesn't prove that I broke in anybody house and stole
5 the weapon.

6 Q And you've admitted that you lied when you said you
7 were guilty during your guilty plea, correct?

8 A Repeat that ma'am?

9 Q You lied during your guilty plea, correct? You're
10 telling the truth today, you say, and you're not guilty?

11 A Because I have the proof to back up what I'm
12 saying. At first, I'm just going by what my lawyer telling
13 me.

14 Q And you lied in your statements to law enforcement,
15 correct?

16 A I went by what my lawyer told me to tell them. He
17 tell me --

18 Q And you weren't --

19 A -- he wasn't present. Excuse me, ma'am. But he
20 wasn't present.

21 Q And you were untruthful during those statements to
22 law enforcement. You implicated yourself and now you're
23 saying that you're innocent today?

24 A I went by telling them what my lawyer telling me.
25 He telling me to give me a statement and that would look

Anthony Britt - Cross-Examination by Ms. Harrigan

1 good on me if I was to go -- when I go to plea. The judge
2 would take leniency on me.

3 Q And what sentence did you receive?

4 A I received 16 year.

5 Q And you testified that Mr. Hutto did explain to you
6 that for burglary in the first-degree, the sentence range
7 is 15 years to life imprisonment, correct?

8 A When he tell me -- when he wrote me the letter
9 stating that my DNA came back positive, he informed me that
10 a burglary first degree charge carry up to 15 to life
11 sentence. Well, he said, you take a plea, I'll try to get
12 you the less possible time for that, which is 15.

13 Q Did Mr. Hutto explain to you that two separate DNA
14 tests were done -- a DNA test based on the blood found in
15 the victim's home that was run through the SLED data
16 base -- did he explain that to you?

17 A I never knew nothing about this here.

18 Q And did he explain to you that a separate DNA test
19 was done based on your cheek swab?

20 A The DNA test that came back from the crime scene, I
21 never was informed of that DNA until my attorney Victor Li
22 sent me my motion. I was never informed of that.

23 Q Were you aware that your DNA taken from your cheek
24 swab after your Schmerber Hearing when the Court allowed
25 the State to take that swab, that that matched the DNA from

Anthony Britt - Cross-Examination by Ms. Harrigan

1 the blood found in the victim's home?

2 A That's what Mr. Bad Hutto told me, but he never
3 seen the results from that test, so how could he say that
4 it came back positive or even know that the officer who
5 took it was -- could have did it.

6 Q So you aren't aware that two separate samples were
7 used, two separate DNA tests were done. You didn't know
8 that?

9 A One sample came back from the crime scene. That's
10 what they -- they collected from the crime scene. But that
11 DNA didn't have a chain of custody attached to it. It came
12 back to an unidentified male. I did not know nothing about
13 this DNA. Brad Hutto never told me nothing about with DNA
14 until the second -- I already knew from the Schmerber
15 Hearing that they had to get a second sample to compare it
16 because by law they have to. SLED recommended that. In my
17 order SLED recommended it.

18 Q And there was a DNA match from that second test --

19 A That's what Brad Hutto told you.

20 Q -- it --

21 A But he never seen -- if I don't have the results in
22 my motion and everything I got, my lawyer right there gave
23 it to me and Brad Hutto gave it to them, so there should
24 have been the DNA test results in my motion to prove what
25 he's telling me. But there wasn't none. And for the

Anthony Britt - Cross-Examination by Ms. Harrigan

1 simple fact that he wasn't present when this officer took
2 my DNA in the courtroom. Who say that the officer even did
3 it correct. Whose to say that he was even qualified to
4 take the DNA.

5 **MS. HARRIGAN:** Your Honor, if I may have a brief
6 moment to speak with Mr. Li. I believe he has the full
7 packet of discovery, which the State does not have.

8 **THE COURT:** Yeah.

9 **MR. LI:** Sure.

10 (WHEREUPON the attorneys were conferring.)

11 **THE WITNESS:** And may I inform, that letter is
12 from --

13 **THE COURT:** Wait. Hold on just a second.

14 **THE WITNESS:** I'm sorry.

15 **THE COURT:** That's okay.

16 **MS. HARRIGAN:** I'd like this marked as Respondent
17 or State's 1.

18 (WHEREUPON Respondent's Exhibit No. 1 was marked
19 for evidence.)

20 **MS. HARRIGAN:** I believe it's without objection.

21 **MR. LI:** No objection, Your Honor.

22 (WHEREUPON Respondent's Exhibit No. 1 was entered
23 into evidence.)

24 **MS. HARRIGAN:** Your Honor, may I approach?

25 **THE COURT:** You may.

Anthony Britt - Cross-Examination by Ms. Harrigan

1 **BY MS. HARRIGAN:**

2 Q Mr. Britt, I'm going to now hand you what's been
3 marked and introduced as State's marked and introduced as
4 States 1. Have you seen this before?

5 A Yes, ma'am, but that is from the first sample.
6 That is -- the date is April 17, 2008. They never took the
7 second sample from me until 2009, so that's not the DNA
8 that you're looking for.

9 Q If you'll please read for the Court, this second
10 sentence right here starting with this profile matches.

11 A I understand that the profile says that it came
12 back to Anthony Britt. But that DNA right there couldn't
13 have been used against me if I would go the trial because
14 the chain of custody been broke.

15 Q Could you please just read that second sentence
16 right there.

17 A The profile matches is SCR PCR DNA profile
18 developed from Anthony Britt, South Carolina. But that's
19 not the second -- that's not the second swab. That's not
20 the swab that they took from me. In June of 2009, that's
21 not the swab that they took from me in the courtroom.
22 That's the DNA that came back from the crime scene.

23 THE COURT: I got it. I understand what you're
24 saying.

25 MS. HARRIGAN: No further questions, Your Honor.

Anthony Britt - Redirect Examination by Mr. Li

1 THE COURT: Okay. Redirect?

2 MR. LI: Yes, Your Honor, very briefly.

3 REDIRECT EXAMINATION

4 BY MR. LI:

5 Q Anthony.

6 A Yes, sir.

7 Q Let's go over the DNA stuff first. Regardless of
8 what the second report says, were you aware of the first
9 report?

10 A No, sir.

11 Q If you were aware -- had you been aware of the
12 first report, would it have changed your decision in the
13 process of your trial?

14 A Yes, sir, the main reason why because I'm a
15 convicted felon and if my DNA is in the system but it's
16 coming back unidentified, of course I could have took a
17 trial. There's no way I could have took a plea.

18 Q And not saying you would have -- because you can't
19 foresee the future, not to say that you know that you would
20 have won or lost, but would it have affected your
21 decision --

22 A It would have made a big difference because that's
23 all they said that had against me.

24 Q Would you have talked to Mr. Hutto about
25 challenging the credibility of the DNA evidence itself?

Anthony Britt - Redirect Examination by Mr. Li

- 1 A Yes, sir.
- 2 Q Okay. So regardless of what the second one said,
3 it would have changed your decision?
- 4 A Well --
- 5 Q Knowing that there was a first one.
- 6 A What do you mean by second one. All it is is one.
7 The second one is the DNA that they took in June. That's
8 what convicted me.
- 9 Q Right.
- 10 A This DNA couldn't have convicted me because they
11 couldn't have used it against me because the chain of
12 custody wasn't attached. The chain of custody was broke.
- 13 Q And did you talk to Mr. Hutto about that?
- 14 A I never knew about that. I found this out once I
15 got my motion from you and I looked into it myself.
- 16 Q Okay. And let's talk about -- you were at -- were
17 you at the plea -- do you remember the things that the
18 State was saying at the plea?
- 19 A Yes, sir.
- 20 Q Okay. And at that point they didn't have -- they
21 didn't present any evidence, right?
- 22 A No, they didn't put any --
- 23 Q They just said things.
- 24 A They just said that the DNA came back positive.
- 25 Q Right.

Anthony Britt - Redirect Examination by Mr. Li

1 A That's what I mean. But I mean, I never seen
2 results.

3 Q Did you hear them talk about fingerprints?

4 A No, because -- they -- he said fingerprints, but at
5 the motion hearing where Ms. Jillian Ullman be my lawyer,
6 when the officer got up on the stand, he said something
7 about it; but this other, a year later and he's saying it
8 just now and she's saying, Well, why isn't it in the
9 motion. That's why I asked you to get my transcript from
10 that motion because she was like, Well, why is you just now
11 bringing it up about the fingerprint. So you mean to tell
12 me if you're qualified to do this, it take you over a year
13 to get a fingerprint.

14 Q And regardless, there's nothing --

15 A There's nothing in my motion stating, that
16 proved --

17 Q Nothing about fingerprints?

18 A Nothing about fingerprints.

19 Q And at the plea, it's just like your attorney,
20 Mr. Hutto was saying good things about you, the State
21 didn't ask him to present any sort of evidence according to
22 you, right?

23 A Not every --

24 Q Mr. Hutto didn't ask them -- so whatever the State
25 said didn't matter?

Anthony Britt - Redirect Examination by Mr. Li

1 A It didn't matter.

2 Q Okay. Because they would have said whatever -- it
3 like, they could say whatever they wanted to at the plea.

4 Let's talk about your lying. Did you feel like you
5 were between a rock and a hard place?

6 A Yes. Now -- my lawyer telling me I'm facing a life
7 sentence.

8 Q Right. Did you ever talk to him about North
9 Carolina versus Alford?

10 A No, sir, I never knew nothing about it until after
11 I got convicted, I went to the law library and I looked up
12 on it.

13 Q Because that's what you wanted to do, correct?

14 A Yes, sir.

15 Q That the point, with the information that you knew,
16 you were either going to have to go trial and face up to
17 life, right?

18 MS. HARRIGAN: Your Honor, he's testifying.

19 BY MR. LI:

20 Q Or the other option would be what?

21 A Either I was going to go to trial --

22 Q Or?

23 A Or take a plea.

24 Q With your listening to the advice of your attorney?

25 A Yeah, totally.

Anthony Britt - Redirect Examination by Mr. Li

1 Q Okay.

2 A Because I never knew nothing about any of the
3 evidence, only about what he told me, which is, that the
4 DNA test came back positive, but he was talking about the
5 second sample. I never knew nothing about the first sample
6 coming back to an unidentified male.

7 Q Well, what I'm trying to focus on is the State has
8 implicated that you were lying during your plea, that the
9 judge asked you questions and you told him untruths, okay?

10 A I plead on the advisement of my lawyer.

11 Q Right. If your attorney had told you there's
12 something called North Carolina versus Alford, where
13 basically explained to you -- if he had explained to you,
14 Well, this deal is just too good to pass up and you don't
15 want to go trial where you could remain silent, would you
16 have taken that?

17 A Say that again.

18 Q If he had explained to you that North Carolina
19 versus -- taking a plea under North Carolina versus Alford
20 meant that you were accepting a plea deal, you're accepting
21 the guilty plea, but you weren't agreeing to the facts of
22 it, basically because the deal was too good to pass up or
23 that you felt that you had a bad chance at trial, at that
24 point with the information that you knew, would you have
25 taken that deal?

Anthony Britt - Redirect Examination by Mr. Li

- 1 A Yes, I would have taken that deal.
- 2 Q And you would have said, I want to plea under North
3 Carolina versus Alford, correct?
- 4 A Yes, by the information that he told me, yes.
- 5 Q That's right, right?
- 6 A Yes.
- 7 Q But he never explained that to you?
- 8 A He never explained none of that to me.
- 9 Q Did you know -- had you done any research at the
10 law library at that time?
- 11 A When I --
- 12 Q At that time?
- 13 A At that time, no. No, no, sir.
- 14 Q Okay. So how did you feel being put between a rock
15 and a hard place of either going to trial or taking the
16 deal that your attorney told you?
- 17 A It was unbearable because -- I mean, here I got my
18 family and they're talking about a life sentence. I wasn't
19 nothing more but 21 years old. That's awfully young.
- 20 Q So at that point, did you want to lie to the Court?
21 Was it your goal to tell him untruths?
- 22 A My goal was to get -- if my lawyer telling me that
23 there's DNA come back positive and I can't win a trial, my
24 goal was to try to get the best plea bargain that I can
25 get.

Anthony Britt - Recross-Examination by Ms. Harrigan

1 Q And at that point with the information that you
2 knew at that point, did you feel that was -- it was a deal
3 too good to pass up with Mr. Hutto, an immaculate attorney,
4 impeccable attorney --

5 A At the time, yes, it was. But had I knowed --

6 Q Right.

7 A -- then I wouldn't have took a plea, period. Had I
8 knowed the information that I know now, I wouldn't have
9 took a plea, period.

10 Q Okay.

11 MR. LI: No further questions, Your Honor.

12 THE COURT: Okay.

13 MS. HARRIGAN: Very briefly, Your Honor.

14 If I may have Respondent's 1.

15 May I approach?

16 THE COURT: Uh-huh.

17 **RECROSS-EXAMINATION**

18 BY MS. HARRIGAN:

19 Q If you'll please read for the record, what's the
20 date on this letter? I'm showing you Respondent's Exhibit
21 1. The top.

22 A The top date for that is April 17, 2008.

23 Q And as you've already read before the Court, it
24 shows that there is a -- that their DNA profile matches
25 Anthony Bernard Britt, correct?

Anthony Britt - Recross-Examination by Ms. Harrigan

1 A Yes, ma'am. That's what -- that's what this
2 paper's saying.

3 Q And that's you, correct?

4 A But this is an official SLED report.

5 Q Is that you, correct?

6 A Yes, ma'am. I'm Anthony Britt.

7 Q And the Schmerber Hearing, I believe you testified
8 before, wasn't until April -- or excuse me, February of
9 2009 and your sample was taken in June of 2009?

10 A June of 2009.

11 Q So this is involving the first sample from the SLED
12 DNA data base, correct? Showing that your DNA matched the
13 blood found in the home, correct?

14 A I understand that, but what about this one --

15 Q Yes or no?

16 A -- coming back to an unidentified male.

17 Q It's the same sample, correct.

18 A It's the same sample.

19 Q Okay. So all of these allegations regarding the
20 Schmerber Hearing really are irrelevant because your DNA
21 matched from the first sample, correct? They didn't need
22 the second sample. Your DNA already matched?

23 A No, they needed the second sample because they
24 couldn't have proceeded to a trial with that first sample.
25 They couldn't.

Anthony Britt - Recross-Examination by Ms. Harrigan

1 Q Even though Respondent's Exhibit 1, you'll -- it
2 does show that it's a match for Anthony Bernard Britt,
3 correct?

4 A The thing about that is because it has no chain of
5 custody on it. Without that chain of custody that's saying
6 where this DNA went and how he even sent it to SLED, you
7 couldn't have used it against me. The judge even told me
8 this in my Schmerber Hearing. That's why I asked for a
9 transcript for my Schmerber Hearing so he could have seen
10 it.

11 Q And I believe your testimony a moment ago on
12 redirect was that you didn't want to lie to the Court, but
13 you took Mr. Hutto's advice because you wanted to get the
14 best deal possible to avoid a life sentence, correct?

15 A Yeah, because he telling me that my DNA came back
16 positive.

17 Q So you didn't want to lie to the Court, but you
18 did.

19 A I plead on advisement of my lawyer.

20 Q Did you tell the truth when you said you were
21 guilty?

22 A I plead on the advisement of my lawyer.

23 Q Yes or no, were you telling the truth during your
24 guilty plea when you said you were guilty? Yes or no.

25 A I plead on the advisement of my lawyer. My lawyer

C. Bradley Hutto - Direct Examination by Ms. Harrigan

1 telling me that the DNA came back positive, I can't win a
2 trial. He said, give a statement to the judge and he'll
3 take it light on you.

4 Q And your testimony here today is you're not guilty,
5 correct?

6 A Yes, ma'am.

7 MS. HARRIGAN: No further questions, Your Honor.

8 THE COURT: Okay. You can come back down to the
9 counsel table.

10 Call your next witness, Mr. Li.

11 MR. LI: No further witnesses.

12 THE COURT: Okay.

13 MS. HARRIGAN: At this time, the State would call
14 Senator C. Bradley Hutto.

15 C. BRADLEY HUTTO,

16 having been duly sworn, testified as follows:

17 THE COURT: And would you state your full name for
18 the record, please.

19 THE WITNESS: My full name is Charles Bradley
20 Hutto.

21 THE COURT: Your witness.

22 DIRECT EXAMINATION

23 BY MS. HARRIGAN:

24 Q Good morning, Senator Hutto. How long have you
25 been practicing law?

C. Bradley Hutto - Direct Examination by Ms. Harrigan

1 A Since 1982.

2 Q What percentage of your practice, you can give a
3 rough estimate, is criminal defense?

4 A At least 50 percent.

5 Q And you were retained in this case?

6 A I was.

7 Q Do you recall the date you were retained?

8 A The retainer agreement shows July 6th I believe it
9 is of -- hang on one second.

10 (WHEREUPON there was a pause in the proceedings.)

11 THE WITNESS: July 6th of 2009. Now, I did
12 represent him at a bond hearing prior to that for the
13 purpose of the bond hearing only after he made bond, he
14 came out and hired me. So again, I had represented him
15 before at a bond hearing, but I undertook to represent him
16 in the case when he came to us in July.

17 BY MS. HARRIGAN:

18 Q Do you recall how many times you met with Mr. Britt
19 before his guilty plea?

20 A I don't exactly, but it would probably be three or
21 four, maybe five.

22 Q And some of those would have been at the
23 courthouse. And at the time of your retention, he was
24 represented -- was he represented by a public defender?

25 A He was. Ms. Ullman.

C. Bradley Hutto - Direct Examination by Ms. Harrigan

1 Q Had she filed any Brady or Rule 5 motions at that
2 time?

3 A She had.

4 Q Did you renew those motions?

5 A I believe I just went over and got her -- sometimes
6 I do, but more often than not, if the solicitor has already
7 turned it over to the first attorney, I subsequently would
8 go and get them directly from her and I think that's what I
9 did in this case.

10 Q To the best of your knowledge, did you receive a
11 complete copy of discovery from Ms. Ullman?

12 A Yes.

13 Q Did you review these materials with Mr. Britt?

14 A I did. And in fact, part of what I received was an
15 investigator's report from an investigator that the public
16 defender used, which is also the same investigator that I
17 use. The investigator, they use him and I use him too. So
18 in addition to getting their report, I had his report that
19 was in their file and he's the same investigator that I
20 use, so I have a high degree of faith in his investigations
21 because I use him also.

22 Q Can you summarize for the Court, the results of
23 this investigative record?

24 A Well, basically, there was a burglary that took
25 place in Orangeburg. Guns and other things were stolen.

C. Bradley Hutto - Direct Examination by Ms. Harrigan

1 Blood was found at the scene, fingerprints were found at
2 the scene, but Orangeburg was unable to make any headway
3 with coming up with suspects.

4 Later, Mr. Britt was arrested in Richland County on
5 a gun charge. When he was arrested on the gun charge, it
6 turned out the gun he had in his possession at this time
7 was one that was taken from this scene. So that
8 information got transmitted back to Orangeburg who sort of
9 then started focussing on Mr. Britt; and at some point they
10 were able match his fingerprints to the crime scene. They
11 were able to match his DNA to the crime scene. They were
12 able to determine that some of the items that were stolen,
13 in addition to the gun that he had actually pawned at a
14 pawnshop -- so from the investigation it looked like they
15 had his fingerprints at the crime scene, they had his DNA
16 at the crime scene. They had a gun -- the victim's gun in
17 his actual possession and other items that had been taken
18 from the home, had been pawned, and he was identified as
19 the person who had pawned them.

20 Q Would you characterize this as overwhelming
21 evidence of guilt?

22 A Yeah. Well, now I told him it was circumstantial.
23 I let him know that there were no eyewitnesss at the scene.
24 So what it was, was a case built up from every type of --
25 not every type, but many types of circumstantial evidence.

C. Bradley Hutto - Direct Examination by Ms. Harrigan

1 And so I did think and I still do think that if he went to
2 trial he'd been convicted.

3 So we talked about that and his biggest concern as
4 I recall was trying to get this pled down to a burglary
5 second. And I worked on that for quite a while before it
6 came apparent to me that the State was just not going to
7 plead this down to a burglary second. They were going --
8 it was going to be burglary first, which was going to be 15
9 years at a minimum. They were recommending 20. We talked
10 about that. He wasn't happy with the 20 years.

11 I kept working on it with the solicitor. Finally
12 agreed that if we would give them a statement about where
13 they might find some of the other items, that type of
14 thing, that they would back out of the 20-year
15 recommendation, which they did and he ended up getting 16,
16 which was as close to 15 as we were going to get.

17 Q At the time you were retained, the State had
18 already -- had the State already moved for a Schmerber
19 Hearing?

20 A They had and I think that maybe the order had
21 already been signed before I was retained. But sometime
22 around then. But, you know, that didn't concern me too
23 much at the time because he was contending alibi initially.
24 And so if the alibi that he was with his grandmother or
25 other people during the time of the commission of the

C. Bradley Hutto - Direct Examination by Ms. Harrigan

1 crime, the actual -- if I was to believe him that he had an
2 alibi, then the DNA was actually going to exonerate him if
3 it wasn't his DNA and he wasn't there.

4 But I was aware that there had been a Schmerber
5 order signed. I didn't represent him at that hearing.

6 **MS. HARRIGAN:** Your Honor, may I approach?

7 **THE COURT:** You may.

8 **BY MS. HARRIGAN:**

9 Q I'm handing you what's been entered into evidence
10 as Respondent's Exhibit 1. Do you recall receiving that in
11 discovery from Ms. Ullman?

12 A I do.

13 Q And --

14 A And I told him that they had a DNA match for him
15 from the blood in the house that was matched to him.

16 Q Did you explain to him that this was separate from
17 the Schmerber sample?

18 A I don't know that I did to be honest with you
19 because at that point in time, we were headed toward a
20 plea. Obviously, if we'd gone to a trial, they would have
21 had to produce the second DNA they would have had to go
22 through the chain of custody, but for the purpose of
23 telling him what evidence they had, I was relying on this
24 original DNA match, not the second one.

25 To be honest with you I don't even know if the

C. Bradley Hutto - Direct Examination by Ms. Harrigan

1 second DNA match was ever -- I know they took the second
2 sample. I don't even know if they even ran it. That was
3 not a concern of mine at that time because we were talking
4 about a plea deal, we're not talking about a trial.
5 Obviously if you don't go to trial, those would certainly
6 have been issues.

7 Q If the transcript reflects that a second sample was
8 tested and was a match, do you have any reason to refute
9 that?

10 A I have no reason to doubt that. In fact, Solicitor
11 Sorenson may have told me that. I do not have a copy of it
12 in my file. I would have been more concerned about it too
13 if that was the only that I think connected him to the
14 crime scene, but there were four other things, so it's just
15 one of a piece of evidence. I had no reason to doubt it.

16 Q And I believe you testified before that you
17 explained to Mr. Britt that it was circumstantial evidence
18 because there was no eyewitness, correct?

19 A Right.

20 Q Did you explain to him, however, that his DNA did
21 match that initial sample?

22 A Yes.

23 Q And that his fingerprints were found near the
24 jewelry box where stolen jewelry was taken?

25 A Yes.

C. Bradley Hutto - Direct Examination by Ms. Harrigan

1 Q The weapon that he was found with in Richland
2 County, do you recall whether there was any sort of
3 engraving that matched the victim's?

4 A It was. I don't think that was ever an issue that
5 that was not the right gun that came from the house.

6 Q Did the State ever offer to allow Applicant to
7 plead under North Carolina versus Alford.

8 A They did not and I didn't pursue it because we were
9 trying to get the sentence minimized. To plea under Alford
10 would not allow him to offer any assistance to the victim.
11 And part of what we were trying to do is to get the victim
12 to agree to something less than 20 years.

13 Q Had the State offered 20 years at that point?

14 A Right.

15 Q At what time did -- did the State recommend that he
16 give a statement to law enforcement or was that at your
17 request?

18 A I approached -- because they were not -- they were
19 adamant that they wanted him -- first of all, they were
20 adamant they were not going to let him plead to burglary
21 second. Second of all, they were adamant that they were
22 not going to agree to recommend the minimum sentence. In
23 talking to them, they basically said if you can give us
24 something that we can go to the victim with to give them
25 some closure in this case, then we will consider backing

C. Bradley Hutto - Direct Examination by Ms. Harrigan

1 off the 20 years. We couldn't have done that under North
2 Carolina versus Alford.

3 Q Did you advise him that this plea was without any
4 negotiation or recommendation? It was what's called a
5 straight-up plea?

6 A I probably did, but there were -- I have to tell
7 you that there were discussions between myself and
8 Solicitor Sorenson in the presence of the judge and I had a
9 good feeling that we could get it for less than 20 if we
10 cooperated and that's why we did it.

11 Q And did you --

12 A But the State was not going to -- they weren't
13 going to agree to 15 or 16 for that matter, but they
14 weren't going to agree to 15 for sure. They weren't also
15 going to agree to -- we did not have a negotiated time, but
16 I'm sure I probably led him to believe that it was going to
17 be less than 20 because that's what I believed was going
18 to happen.

19 Q Based on your good faith discussions with Solicitor
20 Sorenson and Judge Dickson?

21 A Right.

22 Q Did you advise Mr. Britt the potential sentence
23 range for burglary in the first-degree?

24 A I did. And of course, that was one of the main
25 considerations. He had a prior record and there was this

C. Bradley Hutto - Direct Examination by Ms. Harrigan

1 DNA, fingerprints, the other things that if he went to
2 trial and lost, I told him it was likely that he would get
3 life imprisonment.

4 Q In regard to his prior convictions, did he have
5 prior burglary convictions?

6 A He did.

7 Q Do you recall how many?

8 A I don't right off. I do have his rap sheet here.
9 You want me to look at it?

10 Q Did you have any basis to challenge the enhancement
11 to burglary in the first-degree?

12 A I did not.

13 THE COURT: If you would, just -- Mr. Hutto wanted
14 to know, did you want him to look at the rap and count them
15 up.

16 BY MS. HARRIGAN:

17 Q No, if your answer is you didn't have any basis to
18 challenge an enhancement and he does have prior burglaries.

19 A He does.

20 Q More than one?

21 A Right.

22 Q There was also -- do you recall whether there was
23 any evidence that this crime occurred at night?

24 A Well, because the victim wasn't at home when it
25 happened, I don't think they knew for sure. The victim

C. Bradley Hutto - Direct Examination by Ms. Harrigan

1 came home at nighttime. So I don't think that -- I don't
2 think they could prove exactly when it happened.

3 Q Is it your common practice to advise clients not to
4 tell the truth during a guilty plea.

5 A No, I don't ever to do that.

6 Q Did you advise Mr. Britt not to tell the truth
7 while under oath?

8 A I don't advise anybody not to tell the truth any
9 time.

10 Q Whose decision was it for Mr. Britt to plead
11 guilty?

12 A It was his. And he -- from the time that we
13 started talking about the idea was that we were going to
14 try and get to a plea for a second degree. That was the
15 whole focus of what we were going to try and accomplish.
16 When it became apparent that that couldn't happen, at no
17 time did he indicate to me that he wanted a trial, nor did
18 I think that was in his best interest, nor did I encourage
19 him to thinking having a trial because I thought if he went
20 to trial, he was going to get a substantially longer
21 sentence than that he ended up with.

22 Q You testified prior that originally Mr. Britt was
23 asserting an alibi defense, correct?

24 A Right.

25 Q At what point did that stop becoming a viable

C. Bradley Hutto - Cross-Examination by Mr. Li

1 defense?

2 A When we could not get his -- I think his
3 grandmother, or relatives that would have been his alibi to
4 come forward and actually be his alibi. And I think I
5 asked if they could, you know, get them to come by the
6 office so we could get a statement from them and that just
7 did not materialize. It became apparent that it wasn't
8 really going to be an alibi case.

9 Q Did Mr. Britt ever tell you that he wasn't guilty
10 of this?

11 A No.

12 MS. HARRIGAN: No further questions.

13 THE COURT: You were shaking your head --

14 THE WITNESS: No.

15 THE COURT: Okay. Cross-examination.

16 MR. LI: Thank you, Your Honor, may it please the
17 Court?

18 THE COURT: Yes, sir.

19 **CROSS-EXAMINATION**

20 BY MR. LI:

21 Q Good morning, Mr. Hutto.

22 A Good morning.

23 Q How much did you charge Anthony Britt?

24 A I charged him \$4,000. Whether I got paid the whole
25 thing or not, I'm not sure.

C. Bradley Hutto - Cross-Examination by Mr. Li

1 Q I understand how you feel. And it was basically
2 from July of 2009 and he pled in August 6 of 2009?

3 A Right.

4 Q Correct. So roughly a month's worth of time?

5 A Right. And I had talked to him earlier at the bond
6 hearing.

7 Q Right.

8 A I knew something about the case, but, yes, it was
9 about a month's worth of time, probably at his second
10 appearance.

11 Q And at the time of the bond setting, you didn't
12 have the pack of discovery sent from the public defender's
13 office?

14 A I did not. I just had conversation with him and he
15 told me about his grandmother and --

16 Q And you wouldn't have gotten the packet of
17 discovery until your office sent the official letter of
18 representation, motion of discovery and all of that
19 stuff --

20 A Right.

21 Q -- correct? And that was in roughly July, you
22 said?

23 A Right.

24 Q Okay. So between July and August 6 was the length
25 of your representation of -- full representation of --

C. Bradley Hutto - Cross-Examination by Mr. Li

1 A That's right.

2 Q Did you ever sit down with him and go over the
3 discovery? Not a summation but showing him --

4 A No, I did not.

5 Q Okay. And earlier you said that -- you said that
6 there was some fingerprint evidence, correct?

7 A That's what the investigative record says and he's
8 the same investigator I use, so, yes.

9 Q Okay. And did you actually see -- did you see the
10 fingerprint result?

11 A No.

12 Q Was there one in your file?

13 A No.

14 Q Right. And the DNA -- the letter from March 11 of
15 the DNA, did you ever share that information with Mr. Britt
16 specifically the March 11th DNA report from SLED?

17 A I don't know that I physically showed him the
18 letter or anything else. I told him what I was reading in
19 this file.

20 Q And you told him about -- what you told him was
21 that it matched his -- the DNA matched him, correct?

22 A Yes. That's what the SLED report says.

23 Q But that's what one of the SLED reports says?

24 A Right.

25 Q But the other SLED report says it doesn't match

C. Bradley Hutto - Cross-Examination by Mr. Li

1 him, it comes back to an unidentified black male, correct?

2 A Well, that's not how I interpret it, but it is the
3 -- the analysis says that it comes back to an unidentified
4 black male. But I don't know at that point in time what
5 they're comparing that to because shortly after that that
6 they run it against the profiles. I'm not sure what the
7 SLED protocol is, whether when they test it, they actually
8 run it against the profile then or do they do that later,
9 but clearly within a -- like a month, maybe a month and a
10 half, they had run it and it came back to match.

11 Q So you never questioned the one that came back of
12 an unidentified black male?

13 A I -- no, because to me, this is two parts to the
14 same puzzle. The first, they ran the test and got the
15 analysis and then second, they ran a match from what they
16 got from test one against the data base and that's when
17 they came up with it.

18 Q Well, what do you think they did on the first one?
19 They didn't just run it and test against nothing, right?
20 They must have run it against something. That's why it
21 came back to an unidentified black male?

22 A Right.

23 Q But any way --

24 MS. HARRIGAN: I don't believe he had an
25 opportunity to answer the question.

C. Bradley Hutto - Cross-Examination by Mr. Li

1 MR. LI: I'm sorry.

2 BY MR. LI:

3 Q Go ahead Mr. Hutto, I'm sorry.

4 A It does say that the DNA profile developed from 2.1
5 and a partial developed from 2.2 is from an unidentified
6 male individual; and then it says the DNA profile developed
7 from 2.1 has been entered into the index. And then later I
8 get a letter that says, Now that it's been entered into the
9 index, they've got a match, so I'd assume that that is the
10 protocol of how they match it, not that there was a problem
11 with it.

12 Q But earlier in your testimony, you said that you
13 were not sure of the SLED protocol.

14 A I'm not.

15 Q And you were unaware as to why they would send you
16 a first report that says it came back to an unidentified
17 black male?

18 A It doesn't say black.

19 Q Oh, I'm sorry. It came back to an unidentified
20 male?

21 A Right. I think you can probably look at -- I think
22 you can probably look at DNA and determine it came from a
23 male subject and then you put it in the data base and then
24 they match that up.

25 Q But you didn't do any research -- you never did any

C. Bradley Hutto - Cross-Examination by Mr. Li

1 independent research as to why -- what SLED's protocol is,
2 correct?

3 A I did not because I've had other cases before in
4 which we were going to trial, we've gone through and I had
5 no reason to question SLED's protocol in this case because
6 I have had the opportunity to be up against it in other
7 cases.

8 Q Uh-huh.

9 A If we had gone to trial in this case all of that
10 would have been done. But that's not where we were headed
11 in this case.

12 Q I understand. And I'm not saying if you had gone
13 to trial you wouldn't have done it, I'm just asking you --

14 A I did not do it at that time.

15 Q Did not do it at that time. Did you tell Mr. Britt
16 that there were two pieces of paper, that one said
17 unidentified and one said match?

18 A I did not.

19 Q Okay. Did you do research into exploring the chain
20 of custody for the April 2008 letter? I mean -- yeah, the
21 April 2008 results?

22 A I did not.

23 Q Okay. And -- so you were not aware that there was
24 an issue with the chain of custody?

25 A Well, I was because the letter says that if you're

C. Bradley Hutto - Cross-Examination by Mr. Li

1 going to use this for trial purposes, you're going to need
2 to get a known sample. So I read between the lines that
3 they didn't have the chain of custody on that.

4 Q Right. And you knew -- and did you explain the
5 chain of custody issue to Mr. Britt?

6 A I don't know that I did.

7 Q Okay.

8 MR. LI: I beg the Court's indulgence.

9 THE COURT: Okay.

10 BY MR. LI:

11 Q Which sample was the one that you used to relay the
12 message to Mr. Britt that the DNA matched?

13 A It was the -- the first sample, the one that's
14 dated March 11 and was commented on in the letter of April
15 17th, which both are 2008.

16 Q Okay. And that's the same result that had the
17 issue with the chain of custody, correct?

18 A Correct.

19 Q Okay. That's -- I'm sorry, go ahead.

20 A I've been doing this for over 30 years. If this
21 was the only thing that tied him to the scene and he was
22 adamant that there was no way possible that he could have
23 done it. I would have put a lot more attention on this one
24 piece of evidence. But this is not the only thing that
25 tied him to the crime scene. He was found with the gun.

C. Bradley Hutto - Cross-Examination by Mr. Li

1 The fingerprints that the investigator said matched were
2 there.

3 He pawned -- the items he pawned came from the
4 house. His initial response to me as alibi was not working
5 out. So just using the totality of things, I did not
6 question this -- nor do I still question and believe if
7 he -- if he gets a new trial, which will be fine with me,
8 he's going to get convicted and go to jail for a lot longer
9 than 16 years.

10 Q And I understand that. But eventually, you would
11 agree with me that the decision of whether or not to go to
12 trial is the defendant's, right?

13 A Oh, absolutely. Absolutely. And that's why in
14 this case, he was pretty adamant from the beginning that he
15 did not want to go to trial.

16 Q And that was without all the information, correct?

17 A Well, it depends on what you consider all the
18 information. I thought I had enough information to give
19 him an informed and intelligent advice and that's what I
20 gave him.

21 Q So you made the decision selectively choosing which
22 pieces of evidence to give Mr. Britt for him to make that
23 decision?

24 A I couldn't say that. I would say that I gave him
25 the information I had in the file. Had he indicated he

C. Bradley Hutto - Cross-Examination by Mr. Li

1 wanted to go to trial, we would have explored further, as
2 you always do as you get close to trial. You develop more
3 and more --

4 Q Right. Did you give him the March 11 letter?

5 A I don't think I gave him anything.

6 Q You did relay information or discussions?

7 A I would have -- yes, but I did it in the context of
8 I read these two documents together. You're trying to say
9 that there were not two separate DNA tests in 2008. There
10 was one test and then one letter that matches the first
11 test to the data base. I didn't question the fact that
12 those were two separate things, that there would be a
13 chemist who did the test and somebody else who does the
14 match and I put those together.

15 Q Okay. And you said the totality of the
16 circumstances. You know, just very briefly, he was in
17 possession of some of the stolen stuff, he pawned some of
18 the stolen stuff. And, you know, there's a possibility
19 that's just receiving stolen goods, correct?

20 A Absolutely.

21 Q Right.

22 A You're absolutely right.

23 Q Because there's no other evidence that ties him to
24 the burglary, correct? I mean those -- those are just
25 several pieces of evidence, no eyewitnesss, no fingerprints

C. Bradley Hutto - Cross-Examination by Mr. Li

1 in fact?

2 A I told him that. Now, the fingerprints -- now,
3 I've got an investigative record in here. I don't have the
4 fingerprint report, but I have the investigator's report
5 that says that the fingerprints on the jewelry box are his.

6 Q Right. But no actual report?

7 A No, but I'm just telling -- no, not that I saw, but
8 I relied on the investigator's report whose the same
9 investigator that -- the public defender uses the same
10 investigator I use, so he doesn't usually make a mistake
11 like that. If he did, he did. But I relied on that.

12 Q Was there actually any fingerprint evidence from
13 the State?

14 A I did not have any in my file. What I had was that
15 report.

16 Q Right. But that report's from your investigator,
17 correct?

18 A Right.

19 Q The State, the law enforcement, the evidence that
20 they were going to use never actually turned over any sort
21 of fingerprint?

22 A Actually, there must have been something because
23 Mr. Sorenson referred to it in the plea and he wouldn't
24 have gotten stuff out my file.

25 Q Right. You referred -- do you have your file with

C. Bradley Hutto - Cross-Examination by Mr. Li

1 you? Because I'm going to tell you there's no -- not from
2 the packet that your office sent to my office, there's
3 nothing about it.

4 A There's no SLED fingerprint report in my file.

5 Q Nothing, right.

6 A I agree with that. What I was going to tell you is
7 that after cases like this, my file is electronically
8 downloaded and shredded, so what I have is a new creation
9 of the file from -- it's all electronic; and I've got my
10 computer in the car if I need it, but I -- I printed it for
11 you and I printed it back out again.

12 Q Right.

13 A So the notion that somehow putting this on
14 electronic drive is not panned out in this case because
15 I've printed it three times.

16 Q But I think we're in agreement that there's no
17 fingerprint evidence from the --

18 THE COURT: No. Not when I have the transcript in
19 front of me. You need to look at page 9.

20 MR. LI: That's what the State is saying, though.

21 THE COURT: I know.

22 MR. LI: There's actually no pieces of paper.

23 THE WITNESS: You're asking me if there's a SLED --
24 if I have a SLED fingerprint report, I do not.

25 MR. LI: Right.

C. Bradley Hutto - Cross-Examination by Mr. Li

1 THE COURT: No, that's not what he asked you. What
2 he asked you was did the State have any evidence of
3 fingerprints.

4 THE WITNESS: They obviously did because they --

5 THE COURT: And that's where you started.

6 THE WITNESS: Right. They obviously did.

7 THE COURT: And I'm stopping you there because it's
8 on page 8. Okay?

9 MR. LI: Okay. Your Honor, I'm sorry.

10 THE COURT: Let me just put it on the record. What
11 it says: Additionally there were several latent
12 fingerprints taken off of the jewelry box and one of those
13 latent prints was matched up to Mr. Britt also. That is
14 not -- that is -- I don't see how that cannot be from the
15 State.

16 MR. LI: No, I understand that, Your Honor.

17 THE COURT: Okay.

18 BY MR. LI:

19 Q My question still remains, did you ever show --
20 that transcript is from the plea?

21 A Correct. And, no, I never showed it to him because
22 we weren't going to trial. If we were going to trial, I
23 would have had every -- made sure that every person that
24 was involved in taking the fingerprints and -- was in the
25 courtroom and testified. The chain of custody, I wouldn't

C. Bradley Hutto - Cross-Examination by Mr. Li

1 have waived any of that. But for the purpose of telling
2 you what evidence they had, I told him what evidence was in
3 the file that they had. We didn't get to a trial to
4 challenge that because he decided it was in his best
5 interest to accept a plea that was going to get him
6 something closer to the minimum.

7 Q Right.

8 A I concurred with that and still do.

9 Q Right. I'm not saying whether or not you would
10 challenge the evidence. Because I know you would have done
11 that at trial. I know you would have done that at trial.
12 My question is did you explain to Mr. Britt prior to him
13 making the decision to plead that there was not any
14 fingerprint evidence?

15 I know what the transcript says. The transcript
16 says -- Don Sorenson, we have latent fingerprints. Was
17 there a fingerprint card; was there something matched on
18 AFIS; was there an AFIS card, anything like that?

19 A I did not have any -- did not have that in my file.

20 Q All right. I'll move on. That's all I wanted.

21 And I know that you didn't -- I'm not --

22 **MS. HARRIGAN:** Your Honor, I would object. If he
23 could just ask questions, he's testifying. These arguments
24 can be made in his closing argument.

25 **THE COURT:** Yeah, but he's on cross-examination.

C. Bradley Hutto - Cross-Examination by Mr. Li

1 BY MR. LI:

2 Q And I know that you're not -- you would never ask
3 Mr. Britt to tell an untruth to a plea. I find that notion
4 ridiculous. Did you discuss with him North Carolina versus
5 Alford?

6 A I don't think I did.

7 Q Okay.

8 A You know, we were already moving forward toward a
9 plea. This was not a situation in which I felt like there
10 was any reservation about his involvement.

11 Q Right. And that -- you're own personal feeling
12 about that was based on the totality of the circumstances?

13 A It was and I don't -- unless there's some reason to
14 bring up North Carolina versus Alford, I generally don't
15 because it adds confusion to many cases.

16 Q Right.

17 MR. LI: I beg the Court's indulgence.

18 THE COURT: Okay.

19 BY MR. LI:

20 Q What is your understanding of the facts in terms of
21 the pawnshop and how that relates to this case? The one in
22 Columbia.

23 A Just that there were pawned power tools -- that he
24 had pawned some power tools and that -- my belief was that
25 those were some that were taken from this house.

C. Bradley Hutto - Cross-Examination by Mr. Li

1 Q Are you sure of that?

2 A No. I'm not. I'm just telling you. That's what
3 the investigator said and that's what the notes of the
4 officers say.

5 Now, it's written in two places in my file that
6 power tools were pawned by him from the scene.

7 Q Okay.

8 A Could that be -- that could not be true.
9 There's -- a lot of things could not be true, but I relied
10 on it.

11 Q Right.

12 MR. LI: All right. Your Honor, no further
13 questions.

14 THE COURT: Okay. Redirect?

15 MS. HARRIGAN: No, Your Honor.

16 THE COURT: All right. You may come down.

17 I don't know -- you got anything else?

18 MR. LI: That's all.

19 THE COURT: Is he free to go?

20 MS. HARRIGAN: Yes, Your Honor.

21 THE COURT: Any objections? You're free to go.

22 Okay. Call your next witness, please.

23 MS. HARRIGAN: The State has no additional
24 witnesses to call.

25 THE COURT: Okay. Will there be any reply or

1 rebuttal witnesses?

2 MR. LI: No, ma'am.

3 THE COURT: Okay. Very well. I will continue to
4 review these matters. I'm going ask to State to prepare a
5 proposed order and you are to look at it, please, sir.

6 MR. LI: All right. Thank you.

7 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 13th day of November, 2013.

12 I FURTHER CERTIFY that the foregoing 76 pages
13 constitute a true, accurate and complete transcript of said
14 hearing.

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

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 9th day of June, 2014

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Brenda J. Sigwald

Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

MARK A. KEEL
Interim Chief



1-1 one

CSI Carl W. Shultz
Orangeburg Department of Public Safety
P.O. Box 1425
Orangeburg, SC 29116-1425

DNA ANALYSIS
March 11, 2008
SLED LAB: L08-02073
Your Case No: 07-03036
Incident Date: 12/10/2007
[V] LaVerne Blewer

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Interim Chief
South Carolina Law Enforcement Division

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

2	Two boxes of swabs		
2.1	Swabs- floor of kitchen at back door	2.1	Blood indicated. See DNA analysis.
2.2	Swabs- side/front of gun cabinet	2.2	Blood indicated. See DNA analysis.

DNA ANALYSIS

ITEMS ANALYZED:

2.1 Swabs- floor of kitchen at back door
2.2 Swabs- side/front of gun cabinet



*B-11
10-200*



P.O. Box 21598, Columbia, South Carolina 29221-1598 Phone (803) 896-7300 Fax (803) 896-7351

SLED LAB No. L00-02073
March 11, 2008

Page 2 of 3

EXAMINATIONS

DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

The DNA profile developed from item 2.1 and the partial DNA profile developed from item 2.2 is from an unidentified male individual. The DNA profile developed from item 2.1 has been entered into the Combined DNA Index System (CODIS).

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Maryann E. Sheehan
Forensic Scientist

cc: Orangeburg County Solicitor's Office



Suma	088.1179	021231	073630	028179	038198	TH01	012850	010509	025130	PH0417	0004	TH09	040834	035918	PG01	Amo- Roth
L1	13.15	30.31	9.11	10.12	15.16	7.8	11.12	9.13	20.24	12.14	16.18	6.9	3.8	8.13	(21.25)	XY
Entered floor																
2.2 Gue cabinet	13.15	30.31	-	(10)	15.16	7.8	11.12	9.13	20.24	12.14	16.18	6.9	(15)	8.13	21.(20)	XY

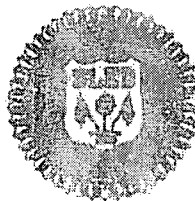
- 10 -



SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

April 17, 2008

CSI Carl W. Shultz
Orangeburg Department of Public Safety
P.O. Box 1425
Orangeburg, SC 29116-1425

Agency Case Number: 0703036
SLED Case Number: L08-02073

Dear CSI Carl W. Shultz,

The Short Tandem Repeat (STR) PCR DNA profile developed from item 2.1 was compared to the Combined DNA Index System (CODIS). This profile matches the STR PCR DNA profile developed from Anthony Bernard Britt, South Carolina SID# SC01617633.

This information is provided for investigative purposes only. If the suspect is charged, a known blood standard in a lavender top tube must be submitted for court purposes.

This search was conducted by Rhonda R. Fields, Forensic Scientist, South Carolina Law Enforcement Division.

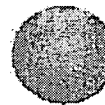
Rhonda R. Fields

Rhonda R. Fields
DNA Database Unit



Britt
1025.13

h2



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7381



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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF ORANGEBURG

CASE NO. 10-CP-38-1105

ANTHONY BRITT

)
)
)
)
)

vs.

TRANSCRIPT OF RECORD
VOLUME II

STATE OF SOUTH CAROLINA

OCTOBER 31, 2013
ORANGEBURG, SC

B E F O R E:

HONORABLE DIANE SCHAFER GOODSTEIN

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

VICTOR K. LI, ESQUIRE
Attorney for the Applicant

MEGAN E. HARRIGAN, ESQUIRE
Attorney for the State

Ruth L. Mott, RPR, CRR
Official Court Reporter

1 I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

4 C. BRADLEY HUTTO

MS. HARRIGAN

6

22

5 MR. LI

17

22

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7 CERTIFICATE OF REPORTER 26

8

9

10 E X H I B I T S

11 NO. DESCRIPTION ID EVD

12 S-S-1 7/13/09 LAB REPORT 3 5

13 S-S-2 5/28/09 MEMO 3 5

14 S-S-3 8/6/09 STATEMENT 3 5

15 S-S-4 HANDWRITTEN NOTE 3 5

16 S-S-5 2/9/09 SCHMERBER TRANSCRIPT 3 5

17 S-S-6 12/10/07 CONTINUATION REPORT 3 5

18 S-S-7 RULE 5(E) (1) ALIBI DEFENSE 3 5

19 S-S-8 7/27/09 LETTER 3 5

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1 (State's Exhibits 1-8 premarked for identification.)

2 MS. HARRIGAN: May it please the Court, we are back on
3 the record for the matter of Anthony Britt versus the State
4 of South Carolina, Docket No. 2010-CP-38-1105. An initial
5 hearing commenced on Tuesday, the 29th. At the conclusion of
6 the hearing applicant's prior trial counsel and the witness,
7 Bradley Hutto, let us know that there were additional
8 documents that had come to his attention, and we are here to
9 take additional testimony regarding the other portions of his
10 file that have been shared with both the State and applicant
11 at this time.

12 THE COURT: Yes.

13 MR. LI: Yes, ma'am.

14 THE COURT: Very well. Okay.

15 C. BRADLEY HUTTO,
16 having been previously duly sworn, testified as follows:

17 THE WITNESS: May I make a statement?

18 THE COURT: You want to make a statement?

19 THE WITNESS: I do. I want to apologize to Mr. Britt
20 and both attorneys and to the Court for the process under
21 which I retrieved my old file. We have had a conference at
22 our office now about how we now document and store these
23 things. And what happened, just so that we're clear, is that
24 under the name of Mr. Britt there was a file that said old
25 file, you know, and I assumed as well as my staff assumes

1 that was the complete file. What I found out later is that
2 our system is incapable of scanning and storing in one folder
3 a file that's longer than a certain number of documents, so
4 the second portion of the file was stored, it just wasn't
5 labeled.

6 THE COURT: Oh, interesting.

7 THE WITNESS: So when I pulled up his file folder, there
8 are numerous things there, like the bill that he was paying
9 on and the actual disc of the photographs of which copies
10 were in the file. This other one was just an unlabeled file
11 I thought, didn't really know what was in it, didn't think it
12 was anything important because the other file was clearly
13 labeled, you know, closed file. So we have reviewed that
14 with our staff as to how we do that in the future. If there
15 is a second portion, it's going to be labeled closed file
16 continued. And so the only thing that really I further would
17 explain to the Court is that when reference was made in the
18 first -- the hearing the other day about a letter I had
19 written, and I was sitting in the audience when that
20 happened, I was going through the file trying to find the
21 letter and I couldn't. I found that very odd that a letter I
22 had written would not be in the file, and that's what
23 prompted me to go look to see why that letter -- I thought
24 maybe it just didn't get copied, so I went back to the closed
25 file of Mr. Britt, went through the 91 pages that were there,

1 and it still wasn't there, and that's when I clicked on the
2 other unlabeled file, and there was the letter, but there
3 were also some other documents there. So I called the Court
4 after I discovered that. I electronically gave that to the
5 rest of the attorneys, and so I just wanted to make that
6 explanation and also apologize.

7 THE COURT: Well, I think it's not so much of an apology
8 as it just speaks to your integrity, and I appreciate you
9 doing that. Having heard all of that, you know, there's a
10 little bit of a blessing to be my age because I don't think I
11 understood a thing of what you were talking about. I still
12 think the folders are like paper, but I'm learning, and so I
13 appreciate the fact that you brought it to everyone's
14 attention and that you've shared it with the State and with
15 Mr. Li, so we're here about that today. Yes.

16 MS. HARRIGAN: Yes, Your Honor, and I believe that the
17 State called Mr. Hutto, so if I could briefly --

18 THE COURT: Sure.

19 MS. HARRIGAN: And I've had some exhibits premarked 1
20 through 8, and I believe there's no objection. These are all
21 from Mr. Hutto's file.

22 THE COURT: Very well.

23 (State's Exhibits 1-8 received into evidence.)

24 MS. HARRIGAN: May I approach?

25 THE COURT: Of course.

1 DIRECT EXAMINATION BY MS. HARRIGAN:

2 Q. Senator Hutto, I'm going to hand you what's been
3 premarked and now been moved into evidence as State's Exhibit
4 1. Do you recognize that document?

5 A. I do, and it is the second SLED report of DNA. I
6 earlier had testified that I did not have it in my file
7 because at the time I didn't think I did, but obviously when
8 I read the letter -- when I found the letter and read the
9 letter and the letter made reference to it, I realized it was
10 probably in there as well, and it is.

11 THE COURT: And that was in the unlabeled folder too.

12 THE WITNESS: It was.

13 THE COURT: And you have that, all of this, right, Mr.
14 Li?

15 MR. LI: I've seen it. He has e-mailed it to me, yes.

16 Q. Would you share with the Court, what was the result of
17 that, and that was from the Schmerber transcript, correct?

18 A. Right, and it matches, the same DNA profile that was
19 taken from the scene was then compared to the Schmerber DNA,
20 and it matched to approximately 1 in 830 trillion that it
21 would be somebody other than Anthony Britt.

22 THE COURT: Okay.

23 Q. I believe there was testimony on Tuesday in regards to a
24 potential alibi defense for Mr. Britt, correct?

25 A. Yes, and I actually obviously remembered all that

1 without that being in the file, but that was in the --

2 Q. Jillian Ullman from the Orangeburg Public Defender's
3 Office previously represented Mr. Britt before you, correct?

4 A. Correct.

5 Q. And you received all of her materials when you were
6 retained?

7 A. I did.

8 Q. I'm going to hand you what's been introduced into
9 evidence as State's No. 2. Do you recognize that document?

10 A. Yes.

11 Q. Can you share with the Court what that document is?

12 A. It's a memo from the private investigator, as I
13 mentioned earlier, the public defender and I used the same
14 person, but this -- he had been working for them at the time
15 because Ms. Ullman was Mr. Britt's attorney, and this is a
16 memo he had prepared relative to the potential alibi claim
17 that Mr. Britt was making.

18 Q. And that verifies that he intends to set forth an alibi
19 defense while represented by Ms. Ullman?

20 A. While represented by Ms. Ullman that was his intention,
21 and he further communicated that to me as well.

22 Q. And I believe you testified that on the date of the
23 Schmerber hearing Ms. Ullman was still representing Mr.
24 Britt.

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

1 Q. Were you privy through your representation to receive a
2 copy of the Schmerber hearing transcript?

3 A. I did.

4 Q. I'm going to hand you what's been marked as State's
5 Exhibit No. 5. Is that the Schmerber hearing transcript?

6 A. It is. And it contains testimony of Carl Schultz, who
7 was the witness at the preliminary hearing, and in it he
8 makes reference to the fingerprint evidence, among other
9 things.

10 Q. Does it also discuss that the -- if you'll turn to page
11 19 of State's Exhibit No. 5.

12 A. Yes.

13 Q. Does Ms. Ullman discuss that the State already has
14 enough evidence that could be used to possibly convict at
15 trial, particularly regarding the fingerprint match of Mr.
16 Britt's and the weapon that he was arrested with?

17 A. Yes. I'm sorry, was this -- I might have referred to it
18 as preliminary hearing but this was --

19 Q. The Schmerber hearing.

20 A. -- the Schmerber hearing, okay, yes, yes, it does say
21 that, that there's other evidence that they could move
22 forward to prosecute him on without drawing -- taking a DNA
23 sample.

24 Q. Following Mr. Britt's guilty plea on August 6th he gave
25 a statement to law enforcement, correct?

1 A. Say that again.

2 Q. He gave a statement to law enforcement following his
3 guilty plea before sentencing?

4 A. Following his guilty plea, that's correct.

5 Q. I'm going to hand you what's been marked and in evidence
6 as State's Exhibit No. 3. Do you recognize that document?

7 A. Yes.

8 Q. In that statement does Mr. Britt implicate himself in
9 this burglary?

10 A. Yes.

11 Q. And, again, did you advise him to be untruthful when
12 making this statement?

13 A. No, in fact, just the opposite, I advised him to tell
14 the truth because this is what we were -- there was a gap
15 between the, as I recall, a gap between the plea and the
16 sentence so that we were going to try and give this
17 additional information or -- I can't remember the exact time
18 on that, but part of trying to get the sentence reduced from
19 what the State initially was asking for down to consideration
20 of a minimum sentence, we indicated to the solicitor and
21 thereby to the victim that there might be some additional
22 information that could be shared that would be helpful. They
23 said they would take that in consideration as part of
24 mitigation if he would do that.

25 Q. Do you believe the Court did take that into

1 consideration in the ultimate sentence he received?

2 A. I absolutely do.

3 Q. Throughout your representation of Mr. Britt did you ever
4 receive correspondence from him?

5 A. There's a letter. I'm not sure what the date is.

6 Q. I'm going to hand you State's Exhibit 4 that's in
7 evidence. Do you recognize that from your file?

8 A. Yes, yes, I do recall this letter now. Yes.

9 Q. If you'll review that to yourself for a moment.

10 A. Yes.

11 Q. In this letter does he make any requests of you
12 regarding plea negotiations with the State?

13 A. He wants some more time before a court date, but he
14 indicates that he wants me to try and work out a plea to as
15 low a sentence as possible.

16 Q. Okay. I believe there was some testimony from Mr. Britt
17 and yourself regarding fingerprint analysis and a positive
18 fingerprint ID. Do you recall that?

19 A. Correct.

20 Q. I'm going to hand you what's been introduced into
21 evidence as State's Exhibit No. 6. Do you recognize that
22 document from your file?

23 A. Yes.

24 Q. What is that document?

25 A. It is a report of the Orangeburg Department of Public

1 Safety in which it says that the third impression of the
2 fingerprints that were taken from the jewelry box, the third
3 impression was possibly identified as the left ring finger of
4 Mr. Britt.

5 Q. And that's the jewelry box that was in the victim's
6 home, correct?

7 A. Correct.

8 Q. Where jewelry was taken.

9 A. It does also say that there were some other fingerprints
10 that they could not suitably match but that one of the
11 fingerprints could be matched to him.

12 Q. And as I believe you testified earlier to today,
13 originally under Ms. Ullman and yourself Mr. Britt intended
14 to set forth an alibi defense if he proceeded to trial,
15 correct?

16 A. That's correct. He told me that as early as the bond
17 hearing because that's on my notes from the bond hearing.

18 Q. I'm going to hand you what's been marked as State's
19 Exhibit No. 7. Do you recall what that document is?

20 A. It is required by the Rule 5. If the defendant intends
21 to seek to use an alibi defense, he's required to notify the
22 State in writing, and since we had an appearance coming up in
23 which we were going to have to assert either we wanted a
24 trial or plea, I wanted to make sure that we notified the
25 State in writing of our intention to proceed with an alibi

1 defense, and that's what I did, and I gave the names of the
2 individuals that had been given to me as his alibi witnesses.

3 Q. Did you speak to those individuals?

4 A. No, I did not, I asked Mr. Britt or explained to him if
5 he wanted me to pursue an alibi defense -- these were his
6 relatives -- that they would need to come into the office and
7 we would need to talk to them, but I didn't -- since they
8 were his relatives and presumably people that would want to
9 help him, I told him if we were going to go to trial and if
10 he was going to pursue an alibi defense, we'd have to get
11 them in. That never occurred because at some point we
12 decided we weren't going to go to trial and we were going to
13 pursue a plea.

14 Q. In reference to the letter that we've discussed here
15 today in Court that jogged your memory about the rest of the
16 file, I'm going to hand you what's been marked and introduced
17 as State's Exhibit No. 8. Is that the letter to which you
18 were referring?

19 A. It is.

20 Q. If you'll read that into the record, please.

21 A. It's a letter addressed to Mr. Britt. It says, Dear
22 Anthony, this will confirm our meeting -- it's dated July 27,
23 2009 -- it says, this will confirm our meeting today
24 regarding your charges of burglary first. You are scheduled
25 for Court on August 10, at which time you will need to notify

1 the Court if you intend to plead guilty or go forward with a
2 jury trial. The jury trial will likely be scheduled during
3 the September term. As you know, the State has information
4 that the weapon stolen from the home on [REDACTED] was
5 recovered in a vehicle owned by your grandmother. There were
6 fingerprints lifted that match your fingerprints. Also,
7 there was blood found at the home and it was tested and
8 determined to match your DNA profile. The odds that the
9 blood found in the home, this home, are someone other than
10 you are 1 in 830 trillion. The solicitor has made no plea
11 offers. If you are found guilty through a jury trial, you
12 are facing life imprisonment. If you plead guilty I am
13 convinced that the sentence will be considerably less. I
14 will meet with the Judge on August the 10th.

15 My understanding that your alibi is your grandmother,
16 Joan Barnett, and your father Bernard Martin. They would be
17 available for trial and will verify your alibi for the entire
18 day of August 10 and the entire night. They would be
19 subpoenaed at the address of [REDACTED], Orangeburg,
20 South Carolina. And I signed it.

21 MS. HARRIGAN: No further questions, Your Honor.

22 THE COURT: All right. Very well. Mr. Li.

23 MR. LI: Yes, ma'am.

24 THE COURT: And let me just say this, even before you
25 begin.

1 MR. LI: Yes, ma'am.

2 THE COURT: Because obviously, as Mr. Hutto just said,
3 once he realized he had the file, he made a phone call to the
4 office so that hopefully we wouldn't lose the opportunity to
5 get everybody back together. And it's my information that
6 Ms. Harrigan immediately called you, is that right?

7 MR. LI: Yes, Your Honor.

8 THE COURT: And while I haven't seen these documents,
9 Mr. Hutto got you these documents, he e-mailed you the
10 documents from the file?

11 MR. LI: Yes, and I have had a brief moment to speak
12 with my client about that. He has not seen the documents,
13 but I have. He did e-mail them immediately.

14 THE COURT: Okay. Good. Because it's just one of those
15 things that when it happened I just wanted -- because you
16 were not here, and Ms. Harrigan, obviously, we were
17 continuing other matters, it was like, I need him, so I'm
18 delighted that you were notified immediately.

19 MR. LI: Absolutely.

20 THE COURT: As soon as you should be, and I did want
21 your client to know that he's had more information about
22 these documents. I certainly haven't seen them and still
23 haven't seen them. I know that they're now in evidence, but
24 that does bring one issue to my mind, and I want you to have
25 time to speak to Mr. Britt about this because I specifically

1 remember Mr. Britt testifying the other day, I wanted to have
2 the transcript. It's my feeble memory that it was the
3 Schmerber hearing transcript. Now, maybe it was the
4 preliminary hearing, but I thought I remembered, and I have
5 not gone back to my notes, but I thought it was Mr. Britt
6 said I really wish I had a copy of the Schmerber hearing
7 transcript, and that's my memory, and if that's his memory,
8 we've got the transcript here, and if he wants to have or you
9 need to have time to go through that, I want you all to have
10 that time, see what I'm saying? First of all, I guess I
11 would see if I'm remembering that correctly because it would
12 be the transcript obviously from the trial, the Jackson v.
13 Denno, the preliminary hearing and the Schmerber hearing, but
14 my memory was it was the transcript from the Schmerber
15 hearing that he wished that he had had. Isn't that right?

16 MR. BRITT: Yes, ma'am.

17 THE COURT: Okay. So now that I know that we have it,
18 do you all need to take a moment, because I'm sure it's not
19 lengthy, do you need to take a minute for you and Mr. Britt
20 to have a chance to go through that for whatever reason --
21 that's between the two of you -- to go through that? I don't
22 want you rushed.

23 MR. LI: Give me one moment.

24 THE COURT: Absolutely.

25 (Applicant and attorney confer.)

1 MR. LI: Your Honor, we would request seven minutes to
2 look over the transcript.

3 THE COURT: You don't have to limit yourself like that.

4 MR. LI: We're just looking for one issue.

5 THE COURT: You don't have to limit yourself like that.
6 You really do not. Now, here's the question, y'all have got
7 to have a chance to have a conversation about that, so let me
8 ask you, in what format do you have it in because we've got
9 paper here.

10 MR. LI: I would like to use that.

11 THE COURT: Let's use the paper. I like paper.

12 THE WITNESS: It's actually Exhibit No. 5.

13 THE COURT: There you go. That's it. So why don't we
14 then give you guys the space and just let you go down to the
15 interview room, take your time and go through it, see what
16 I'm saying?

17 MR. LI: Yes, ma'am.

18 THE COURT: That way you've had that time.

19 MR. LI: Thank you, Your Honor.

20 THE COURT: Does that work?

21 MR. LI: That works for me.

22 THE COURT: And as soon as you're ready let me know.

23 (Recess held.)

24 THE COURT: These other documents, I want you to feel
25 free now, Mr. Li, if Mr. Britt wants to see these, come get

1 them.

2 MR. LI: Yes, ma'am. May it please the Court.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION BY MR. LI:

5 Q. Senator Hutto --

6 A. Yes, sir.

7 Q. -- the other day on Tuesday we talked at some length
8 about the DNA, and at that point you did not recall receiving
9 a letter from SLED about the -- the July letter dated in the
10 papers.

11 A. I did not independently recall that, but now that I've
12 seen it I remember it.

13 Q. Okay. And when you wrote Mr. -- you wrote Mr. Britt the
14 letter indicating that there was DNA and fingerprints. You
15 based that off of the April letter which already stated that
16 he matched, correct?

17 A. When I wrote the July letter, well, by then I had the 1
18 in 830 trillion, so I was basing it on both of them at that
19 point in time.

20 Q. Okay.

21 A. Now, I told you the other day that I wasn't because I
22 didn't independently recall that, but the gist of what I'm
23 conveying now and conveying then, I hope, was that in my mind
24 there was enough evidence that if we went to trial with the
25 likelihood of winning is not strong, and I wanted to convey

1 that to him. I thought the other day when I testified that
2 all I had was the first DNA report. Now it looks like I had
3 both of them.

4 Q. When you conveyed your impressions to Mr. Britt through
5 the letter, had you taken a chance -- had you had a chance to
6 look at the Schmerber hearing transcript?

7 A. I think I should have had that by then, yes.

8 Q. So are you aware that on the last -- I'm going to refer
9 you to page 20 of the transcript where the Judge indicates
10 that the initial sample could not have been used in the -- in
11 a trial against Mr. Britt due to a lack of chain of custody?

12 A. Right, yes, the Judge did say that, but I already knew
13 that.

14 Q. You had talked to Ms. Ullman.

15 A. Right. I already knew that -- I already knew from the
16 first DNA report that states in the letter that for Court
17 purposes you're going to need to take another sample. I read
18 between the lines to tell me they didn't have the chain of
19 custody on the first one. That's what -- I think I testified
20 to that the other day.

21 Q. For the Schmerber hearing, were you hired at that point
22 or was it still the public defender?

23 A. Public defender was his attorney at that time.

24 Q. Are you aware of whether or not she objected to the
25 taking of DNA?

1 A. Yes. I mean, she basically argued to the Court that it
2 would be cumulative, that they had other evidence and didn't
3 need to do this invasive test.

4 Q. And the fingerprint results that you were just shown,
5 did you ever show that to Mr. Britt?

6 A. I don't think I actually showed him any of the tests for
7 him to look at. I mean, I thought he was trusting me on
8 that, so I don't think I showed it to him. Had he asked, I
9 had no reason not to show it to him, but I don't think he
10 asked, and I don't think I showed it to him.

11 Q. Did you tell him that there were some fingerprints that
12 could not be matched, that could not be identified to Mr.
13 Britt?

14 A. I don't know that I told him that.

15 Q. So you never actually shared any of the specific
16 results, you read the conclusion and gave him a --

17 A. Correct. He hired me to represent him, and I think from
18 my reputation in Orangeburg, if I've got an ability to go to
19 Court with the solicitor and beat him, I'm going to do it,
20 okay, so I had no reason to hold back anything, but just my
21 analysis of this, that there were too many cumulative things
22 for us to overcome with him facing life imprisonment to take
23 that risk.

24 Q. But at some point Mr. Britt should have been allowed to
25 come to that decision himself, correct?

1 A. Absolutely. He absolutely should have.

2 Q. And as a client he should have the right -- he should
3 have the ability to judge the credibility of the evidence
4 himself, correct?

5 A. Right, because he would have been in the courtroom
6 during the Schmerber hearing, I'm guessing, because I wasn't
7 there, but I think -- I think that they would have allowed
8 him to be there, so maybe I shouldn't say that I know that.
9 I sort of assumed that he was present at that hearing. Maybe
10 he wasn't.

11 Q. And I believe that you testified on Tuesday that Mr.
12 Britt came to you and hired you already with the expectations
13 of a plea deal; is that correct?

14 A. No, not -- no, I can't say that's absolutely true
15 because we wouldn't have even talked about alibi if he
16 absolutely had said from the beginning that he wanted a plea
17 deal. So no, I wouldn't say that we had ruled out a trial
18 from the get-go.

19 Q. And -- last couple questions, Your Honor.

20 THE COURT: Mr. Li, don't you feel that way, you ask all
21 the questions you need to.

22 Q. As to the proffer statement written by Mr. Britt, were
23 you with him?

24 A. I was not.

25 Q. Was there a reason why you were not with him?

1 A. He'd already plead guilty at that point in time, and he
2 was going to share with them whatever information that he had
3 that would be of assistance. He had already waived his
4 Miranda rights. He had already pled guilty. As far as I
5 could think, I couldn't think of any advice that I could give
6 him at that point in time. I just told him to be truthful,
7 tell as much as he knew and that would help us with the
8 sentence.

9 Q. And, I'm sorry for being repetitive, but in the end you
10 didn't show him any of the actual evidence, you just made a
11 summation of it and gave him your best advice.

12 A. Right. He was in the office with me when we talked. I
13 would have had the things in the file. But I just routinely
14 do not show evidence, unless I'm being asked for it. I'm not
15 opposed to doing that but -- and I might change -- after this
16 I might change my procedure, but I don't think I actually
17 showed it to him because I was representing it to him as I
18 understood it, as I was going to be his attorney trying to do
19 the best I could for him, this was how I understood it and
20 what I believed that they would show, so I don't think I
21 actually showed him the actual documents from SLED.

22 MR. LI: I beg the Court's indulgence one moment.

23 THE COURT: Of course, Mr. Li.

24 MR. LI: No further questions, Your Honor.

25 THE COURT: Very well. Redirect.

1 MS. HARRIGAN: Very brief, Your Honor. If I may
2 approach to get the exhibits.

3 THE COURT: Yes.

4 REDIRECT EXAMINATION BY MS. HARRIGAN:

5 Q. Are you aware -- I'm going to hand you State's Exhibit
6 No. 6 which is the fingerprint report from Orangeburg Public
7 Safety. I believe Mr. Li was asking you if you had informed
8 your client, Mr. Britt, that his fingerprints didn't match.
9 Does the report say that the other fingerprints didn't match
10 or that they were unidentified?

11 A. It says two of the latents on the card are partial
12 latent fingerprint impressions that do not have suitable
13 detail for identification.

14 Q. So it wasn't that Mr. Britt's fingerprints didn't match;
15 they weren't suitable samples to identify anyone.

16 A. Right. If what you're saying was that this would create
17 an impression that there was another known person there other
18 than Mr. Britt, this doesn't say that. These could have been
19 his, but they could have been somebody else's as well, but we
20 don't know whose they were.

21 MS. HARRIGAN: No further questions, Your Honor.

22 THE COURT: All right. Recross.

23 RECROSS-EXAMINATION BY MR. LI:

24 Q. What was the date on that letter?

25 A. The date on the --

1 Q. The public safety report.

2 A. December the 10th of 2007 was the date of -- I'm sorry,
3 that was the date of the incident. The date of the report
4 was March the 6th of 2009.

5 MR. LI: No further questions.

6 THE COURT: Thank you. All right. Very well, and is
7 this witness free to leave?

8 MS. HARRIGAN: Yes, Your Honor.

9 THE COURT: Any objection?

10 MR. LI: No objection.

11 THE COURT: Thank you.

12 THE WITNESS: Thank you.

13 MS. HARRIGAN: And just briefly in closing the State
14 would argue that applicant hasn't shown any deficiencies in
15 Senator Hutto's representation; however, if any were there,
16 this is a strong case of overwhelming evidence, two matches
17 of DNA samples, fingerprints, and he was arrested with a
18 weapon stolen from the home with the victim's name engraved
19 on it. Additionally, he pled guilty under oath and gave a
20 full statement to law enforcement implicating himself, so
21 this is a case of overwhelming evidence of guilt, and he has
22 not met his burden as required under Strickland.

23 THE COURT: Yes. Mr. Li.

24 MR. LI: Your Honor, we are simply saying that Mr. Britt
25 should have been afforded the ability to review all of the

1 documents and all the evidence against him, whether or not if
2 there's conflicting evidence, it would have been my
3 client's -- would have been his decision on whether or not to
4 go to trial. He wrote Senator Hutto the letter saying I
5 would like to plead based on the information that Mr. Hutto
6 gave him. We believe that he should have been afforded the
7 opportunity to review all the fingerprint evidence, the DNA
8 evidence, the one that said it matched him and the one that
9 said it didn't match him, just so that he could make the
10 decision of whether or not to plead. We believe that his
11 decision was handicapped by his inability to review all of
12 the necessary documents, Your Honor.

13 THE COURT: Thank you. Thank you very, very much, Mr.
14 Li. Now, I want to be absolutely certain, the documents that
15 now have been put in as exhibits, you have them -- you may
16 have them electronically but you have all of them, Mr. Li?

17 MR. LI: Yes. I have all of them, and I will print them
18 out and mail them to Mr. Britt.

19 THE COURT: That's the next thing I was going to ask. I
20 know Mr. Britt's going to want to have copies of those things
21 for his file.

22 MR. BRITT: Yes, Your Honor.

23 THE COURT: Of course he does. So I appreciate you
24 doing that. That's excellent.

25 MR. LI: I'll be billing OID for that, Your Honor.

1 THE COURT: Absolutely, Mr. Li. Yes.

2 MS. HARRIGAN: Nothing further.

3 THE COURT: And I will continue in my review of these
4 matters, and I think that's sufficient for me. I will be
5 continuing my review of these matters and, you know, I'm not
6 going to ask both sides to do a proposed order. That's too
7 much busy work for folk, so I'm not going to ask that, but
8 what I will do is I will notify counsel, I will notify you of
9 my decision and ask one of you to draft the order. When I
10 do, I'll ask you to share that of course with the other side
11 really a few days before you send it to me for their
12 comments. And that will conclude the work that we're going
13 to do in this file. Thank you so much.

14 --- END OF TRANSCRIPT OF RECORD ---

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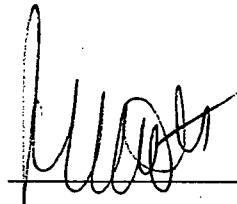
25

1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF ORANGEBURG
4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the trial of the captioned case, relative to appeal, in the
10 First Judicial Circuit Court for Orangeburg County, South
11 Carolina, on the 31st of October, 2013.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 May 2, 2014

16
17
18 A handwritten signature in dark ink, appearing to read 'Ruth L. Mott', is written over a horizontal line.

19 Ruth L. Mott, RPR, CRR

20 Official Court Reporter
21
22
23
24
25

D5143

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

RECEIVED
RICHMOND

CSI Carl W. Shultz
Orangeburg Department of Public Safety
P.O. Box 1425
Orangeburg, SC 29116-1425

DNA ANALYSIS
July 13, 2009
SLED LAB: L08-02073
Your Case No: 0703036
Incident Date: 12/10/2007
[V] LaVerne Blewer
[S] Anthony Britt

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

SUPPLEMENTAL REPORT

SEROLOGY ANALYSIS

Items Submitted:

Results of Examinations:

2	Two boxes of swabs		
2.1	Swabs- floor of kitchen at back door	2.1	Blood indicated. See DNA analysis.
2.2	Swabs- side/front of gun cabinet	2.2	Blood indicated. See DNA analysis.
3	Buccal swabs- Anthony Britt	3	See DNA analysis.

DNA ANALYSIS

ITEMS ANALYZED:

3 Buccal swabs- Anthony Britt

2.1 Swabs- floor of kitchen at back door

2.2 Swabs- side/front of gun cabinet



SLED LAB No. L08-02073
July 13, 2009

Page 2 of 3

EXAMINATIONS

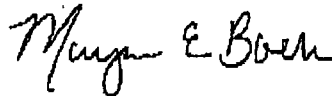
DNA analysis was performed on the items above. The results of Short Tandem Repeat (STR) PCR DNA analysis are shown in Table 1.

RESULTS

The DNA profile developed from item 2.1 matches the DNA profile of Anthony Britt. The probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately 1 in 830 trillion.

The partial DNA profile developed from item 2.2 also matches the DNA profile of Anthony Britt.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.



Maryann E. Boehm
Forensic Scientist

cc: Orangeburg County Solicitor's Office



SLED LAB No. L08-02073
July 13, 2009

Page 3 of 3

Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CSF1PO	D3S1358	TH01	DM3S17	D16S539	D7S1338	D19S403	pWA	TPOX	D18S51	D5S818	FGA	Amelogenin
3 Anthony Brita	13,15	30,31	9,11	10,12	15,16	7,8	11,12	9,13	20,24	12,14	16,18	6,9	15	8,13	21,24	XY
2.1 Kitchen floor	13,15	30,31	9,11	10,12	15,16	7,8	11,12	9,13	20,24	12,14	16,18	6,9	15	8,13	(21,24)	XY
2.2 Gun cabinet	13,15	30,31	-	(10)	15,16	7,8	11,12	9,13	20,24	12,14	16,18	6,9	(15)	8,13	21,(24)	XY

() = alleles between 75 and 149 rfu

- = no results



Memo

To: Danny McDaniel

From: Jill Ullman

CC:

Date: 5/28/2009

Re: Anthony Britt

Mr. Britt tells me he could not have committed this crime because he was with his grandmother all evening through the next day. Joan Barnette is the grandmother. Mr. Britt said she severely burnt herself shortly after thanksgiving. He was to take her to Charleston on 12/11/07 to get cadaver skin. Once she got to Charleston, they sent her to Augusta Burn Center because the burn was worse than the doctors expected. Mr. Britt tells me he stayed the night of 12/10/07 with his grandmother because they had to be in Charleston so early. Ms. Barnette should have medical records to back this story up and should be able to cooperate what Mr. Britt said. She is his alibi.

Joan Barnette: 533-0990

I sent a letter on 5-36-09 to Mr. Britt informing him that you have not been able to contact him or his grandmother. I asked for better contact information for him and Ms. Barnette.

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG
VOLUNTARY STATEMENT
(UNDER ARREST)
CASE# 07-03036

DATE: 08/06/2009

TIME: 1150 HRS

PLACE: ORANGEBURG DEPT. OF PUBLIC SAFETY

PERSON GIVEN STATEMENT: ANTHONY BRITT

AGE: 21

ADDRESS: [REDACTED]

ORANGEBURG SC 29115

I HAVE BEEN ADVISED AND DULY WARNED BY DET. MICHAEL SMALLS AND LT. SAMUEL JENKINS OF THE ORANGEBURG DEPT. OF PUBLIC SAFETY OF MY RIGHTS.

I GIVE THIS STATEMENT TO DET. SMALLS OF MY OWN FREE WILL AND SWORE THAT THIS STATEMENT TO BE TRUE TO THE BEST OF MY KNOWLEDGE.

ON DECEMBER 10, 2007 I ANTHONY BRITT AND MY FRIEND PHILLIP MICHAEL KING AKA (BOSS) WERE RIDING AROUND IN HIS GIRL FRIENDS CAR WHEN BOSS ASKED ME IF I WANTED TO GO WITH HIM ON A LICK (ROBBERY.) I SAID YES BUT I WAS NOT GOING IN. WE CONTINUED TO RIDE AROUND WHEN BOSS PULLED UP INTO THE DRIVE WAY AT [REDACTED] ORANGEBURG SC AND WE PARKED. BOSS GOT OUT THE CAR AND WALK UNDER THE CARPORT AND KNOCKED ON THE SIDE DOOR OF THE RESIDENCE. WHEN NO ONE CAME TO THE DOOR BOSS CALLED BACK TO ME AND SAID HE WAS GOING IN THE HOUSE. BOSS BROKE OUT A WINDOW NEXT TO THE DOOR REACHED IN AND OPENED THE DOOR TO THE HOUSE. BOSS WENT INSIDE AS I STOOD LOOK OUT. BOSS WAS IN THE HOUSE FOR ABOUT THREE MIN CARRYING FOUR

COPY

[REDACTED]

RIFLES IN HIS ARMS. I GOT OUT OF THE CAR AND OPENED THE TRUNK AND BOSS PUT THE GUNS IN THE TRUNK OF THE VEHICLE. AFTER THAT BOSS SAID THAT THERE WERE MORE GUNS IN THE HOUSE. BOSS WENT BACK INTO THE HOUSE TO GET THE REST OF THE STUFF. BOSS CAME BACK OUT OF THE HOUSE CARRYING MORE GUNS AT WHICH TIME HE TOLD ME THAT THERE WAS A JEWELRY BOX IN ONE OF THE ROOMS AT WHICH TIME I WENT TO ENTER THE HOUSE AND CUT MYSELF AS I WENT IN THE HOUSE. ONCE IN THE HOUSE I WENT INTO ONE OF THE BEDROOMS THAT HAD A GUN CABINET WITH THE DOOR OPEN. I STARTED TO TAKE ONE OF THE GUN BUT DIDN'T SO I CLOSED THE DOOR AND WENT INTO ONE OF THE OTHER BEDROOMS. ONCE IN THE ROOM I SAW THE JEWELRY BOX. AS I WENT TO PICK IT UP I NOTICED THAT I HAD CUT MYSELF SO I RAN OUT THE HOUSE GOT BACK IN THE CAR AND WE BOSS AND I LEFT THE HOUSE. BOSS TOLD ME THAT HE WAS GOING TO SELL THE GUNS TO HIS UNCLE AND THAT HE WOULD GIVE ME SOME MONEY AFTER HE SOLD THE GUNS. BOSS DROPPED ME OFF AT MY HOUSE WHICH IS LOCATED AT [REDACTED] ORANGEBURG SC. 29115. I DID NOT RECEIVE ANY MONEY FROM BOSS AND HAVEN'T SEEN HIM.

WITNESSES:

[Signature]
[Signature]

[Signature]
 SIGNATURE OF MAKER OF AFFIDAVIT

SWORN TO BEFORE ME THIS THE 6 DAY OF Aug, 20 09.

NOTARY PUBLIC, S.C. [Signature] (L.S.)

THIS IS TO CERTIFY THAT I HAVE READ THE ABOVE STATEMENT OR SAME HAS BEEN READ TO ME AND I HAVE BEEN GIVEN COPY OF THE SAME AS OF THIS DATE.

[Signature]
 SIGNATURE OF MAKER OF AFFIDAVIT

Dear Mr. B. Hutto

This is Anthony Britt, you are the lawyer in the case of Burglary 1st For me. Listen Mr. Hutto I know that you are a very busy man. so I'm not going to waste a lot of your time. I also know that you are very good at what you do. The first thing I wanted to ask you was ~~Is~~ Is there any way possibly that you can get my ~~case~~ court date Push Back. I just need a l.1 more time to get your money and I got a lot of stuff going on right now. The second thing I wanted to ask you is that I'm not ready to go to trial. I was wonder do you think that you can get me a plea. (As low as possible). I know I still owe 3,000 and you will get it But I just need some time. So can you please get my court date Push Back. Thank you for your time and consideration.

~~Anthony Britt~~
~~Anthony Britt~~

Love Anthony Britt

Push my court date Back
until you can work a plea (as low as possible)
If it will cost extra money
I will pay.



STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

COURT OF GENERAL SESSIONS
FIRST JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

WARRANT NO. J-695972

versus

SCHMERBER HEARING
TRANSCRIPT OF RECORD

ANTHONY BERNARD BRITT

DATE:

FEBRUARY 9, 2009

DEFENDANT

BEFORE:

HONORABLE JAMES C. WILLIAMS, JR., PRESIDING JUDGE

APPEARANCES:

DONALD SORENSON, ESQUIRE

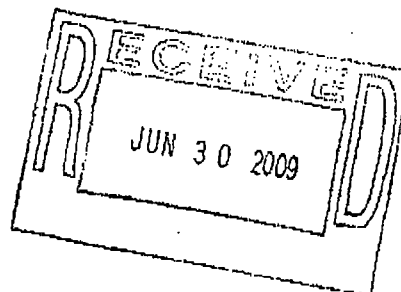
ASSISTANT SOLICITOR

FOR THE STATE

JILLIAN D. ULLMAN, ESQUIRE

ASSISTANT PUBLIC DEFENDER

FOR THE DEFENDANT



HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

I N D E X

	<u>PAGE</u>
EXAMINATION OF CARL W. SHULTZ	
DIRECT BY SOLICITOR SORENSON	5
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ARGUMENT BY MS. ULLMAN	19
RULING OF THE COURT	20

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>EV.</u>
CT. 1	LETTER FROM SLED DATED 4/17/08	5
CT. 2	SLED DNA ANALYSIS REPORT	5

NOTE: COURT'S EXHIBITS 1 AND 2 ATTACHED TO ORIGINAL
OF THIS TRANSCRIPT.

1 DATE:

2 FEBRUARY 9, 2009

3 SOLICITOR SORENSON: YOUR HONOR,
4 THIS IS A MOTION BY THE STATE, A SCHMERBER MOTION, IN
5 THE CASE OF THE STATE VERSUS ANTHONY BERNARD BRITT.
6 HE'S BEEN CHARGED WITH WARRANT J-695972, CHARGING HIM
7 WITH ONE COUNT OF BURGLARY IN THE FIRST DEGREE. THERE'S
8 A COPY I'VE HANDED UP TO YOU, YOUR HONOR, OF THE NOTICE
9 THAT WAS PROVIDED TO NOT ONLY THE DEFENDANT BUT ALSO HIS
10 LAWYER, MS. JILL ULLMAN IN THE PUBLIC DEFENDER'S OFFICE.

11 THE COURT: ALRIGHT.

12 SOLICITOR SORENSON: WE'RE PREPARED
13 TO CALL THE OFFICER.

14 THE COURT: YOU'VE GOT AN OFFICER?
15 CALL HIM.

16 SOLICITOR SORENSON: THE STATE CALLS
17 SERGEANT CARL SHULTZ.

18 THE COURT: SIR, IF YOU WOULD PUT
19 YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT.
20 (Whereupon, Carl W. Shultz
21 is duly sworn.

22 THE COURT: THANK YOU, SIR. HAVE A
23 SEAT RIGHT THERE AND STATE YOUR FULL NAME FOR US.

24 WITNESS: CARL WAYNE SHULTZ.

25 THE COURT: THANK YOU, SIR.

1 ALRIGHT, COUNSELOR.

2 SOLICITOR SORENSON: THANK YOU, YOUR
3 HONOR.

4 (NOTE: Blank lines on this page do not indicate any
5 part of record has been omitted. Headers on testimony
6 pages and hard page breaks between testimony are now
7 required by the Court. See next ensuing page for
8 sequential continuation of record.)

DIRECT - CARL W. SHULTZ BY SOL. SORENSON

5

DIRECT EXAMINATION OF CARL W. SHULTZ

BY SOLICITOR SORENSON:

(Court's Exhibits 1 and 2
marked and filed.)

Q. GOOD MORNING, SERGEANT SHULTZ.

A. GOOD MORNING.

Q. IF YOU WOULD, TELL THE COURT, IF YOU WOULD, WHERE
ARE YOU EMPLOYED?

A. I'M A SERGEANT, CRIME SCENE INVESTIGATOR WITH THE
ORANGEBURG DEPARTMENT OF PUBLIC SAFETY.

Q. AND HOW LONG HAVE YOU WORKED WITH THE PUBLIC
SAFETY?

A. TWO YEARS.

Q. TWO YEARS, AND YOU'VE BEEN EMPLOYED AS A CRIME
SCENE INVESTIGATOR FOR THAT PERIOD OF TIME?

A. YES, SIR.

Q. ALRIGHT. AND WERE YOU INVOLVED, SERGEANT, IN THE
INVESTIGATION OF A BURGLARY THAT OCCURRED AT [REDACTED]
[REDACTED] HERE IN THE COUNTY OF
ORANGEBURG?

A. YES, I WAS.

Q. AND WHEN DID THAT INCIDENT OCCUR?

A. IT WAS DECEMBER THE TENTH, TWO THOUSAND SEVEN.

Q. TWO THOUSAND AND SEVEN. AND HOW, WHAT WAS YOUR
INVOLVEMENT IN THE INVESTIGATION OF THAT CRIME

DIRECT - CARL W. SHULTZ BY SOL. SORENSON

6

1 SCENE?

2 A. AFTER THE INITIAL OFFICERS ARRIVED AT THE SCENE
3 THEY CALLED ME TO PROCESS THE SCENE FOR ANY
4 EVIDENCE.

5 Q. AND WOULD YOU JUST DESCRIBE JUST BRIEFLY FOR THE
6 JUDGE WHAT KIND OF FORENSIC EVIDENCE YOU FOUND AT
7 THAT CRIME SCENE?

8 A. DURING THE PROCESSING OF THE SCENE I LIFTED
9 MULTIPLE FINGERPRINTS AND BLOOD EVIDENCE FROM THE
10 ENTRANCEWAY WHERE THE GLASS WAS BROKEN OUT,
11 SEVERAL PLACES THROUGHOUT THE HOUSE, AND THEN ON A
12 GUN CABINET WHERE THE ITEMS WERE STOLEN FROM IN A
13 BACK BEDROOM OF THE HOUSE.

14 Q. OKAY. AND THIS WAS A BURGLARY THAT YOU RESPONDED
15 TO?

16 A. YES, IT WAS.

17 Q. AND WHAT TYPE OF ITEMS WERE REMOVED FROM THAT
18 SCENE, WERE STOLEN FROM THAT - - -

19 A. MOSTLY WEAPONS.

20 Q. MOSTLY WEAPONS.

21 A. I BELIEVE THERE WAS NINE ALTOGETHER.

22 Q. OKAY. SO, AS YOU INDICATED YOU COLLECTED SEVERAL
23 LATENT PRINTS FROM THAT SCENE?

24 A. I DID.

25 Q. ALRIGHT. AND ADDITIONALLY, YOU TOLD THE JUDGE

DIRECT - CARL W. SHULTZ BY SOL. SORENSON

7

1 ABOUT THERE BEING BLOOD FOUND AT THE POINT OF
2 ENTRY, LEADING ALL THE WAY BACK TO THE GUN
3 CABINET?

4 A. YES, THERE WAS.

5 Q. WERE YOU ABLE TO COLLECT ANY SAMPLES OR SWABS OF
6 THAT BLOOD FROM THE CRIME SCENE?

7 A. I TOOK TWO SWABS FROM THE FRONT DOOR AREA AND TWO
8 FROM THE BACK WHERE THE GUN CABINET WAS, AND BOTH
9 OF THOSE, OR ALL FOUR OF THEM, IT WAS TWO BOXES,
10 WERE SENT TO SLED.

11 Q. OKAY. AND I'LL MOVE ON TO MY NEXT QUESTION. SO,
12 THOSE SWABS THAT YOU COLLECTED WERE SENT OUT TO
13 SLED FOR FURTHER ANALYSIS?

14 A. YES, THEY WERE.

15 Q. OKAY. AND ADDITIONALLY, ARE YOU AWARE OF WHETHER
16 THIS DEFENDANT, ANTHONY BRITT, WAS ARRESTED IN THE
17 CITY OF COLUMBIA ON JANUARY THIRTEENTH OF TWO
18 THOUSAND EIGHT?

19 A. YES, HE WAS.

20 Q. AND WHAT ITEM, IF ANY, THAT RELATES TO THIS
21 BURGLARY AT [REDACTED]

22 DID HE HAVE IN HIS POSSESSION AT THAT TIME?

23 A. HE WAS IN POSSESSION OF A THIRTY-EIGHT CALIBER
24 PISTOL THAT WAS FOUND INSIDE THE VEHICLE THAT HE
25 WAS IN.

DIRECT - CARL W. SHULTZ BY SOL. SORENSON

8

1 Q. OKAY. HOW DID THAT PISTOL RELATE TO THE BURGLARY?

2 A. THE PISTOL WAS STOLEN FROM MR. BLEWER AT, ON THE

3

4 Q. OKAY. SO, TWO MONTHS LATER THIS DEFENDANT WAS
5 FOUND IN POSSESSION OF ONE OF THE PISTOLS THAT WAS
6 TAKEN DURING THAT BURGLARY?

7 A. YES.

8 Q. OKAY. NOW, THE STATE LAW ENFORCEMENT DIVISION,
9 WITH THE ITEMS THAT YOU SENT OUT THERE, WERE THEY
10 ABLE TO DO DNA ANALYSIS ON THE SWABS THAT YOU TOOK
11 AND SUBMITTED?

12 A. THEY DID DO DNA ANALYSIS, AND THEY SENT A REPORT
13 BACK STATING THAT THEY DEVELOPED A PROFILE. THAT
14 PROFILE WAS DEVELOPED FROM - - -

15 Q. OKAY. GO AHEAD.

16 A. I WAS GOING TO SAY, THAT PROFILE WAS DEVELOPED
17 FROM THE BLOOD AT THE ENTRYWAY OF THE DOORWAY, AND
18 ONCE THAT WAS RAN THROUGH THE CODIS SYSTEM - - -

19 Q. OKAY, LET ME STOP YOU FOR ONE SECOND, LET ME SHOW
20 YOU COURT'S EXHIBIT NUMBER TWO, IS THAT THE
21 INITIAL REPORT THEY SENT?

22 A. IT IS.

23 Q. SHOWING THAT THEY HAD DEVELOPED A PROFILE ON SWAB
24 TWO POINT ONE AND TWO POINT TWO?

25 A. THAT'S CORRECT.

DIRECT - CARL W. SHULTZ BY SOL. SORENSON

9

1 Q. OKAY.

2 SOLICITOR SORENSON: LET ME GIVE YOU
3 A COPY OF THAT.

4 Q. AND AT THAT POINT IN TIME WHEN THAT REPORT WAS
5 GENERATED HAD THEY HAD A SUSPECT SAMPLE SENT OUT
6 THERE YET, THAT WOULD HAVE BEEN MARCH OF TWO
7 THOUSAND EIGHT, HAD ANY ARREST BEEN MADE OR
8 ANYTHING AT THAT POINT IN TIME?

9 A. NO, NOT FROM US, NO.

10 Q. OKAY. AND DID THEY THEN HAVE AN OPPORTUNITY, ARE
11 YOU AWARE, TO RUN ONE OF THOSE SWABS,
12 PARTICULARLY, ITEM TWO POINT ONE, THROUGH THE
13 CODIS, THE COMBINED DNA INDEX SYSTEM?

14 A. YES, THEY DID.

15 Q. OKAY. AND DID YOU GET ANY DOCUMENTS FROM THEM
16 INDICATING THAT THEY GOTTEN A HIT WHEN THEY RAN
17 ITEM TWO POINT ONE THROUGH THE CODIS SYSTEM?

18 A. I DID, I RECEIVED AN ANALYSIS REPORT ON APRIL
19 SEVENTEENTH.

20 Q. LET ME SHOW YOU COURT'S EXHIBIT NUMBER ONE, IS
21 THAT THE ITEM THAT GOT?

22 A. YES, IT IS.

23 Q. AND WHAT, IF YOU WOULD, TELL THE COURT, WHAT IS IT
24 THAT THEY WERE REQUESTING, OR FIRST OF ALL, WHAT
25 DID THEY INDICATE THAT THEIR FINDINGS WERE WHEN

DIRECT - CARL W. SHULTZ BY SOL. SORENSON

10

1 THAT SWAB, TWO POINT ONE, THAT DNA PROFILE WAS RUN
2 THROUGH THE CODIS SYSTEM, WHAT WERE THE RESULTS?

3 A. THE RESULTS OF THAT STATED THAT THEY DEVELOPED A
4 PROFILE THAT WAS A MATCH TO A PROFILE THAT WAS
5 ALREADY IN THE SYSTEM, AND THEY IT MATCHED THE
6 PROFILE OF ANTHONY BERNARD BRITT.

7 Q. OKAY. AND THAT'S THE DEFENDANT IN THIS CASE?

8 A. THAT'S THE DEFENDANT.

9 Q. OKAY. AND THEN, WHAT ARE THEY THEN REQUESTING IN
10 ADDITION?

11 A. FOR INVESTIGATIVE PURPOSES, THEY REQUESTED A KNOWN
12 BLOOD STANDARD, OR IN THIS CASE, A BUCKLE SWAB OF
13 THE INDIVIDUAL TO MAKE A COMPARISON AS A STANDARD.

14 Q. SO, YOU'RE AWARE THAT THEY EITHER NEED A BLOOD
15 STANDARD OR THE SALIVA SWAB?

16 A. YES.

17 Q. OKAY. AND WOULD THAT ASSIST YOU IN YOUR FURTHER
18 INVESTIGATION OF MR. BRITT - - -

19 A. YES, IT WOULD.

20 Q. --- TO GET THAT ITEM?

21 A. YES, IT WOULD.

22 Q. OKAY. IN FACT, IT WOULD BE MATERIAL TO YOUR
23 INVESTIGATION?

24 A. YES, IT WOULD.

25 Q. IN ADDITION, YOU HAD TOLD THE COURT EARLIER THAT

DIRECT - CARL W. SHULTZ BY SOL. SORENSON

11

1 YOU HAD COLLECTED SOME LATENT PRINTS FROM THE
2 CRIME SCENE?

3 A. YES, I DID.

4 Q. DID YOU HAVE A CHANCE TO GO BACK AND COMPARE THOSE
5 LATENT PRINTS, NOW THAT AN ARREST HAS BEEN MADE OF
6 MR. BRITT?

7 A. I HAVE.

8 Q. AND WHAT WERE THE RESULTS OF THAT?

9 A. THE LATENTS, THERE WERE THREE LATENTS LIFTED FROM
10 A WOODEN JEWELRY BOX FROM THE BEDROOM, THE SAME
11 AREA WHERE THE PISTOL WAS TAKEN, AND ONE OF THOSE
12 LATENT PRINTS -- TWO OF THEM ARE KIND OF ROUGH, IN
13 BAD SHAPE, BUT THE, ONE OF THEM IS THE LEFT MIDDLE
14 FINGER OF DEFENDANT BRITT.

15 Q. ALRIGHT. AND YOU WERE ABLE TO DO THAT COMPARISON?

16 A. I WAS, YES.

17 Q. AND IF THE COURT WERE TO, WERE TO GRANT THE ORDER
18 TO GET THE SWABS FROM MR. BRITT WOULD YOU BE THE
19 PERSON THAT WOULD BE ABSOLUTELY COLLECTING THEM?

20 A. YES, I WOULD.

21 Q. OKAY. JUST BRIEFLY TELL THE COURT HOW YOU WOULD
22 GO ABOUT DOING THAT?

23 A. ALRIGHT. IT'S A VERY SIMPLE PROCESS, VERY NON-
24 INVASIVE. YOU'D JUST TAKE TWO SWABS, BASICALLY
25 LIKE A BIG Q-TIP, HAVE HIM OPEN HIS MOUTH, TAKE

DIRECT - CARL W. SHULTZ BY SOL. SORENSON

12

1 ONE FROM THE LEFT SIDE AND ONE FROM THE RIGHT
2 SIDE, AND BOX THEM UP, SEAL THEM, AND SEND THEM TO
3 SLED.

4 THE COURT: AND YOU WOULD DO THAT
5 YOURSELF?

6 A. YES, SIRS.

7 SOLICITOR SORENSON: THAT WOULD BE
8 ALL I WOULD HAVE, YOUR HONOR.

9 THE COURT: MS. ULLMAN.

10 (NOTE: Blank lines on this page do not indicate any
11 part of record has been omitted. Headers on testimony
12 pages and hard page breaks between testimony are now
13 required by the Court. See next ensuing page for
14 sequential continuation of record.)

CROSS - CARL W. SHULTZ BY MS. ULLMAN

13

CROSS-EXAMINATION OF CARL W. SHULTZ

BY MS. ULLMAN:

Q. WHAT DAY DID YOU SAY THIS INCIDENT OCCURRED?

A. IT WAS DECEMBER THE TENTH, TWO THOUSAND SEVEN.

Q. WHEN DID YOU SEND THIS STUFF OFF, THE SWABS AND THE FINGERPRINTS OFF FOR ANY ANALYSIS?

A. LET ME LOOK AT THE EXACT DATE. IT WOULD HAVE BEEN -- THE SLED REPORT HAS DECEMBER TENTH ON IT, BUT NORMALLY, AFTER I DO MY PROCEDURES AND LOG EVIDENCE IN IT'S USUALLY A DAY OR TWO AFTER THE FACT, AFTER IT GOES INTO EVIDENCE AND ALL THE PAPERWORK IS FILLED OUT.

Q. WHEN DID YOU GET A RESPONSE BACK FROM SLED REGARDING THOSE BLOOD SAMPLES?

A. MARCH ELEVENTH, TWO THOUSAND EIGHT.

Q. IS IT COMMON FOR IT TO TAKE THREE TO FOUR MONTHS TO GET A SAMPLE BACK?

A. ACTUALLY, IT'S COMMON FOR IT TO TAKE FIVE OR SIX MONTHS, THAT WAS A FAIRLY FAST TURN AROUND.

Q. WHEN DID YOU TAKE THE, LIFT THE FINGERPRINTS?

A. THE SAME EVENING, IT WOULD HAVE BEEN DECEMBER THE TENTH.

Q. AND WHEN DID YOU ANALYZE THEM TO SEE IF THERE WAS A MATCH?

A. INITIALLY THEY WERE SENT WITH THE BLOOD TO SLED,

CROSS - CARL W. SHULTZ BY MS. ULLMAN

14

1 TO RUN THROUGH AFIS, AND HOWEVER THEY COME BACK IS
2 NO, NO IDENTIFICATION, AND I JUST COMPARED THOSE
3 ON FRIDAY, AFTER SPEAKING WITH THE SOLICITOR'S
4 OFFICE AND FINDING OUT ABOUT MR. BRITT.

5 Q. YOU PERSONALLY COMPARED THEM?

6 A. YES, I DID.

7 Q. WHAT IS YOUR TRAINING BACKGROUND TO GIVE YOU THE
8 KNOWLEDGE TO COMPARE FINGERPRINT ANALYSIS?

9 A. I'VE BEEN IN THIS FIELD FOR APPROXIMATELY TEN
10 YEARS AND HAVE HAD NUMEROUS FINGERPRINT COMPARISON
11 CLASSES, CERTIFIED AS A LATENT EXAMINER,
12 APPROXIMATELY SIXTY HOURS OF TRAINING AND FIELD
13 WORK.

14 Q. YOU SAY YOU'RE CERTIFIED AS A LATENT EXAMINER,
15 DOES THAT MEAN YOU'RE CERTIFIED TO TAKE THE PRINTS
16 OR CERTIFIED TO EXAMINE THEM?

17 A. ACTUALLY, BOTH.

18 Q. DO YOU KNOW WHEN AN ARREST WARRANT WAS ISSUED FOR
19 MR. BRITT IN REGARDS TO THIS CASE?

20 A. I DO NOT BUT I CAN GIVE YOU THAT DATE. IT LOOKS
21 LIKE IT WAS APRIL TENTH, TWO THOUSAND AND EIGHT.

22 Q. I'M SORRY, SAY THAT AGAIN?

23 A. IT LOOKS LIKE IT WAS APRIL TENTH, TWO THOUSAND
24 EIGHT.

25 Q. MAY I SEE WHAT YOU'RE LOOKING AT?

CROSS - CARL W. SHULTZ BY MS. ULLMAN

15

1 A. I'M SORRY, THAT'S RECEIVING STOLEN GOODS... I'M
2 SORRY. NO, MA'AM, I DO NOT HAVE THAT IN MY FILE.

3 Q. CAN I SHOW YOU - - -

4 A. AUGUST FIFTH, TWO THOUSAND EIGHT.

5 Q. IT WAS ISSUED AUGUST FIFTH, TWO THOUSAND EIGHT?

6 A. YES.

7 Q. AND IT ALLEGEDLY OCCURRED ON DECEMBER TENTH, TWO
8 THOUSAND SEVEN?

9 A. YES.

10 Q. AND YOU RECEIVED THE BLOOD ANALYSIS BACK ON MARCH
11 OF TWO THOUSAND EIGHT?

12 A. YES.

13 Q. OKAY. YOU ALSO TESTIFIED THAT MR. BRITT WAS
14 APPREHENDED WITH A WEAPON IN COLUMBIA?

15 A. YES, MA'AM.

16 Q. AND THAT WEAPON IS CONNECTED TO THIS CASE?

17 A. YES, IT IS.

18 Q. AND HOW DO YOU KNOWN?

19 A. IT HAS A PARTICULAR ENGRAVING ON IT THAT WAS
20 UNIQUE TO THE VICTIM.

21 Q. DO YOU HAVE ANY IDEA WHAT THAT ENGRAVING WAS?

22 A. I DO NOT, AT THIS TIME I DON'T HAVE THE PICTURES
23 WITH ME.

24 Q. SO, IT WAS MATCHED BY THE ENGRAVING NOT BY THE
25 SERIAL NUMBER?

CROSS - CARL W. SHULTZ BY MS. ULLMAN

16

1 A. AND THE SERIAL NUMBER AS WELL. HE WAS VERY
2 METICULOUS IN HIS RECORD KEEPING, AND HE HAD ALL
3 OF HIS SERIAL NUMBERS.

4 MS. ULLMAN: I HAVE NO FURTHER
5 QUESTIONS, YOUR HONOR.

6 THE COURT: ALRIGHT.

7 (NOTE: Blank lines on this page do not indicate any
8 part of record has been omitted. Headers on testimony
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10 required by the Court. See next ensuing page for
11 sequential continuation of record.)

EXAM - CARL W. SHULTZ BY THE COURT

17

EXAMINATION OF CARL W. SHULTZ

BY THE COURT:

Q. YOU DIDN'T, AT THE TIME YOU GOT THIS LETTER BACK
ON APRIL THE EIGHTEEN -- AND LET ME MARK THESE.

SOLICITOR SORENSON: THEY SHOULD BE
MARKED.

COURT REPORTER: I'VE ALREADY MARKED
THEM, JUDGE.

THE COURT: YOU DID. ALRIGHT.

Q. YOU GOT COURT'S EXHIBIT TWO BACK ON, IT WAS DONE
ON MARCH ELEVENTH, AND YOU GOT IT SHORTLY AFTER
THAT, BUT NO IDENTIFICATION AS TO THE INDIVIDUAL.
ON APRIL THE SEVENTEENTH, O-EIGHT, THEN YOU GOT
THE LETTER BACK SAYING THAT IT MATCHED MR. BRITT?

A. YES, SIR.

Q. AND THEN, BUT NO WARRANT WAS ISSUED UNTIL AUGUST?

A. NO, SIR. WHAT I DO IS, I TURN ALL OF MY
INVESTIGATIVE FINDINGS OVER TO THE INVESTIGATOR
WORKING THE CASE AND THEY HANDLE IT FROM THERE.

Q. ALRIGHT.

A. AND DURING THAT TIME FRAME THE INVESTIGATOR THAT
WAS INITIALLY HANDLING THE CASE WAS PROMOTED AND
WENT BACK TO ROAD PATROL, AND I GUESS THERE WAS
SOME BREAK DOWN IN THAT.

Q. OKAY.

EXAM - CARL W. SHULTZ BY THE COURT

18

1 A. THAT'S WHY IT TOOK SO LONG TO GET THE WARRANT
2 ISSUED.

3 Q. BUT AT THAT TIME MR. BRITT WAS NOT A SUSPECT?

4 A. NO, HE WAS NOT A SUSPECT.

5 Q. AS FAR AS YOU KNOW?

6 A. NO, SIR, NOT AS FAR AS I KNOW. BUT AGAIN, I DON'T
7 DO THE FOLLOW UP INVESTIGATION.

8 Q. AND THEN HE WAS NOT ARRESTED UNTIL DECEMBER OF O-
9 EIGHT?

10 A. YES, SIR, THAT'S CORRECT.

11 THE COURT: OKAY. SOLICITOR, DO YOU
12 HAVE ANYTHING ELSE?

13 SOLICITOR SORENSON: NO, SIR.

14 THE COURT: MS. ULLMAN?

15 MS. ULLMAN: THANK YOU, YOUR HONOR.

16 THE COURT: DO YOU HAVE ANYTHING
17 ELSE FROM THIS WITNESS?

18 MS. ULLMAN: NO, SIR.

19 THE COURT: YOU CAN HAVE A SEAT.

20 WITNESS: THANK YOU.

21 THE COURT: DOES THE STATE HAVE
22 ANYTHING ELSE?

23 SOLICITOR SORENSON: NO, SIR.

24 THE COURT: ALRIGHT, MS. ULLMAN,
25 I'LL BE GLAD TO HEAR FROM YOU. DO YOU HAVE ANY

1 TESTIMONY OR EVIDENCE YOU'D LIKE TO OFFER, OR DO YOU
2 JUST WANT TO ARGUE?

3 MS. ULLMAN: I JUST WANT TO ARGUE.

4 THE COURT: I'LL BE GLAD TO HEAR
5 YOU.

6 ARGUMENT BY MS. ULLMAN

7 YOUR HONOR, WE WOULD SAY THAT
8 THERE'S NO INDICATION THAT EVIDENCE TAKEN FROM MR. BRITT
9 WOULD MAKE THIS CRIME ANYMORE LIKELY TO HAVE BEEN
10 COMMITTED, OR ANYMORE LIKELY TO HAVE BEEN COMMITTED BY
11 MR. BRITT. THERE'S AVAILABILITY OF OTHER EVIDENCE, SUCH
12 AS A FINGERPRINT THAT OFFICER SHULTZ SAYS THAT HE IS
13 QUALIFIED TO ANALYZE, HAS ANALYZED IT, AND HE SAYS THAT
14 FINGERPRINT MATCHES. THEY'VE ALSO SAID THAT MR. BRITT
15 WAS APPREHENDED WITH A WEAPON THAT WAS PARTICULAR TO
16 THIS CRIME IN HIS POSSESSION. WE WOULD SAY THAT THERE
17 IS EVIDENCE CAN BE USED AT TRIAL THAT COULD PROVE HIS
18 GUILT. THE STATE CAN ABSOLUTELY MOVE FORWARD WITHOUT
19 THIS DNA EVIDENCE, AND WE WOULD SAY THAT IT IS AGAINST
20 HIS FOURTH AMENDMENT RIGHT TO HAVE BODILY INTRUSIONS IF
21 YOUR HONOR WERE TO ALLOW THEM TO TAKE THIS EVIDENCE. AS
22 I SAID, I BELIEVE IT WOULD BE CUMULATIVE, THEY HAVE
23 PLENTY OF EVIDENCE TO MOVE FORWARD WITHOUT THIS DNA
24 SAMPLE.

25 THE COURT: OKAY.

RULING OF THE COURT

1
2 WELL, I FIND THAT THERE IS PROBABLE
3 CAUSE, NUMBER ONE, TO FIND THAT A CRIME WAS COMMITTED.
4 THERE IS PROBABLE CAUSE TO BELIEVE THAT MR. BRITT WAS A
5 REASONABLE SUSPECT IN THAT CRIME, AND THAT THERE IS
6 FINGERPRINT EVIDENCE, AND HE WAS ARRESTED WITH A PISTOL
7 THAT WAS STOLEN FROM THAT CRIME. I ALSO FIND THAT THERE
8 WAS DNA ANALYSIS DONE ON BLOOD WHICH WAS FOUND AT THE
9 POINT OF IMPACT, OR ENTRANCE, POINT OF ENTRANCE WHERE
10 THE GLASS WAS BROKEN TO GET INTO THE HOUSE, AS WELL AS
11 ON THE GUN CASE FROM WHICH NUMEROUS WEAPONS WERE STOLEN,
12 CERTAINLY A REASONABLE INFERENCE THERE THAT THAT BLOOD
13 CAME FROM THE DEFENDANT OR THE PERSON WHO STOLE THOSE
14 GUNS, AND THE STATE HAS ALREADY RUN THE DNA ON THAT.

15 I FURTHER FIND THAT THE CODIS SYSTEM
16 IDENTIFIED MR. BRITT AS A SUSPECT, BUT THAT, OF COURSE,
17 THAT WOULD NOT BE ADMISSIBLE IN COURT BECAUSE YOU
18 WOULDN'T BE ABLE TO ESTABLISH A CHAIN OF CUSTODY FOR THE
19 SAMPLE, AND SO, THERE IS A REAL NEED FOR THE BLOOD, NOT
20 BLOOD, THE LETTER ASKS FOR BLOOD BUT YOU'RE JUST ASKING
21 FOR THE SWABS WHICH IS SUFFICIENT. THERE'S A REAL NEED
22 TO DO THAT. IT COULD TURN OUT THAT, YOU KNOW, THERE'S
23 BEEN SOME MISTAKE MADE IN SOME OF THE OTHER EVIDENCE AND
24 IT COULD BE EXCULPATORY AS FAR AS MR. BRITT IS
25 CONCERNED.

1 SO, I FIND THE STATE HAS MADE A
2 SUFFICIENT CASE TO JUSTIFY THE MINIMUM INTRUSION OF THE
3 CHEEK SWABS FROM MR. BRITT. IT COULD, LIKE I SAY, IT
4 COULD BE EXCULPATORY, IT COULD ADD TO THE EVIDENCE
5 THAT'S ALREADY AGAINST HIM, I DON'T KNOW, BUT THERE'S
6 CERTAINLY SUFFICIENT GROUNDS FOR ME TO GRANT THE ORDER
7 FOR MR. BRITT TO SUBMIT TO THE SWABS. SO, I WILL GRANT
8 THE ORDER.

9 YOU PREPARE ME AN ORDER.

10 HAVE YOU MADE MR. BRITT AN OFFER?

11 SOLICITOR SORENSON: THIS IS A BRAND
12 NEW CASE, JUDGE, HE'S GOT A PRIOR RECORD AND I'M DOUBLE
13 CHECKING ON THAT TO SEE IF - - -

14 THE COURT: ALRIGHT.

15 MS. ULLMAN: THANK YOU, YOUR HONOR.

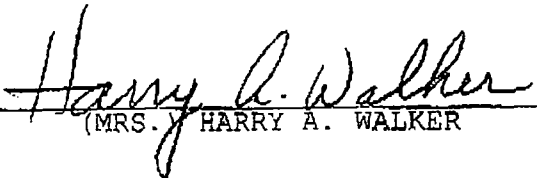
16 THE COURT: YES, MA'AM.

CERTIFICATE

I, THE UNDERSIGNED, MRS.. HARRY A. WALKER, OF ROWESVILLE, SOUTH CAROLINA, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE NINTH DAY OF FEBRUARY, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DATE: JUNE 29, 2009


(MRS.) HARRY A. WALKER

DEPARTMENT OF PUBLIC SAFETY
ORANGEBURG, SOUTH CAROLINA

CONTINUATION REPORT

CASE NO: 07-03036

DATE OF REPORT: 12-10-07

OFFENSE: Burglary

DATE OF OFFENSE: 12-10-07

VICTIM: (Blewer) Lavern

SUSPECT: (Britt) Anthony

ASSIGNED INVESTIGATOR: Cpl. T. Gibson

ADDITIONAL INFORMATION:

Upon learning of DNA evidence that identified S/Anthony Britt as a Suspect in this incident this R/I examined the known ink fingerprint impressions of S/Britt against the card of latent lifts originally collected from a jewelry box at the original incident location. That card bears three partial latent fingerprint impressions.

Two of the latents on the card are partial latent fingerprints impressions that do not have suitable detail for identification.

A third impression was compared and positively identified as the # 9 finger of S/Britt (left ring finger).

The prints were lifted from the front left corner of the wooden jewelry box.

The identification of the print will be charted for court purposes on a later date.

This form is used by Officer assigned to the case to report progress within ten days and as needed thereafter.

Investigating Officer: Carl W. ShultzDate: 03-06-09

Reviewing Officer: _____

Date: _____

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) CASE NO.: 2009-GS-38-0331
 COUNTY OF ORANGEBURG)

STATE OF SOUTH CAROLINA,)
)

v.)

Rule 5 (e 1) Alibi Defense

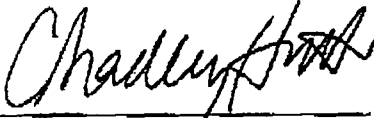
Anthony Britt,)
)

Defendant.)
)
)

TO: Don Sorenson, ASSISTANT SOLICITOR ORANGEBURG COUNTY

You will please take notice that Defendant claims to have been with his grandmother Joan Barnette and his father Bernard Martin, both of [REDACTED] [REDACTED] Orangeburg, South Carolina, at the time of the alleged offense. They are his alibi witnesses.

July 29, 2009
 Orangeburg, SC


 C. Bradley Hutto
 Williams and Williams
 Post Office Box 1084
 Orangeburg, SC 29116-1084
 803-534-5218
 803-536-6544 (fax)
 Attorney for Defendant



WILLIAMS & WILLIAMS
ATTORNEYS AT LAW

MARSHALL B. WILLIAMS
(1912 - 1995)
CHARLES H. WILLIAMS, P.A.
CHARLES H. WILLIAMS, II
C. BRADLEY HUTTO
RUSSELL A. BLANCHARD, IV

370 ST. PAUL N.E.
P. O. Box 1084
ORANGEBURG, SOUTH CAROLINA 29116-1084
(803) 534-5218
FAX (803) 536-6544

July 27, 2009

Anthony Britt

Orangeburg, SC 29115

RE: Burglary 1st

Dear Anthony:

This will confirm our meeting today regarding your charges of Burglary 1st. You are scheduled for court on August 10 at which time you will need to notify the court if you intend to plea guilty or go forward with a jury trial. The jury trial will likely be scheduled during the September term. As you know, the State has information that the weapon stolen from the home on [REDACTED] was recovered in a vehicle owned by your grandmother. There were fingerprints lifted that match your fingerprints. Also there was blood found at the home and it was tested and determined to match your DNA profile. The odds that the blood found in this home are someone other than you are 1 and 830 trillion. The Solicitor has made no plea offers. If you were found guilty through a jury trial, you are facing life imprisonment. If you pled guilty, I am convinced that the sentence would be considerably less. I will meet with the judge on August 10.

My understanding that your alibi is your grandmother Joan Barnette and your father Bernard Martin. They would be available for trial and will verified your alibi for the entire day of August 10 and the entire night. They would be subpoenaed at the address [REDACTED], Orangeburg, South Carolina.

Sincerely,


C. Bradley Hutto



STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Anthony Britt, #317524,

Case No. 2010-CP-38-1105

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed August 3, 2010. Respondent made its Return on January 7, 2011, requesting an evidentiary hearing be held. An evidentiary hearing was convened on October 29, 2013 and November 1, 2013, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Victor K. Li, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Orangeburg County Clerk of Court. Applicant was indicted during the March 2009 term of the Orangeburg County Grand Jury for Burglary in the First Degree (2009-GS-38-0331). C. Bradley Hutto, Esquire, represented him. On August 6, 2009, Applicant appeared before the Honorable Edgar W. Dickson, where he pled guilty as indicted; sentencing was deferred at that time. On August 13, 2009, Judge Dickson sentence Applicant to sixteen years imprisonment. No direct appeal was taken.

Page 1 of 12

1. Ineffective assistance of counsel for failing to investigate Rule 5 materials before advising Applicant to pled guilty;
2. Ineffective assistance of counsel for failing to protect his Fourth Amendment right against bodily intrusion; and
3. Ineffective assistance of counsel for failure to object and argue against the State's Schmerber¹ motion.

At the evidentiary hearing, Applicant proceeded forward on these three allegations.

TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel C. Bradley Hutto, Esquire (hereafter "Counsel"). This Court also had before it a copy of the Applicant's guilty plea transcript, the records of the Orangeburg County Clerk of Court, and the Applicant's records from the South Carolina Department of Corrections.

testified that he discussed the discovery with Counsel, and that Counsel advised him the evidence was only circumstantial. However, he testified that Counsel told him that his DNA matched the blood found at the victims' residence and he should plead guilty. He testified that the South Carolina Law Enforcement Division (hereafter "SLED") DNA crime scene report from December 10, 2007, which was introduced as Applicant's Exhibit #1, stated that the blood sample from the victims' residence matches an "unidentified man," and therefore Counsel's advice was incorrect. He testified that he was never shown a subsequent SLED DNA report showing that his DNA matched the sample found in the victims' home based on his known DNA sample in the SLED DNA database for convicted felons.² He testified that this report would not have been admissible at trial based on a break in the chain of custody.

He testified that his DNA was taken pursuant to a court order following a Schmerber hearing that took place before Counsel had been retained. He testified that Jillian Ullman of the Orangeburg County Public Defender's Office represented him at the time of the Schmerber hearing. He acknowledged that Ullman argued against the State's Schmerber motion, but that his DNA was taken in violation of his constitutional rights. He testified that his DNA was taken in a hallway of the courthouse without any counsel present. He acknowledged that this DNA sample also matched the blood found in the victims' home, but that since it was taken in violation of his constitutional rights, it would have been inadmissible at trial.

Applicant testified that he did not give Counsel any leads or potential witnesses to aid in his defense. He testified that he did not want to plead guilty, but that Counsel advised him that it was in his best interest to plead since his DNA was a match. He testified that it was his decision to plead guilty and he pled because he did not want to risk receiving a possible life sentence if

² Applicant has prior convictions for: three counts of Burglary in the Second Degree, two counts of Grand Larceny, and Unlawful Carrying of a Pistol.

convicted. He testified that Counsel informed him the mandatory minimum sentence for Burglary in the First Degree was fifteen years imprisonment up to a possible maximum sentence of life without parole. He testified that he told the plea court under oath that he was guilty, but testified at the evidentiary hearing that he is not guilty. He testified that he lied under oath during his guilty plea proceeding based on the advice of Counsel. He testified that Counsel advised him to give a statement to law enforcement in an effort to help retrieve some of the jewelry, weapons, and other items stolen from the victims' residence because it would "look good" to the plea court. He testified that he gave three or four different statements to law enforcement and that he lied in each statement. He testified that Counsel advised him to lie when speaking to law enforcement. He testified that he recalled telling the plea court that he was satisfied with Counsel's representation and testified that Counsel "did the best he could do." Applicant testified that he understood the plea was without any negotiation or recommendation from the State and that he understood he could possibly receive a life sentence as a result of his guilty plea.

Applicant testified that he has a prior record, including three Burglary in the Second Degree convictions. He acknowledged that when he was arrested, he was in possession of one of the stolen weapons with an engraving of one of the victim's name on the handle. However, he testified that this merely proves that he was in possession of stolen property, not burglary. He testified that he was aware the State had fingerprint evidence, but testified that he never reviewed any fingerprint discovery prior to his guilty plea.

Following Applicant's testimony, Counsel testified. He testified that he has been practicing law since 1982 and that approximately fifty-percent of his practice is criminal defense. He testified that Applicant first retained him solely for a bond hearing and after successfully

obtaining bond for Applicant, Applicant retained in full for the pending charges on July 6, 2009. He testified that he met with Applicant between three and five times, as well as in court for appearances. Counsel testified that Applicant was previously represented by Jillian Ullman of the Orangeburg Public Defender's office and that he received a full copy of her file when he took over representation. He testified that Ullman had previously filed all appropriate discovery motions and he received those materials when he took over representation. He testified that Ullman had used the Public Defender's Office Investigator and that he received a copy of the investigator's report when he took over the case. He testified that this is the same private investigator that he personally employs. He testified that the report was not beneficial to Applicant and further implicated him, which he shared with Applicant.

He testified that he thoroughly reviewed all discovery materials with Applicant and told him he would more than likely be convicted at trial. He characterized the State's case as "overwhelming evidence of guilt," including fingerprint evidence, DNA evidence, and Applicant's possession of a stolen weapon with the victim's personal engraving. He testified that he informed Applicant that his DNA matched blood found in the victims' home. Additionally, he testified that Applicant's fingerprints matched multiple fingerprints found on and around the jewelry box where items were taken at the victims' home; this report was introduced as Respondent's Exhibit #7. He testified that he informed Applicant that the case was "circumstantial" because there was no eyewitness who saw him in the home, but unequivocally told Applicant that his DNA matched the blood found at the victims' home and a conviction was likely. He testified that the blood found at the victims' home matched Applicant's DNA sample that was in the SLED DNA Database for convicted felons and that he shared these results with Applicant, which were introduced as Respondent's Exhibit #1. He testified that before he was

retained, the State moved for a known sample of Applicant's DNA pursuant to Schmerber. He testified that Ullman represented Applicant at this hearing and she argued against the State's motion; the transcript of this hearing was introduced as Respondent's Exhibit #5. He testified that Ullman's argument at this hearing was that the DNA was not necessary, as it would be merely cumulative to the SLED DNA Database sample of Applicant's DNA. Counsel testified that based on his discussions with Applicant and Ullman, opposing the State's Schmerber motion was not crucial to Applicant's defense, as Applicant was insistent that he had an alibi and the DNA would exonerate him. In support of this, Respondent introduced an email between Counsel and Ullman as Respondent's Exhibit #3. Counsel testified that based on this information from Applicant, he put the State on notice of an intended alibi defense, introduced as Respondent's Exhibit #8. Counsel testified that the Schmerber sample positively matched the blood found in the victims' home and this report was introduced as Respondent's Exhibit #2.

He testified that after receiving this second report showing Applicant's DNA matched the blood found in the victims' home, he advised Applicant that he would likely be convicted at trial. He testified that he summarized all of the evidence in a letter to Applicant, advising him to plead guilty, which was introduced as Respondent's Exhibit #9. He testified that Applicant asked him to secure a favorable plea deal, and an example of such request was introduced to the Court as Respondent's Exhibit #5. He testified that he entered into plea negotiations with the State and the prosecuting solicitor refused to make a recommendation for the minimum sentence. He testified that he discussed the plea in chambers with the State and plea court and received assurances that Applicant would likely receive a sentence of less than twenty years. He testified that based on this, he advised Applicant to provide any assistance possible to law enforcement in an effort to mitigate the damage and possibly lessen his sentence. He testified that Applicant

gave a statement to law enforcement implicating himself and indicating where some of the stolen materials might be located, introduced as Respondent's Exhibit #3. He testified that he explained to Applicant that the plea was without any negotiations or recommendations and Applicant understood he was facing a sentence of between fifteen years to life imprisonment.

He testified that Applicant had three prior burglary convictions and that there was no meritorious ground on which he could have challenged the enhanced Burglary in the First Degree indictment. He testified that he fully advised Applicant of his constitutional rights and the implications of entering a guilty plea. He testified that it was Applicant's decision to plead guilty, and that he never indicated he wanted a trial. He testified that a trial would not have been in Applicant's best interest. He testified that he was unable to get any witnesses to come forward on Applicant's behalf to support his alibi claims. In response to Applicant's claims that he advised Applicant to lie, Counsel testified that he never advises anyone to be untruthful in any situation and certainly does not advise clients to lie in court.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not credible. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

*Failure to investigate discovery materials before advising
Applicant to plead guilty*

Applicant has failed carry his burden of establishing that Counsel was ineffective in his representation regarding Applicant's discovery materials. To establish counsel was inadequately prepared, an applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding an applicant not entitled to relief where no evidence presented at post-conviction relief hearing to show how additional preparation would have had any possible effect on the result at trial). Counsel testified once he took over representation of Applicant, he fully reviewed all discovery materials in Applicant's file, including the State's discovery that was supplied in response to former counsel Ullman's motions. He testified that he fully reviewed the discovery with the Applicant and discussed Applicant's version of the facts with him. Counsel testified that advised Applicant of the elements of each charge he was facing, what the State would be required to prove if he proceeded to trial, and the possible sentences Applicant was facing for each charge. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel, as the Applicant failed to provide the Court with any evidence of how specifically Counsel was ineffective in this regard or what additional investigation could have been performed. See Harris v. State, 377 S.C. 66, 659 S.E.2d 140 (2008) (Applicant failed to show that he was prejudiced by any lack of preparation by defense counsel in armed robbery case, as required for his ineffective assistance of counsel claim, where defendant did not present any evidence or argument as to how counsel's alleged

lack of preparation prejudiced him or how the outcome of the trial would have been different had counsel spent more time with defendant or given him a copy of the discovery materials). Additionally, this Court finds that there was overwhelming evidence of guilt (including multiple fingerprints, a match between Applicant's DNA and blood found in victims' home, and possession of a stolen weapon with an engraving of victim's name) and therefore, any alleged deficiency does not amount to ineffective assistance of counsel. See Harris, 377 S.C. 66, 659 S.E.2d 140 (Evidence that applicant committed armed robbery was overwhelming, such that any deficiency in counsel's performance arising from his failure to obtain a transcript from defendant's first trial, to use for impeaching witnesses in defendant's second trial on same charges, did not prejudice defendant and did not amount to ineffective assistance of counsel). Therefore, this Court finds that this allegation of ineffective assistance of counsel must be denied and dismissed with prejudice.

*Failure to protect Applicant's Fourth Amendment Rights Against
Bodily Intrusion and Failure to Object and Argue for the Denial of
the State's Schmerber Motion*

Applicant has failed to meet his burden of proof in establishing that Counsel was ineffective in his representation of the Applicant regarding bodily intrusion. Counsel testified that he was retained after the State's Schmerber motion hearing, in which the court allowed the State to obtain a buccal swab from Applicant to compare with blood found in the victims' home. Counsel testified that at the time to the hearing, and when he was retained, Applicant insisted that he had an alibi defense and his DNA would not match the blood sample from the victims' home. The record of Applicant's Schmerber hearing, introduced as Respondent's Exhibit #6, supports Counsel's testimony. This Court finds that Counsel's performance was reasonable and effective.

Additionally, this Court finds that the Applicant has failed to establish any prejudice resulting from Counsel's alleged ineffective assistance of counsel, as there was ample evidence independent of the Schmerber DNA sample, that implicated Applicant, including multiple fingerprint matches and that he was arrested with a personally engraved weapon from the victims' home. Therefore, this Court finds that these allegations of ineffective assistance of counsel must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

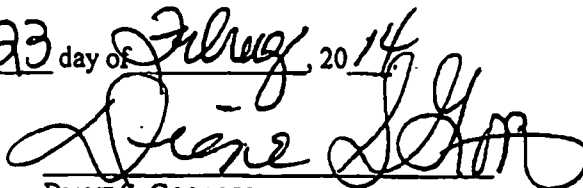
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of 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. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 23 day of February, 2014.



DIANE S. GOODSTEIN
Presiding Judge
First Judicial Circuit

Sumner, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF
STATEOrangeburgVS.
Anthony Benard Britt

AKA:

Race:

Sex: MAge: 21

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

In disposition of the said indictment comes now the Defendant who was

TO:

Burglary 1st DegreeIn violation of § 16-11-311of the S.C. Code of Laws, bearing CDR Code # 0079☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Solicitor

SC Bar # 9512

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 16 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ 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

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	\$ <u>100.00</u>
\$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	\$ <u>25.00</u>
\$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	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/Deputy Clerk
Court Reporter:

Marion L. Edgeworth
Harry Datt Walker

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 09 -GS- 38 - 0331A/W#: J695972Date of Offense: 12-10-07S.C. Code §: 16-11-311CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS(CSC w/minor 1st or Lewd Act)

(defendant's initials)

Recommendation by the State

Attorney for Defendant

County Detention Center,

County Detention Center, not to exceed _____ years

days/months/years and or payment

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department

of Corrections.

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

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 \$ 100.00

\$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 \$ 25.00

\$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 \$ 5.003% to County (if paid in installments) \$ \$ 3.90TOTAL \$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge EdgeworthJudge Code: 2153Sentence Date August 13, 2009

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2009GS38-0331

At a Court of General Sessions, convened on March 04, 2009 the Grand Jurors of Orangeburg present upon their oath:

BURGLARY - FIRST DEGREE

That in Orangeburg County, South Carolina, on or about December 10, 2007, the Defendant, Anthony Bernard Britt, did willfully and unlawfully enter the dwelling of H. Levern Blewer, Jr., without consent and with the intent to commit a crime therein and the defendant was armed while in the dwelling or in immediate flight from the dwelling with a deadly weapon and/or the entering or remaining occurs in the nighttime and/or the defendant has two or more convictions for burglary. This offense being a violation of Section 16-11-311 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Donald Sorenson, Solicitor

Carl Shultz

Orangeburg Police Department

07-03036

ARREST WARRANT NUMBER

J695972

Arrested: December 3, 2008

ACTION OF GRAND JURY

FOR

MAR 04 2009

Foreperson of Grand Jury

Date: March 04, 2009

Quinn B. Ball

VERDICT

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

March 2, 2009 TERM

THE STATE
vs.

Anthony Bernard Britt

Indictment for

BURGLARY - FIRST DEGREE

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY

Wynne B. Clark
CLERK OF COURT

ORANGEBURG COUNTY, SC

SC Code: 16-11-311

Foreperson of Petit Jury

Date:

ARREST WARRANT

00 J-695972

STATE OF SOUTH CAROLINA

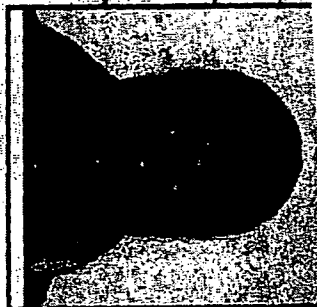
☐ County/ ☒ Municipality of

ORANGEBURG

THE STATE

against

ANTHONY BERNARD BRITT



Address: _____
 Phone: _____
 Sex: M Race: B Height: 5-4 Weight: 182
 DL State: SC DL#: _____
 Agency ORI#: SC0380100
 Prosecuting Agency: CITY OF ORANGEBURG
 Prosecuting Officer: SGT. C. SHULTZ
 Offense: BURGLARY 1ST
 Offense Code: 0079
 Code/Ordinance Sec: 16-11-0311

his warrant is CERTIFIED FOR SERVICE in the

] County/ ☐ Municipality of

ORANGEBURG

The accused to be arrested and brought before me to be

Signature of Judge

(L.S.)

le: 08/05/2008

RETURN

copy of this arrest warrant was delivered to
 andant ANTHONY BERNARD BRITT

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

 ORANGEBURG MUNICIPAL COURT
 BOX 1425
 0 MIDDLETON STREET
 ORANGEBURG, SC 29116

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

ORANGEBURG

Personally appeared before me the affiant DET. T. GIBSON

being duly sworn deposes and says that defendant ANTHONY BERNARD BRITT

did within this county and state on 12/10/2007

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ORANGEBURG

in the following particulars:

DESCRIPTION OF OFFENSE: 16-11-0311 / BURGLARY 1ST

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

ON 12-10-07 BETWEEN THE HOURS OF DARKNESS OF 7:00 PM AND 10:00 PM THE DEFENDANT, ANTHONY BRITT, WHILE AT ST. WITHIN THE CITY OF ORANGEBURG, DID FORCIBLY ENTER THAT RESIDENCE BY BREAKING A GLASS PANE OUT OF A DOOR AND THEN DID TAKE, STEAL AND CARRY AWAY SEVERAL ITEMS INCLUDING JEWELRY AND FIREARMS TOTALING APPROXIMATELY \$8600.00 DOLLARS IN VALUE. THE DEFENDANT WAS POSITIVELY IDENTIFIED BY BLOOD EVIDENCE COLLECTED FROM THE CRIME SCENE.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

ORANGEBURG

Affiant's Address 1320 MIDDLETON ST. 0

ORANGEBURG SC 29115

Affiant's Telephone 803-533-4119

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 12/10/2007

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of ORANGEBURG

DESCRIPTION OF OFFENSE: BURGLARY / BURGLARY (AFTER JUNE 20, 1985) - FIRST DEGREE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 08/05/2008

BARNET M. HOFER

(L.S.)

Judge's Address P. O. BOX 1425

ORANGEBURG SC 29116

Judge's Telephone 803-533-5921

Issuing Court: ☐ Magistrate☒ Municipal ☐ Circuit

Case: 07-03036

ORIGINAL

 Form Approved by
 State of South Carolina
 Jan 28, 1990
 SCSA 516