

2014-002465

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

RECEIVED

NOV 18 2014

S.C. Supreme Court

STEVE BAGWELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

SUPPLEMENTAL APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN RATIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEXi

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COURT’S EXHIBIT #1 32

Mrs. Susannah Ross
Ross & Enderlin, PA
2435 E. North St., #222
Greenville, SC 29615

DATE: 5/6/08

Dear Mrs. Ross,

I have received your letter, and am glad to hear me and Spain will not be represented together. Enclosed is a copy of the letter Spain wrote me while at R & E. I still have the original. I hope it will be of value for this case.

I thank you for your time, may God bless you and your loved ones.

Sincerely,

Steve R. Bagwell
Steve R. Bagwell 2nd



July 04-08

On the night of September 14, 2003, Steve Baguella and I, Daryl L. Spain had been drinking with some people next door. Later that evening Steve passed out in his chair. I needed to do some laundry, on my return from the laundry mat, I saw Jarrett Armstrong patio door shattered. I walked up on to the edge of the patio to see if he was alright. At that time someone grabed me from behind around the neck. The next thing I knew, I was waking up in the hospital for just a moment, and then I woke up again in the Greenville Detention Center. Being charged with Burglary first. Steve was not with me when I went to the laundry mat. Steve and I Daryl have no knowledge of what was going on that night. This whole thing was a set up.

Sword This 28th Day April ^{S:gn} ~~Daryl L. Spain~~
 2005 ^{S:gn} DARYL L. Spain
 Don Fuentes

ATW 10-8-03

GREENVILLE COUNTY DETENTION CENTER

BAGWELL, Steve

DATE: 09/17/03

PACK: 159427

ID: 687

DOB 4-23-76

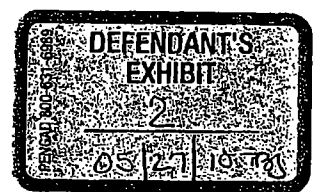
Mr. Eagwell tells a story of being attacked by several people and kicked several times in the head and about the body and face. He states he did loose consciousness and went to the ER and was released to our facility.

He has a significant amount of periorbital edema and bruising in his left eye. There is bruising on the sclera but not in the cornea. His pupils are equal, round and reactive to light and accommodation. EOMI. There is no cranial nerve damage. There is significant swelling on the left side of his face and he does have a tremendous amount of bruising on his scalp and his Romberg's is negative. Gait and station is normal. He does admit to having a worsening headache over the last three days.

Because of history of loss of consciousness and severe headaches - denies having nausea or vomiting, we are going to get a CAT scan of his head as soon as possible. We are going to start Lortab 10 q4h prn pain. Comfortable using the Lortab because it has been 3 days and he has not had any significant neurological changes.

Richard L. Sherman, DO

RLS/dh



BAGWELL, Steve 9/15/03 Greenville County Detention Center

PACK NUMBER: 159427 **ID#** 687 **DOB:**

SUBJECTIVE: Mr. Bagwell comes into the office today with pre-detention injuries from an altercation. He was hit in the head with shoes and fists. He has bruises and lumps on his head. He has a significant blue bruise on his left eye with an abrasion on the eyebrow, and he has bruises on his left chest on the side with a bite mark on his back.

OBJECTIVE: Purple ecchymosis over the left eye with edema and an abrasion over the eyebrow on the left but no laceration. There are some very small hematomas on his head that are resolving. On the side of his chest on the left are the markings of a bite mark; it did not break the skin. On his back are several scratches and ecchymotic areas.

ASSESSMENT: Soft tissue trauma secondary to an altercation pre-detention.

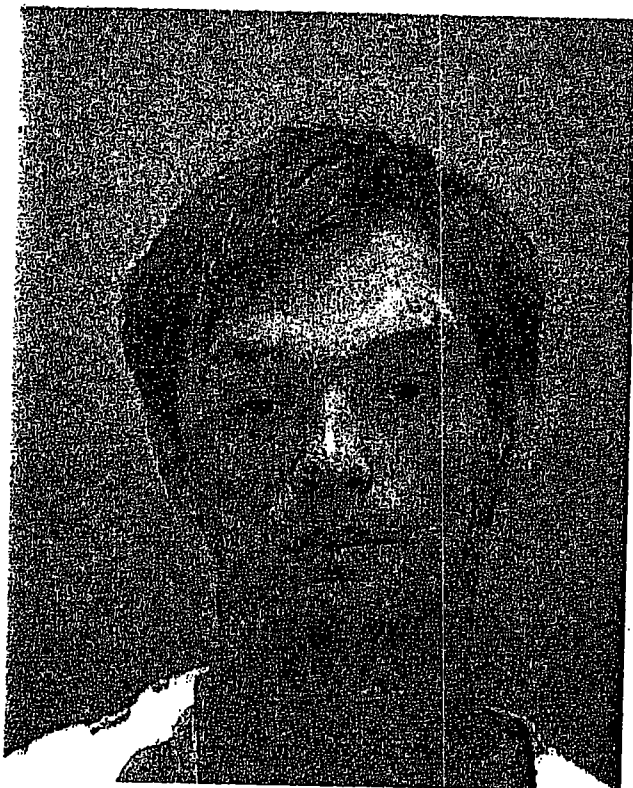
PLAN: Motrin 800 mg po TID for ten days prn discomfort.

Lantz
Dawn F. Lantz, Ph.D., R.N., F.N.P., C.S./bjs

GREENVILLE COUNTY
DETENTION CENTER - RECORDS
CERTIFIED COPY

CURRENT DATE

BAGWELL, STEVE RANDALL



CRIMINAL JUSTICE SUPPORT
RECORDS *8/11/08*
4 MCGEE STREET, SUITE #19
GREENVILLE, SC 29604

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 The State,)
)
 vs.)
)
 Steve R. Bagwell,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS

Indictment / Warrant Nos.
H-466504

ENTERED
COMPUTER

BRADY MOTION

PLEASE TAKE NOTICE that the Defendant, by and through the undersigned attorney, moves for an Order compelling the State to disclose and, in the case of tangible items, to produce for inspection and copying by the Defendant, all evidence in the possession and control of the State or others, which may be favorable to the Defendant and material to the issue of guilt or punishment, or which could reasonably weaken or affect any evidence proposed to be introduced against the Defendant, or which is relevant to the subject matter of the indictment, or which in any manner may aid the Defendant in the ascertainment of the truth; the disclosure and production to be made without regard to whether the evidence to be disclosed and produced is deemed admissible at the trial herein; said disclosure and production to include, but not be limited to, the following evidence:

- 1) The statements of all persons who have been interviewed by an agent of the State in connection with the subject matter of this case and whom the State does or does not presently intend to call at trial.



Brady Motion Cont'd
Page 2

2) The memorandum of summaries of any oral statements made to an agent of the State, County Sheriff, or other law enforcement Officer, by any person in connection with the subject matter of this case whether or not:

(a) the statement, if in writing, has been signed, or approved by the witness, and;

(b) the statement relates to the proposed subject matter of the direct testimony of the witness at trial.

3) The statements of persons or memoranda or recordings of any oral statement of any person, whether or not made to an agent of the State, County Sheriff's Department, or other Law Enforcement Officer.

4) A summary reflecting the criminal records or all persons the State intends to call at trial, including all information in the files of the State Law Enforcement Division (SLED), the Federal Bureau of Investigation (FBI), County Sheriff's Department, Police Department, and computer printouts of these departments.

5) The names of all persons known by the State to be witnesses to the crime, including all persons present who had any knowledge or were able to see or hear any part of the alleged criminal transaction.

6) Reports of all drug analysis and/or alcohol tests, as well as a list of types of tests used.

Brady Motion Cont'd
Page 3

7) Copies of all tape recordings, as well as, transcriptions made thereof; and copies of all video recordings made of the alleged criminal transaction.

Respectfully Submitted,

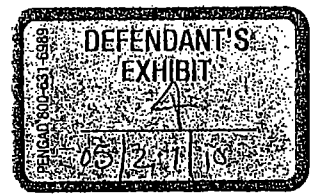
Dorothy A. Manigault

DOROTHY A. MANIGAULT
Attorney for Defendant
104 Chapman Street
Post Office Box 392
Greenville, SC 29602

(864) 235-7073
235-9630 (Fax)

Greenville, South Carolina

September 19, 2003



STATE OF SOUTH CAROLINA
COUNTY OF Greenville

CASE # 04-9373

PLAINTIFF	State	PLAINTIFF'S ATTORNEY	A. Marmor
DEFENDANT	Steve Bagwell Daryl Spair	DEFENDANT'S ATTORNEY	M. Buncroft D. Manigault
JUDGE	Pyle	DATE	4-11-05

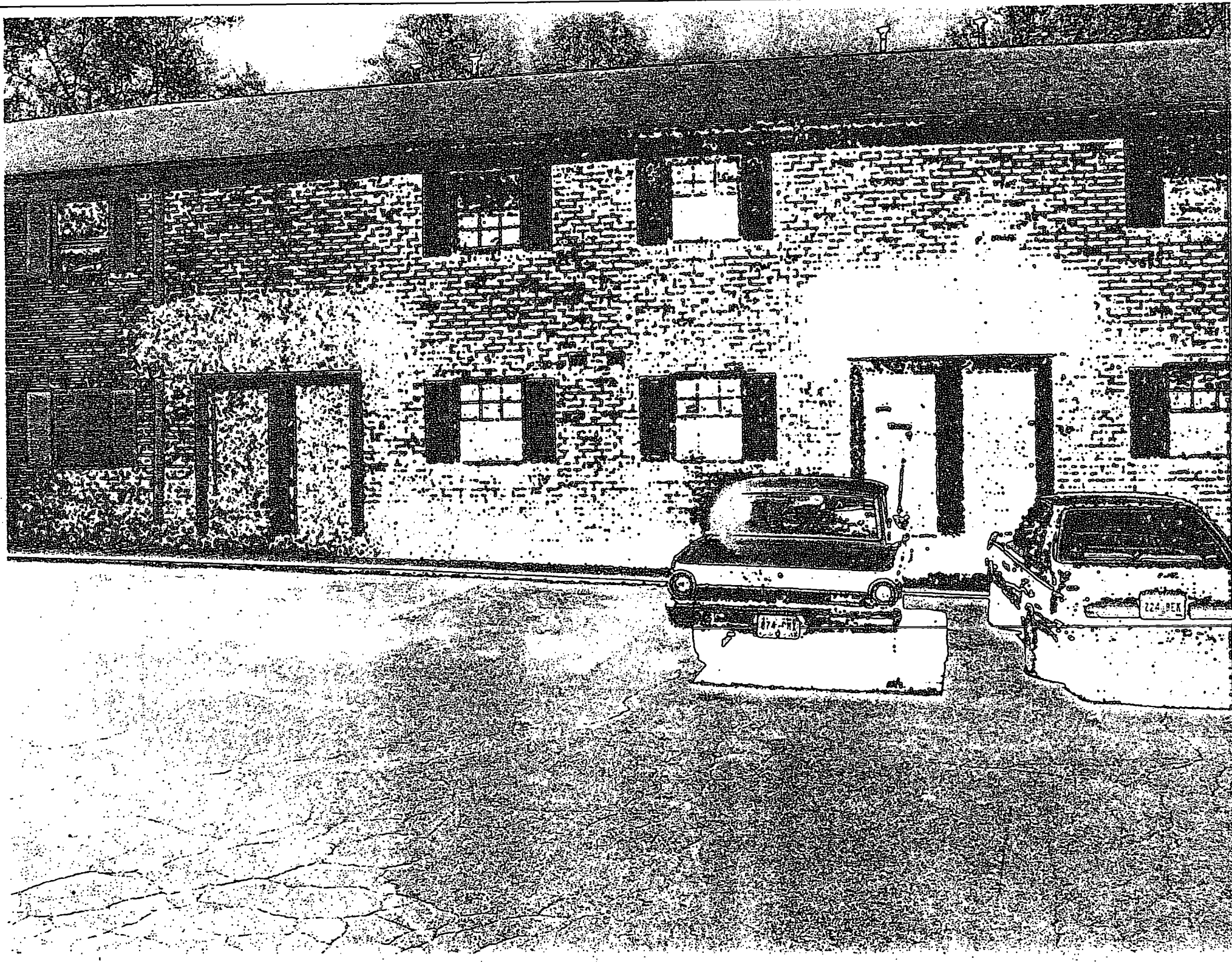
PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 Photos	1 Statements	1 Photos
2 "	2 " "	2
3	3 photo	3
4		4
5		5
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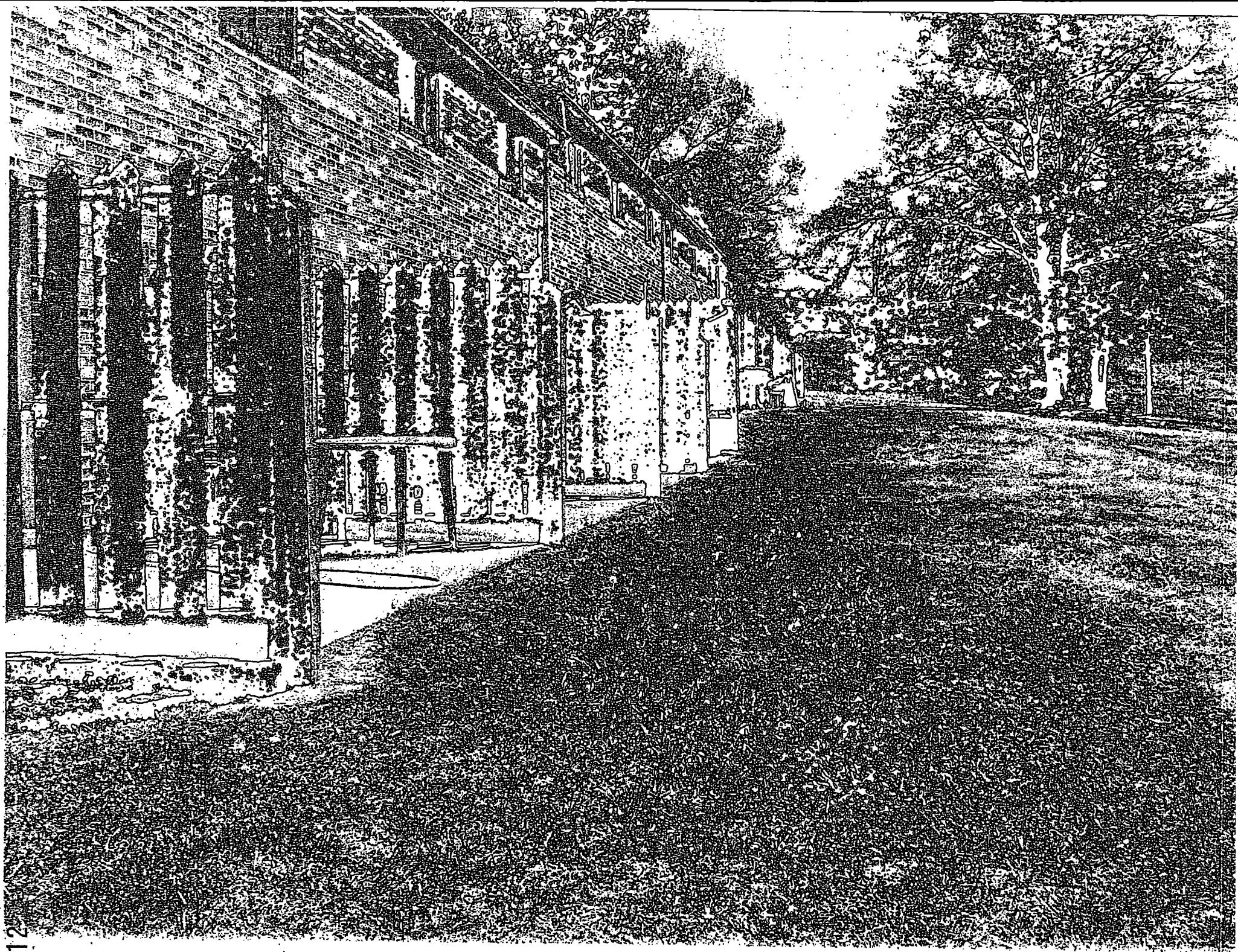
COURT REPORTER: April Herron

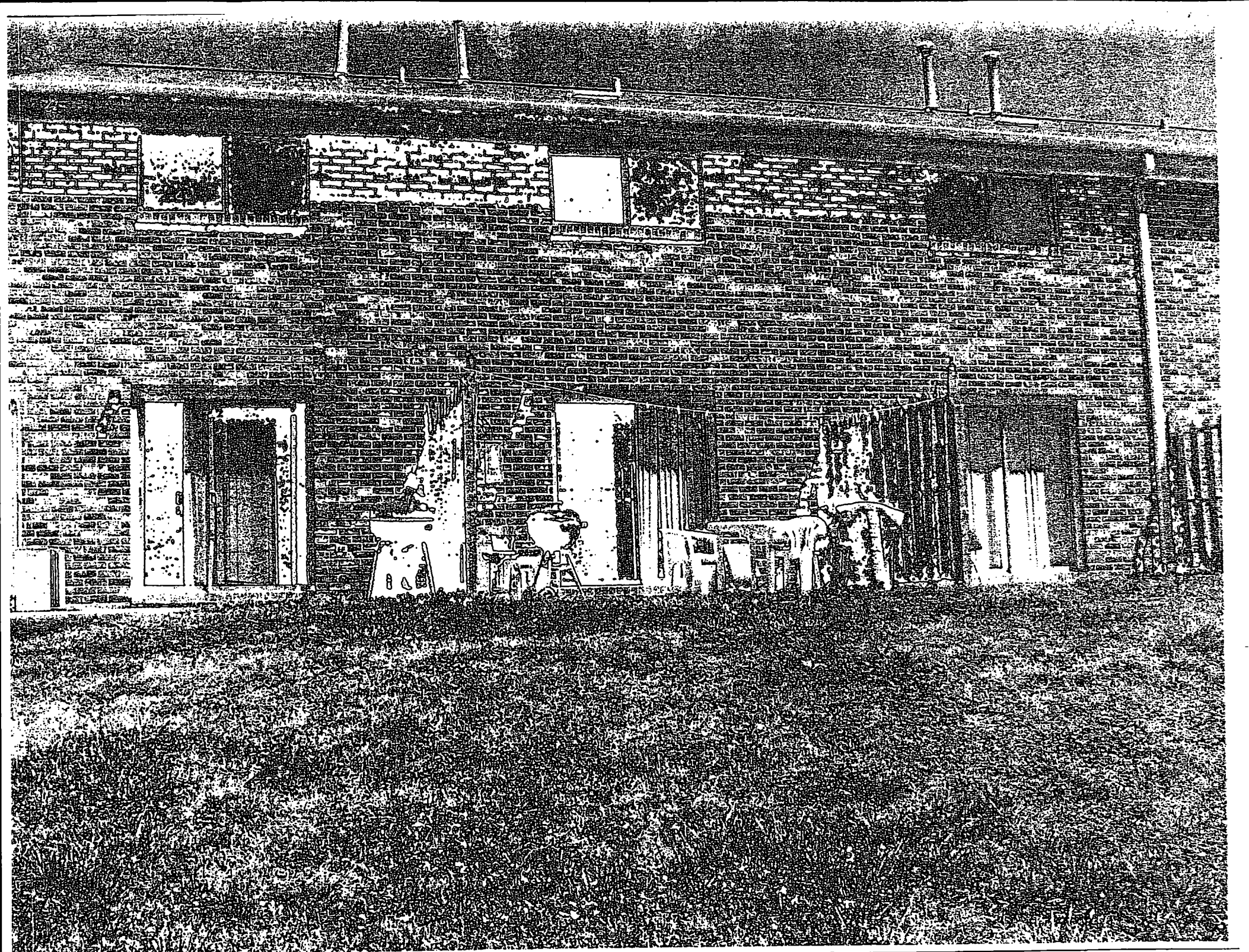
CLERK OF COURT Shirley Klein

DATE RECEIVED 4/13/05





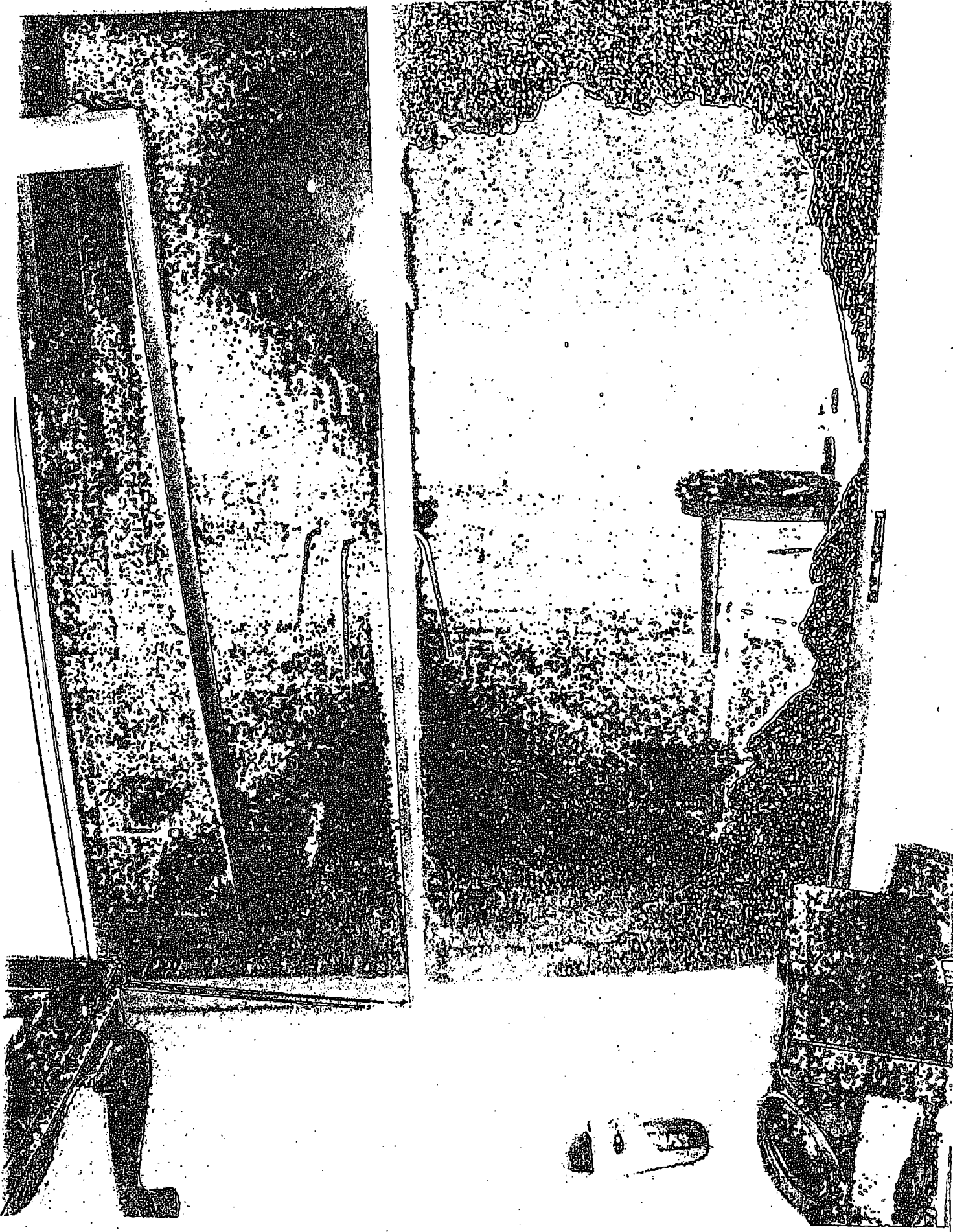




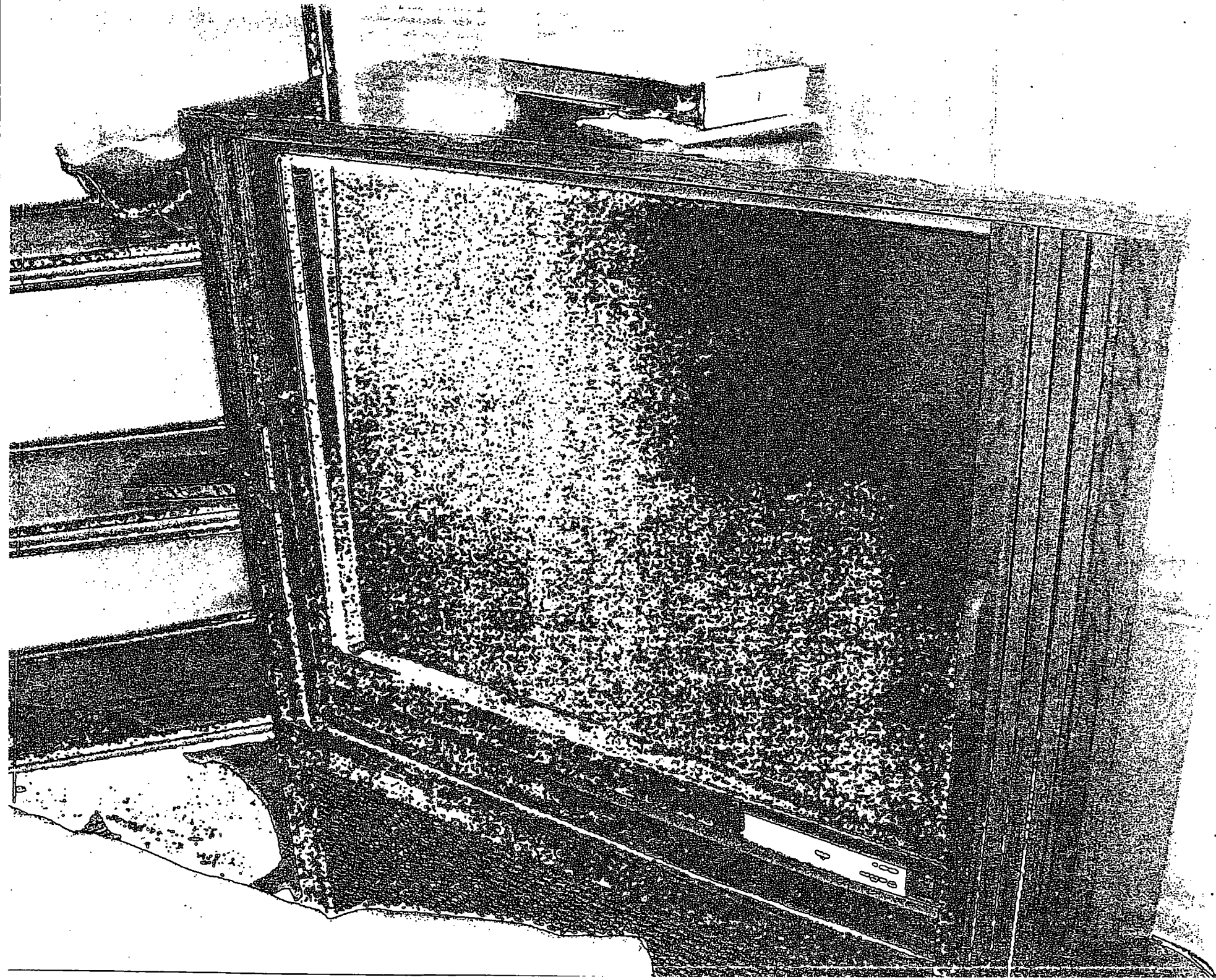
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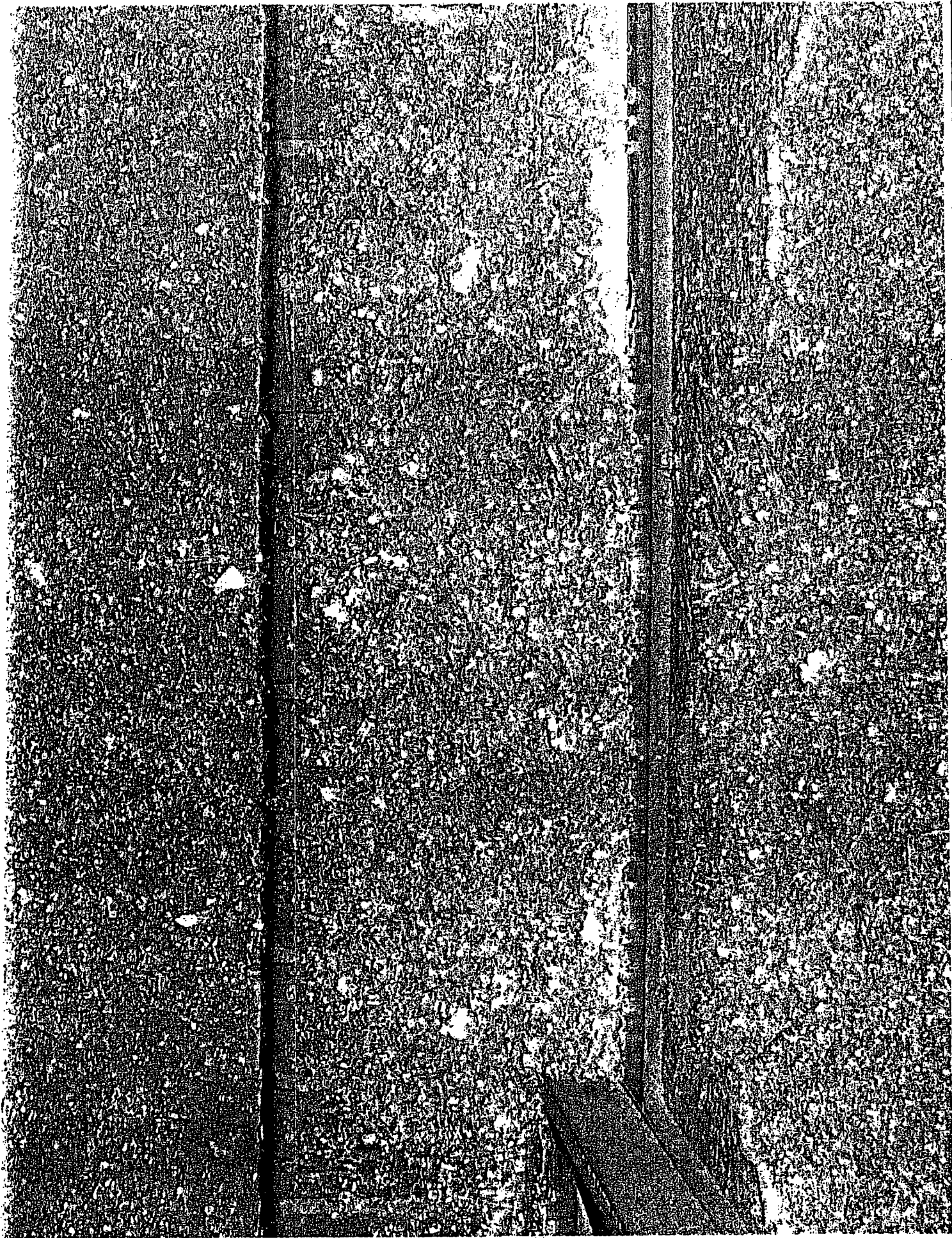
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Case #: 1-03-135749









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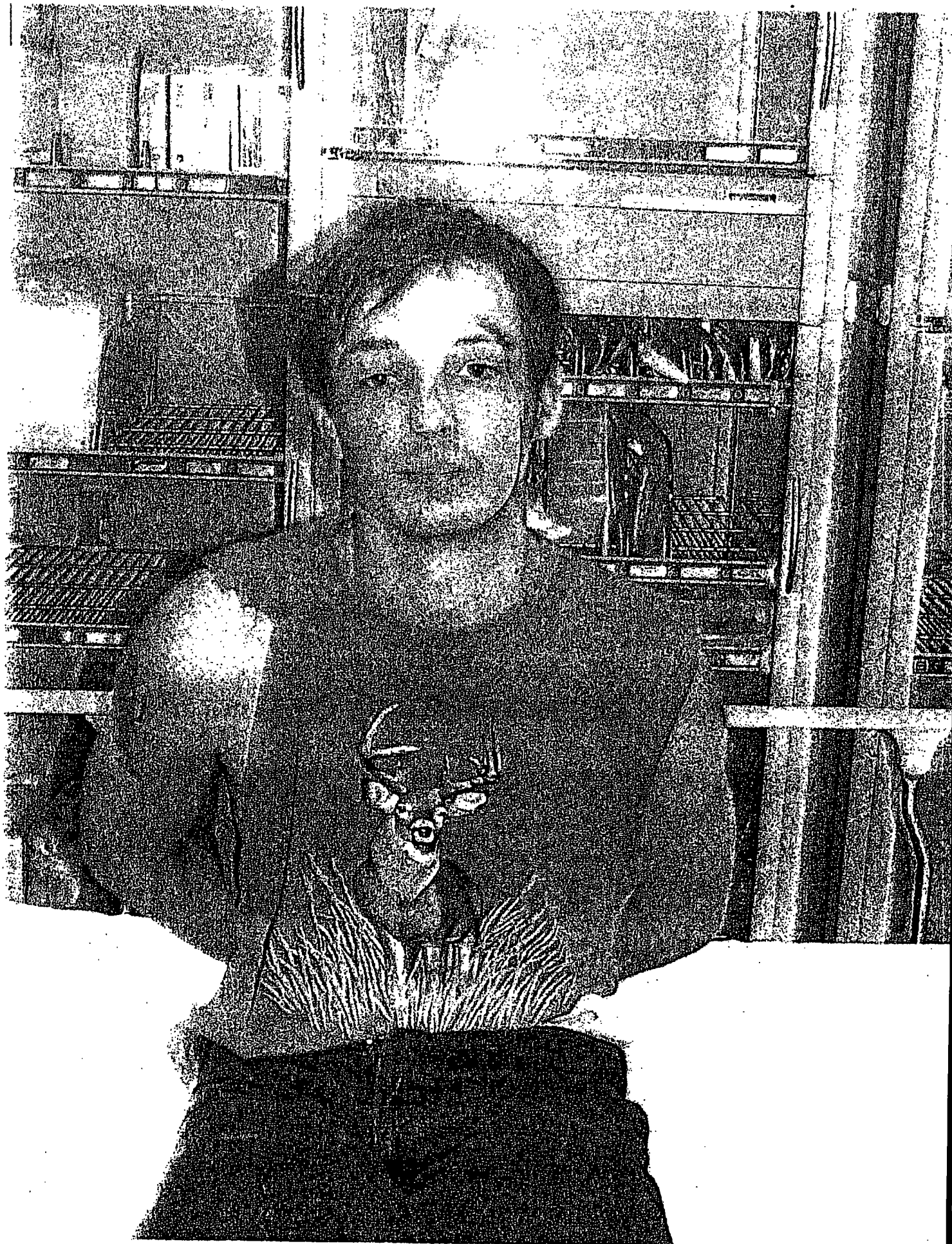
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Case #: 1-03-135749

18
9/11/2005 1:48:41PM

Image #: 653061

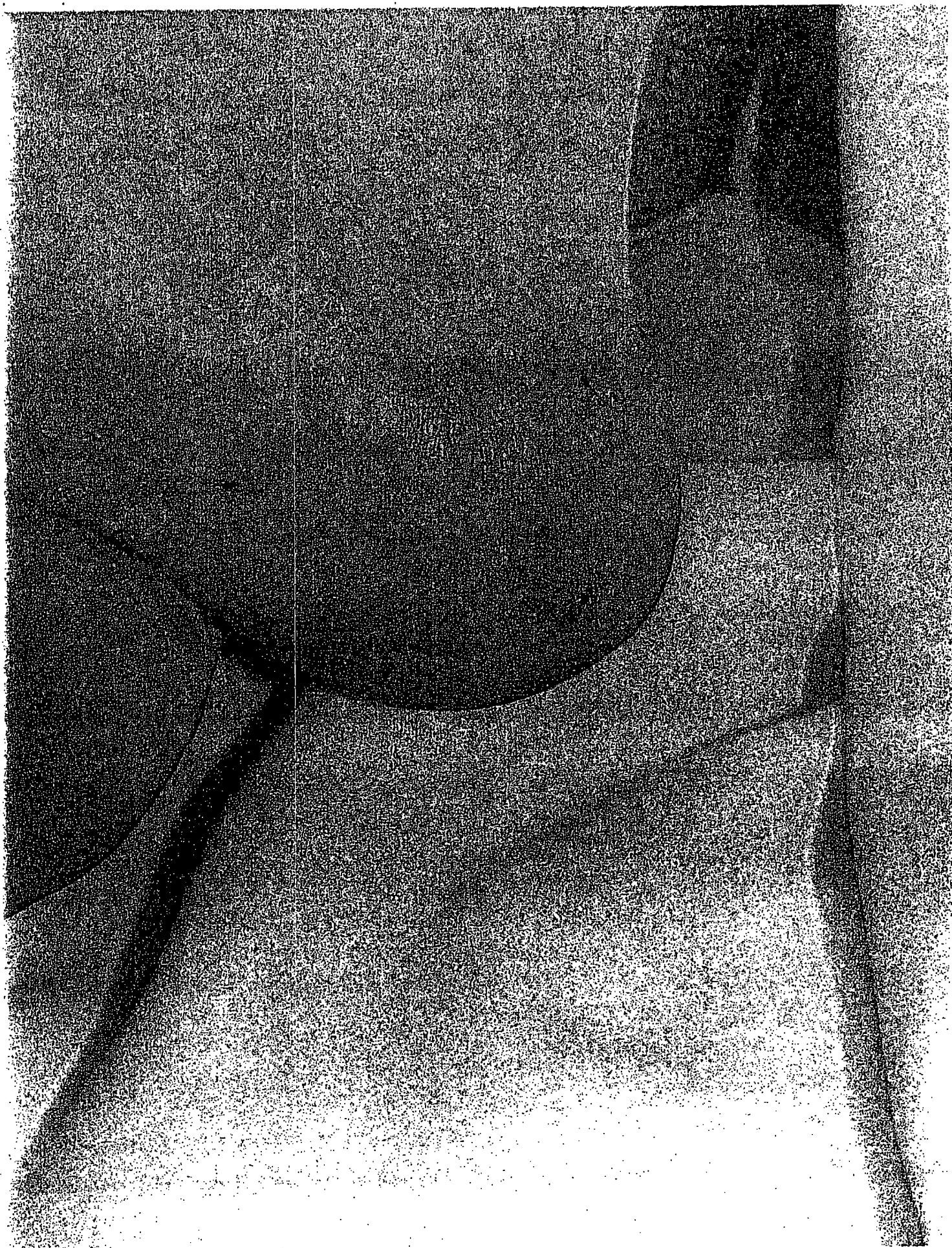
Case #: 1-03-135749



4/11/2005 9:00:31AM

Image #: 653097

Case #: 1-03-135749



21
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Image #: 653118

Case #: 1-03-135749



4/11/2005 9:02:02AM

Image #: 653115

Case #: 1-03-135749



22
11/2005 8:59:49AM

Image #: 653094

Case #: 1-03-135749





Greenville County Sheriff's Office

4 McGee St.
Greenville, South Carolina 29601

VICTIM/WITNESS STATEMENT

FIELD

Case Number 03-135749

Date 9-14-03

I, CHRIS SONDDY, do hereby give freely and voluntarily this statement to DEP. HUNTER and M/D CANNON who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina.

I am 18 years old and I reside at _____
WE GOT HERE AND JARRET STAYED AT THE FRONT DOOR AND I WENT THE BACK. WHEN I GOT TO THE BACK PATIO I SAW TWO WHITE GUYS TRYING TO COME OUT OF THE BROKEN GLASS DOOR. ABOUT THEN JARRET HAD OPENED THE FRONT DOOR AND YELLED CHRIS. I GRABBED THE SHORT DUDE AND THE OTHER TALLER ONE WEARING THE RED SHIRT GOT AROUND FRONT. HE SWUNG AT ME AND I HAD TO FIGHT HIM IN SELF DEFENSE. AFTER I LET HIM GO, HE WENT AND PAGED OUT AT THE END OF THE STREET.

END OF STATEMENT

BRADY

I have read the above statement of 1 pages and it is true and correct as best

WITNESS:

[Signature] #801
Marcus Cannon *433 E31

[Signature]
I have received a copy of this statement.

Sworn before me this _____ day of _____,

NOTARY PUBLIC FOR SOUTH CAROLINA

Greenville County Sheriff's Office

4 McGee St.
Greenville, South Carolina 29601

VICTIM/WITNESS STATEMENT

Case Number 03-135749

Date 9-14-03

I, JARRET ARMSTRONG, do hereby give freely and voluntarily this statement to DEP. HUNTER and M/D CANNON who have identified themselves to me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina.

I am 27 years old and I reside at _____

I OPENED THE FRONT DOOR AND SAW THE TALL WHITE GUY WEARING THE RED SHIRT RUNNING OUT THE BACK PATIO DOOR. I YELLED FOR CHRIS TO STOP THEM. THE GUY RAN AROUND THE SIDE OF OUR BUILDING AND FELL DOWN. I RECOGNIZED THE GUY THAT LIVES NEXT TO US. I FOUND A BROWN SHOE ON THE FLOOR OF MY APARTMENT.

END OF STATEMENT

I have read the above statement of 1 pages and it is true and correct as best as I recall.

WITNESS:

[Signature]
Marcus Carr E31

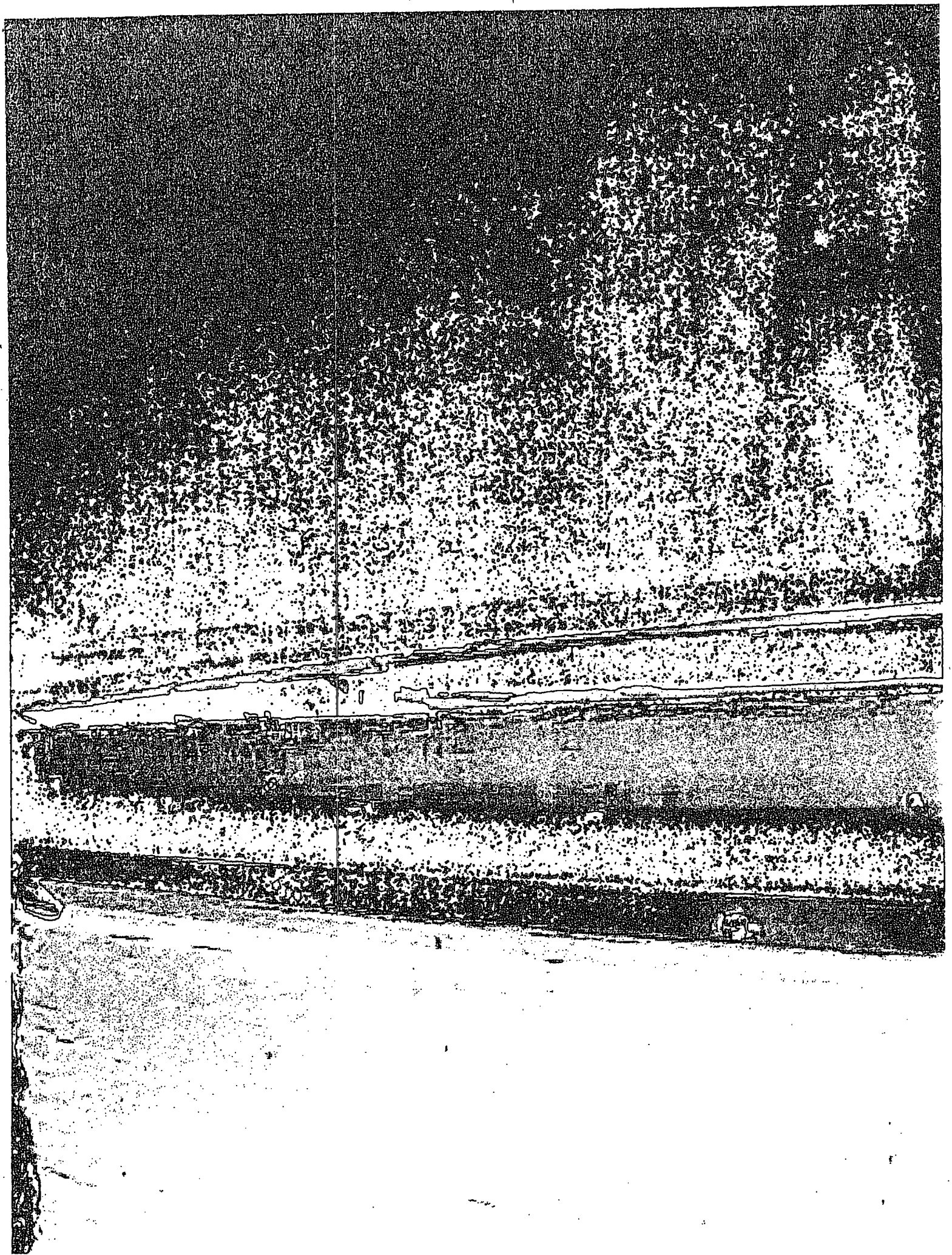
[Signature]
I have received a copy of this statement.

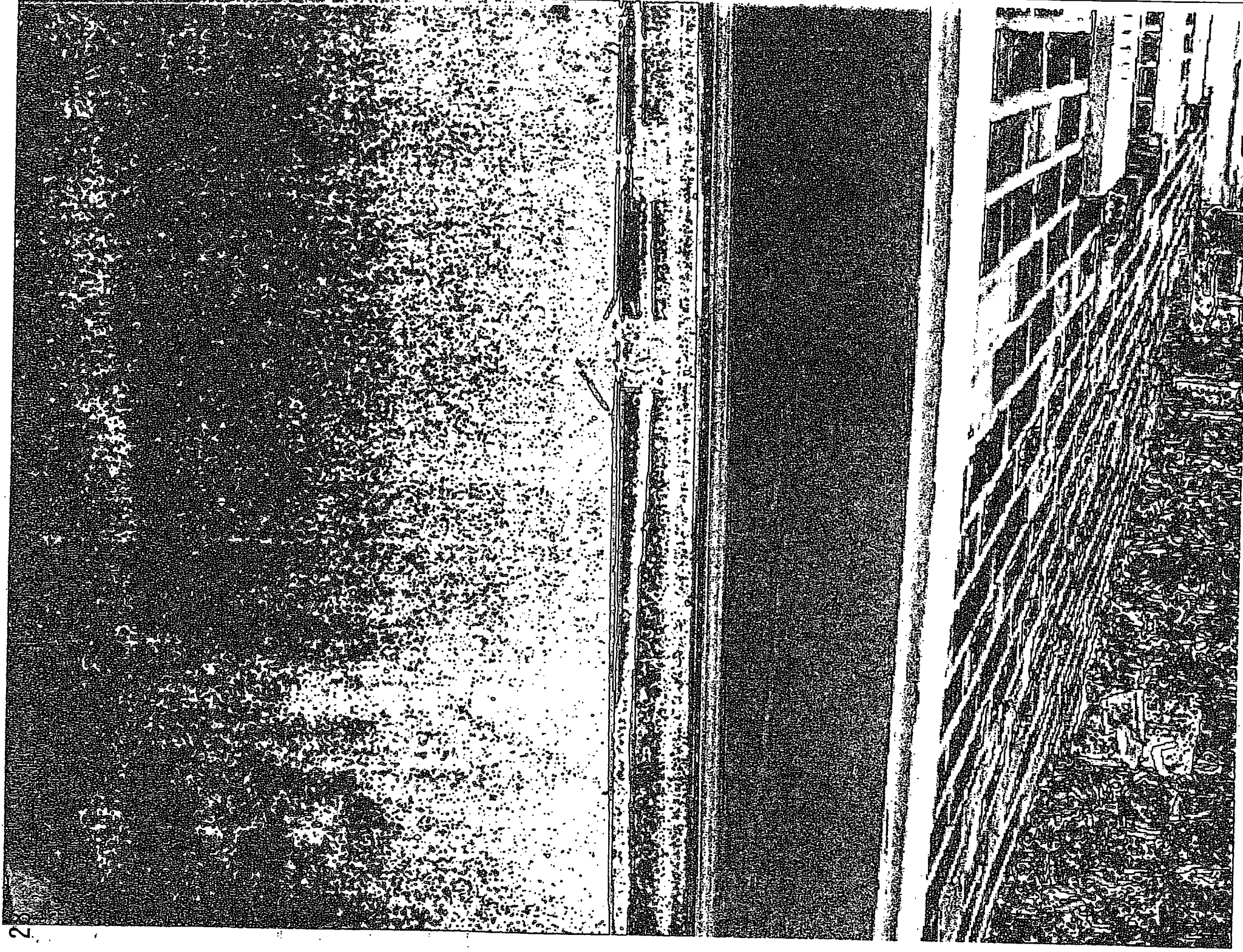
Sworn before me this _____ day of _____

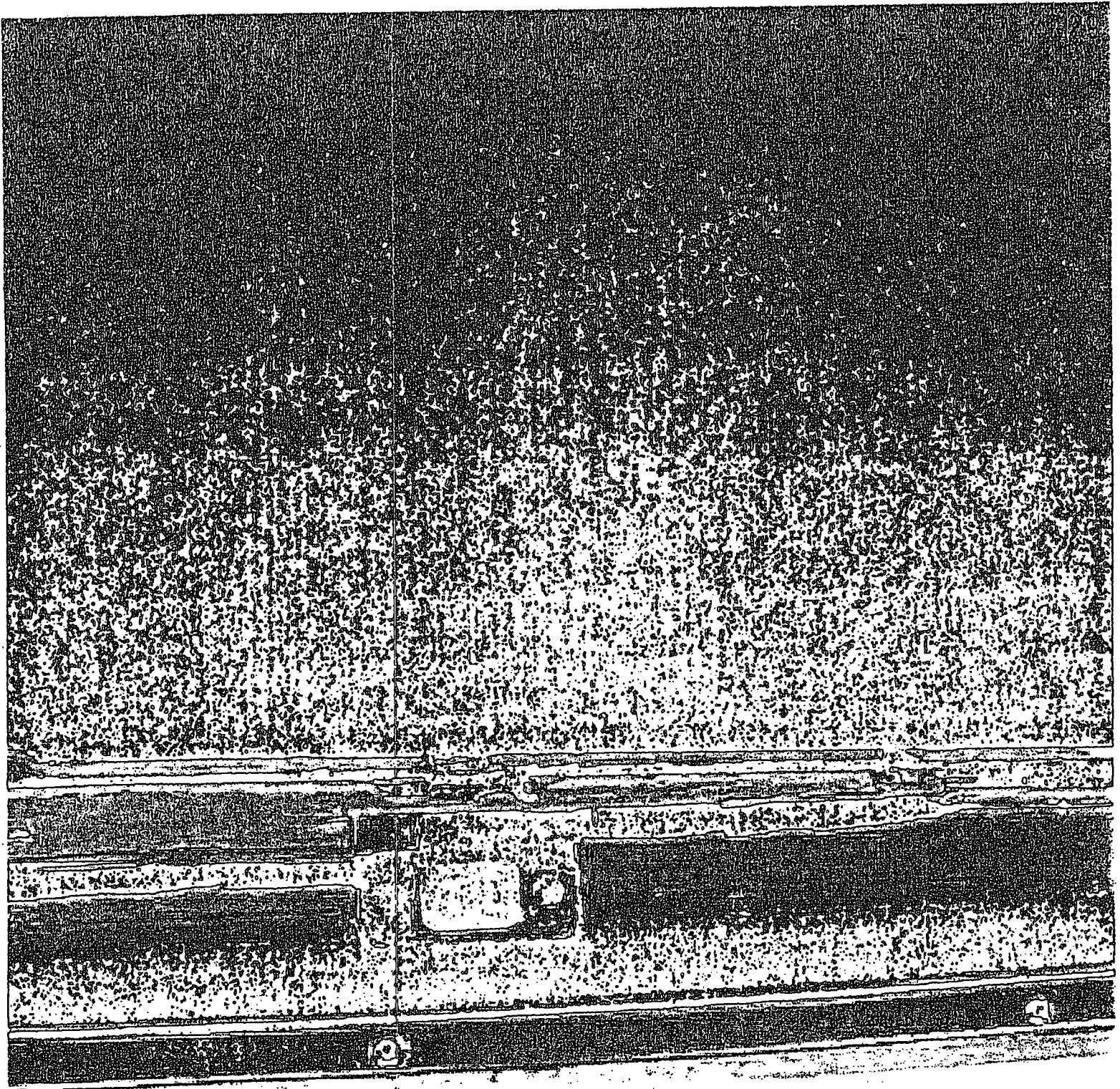
NOTARY PUBLIC FOR SOUTH CAROLINA

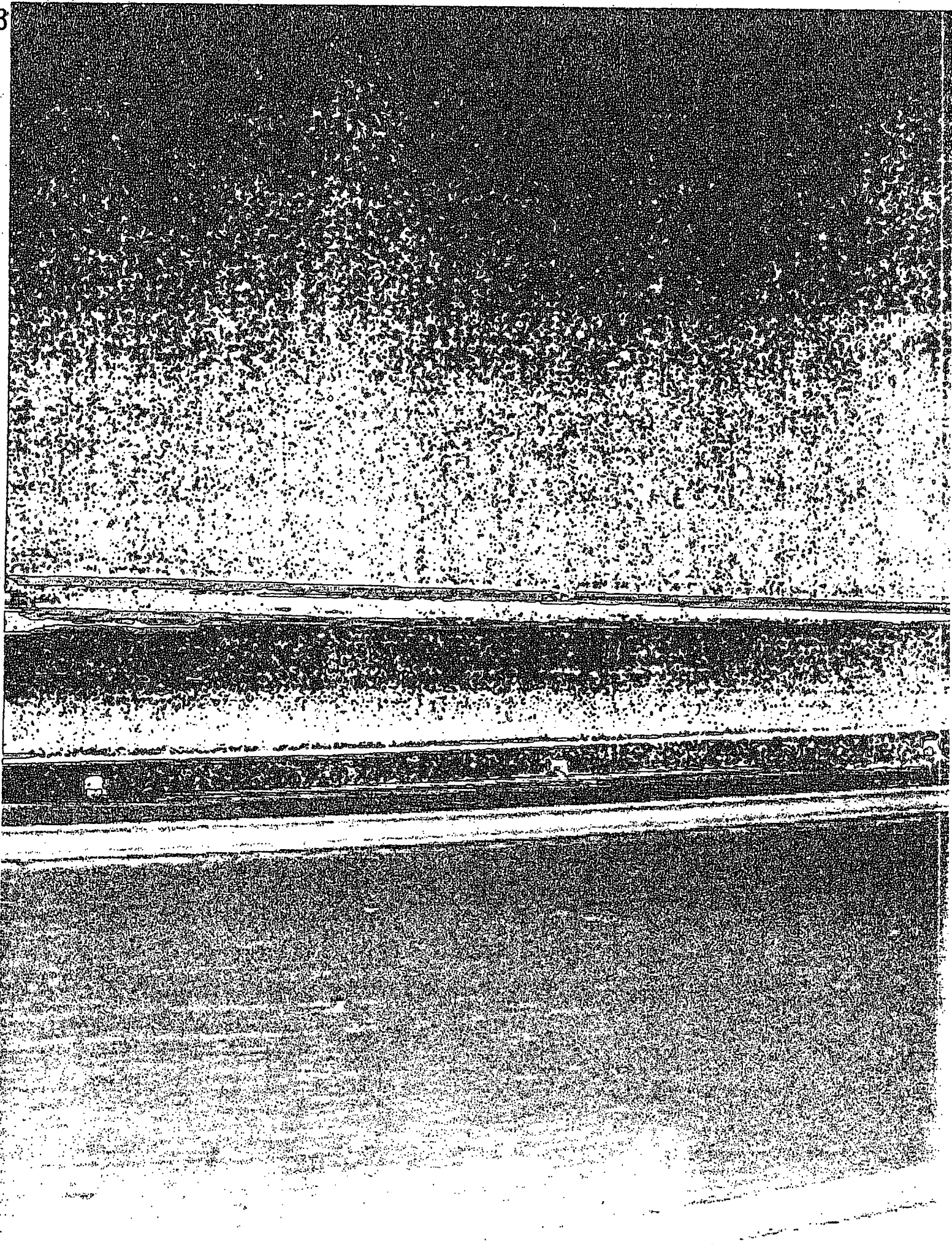
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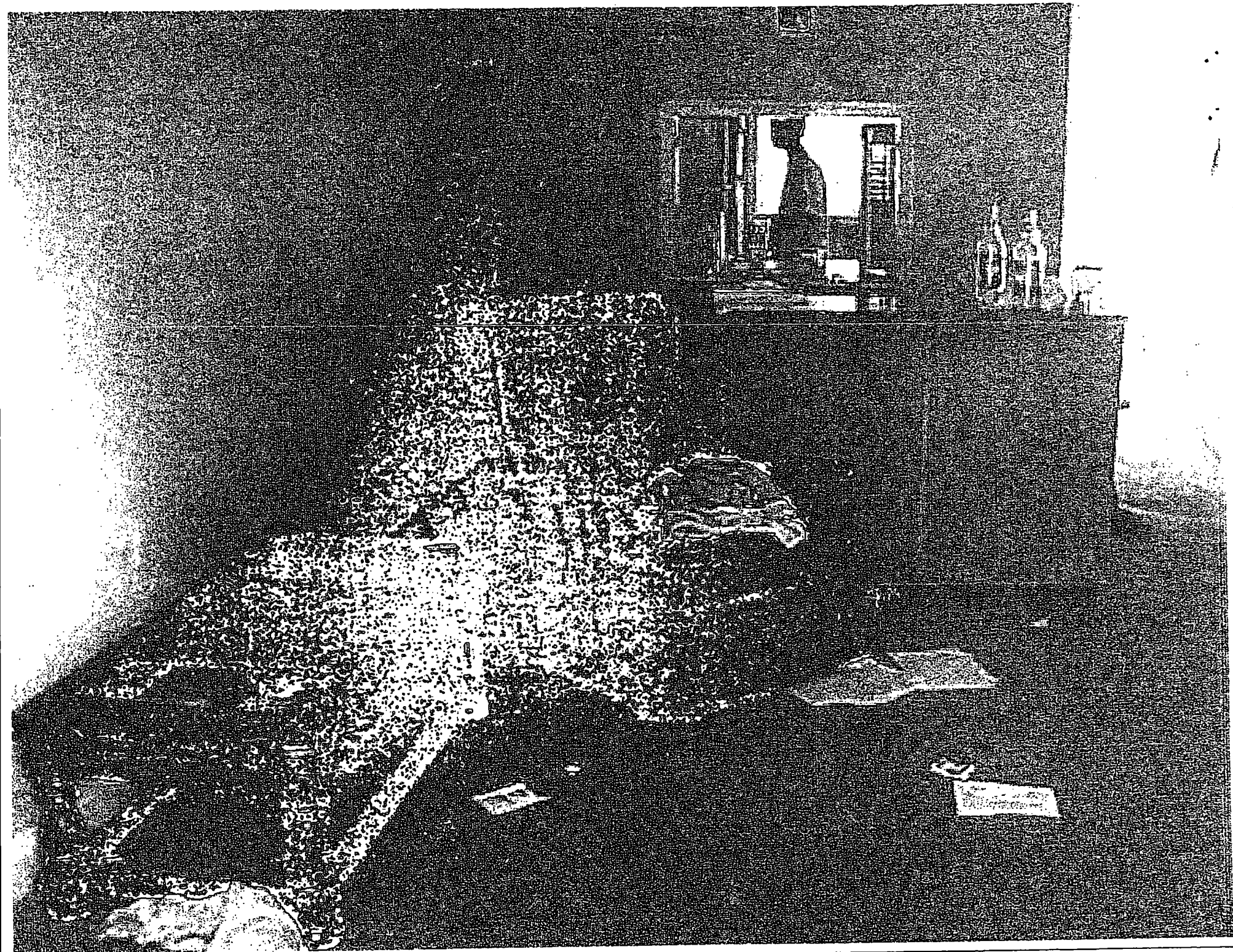




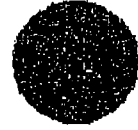








SOUTH CAROLINA LAW ENFORCEMENT DIVISION



FACSIMILE

TO: SUSANNAH ROSS DATE: 5/4/10
 PHONE: _____ FAX: ⁸⁶⁴255-2946 PAGE 1 OF 4 PAGES
 FROM: ROBIN TAYLOR ⁸⁰³PHONE: 803-7321 FAX: _____

MESSAGE:

Report for Steve Bagwell case.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION
 PO BOX 21398
 COLUMBIA, SC 29221-1398
 (803) 737-9000

- HEADQUARTERS..... (803) 896-7041
- FORENSICS LAB..... (803) 896-7351
- NARCOTICS..... (803) 896-7192
- LOW COUNTRY REGION..... (843) 797-3662
- PIEDMONT REGION..... (864) 467-8121
- CJCS..... (803) 896-7022
- PEE DEE REGION (843) 662-5201
- MIDLANDS REGION (803) 896-7259
- REGULATORY (803) 896-7037

CONFIDENTIALITY NOTICE

THIS TRANSMISSION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION WHICH IS PRIVILEGED AND CONFIDENTIAL. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, DISTRIBUTION, OR COPYING OF THIS INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR, PLEASE NOTIFY THE SENDER IMMEDIATELY BY CALLING THE ABOVE TELEPHONE NUMBER. THANK YOU FOR YOUR ASSISTANCE AND COOPERATION.

COURT'S
 EXHIBIT NO. 1
 IDENTIFICATION/EVIDENCE
 DKT. # _____
 DATE: 05/27/10 733

SOUTH CAROLINA LAW ENFORCEMENT DIVISION FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Inv. Al Cannon
Greenville County Sheriff's Office
Law Enforcement Center, 4 McGee Street
Greenville, SC 29601

DNA ANALYSIS
November 25, 2009
SLED LAB: L04-12676
Your Case No: 03135749
Incident Date: 9/14/2003
[V] Chris Snoddy
[V] Jarrett Armstrong
[S] Daryl Spain
[S] Steve Bagwell

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

DNA ANALYSIS

ITEMS ANALYZED:

- 7 Oral swabs from Steve Randall Bagwell
 - 1.1 Swab from piece of broken glass
 - 2.1 Swab from piece of broken glass
 - 3.1 Swab from piece of broken glass
 - 4.1 Swab from piece of broken glass
 - 5.1 Swab from piece of broken glass
 - 6.1 Swab from piece of broken glass

EXAMINATIONS

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



SLED LAB No. L04-12676
November 25, 2009

Page 2 of 3

RESULTS

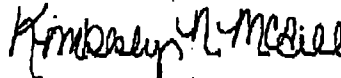
The DNA profile developed from items 1.1, 2.1, 3.1 is from an unidentified male individual and has been entered into the Combined DNA Index System (CODIS). Steve Bagwell does not match this DNA profile.

The partial DNA profile developed from item 5.1 is consistent with the DNA profile developed from item 1.1.

The partial DNA profile developed from item 6.1 is insufficient for reliable interpretation.

No human DNA was obtained from item 4.1.

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



Kimberly N. McGill
Forensic Scientist

cc: Greenville County Solicitor's Office



SLED LAB No. L04-12676
November 25, 2009

Page 3 of 3

Table 1 - Identifier

Items	D8S1179	D21S11	D7S820	CFR1PO	D3S1358	TH01	D13S317	D16S539	D2S1338	D19S433	vWA	TPOX	D18S51	DSS818	FGA	Amelogenin
7 Steve Bagwell	11,13	29,30	9	10,12	(17,18)	9,9,3	8,12	12,13	19,25	13,14	14,15	8	14,15	11,15	(25,27)	XY
1.1 Glass	11,16	28,29	10,11	10,12	16,18	9,3	11,13	11,12	17,18	15,15,2	14,17	8	12,18	12	21	XY
2.1 Glass	11,16	28,29	10,11	10,12	16,18	9,3	11,13	11,12	17,18	15,15,2	14,17	8	12,18	12	21	XY
3.1 Glass	11,16	28,29	10,11	10,12	16,18	9,3	11,13	11,12	17,18	15,15,2	14,17	8	12,18	12	21	XY
5.1 Glass	-	(28,29)	-	-	(16,18)	(9,3)	(13)	(11)	-	15,(15,2)	(14)	8	-	12	-	-
6.1 Glass	-	-	-	-	-	(9,3)	-	-	-	-	-	-	-	-	-	-

() = alleles between 75 and 149 rfu - = no results



Order to do DNA faxed MCI and SLED w/ Kimberly McGill- offer results

A. statement by party opponent/ record kept in the regular course of business/ non-jury proceeding/ Order/ out of state subpoena – 1. SLED

b. Brady - testimony from Mike Barcroft in St. v. Spain that state would do DNA only if turned down offers –never requested DNA- 2. B

etc??

II. 17-27-70 reply not filed w/in 30 days Summary Judgment for defense

III. IOC – conduct below professional standards brings in question outcome of the case
May overlap w/ prosecutorial error

a. Failed to test DNA/ or argue Brady/move to suppress

i. motion in limine re. DNA since state failed to test can't argue

ii. no objection to W. inference Steve's blood on glass p. 62-4

iii. no obj. closing Steve's blood on glass p.227-8

1. speculative

2. not in record

3. Brady violation

4. Can't be harmless b/c state underlined in closing

b. failed to get mug shot or LEC records cross p.76-9 showing beaten/bite

c. failed to get 911 records p.129-1;

i. subpoenaed by Barcroft recording destroyed pp.149-1.22, p. 151, l. 18

because no one requested it w/in 90 days and destroyed no Brady

argument (inc. report say went to location "in reference to a call") pretrial

ii. failed to object to closing p.228-1 why if Jarret didn't call police

1. speculative

2. not in record

3. Brady violation

4. Can't be harmless b/c state underlined in closing

d. Failed pretrial investigation

i. To complex for pics

ii. To speak to neighbors

iii. Prepare D. for direct

iv. Prepare defense strategy

e. Failed to argue bias r. 608 re: Jerry Spain allowed State argument that R 613, then no objection in closing p.227-8 when state says "why would they beat up???"

i. Appeal- atty. botched opportunity to cross Armstrong

ii. Appellate opinion says "friends" failed to argue not in statement

f. Failed to provide assessment of state's case and maximum

g. Failed to object to tv picture/testimony p. p. 49-5; 75-9, year later another apt.

h. failure to move to sequester witnesses

- IV. Prosecutorial Misconduct/Due process violation - guaranteed in the Fifth, and Fourteenth Amendments of the Constitution of the United States & Art. I Sec.3 of the South Carolina Constitution – Brady & improper closing arouse passions and confuse jury
- a. BRADY- dated 9/19/03
 - i. Favorable
 - ii. Available to state – responded to a call
 - iii. Suppressed
 - iv. Material
 - b. failed to tell TV picture a year later in different apt. p. 49-5; 75-9
 - i. may have opened questions that fabricated picture
 - ii. fabricated story
 - c. failed to reveal changes in V. statement favorable to defense. 110, 115 where Snoddy says that he actually did not see Bagwell even though his statement says he did p. 111, l. 10-25, Armstrong (who beat Bagwell after breaking into his apt. has to justify and sticks to story saw Bagwell), statement says red shirt tall then at trial says known since middle school relied on by Appellate Court p. 39, l. 13
 - d. Failed to turn over 911 tape p. 129-2, brady
 - i. then subversive about fact pp. 149-162,
 - ii. then argued in closing p228, l. 2 when p. 160, l.3
 1. solicitor may not rely on statements not in evidence in closing St. v. Huggins 481 Se2d 114 (1997)
 2. argument so infected trial with unfairness as to deny due process Darden v. Wainwright, 447 US 168, 181, 106 Sct 2464, 2471 (1986)
 - e. failed to get blood test after order DNA – Brady
 - i. argued in closing on what would have been shown a lie by DNA cut on glass.
 - ii. p. 62-4; p. 227-8
 - f. closing -theme “Why beat Bagwell?” p. 226-17; p. 231-13 when prevented the defense from telling jury just why they did / closing comment on picture of door that not authenticated when again State prevented that testimony pp. 164 l. 13; 230, l. 8 / like 911 call suggestion D: did not make prevented testimony Holmes v. SC 547 US 319, 126 Sct 1727 (2006)
 - i. tried to ask Jerret Armstrong p. 57-61
 - ii. tried to ask Jerry Spain pp. 162-173 prevented by state’s objection r.613
 - iii. not can’t say harmless Holmes v. SC 547 US 319, 126 Sct 1727 (2006)
 - iv. must reevaluate harmless error in light of all
 - g. closing references to neighbors p.221-8;p. 230-p.231-12
 - i. not in line with evidence p. p.131-6, said just saw aftermath
 - ii. St. v. Huggins 481 Se2d 114 (1997)
 - iii. did not call officer Hunter, first on scene wrote report

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
 The State)
)
 -vs-)
)
 Steve Bagwell,)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS

Indictment Number 2003-GS-23-9373

NOTICE OF MOTION
 and
 MOTION TO REQUIRE DEFENDANT
 TO PROVIDE BLOOD, HAIR,
 AND SALIVA SAMPLES

APR 20 11 09 AM '04
 COURT

PLEASE TAKE NOTICE that the State of South Carolina will move before the Presiding Judge on Monday, May 17, 2004, or at such other date and time as is Scheduled by the Court, that an Order be issued requiring the Defendant to submit to the collection of blood, hair, and saliva samples for use in comparison with evidence that has been collected and preserved.

THE STATE ALLEGES HEREIN AND WOULD SHOW unto this Court

1. That the Defendant has been charged with burglary 1st degree;
2. That during the investigation of the alleged criminal offense, the following evidence was collected from the crime scene and preserved for analysis: a piece of broken glass containing bloodstains;
3. That the comparison of samples of the Defendant's blood, hair, and/or saliva against the evidence that has been collected and preserved will produce material evidence in the case; and
4. That the collection of blood, hair, and saliva samples does not violate the Constitutional laws of this State or the United States in that such evidence is non-testimonial in nature.

THEREFORE, the State does hereby request an Order from this Court that the Defendant submit to the collection of blood, hair, and saliva samples by the State.

Greenville, South Carolina
 April 29, 2004

Respectfully Submitted,


 L. Mark Moyer, Assistant Solicitor

Greenville County Forensic Division CRIME SCENE INVESTIGATION REPORT

AGENCY: Greenville County Sheriffs Office
AREA: CJII

CASE NUMBER: 1-03-135749

INCIDENT TYPE:	Burglary (Residence) Follow-Up	INCIDENT LOCATION:	Greenville, SC
VICTIM:	Armstrong, Jarel	ADDRESS:	Greer, SC
COMPLAINANT:		ADDRESS:	
INV. OFFICER:	Porter	UNIT NUMBER:	D32

PAGE 1 OF 1

INCIDENT SUMMARY/ACTION(S) TAKEN:

On 05/18/04, this forensic officer collected a swabbing of suspected blood from one of the pieces of broken glass recovered at the scene (see original incident report). The swabbing of suspected blood was collected while the evidence was still in the custody and control of D.P.S. Property and Evidence personnel.

Deputy Solicitor Mark Moyer had requested a Phenolphthalein presumptive test be conducted on one of the broken pieces of glass to confirm that blood was present on the glass.

This forensic officer tested the swabbing of suspected blood, using the Phenolphthalein presumptive test, with positive results.

Deputy Solicitor Moyer was advised of the results.

No further action taken.

All action taken place between 0835-0850 at the L.E.C.

INCIDENT DATE: 11/14/03		CASE NUMBER: 1-03-135749	
CONDITIONS OF NEIGHBORHOOD: [Observed]			
Condition of Interior/Neat/Ordery			
Did perpetrator alter lights? NO	Switches/Controls affected? N/A	Bulbs broken/loosened? N/A	
Smells (Gas, Tobacco, Alcohol, Perfume, Other) Are smells unusual? N/A		Type Smell: N/A	
Pets/Animals Present: N/A	Is Perpetrator suspected to have had contact with pets/animals: N/A		
Unusual debris or discarded items? YES (1) Yes, describe: One "Faded Glory" candle, size 7-1/2 (JH2)			
Security videotape available? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Tape viewed by R/O? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Tape collected by R/O? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>			
Notes:			

Items Processed/Photographed/Collected: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Latent Prints: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Elimination Prints: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
General Areas of Search/Processing: SCREEN DOOR THAT WAS REMOVED FROM REAR SLIDING GLASS DOOR, NO ITEMS REMOVED OR DISTURBED FROM WITHIN THE RESIDENCE		
Notes: THE SUSPECTED ITEM USED TO GAIN ENTRY (SCOOTER) WAS PHOTOGRAPHED AND RETURNED TO ONE BARRON, SENEGA OF 113 DECKA BOND DRIVE, APT 10		
Evidentiary Items: [Observed]		

Blood: YES	Location: [Observed]	Photo: YES	Collect: YES
Hair: NO	Location:	Photo: N/A	Collect: N/A
Fibers: NO	Location:	Photo: N/A	Collect: N/A
Stains: NO	Location:	Photo: N/A	Collect: N/A
Glass: NO	Location:	Photo: N/A	Collect: N/A
Soil/Dirt: NO	Location:	Photo: N/A	Collect: N/A
Tool Marks: NO	Location:	Photo: N/A	Collect: N/A
Liquid: NO	Location:	Photo: N/A	Collect: N/A
Other: NO	Location:	Photo: N/A	Collect: N/A
Notes: Pieces of broken glass collected, all having suspected bloodstains. One of suspects is believed to have cut foot on broken glass.			
Footwear: N/A	Shoes: N/A	Socks: N/A	Undies: N/A
Tire Tracks: N/A	Castings: N/A	Saps: N/A	Oil/Lit: N/A
Location / Describe:			

Photographs: [Observed]	Prints: [Observed]	Processing: [Observed]
Evidence Processing: Collected items Processed: <input type="checkbox"/>	Results: N/A	Remarks: N/A
Forensic Investigation/Disposition: Latents forwarded to DPS Latent Division: <input checked="" type="checkbox"/>	Elimination prints forwarded to DPS Latent Division: <input type="checkbox"/>	
Evidence items packaged and placed in DPS P&E: <input checked="" type="checkbox"/> Total evidence items placed into P&E: 2		

REPORTING OFFICER	Hornby, J.A.	STAR #	6728	UNIT #	927	DATE	08/14/03
REPORTING OFFICER		STAR #		UNIT #		DATE	
APPROVING SUPERVISOR	Sgt. [Signature]	STAR #	1561	UNIT #	924	DATE	8/15/03

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

03-135749

MARK SANFORD
Governor



ROBERT M. STEWART
Chief

EVIDENCE PROCESSING DEPARTMENT

Master Deputy Marcus A. Cannon
Greenville County Sheriff's Office
4 McGee Street
Greenville, SC 29601

February 3, 2005
SLED Lab No: L04-12676
Your Case No: 03-135749
Incident Date: 09/14/03
(S) Spain, Daryl Lee
(S) Bagwell, Steve Randall
(V) Snoddy, Chris
(V) Armstrong, Jarrett

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.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

Item 1: Piece of broken glass

RESULTS:

Sample collected and sent to the DNA Department for blood identification.

Item 2: Piece of broken glass

RESULTS:

Sample collected and sent to the DNA Department for blood identification.

Item 3: Piece of broken glass

RESULTS:

Sample collected and sent to the DNA Department for blood identification.



SOUTH CAROLINA LAW ENFORCEMENT DIVISION FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor

ROBERT M. STEWART
Chief



Department of Forensic
Serology and DNA Analysis

February 10, 2005

SLED Lab No.: L04-12676

Your Case No.: 03-135749

Incident Date: 9/14/03

(V) Chris Snoddy

(V) Jarrett Armstrong

(S) Daryl Spain

(S) Steve Bagwell

MD MARCUS A. CANNON
GREENVILLE COUNTY SHERIFF'S OFFICE
4 MCGEE STREET
GREENVILLE, SC 29601

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.

Robert M. Stewart, Chief
South Carolina Law Enforcement Division

ITEM(S) SUBMITTED:

RESULTS OF EXAMINATIONS:

1.1-6.1 Swabs from pieces of
glass

1.1-6.1 Blood identified.

No further analysis will be performed on this case until blood standards from the suspects are submitted.

These examinations were conducted by S/A Robin A. Taylor, Forensic Analyst, South Carolina Law Enforcement Division.

Robin Taylor
Robin A. Taylor
Senior Agent

2/10/05
Date

jmj

cc: Greenville County Solicitor's Office

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



2005 FEB 10 10:52

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

RECEIVED

NOV 18 2014

S.C. Supreme Court

STEVE BAGWELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ATTORNEY FOR PETITIONER

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Columbia, S. C. 29211

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS

2004-GS-23-9373

2004-GS-23-9375

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

vs.)

STEVE BAGWELL AND DARRYL SPAIN,)

DEFENDANTS.)

ORIGINAL

TRANSCRIPT OF RECORD

April 12 and 13, 2005
Greenville, South Carolina

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR., JUDGE.

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

ANDREW B. MOORMAN, ESQ.
Attorney for the State

DOROTHY MANIGAULT, ESQ.
Attorney for Defendant Bagwell

MICHAEL BARCROFT, ESQ.
Attorney for Defendant Spain

APRIL HERRON
Official Court Reporter

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(IC) - Denotes In Camera

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All Exhibits were retained by the Clerk of Court for
Greenville County.

1 with respect to the State, to the Defendants or to the
2 subject matter of the case? That being an alleged burglary.
3 Or do you know of any reason why you could not give the State
4 and these defendants a fair and impartial trial based on the
5 law and evidence to be presented? If so, would you, please,
6 stand and give me your name.

7 There was no response.

8 Do I have any member of the panel who has any connection,
9 family, business, social or otherwise with Bob Ariail, the
10 Solicitor in this case or with law enforcement? Whether that
11 be federal, state, county or municipal. If so, would you,
12 please, stand and give me your name and the relationship.

13 THE COURT: Mr. Taylor.

14 PROSPECTIVE JUROR: Ron Taylor. I guess acquaintance and
15 friend of one of the State's witnesses.

16 THE COURT: Would that fact in any way interfere with
17 your ability to be a fair and impartial juror on this case?

18 PROSPECTIVE JUROR: I think it would in this case, Your
19 Honor.

20 THE COURT: It would?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Thank you, sir, I appreciate you telling me
23 that. I would not place you on this jury. Thank you, sir,
24 please, be seated.

25 Your name, ma'am?

1 PROSPECTIVE JUROR: Leslie Crews:

2 THE COURT: All right.

3 PROSPECTIVE JUROR: Officer Cannon is a friend of mine.

4 THE COURT: Would that fact in any way interfere with
5 your ability to be a fair and impartial juror on the case?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Thank you, ma'am, you're qualified so far.

8 Mike Barcroft and Dorothy Manigault represent the
9 defendants in this case. Do I have any clients now or
10 formally of Mr. Barcroft or Ms. Manigault? If so, would you,
11 please, stand and give me your name.

12 There was no response.

13 Do I have any member of the panel that's ever been a
14 victim of a violent crime? If so, would you, please, stand
15 and give me your name.

16 There was no response.

17 Any other questions, Counsel?

18 MR. MOORMAN: None from the State, Your Honor.

19 MR. BARCROFT: None.

20 MS. MANIGAULT: None from Bagwell.

21 THE COURT: All right, strikes are 10 for the State, 10
22 for each Defendant.

23 Ladies and gentlemen, when your name is called I'll ask
24 that you, please, come forward to the podium, turn around,
25 face counsel and await further instructions. Thank you.

1 THE CLERK: Number 19, Jonathan Brush.

2 (Jonathan Brush, a white male, came forward.)

3 What says the State?

4 MR. MOORMAN: Please present this juror.

5 THE CLERK: What says Defendant Spain?

6 MR. BARCROFT: Swear Mr. Brush.

7 THE CLERK: What says Defendant Bagwell?

8 MS. MANIGAULT: Swear Mr. Brush.

9 THE CLERK: You may be seated in the jury box.

10 128, Joseph Shell.

11 (Joseph Shell, a white male, came forward.)

12 What stays the State?

13 MR. MOORMAN: Please present the juror.

14 THE CLERK: What says Defendant Spain?

15 MR. BARCROFT: Swear Mr. Shell.

16 THE CLERK: What says Defendant Bagwell?

17 MS. MANIGAULT: Please swear Mr. Shell.

18 THE CLERK: You may have a seat in the jury box.

19 151, John Warner.

20 (John Warner, a white male, came forward.)

21 What says the State?

22 MR. MOORMAN: Please present this juror.

23 THE CLERK: What says Defendant Spain?

24 MR. BARCROFT: Please excuse Mr. Warner from this case.

25 THE CLERK: You're excused from this case.

1 Number 82, Lisa Lanni.

2 (Lisa Lanni, a white female, came forward.)

3 What says the State?

4 MR. MOORMAN: Please present this juror.

5 THE CLERK: What says Defendant Spain?

6 MR. BARCROFT: Excuse Ms. Lanni.

7 THE CLERK: You're excused from this case.

8 Number 3, Doris Anderson.

9 (Doris Anderson, a black female, came forward.)

10 What says the State?

11 MR. MOORMAN: Please excuse this juror from the trial of
12 this case.

13 THE CLERK: You're excused from this case.

14 Number 26, Brenda Cauble.

15 (Brenda Cauble, a white female, came forward.)

16 What says the State?

17 MR. MOORMAN: Please present this juror.

18 THE CLERK: What says Defendant Spain?

19 MR. BARCROFT: Please swear Ms. Cauble.

20 THE CLERK: What says Defendant Bagwell?

21 MS. MANIGAULT: Please excuse Ms. Cauble.

22 THE CLERK: You're excused from this case.

23 Number 164, Catherine Williams.

24 (Catherine Williams, a black female, came forward.)

25 What says the State?

1 MR. MOORMAN: Please present this juror.

2 THE CLERK: What says Defendant Spain?

3 MR. BARCROFT: Swear the juror.

4 THE CLERK: What says Defendant Bagwell?

5 MS. MANIGAULT: Please swear Ms. Williams.

6 THE CLERK: You may have a seat in the jury box.

7 Number 35, Michael Couch.

8 (Michael Couch, a white male, came forward.)

9 What says the State?

10 MR. MOORMAN: Please present this juror.

11 THE CLERK: What says Defendant Spain?

12 MR. BARCROFT: Swear Mr. Couch.

13 THE CLERK: What says Defendant Bagwell?

14 MS. MANIGAULT: Please swear the juror.

15 THE CLERK: You may have a seat in the jury box.

16 Number 116, Leon Polowczuk.

17 (Leon Polowczuk, a white male, came forward.)

18 What says the State?

19 MR. MOORMAN: Please present this juror.

20 THE CLERK: What says Defendant Spain?

21 MR. BARCROFT: Please swear the juror.

22 THE CLERK: What says Defendant Bagwell?

23 MS. MANIGAULT: Please swear Mr. Polowczuk.

24 THE CLERK: You may have a seat in the jury box.

25 155, Judith Williams.

(Judith Williams, a white female, came forward.)

What says the State?

MR. MOORMAN: Please present this juror.

THE CLERK: What says Defendant Spain?

MR. BARCROFT: Swear Ms. Williams.

THE CLERK: What says Defendant Bagwell?

MS. MANIGAULT: Please excuse Ms. Williams.

THE CLERK: You're excused from this case.

Number 77, Michelle Kelaher.

(Michelle Kelaher, a white female, came forward.)

What says the State?

MR. MOORMAN: Please present this juror.

THE CLERK: What says Defendant Spain?

MR. BARCROFT: Please excuse Ms. Kelaher.

THE CLERK: You're excused from this case.

Number 42, Timothy Davenport.

(Timothy Davenport, a white male, came forward.)

What says the State?

MR. MOORMAN: Please excuse this juror from the trial of this case.

THE CLERK: You're excused from this case.

Number 133, Sandy Simpson.

(Sandy Simpson, a white female, came forward.)

What says the State?

MR. MOORMAN: Please excuse this juror from the trial of

1 this case.

2 THE CLERK: You're excused from this case.

3 Number 156, Silas Williams.

4 (Silas Williams, a white male, came forward.)

5 What says the State?

6 MR. MOORMAN: Please present this juror.

7 THE CLERK: What says Defendant Spain?

8 MR. BARCROFT: Please excuse Mr. Silas.

9 THE CLERK: You're excused from this case.

10 108, Narayanan Bikshandarkoil.

11 (Narayanan Bikshandarkoil, a Indian male, came forward.)

12 What says the State?

13 MR. MOORMAN: Please present this juror.

14 THE CLERK: What says Defendant Spain?

15 MR. BARCROFT: Swear the juror.

16 THE CLERK: What says Defendant Bagwell?

17 MS. MANIGAULT: Please swear the juror.

18 THE CLERK: You may have a seat in the jury box.

19 121, Candace Rogers.

20 (Candace Rogers, a white female, came forward.)

21 What says the State?

22 MR. MOORMAN: Please present this juror.

23 THE CLERK: What says Defendant Spain?

24 MR. BARCROFT: Swear Ms. Rogers.

25 THE CLERK: What says Defendant Bagwell?

1 MS. MANIGAULT: Please excuse Ms. Rogers.

2 THE CLERK: You're excused from this case.

3 Number 78, Colin Kelly.

4 (Colin Kelly, a white male, came forward.)

5 What says the State?

6 MR. MOORMAN: Please excuse this juror from the trial of
7 this case.

8 THE CLERK: You're excused from this case.

9 84, Linda Lay.

10 (Linda Lay, a white female, came forward.)

11 What says the State?

12 MR. MOORMAN: Please present this juror.

13 THE CLERK: What says Defendant Spain?

14 MR. BARCROFT: Please excuse Ms. Lay from this case.

15 THE CLERK: You're excused from this case.

16 Number 22, Gary Caldwell.

17 (Gary Caldwell, a white male, came forward.)

18 What says the State?

19 MR. MOORMAN: Please present this juror.

20 THE CLERK: What says Defendant Spain?

21 MR. BARCROFT: Swear Mr. Caldwell.

22 THE CLERK: What says Defendant Bagwell?

23 MS. MANIGAULT: Please swear Mr. Caldwell.

24 THE CLERK: You may have a seat in the jury box.

25 THE COURT: Mr. Caldwell, take that first seat and serve

1 as foreman from me, please, sir.

2 THE CLERK: Number 8, Richard Batto.

3 (Richard Batto, a white male, came forward.)

4 What says the State?

5 MR. MOORMAN: Please present this juror.

6 THE CLERK: What says Defendant Spain?

7 MR. BARCROFT: Please excuse Mr. Batto.

8 THE CLERK: You're excused in this case.

9 118, Daryl Ralls.

10 (Daryl Ralls, a black male, came forward.)

11 What says the State?

12 MR. MOORMAN: Please present this juror.

13 THE CLERK: What says Defendant Spain?

14 MR. BARCROFT: Swear Mr. Ralls.

15 THE CLERK: What says Defendant Bagwell?

16 MS. MANIGAULT: Please swear Mr. Ralls.

17 THE CLERK: You may have a seat in the jury box.

18 112, Gutierrez Pace.

19 (Gutierrez Pace, a white female, came forward.)

20 What says the State?

21 MR. MOORMAN: Please excuse this juror from the trial of
22 this case.

23 THE CLERK: You're excused from this case.

24 94, Laura Mayfield.

25 (Laura Mayfield, a white female, came forward.)

1 What says the State?

2 MR. MOORMAN: Please present this juror..

3 THE CLERK: What says Defendant Spain?

4 MR. BARCROFT: Please swear Ms. Mayfield.

5 THE CLERK: What says Defendant Bagwell?

6 MS. MANIGAULT: Please swear Ms. Mayfield.

7 THE COURT: May be seated in the jury box.

8 Number 33, Kevin Cooper.

9 (Kevin Cooper, a white male, came forward.)

0 What says the State?

1 MR. MOORMAN: Please present this juror.

2 THE CLERK: What says Defendant Spain?

3 MR. BARCROFT: Swear Mr. Cooper.

4 THE CLERK: What says Defendant Bagwell?

5 MS. MANIGAULT: Swear Mr. Cooper, please.

6 THE CLERK: You may have a seat in the jury box.

7 56, David Glenn.

8 (David Glenn, a white male, came forward.)

9 What says the State?

0 MR. MOORMAN: Please present this juror.

1 THE CLERK: What says Defendant Spain?

2 MR. BARCROFT: Swear Mr. Glenn.

3 THE CLERK: What says Defendant Bagwell?

4 MS. MANIGAULT: Please swear Mr. Glenn.

5 THE CLERK: You may have a seat in the jury box.

1 Number 50, Elaine Fleming.

2 (Elaine Fleming, a white female, came forward.)

3 What says the State?

4 MR. MOORMAN: Please present this juror.

5 THE CLERK: What says Defendant Spain?

6 MR. BARCROFT: Please excuse Ms. Fleming from the case.

7 THE CLERK: You're excused from this case.

8 158, Charles Winfield.

9 (Charles Winfield, a white male, came forward.)

10 What says the State?

11 MR. MOORMAN: Please present this juror.

12 THE CLERK: What says Defendant Spain?

13 MR. BARCROFT: Please excuse Mr. Winfield from this case.

14 THE CLERK: You're excused from this case.

15 Number 136, William Smith.

16 (William Smith, a white male, came forward.)

17 What says the State?

18 MR. MOORMAN: Please present this juror.

19 THE CLERK: What says Defendant Spain?

20 MR. BARCROFT: Swear Mr. Smith.

21 THE CLERK: What says Defendant Bagwell?

22 MS. MANIGAULT: Please excuse Mr. Smith.

23 THE CLERK: You're excused from this case.

24 154, David Williams.

25 (David Williams, a black male, came forward.)

1 What says the State?

2 MR. MOORMAN: Please present this juror.

3 THE CLERK: What says Defendant Spain?

4 MR. BARCROFT: Swear Mr. Williams.

5 THE CLERK: What says Defendant Bagwell?

6 MS. MANIGAULT: Please excuse Mr. Williams from this
7 case.

8 THE CLERK: You're excused from this case.

9 Number 130, Wanda Shipman.

10 (Wanda Shipman, a black female, came forward.)

11 What says the State?

12 MR. MOORMAN: Please present this juror.

13 THE CLERK: What says Defendant Spain?

14 MR. BARCROFT: Swear Ms. Shipman.

15 THE CLERK: What says Defendant Bagwell?

16 MS. MANIGAULT: Please swear Ms. Shipman.

17 THE CLERK: You may have a seat in the jury box.

18 THE COURT: One alternate. One for the State two for
19 each Defendant.

20 THE CLERK: Number 21, Sonya Burton.

21 (Sonya Burton, a black female, came forward.)

22 What says the State?

23 MR. MOORMAN: Please present this juror.

24 THE CLERK: What says Defendant Spain?

25 MR. BARCROFT: Swear Ms. Burton.

1 THE CLERK: What says Defendant Bagwell?

2 MS. MANIGAULT: Please swear Ms. Burton.

3 THE CLERK: You may have a seat in the jury box.

4 THE COURT: Swear the jury, please.

5 THE CLERK: Ladies and gentlemen, please stand, raise
6 your right hand for the oath in this case.

7 (WHEREUPON, the jury was sworn.)

8 THE CLERK: Thank you, you may be seated.

9 THE COURT: Ladies and gentlemen, there are a couple of
10 matters that I need to take up before we start the case.
11 I'll give you a recess while I do that. Now, you don't know
12 any more about this case other than what I briefly told you a
13 moment ago. But I need to instruct you that from this point
14 on don't talk about this case. You don't discuss the facts
15 of the case until you've heard all the testimony to be
16 presented, the arguments by the attorneys and my charge on
17 the law. So if you'll be at ease, follow the bailiff and
18 we'll start shortly. Thank you.

19 (WHEREUPON, the jury left the courtroom at
20 approximately 10:20 a.m.)

21 THE COURT: And I need the balance of the panel to report
22 back downstairs to the jury assembly room. Thank you.

23 (WHEREUPON, the jury venire was excused at
24 approximately 10:30 a.m.)

25 THE COURT: Could counsel approach just a minute, please.

(WHEREUPON, a bench conference was held.)

1
2 THE COURT: All right, Solicitor.

3 MR. MOORMAN: Yes, sir, Your Honor. The State would like
4 to put the Court on notice and the defense on notice that one
5 of the witnesses we will be calling, Mr. Christopher Snoddy,
6 has a prior record. Specifically, he's got two convictions
7 for possession of marijuana. He's got one conviction for
8 open container and one conviction for possession of beer by a
9 minor. All these convictions have occurred within the last
10 years. But it would be the State's position that none of
11 these convictions are admissible under either Rule 609 or
12 608. So we would ask the Court---

13 THE COURT: All right, they would not be admissible
14 under 404.

15 Mr. Barcroft, you take the position they are admissible
16 under 608?

17 MR. BARCROFT: Yes, Your Honor. I believe they are
18 admissible under 608.

19 THE COURT: On what specifically? What rule?

20 MR. BARCROFT: Your Honor, I think because the defenses
21 position is that there was drug activity that was taking
22 place in this apartment that was broken into.

23 THE COURT: What part of 608 are you relying on? A, B,
24 C?

25 MR. BARCROFT: Yes, Your Honor. I'm reviewing it.

1 Judge, I think it could be admissible under (b). And
2 certainly this would be allowable under discretion of the
3 Court. Because I think it's going to become -- I think that
4 whether there some drug activity taking place in that
5 apartment is going to become an issue relevant to this case.
6 Obviously the State's going to deny it. I anticipate them
7 denying that. But, Your Honor, I think it will go to that --
8 it may become relevant under that issue. And I would ask you
9 -- I don't know---

10 THE COURT: All right. I need to hear the testimony
11 before I can rule on that.

12 MR. BARCROFT: I understand.

13 THE COURT: So just don't -- let's excuse the jury before
14 it comes up.

15 MR. BARCROFT: Yes, Your Honor.

16 THE COURT: All right. Now there was another matter you
17 mentioned?

18 MR. BARCROFT: Your Honor, it came to my attention
19 yesterday when I was given some additional discovery by the
20 Solicitor's office that Mr. Snoddy may -- they initially
21 raised the issue that he may have a contempt of court problem
22 in Family Court. At that time I wanted to inquire what the
23 circumstances were of that. I am told this morning, Judge,
24 and to be absolutely candid with the Court, I'm told this
25 morning that he doesn't have a contempt of court conviction.

1 But as a result of learning that, Your Honor, I learned that
2 there is a DSS case, open case, in Family Court that involves
3 a child. A DSS case that was opened four months prior to the
4 alleged incidents that we're here on today that involved a
5 child that was born, I think, tested positive for marijuana.
6 And from what the brief little bit I can gather that there
7 were some -- that there may be some credibility issues from
8 that Family Court issue. In other words, they tell me that
9 he was told certain things by some DSS people and I can't get
10 the full story.

11 And, Your Honor, I don't know what's in that file. There
12 may not be anything that would be exculpatory but, Your
13 Honor, I would ask to have an order so that I can at least
14 review that file. If we can do it this morning, perhaps over
15 lunch, then I would have an opportunity to review that and
16 see if there's any evidence that would be relevant.

17 THE COURT: Solicitor.

18 MR. MOORMAN: Yes, sir, Your Honor. First to clarify the
19 time line of events that occurred, I faxed Mr. Barcroft a
20 letter on April 8th. In which I told him that after speaking
21 with my witness on the third occasion that I believe he did
22 have a contempt of court conviction. I then spoke with my
23 witness after I sent this letter, again, asked him if he had
24 ever been in front of a Judge. He said he had not. We also
25 ran an updated criminal history for Mr. Snoddy, there's

1 absolutely no mention of any contempt conviction on his
2 criminal history. So as far as convictions goes, the State's
3 position would be that he does not have a conviction for
4 contempt. And we were in error when we first notified
5 Mr. Barcroft and Ms. Manigault.

6 As far as the discoverability of this information, the
7 State's position would be that whatever -- basically
8 whatever's in that DSS file is wholly irrelevant to the
9 prosecution of this case. My understanding of what happened
10 is that that file deals primarily with a mother of Mr.
11 Snoddy's baby not Mr. Snoddy. The initial facts surrounding
12 the contempt issue related to Mr. Snoddy's failure to attend
13 certain meetings. Not any truthfulness or untruthfulness. I
14 would say that any impeachment -- unless Mr. Barcroft can
15 show that there's the likelihood of any exculpatory
16 information in that file or that it somehow is discoverable
17 under Rule 5, the State's position would be that he would not
18 be entitled to that information.

19 THE COURT: I agree with the Solicitor and I would not
20 allow that, Mr. Barcroft.

21 All right, you ready to make your opening statements to
22 the jury?

23 MR. MOORMAN: May I use the rest room, Your Honor?

24 THE COURT: All right.

25 (WHEREUPON, a short break was taken.)

1 Okay, bring our jury, please.

2 (WHEREUPON, the jury entered the courtroom at
3 approximately 10:51 a.m.)

4 THE COURT: Brief opening statement, Solicitor.

5 MR. MOORMAN: Thank you, Your Honor.

6 Mr. Barcroft.

7 Ms. Manigault.

8 Good morning, ladies and gentlemen. My name is Andy
9 Moorman. Seated with me is my Investigator, Ms. Jenny Hill.
0 Ladies and gentlemen, a few moments ago you took an oath.
1 You took an oath and that oath requires you to carry out a
2 few functions. It requires you to determine what the facts
3 are. It requires you to apply the law that the Judge gives
4 to you to the facts. And it requires you to reach a verdict.
5 Now opening statements mark the beginning of that process
6 you're going to use to carry out your oath. Opening
7 statements provide the lawyers with an opportunity to tell
8 you what this case is about. And I'm going to do that in
9 just one second. But before I do I want to talk to you very,
0 very briefly about the charge in this case. Burglary in the
1 first degree.

2 Ladies and gentlemen, a person commits burglary in the
3 first degree if that person enters the dwelling of another,
4 without consent, with the intent to commit a crime and when
5 this is done at nighttime. And that's the charge. The State

1 alleges that the defendants, Darryl Spain and Steve Bagwell,
2 entered the home of another on the evening or early morning
3 hours of September 14th, 2003. So let's talk about what the
4 case is about. Let's talk about the facts. Ladies and
5 gentlemen, the evidence will show that on September 13th,
6 2003, Mr. Christopher Snoddy and Mr. Jarret Armstrong were
7 living in an apartment together on [REDACTED] in
8 Greenville County. The evidence will show they were living
9 in [REDACTED]. At the same time the defendants, Darryl Spain
10 and Steve Bagwell were living in apartment [REDACTED]. Just
11 two doors down.

12 In September of 2003 Mr. Armstrong and Mr. Snoddy worked
13 together at Applebee's. And that day, like many other days,
14 they were working. The evidence will show that on September
15 13th, 2003, Jarret was working from 5 p.m. to 10 p.m. The
16 evidence will show that Chris, that night, was working 5 p.m.
17 to close or mid-night. So the two road together. About 10
18 o'clock Mr. Armstrong went back to his apartment on [REDACTED]
19 [REDACTED], [REDACTED] and took a shower. The evidence will show
20 that the apartment on [REDACTED] was very close to the
21 Applebee's. May be a mile or two. So it was no time at all
22 to get back and forth. After Mr. Armstrong took a shower, he
23 got back in his car and went to pick up Mr. Snoddy at work at
24 about 11:45. The evidence will show that Mr. Snoddy didn't
25 get off right at midnight, that Jarret had to wait for him.

1 So Jarret waited until about 12:15, when Chris got done with
2 work and they got in the car.

3 The evidence will show, ladies and gentlemen, that while
4 they were on their way home, about 12:20 in the morning,
5 Jarret received a phone call. At which time he sped up. Got
6 to the apartment. The evidence will show that when he got to
7 the apartment, he spoke to some neighbors and he asked Chris
8 to go around to the back of the apartment. The evidence will
9 show that after Chris left and went around to the back of the
0 apartments, the evidence will show that Jarret opened the
1 front door and who did he see inside? Who did he see inside,
2 ladies and gentlemen? That Defendant, Steve Bagwell.

3 The defendant he had known for quite a while. The
4 evidence will show that after Jarret entered Steve Bagwell
5 became upset and ran out the patio glass door. The patio
6 glass door which had been shattered moments before. When
7 this happened the evidence will show Jarret went upstairs to
8 see if anybody else was up there, if anything was missing.
9 While he was upstairs the evidence will show that Chris had
0 made it around to the back by this time. And he ran out when
1 Chris got there. The evidence will show that Darryl Spain,
2 Mr. Bagwell's roommate, ran out. And what did Chris do when
3 Darryl Spain ran out? Chris picked up a pipe and hit Darryl
4 Spain. Hit him at least twist. After he was hit, Darryl
5 Spain got up, clinched his fist and went at Chris. There was

1 a brief fight and then Darryl Spain submitted.

2 The evidence will show that after this happened, after
3 this happened, Chris Snoddy and Jarret Armstrong went over to
4 [REDACTED] and confronted Steve Bagwell. And when they
5 confronted Steve Bagwell the evidence will show that Chris
6 saw on Steve's face, a cut and blood. Just when the argument
7 started. The evidence will show that after the argument
8 started Jarret became angry and struck Steve Bagwell. He was
9 then restrained by Chris and some other neighbors, went in
10 and called the police. When the police came the evidence
11 will show that they found a sandal in the apartment. A
12 sandal that both Mr. Snoddy and Mr. Armstrong had seen Darryl
13 Spain wear on previous occasions. A sandal that is a size 7
14 1/2. The evidence will also show that Chris wears a size 12
15 to 13 and Jarret wears a size 11 1/2 to 12.

16 In addition to that the evidence will show -- the
17 evidence will show that stereo equipment had been moved in
18 the apartment and that a TV had been damaged. Both which
19 occurred after Jarret went to go pick up Chris that night.
20 Finally, ladies and gentlemen, the evidence will show that on
21 this night and any other night, these defendants, Darryl
22 Spain and Steve Bagwell did not have permission to be in that
23 apartment.

24 Ladies and gentlemen, at the close of the State's case,
25 at the close of the evidence I'm going to come back and talk

1 with you. I'm going talk with you a little bit more about
 2 your oath and your function. I'm going to ask at the close
 3 of the case that you determine that the facts show that these
 4 two defendant's entered apartment [REDACTED] on September 14th,
 5 2003 without permission and with the intent to commit a
 6 crime, that this happened in the nighttime and I'm going to
 7 ask that apply the law and reach a verdict of guilty on both
 8 defendants for burglary in the first degree. Thank you, very
 9 much.

10 THE COURT: Mr. Barcroft.

11 MR. BARCROFT: Ladies and gentlemen of the jury, I
 12 introduced myself to you earlier, my name is Mike Barcroft I
 13 practice law here in Greenville. And it's certainly my
 14 pleasure to try this case with you today and to represent
 15 Darryl Spain seated over there next to me at that table. I
 16 know that serving on a jury is not something that everyone is
 17 looking forward to doing on a regular basis. And the average
 18 person might never think, Oh, I might get to serve on a jury
 19 today or I hope I get a letter in the mail calling me for
 20 jury service. I know it's an inconvenience to you, I
 21 understand that. But I, on behalf of Mr. Spain, I want to
 22 thank you for your service today. I think maybe you were
 23 told this downstairs yesterday morning during the jury
 24 qualifications but I'm going to repeat it to you because I
 25 also believe, I think Winston Churchill had said that jury

1 service is the greatest service that you can render to your
2 country in peace time and I certainly agree with that. A
3 because of that I want to thank for your service.

4 Because I know you would rather be somewhere else and I
5 understand it's a imposition on you. And I can tell by the
6 looks from your faces that when your number and your name was
7 called and you were coming up here, it wasn't like you just
8 won the lottery or anything like that. Maybe if you do that
9 maybe today's the day to buy the ticket. I don't know, your
10 number maybe coming up. But I want to thank you and I do
11 thank you. And the reason I say that is I think your service
12 today will be profitable for you. Why do I believe that?
13 Because this is going to give you an opportunity to see our
14 great system, our great country and the way we handle
15 disputes in question.

16 Now let me -- having said that, let me just talk to you
17 briefly. One of the things that the prosecutor mentioned to
18 you that you had taken an oath and he believed part of the
19 oath that you had taken was to determine the facts in the
20 case. And I would take some slight exception to that because
21 I think your oath is to be fair and impartial and to well and
22 truly try the issues in the case. Sometimes there are cases,
23 ladies and gentlemen, where you can't decide what might have
24 happened or didn't happen. Sometimes there are cases and the
25 facts are such or the issues are such that for some reason,

1 for some lack of evidence or a question mark that you have in
2 your mind about what a witness may have said or didn't say,
3 it leaves you with the question that you really don't know
4 for sure. So sometimes there are cases when you can't really
5 determine what the facts were for certain. And what we call
6 that in this country is reasonable doubt, ladies and
7 gentlemen. So you certainly do take an oath to well and
8 truly try the issues in the case. And what that means is to
9 be fair and impartial. That's why the State selected you,
10 that's why we selected you and certainly why Mr. Bagwell
11 selected you as well. Because we believe that you can be
12 fair and impartial. And what means is as, His Honor, told
13 you a moment ago is to not discuss or decide the issue in the
14 until you have heard all the evidence and all the testimony
15 presented.

16 The State has the burden of proof. They're required to
17 prove the elements -- the evidence of each element of the
18 crime beyond a reasonable doubt. That the burden that's on
19 them. The defense has nothing to prove. Nobody's required
20 at this table to present any evidence, to call any witnesses,
21 to present any evidence whatsoever. Because the burden of
22 proof rests entirely on the State of South Carolina. And
23 after they have called their witnesses and put up their case,
24 there maybe question marks in your mind. There maybe
25 questions that haven't been answered. There maybe facts that

1 you don't know that would have helped you in some way. And
2 certainly you can't consider anything that's not presented in
3 this case. And the Judge will charge you, he will give you a
4 charge on the law after all the evidence is presented.

5 But I ask you, ladies and gentlemen, at this important
6 stage, I just ask you to do two things. One is to keep an
7 mind. You know, it's our natural tendency, ladies and
8 gentlemen, when we read something in the paper often times we
9 think, Oh, how can somebody do that? And, you know, at the
10 that moment we've already made a conclusion, we've already
11 kind of made up our mind that somebody's done something and
12 that they're guilty of that. And that's the natural
13 inclination, we all do that. But you, ladies and gentlemen,
14 while you are serving on this jury you have taken an oath not
15 to do that. You have taken an oath to be fair and impartial.
16 And that means you that you'll have to affirmatively make a
17 conscious effort to not make up your mind and form
18 conclusions until you've heard the whole case. So that's one
19 thing I'll ask you to do. Please do that today. Secondly, I
20 would ask you to consider as you hear the evidence, as you
21 hear the witnesses, I would ask you to weigh and consider the
22 credibility and believability of the witnesses that the State
23 calls to you.

24 Mr. Moorman just went through a lengthy dissertation of
25 what he believes the facts to be and what the evidence will

1 show. And I'm not going to repeat that because I'm going to
2 simply say that, ladies and gentlemen, the facts will not
3 support what he says. The evidence, basically, ladies and
4 gentlemen, will not support what he says beyond a reasonable
5 doubt. The State's case, ladies and gentlemen, is built on
6 the witness, on the statements of two people. That's
7 essentially, that is what there case will be, I believe, will
8 be built on. On the statements of two people. And that's
9 it.

10 So I ask you as we go through this case, as you hear the
11 evidence, ask yourself is this sufficient? Am I really
12 convinced? Does the evidence really support what these
13 statements or what somebody is saying? I think as we go
14 through the case there will be question marks and there will
15 be -- clearly there will be reasonable doubt. I look forward
16 to trying the case with you. Again, I ask not to make up
17 your mind or form any conclusions until the case has been
18 given to you and you've been charged on the law and then you
19 go back and gather as jurors. I thank you for your service,
20 I look forward to trying this case with you. This is a very
21 interesting case and I think there are certainly a number of
22 things that are going to come out in this case that are going
23 to contradict basically the statements that Mr. Moorman made
24 to you. So certainly what he says is not evidence, it's just
25 what he thinks the evidence may show. And I would submit to

1 you as we go through the case you will find that not to be
2 the case. Thank you for your service. I look forward to
3 trying the case with you.

4 THE COURT: Ms. Manigault.

5 MS. MANIGAULT: May it please the Court.

6 Ladies and gentlemen, my name is Dorothy Manigault, I
7 represent Steve Bagwell. My client is not guilty. He has
8 entered the Court with the presumption of innocence. The
9 evidence the State presents to you will have to remove that
10 presumption from him. The State has presented to you a
11 summary of neat facts. This dissertation of neat facts,
12 these facts are not neat. The facts as presented to the jury
13 and to the Court from the witnesses or from the officers, you
14 will have to decide whether you're going to believe anything
15 that the State presents. It is not a neat package. We
16 cannot deal with probabilities. The alleged victims live
17 next to the defendants. So they knew the defendants. What
18 evidence was found, what evidence is going to be presented to
19 you, will it be enough to prove to you beyond a reasonable
20 doubt that my client is, in fact, guilty of burglary? I
21 submit to you right now, right here, that the evidence
22 presented will not prove that my client is guilty of
23 burglary. So we ask that you pay close attention and we
24 appreciate your service. Thank you.

25 THE COURT: All right, Solicitor.

1 MR. MOORMAN: Yes, sir, Your Honor. The State calls
2 Jarret Armstrong.

3 THE CLERK: Place your left hand on the Bible, raise your
4 right hand.

5 Jarret Armstrong, after being duly sworn,
6 testified as follows:

7 THE CLERK: Thank you, you maybe seated. State your full
8 name for the record, please.

9 THE WITNESS: Jarret Armstrong.

10 DIRECT EXAMINATION

11 BY MR. MOORMAN:

12 Q Good morning, Mr. Armstrong.

13 A Good morning.

14 Q How old are you?

15 A 28, sir.

16 Q Where do you live?

17 A At [REDACTED], [REDACTED].

18 Q Is that in Greenville?

19 A It's in Greer.

20 Q Have you lived in Greer your entire life?

21 A No, sir.

22 Q Where did you grow up?

23 A In Taylors.

24 Q How long have you lived on [REDACTED]?

25 A Since November this year.

1 Q You may want to speak up.

2 A Since November.

3 Q Where were you living in September of 2003?

4 A At [REDACTED]

5 (WHEREUPON, State's Exhibit No. 1 and 2 were
6 marked for identification.)

7 BY MR. MOORMAN:

8 Q Jarret, take a look at these pictures, what's been marked
9 State's Exhibit 1 and 2.

10 A (The witness complies.)

11 Q Are those a fair and accurate representations of the
12 front of your apartment complex that you lived in on
13 September of 2003?

14 A Yes, sir.

15 MR. MOORMAN: Your Honor, at this time could we move
16 State's Exhibit 1 and 2 into evidence?

17 THE COURT: Any objection?

18 MR. BARCROFT: Not from Spain.

19 MS. MANIGAULT: None from Bagwell.

20 THE COURT: Without objection, they're in evidence.

21 (WHEREUPON, State's Exhibit No.'s 1 and 2 were
22 admitted into evidence.)

23 BY MR. MOORMAN:

24 Q Jarret, did Chris Snoddy live with you at apartment
25 [REDACTED] as well?

1 A Yes, sir.

2 Q How did you meet Chris Snoddy?

3 A I met him through working at Applebee's.

4 Q How long have you worked Applebee's?

5 A For 11 years, sir.

6 Q Which Applebee's?

7 A Greer on Wade Hampton.

8 Q How far was the Applebee's from apartment [REDACTED] on

9 [REDACTED]?

10 A I'm not sure exactly, it's not more than a mile, mile and
11 a half.

12 Q Not very far?

13 A No, sir.

14 Q So you and Chris were living together on September 13th
15 2003?

16 A Yes, sir.

17 Q Was anybody else living in the apartment with you?

18 A Yes. Jason Goodwin.

19 Q Did Jason stay there very often?

20 A No, sir. Most of the time he was at his girlfriend's
21 house.

22 Q Was he there at all the night of September 13th, 14th,
23 2003?

24 A No, sir.

25 Q So mainly you and Chris that lived there?

1 A Yes, sir.

2 Q Let's talk about the day this happened. On September
3 13th, 2003 did you have to work at Applebee's that day?

4 A Yes, sir.

5 Q What hours were you working at Applebee's?

6 A 5 p.m. to 10 p.m., sir.

7 Q Did Chris work on that day too?

8 A Yes, sir.

9 Q What hours did Chris work?

10 A 5 p.m. to 12 a.m., sir.

11 Q Did you all go to work together that day?

12 A Yes, sir.

13 Q Who drove?

14 A I did, sir.

15 Q How long -- did you work until 10 o'clock that day?

16 A Yes, sir.

17 Q 10 p.m.?

18 A 10 p.m.

19 Q What did you do when you got off work?

20 A I went home, took a shower, just watched TV until it was
21 time to go pick up Chris.

22 Q Did you leave to go pick up Chris?

23 A Yes, sir.

24 Q What time did you go pick up Chris?

25 A About 11:45.

1 Q When did you get to the Applebee's?

2 A It was very shortly after that.

3 Q Was Chris ready to go or did you have to wait on him?

4 A I had to wait on him, sir.

5 Q How long did you wait for Chris?

6 A Maybe 20 minutes.

7 Q So when did you all leave the Applebee's, about 12:15?

8 A Yeah, that be about right 12:15, 12:20.

9 Q On your way home what, if anything, happened?

10 A I got a call from a neighbor saying he heard---

11 MR. BARCROFT: Your Honor, I object.

12 THE COURT: I sustain the objection.

13 BY MR. MOORMAN:

14 Q After you got the call from your neighbor, what did you
15 do?

16 A I hurried home, sir.

17 Q You sped up?

18 A Yes, sir.

19 Q What happened when you got to your apartment complex?

20 A It was a few neighbors gathered outside and they informed
21 me---

22 Q After you spoke with your neighbor what did you do?

23 A I told Chris to go around the back of the building
24 because there was somebody in our house.

25 Q Okay.

1 (WHEREUPON, State's Exhibit No.'s 3 and 4 were
2 marked for identification.)

3 BY MR. MOORMAN:

4 Q I'm going to show you what's been marked State's Exhibit
5 No. 3 and State's Exhibit No. 4. Take a look at these
6 please.

7 A (The witness complies.)

8 Q Do those fairly and accurately represent the back of your
9 apartment building as it existed September 2003?

10 A Yes, sir.

11 MR. BARCROFT: Your Honor, I would object to the photos
12 because there's no foundation for them. I understand they
13 were -- let me approach, Your Honor.

14 (WHEREUPON, a bench conference was held.)

15 THE COURT: All right, your objection goes to weight, not
16 admissibility. Put them in subject to your objection.

17 MR. MOORMAN: Thank you, Your Honor.

18 (WHEREUPON, State's Exhibit No.'s 3 and 4 were
19 admitted into evidence.)

20 BY MR. MOORMAN:

21 Q All right, let's get back to what happened. So you had
22 Chris go around the back and you went to the front. Did you
23 open the front door?

24 A Yes, sir.

25 Q When you opened the front door, what did you see or who

1 did you see?

2 A I seen a white male in a red shirt exiting through the
3 broken glass.

4 Q Who was this white male exiting?

5 A Steve Bagwell.

6 Q The defendant?

7 A Yes, sir.

8 Q Did you know -- did you know Steve Bagwell prior to this
9 night?

10 A Yes, sir.

11 Q How did you know Steve Bagwell?

12 A I've known him a long time. I went to elementary school,
13 middle and high school with him.

14 Q Did Steve Bagwell live in that apartment complex?

15 A Yes, sir.

16 Q Where did he live?

17 A Apartment [REDACTED]

18 Q Did he have a roommate?

19 A Yes, sir.

20 Q Who was his roommate?

21 A Darryl Spain.

22 Q The other defendant?

23 A Yes, sir.

24 Q Jarret, I'm going to give you this laser pointer, would
25 you, please, use the laser pointer and first identify which

1 apartment is [REDACTED]

2 A Right here, sir.

3 Q That's where you lived?

4 A Uh-huh.

5 Q All right. Which apartment is [REDACTED]

6 A Right here, sir.

7 Q And is that where Darryl and Steve lived?

8 A Yes, sir.

9 Q Thank you, very much. Now, you said that Steve and
10 Darryl lived in apartment [REDACTED]

11 A Yes, sir.

12 Q Had Steve ever been over to your apartment before?

13 A Yes, sir.

14 Q How many times?

15 A Not many but a couple times.

16 Q And why did you have Steve over those prior times?

17 A He was -- I considered him not a close friend but a
18 friend I've known him for several years.

19 Q So were you trying to be nice?

20 A Yes, sir, be neighborly.

21 Q When was the last time he was in your apartment prior to
22 September 14th, 2003?

23 A It would be like weeks, a couple weeks before.

24 Q Did he have permission to be in your apartment that
25 night?

1 A No, sir.

2 Q Did he a key to your apartment?

3 A No, sir.

4 Q Did he have Chris' permission to be in that apartment
5 that night?

6 A No, sir.

7 Q Did he have anybody's permission to be in that apartment
8 that night?

9 A No, sir.

10 Q You said you saw Steve run out?

11 A Uh-huh.

12 Q What did he run through?

13 A The sharp glass of the patio door.

14 (WHEREUPON, State's Exhibit No. 5 was marked
15 for identification.)

16 BY MR. MOORMAN:

17 Q Jarret, I'm going to show you what's been marked State's
18 Exhibit 5, take a look at the for me, please.

19 A (The witness complies.)

20 Q Is that a picture of the door that Steve ran through on
21 the early morning hours of September 14, 2003?

22 A Yes, sir.

23 THE COURT: Any objection?

24 MR. BARCROFT: Your Honor, I have an objection as to the
25 foundation again. Who took the photo.

1 THE COURT: Subject to your objection, put it in.

2 MR. MOORMAN: Thank you, Your Honor.

3 (WHEREUPON, State's Exhibit No. 5 was admitted
4 into evidence.)

5 BY MR. MOORMAN:

6 Q This is what he ran through on that night?

7 MR. BARCROFT: Your Honor, I object to leading.

8 THE COURT: Don't lead your witness.

9 MR. MOORMAN: Yes, sir, Your Honor.

10 BY MR. MOORMAN:

11 Q Now, Jarret, what was Steve wearing that night?

12 A I remember him wearing a red shirt.

13 Q After he ran through that window, what did you do?

14 A I looked around downstairs looking at the damage to the
15 window and I looked around to see if anything was missing.

16 Q Did you yell anything when you saw him run?

17 A Yeah, I yelled to Chris that somebody was coming out.

18 Q At some point after that did you go upstairs?

19 A Yes, sir.

20 Q Prior to going upstairs, did you look in your bathroom
21 downstairs?

22 A No, sir.

23 Q Did you look in your kitchen downstairs?

24 A No, sir.

25 Q What did you do when you were upstairs?

1 A I checked to see was anything missing up there.

2 Q Did you find anything missing up there?

3 A No, sir.

4 Q Eventually did you come back downstairs?

5 A Yes, sir.

6 Q What did you do when you came back downstairs?

7 A I went outside to check on Chris. I went toward around
8 the side of the building.

9 Q Did you meet up with Chris?

10 A Yes, sir.

11 Q What did you do after you and Chris met up?

12 A We came back around the front.

13 Q Where did you go?

14 A Towards their apartment.

15 Q Why did you go to there apartment?

16 A Because they had broke in my apartment. I wanted to know
17 why.

18 Q Did you run into Mr. Bagwell?

19 A Yes, sir.

20 Q Did you two start to argue?

21 A Yes, sir.

22 MR. BARCROFT: Your Honor, I'm going to ask -- he's just
23 leading this witness here, ask him what happened next.

24 THE COURT: Well that question was all right.

25 Move on but don't lead.

1 MR. MOORMAN: Yes, sir.

2 BY MR. MOORMAN:

3 Q At some point what, if anything, did you do to Steve
4 Bagwell?

5 A I took a swing at him.

6 Q Did you hit him?

7 A Yes, sir.

8 Q How many times did you hit him?

9 A Just once. And then the neighbors that were out there
10 they corralled me and told me that's not the way the handle
11 the situation.

12 Q What did you do after that?

13 A I called the police.

14 Q Prior to hitting the defendant, Steve Bagwell, do you
15 remember what his face looked like? Do you remember -- did
16 he have anything on his face?

17 A Scar, blood running down.

18 Q You saw something on his face; what did you see?

19 A Like a scar or something and blood coming down.

20 BY MR. MOORMAN:

21 Q Why didn't you --

22 THE COURT: Let him identify them before she marks them.

23 BY MR. MOORMAN:

24 Q Take a look at those pictures.

25 A (The witness complies.)

1 Q Is that what you saw on Defendant Bagwell's face that
2 night?

3 A Yes, sir.

4 THE COURT: All right show them to the defendant and see
5 if they have an objection.

6 Any objection, Ms. Manigault?

7 MS. MANIGAULT: Yes, sir.

8 THE COURT: What's your objection?

9 MS. MANIGAULT: Your Honor, we object to the foundation.
10 We object to the way that it's going to be given.

11 THE COURT: I'll allow that one, disallow that one.

12 MR. MOORMAN: Yes, sir, Your Honor.

13 (WHEREUPON, State's Exhibit 6 was admitted into
14 evidence.)

15 MR. MOORMAN: Your Honor, at this time, I would move
16 State's Exhibit No. 6 into evidence.

17 THE COURT: All right, it's already in.

18 BY MR. MOORMAN:

19 Q Is that the mark you saw on Defendant Steve Bagwell's
20 face that evening?

21 A Yes, sir.

22 Q After you called the police, did you and Chris look
23 around the apartment?

24 A (The witness nods.)

25 Q Did you find anything that was missing?

1 A There was nothing missing but things was moved around.

2 Q What was moved?

3 A The DVD and the speaker was not -- it was moved.

4 Q Let me show you what's been marked as State's Exhibit No.

5 5. Do you see what's been moved in this picture?

6 A Yes, sir.

7 Q Would you point it -- use the laser pointer to show the
8 jury what was moved.

9 A If you see right here, that DVD player and it's sitting
10 on top of the speaker. And it's facing sideways and it was
11 facing forward.

12 Q Okay. Thank you. After you saw that somebody had moved,
13 did you find anything -- what, if anything, did you find in
14 the apartment that was not there before you went to pick up
15 Chris?

16 A It was a shoe.

17 Q There was a?

18 A A sandal.

19 Q A sandal?

20 A Uh-huh.

21 Q All right. Is this the sandal in this picture? Hold on
22 one second. The sandal in the picture?

23 A Yes, sir. Right there, sir.

24 Q Had you seen this sandal before?

25 A I seen Darryl Spain wearing those things.

1 Q You have?

2 A Yeah.

3 Q Had Darryl Spain ever been in your apartment that night?
4 I mean, had he ever been in your apartment before that night?

5 A Yes, sir.

6 Q How many times?

7 A Not often. Like I told you before, I knew Steve Bagwell.
8 And he came over with Steve Bagwell. He introduced me as his
9 roommate.

10 Q Did Darryl Spain have permission to be in your apartment
11 that night?

12 A No, sir.

13 Q What size shoe do you wear, Jarret?

14 A Between 11 and a half to 12, depending on the brand of
15 the shoes.

16 Q After you met up with Chris, did you see Darryl Spain?

17 A Yes.

18 Q Where was Darryl Spain?

19 A He came from around the building and passed out. He was
20 very incoherent. He passed out.

21 Q Could you tell whether he had any bruises or anything?

22 A I really wasn't looking at him like that.

23 Q After the police had left that night, did you notice any
24 other damage either in your apartment or something in your
25 apartment?

1 A Yes, sir.

2 Q What did you notice?

3 A I noticed that my television was damaged. The top left
4 corner was pushed in.

5 Q Is that the television that you had in your apartment in
6 the early morning hours of September 14th, 2003?

7 A Yes, sir.

8 THE COURT: Any objection?

9 MS. MANIGAULT: Just one question, Your Honor.

10 MR. BARCROFT: Your Honor.

11 THE COURT: Yes, sir.

12 MR. BARCROFT: I would object because my understanding
13 this photo -- I don't know when the photo was taken. I don't
14 know who took it and I would object, Your Honor. Again,
15 there's not been a foundation laid.

16 THE COURT: You can cross-examine him based on that.
17 He's identified it and that's the basis from its admission.
18 Subject to your objection put it in.

19 MS. MANIGAULT: Bagwell has the same objection.

20 THE COURT: All right.

21 (WHEREUPON, State's Exhibit No. 7 was admitted
22 into evidence.)

23 BY MR. MOORMAN:

24 Q With the laser pointer would you, please, point out to
25 the jury where the damage is on the TV?

1 A If you see how it comes straight right here and then
2 right here it's pushed in in the corner. You see that big
3 gap right there, in the corner of the television.

4 Q Was that picture of the TV, was that taken that night or
5 later?

6 A Later.

7 MR. MOORMAN: Your Honor, I've got nothing further.

8 THE COURT: All right, who's going first?

9 Mr. Barcroft?

10 MR. BARCROFT: I'll go first.

11 CROSS-EXAMINATION

12 BY MR. BARCROFT:

13 Q Mr. Armstrong?

14 A Yes, sir.

15 Q When did -- you didn't mention any damage to the police
16 about any damage to the television to the police that night,
17 did you?

18 A No, sir.

19 Q And, in fact, that photo of this TV was taken just the
20 other day, wasn't it?

21 A Yes, sir.

22 Q Did you take the photo?

23 A No, sir.

24 Q Prosecutor took the photo?

25 A Yes, sir.

1 Q Mr. Moorman?

2 A Yes, sir.

3 Q He came to your apartment to take it?

4 A Yes, sir.

5 Q Okay. That was after you moved from one apartment to the
6 other, is that right?

7 A Yes, sir.

8 Q How many times have you moved since you lived over on

9 [REDACTED]?

10 A Once.

11 Q All right. And you have, in fact, you have never
12 reported to the police that there was any damage done to the
13 television, have you?

14 A No, sir.

15 Q And the night back on September 14th and the night of the
16 13th of 2003 you testified that you were working at
17 Applebee's; is that right?

18 A Yes, sir.

19 Q When did you go to work that day?

20 A At 5 p.m.

21 Q At 5 p.m. So from 5 p.m. until later that night at
22 least, you hadn't seen Darryl Spain, had you?

23 A No, sir.

24 Q Okay. And let me ask you this question, Mr. Armstrong.

25 How many times did you meet with Mr. Moorman in preparation

1 for your testimony today?

2 A Probably like three times.

3 Q Okay. And each time you met with him, other than the
4 time that he came to your apartment, did you meet with him at
5 the office?

6 A Yes, sir.

7 Q At the Solicitor's office?

8 A Yes, sir.

9 Q And you went over your testimony, right?

10 A Yes, sir.

11 Q And you looked at the photographs that were taken?

12 A Yes, sir.

13 Q Is that right?

14 A Yes, sir.

15 Q And since that time, for the last two or three years, you
16 worked with Mr. Snoddy, Chris Snoddy; is that right?

17 A Yes, sir.

18 Q You see him everyday, would that be a fair statement?

19 A At least -- if we're scheduled for the same shift I see
20 him.

21 Q Well that would be four or five days a week?

22 A Yes, sir.

23 Q Sometimes seven days a week. Pretty regular?

24 A Yes, sir.

25 Q All right. And you and Mr. Snoddy are good friends, is

1 that right?

2 A Yes, sir.

3 Q Now you testified a moment ago that when you got to your
4 apartment that there was already a group of neighbors around?

5 A Yes, sir.

6 Q Is that what happened?

7 A Yes, sir.

8 Q Okay. And then I think your testimony was that these
9 neighbors had to, I think you said, they corralled you after
10 you assaulted Mr. Bagwell?

11 A Yes, sir.

12 Q Correct?

13 A Yes, sir.

14 Q And after they -- what do you mean by that? That they
15 corralled you?

16 A They apprehended me. They didn't let me hit him.

17 Q They held you back?

18 A Uh-huh.

19 Q Is that correct?

20 A Yes, sir.

21 Q Okay. Because you were fixing to let loose on
22 Mr. Bagwell, right?

23 A Yes, sir.

24 Q And do you recall grabbing Mr. Spain and letting a few
25 licks fly on Mr. Spain?

1 A No, I did not. No, I don't.

2 Q Did you see Mr. Snoddy do that?

3 A No, sir.

4 Q You didn't see that?

5 A No, sir. The conflict between Mr. Snoddy and Mr. Spain
6 happened behind the building.

7 Q And you didn't see any of that?

8 A No, sir.

9 Q How do you know he passed out?

10 A Because he came -- he came around the building and passed
11 out right there in the parking lot.

12 Q After this altercation?

13 A Yes, sir.

14 Q That you didn't see. He then came around and passed out?

15 A Yes, sir.

16 Q Is that your story?

17 A Yes, sir.

18 Q All right. And you never saw Darryl Spain in your
19 apartment, did you?

20 A No, sir.

21 Q And you said that you rushed home because of a phone call
22 you got, right?

23 A Yes, sir.

24 Q Okay. And who was the phone call allegedly from?

25 A A neighbor.

1 Q A neighbor?

2 A Yes, sir.

3 Q Okay.

4 A He told me that---

5 Q No, I'm not asking what he told you I'm asking who it was
6 from?

7 A A neighbor.

8 Q And did you tell -- you didn't tell -- well let me ask
9 you this, does your neighbor have a name?

10 A Yes, sir.

11 Q Pardon me?

12 A Yes, sir.

13 Q And what is his name?

14 A I don't know his real name we call him---

15 Q Oh, come on now. You don't know his name?

16 A We always call him Bam.

17 Q Bam?

18 A Bam, yeah.

19 Q Bam. You don't know Bam's first name?

20 A No, sir. At the time of the incident he hadn't been
21 living out there that long.

22 Q Okay. And but you just moved back in November. So two
23 years gone by and you still don't know who Bam is?

24 A No. I mean, I don't know his real name, I just know the
25 name that he told me was Bam.

1 Q Okay. Well, let me ask you this, isn't it true,
2 Mr. Anderson -- excuse me, Mr. Armstrong, you never told the
3 police who Bam was either, did you?

4 A They never asked.

5 Q They never asked. Okay. Do you see Bam anywhere in the
6 courtroom today?

7 A No, sir.

8 Q Do you see any of your neighbors in the courtroom today?

9 A No, sir.

10 Q Now you testified that after you got home, was it your
11 idea to send Chris Snoddy around the back?

12 A Yes, sir.

13 Q That was your idea?

14 A Yes, sir.

15 Q Okay. And you went in the front door?

16 A Uh-huh.

17 Q Right?

18 A Yes, sir.

19 Q Did you lock your apartment before you left for work?

20 A Yes, sir.

21 Q Okay. And you unlocked the door and walked in?

22 A Yes, sir.

23 Q And after you saw somebody running out the back, you say,
24 you then went upstairs to your apartment, right?

25 A Uh-huh.

1 Q What were you looking for upstairs, Mr. Armstrong?

2 A I was checking to see was anything missing.

3 Q Why didn't you check around downstairs?

4 A I did.

5 Q But you went upstairs first?

6 A No. If you heard me correctly, sir, I said that I looked
7 downstairs, I looked at the broken glass then I went upstairs
8 to see was anything missing.

9 Q Did you disturb anything in your apartment before you
10 called the police?

11 A No, sir.

12 Q Did you touch anything or move anything?

13 A No, sir.

14 Q Did you walk through that glass door?

15 A No, sir.

16 Q State's Exhibit No. 5, you looked at that earlier, I'm
17 going to ask you, is that photograph exactly the way you
18 remember seeing it when you got to the apartment?

19 A Yes, sir.

20 Q Okay. Now, do you remember what Mr. Bagwell -- not
21 Bagwell, Mr. Spain was wearing that night?

22 A No, sir.

23 Q You don't remember?

24 A (The witness shook his head.)

25 THE COURT: He answered, he said he didn't know,

1 Mr. Barcroft.

2 BY MR. BARCROFT:

3 Q And you indicated that you also had another roommate
4 named Jason?

5 A Yes, sir.

6 Q Jason have a key to your apartment? To this apartment?

7 A Yes, sir.

8 Q He did?

9 A Yes, sir.

10 MR. BARCROFT: One minute, Your Honor.

11 BY MR. BARCROFT:

12 Q Isn't it true that you had a little side business going
13 on there from your apartment, Mr. Armstrong?

14 A What do you mean?

15 Q I mean, like you were selling dope.

16 MR. MOORMAN: Your Honor, I object.

17 THE COURT: Hold on. Hold on. Take the jury out,
18 please.

19 (WHEREUPON, the jury left the courtroom at
20 approximately 11:43 a.m.)

21 THE COURT: What's the relevance of this, Mr. Barcroft?

22 MR. BARCROFT: Your Honor, the relevance is that he's
23 selling marijuana from his apartment there'd be a host of
24 people that would have a reason and motive---

25 THE COURT: That's too speculative of a question for this

1 jury as to whether or not your client and Ms. Manigault's
2 client did it. You have proof that he was doing that,
3 Mr. Barcroft?

4 MR. BARCROFT: Your Honor, I have -- there's witnesses
5 that I spoke to, neighbors, that said people were coming and
6 going from that apartment all the time. Your Honor, actually
7 I've spoken to someone -- I know of one person that's bought
8 marijuana from that apartment before.

9 THE COURT: Solicitor.

10 MR. MOORMAN: Your Honor, there is no evidence that I'm
11 aware of that Jarret Armstrong ever sold any marijuana out of
12 that apartment or any other. Deputy Cannon, who I intend on
13 calling later, spent three years in vice and narcotics, he'll
14 testify that when he arrived on the scene, the apartment was
15 very clean. Not characteristic of a place where drugs are
16 being sold from. There's just no evidence, Your Honor, that
17 the State is aware of that there was any drug activity in the
18 apartment or coming out of that apartment. And the State's
19 position is that that calls for speculation is highly -- has
20 no probative value because there's no foundation that's been
21 laid that there were any drugs in the apartment that were
22 being sold. And the State, should the Court agree, should
23 the Court agree with the State's position, the State would
24 ask---

25 THE COURT: Well what you're trying to do is show third

1 party guilt, Mr. Barcroft. And I'm going to sustain the
2 objection. I'm not going to allow that cross-examination or
3 any direct evidence to the effect. Because that will have no
4 other effect and casts a bear suspicion or raise a
5 conjectural inference as to commission of the crime by
6 someone else.

7 MR. BARCROFT: Your Honor.

8 THE COURT: Yes, sir.

9 MR. BARCROFT: If -- it doesn't go just to the issue of
10 third party guilt, Judge. It goes to the issue of this whole
11 thing that they concocted about their apartment being broken
12 into. With the fact that there's nothing missing from their
13 apartment---

14 THE COURT: Doesn't have to be. Only intent. Doesn't
15 have to be anything taken. I sustain the objection.

16 Bring the jury.

17 MS. MANIGAULT: Your Honor, before you bring the jury,
18 just one inquiry, are you going to allow an answer to that
19 question on the record?

20 THE COURT: No.

21 MS. MANIGAULT: You're not. Because when I cross-examine
22 I might ask him a question specific to my client. Regarding
23 the same issue.

24 MR. BARCROFT: Your Honor, my client -- Your Honor, he
25 sold marijuana to Mr. Bagwell before, Judge. From his

1 apartment.

2 THE COURT: What relevance is that? Whether he did or
3 whether he didn't?

4 MR. BARCROFT: Judge, if he is selling marijuana---

5 THE COURT: The question is whether or not these two men
6 went into that apartment on this day.

7 MR. BARCROFT: Your Honor, it's relative to the truth and
8 veracity as well. Because selling marijuana is a crime of
9 moral turpitude. It is conduct that would go to his
10 veracity.

11 THE COURT: No, sir. I sustain the objection.
12 Bring the jury.

13 MS. MANIGAULT: Your Honor, we join in that.

14 THE COURT: No.

15 MS. MANIGAULT: Thank you.

16 MR. MOORMAN: Is, Your Honor, inclined to tell the jury
17 to disregard---

18 THE COURT: Yes.

19 MR. MOORMAN: Thank you.

20 MR. BARCROFT: Just note that I object that he should be
21 allowed to answer the question.

22 THE COURT: I understand.

23 Solicitor, you want him to answer the question or you
24 don't want him to?

25 MR. MOORMAN: Your Honor...

1 THE COURT: I sustained your objection so I'm going to
2 instruct the jury to disregard the question.

3 MR. MOORMAN: Yes, sir, that's fine.

4 THE COURT: All right.

5 (WHEREUPON, the jury entered the courtroom at
6 approximately 11:47 a.m.)

7 THE COURT: All right, Solicitor, I sustain your
8 objection, I instruct the jury to disregard the question by
9 Mr. Barcroft.

10 All right, anything else, Mr. Barcroft?

11 MR. BARCROFT: Yes, sir.

12 BY MR. BARCROFT:

13 Q Mr. Armstrong, did you -- do you recall kicking down the
14 door to Mr. Spain's apartment and going into the apartment?

15 A No, sir.

16 Q You don't remember that?

17 A No, sir.

18 Q You don't remember going in there and pulling Mr. Spain
19 and Mr. Bagwell out of the apartment?

20 MR. MOORMAN: Asked and answered, Your Honor.

21 A No, sir.

22 THE COURT: All right, sir, overruled.

23 Go ahead. Anything else?

24 BY MR. BARCROFT:

25 Q This gash that Mr. Bagwell had on his forehead, I think

1 it was in one of those photos here, State's Exhibit No. 6,
2 isn't it true that Mr. Garrett (sic) received that gash when
3 you hit him on the forehead with a hand gun?

4 A No, sir. Sir, if you -- if you -- could you show the
5 picture of the broken glass?

6 Q You deny that he got that gash when he hit him on the
7 head with a handgun?

8 A Yes, sir.

9 Q Butt of a handgun?

10 A Yes, sir.

11 Q Do you have a friend named Mr. -- did you have a friend
12 at the time that worked at Rentway in Greer?

13 A Yes, sir.

14 Q And would you have told that friend at Rentway ---

15 MR. MOORMAN: Your Honor.

16 THE COURT: I sustain the objection.

17 BY MR. BARCROFT:

18 Q Do you recall what time it was when you called the
19 sheriff's office?

20 A No, sir.

21 Q Do you recall how long you were home before you called
22 the sheriff's office?

23 A No, sir.

24 Q Had you been there 10 minutes, 30 minutes, an hour?

25 A I say maybe it might have been be like 10 minutes, 15

1 minutes, sir.

2 Q Could it have been longer than 15 minutes?

3 A Not really. I don't think so.

4 Q Before you called the law or before you say you called
5 the law, had you earlier that night broken into the apartment
6 of Mr. Spain, Mr. Bagwell?

7 A No, sir. Why would I do that?

8 Q Had you earlier that night assaulted Mr. Bagwell or Mr.
9 Spain?

10 MR. MOORMAN: Your Honor, I believe that question has
11 been asked and answered.

12 THE COURT: I'll allow it.

13 Go ahead.

14 BY MR. BARCROFT:

15 Q Earlier that night had you assaulted Mr. Spain or Mr.
16 Bagwell?

17 A No, sir.

18 Q Mr. Spain or Mr. Bagwell?

19 A No, sir.

20 MR. BARCROFT: No further questions.

21 THE COURT: All right, Ms. Manigault.

22 CROSS-EXAMINATION

23 BY MS. MANIGAULT:

24 Q Your roommate, Jason, what is his last name?

25 A Goodwin.

1 Q Goodwin. And how long has Mr. Goodwin lived with you?

2 A He currently lives with me now.

3 Q At that time. When you were living at [REDACTED]

4 [REDACTED]?

5 A About a year.

6 Q About one year. And how often would you say that he
7 actually stayed at the apartment?

8 A Maybe three, four times a month.

9 Q Are you testifying that you knew Steve Bagwell since
10 elementary school and longer?

11 A Uh-huh. Yes, sir.

12 Q Is that right? All right. How long have you lived at
13 [REDACTED] when Steve moved there?

14 A I had been living there maybe a year or two.

15 Q A year or two.

16 A Probably two years, ma'am.

17 Q And date of this alleged incident is September 14th,
18 2003?

19 A Yes, ma'am.

20 Q How long had Steve Bagwell lived at [REDACTED]

21 [REDACTED] before that date? Before 9/14/03?

22 A Not that long. Maybe three -- maybe three months. I
23 guess. He hadn't been living there long at all.

24 Q Okay. Maybe three months. And you testified to the
25 Court that Steve would come -- you allowed him to come down

1 to your house because you considered him not a close friend
2 but a friend?

3 A Yes, ma'am.

4 Q When Steve came to your house what would y'all do?

5 A We had a beer and everything and I asked him about how he
6 been doing.

7 Q So you would drink beer, have a general conversation?

8 A Yes, ma'am.

9 Q Did you do anything else?

10 A No, ma'am.

11 Q Now on the night of this alleged incident, September
12 14th, 2003, you said that there were a lot of neighbors that
13 had gathered outside?

14 A A few neighbors.

15 Q A few neighbors had gathered outside?

16 A Uh-huh.

17 Q And you're investigating before the police arrived on the
18 scene, did you get those neighbors names or what apartment
19 they lived in?

20 A No, ma'am.

21 Q You did not?

22 A No, ma'am.

23 Q All right. When you say a few neighbors, would that be
24 three, four or more?

25 A Like maybe four.

1 Q About four. Were they males or females?

2 A Both.

3 Q Both. And when you testified that somebody pulled you
4 off of -- pulled you off of Bagwell or Spain?

5 A Bagwell. And they didn't really pull me off of him
6 because I was never on him. I took one swing at him.

7 Q What did you swing at him with?

8 A My hand.

9 Q All right. Where were you when you swung at him?

10 A We were out in front of the apartments.

11 Q Were you in front of [REDACTED] door, [REDACTED] door?

12 A We was closer to [REDACTED] To his.

13 Q Closer to [REDACTED]'s door?

14 A Yes, ma'am.

15 Q Okay. And who corralled you?

16 A Chris and one of the neighbors that was out there, Bam.

17 Q So Chris and one of the neighbors, not just the
18 neighbors?

19 A Uh-huh.

20 Q I think your earlier testimony was it was the neighbors
21 that corralled you. So it was Chris and a neighbor?

22 A Yeah. I mean, ma'am, and---

23 Q Just yes or no?

24 A Yes.

25 Q Thank you. You testified that you looked at the broken

1 glass downstairs and then you went immediately upstairs to
2 check to see whether anything was stolen. What of value did
3 you have upstairs?

4 A TV's, VCR, DVD players. Personal items like clothes,
5 shoes.

6 Q Did you have a large sum of money there?

7 A No. I don't have a large sum of money at all.

8 Q At that time did you have a large sum of money at the
9 house?

10 A No, ma'am.

11 Q Did you have anything else besides what you just
12 described?

13 A No, ma'am.

14 Q When Steve Bagwell came to your house where would you
15 allow him to go in your house?

16 A In the living room. In the living room area.

17 Q The living room area?

18 A Yes, ma'am.

19 Q Did y'all ever hang out in the kitchen area?

20 A No.

21 Q No. All right. Did you ever allow him to go upstairs?

22 A No, ma'am.

23 Q All right. And Bam, the neighbor that called you?

24 A Yes, ma'am.

25 Q Is that black male, white male or female?

1 A He's Hispanic.

2 Q How long had Bam lived there?

3 A I would say about a year.

4 Q And you said -- you said he hadn't been living there long
5 but you think now is a year?

6 A I mean, I guess.

7 Q All right. And why would he have your phone number?

8 A He was a friend.

9 Q Okay. So when you testified earlier that you didn't know
10 him that well, that was an inaccurate statement?

11 A I mean, I know him well enough to give him my phone
12 number.

13 Q Did you have any specific reason for giving him your
14 phone number?

15 A He's good with like installing stereos and fixing cars.
16 And it was just for access. If he needed to get in touch
17 with me or anything he had my number. If I needed to get in
18 touch with him for anything I had his number.

19 Q That was the only reason that he had your number?

20 A Yes, sir -- yes, ma'am.

21 Q And do you remember giving a statement to the police
22 officer on 9/14/2003?

23 A Uh-huh.

24 Q I'm going to show you this statement. Ask you to review
25 it before I ask you a question.

1 A (The witness complies:)

2 Q Is this the statement you gave to the police? Is that
3 your signature at the bottom?

4 A Yeah.

5 Q Now on this statement, there is nothing about you going
6 upstairs checking for stolen items. There's no description,
7 is that correct?

8 A (The witness shakes his head.)

9 Q All right. Is there a description of a broken television
10 on that statement?

11 A No, ma'am.

12 Q Is there a description of any other items being moved?

13 A No, ma'am.

14 Q Or positioned differently in your apartment than when you

15 --

16 A No, ma'am.

17 Q When you arrived home, did you go to the front door or
18 back door?

19 A I went to the front door, ma'am.

20 Q Who was at the back?

21 A Chris.

22 Q Now you testified earlier that --

23 This is State's Exhibit No.---

24 MR. MOORMAN: Your Honor, I'm sorry to interrupt the
25 examination, if I could ask Ms. Manigault to reposition the

1 statement I'd appreciate it.

2 BY MS. MANIGAULT:

3 Q State's Exhibit No. 5, that's a shattered door, is that
4 correct?

5 A Yes, ma'am.

6 Q Is your testimony that you saw Steve Bagwell run --
7 actually run through that door?

8 A Yes, ma'am.

9 Q Okay. That door is where?

10 A In the back.

11 Q In the back?

12 A Uh-huh.

13 Q And you actually saw him run through the glass?

14 A Yes, ma'am.

15 Q And break the glass?

16 A No. I seen him exiting through. I said I seen him
17 exiting through the chard glass.

18 Q The shattered glass already?

19 A Uh-huh.

20 Q So you had come around from the front to the back?

21 A No.

22 Q Okay. Well explain that to me then?

23 A When I opened the door I seen him exiting through.

24 Q When you opened the front door?

25 A Yes, ma'am.

1 Q All right. And how did you yell to Chris? Did you go
2 back outside? Did you yell through the house that somebody
3 was coming?

4 A As I seen him -- as I was opening the door I seen him
5 leaving. So I just said, Chris, he's coming out.

6 Q So you leaned back toward the front door?

7 A Yeah.

8 Q Now you just told me that Steve was at the back?

9 A Yes.

10 Q So why would lean toward the front door to say somebody
11 was coming out the apartment?

12 A Because I was not all the way in my apartment yet. I was
13 entering the front -- I had opened the front door when I seen
14 him going out the back. If I'm not already in the house all
15 I got to do is lean back and yell for Chris and he heard me.

16 Q Okay. I'm going to show you State's Exhibit No. 4 and
17 State's Exhibit No. 2. Now what does State's Exhibit No. 4
18 show?

19 A The back of the apartment complex.

20 Q What does State's Exhibit No. 2 show?

21 A The front.

22 Q All right. So when you were standing at the front door,
23 you're not inside the apartment, you're at the front door you
24 just opened it?

25 A Uh-huh.

1 Q And you see someone running out the glass door that's
2 already shattered?

3 A Yes, ma'am.

4 Q Is that right?

5 A Yes, ma'am.

6 Q All right. So if Chris is at the back of the apartment,
7 why would you lean to the front door?

8 A If he's not all the way around there yet. He wasn't
9 around all the way.

10 Q So now he's not all the way around there. Is that right?

11 A Yes.

12 Q So where was Chris when you yelled, Somebody's coming
13 out?

14 A He was going around the building.

15 Q He was going around the building?

16 A Uh-huh.

17 Q All right. What direction was he going, left or right?

18 If your apartment's [REDACTED]

19 A My apartment [REDACTED] he was going to the right.

20 Q To the right. And how many units on that building?

21 A 10.

22 Q Before he can get around to the back?

23 A It was 10 units to the building.

24 Q So you're kind of in the middle?

25 A In the middle.

1 Q All right. So he has to go---

2 A He's got to go---

3 Q At least four units down?

4 A And around.

5 Q And then around the side of the building?

6 A Uh-huh.

7 Q Then another four units back to get to the back of your
8 apartment door, is that correct?

9 A Yes, ma'am.

10 Q So you don't know exactly where he was when you yelled?

11 A No, ma'am.

12 Q I'm going to show you State's Exhibit No. 3, what does
13 that show?

14 A That's the back -- the back of the complex.

15 Q Does this picture depict anything of your apartment back?
16 Can you tell whether they have photo'd (sic) the back of your
17 apartment or is that just the back of the apartments?

18 A That's the back of our apartment.

19 Q All of them but your's not specifically in that one?

20 A Yeah, it's in there because it's part of the building.

21 Q So which one is your's?

22 A On this photo?

23 Q Yes.

24 A I would be right up here. Right up there.

25 Q All right. The one where there's a red, looks like

1 grill, is that a grill?

2 A Yes, ma'am.

3 Q Is that your's?

4 A No because I don't live there anymore.

5 Q No, at that time. When was that picture taken?

6 A I'm not sure, ma'am.

7 Q So this wasn't taken the night of the incident, correct?

8 A No.

9 Q But you believe that where the red outdoor grill is
10 placed on that picture, that's where your apartment was?

11 A Yes, ma'am.

12 Q Is that right. Okay. Okay. If you're looking at the
13 picture it's to the right far end, is that right?

14 A Uh-huh.

15 Q Now, which end of the building would Chris have been
16 coming around?

17 A From this end.

18 Q From this end closest to me?

19 A Yes, ma'am.

20 Q The most visible fence?

21 A Yes, ma'am.

22 Q Okay. All right. And State's Exhibit No. 7, what does
23 that show?

24 A The television.

25 Q All right. Where was that television when that picture

1 was taken?

2 A It's in my current apartment.

3 Q All right. And you said you had moved?

4 A Uh-huh.

5 Q Did you get a moving company or you moved yourself?

6 A I moved myself.

7 Q All right. So this picture was taken this week?

8 A Yes.

9 Q State's Exhibit No. 7?

10 A Yes, ma'am.

11 Q All right. And that's after you moved to another
12 location?

13 A Yes, ma'am.

14 Q And this incident, alleged incident, supposedly happened
15 September 14th, 2003, correct?

16 A Yes, ma'am.

17 Q All right. Did you ever go inside of Steve Bagwell's
18 apartment that night, September 14th, 2003?

19 A No, ma'am.

20 Q All right, sir. Didn't you enter Steve Bagwell's
21 apartment while he was asleep on the couch and started to
22 attack him?

23 A No, ma'am.

24 Q That's how he got the cut on his head?

25 A No, ma'am.

1 Q You didn't do that?

2 A No, ma'am.

3 Q Did you break through his door, break through his door
4 jams?

5 A No, ma'am.

6 Q All right. Did you -- you said that you only hit Steve
7 Bagwell one time, is that correct?

8 A Yes, sir.

9 Q Did you bite him?

10 A No.

11 Q You didn't bite him?

12 A (The witness shook his head.)

13 Q All right. And the one time you hit him it was outside?

14 A Yes, ma'am.

15 Q How close is your unit or [REDACTED] or [REDACTED] to the
16 laundry mat?

17 A It's almost -- the laundry mat is at the end of our
18 building.

19 Q At the end your building?

20 A Uh-huh.

21 Q So is it near number 1 or is it near number 10?

22 A It's near number 10.

23 Q Okay. All right. After you had hit Steve Bagwell did he
24 ever go back into his apartment?

25 A I think he went and called the police.

1 Q He went and called the police?

2 A I think he did.

3 Q Okay.

4 MS. MANIGAULT: Thank you.

5 THE COURT: Any redirect?

6 MR. MOORMAN: No redirect, Your Honor.

7 THE COURT: Thank you, step down.

8 MR. MOORMAN: Your Honor, the State calls Chris Snoddy to
9 the stand.

10 THE CLERK: Place your left hand on the Bible, raise your
11 right.

12 Chris Snoddy, after being duly sworn, testified
13 as follows:

14 THE CLERK: Thank you, you may be seated. State your
15 name for the record, please.

16 THE WITNESS: Christopher Snoddy.

17 DIRECT EXAMINATION

18 BY MR. MOORMAN:

19 Q Mr. Snoddy, Chris, how old are you?

20 A 20.

21 Q Where do you live right now?

22 A [REDACTED]

23 Q How long have you lived there?

24 A Six months.

25 Q Where did you live in September 2003?

1 A [REDACTED].

2 Q Are you from Greenville originally?

3 A Yes.

4 Q Do you have a job?

5 A Yes, sir.

6 Q Where do you work?

7 A Applebee's in Greer.

8 Q How long have you worked there?

9 A Two years.

10 Q Were you working there on September 14th, 2003?

11 A Yes, sir.

12 Q Were you working on the evening of September 13th, 2003?

13 A Yes, sir.

14 Q What were your hours?

15 A Five to close or 5:00 to 12:00.

16 Q That's when Applebee's closed?

17 A Yes, sir.

18 Q When -- was Jarret working that night?

19 A Yes, sir.

20 Q When was Jarret working?

21 A He was scheduled from 5 to 10.

22 Q How late did -- strike that. What do you do for
23 Applebee's?

24 A I wash dishes.

25 Q What time did Jarret get off work that night? He get off

1 at 10:00?

2 A Yes, sir.

3 Q What did he do when he got off work?

4 A He went home.

5 Q If you could speak up a little bit. Did he come back?

6 A Yes, sir.

7 Q Did he come back to pick you up?

8 A Yes, sir.

9 Q What time did Jarret come back that night?

10 A About 11:45, 11:50.

11 Q Did you get off work right when he arrived?

12 A No, sir. It was about 10, 15 minutes later.

13 Q So when did you and Jarret leave to start back to your
14 apartment?

15 A About 12:10, 12:15, somewhere around there.

16 Q While you were driving back to your apartment did Jarret
17 get a call?

18 A Yes, sir.

19 Q What did Jarret do after he got the call?

20 A He sped up.

21 Q How long from the time you left the Applebee's was it
22 until the time you got back to your apartment?

23 A Just a couple of minutes.

24 Q What happened when you got back to your apartment?

25 A There were some neighbors outside.

1 Q Did you and Jarret speak to the neighbors?

2 A Yes, sir.

3 Q What did you do? What did you and Jarret do after you
4 spoke to the neighbors?

5 A I went around the back of the apartments and he stayed in
6 the front.

7 Q Let's talk about these apartments. How many apartments
8 were in your building?

9 A 10.

10 Q So when you went around your apartment, how many
11 apartments did you have to go around?

12 A I think 4, 5 maybe. 4.

13 Q So did you have to go around half the building, all the
14 building, how much of the building?

15 A Half of it.

16 Q As you're going around the building did you hear Jarret
17 say anything?

18 A Yes, I heard him say that he seen somebody coming out of
19 the apartment. He said, Chris, they're running out of the
20 apartment.

21 Q Describe for us, if you would, what the back of that
22 apartment building looked like?

23 A They were divided by wood fences.

24 Q Are these the fences you're talking about?

25 A Yes, sir.

1 Q When you turned the corner did these fences obstruct your
2 view at all? How far could you see down?

3 A I couldn't see too well down there.

4 Q What happened when you turned the building? After you
5 heard Jarret yell what happened when you turned the corner of
6 the building?

7 A I had stopped in between the fences and I grabbed a
8 scooter or something like that that I had grabbed.

9 Q What did you do after you grabbed the scooter?

10 A I had crept up to where the apartment was in the back.

11 Q Why were you moving slowly to the apartment?

12 A I wasn't sure who was in there or what their intentions
13 were once I got up to the window -- door.

14 Q What did you eventually do with the scooter?

15 A I put it down and I grabbed a pole that I had seen.

16 Q Why did you grab the pole?

17 A Self protection.

18 Q When you got to the sliding glass door, that went with
19 your apartment, describe the condition of the door?

20 A It was shattered. Glass was covered in the apartment and
21 on the outside.

22 Q Take a look at this if you would, Chris. Is that a
23 picture of the shattered glass that was on your patio inside
24 your apartment that night?

25 A Yes, sir.

1 THE COURT: Any objection?

2 MR. BARCROFT: Your Honor, I object again, there's no
3 foundation laid for the photo who was taken.

4 THE COURT: All right, subject to your objection. Put it
5 in.

6 (WHEREUPON, State's Exhibit No. 8 was admitted
7 into evidence.)

8 BY MR. MOORMAN:

9 Q So you picked up a pole?

10 A Yes, sir.

11 Q What happened after you picked up the pole?

12 A I sat there for just a couple seconds and I seen the
13 defendant, Mr. Spain, come out of the broken glass door.

14 Q What did you do when you saw Darryl Spain come out of
15 that door?

16 A I hit him with the pole.

17 Q Where did you hit him with the pole?

18 A I know I hit him at least twice in the stomach and back.

19 Q Did you continue to hit him with the pole?

20 A No, sir.

21 Q Why did you stop hitting him with the pole?

22 A I didn't want to kill him or anything. So we -- after
23 that we started fighting.

24 Q Were both of you swinging punches? Describe for us.

25 A Once I hit him with the pole he didn't go down, he didn't

1 do anything, he just kept coming at me. So I got dropped the
2 pole and we got to swinging.

3 Q At some point did you stop hitting?

4 A Yes, sir.

5 Q Why did you stop hitting Darryl Spain?

6 A He submitted it was no point anymore.

7 Q When Darryl Spain came out of the apartment, was he
8 wearing shoes?

9 A No.

0 Q Was he -- did he have any shoes on?

1 A No.

2 Q After you stopped hitting Darryl, where did you go?

3 A I went back towards around the front of the apartment,
4 that's where I met Mr. Armstrong. Coming back he was coming
5 towards me and I was going towards him.

6 Q What did you and Jarret do after you met up?

7 A We went back to the front of the apartment.

8 Q Where did you go after you went back toward the front of
9 the apartment?

10 A Towards [REDACTED]

11 Q Who lived in [REDACTED]

12 A Darryl and Steve.

13 Q What happened when you and Jarret got to [REDACTED]

14 A Him and Steve started arguing outside the apartment.

15 Q Did Jarret hit Steve?

1 A Yes, sir.

2 Q Let's talk about what happened prior to Jarret hitting
3 Steve. What, if anything, did you notice about Steve's face?

4 A I noticed that Steve had a -- I wasn't sure if it was
5 blood or a scratch but I know he had something that was along
6 on the side of his face.

7 Q And you noticed that -- did you notice that before or
8 after?

9 A Before -- while they were arguing I noticed that it was
10 on his face.

11 Q What happened after Jarret hit Steve?

12 A Me and a couple of neighbors, we had just grabbed Jarret
13 by the arm and was like don't worry about it, just call the
14 police and they'll take care of it.

15 Q Did you call the police?

16 A Yes, sir. Mr. Armstrong did.

17 Q Chris, did you give anybody permission to be in your
18 apartment that night?

19 A No, sir.

20 Q Did Jarret have permission to be in your apartment that
21 night?

22 A Jarret?

23 Q I'm sorry, strike that. Did Darryl have permission to be
24 in your apartment that night?

25 A No, sir.

1 Q Did Steve have permission to be in your apartment that
2 night?

3 A No, sir.

4 Q Did any of your roommates give anybody permission to be
5 in that apartment that night?

6 A No.

7 MR. BARCROFT: Objection, Your Honor. I ask that
8 stricken.

9 THE COURT: I sustain the objection to the last question.
10 I instruct the jury to disregard the last question.

11 BY MR. MOORMAN:

12 Q Chris, what size shoes do you wear?

13 A 12 to 13. Mostly 13's.

14 Q Had anything been moved in the apartment that night?

15 A Well the DVD player belonged to me so. That's where I
16 slept is downstairs on the couch. So it was moved. The DVD
17 player was moved.

18 Q How had it been moved?

19 A It was facing towards the front and it was turned
20 sideways or whatever.

21 Q Was there anything else damaged in the apartment?

22 A Later on that night after the police left we had noticed
23 that the TV was pushed in.

24 Q Did the TV still work?

25 A It worked but the picture was messed up.

1 MR. MOORMAN: I've got nothing further, Your Honor.

2 THE COURT: All right, Mr. Barcroft.

3 CROSS-EXAMINATION

4 BY MR. BARCROFT:

5 Q Mr. Snoddy, at the time that this alleged break-in
6 occurred, did you have a cell phone?

7 A No.

8 Q The only one that had a cell phone was?

9 A Mr. Armstrong.

10 Q Mr. Armstrong, your roommate?

11 A Yes, sir.

12 Q And Mr. Armstrong, he didn't call the law when he got a
13 phone call in his car, did he?

14 A No.

15 Q Okay. And your testimony is that after you snuck around
16 behind the apartment building and first you said you grabbed,
17 picked up a scooter?

18 A Uh-huh.

19 Q That was outside behind one of the buildings?

20 A Yes, sir.

21 Q And you carried it down toward your apartment?

22 A Uh-huh.

23 Q Do you recall which apartment that you picked it up from?

24 A I think it was the first apartment that I came up to.

25 Q That would be number 10?

1. A Number 10.

2. Q Is that right?

3. A Yes, sir.

4. Q You picked up the scooter from number 10 and carried it
5. down to [REDACTED]

6. A [REDACTED]

7. Q All right. And it was your intent to -- was it to hit
8. somebody or use it as a weapon?

9. A I wasn't sure. I was just in case.

10. Q You're telling the jury you don't know what your intent
11. was?

12. A I mean, if it came down to that yes I would have, yes.
13. So I guess yes it was my intent.

14. Q All right. You picked that scooter up then on your way
15. down to [REDACTED] you found a pole?

16. A Uh-huh.

17. Q Right?

18. A Yes, sir.

19. Q And you picked up the pole?

20. A Yes, sir.

21. Q And your intent with the pole was to do what?

22. A Protect myself. Because I wasn't sure who was in the
23. house or what they had so I bare handed with the pole so.

24. Q Were you worried about your safety?

25. A Yes.

1 Q Were you afraid you might be hurt?

2 A Yes. I wouldn't had the pole if I wasn't.

3 Q Pardon me?

4 A I wouldn't have grabbed the pole if I wasn't.

5 Q Why didn't you call the police if you were worried about
6 your safety?

7 A I mean, I wanted -- I don't know. I didn't have a phone.

8 Q Why didn't you ask one of the neighbors that you say was
9 out there to call the police if you were worried about your
10 safety?

11 A (The witness shrugs his shoulders.)

12 Q I'm sorry?

13 A I don't know. I wasn't thinking about it at the time. I
14 just knew that somebody was in my apartment and I wanted to
15 find who it was.

16 Q Well yeah, you want this jury to believe that you picked
17 up a pole and that you used it on Mr. Spain and beat him with
18 that pole. And then just seconds later went around and
19 restrained this man and said, Don't worry about it, just call
20 the police. That's what you're telling this jury?

21 A Yeah, because I caught him coming out.

22 Q Pardon me?

23 A Yes, because I caught him coming out.

24 Q Well I thought you said you saw Bagwell too, right?

25 A No.

1 Q You didn't see Bagwell?

2 A I never said that.

3 Q Did you see Bagwell?

4 A No. I seen Mr. Spain coming out and he looked straight
5 at me as he came out of the apartment.

6 Q But you didn't see Mr. Bagwell?

7 A No.

8 Q You're sure?

9 A Uh-huh.

10 Q Did you see anyone come out after you saw Mr. Spain?

11 A No.

12 Q Do you know for sure you just hit Mr. Spain twice with
13 the pole?

14 A I'm pretty sure. I mean, it was a pretty heavy pole. So
15 I didn't want to do too much damage.

16 Q You didn't want to kill him but you were willing to keep
17 fighting him, right?

18 A Yes, sir. Because he attacked me, yes, I did.

19 Q Okay. And it's when he attacked you that you then put
20 the pole down and went to fighting him?

21 A No, I hit him twice and I put the pole down.

22 Q Well, if I understood what you said, when you hit him the
23 first time with the pole you kind of got the jump on him. He
24 didn't see you, you just---

25 A Oh, he saw me.

1 Q --kind of came out---

2 A No. No. That's not what happened. I came around the
3 corner, I stood in front of the door and that's when he came
4 out. It took me a minute to get to the door because I didn't
5 want to rush up to the door. When I did I sat there for a
6 few seconds and I seen him run out. The only reason I did
7 hit him is because when he came out he came out too fast. So
8 I didn't know if he was trying to run or come right at me.
9 Because when he came out of the apartment we made eye contact
10 eye to eye. So he seen me.

11 Q Well, did you give a statement?

12 A Yes, I did.

13 Q Let me just ask you if you would to review that, is that
14 a copy of your statement?

15 A Yes, sir, it is.

16 Q That's a complete copy of the statement that you gave to
17 law enforcement?

18 A He wrote it and I signed it. Yes, that's my statement.

19 Q Who wrote it?

20 A The officer wrote it.

21 Q Do you know the officer's name?

22 A If it's on the paper but not by memory.

23 Q Not by memory, you'd have to---

24 A Read, yes.

25 Q Do you recognize the officer that wrote it?

1 A No.

2 Q You don't?

3 A No.

4 Q Isn't it true that Officer Cannon wrote it, that officer
5 sitting back there?

6 A He could have.

7 Q You don't remember?

8 A I mean, my adrenaline was pumping, I couldn't tell you.

9 Q Well if your adrenaline was pumping how do you remember
0 anything?

1 A I remember what happened in the back of that house.

2 Q You're sure about that?

3 A I'm positive. Because when somebody comes out of broken
4 glass that was not there before I left, I remember.

5 Q And you're positive you just saw one person coming out
6 and that was Mr. Spain?

7 A That was Mr. Spain.

8 Q You're 100 percent sure?

9 A 110 percent sure.

0 Q All right. Why didn't you just take a second and look
1 and see if that's what your statement says?

2 A I see what it says.

3 Q And that's not what your statement says, is it?

4 A No.

5 Q Pardon me?

1 A No.

2 Q So what is it, your statement or what you say you're 110
3 percent sure about today?

4 A Well I know that statement, I didn't read it all the way
5 through or whatever when he handed it to me.

6 Q Now you're saying you signed this and you didn't even
7 read it?

8 A That's what I'm saying. He briefly -- he briefly went
9 over it with me, I scanned it and I signed it.

10 Q And you signed it?

11 A I signed it.

12 Q And in your statement you say you saw two people,
13 supposedly. Isn't that what you're saying here?

14 A That's what it says on the piece of paper.

15 Q You don't say anything in your statement about picking up
16 a scooter and carrying it down to apartment [REDACTED] do you?

17 A No.

18 Q You don't say anything in your statement about hitting
19 Darryl Spain with a pole, do you?

20 A No.

21 Q You don't say anything in your statement about being
22 afraid or self-defense, do you?

23 A No.

24 Q You don't say anything in your statement at all about
25 having to restrain Mr. Armstrong here from putting a whoppin'

1 on Mr. Bagwell, do you?

2 A Uh-huh.

3 Q Nothing in here about that, right?

4 A (The witness shook his head.)

5 Q Is that a no?

6 A No.

7 Q And there's nothing if your statement about saying, Don't
8 worry about it, just call the police?

9 A No.

10 Q And contrary to what you're saying today, your statement
11 says that you saw Darryl and Bagwell coming out of the
12 apartment, right?

13 A That's what it says on that piece of paper.

14 Q But that's not what you really saw?

15 A No.

16 Q In fact, your statement doesn't even say anything about
17 Mr. Bagwell -- or excuse me, Mr. Spain being barefoot, does
18 it?

19 A I don't think so.

20 Q Well, will this help you? You want another minute to
21 look at that?

22 A No.

23 Q Is it in there anywhere?

24 A No.

25 Q Did you bust into Mr. Bagwell and Mr. Spain's apartment

1 that night?

2 A No.

3 Q Did you kick in their door?

4 A No.

5 Q Did you see law enforcement do anything like that?

6 A No.

7 Q Do you know Bam?

8 A Yes, I do.

9 Q Do you know Bam's name?

10 A Bam.

11 Q Bam.

12 A Bam.

13 Q Did you go into the apartment and move anything in the
14 apartment before the police were there?

15 A No.

16 Q Did you move this shoe?

17 A No.

18 Q Are you sure?

19 A Positive.

20 Q Positive?

21 A Didn't touch it.

22 Q Didn't touch it. Okay. Did you bust the glass out of
23 that door?

24 A I was at work.

25 Q Did you ever go into Mr. Spain's apartment that night?

1 A I've never been in that apartment before.

2 Q You've never been in there?

3 A I've never been in there before.

4 Q To your knowledge had Mr. Armstrong been in that
5 apartment that night?

6 A Hu-huh.

7 Q Is that no?

8 A No, sir.

9 Q And let me just ask you finally, is Bam in the courtroom
0 anywhere today?

1 A No.

2 Q Any of your neighbors, are they here in the courtroom
3 today?

4 A No.

5 MR. BARCROFT: One minute, Your Honor. I have no other
6 questions.

7 THE COURT: All right, Ms. Manigault.

8 CROSS-EXAMINATION

9 BY MS. MANIGAULT:

10 Q All right, Mr. Snoddy, how long did you live with
11 Armstrong?

12 A About 6, 7 months, maybe.

13 Q All right. How long were you there before the alleged
14 incident on 9/14/2003?

15 A About two months.

1 Q About two months. Did y'all have a lot of visitors at
2 your apartment?

3 A Not really.

4 Q Were you ever present -- did you ever Steve Bagwell come
5 to your apartment?

6 A I never witnessed him come over.

7 Q You never saw him come over?

8 A No.

9 Q Now where were you when you said that you heard Jarret
10 Armstrong, your roommate, say, Chris they are running out of
11 the apartment. Where were you located at that point?

12 A I was grabbing the scooter at that time. At apartment
13 10.

14 Q So you were at the back of apartment 10 or front of
15 apartment 10?

16 A It was in the back in between those wooden things, wooden
17 fence.

18 Q So you were in the back of apartment 10?

19 A Yes, ma'am.

20 Q And you were grabbing a scooter?

21 A Yes, ma'am.

22 Q And where was Jarret when he said that to you?

23 A I think he was in front. I heard him yell to me from the
24 front.

25 Q Jarret, your roommate, was in the front?

1 A In the front of the apartment.

2 Q And when you left him where was Jarret positioned when
3 you were headed around to the back of the apartments?

4 A Where was who?

5 Q Where was Jarret standing when you left him in the front
6 of the building?

7 A He was going to unlock the door to his apartment.

8 Q He was going to unlock your apartment?

9 A Uh-huh.

10 Q [REDACTED]

11 A Yes, ma'am.

12 Q So you testified that you had to go at least 4, 5
13 apartments down in the front side of the building, is that
14 correct?

15 A Uh-huh.

16 Q One half of the building to walk around, that's your
17 testimony; is that right?

18 A Yes, ma'am.

19 Q Okay. So you had to go past 4, 5 apartments, then go
20 down the side of the building?

21 A Yes.

22 Q And then come back up 4, 5 apartments to get to [REDACTED]

23 A Yes.

24 Q So you stopped at?

25 A Number 10.

1 Q Number 10 and picked up the scooter?

2 A Uh-huh.

3 Q Where did you stop to pick up the pole?

4 A That pole was at the apartment [REDACTED] when I got there.

5 Q Okay. Was it a wood pole, iron pole?

6 A A little metal pole.

7 Q Metal pole. Was it a water pipe or?

8 A I think it was a weight bench type pole, something like
9 that.

10 Q A weight bench type pole?

11 A Yes, ma'am.

12 Q Did you have a weight bench in your apartment?

13 A No, ma'am, it didn't belong to either one of us.

14 Q So you picked up a little metal pole, how long was this
15 pole?

16 A It was long.

17 Q So how long?

18 A It was long.

19 Q Use the courtroom. Is it as long as that palmetto staff
20 stick?

21 A Almost. Almost. I give or take 6, 7 inches but not that
22 long. It was a little bit thinner.

23 Q Okay, so if you take off the top nodule off of the gold
24 looking pointed thing off the top of this flag pole---

25 A About where that knot -- see where that knot is at the

1 very bottom.

2 Q This knot right here?

3 A Yes, ma'am. Right there, about right there. It was a
4 pretty long pole.

5 Q So the pole was from this knot to the floor?

6 A Yes, ma'am.

7 Q How round was the pole?

8 A It was a real small, thin pole.

9 Q Was it bigger than a quarter, bigger than a 50 cent
10 piece?

11 A Just a little bit bigger than a quarter, maybe.

12 Q Little bigger than a quarter?

13 A Yes, ma'am.

14 Q And you used that pole. Is that what you hit -- who did
15 you hit with the pole?

16 A Mr. Spain.

17 Q Mr. Spain. All right. Where did you hit him?

18 A I hit him in the back I know for sure and in the stomach.
19 I swung it this way and I went back up.

20 Q You swung at him?

21 A Yes, ma'am.

22 Q What -- I think you testified, is there lights in the
23 back of the apartments?

24 A Yes.

25 Q Was there lights that night?

1 A Yes.

2 Q Was it dark or lit?

3 A It was lit.

4 Q Every apartment was lit in the back?

5 A Not every apartment.

6 Q So you -- can you recall where the light was from any
7 apartment?

8 A Ours was on.

9 Q The lights for [REDACTED] in the back was on?

10 A On.

11 Q Okay. And any that you passed from 10 to 6. Can you
12 remember?

13 A I can't remember.

14 Q That's fine. All right. So -- but you said you couldn't
15 see too well down there when you were headed down toward

16 [REDACTED]

17 A Yes, ma'am.

18 Q Now, what was so important in your apartment that you or
19 Jarret did not call the police immediately when you arrived
20 on the premises?

21 A Nothing of importance.

22 Q I mean, why did you go around?

23 A I mean, everything I had was in his house. So everything
24 I owned was in there.

25 Q What did you own?

1 A I owned like same things he had, clothes, DVD players.
2 We had a few TV's. I had a 27 inch screen TV, he had his TV.

3 Q Where was your 27 inch---

4 A It was downstairs. On the right-hand side of that TV.
5 The TV that's broken.

6 Q Excuse me?

7 A The TV that was broken it was on the right-hand side
8 sitting on top of the table.

9 Q The 27 inch TV was fine?

10 A Uh-huh.

11 Q And the TV that's shown on State's Exhibit No. --
12 whatever.

13 A The one closet to the door?

14 Q Yeah, the one that was closet to the broken glass door?

15 A Yes, ma'am.

16 Q How big was that TV?

17 A It's pretty big.

18 Q 32, 42, 54?

19 A 54 inches.

20 Q 54 inches?

21 A I'm guessing -- I'm not sure, it's bigger than 30.

22 Q All right. And the 27 inch was right where you left it
23 though?

24 A Yes.

25 Q So the 54 inch TV, was it moved out of place?

1 A I can't tell, no.

2 Q You couldn't tell or no it wasn't moved?

3 A I couldn't tell if it was, it was a big TV.

4 Q Okay. So usually how---

5 A If it was moved a couple of inches I couldn't tell. But
6 It wasn't dramatic that I could tell.

7 Q But the 54 inch TV was usually positioned on the wall or?

8 A No, floor.

9 Q In the middle of the floor?

10 A Not the middle, it was catty-cornered on the right side
11 of the door that was broken.

12 Q Okay. So it was already catty-cornered?

13 A Uh-huh.

14 Q All right. And tell me where the speakers were or
15 whatever you said the DVD player that was near the crack
16 door?

17 A They were beside the TV.

18 Q Where do you usually keep them?

19 A Same spot.

20 Q Beside the TV?

21 A Yes.

22 Q Okay. So in State's Exhibit No. 7, if you're looking at
23 the photo, which side would the 27 inch TV be placed?

24 A On this side.

25 Q On your right?

1 A On this side.

2 Q So you're looking at the photo on the right?

3 A Yeah, the right.

4 Q All right. All right. The DVD player you said was kept
5 on the floor, on the shelf or where?

6 A On the floor.

7 Q It was kept on the floor?

8 A It was on the floor.

9 Q Okay. And that was right next to the big screen, 54
10 inch?

11 A (The witness nods.)

12 Q All right. You said you had other TV's in the house,
13 what other TV's were in the house?

14 A He had his TV in his room. So there was three TV's.

15 Q How large was that television?

16 A Probably 20 inch.

17 Q So it was not a floor model?

18 A No.

19 Q It was portable. Now, and that's Jarret's room, correct?
20 Jarret's room is upstairs?

21 A (The witness nods.)

22 Q Now I think you said you hit Mr. Spain twice, back and
23 stomach and then he started fighting you. All right. I'm
24 going to show you again your statement. Just take a moment
25 to review it. I'm going to ask you a question.

1 A (The witness complies.)

2 Q All right. On the first line of your statement you said,
3 We got here, Jarret stayed at the front door, I went to the
4 back. Is that correct?

5 A Yes.

6 Q Okay. Then you said in your statement, When I got to the
7 back patio -- read that line starts with I.

8 A I went to the back. When I got to the back patio I saw
9 two white guys trying to come out of the burglarized door.

10 Q Okay. So in your statement you said you saw two white
11 guys. But in your testimony you said you only saw one person
12 and that was not Mr. Bagwell?

13 A Yes.

14 Q Is that right?

15 A Yes, ma'am.

16 Q All right. Then you said, About then Jarret had opened
17 the front door and yelled, Chris.

18 So you were already at the back sliding glass door?

19 A No.

20 Q Well how did you know that Jarret opened the front door?

21 A I didn't know. I just know that he had to know that he
22 yelled to me that somebody was coming out of the front.
23 That's the only way I knew he opened the door.

24 Q I didn't hear you, you dragged off. What did you say?

25 A I said the only way I would know that he opened the front

1 door is that he had seen somebody running out of the front.
2 And he yelled at me that somebody was running out of the
3 front door.

4 Q Okay. So when you heard Jarret yell Chris, you were?

5 A I wasn't even at the apartment yet.

6 Q Where were you?

7 A I was getting the scooter.

8 Q What apartment were you at?

9 A Number 10.

10 Q You were still at number 10? At the end of the building?

11 A At the end of the building.

12 Q All right, sir. All right. So the person on this
13 statement you said that somebody went past you and went
14 around the front, that's not correct?

15 A Could you repeat that one more time, please?

16 Q Look at three lines from the bottom -- two lines from the
17 bottom. Where it says, End of statement.

18 A Yes, ma'am.

19 Q Three lines up.

20 A I grabbed it -- just says that I had grabbed the
21 short-hair dude.

22 Q Yeah. You on this statement you said that somebody went
23 around you, you had grabbed one person and was fighting them
24 but somebody else went around you to the front. So that's
25 not true?

1 A No.

2 Q Excuse me?

3 A No, ma'am.

4 Q That's not true?

5 A No.

6 Q So your statement is not true?

7 A I guess not, no.

8 Q And you gave this statement on what date?

9 A 9/14/03.

10 Q I didn't hear you.

11 A 9/14/03.

12 Q And that's the day of the alleged incident, 9/14/03?

13 A Yes, ma'am.

14 Q Have you ever been in Steve Bagwell's apartment?

15 A No.

16 Q Did you go in Steve Bagwell's apartment the night of
17 9/14?

18 A No, ma'am.

19 Q All right. When you got finished you said beating on
20 Mr. Spain, what did you do?

21 A I met Jarret halfway, he was coming around the front and
22 I was meeting him. We had met sort of halfway.

23 Q Jarret was coming around the front?

24 A He was coming towards me and I was going back the way
25 that I had come around the building.

1 Q Same way you came around?

2 A Yes, ma'am.

3 Q Down by number 10?

4 A Yes, ma'am.

5 Q When you met up with Jarret, where was he?

6 A He was almost making his way back around to the back of
7 the apartments.

8 Q So Jarret was at the side of the apartments?

9 A Side.

10 Q Was that the side of the apartments?

11 A Yes, ma'am.

12 Q Okay. So you met him on the side of the apartments?

13 A Yes, ma'am.

14 Q Did the two of you walk back together towards [REDACTED] or
15 6?

16 A Yeah, we walked together towards the front of the
17 apartment.

18 Q How many apartments did you have to pass?

19 A Same four. Half of the building.

20 Q About half of the building. All right. All right. Now,
21 who were the couple of neighbors you said Jarret and Steve
22 started arguing -- excuse me?

23 A I'm listening.

24 Q Jarret and Steve started arguing, where were they
25 positioned?

1 A I say about [REDACTED] apartment in between his apartment
2 and their apartment.

3 Q All right. And they were arguing?

4 A Yes, ma'am.

5 Q Jarret hit Steve?

6 A Yes.

7 Q And you and a couple of neighbors have to pull Jarret off
8 of Steve?

9 A We didn't pull him off we just held him back.

10 Q Held him back?

11 A Uh-huh.

12 Q You said a couple of neighbors? Two people?

13 A Two people. At least two people.

14 Q Did you know who these neighbors were?

15 A I knew Bam. I didn't know the other lady.

16 Q So Bam pulled -- Bam helped y'all pull -- hold Jarret
17 back from Steve?

18 A Yes.

19 Q Okay. Did you tell the police that?

20 A No.

21 Q Did you tell the police about any of the other neighbors?

22 A No.

23 Q That helped -- that was out there and saw some of what
24 was going on?

25 A No.

1 Q All right. After -- you said Mr. Spain came out of that
2 apartment, you didn't see anybody else come out of that
3 apartment?

4 A Hu-huh.

5 Q I think you testified that you didn't read all this
6 statement, your statement is like---

7 A No, I didn't read all of it that night, no, ma'am I
8 didn't.

9 Q Eight lines and you didn't read all of your statement?

10 A No.

11 Q And you're telling the Court that the officer had you
12 signed this and he didn't read it to you either?

13 A I wasn't paying attention.

14 Q You weren't paying attention?

15 A No; at the time he read it to me I wasn't paying
16 attention.

17 Q All right. So this is an important event that you're
18 claiming that happened but you didn't pay attention to what
19 you signed?

20 A I was -- I was in the heat of the moment. I didn't pay
21 attention to it as good as I should have.

22 Q You didn't pay attention because your testimony today is
23 untrue and your statement---

24 MR. MOORMAN: Your Honor, I object.

25 THE COURT: Ask it in a form of a question, don't make a

1 statement.

2 BY MS. MANIGAULT:

3 Q Is your statement today true?

4 A Yes, ma'am.

5 Q Was your statement on September 14th, 2003; is that true?

6 A Not the whole thing, no it's not.

7 Q It's not. And you never told the solicitor's office nor
8 the police officer about any discrepancy in your statement?

9 A Discrepancy?

10 Q Anything that was wrong in your statement. Did you ever
11 tell the solicitor?

12 A Yes, I did.

13 Q When?

14 A We met the first time.

15 Q Okay. So you told them that you did not see Steve
16 Bagwell?

17 A I told them I didn't see both of them coming out of the
18 apartment.

19 Q Okay. Was there anything of your's missing from the
20 apartment?

21 A No.

22 Q Was there anything missing from the apartment at all that
23 was reported to the police?

24 A No.

25 MR. MANIGAULT: Thank you.

1 THE COURT: Any redirect?

2 MR. MOORMAN: Yes, sir, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. MOORMAN:

5 Q Chris, you said your DVD player had been moved, how had
6 it been moved? On cross-examination you said it was where it
7 was, describe for the jury how it was moved.

8 A It was sitting right up against the TV and on top of the
9 speaker and the speaker and DVD player were turned sideways.

10 Q You also said on cross-examination you were hyped up when
11 you were asked to give your statement, describe for us what
12 was going through your mind?

13 A I was angry, upset. You know, that this happened.
14 Because it really don't make no sense to me why it happened.

15 Q Did you write your statement?

16 A No, sir.

17 Q Who did you say did, an officer?

18 A An officer.

19 Q How do you spell your last name?

20 A Snoddy with two d's, S-N-O-D-D-Y.

21 Q And how is your last name spelled on this statement?

22 A S-O-N-D-D-Y.

23 Q So the officer that wrote this misspelled your name too;
24 is that correct?

25 A Yes, sir.

1 MR. MOORMAN: Okay, nothing further, Your Honor.

2 MR. BARCROFT: Your Honor, I have a question in light of
3 his redirect.

4 THE COURT: All right.

5 REXCROSS-EXAMINATION

6 BY MR. BARCROFT:

7 Q You never told the police that your things had been
8 moved, did you?

9 A No, I didn't.

10 Q The first anyone heard of that was today, right?

11 A No, the solicitor I told him. But yeah.

12 Q You didn't tell the police that night?

13 A No, I didn't.

14 Q When you gave this untrue statement that anything had
15 been moved, correct?

16 A There's a lot stuff that I didn't notice then that I
17 noticed later. Like the TV. And so forth.

18 Q And you didn't call the police when you noticed the TV,
19 when you say that the TV was damaged when you noticed that?

20 A No, I didn't call them back.

21 Q Even though the TV didn't work, a year and a half went
22 by, the TV didn't work you never called the police to tell
23 them; did you?

24 A It works. It's broken but it works.

25 THE COURT: Thank you, step down.

1 All right, we're going to suspend at this time for lunch.
2 We'll pick back up after lunch. During the lunch recess do
3 not talk about this case amongst yourselves or with anyone
4 else. If anyone contacts you and tries to talk to you about
5 this case, get their names and addresses and report that to
6 me. Please keep your badges on during the lunch recess. I
7 ask that you do that so that everyone involved with this case
8 will know that you are a juror on the case. They should not
9 discuss the case in your presence because that would be
10 unlawful. So please keep your badges on.

11 Now with that I'll ask that you report back to your jury
12 room at 2:15. 2:15. Thank you.

13 (WHEREUPON, the jury left the courtroom at
14 approximately 12:55 p.m.)

15 THE COURT: See you back after lunch.

16 MR. BARCROFT: Your Honor, can the defendants remain on
17 bond?

18 THE COURT: No, they're charged with a felony, they're in
19 custody of the sheriff.

20 (WHEREUPON, a lunch break was taken.)

21 THE COURT: Okay, bring our jury, please.

22 (WHEREUPON, the jury entered the courtroom at
23 approximately 2:20 p.m.)

24 THE COURT: All right, Solicitor, you may proceed.

25 MR. MOORMAN: Your Honor, the State calls Detective

1 Marcus Cannon to the stand.

2 THE CLERK: Place your left hand on the Bible, raise your
3 right hand.

4 Marcus Cannon, after being duly sworn,
5 testified as follows.

6 THE CLERK: Thank you, be seated. State your full name
7 for the record.

8 THE WITNESS: Master Deputy Marcus Cannon.

9 DIRECT EXAMINATION

10 BY MR. MOORMAN:

11 Q Deputy Cannon, where do you work?

12 A Greenville County Sheriff's Office.

13 Q How long have you worked there?

14 A Eight years.

15 Q To what unit are you assigned at this moment?

16 A I am currently a master deputy on uniform patrol division
17 assigned to echo platoon.

18 Q You said you were master deputy, is there a distinction
19 between master deputy and deputy?

20 A Yes. Master Deputy is a promotion rank. It's the
21 supervision on road as well as responsible for training new
22 deputies.

23 Q Were you assigned to uniform patrol in September, 2003?

24 A Yes, I was.

25 Q What are your duties as a master deputy in the uniform

1 patrol division?

2 A Master Deputy is responsible for training of the new
 3 deputies after they graduate from the academy. They ride
 4 with us for field training. We're instructed to teach them
 5 the way, policy of the sheriff's office, the laws and
 6 basically monitor their activity on the road.

7 Q Did you respond to a call to service in the early morning
 8 hours of September 14th, 2003?

9 A Yes, I did.

10 Q Did you respond to [REDACTED] at [REDACTED]
 11 [REDACTED] in Greenville?

12 A Yes, I did.

13 Q Which county is this located?

14 A Greenville County.

15 Q When you responded did you respond by yourself or were
 16 you with another deputy?

17 A I had Detective Hunter, a trainee, with me at the time.

18 Q When you responded to this location, did you meet with
 19 Jerry Armstrong and Mr. Chris Snoddy?

20 A Yes, I met with those out front the apartments right at
 21 the sidewalk.

22 Q What did you do after you met with Jarret and Chris?

23 A At that time Defendant Bagwell was sitting on the
 24 sidewalk out front of his apartment. At that time that I
 25 went to him and kind of scared him.

1 Q Describe for the jury, if you would, what was the
2 Defendant Bagwell's physical state at the time?

3 A He was extremely intoxicated. I could smell the odor of
4 alcohol on his breathe, person, his eyes were blood shot,
5 intoxicated manner.

6 Q Did you notice anything about Mr. Bagwell's face?

7 A He had a cut over his eye and like dried blood down his
8 cheek.

9 Q Did you also locate the defendant, Darryl Spain?

10 A Yes. Darryl Spain was located just inside apartment
11 number four on the floor at the kitchen area of his
12 apartment.

13 Q Describe for the jury his appearance?

14 A His appearance, he was grossly intoxicated. He would
15 have been unable at this point to stand on his own. He was
16 just real out of it. I asked a couple of questions but he
17 couldn't respond to any questions I asked him, he was just
18 extremely intoxicated---

19 MR. BARCROFT: Objection.

20 THE COURT: What's your objection?

21 MR. BARCROFT: No. Not.

22 BY MR. MOORMAN:

23 Q What, if anything, did you know about his face or his
24 body?

25 A He had abrasions and red marks on his face and arms.

1 Q At some point did you and Deputy Hunter enter apartment

2 [REDACTED]

3 A Yes.

4 Q When you went to apartment [REDACTED] did you notice any
5 footwear that was on the apartment, first floor?

6 A Yes, right inside the apartment area in the den, just
7 about a foot in front of the shattered glass that was on the
8 ground, there was like a brownish type of, like a Birkenstock
9 type flip flop type shoe that was on the floor.

10 Q What size was it?

11 A Size 7 and a half.

12 Q You said that you spoke with Jarret Armstrong and Chris
13 Snoddy. Describe to the jury, if you would, their
14 appearance, what you perceived about their appearance.

15 A Their appearance they were excited, kind of adrenaline
16 going. Said that these people they witnessed coming out of
17 their apartment. They were not shocked as unable to control
18 themselves or anything just, you know, kind of shock, excited
19 about the whole thing, the situation. They were confronted
20 upon something that didn't think would happen or they didn't
21 plan for.

22 Q Did they appear to be intoxicated to you?

23 A No, sir.

24 MR. BARCROFT: Your Honor, I'm going to object the
25 leading.

1 THE COURT: Well that question was all right.

2 Go ahead.

3 BY MR. MOORMAN:

4 Q Did they appear to be intoxicated to you, Deputy Cannon?

5 A No, sir. I didn't smell any alcohol about them. Their
6 demeanor led me in no way to believe that they were under the
7 influence of alcohol or drugs.

8 Q At some point did either you or Deputy Hunter take any
9 statements from Mr. Armstrong or Mr. Snoddy?

10 A Deputy Hunter took two statements. One each from the
11 victims.

12 Q So you did not take these statements?

13 A No, sir.

14 Q Did you witness these statements?

15 A I signed it witnessing that the victim signed the
16 statement.

17 Q After you investigated at the scene, were the defendants
18 -- where were the defendants taken after this?

19 A The defendants were taken into custody then. And then
20 they were transported to Greenville Memorial Hospital by EMS
21 to get treatment for their wounds, injuries.

22 MR. MOORMAN: Your Honor, I've got nothing further.

23 THE COURT: All right, Mr. Barcroft, you going first?

24 MR. BARCROFT: Yes, Your Honor.

25 ///

CROSS-EXAMINATION

1
2 BY MR. BARCROFT:

3 Q Were you master deputy at the time of the alleged---

4 A Yes.

5 Q --break-in. And as the master deputy were you -- would
6 it be fair to say that you were the primary investigating
7 officer on this case?

8 A Not at this time because Deputy Hunter was in
9 observation. I was there to just observe him.

10 Q You're the supervisor, right?

11 A Yes, sir.

12 Q Okay. Deputy Hunter was the trainee?

13 A Yes, sir.

14 Q Correct. Are you saying that this was -- Deputy Hunter
15 was the primary person responsible for this case?

16 A I would have been the primary person but he was in
17 observation stage of his training. Which I'm just there to
18 observe him, make sure he's doing things correct.

19 Q All right. And if he didn't do something correct then
20 your job would be to step in and make sure it was done
21 correctly, right?

22 A Yes.

23 Q Okay. So your really the one that was overseeing and
24 responsible for the investigation, isn't that correct?

25 A Yes, sir.

1 Q And Deputy Hunter you said took some statements from
2 Chris Snoddy and Mr. Armstrong, right?

3 A Yes, sir.

4 Q And you witnessed those statements and signed them as
5 well?

6 A Yes, sir.

7 Q And were you -- were you present when those statements
8 were read to Mr. Snoddy and Mr. Armstrong?

9 A I don't remember them being read but I was there during
10 the whole thing.

11 Q You don't remember them being read?

12 A No, sir, I can't testify that they read them back to
13 them. I don't remember them being read back to the victims.

14 Q Well don't -- don't you train the officers to read the
15 statement back? The officer's the one that writes the
16 statement?

17 A Normally it is procedure but I can't testify that yes I
18 remember hearing those statement read back to the victims.

19 Q So you're not sure if they followed procedure or not?

20 A It's not a written procedure it's just a good practice to
21 follow. I can't testify truthfully that yes I did remember
22 them reading them back.

23 Q Well you would agree that's the way you would have
24 trained Officer Hunter?

25 A That's the how I train officers to do it, yes.

1 Q They're going to write the statement down, write it down,
2 then read it back to the person that's giving the statement
3 and let them make any changes or any additions or any
4 corrections; is that right?

5 A That's the way I train them. It's not policy that is
6 followed that way.

7 Q But that would have been the way you trained Officer
8 Hunter?

9 A Actually, I didn't do his training I was just doing the
10 observation period.

11 Q Well, we keep talking, bouncing back and forth about this
12 observation and training. Were you training Officer Hunter
13 or were you just watching him?

14 A This time I was watching him -- or trainee broke in, you
15 have two training officers for four week period each. That's
16 their training. Then they go to master deputy for
17 observation period and that's what Deputy Hunter was in
18 during this time.

19 Q And during that observation period, part of what you do
20 is you train them. Because if they learn something wrong or
21 if they don't do something right, you are supposed to make
22 sure that it's done right?

23 A Yes.

24 Q Correct?

25 A Correct.

1 Q All right. And in this particular occasion you can't be
2 sure that you told them how to do it right. Or that it was
3 done right?

4 A I didn't say that. I said there was no policy that you
5 have to read the statement back. It's not right or wrong,
6 it's not against policy if you don't read it back. So he
7 wasn't doing anything improper, it's not the way I would have
8 trained the deputy to do it.

9 Q Would it be improper to get someone to sign a statement
10 that they didn't know was true?

11 A What are you asking, I mean?

12 Q Just what I asked. Would it be improper to get a witness
13 to sign a statement that wasn't true?

14 A It's not improper because we didn't know if the statement
15 was true or not true. We were taking it, we had no reason to
16 believe it wasn't true.

17 Q Well, would Officer Hunter write down something that the
18 witness wouldn't tell him?

19 A No.

20 Q Would he be trained to do that?

21 A No, sir.

22 Q So what Officer Hunter would have written down would have
23 been what the witness would tell him?

24 A Yes, sir.

25 Q That's the way he's trained?

1 A Yes, sir.

2 Q Okay. Can you identify those two items, please?

3 A Yes, sir.

4 Q What are they?

5 A The statements, a copy of the statements.

6 Q Of whom?

7 A Of Chris Snoddy and Jarret Armstrong.

8 Q Okay. Is that your signature on the bottom?

9 A Yes, sir.

10 Q As a witness?

11 A Yes.

12 Q So you witnessed Chris Snoddy and Jarret Armstrong sign
13 those statements?

14 A Yes.

15 Q Okay.

16 MR. BARCROFT: Your Honor, I'd ask to mark these.

17 MR. MOORMAN: If he's not entering them right now, Your
18 Honor, I have no objection.

19 MR. BARCROFT: Well I'm about to.

20 THE COURT: All right. Are you offering them into
21 evidence?

22 MR. BARCROFT: I am.

23 THE COURT: Any objection, Solicitor?

24 MR. MOORMAN: Yes, sir, I would -- no, sir, I have no
25 objection. I'm sorry, Your Honor, I have no objection.

1 THE COURT: All right, without objection, put them in.

2 (WHEREUPON, Defendant's Exhibit No.'s 1 and 2
3 were admitted into evidence.)

4 BY MR. BARCROFT:

5 Q Would it be fair to say that, Officer Cannon, that these
6 statements were as far as you know to the best of your
7 knowledge taken then in accordance with the sheriff's
8 procedures and policy?

9 A Yes.

10 Q Okay. And when you arrived there on the scene, what time
11 were you dispatched to the scene?

12 A It was around probably about 50 after midnight'till about
13 1:00, somewhere in that area. I don't have the report of
14 times.

15 Q Do you note in your report when you were dispatched?

16 A Yeah, in the report it's noted as 1:15. I think that's
17 incorrect.

18 Q Why do you think that's incorrect?

19 A Because I looked at the CAD report and I think it was
20 like 57 after, 52 after when I was dispatched.

21 Q When did you look at the CAD report?

22 A That was today, sir.

23 Q After you learned I was going to subpoena the person from
24 the CAD report for the records?

25 A I didn't know you subpoenaed that, sir.

1 Q But your time in your statement is incorrect, right? In
2 your report itself. You would agree that's incorrect?

3 A Yes, that's incorrect.

4 Q All right, sir. And do you have your report with you
5 there?

6 A Yes, sir.

7 Q Can I look at it briefly? The last two pages that you
8 have stapled together, are those part of your report that you
9 prepared?

10 A No, sir.

11 Q Who prepared that?

12 A That's the forensics unit.

13 Q Who is the officer that prepared that?

14 A I don't see a name, sir.

15 Q You don't have a name on your's?

16 A Not that I can see. I might be missing it.

17 Q All right. Did you review that in preparation for your
18 testimony today?

19 A No, sir.

20 Q You did not?

21 A Not that form.

22 Q Well, did you -- on that report it notes that -- that the
23 condition of the interior of apartment [REDACTED] was neat and
24 orderly, would you agree with that description that's in
25 report?

1 A I mean, it wasn't a mess. I mean, I don't know how neat
2 you're talking about but it wasn't like everything in
3 specific place but it was not ransacked or dirty. I would
4 consider it neat to my standards.

5 Q You would?

6 A Yes.

7 Q And also in that report it's indicated that---

8 MR. MOORMAN: Your Honor, I would object to him reading
9 from his report when Deputy Cannon said that he didn't
10 prepare it.

11 THE COURT: I'll sustain the objection.

12 BY MR. BARCROFT:

13 Q Well, officer, would you agree that no items were removed
14 or disturbed from within the residences?

15 A No, sir, I would not.

16 Q You would disagree with that?

17 A Yes.

18 Q Did you move the shoe or anything inside the residence
19 when you went inside apartment [REDACTED]

20 A No.

21 Q Were there any other officers that been in there before
22 you got there, to your knowledge?

23 A Not before I got there, no, sir.

24 Q Were there any other officers that had arrived at the
25 scene before you?

1 A No, sir.

2 Q You were the first officer arrived?

3 A Myself and Deputy Hunter, yes.

4 Q At that time when you arrived there, basically how you
5 learned about this was talking to Mr. Snoddy and
6 Mr. Armstrong; is that correct?

7 A Yes.

8 Q Okay. And what -- your report is based on what they told
9 you; is that correct?

10 A Yes, sir.

11 Q Okay. I believe you stated that when you first had
12 contact with Mr. Spain or when you saw Darryl Spain he was
13 inside apartment [REDACTED]

14 A Yes.

15 Q That was -- would that be his apartment?

16 A Yes, that was his apartment.

17 Q Okay. And how did you gain entry into apartment number
18 4?

19 A The door was opened, I just seen him laying there.

20 Q Where was Mr. Armstrong when you arrived?

21 A He was sitting on the sidewalk outside in front of number
22 4. Kind of [REDACTED] [REDACTED] at the sidewalk.

23 Q Well, [REDACTED] and [REDACTED] are together and [REDACTED]s
24 down a little ways; is that right?

25 A I believe [REDACTED] and [REDACTED] are side by side. I think

1 [REDACTED]s here and [REDACTED] is like the door. I could be
2 mistaken, I don't know.

3 Q Well, you examined the inside of apartment [REDACTED]
4 right?

5 A Yes.

6 Q And did you secure the area?

7 A Yes.

8 Q All right. And did you examine the outside of the area,
9 the apartments, front and back?

10 A Yes.

11 Q And did you make any notes of what you found inside and
12 outside in your report?

13 A No, sir.

14 Q You weren't trained to do that?

15 A In my report?

16 Q Uh-huh.

17 A I don't have to document everything I observe in a
18 report.

19 Q Okay. And but as far as things that were inside or
20 outside you didn't do that?

21 A No, sir.

22 Q When you checked the CAD report, Officer Cannon, did you
23 happen to check who the call came in from?

24 A Yes, sir.

25 Q Call came in from defendants, didn't it?

1 A There was one call in from them.

2 Q The defendants called 911, didn't they? At 12:57, isn't
3 that right?

4 MR. MOORMAN: Your Honor.

5 THE COURT: I sustain the objection.

6 BY MR. BARCROFT:

7 Q Does it indicate who made the call?

8 A I don't have that CAD report in front of me.

9 MR. BARCROFT: I don't have any other questions.

10 THE COURT: All right, Ms. Manigault.

11 MS. MANIGAULT: Thank, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. MANIGAULT:

14 Q Officer, you said you wrote your own report?

15 A During this incident I did not type the report.

16 Q You did not write a report at all?

17 A No, sir. No ma'am.

18 Q So you're relying on the report of any other officers?

19 A The initial report but memory on the scene.

20 Q So whose report are you relying on?

21 A Relying as far as such what information?

22 Q Any information.

23 A I mean, the information is typed but I can remember the
24 incident.

25 Q So the answer to the question is, whose report are you

1 relying on, anybody?

2 A I mean, it's according on what information you're wanting
3 me to.

4 Q Have you gathered information from anybody's report,
5 Officer?

6 A I looked at the report from Deputy Hunter but as far as
7 information I remembered what happened, no I'm not actually
8 going by his report.

9 Q Okay. Now, is Officer Hunter's report and any other
10 officer's report an official report?

11 A Yes.

12 Q A part of this case?

13 A Yes, sir.

14 Q And that would include the crime scene investigation
15 report?

16 A Yes.

17 Q All right. Did you at any time ever review the crime
18 scene investigation report?

19 A No, ma'am.

20 Q Not at any time during your investigation?

21 A No, ma'am.

22 Q Were you -- did you talk to any witnesses, neighbors at
23 the alleged crime scene?

24 A Yes, I did.

25 Q And do you have the names of those persons you talked to?

1 A I didn't get the names because they seen everything after
2 it happened. They didn't have any information of the
3 incident so their information was irrelevant.

4 Q Okay. So any information from the witnesses was
5 irrelevant as far as you were concerned?

6 A Yeah, they all -- everyone I talked to came up after it
7 happened and their information was just what led up -- I
8 mean, after everything was over with.

9 Q All right. So did you find any neighbor or any witness
10 that witnessed any of the fighting or anybody hitting
11 anybody? You found no one with that information?

12 A Not that told me.

13 Q They didn't tell you. All right. Did you find any
14 information -- did you talk to anybody that said they saw
15 Mr. Bagwell come out of the apartment beside Jarret and
16 Chris?

17 A No.

18 Q Any neighbors?

19 A No.

20 Q All right. Did you find any neighbors that said that
21 they saw the glass being broken? Glass door in the back
22 being broken?

23 A No.

24 Q Did you find any neighbors that said they saw any one of
25 these gentlemen walking around?

1 A No.

2 Q The building or unit. Including Mr. Jarret and Chris?

3 A Before it all happened, no, I did not.

4 Q All right. I believe you testified that Mr. Bagwell was
5 extremely intoxicated with a cut over his eyes?

6 A Yes.

7 Q And was sitting outside his apartment when you came?

8 A Yes.

9 MS. MANIGAULT: Beg the Court's indulgence.

10 BY MS. MANIGAULT:

11 Q All right. And you testified earlier that you had no
12 reason to believe that the statement given to you by Chris
13 Snoddy and Jarret Armstrong was not the truth?

14 A I had no reason.

15 Q On September 14th, 2003.

16 A That's correct, I had no reason to believe that it wasn't
17 the truth.

18 Q All right. And did they ever tell you about a person
19 named Bam?

20 A Not that I recall.

21 Q All right.

22 MS. MANIGAULT: Thank you.

23 THE COURT: Any redirect?

24 MR. MOORMAN: No redirect, Your Honor.

25 THE COURT: Thank you, you can you can step down.

1 MR. MOORMAN: Your Honor, the State would call Officer
2 Chris Wilson to the stand.

3 THE CLERK: Place your left hand on the Bible, raise your
4 right hand.

5 Chris Wilson, after being duly sworn, testified
6 as follows:

7 THE CLERK: Thank you, you may be seated. State your
8 full name for the record.

9 THE WITNESS: Jan Christopher Wilson.

10 DIRECT EXAMINATION

11 BY MR. MOORMAN:

12 Q Officer Wilson, who do you work for?

13 A Greenville County Forensics.

14 Q What is your position with Greenville County Forensics?

15 A Currently I'm a senior tech, senior forensics tech.

16 Q What does a forensic tech do?

17 A We work all crime scenes throughout Greenville County.

18 Q When you say work crime scenes, how do you -- just very,
19 very briefly, how do you work a crime scene?

20 A Depending on the scene we process it for latent
21 photograph, collect items from individual scenes.

22 Q You say that you're a senior forensic tech, what is --
23 what does that designation mean?

24 A Senior tech, we have two techs, one's a junior, one's a
25 senior. Junior is when you start off learning the calls, how

1 to work a call and the equipment. Senior tech is pretty much
2 you've managed to learn the equipment; you work all the crime
3 scenes or you can work all the crime scenes by yourself.

4 Q Do you have any other experience in law enforcement prior
5 to coming to the forensics department?

6 A I do. I worked five and a half years with the Anderson
7 County Sheriff's Office.

8 Q Did they have a forensics unit in Anderson County?

9 A They did.

10 Q As a deputy when you worked for Anderson County, who
11 worked the crime scenes you responded to?

12 A Mostly the officers or the deputies did. Their
13 forensics, the forensics division down there, they would
14 respond out if the value was so much, money value or assault
15 or death calls.

16 Q So you worked a lot doing crime scenes?

17 A I did.

18 Q Were you working in the early morning hours of September
19 14th, 2003?

20 A Yes, sir.

21 Q While you were working, did you respond to the Greenville
22 Memorial Hospital?

23 A Yes, sir.

24 Q Why did you respond to the Greenville Memorial Hospital?

25 A In reference to securing photographs of individuals that

1 were supposedly involved in a burglary incident.

2 Q Who were the individuals you took pictures of that
3 morning?

4 A After arriving on the scene I photographed Steve Bagwell
5 and Darryl Spain.

6 Q If you would, please, take a look at these pictures.

7 A (The witness complies.)

8 Q Are these the pictures you took of defendants Bagwell and
9 Spain in the early morning hours of September 14th, 2003?

0 A Yes, sir.

1 THE COURT: All right, any objection?

2 MS. MANIGAULT: Yes, sir.

3 THE COURT: What's your objection?

4 MS. MANIGAULT: Your Honor, may we approach?

5 THE COURT: Take the jury out for a minute, please.

6 (WHEREUPON, the jury left the courtroom at
7 approximately 2:52 p.m.)

8 THE COURT: Let me see the photographs, please.

9 Tell me, Mr. Moorman, who the feet belong to?

0 MR. MOORMAN: Mr. Darryl Spain, Your Honor.

1 THE COURT: And---

2 MS. MANIGAULT: Your Honor, as to that photo of my client
3 you already ruled that that was not allowed in.

4 MR. MOORMAN: Your Honor, my understanding was your
5 ruling was we had not laid the foundation necessarily.

1 THE COURT: Well the reason I had excluded that one
2 because it appeared to me that it was taken at the police
3 station and he was handcuffed. But now I understand that it
4 was taken at the hospital. Who and what is that?

5 MR. MOORMAN: That again is Mr. Spain's heels, Your
6 Honor.

7 THE COURT: All right. You have an objection to this
8 photograph?

9 MS. MANIGAULT: Yes, Your Honor.

10 THE COURT: On what ground?

11 MS. MANIGAULT: Your Honor, we object. There is already
12 one photograph taken at the hospital showing the same wound
13 of my client which is already into evidence. It's State's
14 Exhibit No.

15 THE COURT: What then is the reason for another one?

16 MR. MOORMAN: The probative value, Your Honor, is that
17 that picture has the red shirt on it that he was wearing that
18 evening which is also in the statement.

19 THE COURT: All right, subject to your objection that
20 would be admitted.

21 All right, Mr. Barcroft, you object to these photographs?

22 MR. BARCROFT: No, Your Honor.

23 THE COURT: All right, no objection.

24 Bring the jury.

25 MR. MOORMAN: Thank you, Your Honor.

1 THE COURT: Go ahead and mark them.

2 MS. MANIGAULT: Your Honor, for the record my further
3 objection is that the report of C.P. Hunter is that I didn't
4 -- Mr. Hornsby responded to the hospital to photograph the
5 suspects injuries.

6 THE COURT: All right.

7 MS. MANIGAULT: Not this officer.

8 MR. BARCROFT: I would join in that objection, Your
9 Honor.

10 THE COURT: All right.

11 (WHEREUPON, State's Exhibit No.'s 9 through 14
12 were admitted into evidence.)

13 (WHEREUPON, the jury entered the courtroom at
14 approximately 2:55 p.m.)

15 THE COURT: All right, you may proceed.

16 MR. MOORMAN: Thank you, sir.

17 BY MR. MOORMAN:

18 Q Officer Wilson, let me show you what has been marked as
19 State's Exhibit No. 9. Is this a picture you took that
20 evening?

21 A Yes, it is.

22 Q Where did you take this picture?

23 A At the hospital, Greenville Memorial.

24 Q And who is depicted in this picture?

25 A Mr. Bagwell. Steve Bagwell.

1 Q Let me show you what's marked as State's Exhibit No. 10.
2 What does this picture depict?

3 A That is the heel of Mr. Spain. And what we're trying to
4 indicate is in this area there were several small lacerations
5 to the heel area.

6 Q When you arrived at the hospital, was Mr. Spain wearing
7 any shoes?

8 A No, sir.

9 Q What does what has been marked as State's Exhibit No. 11,
10 what does this depict?

11 A That is the foot again, of Mr. Spain. Again, several
12 small lacerations to that under the toe area to the heel.
13 And there's one down at the bottom.

14 Q Okay. Let me show you what's been marked as State's
15 Exhibit No. 12.

16 A That's pretty much the same picture as the one before but
17 mainly focusing on the heel. The other one was focusing on
18 the toes, in that area.

19 Q What's been marked as State's Exhibit No. 13, again,
20 another picture of?

21 A Mr. Spain's foot. This one is showing the suspected
22 blood from small lacerations on the right foot. That's
23 Mr. Spain with kind of abrasions to his cheek, to his nose
24 and several red spots to his forehead.

25 Q Okay. Thank you. Officer, was there another forensic

1 tech who responded to the crime scene that night?

2 A There was.

3 Q Who as that?

4 A It was Joey Hornsby.

5 Q Where is Joey Hornsby now?

6 A He is diseased. He was diseased February 13th of this
7 year.

8 MR. MOORMAN: Your Honor, I've got nothing further.

9 THE COURT: All right, Mr. Barcroft.

10 CROSS-EXAMINATION

11 BY MR. BARCROFT:

12 Q You've been in forensics how long?

13 A A little over three years.

14 Q At the Greenville County?

15 A Yes, sir.

16 Q Okay. And was Hornsby a colleague or supervisor of
17 yours?

18 A He was a cop. Actually he was a senior tech, he would
19 have been kind of a master deputy level over me.

20 Q Okay. Any evidence that you -- that you take custody of
21 or seize at the scene or when you go out, what do you do with
22 that evidence?

23 A We bring it back if we need to test it we will. If not
24 we place it in our property and evidence section.

25 Q All right. And did you ever locate another alleged shoe?

1 A I never went out to the scene, no, sir. All I went was
2 to the hospital.

3 Q Okay. And did you -- to your knowledge, was a second
4 shoe ever located or anything? Did you ask at the hospital
5 about another shoe or do any checking yourself?

6 A No, sir.

7 Q Did you -- so your involvement in this case is strictly
8 you took photographs at the hospital and that was the extent
9 of your involvement?

10 A Yes, sir.

11 Q All right. And I think you did point out that there were
12 a number of abrasions on Mr. Spain's head, forehead and his
13 face, is that right?

14 A Yes, sir.

15 Q When you say abrasions, what do you mean by abrasions?

16 A Abrasions most of the times are ripping of the skin or
17 tearing of the skin.

18 Q Okay. So there was a tearing of the skin to Mr. Spain,
19 Darryl Spain's, face and forehead, correct?

20 A Kind of on the cheek where somebody -- something would
21 have rubbed up kind of using some kind of instrument or
22 whatever could have caused that. Or using the fist could
23 have caused that.

24 Q Well that's all pure speculation. I mean, my question to
25 you though is that there were abrasions on his face and

1 forehead, right?

2 A Yes.

3 Q You're not trained in forensics as far as how injuries
4 might occur or not occur, are you? Are you trained in
5 forensics or in gathering -- in how---

6 A Both.

7 Q --injuries can occur?

8 A We're trained in both.

9 Q Okay. And what you've got there are cuts to the forehead
10 and face and bruises and whatnot?

11 A (There was no response.)

12 Q I'll show you the -- that's what you pointed out, right?

13 A Abrasions, right. Not cuts but abrasions.

14 Q Well you said abrasions were tearing of the skin?

15 A Lacerations, cutting of the skin too.

16 Q Did you notice abrasions or cuts and tearing to the top
17 of Darryl Spain's feet?

18 A Not to my knowledge. I don't remember seeing any, no,
19 sir.

20 Q If any glass had been removed, would you have taken that
21 into your possession at the time that you went out to the
22 hospital?

23 A If it had been removed and the doctor would have signed
24 it over, yes, sir.

25 Q In fact, there wasn't any glass removed or -- from

1 Mr. Spain was there?

2 A Not at the time, I believe he was still waiting for
3 treatment.

4 Q When you say not at the time, let's not edge here, there
5 wasn't any glass removed from Mr. Spain's feet was there?

6 A No, sir.

7 Q Not at any time?

8 A I don't know, I took my photographs and left the hospital
9 after I photographed him.

10 MR. BARCROFT: No further questions.

11 THE COURT: Ms. Manigault.

12 CROSS-EXAMINATION

13 BY MS. MANIGAULT:

14 Q Officer Wilson, you said you had no further contact with
15 anybody regarding this case except for photos at the
16 hospital?

17 A Yes, ma'am.

18 Q And that you had no further contact with my client except
19 that?

20 A That's it.

21 MS. MANIGAULT: Thank you.

22 THE COURT: Thank you, step down.

23 MR. MOORMAN: Your Honor, at this time the State rests.

24 THE COURT: All right, take the jury out, please.

25 (WHEREUPON, the jury left the courtroom at

1 approximately 3:05 p.m.)

2 THE COURT: Any motions?

3 MR. BARCROFT: Yes, Your Honor. Before I do that if I
4 could, I would like to inquire, there was earlier during this
5 trial one of the witnesses, in particularly, Chris Snoddy,
6 told the Court under oath that he advised the prosecutor that
7 his statement was not true. And that it had inadequacies in
8 it. If that, in fact, was the case, then, Your Honor, I
9 would want to prompt the Court that I was -- any exculpatory
10 and something that I would be entitled to under due process,
11 under the rules of discovery and Brady. And I would like the
12 Court to inquire if, in fact, the Solicitor's Office was
13 given that information. And if so, why we were not advised
14 of that.

15 THE COURT: Solicitor.

16 MR. MOORMAN: Yes, sir, Your Honor. First off,
17 Mr. Snoddy, he I spoke with Mr. Snoddy on -- whenever I spoke
18 with him he did tell me that there were inadequacies in the
19 statement. He never indicated to me that they were flat out
20 untrue. We did provide Mr. Barcroft with his statement and
21 Ms. Manigault his statement in discovery.

22 THE COURT: So what else your -- you cross-examined him
23 if what you say is true then that's a matter of credibility
24 for the jury. And you can argue that to the jury.

25 MR. BARCROFT: I understand that. I wanted to confirm

1 that he, in fact, advised him of that. Because frankly, I
2 find that somewhat unbelievable. Your Honor, I thank you for
3 allowing the inquiry.

4 At this time we move for a directed verdict and I would
5 say incorporate into that the objections that have been
6 raised and put on the record up to this point. Your Honor,
7 there's -- there's absolutely no credible evidence, Your
8 Honor, to number one, to put my client inside the apartment
9 of apartment [REDACTED] In addition, Your Honor, there is
10 absolutely no evidence that there was any intent to commit a
11 crime even if the Court were to take the position that there
12 was any evidence of Mr. Spain was, in fact, in the apartment.
13 And clearly any of this testimony from Mr. Snoddy who was the
14 only witness that gives any indication that Mr. Spain may
15 have even been in the apartment is absolutely wholly
16 incredible I think, Your Honor. And again, even if you were
17 to go forward on that I think there's no evidence at all that
18 there was any intent to commit a crime in the apartment.

19 THE COURT: Damaging personal property is not a crime?

20 MR. BARCROFT: Damaging personal property is not in this
21 particular case, Judge. There's no -- if you're referring to
22 the broken window, and actually there's no evidence that says
23 that he broke the window.

24 THE COURT: Well there was the broken television.

25 MR. BARCROFT: Right. That was reported a year and a

1 half---

2 THE COURT: I think that's an issue for the jury,
3 Mr. Barcroft. Your motion is denied.

4 THE COURT: Ms. Manigault.

5 MS. MANIGAULT: Your Honor, as to Bagwell we would also
6 move for a directed verdict and all of our objections made by
7 Defendant Spain. Your Honor, and as far as to the
8 information regarding the statement of Chris Snoddy, it goes
9 more particularly to Bagwell because he in his statement said
10 that he saw both males which would include my client. He
11 testified today that he did not see -- he did not see him and
12 even intimated that he may not have told the officer that.
13 So for my client was very important that we know that. I
14 understand that we have the entire statement. There is no
15 indication of intent as far as a crime to be committed.
16 There is no indication that my client even broke in or went
17 into the apartment. They're conflicting stories in the best
18 light for State, Your Honor. Their alleged victims present
19 conflicting stories and highly incredible. And I would ask
20 the Court to direct a verdict.

21 THE COURT: Your motion is denied.

22 MS. MANIGAULT: Thank you.

23 THE COURT: All right, you got some testimony?

24 MR. BARCROFT: Your Honor, I do anticipate some testimony
25 but I would ask for a few moments to---

1 THE COURT: All right, I'll give you five minutes.

2 MR. BARCROFT: Could I plead for 10, please?

3 THE COURT: All right.

4 MR. BARCROFT: Thank you, Judge.

5 (WHEREUPON, a short break was taken.)

6 THE COURT: All right, where do we stand with respect to
7 testimony from the defense?

8 MR. BARCROFT: Your Honor, we're prepared to call a few
9 witnesses.

10 THE COURT: All right. You're going first?

11 MR. BARCROFT: Yes.

12 THE COURT: And, Ms. Manigault, you likewise will have
13 witnesses?

14 MS. MANIGAULT: Your Honor, I may just have my client but
15 I would like the Court to make a ruling on a criminal record
16 for me before the jury comes in.

17 THE COURT: All right.

18 MS. MANIGAULT: My client was recently convicted in
19 Spartanburg County of burglary second---

20 THE COURT: Recently?

21 MS. MANIGAULT: Yes, sir. June 2004. June or July 2004.

22 THE COURT: Okay.

23 MS. MANIGAULT: So I would ask the Court to include that
24 because of the closeness of relationship to this crime. It's
25 a recent conviction and it might be more prejudicial than

1 probative.

2 THE COURT: Solicitor.

3 MR. MOORMAN: Your Honor, we would not -- we would not
4 seek to introduce the burglary record.

5 THE COURT: Okay.

6 Okay, bring the jury.

7 MR. MOORMAN: And, Your Honor, before -- may I inquire as
8 to date of birth and social security numbers for the lay
9 witnesses so we can run criminal histories?

10 THE COURT: All right, sir.

11 MR. MOORMAN: And we have -- we've got ---

12 Your Honor, just so you know there's, aside from the
13 burglary this defendant does have other convictions that we
14 seek to introduce.

15 THE COURT: All right.

16 MR. MOORMAN: He's got five fraudulent check convictions,
17 he's got a shoplifting conviction from 1998. Which we would
18 allege are crimes of dishonesty which would be admissible
19 under 609.

20 THE COURT: Ms. Manigault.

21 MS. MANIGAULT: Your Honor, we would allege that the
22 fraudulent check charges that they should be excluded because

23 --

24 What was it, one year?

25 MR. MOORMAN: These are Magistrate level offenses.

1 MS. MANIGAULT: They're not one level offenses, Your
2 Honor. They're Magistrate level so we'd ask---

3 THE COURT: How about that, Solicitor?

4 MR. MOORMAN: Your Honor, I would direct the Court's
5 attention to 609(a)2 alleged crimes of dishonesty. The
6 requirement that the crime be in excess of one year is found
7 to be under 609(a)1.

8 THE COURT: So which one are you relying on?

9 MR. MOORMAN: Crimes over -- (a)2. Let me double check
10 that.

11 THE COURT: 609.

12 MR. MOORMAN: (a)2.

13 THE COURT: (a)2.

14 MR. MOORMAN: Yes, sir. It says evidence that any
15 witness has been convicted of a crime shall be admitted as
16 involve dishonesty, false statement regardless of the
17 punishment.

18 THE COURT: How about that, Ms. Manigault?

19 MS. MANIGAULT: Your Honor, we still believe that the
20 fraudulent check charges are of such a nature that they
21 should be excluded.

22 THE COURT: I think it's admissible under 609(a)2.

23 MR. MOORMAN: Thank you, Your Honor.

24 MS. MANIGAULT: As well as the shoplifting?

25 THE COURT: Yes.

1 MS. MANIGAULT: Thank you.

2 THE COURT: All right, bring the jury.

3 (WHEREUPON, the jury entered the courtroom at
4 approximately 3:25 p.m.)

5 THE COURT: All right, Mr. Barcroft.

6 MR. BARCROFT: Your Honor, Mr. Spain calls Butch Johnson.

7 MR. SPAIN: Patterson.

8 MR. BARCROFT: Patterson, excuse me. Joe Patterson I
9 think is the name.

10 MR. MOORMAN: Your Honor, may we approach?

11 THE COURT: Sure.

12 (WHEREUPON, a bench conference was held.)

13 THE CLERK: Place your left hand on the Bible, please,
14 raise your right hand.

15 Joe Patterson, after being duly sworn,
16 testified as follows.

17 THE CLERK: Thank you, you may be seated. State your
18 full name for the record.

19 THE WITNESS: Joseph Patterson. They know me as Butch in
20 the sheriff's office.

21 DIRECT EXAMINATION

22 BY MR. BARCROFT:

23 Q I'm going to call you Butch too since you're use to going
24 by Butch. Butch, you are here pursuant to request from my
25 office; is that correct?

1 A That is correct.

2 Q All right. And if you would, please, tell the jury where
3 you're employed?

4 A I'm employed in communications at the Greenville County
5 Sheriff's Office.

6 Q How long have you've been in communications?

7 A Eight years.

8 Q All right. And did -- pursuant to my request did you
9 research and check 911 calls coming into the sheriff's office
10 back on September the 14th -- 13th and 14th of 2003?

11 A Yes.

12 Q All right. And specifically calls related to [REDACTED]
13 [REDACTED] or [REDACTED] on [REDACTED]?

14 A That's correct.

15 Q All right. Now, were there -- was there a 911 call
16 placed from apartment [REDACTED] on -- back on that night.

17 THE COURT: Hold on.

18 MR. MOORMAN: Your Honor, I would object on the basis of
19 hearsay.

20 THE COURT: I'm going to allow him to testify what the
21 records show.

22 MR. MOORMAN: Yes, sir.

23 THE COURT: All right. So just have him relate what the
24 records show.

25 MR. BARCROFT: Yes, sir.

1 BY MR. BARCROFT:

2 Q Do you have the records with you?

3 A Yes, sir.

4 Q Did you research those records?

5 A Yes, I did.

6 Q Okay. And do the records indicate---

7 THE COURT: No, you're leading him. Let him testify as
8 to what they --

9 MR. BARCROFT: All right.

10 BY MR. BARCROFT:

11 Q All right. Tell, me, Officer, what does the record
12 indicate relating to any 911 calls back on that date placed
13 from [REDACTED], [REDACTED], [REDACTED]

14 A A call from service was taken on September 14th at 57
15 minutes after midnight for [REDACTED], [REDACTED]
16 [REDACTED]. It was a disturbance call.

17 Q All right. Do the records indicate who made the call?

18 A It was made, according to the records, by Steve Bagwell.

19 Q All right. By Steve Bagwell?

20 A Yes.

21 Q All right. And it was categorized as a disturbance call?

22 A Yes, sir.

23 Q All right. And if you would, please, what can that
24 indicate? What can a disturbance call mean?

25 MR. MOORMAN: Your Honor.

1 THE COURT: I sustain the objection to the question.

2 MR. BARCROFT: Well, Your Honor --

3 BY MR. BARCROFT:

4 Q What kind of things can be categorized as a disturbance
5 call?

6 MR. MOORMAN: I renew my objection.

7 THE COURT: I sustain the objection.

8 BY MR. BARCROFT:

9 Q Officer Johnson -- Patterson, did you -- were you trained
10 in communications when you went to work at the sheriff's
11 department?

12 A Yes, sir.

13 Q Were you trained in how to log calls in when a call comes
14 in over 911?

15 A Yes, sir.

16 Q And are all calls categorized as disturbance calls?

17 A No, sir.

18 Q All right. What kind of calls are typically categorized
19 as disturbance calls?

20 MR. MOORMAN: Your Honor, I would renew my objection.

21 THE COURT: I sustain the objection.

22 MR. BARCROFT: Your Honor---

23 THE COURT: I sustain the objection. Move on, please,
24 sir.

25 BY MR. BARCROFT:

1 Q How were you trained on what calls are normally
2 categorized as disturbance calls?

3 MR. MOORMAN: I renew my objection.

4 THE COURT: I sustain the objection.

5 MR. BARCROFT: Your Honor, I'm going to -- I think I want
6 to proffer that.

7 THE COURT: All right. Take the jury out.

8 (WHEREUPON, the jury left the courtroom at
9 approximately 3:30 p.m.)

10 THE COURT: All right, go ahead.

11 BY MR. BARCROFT:

12 Q Officer Johnson or Patterson, excuse me, Butch. What
13 calls are you trained -- were you trained that can be
14 categorized -- that would be categorized as disturbance
15 calls?

16 A Until we know specifics on a call when it comes in, it
17 can be categorized anything basically from somebody wanting
18 someone out of their house, to someone talking loud outside,
19 to basically anything could be a disturbance call.

20 Q All right. Is there a separate category for burglary
21 calls?

22 A Yes, sir, there is.

23 Q Is there a separate category for assault calls?

24 A Yes, sir.

25 Q Is there a separate category for other types of crimes?

1 A Yes, sir.

2 Q And this call was categorized as a burglary call -- or as
3 a disturbance call when it was called in?

4 A Initially put in by the telecommunicator as a disturbance
5 call.

6 MR. BARCROFT: Your Honor, I think that he can testify to
7 that.

8 THE COURT: I disagree. I disagree, sir, and the
9 ruling's still sustain.

10 Bring the jury.

11 MR. BARCROFT: Your Honor, I think that obviously the
12 jury doesn't know the process or the typical proceedings of
13 the communications in the sheriff's office as far as
14 categories of calls. I think for the benefit of the jury
15 they should be allowed to be educated on what type of calls
16 or what kind of different categories there are and what kind
17 of calls would fall in the different categories.

18 THE COURT: I disagree.

19 Bring the jury.

20 MS. MANIGAULT: Your Honor, just one question. May I ask
21 the witness --

22 THE COURT: Sure.

23 MS. MANIGAULT: For the Court's review, may I ask the
24 witness --

25 THE COURT: Go ahead.

CROSS-EXAMINATION

1
2 BY MS. MANIGAULT:

3 Q Is a disturbance call and a burglary call the same thing?

4 Is that a legitimate question?

5 A What was it she asked?

6 Q Is a disturbance call and a burglary call the same thing?

7 A No, ma'am.

8 THE COURT: Solicitor?

9 MR. MOORMAN: I would object for the same reasons. We're
10 getting -- first, I don't believe -- I think that this is a
11 way, an indirect way to first to get hearsay in by what kind
12 of call was made.

13 THE COURT: All right, I will allow that one question.

14 MS. MANIGAULT: Thank you, Your Honor.

15 THE COURT: Nothing further, okay. Now you want
16 Mr. Barcroft to ask it or do you want to?

17 MR. BARCROFT: Yeah, I'll ask it.

18 THE COURT: All right, bring the jury.

19 (WHEREUPON, the jury entered the courtroom at
20 approximately 3:33 p.m.)

21 THE COURT: All right, Mr. Barcroft.

22 MR. BARCROFT: Thank you, Your Honor.

23 BY MR. BARCROFT:

24 Q Butch, is a disturbance call and a burglary call the same
25 thing?

1 A No, sir.

2 Q All right. And this was a disturbance call?

3 MR. MOORMAN: Your Honor, I object.

4 THE COURT: That's been asked and answered. Anything
5 else, Mr. Barcroft?

6 MR. BARCROFT: Yes.

7 BY MR. BARCROFT:

8 Q Now on the -- as the dispatcher gets additional
9 information do they make additional notes on the record?

10 A Yes, sir. According to the officer at the end of call.

11 Q Okay. And what does the record show regarding -- is
12 there any additional information that the record show
13 regarding this call that occurred -- that came in---

14 MR. MOORMAN: Your Honor, I would object.

15 THE COURT: Take the jury out.

16 (WHEREUPON, the jury left the courtroom at
17 approximately 3:34 p.m.)

18 THE COURT: All right, what's the answer to that
19 question?

20 A Yes, sir, there is.

21 THE COURT: I want to know what it is. I want to know
22 what you're testifying to if I allow.

23 A We use 10 codes when we go back and update a call. And
24 the first one, of course, was a disturbance that originally
25 came in. A 1086 which is an assault. 1073, intoxication.

1 And then, of course, they called for forensics which is a
2 30B, Bravo. And those were all added to the call before it
3 was closed out.

4 THE COURT: Solicitor.

5 MR. MOORMAN: Your Honor, I would object because now
6 we've got multiple layers of hearsay. Not only do we have
7 the officer who calls in updating the call which would be
8 hearsay because we've got this out of court statement
9 informing the dispatcher as to what was happening. But we've
10 got the statement of the dispatcher memorialized in the
11 record itself. So the State would argue we've got two layers
12 of hearsay and that's excluding the layer of hearsay of the
13 defendant based on whatever information the officer gleaned
14 from him. We would argue there are multiple layers of
15 hearsay with his testimony. And Mr. Barcroft has not laid a
16 sufficient foundation for exception to hearsay.

17 MR. BARCROFT: Your Honor, I'll go through and lay the
18 foundation. They're business records and I'll be glad to go
19 through that. I thought that had already been sort of ruled
20 on officially. But a business record is an exception to
21 hearsay and it's not hearsay. Therefore, it's allowable.
22 The fact that it's hearsay is not a reasonable objection. If
23 this is an official business record kept in the ordinary
24 course of business.

25 MR. MOORMAN: And the State's position would be that the

1 record itself is not the only statement here. We have a
2 statement that was memorialized in the record from an officer
3 who's called in to update the record. We also have a
4 statement from a dispatcher that entered it into---

5 THE COURT: All right, who made those notes, additional
6 calls, sir? Do you know that?

7 A How it was closed out, the primary on call was Deputy
8 Cannon.

9 MR. BARCROFT: He's here.

10 THE COURT: I'm going to allow him to testify to only
11 what the record shows. And let him tell what the code number
12 translates. But that's it. Then if you want to put the
13 witness back up in reply then you can do that. So all he's
14 -- he's just going to answer that one question.

15 MR. MOORMAN: Your Honor, what's the question again?
16 What do the records show?

17 THE COURT: What does that record show.

18 MR. MOORMAN: Okay. Okay.

19 THE WITNESS: Judge, can I ask a question?

20 THE COURT: Yes, sir.

21 THE WITNESS: Do you want me to say what the 10 codes
22 are?

23 THE COURT: Just the code numbers that were related to
24 you and what they stand for. That's all.

25 THE WITNESS: Okay.

1 THE COURT: All right, bring the jury.

2 (WHEREUPON, the jury entered the courtroom at
3 approximately 3:37 p.m.)

4 THE COURT: All right, Mr. Barcroft.

5 BY MR. BARCROFT:

6 Q Do your official records there show -- indicate that
7 there were other 10 codes called in? What we call 10 code?

8 A Yes.

9 Q All right. The first 10 code would be a disturbance?

10 A 1081.

11 Q All right. Then what -- then tell us what other
12 information do your records show? Specifically what
13 information do your records?

14 A Next one's a 1086 which is an assault. 1073 which is
15 intoxication. And then, of course, forensics was called 1030
16 Bravo.

17 Q Those were all as a result of the call -- the disturbance
18 call that came in from apartment [REDACTED]

19 A To the best of my knowledge, yes, sir.

20 Q That's what the record show?

21 A Yes, sir.

22 Q Okay. Now, did you check the records to see if there
23 were any calls that came in in relation to -- from apartment

24 [REDACTED]
25 A Yes, sir.

1 Q On that date?

2 A There was none.

3 Q And on the 13th or the 14th, any calls from apartment

4

A No, sir.

6 MR. BARCROFT: No further questions.

7 THE COURT: Ms. Manigault, do you have any questions of
8 this witness?

9 MS. MANIGAULT: No, sir.

10 THE COURT: All right, Solicitor.

11

CROSS-EXAMINATION

12 BY MR. MOORMAN:

13 Q Officer Patterson, that record you alluded to earlier,
14 that doesn't refer to every single call that communications
15 gets, does it?

16 A Just for this call on this particular is what I have.

17 Q That's all you brought to court today?

18 A I brought everything related for the time that I was
19 asked to research.

20 Q If another person had called, it is possible that that
21 call would not have been entered in on that CAD system?

22 A It was the same location the normal procedure is to
23 update the current call that is in the computer.

24 Q Are there times when that information is not updated?

25 A I don't know if any of that would happen, it's possible.

1 Q If a caller were to call on a cell phone, for example,
2 would you get the address? Would the address information
3 come up on display automatically like it would from a LAN
4 line?

5 A No.

6 Q It would not?

7 A No.

8 Q If someone were to call and very shortly they were on the
9 phone and the police were to arrive and they said nevermind,
10 don't worry about it and hung up; would they have been
11 recorded on CAD---

12 MR. BARCROFT: Your Honor, I'm going to object to that
13 question, there's no foundation for any --

14 MR. MOORMAN: Your Honor --

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

16 A No, we would not have put -- if they said forget about
17 it, no we wouldn't put it in.

18 MR. MOORMAN: I've got nothing further.

19 THE COURT: Step down.

20 MR. BARCROFT: Your Honor, if I could in brief response.

21 REDIRECT EXAMINATION

22 BY MR. BARCROFT:

23 Q If one someone were to call on a cell phone and ask for
24 an officer at a location as in -- that would be entered into
25 the system, would it not?

1 A Yes.

2 MR. BARCROFT: Thank you.

3 THE COURT: Step down.

4 All right, Mr. Barcroft.

5 MR. BARCROFT: Your Honor, I ask that this witness be
6 excused.

7 THE COURT: He's excused.

8 MR. BARCROFT: Call Jerry Spain.

9 THE CLERK: Place your left hand on the Bible, raise your
10 right hand.

11 Jerry Spain, after being duly sworn, testified
12 as follows:

13 THE CLERK: Thank you, you may be seated. State your
14 name for the record.

15 THE WITNESS: Jerry Gene Spain.

16 DIRECT EXAMINATION

17 BY MR. BARCROFT:

18 Q How old are you, Mr. Spain?

19 A 35 today.

20 Q Okay. And what do you do for employment?

21 A I'm self-employed.

22 Q Okay.

23 A Electrical contractor.

24 Q How long have you been doing that?

25 A 6 and a half almost 7 years now.

1 Q And you're related to Darryl Spain, is that correct?

2 A Yes, sir, that's my brother.

3 Q All right. And back on the 13th of September, 2003, did
4 you see Darryl that day?

5 A Would that be a Saturday? I don't know the day of the
6 13th.

7 Q Well, on Friday?

8 A Friday, yes, sir. I sure did.

9 Q All right. And why would you have seen Darryl on that
10 Friday?

11 A Because he would have worked a normal working hour shift
12 with me during the day and then that evening I would have
13 paid him. Came by and paid him and the other employees their
14 money.

15 Q Need to be sure and speak up for me now. Was Darryl
16 living with Steve Bagwell at that time? Did they share an
17 apartment?

18 A Yes, sir, they did.

19 Q Okay. And did you go by and pay Darryl in the normal
20 course that you -- on that day?

21 A Yes, sir. Directly after 5:00 they go home and I go to
22 the Bank I would have gone and got the money and came by and
23 paid them accordingly.

24 Q All right. Now, did -- was there any damage or problems
25 with their apartment do you recall on that day?

1 A On Friday?

2 MR. MOORMAN: Your Honor---

3 THE COURT: Hold on. Hold on.

4 MR. MOORMAN: I object to the relevance.

5 THE COURT: What's the relevance of this, Mr. Barcroft?

6 MR. BARCROFT: Your Honor, if you'd allow me a little
7 leeway I think that we'll be able to show---

8 THE COURT: This Friday the 13th was what day in relation
9 to the alleged offense in this case?

10 MR. BARCROFT: Your Honor, this alleged offense happened
11 they say around 1:00 a.m. on the 14th. So this was the
12 Friday night into Saturday morning of the alleged offense.

13 MR. MOORMAN: Your Honor, my understanding the question
14 is that he's referring to apartment [REDACTED] I don't
15 understand. I could be mistaken but I don't understand what
16 the relevance---

17 THE COURT: What's the relevance of apartment [REDACTED]

18 MR. BARCROFT: Your Honor, the evidence, I believe, is
19 going to show where Mr. Snoddy and Mr. Armstrong broke---

20 THE COURT: No, I sustain the objection.

21 MR. BARCROFT: Your Honor, may I be allowed to finish?
22 Can I approach?

23 THE COURT: No, sir. No, sir. That has no relevance to
24 this case. Move on, please, sir.

25 BY MR. BARCROFT:

1 Q Did you return to Mr. -- to Darryl's apartment shortly
2 after the 13th?

3 A I did. I did. Following it was Sunday, I don't know the
4 date.

5 Q All right. What was the purpose of your returning on
6 Sunday?

7 MR. MOORMAN: Your Honor, I would object to the relevance
8 of him returning to another apartment at least a day and a
9 half after this happened.

10 MR. BARCROFT: Judge---

11 THE COURT: Take the jury out, please.

12 (WHEREUPON, the jury left the courtroom at
13 approximately 3:47 p.m.)

14 THE COURT: Why does your questioning go to the apartment
15 of the defendants?

16 MR. BARCROFT: Goes to the -- Judge, I'm -- I'm -- I
17 haven't even gotten the first question and he's objecting to
18 relevance. And if you would give me some leeway I can show
19 you how---

20 THE COURT: Tell me what you're going to put in,
21 Mr. Barcroft.

22 MR. BARCROFT: Yes, sir, Judge. The day after this
23 alleged offense, on Sunday, this gentleman returns to my
24 client's apartment and while he's there he encountered Mr.
25 Snoddy or Mr. Armstrong who tells him what happened the day

1 before. Now, I think that's clearly submissible (sic).

2 THE COURT: All right.

3 MR. BARCROFT: I apologize, Judge, but---

4 THE COURT: Well you're not trying to get any testimony
5 as to the condition of the defendant's apartment?

6 MR. BARCROFT: Yes. Because it will verify what this
7 gentleman -- what Mr. Armstrong told him happened.

8 THE COURT: Well you're getting the cart before the
9 horse. Why don't you get the testimony in---

10 MR. BARCROFT: Well that's what I'm trying to do and then
11 he objects because it's a day afterwards saying it's not
12 relevant.

13 THE COURT: Solicitor, with respect to any testimony as
14 to what was told to him by the alleged victim the day after,
15 is that relevant?

16 MR. MOORMAN: Your Honor, I would question -- I would
17 question whether or not it comports with Rule 613 related to
18 a prior inconsistent statement. In that under 613 if he
19 wanted to use this statement that my victim allegedly made to
20 the brother, I believe the appropriate way to have done it
21 would have been to ask my victims during cross-examination
22 whether or not they made a statement to this man.

23 THE COURT: How about that, Mr. Barcroft?

24 MR. BARCROFT: No, Your Honor.

25 THE COURT: You have to lay a foundation for the purpose

1 of impeaching him.

2 MR. BARCROFT: Your Honor, the foundation is laid. He
3 states in court one thing that happens and then he tells my
4 client something different that happens.

5 THE COURT: You didn't lay a proper foundation on that,
6 Mr. Barcroft, I've got to sustain the objection on that, sir.

7 All right, anything else?

8 MR. BARCROFT: Yes, sir. I would like to proffer it.
9 Put it all in the record.

10 THE COURT: Go right ahead.

11 BY MR. BARCROFT:

12 Q Let's -- on the Sunday after this alleged break-in, which
13 would have been the 14th, did you return to Darryl's
14 apartment?

15 A Yes, I did.

16 Q All right. And what happened -- what did you -- what
17 happened when you got to the apartment?

18 A Well when I got to the apartment I eventually got out of
19 the car. At this time I see Jerry standing out in front of
20 the apartment complex at his door.

21 Q That's Jarret Armstrong?

22 A Yes, sir.

23 Q All right.

24 A At that time I learned that Darryl and Steve Bagwell were
25 not at the apartment, they were actually incarcerated because

1 the nights events prior to it. I asked him---

2 Q All right. Let me slow you down. So when you arrived at
3 the apartment did you yourself have knowledge that Darryl had
4 been arrested at that point?

5 A No.

6 Q You were looking for Darryl and Steve; is that right?

7 A Yes.

8 Q And you didn't find them?

9 A No.

10 Q So what happened?

11 A At that time when I learned what had happened to them
12 through Jarret, I asked him what went on. What happened and
13 why. He did not want to talk outside, he asked me to step
14 inside of his apartment. And he carried on further with the
15 conversation.

16 Q All right. Tell the Court what did Mr. Armstrong tell
17 you had happened?

18 A He started off the conversation with telling me that
19 Darryl Spain, my brother, had broke into his apartment and
20 his roommates.

21 Q All right.

22 A Broke into Jarret's apartment.

23 Q Okay.

24 A At that time he started showing me broken glass, the
25 broken TV. Which I couldn't tell exactly what was going on,

1 all I saw was broken glass. And he tells me that Darryl
2 broke in. That he was very angry at him and that he came
3 home and saw them in there and proceeded to go after them.
4 And ended up beating them up. I asked him how bad? He told
5 me very bad.

6 He said, I was mad. I wanted to kill him. He said he
7 took his butt of his gun and went next door to apartment
8 [REDACTED] which is Darryl and Steve's apartment. And Steve
9 was in the recliner and he said he hit him against the head
10 with the butt of his gun. He also told me through the course
11 of them slamming -- Jarret told me they beat him up and was
12 slamming him on the apartment complex parking lot and
13 dragging him around.

14 Q Who?

15 A Jarret told me this.

16 Q They were dragging and beating up who?

17 A Darryl Spain.

18 Q All right.

19 A And he told me again, I wanted to kill him. I should
20 have killed him. I should have killed him.

21 Q Did he tell you why he wanted to kill him?

22 A He told me he was angry with him first of all because
23 Darryl had mentioned to the lady that lived in between the
24 two apartments, which would be apartment [REDACTED] that
25 Jarret at apartment [REDACTED] was selling weed. Marijuana.

1 And he did not like that.

2 Q All right. Did he tell you anything else at that time?

3 A Yes. He proceeded to tell me a little bit more about the
4 fighting and what went on. I asked him how many people were
5 on him?

6 And he said, A bunch.

7 And at that time he told me, I even had him up, this is
8 Jarret speaking, he said, I had him up against the brick wall
9 with the gun to his head and was going to kill him. That's
10 what he told me.

11 Q Speaking of who?

12 A Speaking of Darryl Spain.

13 MR. BARCROFT: Your Honor, that would be extent of my
14 proffer.

15 THE COURT: All right, I'm going to sustain the objection
16 based on Rule 613. All right.

17 Anything before I bring the jury?

18 MR. BARCROFT: Your Honor, I would just mention, I know
19 that I asked Mr. Armstrong if, in fact, he didn't cause the
20 injury to Mr. Bagwell by the butt of a gun. And he denied
21 it.

22 THE COURT: I sustain the objection.

23 Bring the jury.

24 MR. BARCROFT: Your Honor, while the jury -- one moment.

25 THE COURT: Hold up.

1 MR. BARCROFT: Your Honor, I also as part of the proffer,
2 Your Honor, I was going to put in these pictures.

3 THE COURT: All right, just put them into the record.
4 Make them part of the record, not as exhibits, but for the
5 record only.

6 (WHEREUPON, Court's Exhibit No. 1 was admitted
7 into evidence.)

8 THE COURT: All right, bring the jury.

9 (WHEREUPON, the jury entered the courtroom at
10 approximately 3:55 p.m.)

11 THE COURT: All right, Mr. Barcroft.

12 MR. BARCROFT: One minute, Your Honor. Nothing further.

13 THE COURT: Ms. Manigault, do you have any questions for
14 this witness?

15 MS. MANIGAULT: No, sir.

16 THE COURT: Solicitor, any questions?

17 MR. MOORMAN: No, sir.

18 THE COURT: Thank you, you can step down.

19 MR. BARCROFT: Call Ronald Spain, Sr.

20 THE CLERK: Place your left hand on the Bible, raise your
21 right hand, please.

22 Ronald Spain, after being duly sworn, testified
23 as follows:

24 THE CLERK: Thank you, you may be seated. State your
25 name for the record.

1 THE WITNESS: Ronald Raymond Spain, Senior.

2 DIRECT EXAMINATION

3 BY MR. BARCROFT:

4 Q Okay, I need for you to make sure you speak up so the
5 last juror over in the corner can hear you, okay?

6 A Yes, sir.

7 Q Did you see Darryl Spain the night that he was taken to
8 the jail as a result of this alleged incident?

9 A Not that night I didn't.

10 Q When did you see him?

11 A It was the Monday following the incident.

12 Q Right. Okay, the Monday after the very -- just a few
13 days later?

14 A Yes, sir.

15 Q All right. If you would, would you please tell the jury
16 what his physical description was at that time?

17 A Yes, sir. We were standing between the glass there at
18 the -- and he came up, had on his uniform. And he raised his
19 shirt up, you know. He was completely bruised and skint
20 (sic) like on his chest and on his stomach and on his arms.
21 And he also pulled up his pants leg and showed where the
22 front of his leg and top of his feet were skint and bruised
23 pretty bad.

24 Q All right.

25 A Of course his face was pretty well bruised up too.

1 Q All right. And the -- are you familiar -- do you know
2 what size shoes Darryl wears?

3 A Yes, sir.

4 Q What size shoes does Darryl wear?

5 A A 9.

6 Q All right. And this shoe that's in State's Exhibit No.
7 5, is that Darryl's shoes?

8 A I'm not familiar with that shoe.

9 Q Ever seen Darryl wearing that shoe?

10 A No, sir.

11 MR. BARCROFT: I have no further questions.

12 THE COURT: Ms. Manigault.

13 MS. MANIGAULT: No questions, Your Honor.

14 THE COURT: Solicitor.

15 CROSS-EXAMINATION

16 BY MR. MOORMAN:

17 Q Just one question. You love your son don't you, sir?

18 A Yes, sir.

19 MR. MOORMAN: Nothing further.

20 THE COURT: Thank you, you can step down.

21 MR. BARCROFT: Your Honor, we rest.

22 THE COURT: Ms. Manigault.

23 MS. MANIGAULT: Beg the Court's indulgence, just a
24 second.

25 (WHEREUPON, Defendant's Exhibit No. 3 was

1 marked for identification.)

2 MS. MANIGAULT: Your Honor, we have one witness. We call
3 Defendant Steve Bagwell.

4 THE COURT: Come around, please, sir.

5 THE CLERK: Place your left hand on the Bible, raise your
6 right hand.

7 Steve Bagwell, after being duly sworn testified
8 as follows:

9 THE CLERK: Thank you, you may be seated. State your
10 name for the record.

11 THE WITNESS: Steve Randall Bagwell, II.

12 DIRECT EXAMINATION

13 BY MS. MANIGAULT:

14 Q Talk a little louder. What's your address?

15 A Right now?

16 Q Yes, sir.

17 A [REDACTED]

18 Q Okay, I didn't understand a thing you said. Say it
19 again.

20 A [REDACTED]

21 Q Okay. How old are you?

22 A I'm 28.

23 Q Are you employed?

24 A Yes, ma'am.

25 Q Where do you work?

1 A JGS Electric.

2 Q How long have you worked for JGS Electric?

3 A For about -- going on about four years.

4 Q All right. Now, did you at one time live a [REDACTED]

5 [REDACTED]

6 A Yes, ma'am.

7 Q Were you living there on September 13th and 14th of
8 2003?

9 A Yes, ma'am.

10 Q Okay. And did you have a roommate?

11 A Yes, ma'am.

12 Q Who was your roommate?

13 A Darryl Spain.

14 Q Now, on the evening of September 13th and the early
15 morning of September 14th, 2003, where were you?

16 A We was at the apartment.

17 Q All right. What were you doing?

18 A Me and Darryl had been drinking a little bit that
19 evening. We were next door at apartment [REDACTED] The girl
20 that had just moved in over there, we was over there with her
21 just hanging out.

22 Q All right. What time was that?

23 A We left her house probably about 11:00, 11:30, somewhere
24 through there.

25 Q Did you go back to your apartment?

1 A Yes, ma'am.

2 Q And when you got to your apartment what did you do?

3 A Got back to the apartment, me and Darryl went inside, sat
4 down, started watching television. Darryl said he was going
5 to go wash some clothes. We work during the day about seven
6 days a week so---

7 Q Tell me what you did?

8 A Oh. I sat down started watching television and fell
9 asleep on my recliner.

10 Q Did you have furniture in your apartment besides your
11 recliner?

12 A Yes, ma'am.

13 Q What other kind of furniture did you have in your
14 apartment?

15 A I had -- it was a red leather couch, red leather love
16 seat an old coffee table. Dishes, knickknacks sitting all
17 around, you know. Knickknack stuff. I had an entertainment
18 center. 52 inch color television, entertainment center. And
19 that's about it.

20 Q Okay. I'm going to show you a picture and ask you if you
21 can identify this picture? Yes or no answer.

22 A Yes, ma'am.

23 Q All right.

24 THE COURT: Any objection, Solicitor?

25 MR. MOORMAN: No, sir.

1 MR. BARCROFT: No objection.

2 THE COURT: Without objection, put it in.

3 (WHEREUPON, Defendant's Exhibit No. 3 was
4 admitted into evidence.)

5 BY MS. MANIGAULT:

6 Q All right, Steve, I'm going to show you what's marked
7 Defendant's Exhibit and ask you to describe what is in that
8 picture.

9 A That's my recliner right there. And right there is a
10 coffee table that we had. Right there, that's a dresser that
11 Darryl's parents had given us. We had just got it earlier
12 that day. And right through there is the kitchen and the
13 doorway right there.

14 Q All right. The recliner that -- is that the recliner
15 that you were sitting in watching television?

16 A Yes, ma'am, that recliner right there I was sitting in.

17 Q And you said you fell asleep?

18 A Yes, sir.

19 Q Is that the recliner you fell asleep in?

20 A Yes, ma'am. The TV faces right here, the recliner faces
21 the TV and I was sitting there watching TV.

22 Q And this is on September 13th, '03 and September 14th,
23 2003?

24 A Yes, ma'am.

25 Q All right. How long did you stay asleep in the recliner?

1 A I don't know. I probably sleep for about an hour before
2 I got woke up. 30 minutes to an hour maybe before I got woke
3 up.

4 Q How did you wake up?

5 A Jarret was beating on me. I woke up Jarret was beating
6 on me.

7 Q This Jarret?

8 A Yes, ma'am.

9 Q Armstrong?

10 A Yes, ma'am.

11 Q This chair was in your apartment?

12 A Yes, ma'am.

13 Q And you were asleep in your own apartment?

14 A Yes, ma'am.

15 Q And you woke up to Jarret beating you?

16 A Yes, ma'am.

17 Q All right. Tell me what happened after that?

18 A After Jarret beat me up I got up and asked him I said,
19 What's going on? You know. What's going on? You know.

20 He said, Your boy done broke into my apartment.

21 I told him I said, Well ain't got nothing to do with me.

22 So he left our apartment. As soon as he left out of the
23 apartment I grabbed my cell phone and I dialed 911.

24 Q You called the police?

25 A Yes, ma'am.

1 Q And you reported to the police what?

2 A I told the police I said, My next door neighbor Jarret
3 had broken into my house. I said, he beat me up. I said,
4 they're out there beating him up. I said, I don't know
5 what's going on but you need to get somebody down here as
6 fast as possible.

7 Q And the police come?

8 A The police come probably about 15, 20 minutes after.

9 Q All right. Now, did you -- was your apartment door
10 locked?

11 A Yes, ma'am.

12 Q Did you admit anyone to the apartment, did you let Jarret
13 in?

14 A No, ma'am.

15 Q Did you let anybody else in?

16 A No, ma'am.

17 Q So how did he get through your apartment door?

18 A He busted in my door.

19 Q All right. And this was on September 13th, 2003?

20 A Yes, ma'am.

21 Q September 14th, 2003?

22 A Yes, ma'am.

23 Q All right. After you called the police, what did you do?
24 Did you stay in the apartment or did you go out of the
25 apartment?

1 A I stayed pretty much in the apartment. There was a whole
2 bunch of people outside. They was all jumping on Darryl.

3 And beating him up.

4 Q Why did you stay in the apartment?

5 A Because I was scared. I didn't know -- I mean, he done
6 busted in on me and started beating me up for no apparent
7 reason. And I when I poked my head outside, Jarret had
8 Darryl up against the wall right next to his door and had a
9 gun up to his head. And there was probably about 15, 16
10 other people there with him. Just beating Darryl.

11 THE COURT: Any objection, Solicitor?

12 MR. MOORMAN: Your Honor, I would object at this time
13 because I don't believe -- I might have missed it, did Ms.
14 Manigault ask him -- I don't think she's laid the necessary
15 foundation.

16 THE COURT: All right. If she lays the proper foundation
17 they will be admitted.

18 Any objection?

19 MR. BARCROFT: No, Your Honor.

20 BY MS. MANIGAULT:

21 Q All right. When you went into your apartment that night,
22 how was your door situated?

23 A Everything was working properly.

24 Q Was your door busted, cracked?

25 A No, ma'am.

1 Q Torn off the hinges?

2 A No, ma'am.

3 Q Was the door jam in place?

4 A Yes, ma'am, the door jam was in place.

5 Q And the foot hole was in place?

6 A The foot hole was in place and everything.

7 Q I'm going to show you these pictures and ask if you can
8 identify them? Just yes or no?

9 A Yes, ma'am.

10 Q And what do these pictures?

11 A These are pictures of my front door.

12 Q What does it show?

13 A It's busted open.

14 MS. MANIGAULT: Your Honor, we would offer these
15 pictures.

16 THE COURT: All right, put them in.

17 (WHEREUPON, Defendant's Exhibit No.'s 4
18 through 8 were admitted into evidence.)

19 BY MS. MANIGAULT:

20 Q All right, Steve, on Defendant's Exhibit 4 through 8,
21 what does it show?

22 A This right here is a picture of the door frame where it's
23 cracked all the way down. Right down here.

24 Q Okay, look on the back of that Exhibit and tell me which
25 Exhibit that is. Steve, look on the back of that picture and

1 tell me which Exhibit that is?

2 A This is Exhibit 4AH. This right here shows where the --
3 where the hinge that goes on the door where you turn the knob
4 and everything, it's broken, it's split all the way down
5 through there.

6 Q Okay, which Exhibit that?

7 A This right here is Exhibit 5A. This right here shows
8 where the bottom part, this right here is for the latch, the
9 turn latch, it's right where the bottom of the knob is, the
10 whole piece come off. Tore off all the way down through --
11 broke down through there.

12 Q What's that number?

13 A That is 6A. And this is 7A where it's torn all the way
14 down going all the down at the bottom where it's split all
15 the way opened. Where he busted it open. This right here
16 shows where it's more split open. And this right here is 8A.

17 Q All right. And did you cause that damage to your door?

18 A No, ma'am.

19 Q All right. Did Darryl cause the damage to your door?

20 A No, ma'am.

21 Q How was your door damaged?

22 A Jarret Armstrong broke in, busted in my door, come in
23 there beat me up.

24 Q All right. And I think there's a State's Exhibit picture
25 that shows you with a bruised head?

1 A Yes, ma'am.

2 Q This is State's Exhibit No. 9, is that picture of you?

3 A Yes, ma'am.

4 Q How did you get that bruise?

5 A Jarret Armstrong come in there and hit me while I was
6 asleep.

7 Q All right. And State's Exhibit No. 6, is that picture of
8 you again?

9 A Yes, ma'am.

10 Q And that's the same bruise?

11 A Yes, ma'am, same bruise.

12 Q And how did you get that bruise?

13 A Jarret Armstrong.

14 Q And you were in your own apartment?

15 A Yes, ma'am, I was inside the apartment on my recliner.

16 Q All right. Now when the police finally arrived, did you
17 get to talk with the police? Yes or no.

18 A No, ma'am.

19 MR. MOORMAN: Your Honor, I would -- she instructed the
20 witness to answer only yes or no. Which I would say a
21 leading question and I would objection to the form of the
22 question.

23 THE COURT: Don't lead your witness.

24 MS. MANIGAULT: Yes, sir.

25 BY MR. MANIGAULT:

1 Q Did you talk to the police?

2 A No.

3 Q Where were you when the police arrived? Were you in your
4 apartment or out?

5 A I was kind of like in the doorway waiting on them.

6 Q All right. You're apartment [REDACTED]

7 A Yes, ma'am.

8 Q Okay. And do you know where Jarret Armstrong or Chris
9 Snoddy was at that time?

10 A As far as I know they was over there at there apartment
11 beating Darryl up.

12 Q All right. Did you ever go into apartment [REDACTED] on
13 September 13th or September 14th?

14 A No, ma'am.

15 Q All right. I'm going to show you a picture, State's
16 Exhibit No. 5, this is a picture of a broken glass door, did
17 you go into that apartment or come out of that apartment?

18 A Neither.

19 Q That door or any other door?

20 A Neither.

21 Q All right. Let me show you State's Exhibit No. 7, this
22 is a picture of broken glass, did you at any time see the
23 broken glass or the door?

24 A No, ma'am.

25 Q On the 13th or 14th?

1 A No, ma'am.

2 Q Now you live in [REDACTED] correct?

3 A Correct.

4 Q Right next door. On State's Exhibit No. 2, there are two
5 doors then -- there's two windows and two doors. So what
6 apartment is next to your apartment [REDACTED]

7 A That's apartment [REDACTED]

8 Q [REDACTED]

9 A Yes, ma'am.

10 Q And so the next two doors would be?

11 A [REDACTED] and [REDACTED].

12 Q And [REDACTED] would be where?

13 A You got [REDACTED] and [REDACTED] which this is mine. You got [REDACTED] and [REDACTED] and
14 that there is Jarret's.

15 Q So Jarret's at the second car?

16 A Yes, ma'am.

17 Q All right. Now, as you that night, did you go around to
18 the back of that apartment?

19 A No, ma'am.

20 Q [REDACTED] Did you go back to the back of [REDACTED]

21 A No, ma'am.

22 Q Did you go to the back of any apartment?

23 A No, ma'am.

24 Q So when you left the party you went into your apartment,
25 watched television and fell asleep?

1 A Yes, ma'am.

2 Q When -- did you hear anybody screaming outside or
3 anything going on outside before you were awakened?

4 A No, ma'am. I didn't know anything was going on.

5 Q Okay. Had you ever visited Mr. Armstrong's apartment?

6 A Yes, ma'am.

7 Q How many times you gone over there?

8 A Probably a couple of times a month maybe.

9 Q All right. I believe you testified that y'all drink beer
10 together; is that true?

11 A We may have had a beer one time before.

12 Q One time before. Did you at any time on the 13th or 14th
13 enter apartment [REDACTED] to take anything out of apartment
14 [REDACTED]

15 A No, ma'am.

16 Q I'm going to show you a picture that the State has
17 introduced of a broken television screen, this is State's
18 Exhibit No. 7, did you break that TV screen?

19 A No, ma'am.

20 Q Did you move that TV?

21 A No, ma'am.

22 Q Did you go into that apartment that night?

23 A No, ma'am.

24 Q When you have gone to Armstrong's apartment, how far did
25 you get inside the apartment?

1 A I didn't go no further than the kitchen.

2 Q And when you went there how long would you stay?

3 A Maybe 5, 10 minutes at the most.

4 Q Okay.

5 A I never just went over there and just hung out with them
6 or nothing like that.

7 Q What size shoe do you wear?

8 A I wear a 10 and a half.

9 Q 10 and a half?

10 A Yes, ma'am.

11 Q All right. There was some testimony or that there were
12 some neighbors or people outside when the police arrived, did
13 you see those people? Any of those people?

14 A I don't know about neighbors over there. I know Jarret
15 had whole bunch of his friends come over. I know he probably
16 had about 10, 11 friends come over there.

17 Q How did they get there?

18 A I believe he called them. That's the only way I can
19 figure. Because they all rolled up at one time.

20 Q They drove up?

21 A Yes, ma'am.

22 Q How long did you live at that apartment?

23 A I been living there -- I lived there probably about six
24 months.

25 Q And had you ever run into somebody named Bam?

1 A No, ma'am.

2 Q Latino male?

3 A No, ma'am, not that I know of.

4 Q Did you have -- Jarret described that he would consider
5 you a friend because you went to school together, did you
6 have Jarret's phone number, cell phone number?

7 A No, ma'am.

8 Q Did you have his house number?

9 A No, ma'am.

10 MS. MANIGAULT: Beg the Court's indulgence.

11 All right, please answer any questions that the State may
12 have.

13 THE COURT: First, Mr. Barcroft, do you have any
14 questions of this witness?

15 CROSS-EXAMINATION

16 BY MR. BARCROFT:

17 Q After you were awakened in the apartment by Mr.
18 Armstrong, where did you first see Darryl?

19 A Out -- after he broke in on me?

20 Q Yes, sir.

21 A Whenever he had Darryl up against the wall I poked my
22 head outside to find out what was going on, I seen Jarret had
23 Darryl up against the wall and had a gun up to his head.

24 Q The front wall of the apartment building?

25 A Yeah, out front.

1 Q Do you remember what apartment -- did you hear Jarret say
2 anything to him?

3 A I couldn't hear what he said. He was say something like,
4 I should kill you. You know what I'm saying? Had the gun up
5 there and I seen him took it out, hit him with it and then he
6 fell to the ground. I went back inside. Like I said, there
7 was about 10, 15 people out there.

8 Q All right. And the -- when -- about what time was it
9 that you left your neighbors apartment and went back to
10 your's that night?

11 A It was around about 11:00, 11:30, somewhere through
12 there.

13 Q All right.

14 MR. BARCROFT: One minute. Nothing.

15 THE COURT: All right, Solicitor.

16 CROSS-EXAMINATION

17 BY MR. MOORMAN:

18 Q So, Mr. Bagwell, is it safe to say, would you agree with
19 me, that on the night of September 13th in the early morning
20 hours of September 14th, you and Darryl had a pretty bad
21 night?

22 A Yeah.

23 Q You're just in your apartment asleep?

24 A Uh-huh.

25 Q And you say Jarret comes in, kicks in the door and starts

1 beating you?

2 A Yes, sir.

3 Q By the way, you also said you had been drinking?

4 A Yes, sir.

5 Q And you acknowledge that you and Darryl were roommates at
6 the time?

7 A Yes, sir.

8 Q So Jarret came in, you say starting beating you up after
9 he beat you up, somehow he stops and you get up and say, What
10 was that for?

11 A Yeah. The whole time he was doing it I was like, What
12 are you doing?

13 Q So as far as you knew you had no idea why Jarret came
14 into your apartment to beat you up, that's your story?

15 A (The witness nods.)

16 Q Is that yes?

17 A Yes.

18 Q So then you say Jarret comes in beats you up and then you
19 say simultaneously he's got some of his friends out there and
20 they're beating up Darryl; is that right?

21 A (The witness nods.)

22 Q Is that yes?

23 A Yes, sir.

24 Q And for no reason they were beating Darryl up?

25 A Yes, sir, as far as I could tell.

1 Q No reason?

2 A No reason.

3 Q So both of you on Friday the 13th, both of you guys were
4 getting beat up for no reason?

5 A Yes, sir.

6 Q Is that your testimony?

7 A Yes, sir.

8 Q Is that a yes?

9 A Yes, sir.

10 Q All right. Bad night. Now, you go out and you say you
11 see Darryl getting beaten up?

12 A (The witness nods.)

13 Q How long had you known Darryl?

14 A I've known Darryl probably about six, seven years.

15 Q Six or seven years, you guys pretty close?

16 A Yeah, we pretty close friends.

17 Q So you see your friend getting beat up outside. And what
18 do you do, do you rush up there to help him? No, what do you
19 do---

20 A No.

21 Q --you go back inside and you sit down?

22 A I called the police.

23 Q Okay.

24 A I was waiting on the police to get there.

25 Q You called the police and the police show up. And after

1 you were beaten in your house for no reason and Darryl,
2 according to what you say was pistol whipped outside by all
3 these strange people that you've never seen before for no
4 reason, you all get arrested?

5 A Uh-huh.

6 Q Bad night continues, right? You all get arrested?

7 A Uh-huh.

8 Q And you're taken to the hospital. Then you're taken to
9 jail?

10 A (The witness nods.)

11 Q Then after you're arrested you get out and you got to do
12 your own investigation of this burglary, is that what you're
13 telling us? Or what Jarret did. In other words, let me
14 strike that. Who took those pictures that your lawyer put
15 in?

16 A Jerry Spain.

17 Q Jerry Spain. And who is Jerry Spain?

18 A Darryl's brother.

19 Q So you all couldn't even get Greenville County forensics
20 to take pictures of your door that night?

21 A I couldn't get Greenville County to do nothing.

22 Q Just a bad night for you guys?

23 A Yeah.

24 Q Bad night.

25 MR. BARCROFT: Your Honor, I'm going to object to his

constant reference of bad night.

THE COURT: I sustain the objection.

Move on, Solicitor.

BY MR. MOORMAN:

Q So you got to investigate some things on your own?

A I didn't investigate I was in jail at the time. They went over there the very next morning after everything happened and took the pictures.

Q You mentioned jail, do you have a prior record?

A Who me?

Q Yes, sir?

A I've been in jail a few times.

Q In fact, isn't it true that in 1998 you were convicted of shoplifting?

A Yes, sir.

Q Isn't it true in 1998 you were convicted of five counts of fraudulent check?

A Yes, sir.

Q And isn't it true that in 2004 you were convicted of petit larceny?

A Yes, sir.

MR. MOORMAN: Your Honor, I've got nothing further.

THE COURT: Any redirect?

MR. BARCROFT: No, Your Honor.

MS. MANIGAULT: No, Your Honor.

1 THE COURT: Thank you, you can step down.

2 All right, Ms. Manigault.

3 MS. MANIGAULT: That's Bagwell's case, Your Honor.

4 THE COURT: Anything in reply, Solicitor?

5 MR. MOORMAN: Your Honor, could we -- could we have some
6 time to answer that question?

7 THE COURT: I'll give you about five minutes.

8 Take the jury out, please.

9 (WHEREUPON, the jury left the courtroom at
10 approximately 4:27 p.m.)

11 THE COURT: All right, take a short recess.

12 (WHEREUPON, a short break was taken.)

13 THE COURT: All right, Solicitor.

14 MR. MOORMAN: Your Honor, the State will have no reply.

15 THE COURT: Okay, we'll start a 9:00 have arguments and
16 charge. Do you have any particular request you want to give
17 me? I'm going to charge burglary, circumstantial evidence,
18 Mr. Spain's right not to testify or present evidence. What
19 else do I need? Well if you think of anything give it to me
20 in the morning.

21 MS. MANIGAULT: Yes, sir.

22 MR. MOORMAN: Yes, sir.

23 MR. BARCROFT: I'm thinking, Judge.

24 THE COURT: You don't have to give it to me today.

25 All right, bring the jury.

1 MR. BARCROFT: Judge after you excuse the jury we just
2 want to put on the record renew our motion.

3 THE COURT: Sure. Certainly.

4 MS. MANIGAULT: Thank you, Your Honor.

5 (WHEREUPON, the jury entered the courtroom at
6 approximately 4:36 p.m.)

7 THE COURT: All right, Solicitor, I understand you have
8 nothing in reply; is that correct?

9 MR. MOORMAN: Yes, Your Honor.

10 THE COURT: All right, now, ladies and gentlemen, the
11 testimony in this case is complete. What we have remaining
12 is the final arguments by the attorneys and then my charge on
13 the law. We'll do that in the morning. I'll ask that you be
14 back in your jury room tomorrow morning at 9:00. Now, please
15 remember when you leave do not talk about this case amongst
16 yourselves or with anyone else. If anybody contacts you or
17 tries to talk to you about this case, get their names and
18 addresses and report that to me. You can tell family members
19 that you're serving on this case, what kind of case it is but
20 don't discuss the facts with them or like I said anyone else.
21 Please have your badges on, have them on when you come back
22 in the morning. Again, so that everyone involved will know
23 that you are a juror on the case and they should not discuss
24 it in your presence. So please be back promptly at 9:00,
25 ready to go in the morning. See you then. Thank you.

1 (WHEREUPON, the jury left the courtroom at
2 approximately 4:37 p.m.)

3 THE COURT: All right, any further motions now?

4 Mr. Barcroft?

5 MR. BARCROFT: Your Honor, on behalf of Defendant Spain,
6 I would renew my motion for a directed verdict incorporating
7 the basis that I stated earlier as well as the proffer
8 testimony and the other objections that I made during the
9 defendant's portion of the case, Your Honor. And also want
10 to include objections by Defendant Bagwell as well.

11 THE COURT: And your motion's denied.

12 Ms. Manigault?

13 MS. MANIGAULT: Your Honor, on behalf of Defendant
14 Bagwell we would renew our motion for a directed verdict,
15 incorporating all our previous objections and objections of
16 Defendant Spain.

17 THE COURT: And your motion's denied.

18 MS. MANIGAULT: Thank you.

19 THE COURT: All right, see you back in the morning.

20 MR. MOORMAN: Your Honor, would you -- may my witnesses
21 be excused?

22 THE COURT: Yes, they can be excused, certainly.

23 MR. MOORMAN: Thank you.

24 (WHEREUPON, the proceedings were concluded to
25 be reconvened Wednesday, April 13, 2005 at

1 approximately 9:00 a.m.)

2
3 Wednesday, April 13, 2005

4 THE COURT: Solicitor, you waive opening argument?

5 MR. MOORMAN: Yes, sir.

6 THE COURT: All right, bring the jury.

7 (WHEREUPON, then jury entered the courtroom at
8 approximately 9:12 a.m.)

9 THE COURT: All right, who's going first?

0 MR. BARCROFT: I think I am. May it please the Court?

1 THE COURT: Yes, sir.

2 MR. BARCROFT: Good morning. Let me begin by telling you
3 that I appreciate your paying attention as we went through
4 the case. Go through the trial I looked over here and it
5 looked like everyone was listening carefully and paying close
6 attention. For that I appreciate that. I also want to tell
7 you that I appreciate you not making up your mind until
8 you've heard the entire case. And you'll recall at the
9 beginning of my remarks to you at the beginning of the trial,
10 I asked you to keep an open mind and to be fair as we went
11 through the trial. And certainly, I would ask you to
12 continue to do that.

13 This is my opportunity to basically sum up the case to
14 you and to point out, present some things to you that I think
15 are important that I would ask you to consider when you go

1 back and begin your deliberations. After I'm through Ms.
2 Manigault will have an opportunity to speak to you and then
3 after we both have had that opportunity the prosecutor,
4 Mr. Moorman, can speak to you as well. So certainly I won't
5 have an opportunity to speak to you again. This will be my
6 last opportunity so will try to anticipate to have some thing
7 that Mr. Moorman may say to you. And after Mr. Moorman has
8 spoken to you then the Judge will give you the law. He will
9 charge you on the law of the case and it will then become
10 your job to apply the facts as you determine and as best as
11 you can determine them to the law that, His Honor, gives you
12 and to render a verdict.

13 There was a commercial years ago, perhaps it's before
14 some of y'all's time but not all of you. There was a
15 commercial back at Wendy's, a Wendy's commercial years ago
16 and there was a lady that walked up to the counter and
17 ordered a burger and she looked under bun and she looked in
18 there and said, Where's the beef? And I would submit to you
19 that this case is very much -- well reminds me of that
20 commercial frankly. Because I'm left here with lots of
21 questions asking where's the beef? Mr. Moorman got up to you
22 and spoke to you in his opening statement and laid out for
23 you what on the surface appeared to be some neat set of
24 facts, some clean box, some clear cut case that he had, that,
25 you know, some slam dunk in essence. And I would submit to

1 you, ladies and gentlemen, what you heard from the witness
2 stand, notwithstanding what Mr. Moorman said to you, is not
3 anything close to what he presented to you in his opening
4 statement.

5 We heard the witnesses, we heard the statements, the
6 testimony of Mr. Snoddy and Mr. Armstrong and essentially
7 very little of that I would submit to you, ladies and
8 gentlemen, was accurate or true or certainly -- and certainly
9 not consistent with the statements. And you'll have with you
10 the defendants exhibits. The defendants put in -- we put in
11 the statements of these two State's witnesses because you'll
12 see that these statements are absolutely inconsistent with
13 their testimony. There were a number of inconsistencies.
14 And you'll recall that Mr. Snoddy set up here in this witness
15 stand and he was 100 percent sure, he was just positive, he
16 was adamant that he says he saw one person and, of course, he
17 says he made eye contact with him. You'll recall his
18 testimony that he's creeping around these apartments and he
19 picks up a scooter and he says although he's edgy about it he
20 say, you know, it was in self-defense but he doesn't really
21 know why he picked it up. You might recall.

22 Then he goes on down a little bit further from apartment
23 10 to [REDACTED] and at that time he picks up a bar, a metal
24 bar. And again he says it's for his protection. Then he
25 says that he's standing there for a few seconds and he sees

1 Mr. Spain coming out of the apartment is his testimony. And
2 he proceeds to hit him with this bar. He hits him twice he
3 says and then he puts the bar down even though that he says
4 Mr. Spain attacks him. None of that makes sense when you
5 consider what Mr. Armstrong says. And when you put their
6 statements together absolutely none of it makes since. And
7 none of it, frankly is consistent with Mr. Snoddy's own
8 statement. Because he doesn't mention anything in here about
9 a scooter, he doesn't mention anything in here about a bar.
10 He doesn't mention anything except that he says he sees two
11 people coming out of the apartment. Which he absolutely
12 denies today.

13 I submit to you, ladies and gentlemen, Mr. Snoddy's
14 statement, the only witness in this courtroom who says that
15 he saw Darryl Spain in the apartment. He's the only witness
16 here who says that he saw that is the most unbelievable,
17 incredible witness that the State could bring up here to you.
18 This is the biggest bunch of mess I think I've every heard in
19 a courtroom as far as what he says in his statement and then
20 what he puts on this witness stand. It's absolutely
21 unbelievable. It's absolutely incredible. It's inconsistent
22 with what Mr. Armstrong says and it's inconsistent with what
23 he say in his own statement.

24 Now here's the question, where's the beef? Where is
25 there any scientific evidence at all to say, that would

1 demonstrate, that would prove that Darryl Spain was every in
2 that apartment? Where are the fingerprints? Where's the
3 blood that they say that from stepping on the glass? Where
4 is there any DNA? There's not a bit of physical, scientific
5 evidence, there's no fingerprints, there's no nothing. What
6 they bring to you is they bring you some picture of a TV that
7 they say was damaged a year and a half ago and the Prosecutor
8 goes out and takes a picture of the TV a day before the
9 trial. Remember the prosecutor got up here and he sort of
10 was mocking Mr. Bagwell. So you did your own investigation.
11 You had to do your own investigation. It was a bad day. You
12 had to do your own investigation. You know who did his own
13 investigation? Was the Prosecutor the day before the trial.

14 And the reason why is because the police didn't do an
15 investigation. This thing was investigated by a novice, by a
16 trainee, a guy named Hunter who they didn't even bring into
17 the courtroom. They can't even bring him up here to testify
18 to you. Some guy who I don't know where he is, Hunter, who's
19 a trainee, he's a novice. We know that forensic was called
20 out there because the first call that came in, the only call
21 that came in, ladies and gentlemen, was the call by the
22 defendant. And they called 911 for disturbance and it turned
23 into what? It became then an assault call. And then an
24 intoxication and then a forensic call. Never was a burglary.
25 So where is the forensic evidence from the scene? None.

1 Where's the investigating officer from the scene? You had
2 Mr. Cannon up here dancing around about whether he was
3 training, observation or whatever. Who apparently didn't do
4 anything except look around. Where's the shoe? Where's the
5 other shoe? There is no other shoe. That shoe doesn't even
6 fit my client, Mr. Spain. You heard Mr. Spain, Sr. say that
7 his son doesn't wear a size 7 and a half. Where was the
8 other shoe? They want you to think that he went in there and
9 broke into their apartment barefoot. Busting out the glass.

10 Now, I don't know if they're going to try to say he
11 busted in or busted out the glass. Apparently they're going
12 to say he busted in, I guess. But, you know, the thing keeps
13 changing all the time. But Mr. Armstrong testified that when
14 he opened the door, remember, he says he saw Mr. Bagwell
15 running out. That was Mr. Armstrong's testimony. And why
16 can't we believe a thing about Mr. Armstrong's testimony by
17 the way? Because there's another question of where is this.
18 Where is the 911 call that he says he made? Where's that?
19 He didn't make one. He didn't call the police. He never
20 called the police. At least that's what the records
21 indicate. You can't believe a thing Armstrong tells you
22 either. The defense calls the communications officer from
23 the communications department down here at the law
24 enforcement center and brought the official records up here
25 to tell you what the calls were that came in on those dates.

1 On the 13th and 14th. There was only one call that came in
2 to 911 and that call was placed by the defendant. Was not
3 placed by this guy over here.

4 Now I want to ask you something else, if you look at this
5 photograph that the State put in. The mystery shoe here.

6 I'm going to call it the mystery shoe because I don't know
7 whose shoe that is. Nor do I know who broke out that window.

8 I don't think any of us know that frankly. But there's
9 interestingly enough if you notice there's glass laying on
10 top of that shoe. Notice that? Somebody's not wearing that
11 that shoe when they're going in and out of that door and get
12 glass laying on that shoe. That shoe -- maybe that shoe was
13 planted there by Mr. Armstrong or Mr. Snoddy, I don't know.
14 Maybe that shoe was there all along. Probably was there all
15 along when this window got broken. I don't know. But it
16 doesn't belong to my client. It doesn't connect him to any
17 burglary.

18 Then they come up with a year and a half later about this
19 TV being moved. They've got to come up with a way to say
20 that there was some intent to commit a crime. Because that's
21 one of the elements of burglary. An unlawful entering during
22 the nighttime with the intent to commit a crime. So they
23 manufacture, they come up with this TV that was moved a year
24 and a half later. There was nothing reported at the time
25 that anything was missing, that anything was broken, that

1 anything was disturbed. That was never indicated at the time
2 that the officers came out there. None of that.

3 Now I told you at the beginning of the case that nobody
4 has to prove themselves innocent. Because there are
5 circumstances when somebody cannot be because of injury or --
6 or whatever. They're incapable or they don't have the
7 ability to prove themselves innocent. This county never
8 places someone in the position where you have to prove your
9 innocent. That is a fundamental, core right that everybody
10 has in this country. And that is a right that is -- you've
11 taken an oath to protect when you go back into the jury room.

12 So let's ask what evidence do we have? What did the
13 State bring to you? The State brought you four witnesses.
14 Two of whom are absolutely -- I don't think there's anything
15 that we can accept as true, that we can really put any
16 confidence in at all. Then they brought you the testimony of
17 Officer Cannon and then they brought you the testimony of Mr.
18 Wilson. Wilson's job, he went out and took photos of Darryl
19 Spain and of Mr. Bagwell at the hospital. That was all his
20 involvement was. He goes to the hospital and takes pictures.
21 You look at this guy and I'm going to tell you what, this guy
22 was beat, the stuffing was beat out of this guy. He was
23 mauled. That wasn't being hit twice. He was whopped. They
24 take pictures of his feet and you can see there's injuries
25 all over his feet. Not on the bottoms here but there's cuts

1 on the top of his feet. Where are the pictures of the top of
2 his feet? Where are pictures of the injuries to his arms and
3 to his body where he was drug through the parking lot?

4 His father told you that he saw him two days after that,
5 went down and visited him and he was cut all up. Scraped up.
6 You heard Mr. Bagwell testify that he'd been drug through the
7 parking lot. They dragged the guy. You know what's
8 interesting? These guys tell you they went around the side
9 of the building and they say passed out. Now I'm going to
10 tell you he was probably knocked out because he was beat with
11 a bar. But then they drag him around there. Because when
12 the cops finally gets there, when Officer Cannon arrives,
13 Officer Cannon says that he's inside the apartment laying in
14 if kitchen floor. Now, how did he get there? Well they
15 don't want to tell you that they continued beating on him and
16 drug him into the apartment. Why don't they want to tell you
17 that? Because nothing that they stay holds any water. You
18 can't put any confidence in anything that Armstrong or Snoddy
19 told us. None.

20 Where's Officer Hunter? This trainee, this investigating
21 officer? Where's he? Why didn't the State bring him? They
22 have to prove their case, ladies and gentlemen, where's he?
23 Where's the glass that would have been removed from Darryl
24 Spain's feet if he had been walking on this pile of glass or
25 run through this glass. Where's any of have that? The

1 officer told you that if the doctors were to remove that they
2 would have turned it over to them. That's none of that. And
3 the reason there isn't is because Darryl Spain wasn't ever in
4 that apartment. Where's the photo of Darryl Spain's -- his
5 chest and his knees and his elbows and the top of his feet?
6 Where are those photos? Why don't we have pictures of that?
7 Why don't we have the full picture? Where's the iron bar?
8 Why don't we have that? Why didn't forensic collect that? I
9 want to know that. Where's the other shoe? Where's the
10 evidence, ladies and gentlemen, of any disturbance in this
11 glass? If somebody's running through this glass you don't
12 think it's going to be disturbed or moved or slid over that
13 there's going to be some evidence of that? There's no
14 evidence of that at all.

15 Where's the scientific evidence, ladies and gentlemen?
16 Where's -- if he was bleeding, if his feet were injured,
17 where's the blood inside the apartment? Where's the blood on
18 the glass? There's not even any testimony of any human blood
19 let alone any DNA to say who's blood it is. Where are the
20 fingerprints from this TV? Where are the fingerprints from
21 the other stuff that they say was moved? Where's the
22 fingerprints from the screen or anything else? There's none.
23 There's no testimony -- there's no gloves, there weren't any
24 shoes, there would be physical evidence if this was a
25 burglary. There's none. That ladies and gentlemen, each one

1 of these is enough reasonable doubt.

2 Now let's get to some good stuff. Where's Bam? Who was
3 that guy? Where's Bam? Why don't we have him here today?
4 Bam supposedly held the guy back and said, Don't hit him
5 again, just call the law. You don't have to worry about it.
6 Why didn't the State bring Bam in here to us? There isn't a
7 Bam. Where's the neighbors? Where's the names of the
8 neighbors? Where -- did they knock on any doors? Did you
9 hear anything? Excuse me, did you hear any disturbance?
10 Could you tell us what happened? Did you hear any broken
11 glass? Did you hear anything? Nothing. There's none of
12 that. There's no investigation at all. They didn't -- where
13 is that? Where's the 911 call, ladies and gentlemen? I want
14 to know that. Where's the phone records of this Armstrong
15 guy who says he got a call on his way home and then he
16 hurried up. You know, otherwise, they got to have some
17 reason, right, for this guy, for their story. They've got to
18 have some reason for them the say I waited out front and we
19 sent the other one around the back. Right? Because you
20 wouldn't normally do that when you just went home from work.
21 So where's any evidence that he got the call?

22 This whole thing is just a fabrication. There's no
23 neighbors. There's no 911 call. There's no Bam. There's no
24 Jason. Where's Jason the other roommate? Who had the key to
25 the apartment by the way, that could have let these guys in.

1 I mean, we can get into all kind of speculation scenarios.
2 But that's not our job to get you to speculate. These guys
3 could have -- I mean, where's Jason? I mean, the fact is
4 they've got to prove that they didn't have permission to be
5 in the apartment. And they can't prove that because they
6 don't even have Jason. To come here and say I didn't give
7 them permission. I don't have to prove anybody innocent.

8 Finally, ladies and gentlemen, where's the truth in Chris
9 Snoddy's statement? There's not a bit of credibility that we
10 can place in either Chris Snoddy or Jarret Armstrong. None.
11 And that's all they have. They've asked you basically to
12 find somebody guilty on the word of two people whose
13 statements are absolutely not credible.

14 Now what is reasonable doubt? The Judge is going to
15 charge you on reasonable doubt. Our Courts use to say -- and
16 Courts have said that reasonable doubt is a kind of doubt
17 that causes a reasonable person to hesitate to act. Now he's
18 going to -- the Judge will tell you, he'll give you some
19 things to help you understand what reasonable doubt is. But
20 one thing I can help you with that possibly and maybe some of
21 you have served on a civil case, on a civil jury, when
22 somebody's suing someone for monetary damages. In those
23 kinds of cases the burden of proof is proof by preponderance
24 of the evidence. And if you would imagine a traditional set
25 of scales, preponderance of the evidence is if those scales

1 tip slightly in one person's favor or the other, that's
2 preponderance of the evidence. That's the legal term for
3 more likely than not. But in a criminal case, ladies and
4 gentlemen, the burden of proof is much greater than that.
5 The burden of proof is beyond a reasonable doubt.

6 Now, we're not talking about whether the sun's coming up
7 tomorrow or not. We're talking a whole lot more than more
8 likely than not. We're talking more than probabilities.
9 It's not a question of -- you don't go back in the jury room
10 and decide, I wonder what really probably happened? Or what
11 probably took place? Folks, that's not the question that's
12 presented to you as a jury in a criminal case, ladies and
13 gentlemen. It's not whether something probably happened.
14 It's whether you are firmly convinced. Whether you are
15 firmly convinced in an important matter. And I'm going to
16 tell you I know I wouldn't buy a used car from either one of
17 these guys based on what they told me. Let alone consider
18 the weight of what we're dealing with here in this courtroom
19 today. The evidence is not consistent with what they say.
20 The physical evidence is inconsistent. And in addition to
21 that there's an absolute lack of evidence. There is just
22 overwhelming lack of evidence and questions that's left.
23 Where's the beef?

24 Now the prosecutor is going to get up there and say to
25 you, I expect, well you've got the testimony of an eye

1 witness. You got an eye witness here and, you know, the
2 prosecutor -- Mr. Barcroft's over there trying to chase
3 herrings, red herrings. And you chase rabbits or whatever.
4 This is evidence that they can bring that they should have
5 brought to you. What they did bring to you was an alleged
6 eye witness. I questioned them about that because I don't
7 think, frankly, I don't think there was a burglary that ever
8 took place. I think there was a fight and that these guys
9 called the law. And in order to cover themselves and protect
10 themselves from beating the stuffings out of two people, they
11 come up with this.

12 Their stories are inconsistent about sending one around.
13 You know, he's going all the way down four doors and he's
14 going around the building and he's coming around the back.
15 And remember Armstrong, he hollers, He's coming around the
16 back. Like he's going to hear that. And there was a big
17 group of neighbors supposedly. There were several neighbors
18 out there when they got home. Remember he told you,
19 Armstrong, says when we got back -- because it was one of the
20 neighbors that supposedly had called him on the phone. Bam.
21 The guy who didn't know him that well but had his cell phone
22 and all of that. That all was kind of fishy. And yet the
23 officer said when he got there he talked to the neighbors and
24 they didn't know anything. They all got there afterwards.
25 Supposedly. Well you know they hadn't been able to get all

1 their stories straight when the officers got there.

2 Ladies and gentlemen, where's the beef? Where's the
3 physical evidence that would be consistent in the case like
4 this? None. They call forensics out there. They don't have
5 it. Darryl Spain got the absolute stuffings beat out of him
6 and was drug through the parking lot and was beat up. And he
7 was injured. Then they're going to try to say that that's
8 evidence that he was in the apartment. But that's not
9 evidence that he was ever in that apartment. That's evidence
0 that he was beat up. That's evidence that he was drug around
1 out there. But there's not one piece of physical evidence
2 that links him to being inside that apartment. None.

3 Nothing but the word of one guy. Who got up there, Chris
4 Snoddy, and had to finally admit that whatever he put in his
5 statement here was not true. And his only explanation was,
6 well I didn't read it. Remember that? And then the officer
7 danced around whether it had been read to him or not or
8 whether it was just handed. Come on. It says here, I do
9 freely and voluntarily give the statement to Deputy Hunter
0 and M.B. Cannon who have identified themselves to me as
1 deputies. I've read the statement and it is true and correct
2 as the best I recall. I mean, that's right on here that he
3 signs supposedly. Then we get in here and it's all junk.

4 There's reasonable doubt. Overwhelming reasonable doubt
5 in this case. And I ask you, ladies and gentlemen, to return

1 a verdict of not guilty. Because there's absolutely
2 insufficient evidence in this case. And Mr. Spain is not
3 required to prove anything to you. Thank you.

4 THE COURT: Ms. Manigault.

5 MS. MANIGAULT: May it please the Court?

6 Ladies and gentlemen, I'm Dorothy Manigault, as I told
7 you yesterday, I represent Steve Bagwell. As I told you
8 yesterday there would be -- not be a neat package presented
9 to you. We don't make the facts, neither do you. Your
10 Honor, will tell you that you are the trier of the facts and
11 he will give you the law to apply to the facts that you heard
12 this courtroom. In recounting anybody's testimony to you, I
13 would not intentionally misstate a statement made by a
14 witness. So I ask for you to please use our own recall as I
15 recount to you anything anybody said.

16 I told you yesterday that a person comes to court with
17 the presumption of innocence. And that presumption remains
18 with the individual until you, the jurors, go back to your
19 jury room and deliberate together and come to a unanimous
20 verdict. That presumption remains. It's like a trench coat
21 that you use in the rain to button up or a robe of
22 righteousness as referred to in Biblical terms. But it is a
23 cloak that has to be thoroughly removed and taken from a
24 defendant during a trial. If I have a trench coat on you
25 just can't unbutton it and have it hanging off my shoulders

1 and say you proved that I probably did something. You have
2 to thoroughly remove the cloak of innocence.. Thoroughly
3 remove.

4 The State has charged, with presenting to you, facts or
5 evidence, to prove beyond a reasonable doubt that an
6 individual did what he or she is charged with. In this case
7 we have undisputed facts. Number one, there is broken glass.
8 Number two, the glass door was broken. Number 3, that the
9 police was called. Number four, that Steve Bagwell, my
10 client, called the police at 12:57 a.m. Number 5, that there
11 are no other calls to the police department. No other
12 record. The question was asked, would a cell phone show up?
13 Yes. The communications officer answered yes. Any call
14 would show up if a call had, in fact, been made to 911. So
15 yes 911 was called. Undisputed. Undisputed with my client
16 that called. Undisputed the police came. Undisputed is
17 something happened. What happened? What happened?

18 Now, Your Honor, will tell you about the believability of
19 a witness and the credibility of a witness. You can believe
20 any portion of any witnesses statement. You can believe all
21 of what a witness says. You can believe none of what a
22 witness says. That your prerogative as triers of the facts.
23 What does a person have to gain by what he says? What bias,
24 what prejudice? Now the State offers to you that my client's
25 been convicted of fraudulent check, yes. And I believe

1 shoplifting, yes. But that doesn't say you can't believe
2 him. So the credibility and the believability of a witness
3 you weigh, you decide from the demeanor from how they
4 testified. From how they presented themselves to you. To
5 the Court.

6 I submit to you that this is not a neat package. That as
7 drives of cars everyday, you drive over roads with potholes.
8 I submit to you that this case has several potholes. I would
9 even classify it differently, they have sink holes. Which
10 are huge gaps in the evidence. Something has been lost
11 somewhere. Something has been lost somewhere. The triers of
12 the fact, you don't leave your common sense at home. You use
13 your life experiences, you use your common sense to weigh and
14 sift the evidence and facts that you've heard. Something
15 happened. Jarret says he gets a call from Bam. Jarret says
16 that he has, he Jarret, has Bam's phone number and Bam has
17 his phone number. That's what he testified. So I could get
18 in touch with him because he does cars and whatever else
19 repairs. So I could call him when I need call him and he can
20 call me when he needs to call me.

21 Okay, if Jarret has Bam's phone number, why doesn't the
22 State have Bam's phone number? Why isn't Bam here to
23 testify? If Bam made the call to Jarret, somebody's broken
24 into your apartment. If Bam was out there helping Chris
25 Snoddy hold Jarret off of Steve Bagwell, my client. So Bam

1 is reachable according to Jarret. Bam is obtainable. He
 2 could have been here. To verify or not verify what Jarret
 3 said. Neighbors. If you have, whether it's four or 10
 4 neighbors out there or it could have been one neighbor. But
 5 they testified multiple neighbors. If you have multiple
 6 people outside for disturbance, why don't we have any one of
 7 those persons here?

8 Jarret and Chris testified that the neighbors saw what
 9 was going on. Officer Cannon testified that in his
 10 investigation at the scene, that nobody came to him to say we
 11 saw this. That there was nobody. That if there was anybody
 12 they didn't tell him about it. If there was an independent
 13 witness with nothing to gain, nothing to hide, nothing to
 14 cover, then they should have been here. Why aren't they
 15 here? Officer Cannon said well I didn't write a report which
 16 is fine. Officer Hunter wrote the report is what he
 17 testified to. All right. So why aren't there any names in
 18 the report? Something happened. Something happened. I
 19 wasn't there so I don't know what happened but I can give you
 20 a suggestion. Jarret gets home, does not call the police.
 21 Now if a person's apartment being broken into or has been
 22 reported, received a call, somebody broke into your
 23 apartment, it seems like the first thing either the Bam
 24 person would have done was call the police. Or when Jarret
 25 gets to the premises he would have called the police. But,

1 he's more interested in getting into the apartment, getting
2 upstairs, quote, Trying to find if anything's missing.
3 What's so important in that apartment that he wants to get
4 there before the police gets there? What's going on here?
5 You fill in the blanks. Something happened. Something
6 happened. All right.

7 Chris Snoddy testifies that he saw Spain run out. Jeff
8 (sic) says Jarret was opening the front door. Jarret says as
9 he was opening the front door Bagwell ran out. So is it like
10 these stories on TV the person transforms as they walk
11 through the area from one person to another person? So did
12 Steve transform into Spain or did Spain transform into Steve,
13 my client? I submit to you, my client was not in that
14 apartment. Neither was Mr. Spain. Why would they've concoct
15 a story to cover what? I don't know.

16 You have this picture, the Defendants Exhibits and it
17 will show a cracked door jam. Of apartment [REDACTED] where my
18 client lived. Darryl Spain. Why would somebody break into
19 his apartment to beat him up? Why? It's undisputed, it's
20 undisputed that six or seven -- it's undisputed that my
21 client got beat. That's not even a question, they admitted
22 that, Jarret and Chris. It's undisputed that Mr. Spain got
23 beat up pretty bad. Why are they so interested in beating
24 these guys up rather than calling the police? Why? I submit
25 to you that there was no burglary except on my client's

1 apartment.

2 My client testified, I think the State asked him, why
3 didn't you talk to the police or something of that nature.
4 He responded, I couldn't get the police to do anything. I
5 couldn't get the police to do anything. He is the one who
6 called. He's the one that called. But the first contact was
7 made with Jarret by the police. He's the one that called.
8 Disputed facts, was there a burglary? I submit to you that
9 there was not. Credible evidence, Officer Hunter did a
10 written report, he's not here to testify. No appearance. So
11 suggestion of why he's not the here. It's not our job to
12 disapprove or to prove innocence. But we suggest to you
13 today that these defendants are not guilty. Something
14 happened. Something gone wrong. Wrong.

15 On 9/14/2003 something happened. On 9/14/2003 Jarret and
16 Chris gave a statement. Right after the incident. The
17 statement is very brief, very short. And totally
18 contradicted by there testimony in court. Totally
19 contradicted. So they're asking you to believe them
20 yesterday and they asked the police to believe them on 9/14.
21 The officer only writes what he's told. The officer does not
22 create the facts. He investigates the case. Or she
23 investigates the case. So whatever is here is what they were
24 told. He says he didn't read it. Well he had to tell them
25 about it. Why would an officer add facts to a statement?

1 That an alleged victim is giving him.. Why would he add
2 facts? Or why would he keep facts out? Officer Cannon
3 testified in the normal course of duty that they write what
4 they're told. And then the officer -- and Chris Snoddy said
5 he signed it. And Jarret Armstrong signed the Statement.

6 Go home, speed up. The physical evidence in this case,
7 as I said, are all the undisputed facts. The dispute is was
8 there a burglary? Where's the intent? The intent has been
9 told do you, they're trying to prove that TV was moved.
10 Chris said could have been moved a couple inches, not sure.
11 My point to you is that you have a 54 inch floor model TV.
12 If somebody's trying to steal a TV wouldn't it seem like they
13 would steal the 27 inch that was right there next to it.
14 Rather than trying to struggle with a 54 inch floor model.
15 Now Chris testified, if you recall, that there was a 27 inch
16 television right next to the 54 inch floor model. They're
17 trying to conjecture or conjure up that because they say the
18 TV was moved slightly and the DVD player was not in the spot
19 where he usually put it. Chris testified that he leaves it
20 on the floor by the TV anyhow. The TV is catty-cornered.

21 There is no movement of objects in that house expect for
22 what Chris and Jarret moved themselves. Nothing is missing
23 from the house. They have a 27 inch TV downstairs, they have
24 a television upstairs. They have at least three DVD players
25 according to Chris. They have other items in the house. But

1 Jarret was not worried about any of that stuff. He said, he
2 testified, I looked at the broken glass at the door and I
3 went immediately upstairs. The State asked him, did you
4 check the bathroom, did you go -- No, I went upstairs.

5 Something was upstairs. I asked him did he have a large
6 quantity of money in house. He said, No. Was there
7 something else in the house that he had to clear out before
8 the police got there? Was there a dispute here about
9 something else? That they could not tell the police about?

10 Ladies and gentlemen, I submit to you a verdict in this
11 case is not guilty. The term verdict comes from a latin term
12 veredicto which means to speak the truth. I submit to you
13 today that a verdict that speaks the truth in this case is a
14 verdict of not guilty. Thank you.

15 THE COURT: Solicitor.

16 MR. MOORMAN: Thank you, Your Honor.

17 Mr. Barcroft.

18 Ms. Manigault.

19 Ladies and gentlemen, I'm glad that I have this
20 opportunity to speak to you before you go back in your jury
21 room. And I'm going to talk to you about these tasks that I
22 talked to you about in opening statements. Remember, I
23 talked about the oath that you took. The oath that required
24 you to perform three tasks. The first task to determine what
25 the facts are. The second task to apply the law of the

1 facts. The third task to reach a verdict. I want to talk
2 about the first task. What are the facts? And before I do
3 that I want to talk to you about the concept of reasonable
4 doubt. Mr. Barcroft alluded this concept and I want to talk
5 about it myself. The Judge is going to charge you on the
6 law, he's going to tell you what reasonable doubt is.
7 Anything he tells you is different from what I tell you, you
8 must take it as the Judge gives it to you and not as I do.

9 But the Judge is going to tell you that the terms
10 reasonable doubt does not mean beyond any doubt. It does not
11 mean beyond all doubt. They're few things in life we know
12 with absolute certainty. And the law doesn't require that.
13 All the law requires is that you are firmly convinced of the
14 defendants' guilty. Keep that in mind. Let's talk about your
15 first task. Determine what the facts are. And I have in my
16 notes here that there's doubt that somebody broke in. Maybe
17 that's a little presumptuous of me because Mr. Barcroft and
18 Ms. Manigault, in a sort of buckshot approach to what
19 happened, go from the concept of where's the beef and tries
20 to explain everything or tries to point out everything they
21 say we don't have to -- and I wrote this down, the whole
22 thing is a fabrication. The whole thing is entirely made up.

23 How do we know there was a break-in that night, ladies
24 and gentlemen? We've got physical evidence. We got this
25 picture of the glass door that was broken. That's how we

1 know there was a break-in that night. How else we know? We
2 have Jarret Armstrong and we Chris Snoddy who both said that
3 there was a break-in that night. How else do we know? We
4 have the police responded. We had Deputy Cannon and Deputy
5 Hunter who responded. Deputy Cannon on cross-examination,
6 Ms. Manigault asked him, in determining what happened, are
7 Chris and Jarret the only people you spoke with? And what
8 did he say? He said, No. I spoke with neighbors. Neighbors
9 also informed me about what happened. After talking with
0 those neighbors they placed the defendants under arrest.
1 There was a break-in that night, ladies and gentlemen. We
2 have the picture right here. We have the glass picture, the
3 picture of the glass on the photo right here. And we the
4 testimony of Jarret and Chris. There was a break-in that
5 night.

6 Now, ladies and gentlemen, this the really where the
7 rubber meets the road. This is where the fact that you guys
8 are most concerned about. Who broke in? Who broke in?
9 Really two choices. Either these defendants broke in or
0 somebody else did. Or somebody else did. Let's talk about
1 all the evidence we have. That these defendants are the ones
2 who broke in. First off, we have the testimony -- well
3 before you get to the testimony, let's look at this picture
4 right here. Remember this picture right here? Jarret and
5 Chris both said that apartment [REDACTED] and their apartment

1 was right here. Who lived in apartment [REDACTED] which is
2 right here? These defendants. Darryl Spain and Steve
3 Bagwell.

4 Now let's get to the testimony of witnesses. We have --
5 first off we have Jarret's testimony. What was his
6 testimony? I won't repeat the entire testimony because you
7 heard. The testimony was went to pick up Chris at work. At
8 about 12:15 they left to come home. When they left to come
9 home, took them about a minute or two to get home, he got a
10 phone call about a broken glass. Got a phone call and he
11 sped up. When he got home he spoke with some neighbors. He
12 went to the front door, Chris went around the back. And when
13 Jarret went inside who did he see? Who did he say he saw?
14 Who did he saw, ladies and gentlemen? He says he saw Steve
15 Bagwell. He said he saw Steve Bagwell. The man who lived
16 two doors down. The man he'd gone to elementary school with.
17 The man he'd gone to high school with. He said he saw Steve
18 Bagwell. He said he saw Steve Bagwell.

19 What else did he say? Steve Bagwell was wearing a red
20 shirt. Was wearing a red shirt. There's been a lot of
21 discussion about these statements and I want to talk about
22 them in just a little bit. But one thing I want to draw your
23 attention to on Jarret Armstrong's statement that night.
24 What does he say? What does he say? I opened the front door
25 and the tall, white guy was wearing the red shirt. The red

1 shirt. He sees the defendant, Steve Bagwell. The defendant
2 Bagwell runs out. What does Jarret do? Jarret looks around
3 the first floor of the apartment very briefly, looks at the
4 glass then he goes upstairs to see if anything is missing.

5 Now remember what I asked him on direct examination. I asked
6 him, Did you look in the bathroom downstairs? Did you look
7 in the kitchen downstairs? He said he didn't look in those
8 places. He looked very briefly around the TV area downstairs
9 and then went upstairs. Well guess who was still downstairs
0 when he went upstairs? The other defendant, Darryl Spain.

1 Now, let's talk about what Chris was doing at the time.
2 Jarret got to the front door, told Chris to go around. Okay.
3 Jarret -- the testimony -- if you remember the testimony,
4 Jarret did not wait for Chris to get around all the way
5 around to the back. He did not wait before he opened up that
6 door. He opened up the door, saw Steve Bagwell and yelled,
7 They're coming. To Chris. Well what did Steve Bagwell do
8 when he said they're coming? If you remember, this red grill
9 here where the patio to apartment [REDACTED] is, the testimony
0 was, what did Steve Bagwell do? Steve Bagwell ran out of
1 apartment [REDACTED] two patios down, back into his apartment.
2 Before -- before Chris could get around. Before he could see
3 all the way down and before he could get all the around, he
4 got -- Steve Bagwell got out and went to his apartment.

5 Now, Jarret goes upstairs. And what happens when Jarret

1 goes upstairs? By this time Chris picks up the scooter first
2 then picks up the pole. Where does Chris go? Chris goes to
3 the patio, sees the patio door broken, with the pole, holding
4 the pole, ready. Ready to see if somebody was coming out.
5 Now, there has been a lot of -- there was a lot of argument
6 from Mr. Barcroft and from Ms. Manigault about why didn't
7 they -- why didn't they wait for the police to come? Why did
8 they actually try to take on these people that were in their
9 apartment? Well the answer is simple, ladies and gentlemen.
10 If you remember what Chris Snoddy said. Everything he had
11 was in that house. Every single thing he had. Is he going
12 to sit there, let somebody rob him, take off and hope that
13 the police find these guys? No. He and Jarret are going to
14 try to catch these guys while they're still in the apartment
15 so they don't get away. It makes perfect sense why they
16 didn't wait for the police to come. Because had they waited
17 for the police to come, these two guys might have been able
18 to get away. But they didn't. They didn't.

19 Now, let's go on with what happened. So who comes out?
20 After Jarret goes upstairs, the coast is clear, who comes
21 out? Who comes out. Darryl Spain. Darryl Spain. This
22 defendant. And what happens when he comes out? Chris Snoddy
23 hits him with that bar. Hits him twice. And he drops the
24 bar. And why does he drop the bar? Why does he drop the
25 bar? Because he's afraid he's going to kill him. Now

1 Mr. Barcroft says well why would you drop the bar and let
2 somebody come after you? Because what did Chris Snoddy say?
3 He was afraid he was going to kill him. Plus, when you hit
4 somebody with a metal pipe twice, isn't it safe to assume,
5 chances are they're going to submit? Especially if you get
6 in two good licks. Darryl Spain didn't. And you know why
7 Darryl Spain didn't? Because he was intoxicated. He was out
8 of his mind. And who said that? Deputy Cannon said both
9 defendants were extremely intoxicated. Even Steve Bagwell
0 said in his direct testimony he had been drinking. Chris
1 Snoddy said he was intoxicated.

2 Now what other evidence do we have that Darryl Spain came
3 running out, came running out of that sliding glass door?
4 Well, again, we've got the pictures of the glass door. We've
5 got the pictures of the glass door and the glass on the
6 patio. There's glass inside the apartment. And what else do
7 we have, ladies and gentlemen? I found this interesting,
8 ladies and gentlemen. This is a picture that Mr. Barcroft
9 didn't really talk about very much in his closing. Didn't
0 really want to pick these up and really talk very much about
1 these pictures. We've got pictures of Darryl Spain's feet.
2 Darryl Spain's feet. The roommate two doors down whose feet
3 just happened to be cut up. Which Chris Snoddy said was
4 barefoot. Who Chris Snoddy said had been wearing the
5 sandals, one of which had been left in the apartment that

1 night and he had seen him wearing them before. His feet were
2 cut up. Which is perfectly consistent with Chris Snoddy.

3 Now Chris puts the pipe down and they begin to fight and
4 Chris, as he told you, got the better of Darryl Spain. He
5 got the better of Darryl Spain. Obviously. That's one thing
6 too, ladies and gentlemen, if you remember. Chris never
7 wavered on what he did with Darryl Spain. He said he hit him
8 with the bar. He said he punched him repeatedly. Never
9 wavered. What happened after that? Darryl Spain submitted.
10 Chris and Jarret came together and they walked over to Steve
11 Bagwell's house. Now this is very important. Walked over to
12 Steve Bagwell's house. The man he had known elementary
13 school, high school. The man he had even invited over a
14 couple of times to be neighborly. Goes over to Steve
15 Bagwell's apartment and what does he do? They get in an
16 argument and Jarret hit Steve Bagwell. Hits him. Jarret
17 admitted that. Chris said that Jarret hit him. Why in the
18 world would Jarret hit Steve Bagwell if Jarret wasn't sure
19 that Steve Bagwell wasn't the guy who broke into his house?
20 Steve Bagwell himself, his story is I was lying on my couch
21 and Jarret came in and started beating me up and I don't even
22 know why. What is the only reason why Jarret would have hit
23 Steve Bagwell that night? If Jarret saw Steve Bagwell in his
24 apartment. That's the only reason why.

25 Some other testimony that's important for you to

1 remember. If you remember both Chris and Jarret said that
2 when they went over to Steve Bagwell's apartment and he was
3 out front, when they went over there they both saw a scratch
4 on his top eye and blood. A little blood trail coming down
5 the side of his face. Now how did he get that? How did
6 Steve get that? How did he get this right here? How did he
7 get this cut? One way he could have gotten this cut, ladies
8 and gentlemen, one way is if when he ran out, ran through the
9 glass in a hurry, see the arc on this glass? He could have
0 cut his eye when he was running out. When Jarret startled
1 them when they came back.

2 Now, Mr. Barcroft and Ms. Manigault spent a great deal of
3 time talking about, they say -- what they say everything we
4 don't have. And they talk a great deal about two things that
5 we do have. And that is two statements. One from Jarret and
6 one from Chris Snoddy. And they say that the whole thing is
7 a fabrication because there's some discrepancies in their
8 statements. Let's talk about these statements. First, let's
9 talk about what Deputy Cannon says when these statements were
0 being taken. Deputy Cannon said that when he and Deputy
1 Hunter were speaking with Jarret and Chris, they were very --
2 oh by the way, Deputy Cannon also said that Jarret and Chris
3 were very cooperative when they came. Cooperated. And who
4 did Deputy Cannon go to first when he got there? Who did he
5 go to first? Ms. Manigault even said in her closing. He

1 went to Jarret and Chris. Now why would he go to Jarret and
2 Chris if Jarret didn't call the police and if Jarret didn't
3 want the police to be there? If Jarret wasn't out front
4 waiting for the police. Why would he have gone to Jarret
5 first?

6 Now, back to these statements. Deputy Cannon said they
7 were very excited. Very hyped up. Why? Why were they
8 excited, why were they hyped up? Someone had just broken
9 into their apartment. Chris had just has a confrontation
10 with Darryl Spain. That's why they were excited. If you
11 notice too, look at these statements. Deputy Cannon said
12 that Deputy Hunter was in training, was with him that night
13 and he was one that wrote the statements. Look at the
14 handwriting on the statements. The handwriting looks to be
15 the same. Also, look at this. Look at how Chris Snoddy's
16 last name is spelled. S-O-N-D-D-Y. Now why is this
17 significant? Well it is because it shows that Deputy Hunter
18 wrote the statement. Jarret and Chris were excited and they
19 signed the statement. No doubt Chris and Jarret told him
20 what happened. But the way that appeared here was not what
21 they said. Not only that, but if Chris was really -- if he
22 really read this last line -- or this first line -- sorry
23 this last line that Mr. Barcroft put so much emphasis on, I
24 have read the above statement it is true ad correct as best I
25 recall. If Jarret was really -- I'm sorry if Chris was

1 really reading this statement and he was really paying
2 attention, would he have signed it if his name was spelled?
3 If he saw that his name was misspelled? If he was really
4 paying attention? He wouldn't. They were excited.

5 Now let's also talk about these statements. Mr. Barcroft
6 and Ms. Manigault have said that these statements, they're
7 inconsistent from the testimony. And because they're
8 inconsistent you can't believe their testimony. Let's talk
9 about the inconsistencies. If Jarret and Chris are going to
10 come into court and lie, if they wanted to lie, why wouldn't
11 they lie in a way that helped the State's case? What do I
12 mean by that? In both these statements, these statements say
13 that Chris and Jarret saw both of these fellows in the
14 apartment. Why, if they're lying, if they're lying now, why
15 would they come to court and each one say we only saw one.
16 We only saw one. If they're going to lie, why not lie the
17 same way they did that day? The same way the statement said
18 they did. The reason why is that these statements were
19 written by Deputy Hunter and on that day, just as they said
20 on the stand, just as they said on the stand, they only saw
21 one person. Together they saw both of them. Each one only
22 saw one. Each one only saw one.

23 Now, let's talk about what other evidence we have that
24 somebody else did. So that's the first question we talked
25 about. Let's talk about what evidence we have that somebody

1 else did? Okay. The only evidence we have that somebody
2 else did it was Steve Bagwell's testimony. His testimony
3 which says basically I couldn't have done it because I was
4 asleep on my couch minding my own business. When Jarret
5 kicked in the door and started beating me up for no reason.
6 For no reason at all. And then they come in here and they
7 bring pictures that were taken by Mr. Spain's brother. And I
8 could be wrong but I don't remember any testimony as to when
9 these pictures were taken. Don't remember any testimony as
10 to when these pictures were taken. So Steve says, Jarret
11 came in started beating me up for nothing. I don't know why.
12 I don't know why. And then he goes outside and sees 10, 15
13 of Jarret's friends who just happened to appear beating on
14 Darryl. And when he sees that he goes, No, I'm going to go
15 back inside and sit down. I'm going to go back inside and
16 sit down. Is that story believable? Especially in light of
17 the fact when Deputy Cannon -- or Deputy Hunter to the scene
18 and got some of his information from what happened from
19 neighbors---

20 MR. BARCROFT: Your Honor, I'm going to object because
21 that's absolutely inconsistent with the testimony. He's
22 testifying about---

23 THE COURT: That's for the jury to determine.

24 MR. BARCROFT: Judge, he's got to keep the argument to
25 what was admitted and there's nothing from the neighbors.

1 THE COURT: Overruled.

2 Go ahead.

3 MR. MOORMAN: Ladies and gentlemen, if you like to
4 listen, like I said, this is my recollection, if you'd like
5 to listen to the testimony, I believe on cross-examination
6 Ms. Manigault said, Where did you get your information about
7 what happened? Deputy Cannon said -- or she said, Did you
8 just get it from Jarret and Chris and Deputy Cannon said I
9 also got some information from the neighbors.

10 MR. BARCROFT: Renew my objection, Your Honor.

11 THE COURT: All right, subject to your objection.

12 Proceed.

13 MR. MOORMAN: Now, after all this happens to Steve for no
14 reason, he gets arrested. The bad day. With Darryl and
15 they're taken away. Does that make sense? Does that story
16 have any credibility whatsoever? That Steve was in his
17 apartment minding his own business and Jarret came in and
18 beat him up for no reason. Steve can't even say for what
19 reason Jarret beat him up. He can't even say. He can't say
20 in high school we got mad at each other. Or we had a fight a
21 couple of weeks ago. Steve can't even say that. The story
22 doesn't make sense. And why does the story not make sense?
23 Because it is a lie. It is a flat out lie. Also, keep in
24 mind he does have convictions for stealing, for shoplifting,
25 for petit larceny. Keep that in mind when you evaluate the

1 testimony of Steve Bagwell. Also keep something else in mind
2 when you evaluate the testimony of Jarret Armstrong and Chris
3 Snoddy. Listen to Jarret Armstrong's testimony. He's been
4 working at the Applebee's in Greer for how many years? 11
5 years. Chris has worked there for two years. Ladies and
6 gentlemen, I would submit to you you don't work at a job for
7 11 years if you don't have some stability. If you're not
8 stable.

9 Now, let's move to the second task you're to perform
10 under your oath. Apply the law to the facts. The Judge is
11 going to charge you on the law and he's going to say that a
12 person commits burglary in the first degree, if that person
13 enters the dwelling of another, without consent, with the
14 intent to commit a crime and that this entering occurs at
15 nighttime. Okay. That is what the Judge is going to charge
16 you on the law. What evidence do we have on this element?
17 Entering -- entering a dwelling. Entering a dwelling. Well,
18 the defendants entered a dwelling. Mr. Armstrong, Jarret,
19 and Chris both lived in this apartment, they slept, it was a
20 dwelling. Second element, without their consent. Jarret
21 said that nobody had permission to be in there. So did
22 Chris. No one had permission to be in there that night.
23 Mr. Barcroft says well where's Jason? Where's the third
24 roommate? He had a key. Implying maybe he would have let
25 them in. You think these defendants had permission to be in

1 there? If they had permission to be in there, why would they
2 have broken glass? They did not have permission to be in
3 there.

4 All right, the next element. With the intent to commit a
5 crime. With the intent to commit a crime. And Mr. Barcroft
6 and Ms. Manigault both said nothing was stolen. Nothing was
7 moved. Where's the intent to commit a crime? First off,
8 again, you think somebody -- you think the defendants when
9 they broke this glass they just wanted to go in and watch TV?
10 They just wanted to sit down in there? They broke this glass
11 to go in and steal something. That's why they broke this
12 glass. What other evidence do we have intent to commit a
13 crime? We have the picture of the television. Damage to
14 television. What else do we have? We have Chris' testimony
15 that his DVD player had been moved. He explained very
16 explicitly how it had been moved. It was facing one way, it
17 was turned another. We have the intent to commit a crime.

18 Finally, it happened in the nighttime. Everybody
19 testified -- everybody testified that it happened around
20 12:45, 1:00 in the morning on the evening of September 14th,
21 2003. Let me say one more thing about the intent to commit a
22 crime. Ms. Manigault and Mr. Barcroft made a huge production
23 over, again, nothing was stolen. Nothing was taken. Why
24 wasn't that the case? Why wasn't that the case? Because
25 they didn't have time. They didn't have time. Remember

1 Jarret said he got the call. He sped home, he was there a
2 minute or two, that's when he went in. They didn't have the
3 time to steal anything because by the time they were in the
4 position to steal something, Jarret and Chris were already
5 home. Were already home.

6 Now, ladies and gentlemen, this takes us to our third --
7 to the third function you're to perform as jurors. And that
8 is reaching a verdict in this case. In very short while
9 you're going to go back to the jury room and reach that
10 verdict and I just want to say one or two things to you very
11 briefly before you go back there. Mr. Barcroft in his
12 opening statement, he disagreed -- he disagreed with the
13 tasks I articulated he would perform. He, in fact, he said,
14 I disagree with Mr. Moorman that it's not your job to
15 determine what the facts are. Because there are some cases
16 we don't know what happened. There are some cases we just
17 don't know what happened. Ladies and gentlemen, this is not
18 one of those cases. Mr. Barcroft has gone from we don't know
19 what happened to advancing the notion that he knows what
20 happened that is all fabrication. It's all a lie. Why was
21 it made up? We don't know, it all a lie. We know what
22 happened here. We know what happened here. And what
23 happened here? We had Darryl Spain and Steve Bagwell living
24 in [REDACTED] Jarret and Chris living in [REDACTED] Steve had
25 been in the apartment before. That night Jarret came home,

1 went to pick up Chris. He was gone for half hour. He was
2 gone for about half hour. The rest of the night he was gone
3 for a half hour. And in that brief period who went in?
4 These defendants, Steve and Darryl. And how did they know
5 they were gone? Because they lived next door. They were
6 close by. They broke the glass, they went in but they didn't
7 get very far when they went in. You know why? Because
8 Jarret and Chris got home. Interrupted the burglary. Steve
9 took off. Jarret went upstairs, Darryl came and when Darryl
10 came out Chris hit him with the pipe. Darryl didn't have any
11 shoes on, ran through this glass. Injured his feet.

12 Then what happened? Jarret and Chris went over were,
13 were angry at Steve, hit Steve because Jarret had seen him in
14 the apartment and the police came and placed Steve and Darryl
15 under arrest for burglary. That's what happened in this
16 case, ladies and gentlemen, and I would ask that you find
17 both of these defendants guilty of burglary in the first
18 degree. Guilty of burglary in the first degree. Guilty.
19 Thank you.

20 THE COURT: No one is allowed in or out of the courtroom
21 during my charge. So if anyone needs to leave, now's the
22 time to do so.

23 Now, Mr. Foreman, ladies and gentlemen of the jury, the
24 defendants in this case as you know are charged with the
25 offense of burglary in the first degree. Burglary in the

1 first degree can occur in one of three ways. But in so far
2 as this case is concerned, Section 16-11-311 of our code of
3 laws provides in part as follows: A person is guilty of
4 burglary in the first degree if the person enters a dwelling
5 without consent and with the intent to commit a crime in the
6 dwelling. And the entering or remain occurs in the night
7 time. So as you see, ladies and gentlemen, with respect to
8 the alleged burglary in this case, there must have been an
9 entering or remaining in a dwelling. And it must have been
10 done in the nighttime without consent of the owner or person
11 in charge. And with an intent to commit a crime once
12 therein. Now, dwelling, of course, ladies and gentlemen,
13 means a structure wherein someone sleeps. Enter without
14 consent means to enter without the consent of a person in
15 lawful possession. Or by using deception, artifice, trick or
16 misrepresentation to gain consent. To gain entry.

17 Now, ladies and gentlemen, there must have been an intent
18 to commit a crime once inside the dwelling. However, the
19 intended crime need not be actually committed or
20 accomplished. Intent means a purpose, aim or designed. It
21 means the State of a person's mind which directs his actions
22 toward a specific object. As I told you the entering or
23 remaining must have occurred in the nighttime. In general,
24 ladies and gentlemen, nighttime means a time when there is
25 not enough daylight for a person's face to be seen.

1 Ladies and gentlemen, in the trial of a case the State
2 can rely on direct evidence, on circumstantial evidence or a
3 combination of the two. Now direct evidence proves the
4 existence of a disputed fact by using one or more of our five
5 senses. Without the aid of any inferences. For example, the
6 testimony of a person who asserts or claims to have actual
7 knowledge. In other words, an eye witness. That is direct
8 evidence. Circumstantial evidence on the other hand is where
9 certain facts which are known through using one or more of
0 our five senses, produces a logical inference that other
1 facts exist without directly proving those facts.

2 Circumstantial evidence is proof of a chain of facts and
3 circumstances indicating the existence of a fact. Now, as
4 I've told you the State may rely on either or both of this
5 type evidence, direct or circumstantial. And neither is
6 inferior to the other. The one is as good as the other if
7 equally convincing to you, the jury. Now, ladies and
8 gentlemen, I charge you that you should weigh all of the
9 evidence in this case, direct and circumstantial evidence.
0 And after doing so if you're not convinced of the guilt of
1 these defendants beyond a reasonable doubt, then you must
2 find them not guilty.

3 Ladies and gentlemen, voluntary intoxication is never an
4 excuse for or a defense to a commission of a crime. A person
5 who voluntarily renders himself intoxicated is no less

1 responsible for his actions while in that condition. If one
2 voluntarily drinks intoxicating liquors, including wine or
3 beer and becomes intoxicated to any degree and if while in
4 that condition commits the act which would be a crime if it
5 had been committed by a sober person, the fact of
6 intoxication would not relieve that intoxicated person from
7 criminal responsibility.

8 Now, ladies and gentlemen, as jurors in this case you
9 have a function or a responsibility that is entirely separate
10 and distinct from my function as the trial Judge. I am the
11 judge of law in this case. But you are the judges of the
12 facts. And the Constitution of our State does not allow me
13 to charge you on the facts of this case or to discuss the
14 facts with you. Or in any way or manner let you know what my
15 person feeling, if any, is about the facts of this case.
16 That's because you and you alone are the judges of the facts.
17 Therefore, if during the course of this trial or if during
18 the course of my charge you have a feeling or you have been
19 left with the impression that I have a personal feeling about
20 this case one way or another, then you disregard that feeling
21 or that impression.

22 Now, ladies and gentlemen, it's your duty and your duty
23 alone to weigh the testimony and evidence presented in this
24 case. And to pass upon the credibility or the believability
25 of the witnesses you heard testify. In this connection you

1 have a right to believe all that a witness told you or you
2 can disbelieve all that a witness told you. . You can believe
3 a part of what a witness told you and disbelieve a part of
4 what a witness told you. You can believe one witness as
5 against several or you can believe several as against one.
6 You also have the right to take into consideration any bias
7 or prejudice or interest you feel a witness in the case might
8 have.

9 Now, ladies and gentlemen, with respect to witnesses I
0 charge you that the testimony of the Defendant Bagwell's
1 prior criminal record can only be considered by you in
2 determining or deciding his credibility or his believability
3 as a witness in this case. And cannot be considered by you
4 as evidence having any bearing on questioning of his guilt of
5 burglary in the first degree.

6 Now, as I told you I am the Judge of the law. And I am
7 required to charge you the law that applies to the facts in
8 this case. It's not a question of what you feel the law
9 might be or what it should be. It is not necessarily what
10 the lawyers may have told you it is because under your oath
11 you are required to take the law as I give it to you, and
12 apply that law to the facts as you determine those facts to
13 be and to write your verdict accordingly. It is also my duty
14 to see that this trial is conducted according to the rules of
15 court as well as the rules of evidence that apply to the

1 admissability of testimony and evidence as I understand those
2 rules to be. And therefore, you are not to consider in any
3 way or manner testimony or evidence that was ruled out by me
4 as being not admissible.

5 Now, ladies and gentlemen, in this case as in all
6 criminal cases, these defendant's come into this courtroom
7 presumed to be innocent. And this presumption continues and
8 carries through the entire trial until and unless it is
9 removed by evidence that satisfies you of their guilt beyond
10 a reasonable doubt. The burden is on the State in this case
11 to prove those defendants guilty and to prove each and every
12 element of the offense with which they are charged beyond a
13 reasonable doubt.

14 Now, some of you may have served in the past as jurors on
15 civil cases. And if so, you were most likely told that it
16 was only necessary to prove that a fact is more likely true
17 than not true. But in criminal cases, the State's proof must
18 be more powerful than that. As I told you it must be beyond
19 a reasonable doubt. Now, proof beyond a reasonable doubt is
20 proof that leaves you firmly convinced of these defendants
21 guilt. There a very few things in this world that we know
22 with absolute certainty. And in criminal cases our law does
23 not require proof that overcomes every possible doubt. If
24 based on your consideration of the testimony and evidence
25 presented in this case you are firmly convinced that these

1 defendants are guilty as charged then you must find them
2 guilty. If on the other hand you think there's a real
3 possibility that they are not guilty then you must give them
4 the benefit of that doubt and find them not guilty.

5 Ladies and gentlemen, our laws does not compel a
6 defendant in a criminal case the burden or duty to take the
7 witness stand and testify. And no presumption of guilt may
8 be raised and no inference of any kind maybe drawn from the
9 defendant's Spain decision not the testify. Our law never
10 imposes upon a defendant or criminal case the burden of duty
11 of calling any witness or producing any evidence or
12 testifying. Therefore, the decision of this defendant not to
13 take the stand and testify in his behalf cannot be taken,
14 held, discussed or considered against him in any manner
15 whatsoever.

16 Ladies and gentlemen, under the oath you took in this
17 case you swore to try the case based only and solely on the
18 testimony and evidence presented in the courtroom. I tell
19 you that it is your duty to lay aside all outside opinions,
20 bias or prejudice or sympathy you may have in reaching a
21 verdict. The words verdict, ladies and gentlemen, is taken
22 from the latin veredicto. It means to speak the truth. You
23 have no friends to reward or enemies to punish in this case.
24 I charge you to abide by your oath and return verdicts that
25 speak the truth.

1 Now, you'll have in the jury room with you the two
2 indictments in this case. These indictments do not
3 constitute evidence. They simply set forth the allegations
4 by the State. These indictments are the legal documents that
5 brings this case in the courtroom and presents it to you for
6 your determination. Ladies and gentlemen, there are one of
7 two possible verdicts on each indictment guilty or not
8 guilty. And whatever that verdict is it must be unanimous.
9 That is all 12 of you must agree.

10 Mr. Foreman, on the back of the indictment you'll see a
11 space where it says, Verdict. Whatever the unanimous verdict
12 of the jury is, on each of the indictments, guilty or not
13 guilty. Please write it out in the space then sign your name
14 on the line where it says, Foreperson of the petit jury.

15 Now at this time I'm required to suspend and go over my
16 charge with the lawyers. I need you to go back into your
17 jury room but do not begin deliberating until I send word in
18 for you to do so. Thank you.

19 (WHEREUPON, the jury left the courtroom at
20 approximately 10:35 a.m.)

21 THE COURT: All right, anything further from the State?

22 MR. MOORMAN: Nothing from the State.

23 THE COURT: From the defendants?

24 MR. BARCROFT: Your Honor, I would ask that you charge
25 that reasonable doubt can arise from the evidence or lack or

1 evidence.

2 THE COURT: I would decline to charge any further on
3 that.

4 MS. MANIGAULT: Nothing from Bagwell.

5 THE COURT: All right. Bring my alternate into me and
6 tell the balance of the jury to start deliberating and tell
7 them we'll bring in the evidence as soon as we get it all
8 gathered up.

9 (WHEREUPON, the alternate was excused.)

0 (WHEREUPON, deliberations began at
1 approximately 10:35 a.m.)

2 (WHEREUPON, court was in recess awaiting a
3 verdict.)

4 THE COURT: Now, ladies and gentlemen, I understand we
5 have reached a verdict in this case. Of course, we don't
6 know what that verdict is but I need for everyone in this
7 courtroom to understand that regardless of the verdict, that
8 I will not permit or condone any displays of motion. Should
9 there be any that would constitute contempt of court and I
10 will punish accordingly. Now anyone in the courtroom not
11 understand what I just said? If so, stand up so I can
12 further explain it to you.

13 Okay bring our jury, please.

14 (WHEREUPON, the jury entered the courtroom at
15 approximately 1:55 p.m.)

1 THE COURT: Mr. Foreman, if you've reached a verdict
2 would you hand it to the bailiff, please, sir.

3 THE COURT: All right, publish the verdicts, please.

4 THE CLERK: Your Honor, this is case number
5 2003-GS-23-9373 the State vs. Stephen Randall Bagwell, he is
6 indicted for burglary, in the first degree, the verdict is
7 guilty.

8 2003-GS-23-9375, the State vs. Darryl Lee Spain, he is
9 indicted for burglary, first degree. The verdict is, guilty.

10 Both are signed Gary Caldwell.

11 If this is your verdict, please, signify by raising your
12 right hand.

13 (WHEREUPON, all the members of the jury raised
14 their right hand.)

15 THE CLERK: Thank you.

16 THE COURT: Anything further from the jury, Mr. Barcroft,
17 Ms. Manigault?

18 MR. BARCROFT: Nothing from Mr. Spain.

19 MS. MANIGAULT: Nothing from Bagwell, Your Honor.

20 THE COURT: Thank you, ladies and gentlemen, for your
21 service on this case. Thank you for your service this week.
22 In so far as you're concerned you're through. You don't have
23 to come back tomorrow or Friday. So let me take this
24 opportunity to thank you for coming and serving. I want you
25 to know we are well aware of the fact that jury service is a

1 burden to you. We know that it's difficult for you to take
2 time off from your jobs and families and spend it with us on
3 jury duty. But we do hope you understand that it is a very
4 important service you performed this week. And I thank you
5 very much for that service.

6 Now, the clerk will mail a voucher to you for your
7 service this week. Attached to that voucher will be a slip
8 for you to give to your employer should you need one of
9 those. Should you need one of those slips today then the
10 bailiffs can see that you get one. Do I have any question
11 from the panel I can try to answer for you before letting you
12 go? I've enjoyed working with you. Thank you, so much for
13 your service, you're free to go.

14 (WHEREUPON, the jury was excused from further
15 service at approximately 1:57 p.m.)

16 THE COURT: Any motions?

17 MR. BARCROFT: Your Honor, on behalf of Darryl Spain I
18 would move for a new trial. Incorporated with that the
19 motions for a directed evidence and grounds that were stated
20 in those motions, Your Honor. In addition, the evidence that
21 was proffered that you ruled in admissible. I would also
22 incorporate as well as my request to charge the additional
23 charge for reasonable doubt regarding that it can arise not
24 only from the evidence or from the lack of evidence. Your
25 Honor, I think specifically in this case I think a lot of

1 defense, certainly as to Mr. Spain, was a lack of evidence
2 that was presented by the State. And I believe that that
3 charge would help the jury. And I would make that a part of
4 the motion.

5 THE COURT: And I deny your motion.

6 Ms. Manigault.

7 MS. MANIGAULT: Your Honor, on behalf of Defendant
8 Bagwell, we make a motion for a new trial and incorporate all
9 our previous motions related to the evidence and ruling the
10 Court has made. We do not believe that the jury had
11 sufficient evidence to find my client guilty of burglary.

12 THE COURT: And your motion likewise is denied.

13 MS. MANIGAULT: Thank you, Your Honor.

14 THE COURT: You got the sentencing sheets?

15 MR. MOORMAN: Yes, sir, Your Honor.

16 THE COURT: They don't have to sign those, the defendants
17 have to sign them.

18 MR. MOORMAN: Do you want the attorneys to do that?

19 THE COURT: They don't have to, if they want to that's
20 fine. Just put their name on there and who they are.

21 MR. MOORMAN: Yes, sir.

22 THE COURT: All right, come around, please.

23 Mr. Spain, you exercised your Constitutional right not to
24 testify in your defense. You have a perfect right to address
25 the Court at this time concerning sentence. Is there

1 anything, sir, that you'd like to say now before I sentence
2 you?

3 MR. SPAIN: I didn't do it, man. It's something we did
4 not do. I just don't know what to say, man. I've been in
5 jail for the things I've done, this is the first time I'm
6 going to prison for something I didn't do. And I'm scared
7 and I'm sorry.

8 THE COURT: All right, I understand.

9 Mr. Bagwell, anything you'd like to say, sir, now before
10 I sentence you?

11 MR. BAGWELL: Yes, sir. I didn't commit this crime. I
12 admitted everything I've ever done. I did not never go in
13 Mr. Armstrong's house. He's the one that break into my door.
14 I throw myself on the mercy of the Court.

15 THE COURT: All right, sir.

16 Mr. Barcroft.

17 MR. BARCROFT: Thank you, Your Honor. Mr. Spain, I will
18 say that he has -- he's 36 years old, Your Honor. He is
19 employed and worked for his brother in the electrical
20 construction contracting business. Your Honor, his record,
21 prior record, consists of fraudulent checks, that's it. I
22 think---

23 MR. MOORMAN: We've got -- Mr. Spain, we've got two
24 counts of fraudulent check from 2002. Breach of trust from
25 2001. Five counts of fraudulent check from '97. Six counts

1 of fraudulent check from '92. We also have a shoplifting
2 from '96. Failure to appear from 1992. And two counts of
3 fraudulent check from 1990.

4 MR. BARCROFT: Your Honor, he disputes the failure to
5 appear but obviously his record is -- although there are a
6 number of check charges it's all -- nothing like burglary,
7 nothing of any serious nature. No felonies. This is the
8 first time, Your Honor, that he's been charged with that.
9 And certainly in this particular case, I mean, I know the
10 sentence is significant as far as the minimal sentence. I
11 would ask you to consider the minimum sentence based on the
12 lack of any significant record.

13 THE COURT: Ms. Manigault.

14 MS. MANIGAULT: May it please the Court, Your Honor. My
15 client has a 10th grade education from Riverside High. He
16 does have his GED, he's single. No children. He's living
17 his parents. He works with JGS Electric in Inman. His
18 family was here with him today, his father is still here.

19 Your Honor, I know the Court has heard all of the
20 testimony but frankly I am bewildered even with the evidence
21 that was presented that the jury came back with a conviction
22 on my client. We'd ask the Court to seriously consider the
23 minimum sentence in this case. We'd ask the Court to
24 consider a suspended sentence in this case on behalf of my
25 client.

1 THE COURT: Are these retained or appointed cases?

2 MR. BARCROFT: I was retained, Your Honor.

3 MS. MANIGAULT: I'm appointed.

4 MR. MOORMAN: Your Honor, would like to hear

5 Mr. Bagwell's---

6 THE COURT: Yes, sir, I certainly would.

7 MR. MOORMAN: 2004, petit larceny, burglary, second,
8 interference with officers. 2002, failure to comply. 2001,
9 criminal domestic violence. 1998, criminal domestic
10 violence, trespassing, unlawful carrying of a weapon, driving
11 under suspension, driving on the wrong side of the road,
12 driving an uninsured vehicle, failure to register vehicle,
13 five counts of fraudulent check and shoplifting.

14 THE COURT: Is there a prior burglary?

15 MR. MOORMAN: Yes, sir, from 2004.

16 MS. MANIGAULT: 2004, Spartanburg County.

17 THE COURT: All right, Mr. Spain, the sentence of the
18 Court is you be committed to the Department of Corrections
19 for a period of 15 years.

20 Mr. Bagwell, the sentence of the Court is you be
21 committed to the Department of Corrections for a period of 20
22 years.

23 (WHEREUPON, the proceedings were concluded.)
24
25

CERTIFICATE OF REPORTER

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, April Herron, Official Court Reporter for the 13th
Judicial Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate and complete
Transcript of Record of the proceedings had and evidence
introduced in the trial of the captioned case, relative to
appeal, in the Court of General Sessions for Greenville
County, South Carolina, on the 12th and 13th day of April,
2005.

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

November 10, 2005

April Herron

April Herron, Court Reporter

My Commission Expires:11-17-07

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

STEVE R. BAGWELL AND
DARYL LEE SPAIN,

APPELLANTS

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the judge erred by refusing to allow Spain's brother to testify about a possible motive the purported victims had to fabricate their testimony, which was that Spain had revealed to a mutual neighbor that one of the alleged victims was dealing marijuana from their apartment?

STATEMENT OF FACTS

On April 12 and 13, 2005, Steve Bagwell and Daryl Spain stood trial in Greenville County before Judge C. Victor Pyle, Jr., on indictments charging them both with first-degree burglary. The purported victims, Jarret Armstrong and Chris Snoddy, who lived in the same apartment complex as Bagwell and Spain, claimed that the two men broke into their apartment and damaged their big-screen TV, but fled without taking anything when they returned home unexpectedly. Spain did not testify, but Bagwell testified that he himself was home asleep at the time of the incident, having consumed a bit too much alcohol. The jury obviously believed Armstrong and Snoddy and found Bagwell and Spain guilty as charged; The judge sentenced Bagwell to twenty years and Spain to fifteen.

ARGUMENT

The judge erred by refusing to allow Spain's brother to testify about a possible motive the purported victims had to fabricate their testimony, which was that Spain had revealed to a mutual neighbor that one of the alleged victims was dealing marijuana from their apartment.

This case was essentially a credibility contest between Jarret Armstrong/Chris Snoddy and Steve Bagwell. (Daryl Spain did not testify.) Bagwell testified that he had no idea why the victims would want to accuse him and Spain of burglarizing their apartment. ROA p. 109, line 25 – p. 110, line 5.

Spain's brother, Jerry, would have testified that, the day after the incident, Armstrong told him he regretted not having killed Spain because "Daryl had mentioned to the lady that lived in between the two apartments ... that [Armstrong] was selling weed. Marijuana. And he did not like that." ROA p. 89, line 16 – p. 91, line 1. The Assistant Solicitor objected under *South Carolina Evidence Rule 613* that "if [defense counsel] wanted to use this statement that my victim allegedly made to the brother, ... the appropriate way to have done it would have been to ask my victims during cross-examination whether not they made a statement to this man." ROA p. 86, line 20 – p. 87, line 22. The trial judge sustained the objection. ROA p. 88, lines 5 and 6. Defense counsel then proffered Jerry Spain's testimony for the record.

The Assistant Solicitor was presumably referring to *section(b)* of *Rule 613*, which provides:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was

allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. However, if a witness admits to making the prior statement, extrinsic evidence that a prior statement is made is inadmissible.

This rule does not apply to the present case. Jerry Spain's testimony did not involve Armstrong's prior inconsistent statement, but was instead evidence of the victims' bias and motive to fabricate charges against Bagwell and Spain.

The rule which does apply, *Evidence Rule 608(c)*, states that "[b]ias, prejudice or any motive to represent may be shown to impeach the witness in *either by examination of the witness or by evidence otherwise adduced.*" [Emphasis added.] "Since it is the function of a jury to determine the credibility of witnesses and the weight to be given their testimony, as a general rule, anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony." *State v. Brewington*, 267 S.C. 97, 226 S.E.2d 249, 251 (1976) (citation and quotation marks omitted), quoted in *State v. Sims*, 348 S.C. 16, 558 S.E.2d 518 (2002).

Evidence that the purported victims had a motive to fabricate testimony against Bagwell and Spain was clearly admissible under *Rule 608*. See *State v. Starnes*, 340 S.C. 312, 531 S.E.2d 907 (2000). Accordingly, the trial judge abused his discretion by excluding this evidence under *Rule 613*. See *State v. Fossick*, 333 S.C. 66, 508 S.E.2d 32 (1998).

In *Delaware v. Van Arsdall*, 475 U.S. 673 (1986), the United States Supreme Court set forth certain factors an appellate court should consider in determining whether the erroneous exclusion of evidence of a witness' bias constitutes harmless error.

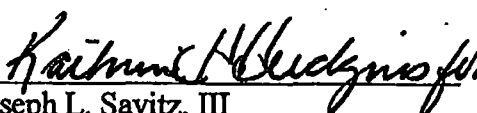
These include: the importance of the witness' testimony to the prosecution's case, whether the testimony was cumulative, whether other evidence corroborates or contradicts the witness' testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case.

State v. Holmes, 320 S.C. 259, 464 S.E.2d 334 (1995).

As noted previously, the State's case depended almost entirely upon the testimony and credibility of Armstrong and Snoddy. Bagwell himself testified that he did not know why they would falsely accuse him and Spain. The excluded testimony of Spain's brother would have filled that gap, by showing the jury that one of the victims had revealed an external motive why they might have testified falsely against Bagwell and Spain.

For this reason, the Court should reverse the convictions of Steve Bagwell and Daryl Spain and remand for a new trial.

Respectfully submitted,


Joseph L. Savitz, III
Chief Attorney


ATTORNEY FOR APPELLANT

This 20th day of March, 2007.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

March 20, 2007


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,


V.

STEVE R. BAGWELL AND
DARYL LEE SPAIN,

APPELLANTS

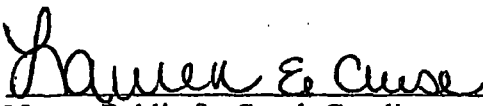
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Shawn Reeves, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of March, 2007.


Joseph L. Savitz, III
Chief Attorney

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of March, 2007.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: March 13, 2007.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

STEVE R. BAGWELL AND
DARYL LEE SPAIN,

Appellant.

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STATEMENT OF ISSUE ON APPEAL

Was the trial judge correct in refusing to allow a defense witness to testify that one of the victims told him that Spain had told neighbors about the victim selling marijuana from the victim's apartment?

STATEMENT OF THE CASE

Steve Bagwell ("Bagwell") and Daryl Spain ("Spain") were indicted on charges of first degree burglary. Bagwell's and Spain's jury trial was held on April 12-13, 2005 in the Greenville County Court of General Sessions before the Honorable C. Victor Pyle, Jr. The jury returned verdicts finding both Bagwell and Spain guilty. The trial judge sentenced Bagwell to twenty years' confinement. The judge sentenced Spain to fifteen years' confinement. Bagwell served his Notice of Appeal on April 21, 2005. Spain served his Notice of Appeal on April 15, 2005.

STATEMENT OF FACTS

In September of 2003, Jarrett Armstrong ("Armstrong") and Chris Snoddy ("Snoddy") lived together at [REDACTED] in Greenville County. (R. p. 2, lines 3-4; p. 2, line 24-p. 3, line 1). Both Armstrong and Snoddy worked at a local Applebee's restaurant. (R. p. 4, lines 2-6; p. 46, lines 6-13).

On September 13, 2003, Armstrong worked from 5 p.m. to 10 p.m. (R. p. 4, lines 2-6). Armstrong testified that at 10 p.m., he went home, took a shower, and watched television until around 11:45 p.m. when he drove back to Applebee's to pick up Snoddy from work. (R. p. 4, lines 19-25). Armstrong testified that he had to wait for Snoddy approximately twenty minutes. (R. p. 5, lines 3-6). He testified that they left Applebee's around 12:15 or 12:20 a.m. (R. p. 5, lines 7-8). While Armstrong and Snoddy were driving back to their apartment, Armstrong received a call from a neighbor and hurried home as a result of the call. (R. p. 5, lines 9-16). When Armstrong and Snoddy arrived at their apartment, some of their neighbors were gathered outside. (R. p. 5, lines 19-21).

Armstrong testified that he told Snoddy to go to the back of the apartment because someone appeared to be inside their apartment. (R. p. 5, lines 22-25). Armstrong testified that he then entered the front door of the apartment and saw Bagwell exiting through the back glass patio door that had been shattered. (R. p. 6, line 21-p. 7, line 5; p. 9, lines 10-13). Armstrong had known Bagwell since elementary school. (R. p. 7, lines 8-13). But Bagwell did not have permission to be inside Armstrong's and Snoddy's apartment. (R. p. 8, line 24-p. 9, line 9). Bagwell lived in a nearby apartment with Spain. (R. p. 7, lines 14-23). As Bagwell exited the patio door, Armstrong yelled out to Snoddy that someone was running

out. (R. p. 10, lines 16-17). Armstrong testified that he found on the apartment floor a sandal that he had previously seen Spain wearing. (R. p. 14, lines 12-25). Armstrong then went upstairs without looking in the downstairs bathroom or kitchen. (R. p. 10, lines 18-24). When he did not find anything missing upstairs, Armstrong went outside to check on Snoddy. (R. p. 10, line 25-p. 11, line 10).

Snoddy testified that when he arrived at the back of the apartment, the sliding glass patio door was shattered. (R. p. 49, lines 18-21). Snoddy picked up a metal pole to protect himself. (R. p. 49, lines 16-17; p. 50, lines 9-10). Snoddy testified that he then saw Spain walk out of the broken glass door. (R. p. 50, lines 11-13). Snoddy hit Spain with the pole. (R. p. 50, lines 14-20). Snoddy and Spain fought until Spain submitted. (R. p. 50, lines 21-23; p. 51, lines 3-6). Spain was not wearing shoes and had several lacerations on his feet. (R. p. 51, lines 7-11; Suppl. R. p. 11, lines 9-13). When Armstrong arrived outside, Spain passed out. (R. p. 15, lines 16-22).

Armstrong and Snoddy then proceeded to Bagwell's apartment where they confronted Bagwell. (R. p. 11, lines 11-21). When they arrived, Bagwell had blood running down his face. (R. p. 12, lines 14-17). Armstrong hit Bagwell once before the neighbors controlled him and told him that fighting was not the way to handle the situation. (R. p. 12, lines 3-11). Armstrong called the police. (R. p. 12, lines 12-13).

ARGUMENT

The trial judge was correct in refusing to allow a defense witness to testify that one of the victims told him that Spain had told neighbors about the victim selling marijuana from the victim's apartment.

Bagwell and Spain sought to introduce the testimony of Spain's brother that Armstrong told him that Spain had told neighbors about Armstrong selling marijuana from Armstrong's apartment. Bagwell and Spain sought to introduce the statement into evidence without laying the proper foundation for the admissibility of the evidence. Therefore, the trial judge did not err in ruling the evidence inadmissible.

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Pagan, 369 S.C. 201, 631 S.E.2d 262, 265 (2006). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id.

First, this issue is not preserved for appellate review. An issue cannot be raised for the first time on appeal but must be raised to and ruled upon by the trial court in order to be preserved for appellate review. State v. Rogers, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004). The State objected to the evidence based on Rule 613, SCRE. (R. p. 87 lines 16-22). Specifically, the State objected because Bagwell and Spain did not lay a proper foundation for the admissibility of a prior inconsistent statement under Rule 613. On appeal, Bagwell and Spain assert that the trial judge erred in not admitting the testimony pursuant to Rule 608(c), SCRE. But the defense never raised that issue at trial. Bagwell and Spain never sought to admit the evidence based upon a showing of the bias or prejudice of a witness. Therefore, the issue is not preserved.

Even if this issue were preserved, Bagwell and Spain failed to show that the judge erred in not finding the evidence admissible under Rule 608(c). Bagwell and Spain never argued to the trial judge that evidence of Armstrong's statement showed bias or prejudice. Bagwell and Spain never argued at trial, as they argue on appeal, that the evidence shows an external motive for Armstrong and Snoddy to testify falsely. The record is void of any discussion regarding Spain's brother's testimony showing Armstrong's or Snoddy's bias or prejudice. The judge was simply never given the opportunity to consider whether the evidence showed bias or prejudice. Therefore, the trial judge did not abuse his discretion in ruling the evidence inadmissible.

Even if the judge did err in ruling the evidence inadmissible, such error was harmless. "In determining harmless error regarding any issue of witness credibility, [appellate courts] will consider the importance of the witness's testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case." State v. Fossick, 333 S.C. 66, 508 S.E.2d 32 (1998). Certainly, Armstrong's and Snoddy's testimony was essential to the State's case and was unique to any other evidence presented at trial. But the State's case was not based solely upon the credibility of Armstrong and Snoddy. The physical evidence of the crime scene supported Armstrong's and Snoddy's testimony. The patio door to Armstrong's and Snoddy's apartment was broken. (Suppl. R. p. 4, ll. 6-7). And Spain's feet had lacerations consistent with Snoddy's testimony that Spain walked barefoot through the broken glass door. (Suppl. R. p. 11, ll. 9-13). Evidence of Spain's bare feet was also consistent with Armstrong's

testimony that he had previously seen Spain wearing the sandals that the burglars left on the floor of the apartment. (R. p. 14, ll. 12-25). Additionally, counsel for Bagwell and Spain exercised their opportunities to extensively cross-examine both Armstrong and Snoddy. (R. p. 17-45; p. 54-80). The State presented a strong case that Bagwell and Spain burglarized Armstrong's and Snoddy's apartment by breaking through the glass patio door. Therefore, any alleged error was harmless.

CONCLUSION

For all of the foregoing reasons, the State respectfully submits that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
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JOHN W. McINTOSH
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Solicitor, 13th Judicial Circuit

BY: 

SHAWN L. REEVES

Office of the Attorney General
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Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 26, 2007

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

STEVE R. BAGWELL AND
DARYL LEE SPAIN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

SHAWN L. REEVES
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STATE OF SOUTH CAROLINA
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Appeal From Greenville County
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THE STATE,

Respondent,

vs.

STEVE R. BAGWELL AND
DARYL LEE SPAIN,

Appellant.


PROOF OF SERVICE

I, Karen Farrell, certify that I have served the within Final Brief of Respondent on Appellant by depositing three copies of the same in the United States mail, postage prepaid, addressed to:

Joseph L. Savitz, III, Esquire
Chief Attorney
SC Commission on Indigent Defense
Division of Appellate Defense
P. O. Box 11589
Columbia, S. C. 29211

I further certify that all parties required by Rule to be served have been served.

This 26th day of February, 2007.


KAREN FARRELL
Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Steve R. Bagwell and Daryl Lee
Spain,

Appellants

Appeal From Greenville County
C. Victor Pyle, Jr., Circuit Court Judge

Unpublished Opinion No. 2007-UP-377
Submitted September 14, 2007 – Filed September 18, 2007

AFFIRMED

Joseph L. Savitz, III, of Columbia, for Appellants.

Attorney General Henry D. McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W.
Elliott, Assistant Attorney General Julie M.

Thames, all of Columbia; and Solicitor Robert M. Ariail, of Greenville, for Respondent.

PER CURIAM: Steve R. Bagwell ("Bagwell") and Daryl Lee Spain ("Spain") were convicted by a jury of first degree burglary. The judge sentenced Bagwell to twenty years of confinement and Spain to fifteen years. Bagwell and Spain appeal their convictions alleging the trial judge erred in ruling inadmissible a defense witness's testimony. We affirm.¹

Facts

In September 2003, Jarrett Armstrong ("Armstrong") and Chris Snoddy ("Snoddy") shared an apartment in Greenville County, and both worked at a local Applebee's restaurant. Bagwell and Spain shared an apartment in the same complex.

On September 13, 2003, the day of the burglary, Armstrong worked from 5 p.m. until 10 p.m. Armstrong testified he went home at 10 p.m., showered, and watched television until driving back to Applebee's at 11:45 p.m. to pick Snoddy up from work. Armstrong waited approximately twenty minutes for Snoddy and left with Snoddy around 12:15 a.m. or 12:20 a.m. While en route back to their apartment, Armstrong stated he received a call from a neighbor that caused them to hurry home. A few neighbors were gathered outside their apartment when Armstrong and Snoddy arrived.

Armstrong told Snoddy to go around to the rear of the apartment because it appeared someone was inside. Armstrong said he entered the apartment's front door and saw Bagwell, whom Armstrong has known since elementary school, leaving through the back glass patio door which had been shattered. As Bagwell was exiting, Armstrong yelled to Snoddy that someone was running out. Armstrong reported

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

finding a sandal on the apartment floor that he had seen worn previously by Spain. After checking the upstairs and finding nothing missing, Armstrong went outside to check on Snoddy.

Snoddy testified that when he arrived at the back of the apartment the glass patio door was shattered. Snoddy picked up a metal pole to protect himself. He observed Spain exiting the apartment through the shattered door, and he struck Spain with the pole. The two fought until Spain submitted. Spain was not wearing shoes and had numerous cuts to his feet. Spain passed out when Armstrong reached the back of the apartment.

Armstrong and Snoddy then went to Bagwell's apartment to confront Bagwell. Upon their arrival, Bagwell had blood running down his face. Armstrong hit Bagwell one time before neighbors intervened. Armstrong called the police.

At trial, Spain did not take the stand, but Bagwell testified that he had consumed too much alcohol and was home asleep at the time of the incident.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001); State v. Wood, 362 S.C. 520, 608 S.E.2d 435 (Ct. App. 2004); State v. Mattison, 352 S.C. 577, 575 S.E.2d 852 (Ct. App. 2003). This court is bound by the trial court's factual findings in determining the admissibility of certain evidence in criminal cases. Wilson, 345 S.C. at 6, 545 S.E.2d at 829; State v. Young, 364 S.C. 476, 613 S.E.2d 386 (Ct. App. 2005). The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Pagan, 369 S.C. 201, 207, 631 S.E.2d 262, 265 (2006); State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Pagan, 369 S.C. at 208, 631 S.E.2d at 265; State v. McDonald, 343 S.C. 319, 540

S.E.2d 464 (2000); State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct. App. 2005). In order for an error of law to warrant reversal, the error must result in prejudice to the appellant. State v. Beck, 342 S.C. 129, 536 S.E.2d 679 (2000); State v. Wyatt, 317 S.C. 370, 453 S.E.2d 890 (1995); State v. Patterson, 367 S.C. 219, 625 S.E.2d 239 (Ct. App. 2006).

Discussion

Bagwell and Spain argue the trial judge erred in refusing to allow Spain's brother to testify that Armstrong was angry with Spain because Spain had revealed to a mutual neighbor that Armstrong was selling marijuana from his apartment. Specifically, Bagwell and Spain claim the statement was admissible under Rule 608(c), SCRE, to show Armstrong's bias and motive to fabricate testimony. Therefore, Bagwell and Spain contend, the trial judge abused his discretion by excluding the evidence under Rule 613, SCRE.

Whether the statement was evidence of bias and admissible under Rule 608(c), SCRE, is an issue not raised at trial and is thus not preserved for appeal. Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505 (2006). See also Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) ("It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review."); Ellie, Inc. v. Miccichi, 358 S.C. 78, 103, 594 S.E.2d 485, 498 (Ct. App. 2004) (noting it is axiomatic that an issue cannot be raised for the first time on appeal). "Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law and arguments." I'On, L.L.C. v. Town of Mount Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

The State objected to the testimony based on Rule 613(b), SCRE, arguing the defense counsel failed to lay a proper foundation for the admissibility of a prior inconsistent statement. Under South Carolina law, a proper foundation must be laid *before* admitting a prior

inconsistent statement. State v. McLeod, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004). Rule 613(b), SCRE, provides:

Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement.

The Solicitor posited, “[T]he appropriate way to [use this statement] would have been to ask my victims during cross-examination whether [sic] not they made a statement to this man.” In response to the State’s challenge to the testimony, the defense counsel opined to the trial judge, “[T]he foundation is laid. He states in court one thing that happens and then he tells my client something different that happens.” The trial judge sustained the State’s objection. At no time during the trial did Bagwell and Spain assert the testimony would show bias, prejudice, or motive for Armstrong and Snoddy to testify falsely. Accordingly, the trial judge was never presented with the opportunity to rule whether the evidence was admissible under Rule 608(c).

Though we find no abuse of discretion in the trial judge’s ruling, any error arising from the exclusion of the evidence in the present case would be harmless.

Error is harmless where it could not reasonably have affected the result of the trial. In re Harvey, 355 S.C. 53, 584 S.E.2d 893 (2003); State v. Pagan, 357 S.C. 132, 591 S.E.2d 646 (Ct. App. 2004). Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 399 S.E.2d 595 (1991); State v. Adams, 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003). Thus, an error is harmless where guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached. State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989); Adams, 354 S.C. at 381, 580 S.E.2d at 795. The conviction should not be reversed where a review of the entire record establishes the error is harmless beyond a reasonable doubt. State v. Pickens, 320

S.C. 528, 466 S.E.2d 364 (1996); State v. Fletcher, 363 S.C. 221, 609 S.E.2d 572 (Ct. App. 2005); State v. King, 349 S.C. 142, 561 S.E.2d 640 (Ct. App. 2002).

In State v. Fossick, 333 S.C. 66, 70, 508 S.E.2d 32, 33-34 (1998), and State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999), the supreme court applied a harmless error analysis to the failure to allow impeaching testimony. In both cases, the court concluded the judge's error in excluding impeachment evidence was harmless. In Fossick, the court explained:

In determining harmless error regarding any issues of witness credibility, we will consider the importance of the witness's testimony to the prosecution's case, whether the witness's testimony was cumulative, whether other evidence corroborates or contradicts the witness's testimony, the extent of cross-examination otherwise permitted, and the overall strength of the State's case. State v. Holmes, 320 S.C. 259, 464 S.E.2d 334 (1995) (citing Delaware v. Van Arsdall, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed2d 674 (1986)).

Id. at 70, 508 S.E.2d at 34.

Here, physical evidence corroborated the testimony of Armstrong and Snoddy and provided the State with a strong case. The back glass door of the victims' apartment had been shattered. Armstrong saw Bagwell, whom he had known for years, leaving the apartment. Snoddy testified he saw Spain exit the apartment through the broken door, and the two had a physical altercation at the scene. Additionally, Armstrong averred the shoe left in his apartment was one he remembered Spain wearing. Importantly, both of these statements indicate the lacerations to Spain's feet were caused by the door's broken glass. Finally, counsel for Bagwell and Spain were permitted to cross-examine Armstrong and Snoddy. Accordingly, even if the trial judge had erred in excluding the testimony of Spain's brother, such

error was harmless as it could not reasonably have affected the outcome of the trial.

Conclusion

The trial judge did not err in ruling inadmissible the defense witness's testimony. At trial, Bagwell and Spain never argued the evidence was admissible under Rule 608(c), SCRE. Therefore, the issue is not preserved for appellate review. Further, the trial judge properly found no foundation had been laid to admit under Rule 613(b), SCRE. Finally, any possible error in its exclusion was harmless given the physical evidence and the opportunity for cross-examination of Armstrong and Snoddy. Accordingly, Bagwell and Spain's convictions and sentences are

AFFIRMED.

**ANDERSON and THOMAS, JJ., and CURETON, A.J.,
concur.**

13 KR

FORM 5

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

IN THE COURT OF COMMON PLEAS

2007-CF-23- 7109

Steve R Baawell 304273

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

-vs-

APPLICATION FOR
POST-CONVICTION RELIEF

FILED IN COURT OF COMMON PLEAS

2007 OCT 25 A 8:31

South Carolina
Name of Respondent.

Instructions - Read Carefully

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or type-written), 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Lieber C.I. W-D276, P.O. Box 205, Ridgville, S.C. 29472
2. Name and location of Court which imposed sentence Greenville County Court House, 305 E. North Street, Greenville S.C. 29601
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2003GS2309373 Burglary First Degree
 - (b) _____
 - (c) _____

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

- (a) 4-13-05 20 years
- (b) _____
- (c) _____

5. 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 _____

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

yes

7. If you answered "yes" to (6), list

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

- i. South Carolina Court of appeals
- ii. _____
- iii. _____

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

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

(c) the date of each such result:

- i. September 14, 2007
- ii. _____
- iii. _____

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

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

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a)
- (b)
- (c)

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

- (a) Ineffective Assistance of Counsel
- (b) Prosecutorial Misconduct
- (c) Newly discovered evidence.

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

- (a) Not requesting D.N.A Evidence, Failing to make reasonable objections, No pretrial Inve
Not interviewing any witnesses, Failing to impeach perjury testimony, (See Attachment).
- (b) See Attachment
- (c) See Attachment

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? NA
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NA
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NA
- (d) any other petitions, motions or applications in this or any other Court?
NA

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) 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) Not Raised By Appellant Attorney

(b) Not Raised By Attorney

(c) Attorney was given Amendment by mail from applicant, but never raised issue.

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

(a) your arraignment and plea? Was never shown plea

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(b) Dorothy Mangault

(c) Dorothy Mangault

(D) Joseph Savitz

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

i. Dorothy Manigault; P.O. Box 392, Greenville S.C. 29602

ii. Joseph Savitcz; Division of Appellate Defense, P.O. Box 11589, Columbia, S.C. 29211-1589

iii. _____

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

i. Trial

ii. Appeal

iii. _____

18. State clearly the relief you seek in filing this application.

New Trial

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

Spartanburg County, violation Probation July 2nd - Release March 2008.

STATE OF SOUTH CAROLINA)

COUNTY OF _____)

VERIFICATION

I, Steve R. Bagwell, 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.

Steve R. Bagwell

SWORN to and subscribed before me this 22 day of Oct., 07.

[Signature] (L.S.)
Notary Public

My Commission Expires: 8/10/2011

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

I, Steve R Bagwell, 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 therefor.

Steve R Bagwell
Applicant

SWORN or affirmed to and
subscribed before me this

23
day of Oct. 07, 2007.

[Signature]
Notary Public
My Commission Expires 8/10/2011

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
DATE: 10/25/07

2007 OCT 25 A 8:37

Continued from Page 3.

10. A) Not holding pretrial conferences with client, Failed to discuss any defense strategies with client, Failed to provide client with assessment of states case, Failure to notify client of possible maximum sentence
- B.) Not giving Applicant exculpatory D.N.A. Evidence, Not giving defense exculpatory information involving statement of witness, Giving false facts on closing argument,
- C.) Alleged victim testified at trial under oath that Applicant had a big gash on his eye and was bleeding to bloody, he testified that Applicant got such gash by running through a shattered back sliding glass door and getting cut by the sharp glass. ~~Defendant~~ Applicant did not know about the D.N.A. evidence prosecution had. Blood samples were taken from pieces of glass from said door. Applicant contends this is not his blood because I was never at the scene and am being falsely accused. Applicant was never given chance to show the D.N.A. evidence as rebuttal to prosecution to prove his innocence.

288 Steve Bagwell #304273
Lieber C.I. W. D276
P.O. Box 205
Ridgeville, SC 29472

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M. Pad
305 E.
Greenville

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Steve R. Bagwell,)
 S.C.D.C. No. 304273,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2007-CP-23-7109

**RETURN AND PARTIAL MOTION
 TO DISMISS**

In response to the post-conviction relief application filed October 25, 2007, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the December 2003 term of General Sessions for first-degree burglary (2003-GS-23-9373). Dorothy Manigault, Esquire represented the Applicant.

After the State called the case to trial,¹ the Applicant was found guilty as indicted. On April 13, 2005, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to twenty (20) years imprisonment.

A notice of appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense

¹ The Applicant had a joint trial – and subsequent joint appeal – with co-defendant Daryl Lee Spain.

perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Bagwell and Spain, Op. No. 2007-UP-377 (S.C. Ct. App. filed September 18, 2007).

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

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel:
 - a. Failed to request DNA evidence.
 - b. Failed to make reasonable objections.
 - c. Failed to conduct pre-trial investigations.
 - d. Failed to interview witnesses.
 - e. Failed to impeach "perjury testimony."
 - f. Failed to discuss defense strategies.
 - g. Failed to provide an assessment of State's case.
 - h. Failed to inform of maximum possible sentence.
2. Prosecutorial misconduct:
 - a. Failed to provide exculpatory DNA evidence.
 - b. Failed to provide "exculpatory information involving statement of witness."
 - c. Provided "false facts" in closing argument.
3. Newly discovered evidence:
 - a. State has DNA evidence from the scene that was not disclosed to defense and, if tested, would not match the Applicant.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent notes the Applicant has alleged newly-discovered evidence. For an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citation omitted).

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

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests: (1) that a hearing be held solely on the issue of ineffective assistance of counsel and (2) that counsel appointed to represent the Applicant.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: 
Attorneys for Respondent

January 16, 2008

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

2007-CP-23-7109

STEVE R. BAGWELL, 304273)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

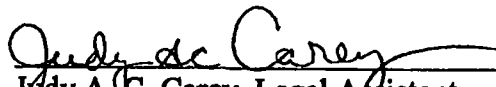
STATE OF SOUTH CAROLINA,)

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 and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Steve R. Bagwell, 304273
 Lieber Correctional Institution
 Post Office Box 205
 Ridgeville SC 29472**

DATED this 16th day of January, 2008.


 Judy A.C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	Case No(s) : 07-CP-23-07109
)	
Steve Bagwell,)	
)	
Applicant,)	
)	
-VS-)	TRANSCRIPT OF RECORD
)	
State of South Carolina,)	
)	
Respondent.)	
)	

May 27, 2010
Greenville, South Carolina

B E F O R E:

HONORABLE ROBIN B. STILWELL, Judge.

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

KAREN RATIGAN, Esquire
Attorney for the State

SUSANNAH ROSS, Esquire
Attorney for the Applicant

Teresa B. Johnson
Certified Verbatim Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



I N D E X

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Remarks	4			
Steve Bagwell				
by Ms. Ross	12			
by Ms. Ratigan		37		
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RESPONDENT EXHIBITS

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1 P R O C E E D I N G S

2 (WHEREUPON, the proceedings begin at approximately
3 9:37 a.m.)

4 **THE COURT:** All right, Ms. Ratigan. You may
5 proceed.

6 **MS. RATIGAN:** May it please the Court, Your
7 Honor. The first case of the day is Steve
8 Bagwell versus the State of South Carolina. The
9 docket number is 2007-CP-23-7109. Mr. Bagwell
10 was indicted for first degree Burglary back in
11 2003. He was represented on that charge by
12 Dorothy Manigault.

13 This case was brought to trial. It was
14 actually a joint trial with his co-Defendant,
15 Darryl Spain. That case was brought to trial in
16 April of 2005 before Judge Pyle. Mr. Bagwell was
17 found guilty of first degree Burglary and was
18 sentenced to 20 years imprisonment on April 13th,
19 2005.

20 Mr. Bagwell and Mr. Spain actually then had a
21 joint appeal, if I remember correctly. That was
22 at the Court of Appeals. His conviction and
23 sentence were affirmed in September of 2007. And
24 the State is ready to proceed.

25 **THE COURT:** Okay. Ms. Ross.

1 **MS. ROSS:** Thank you, Your Honor. The
2 applicant's ready to proceed as well. I, uh, --
3 this is a complicated case. It's been over two
4 years old. We have been attempting to get a DNA
5 sample, that was in evidence the entire time,
6 tested.

7 **THE COURT:** Yes, ma'am.

8 **MS. ROSS:** It was originally tested, but
9 they didn't -- they ran it against the database.
10 They couldn't testify to it. So we finally have
11 had that tested. I would just pass up to you,
12 uh, --

13 **THE COURT:** I think I may have it. Is it a
14 DNA analysis from SLED?

15 **MS. ROSS:** Uh, yes. But this is a more
16 recent one.

17 **THE COURT:** Okay.

18 **MS. ROSS:** I just got a copy of it myself. I
19 also have an outline that I'm just sort of going
20 on of my arguments.

21 **THE COURT:** Okay.

22 **MS. ROSS:** This is not evidence. It just
23 simply ---

24 **THE COURT:** Sure.

25 **MS. ROSS:** --- helps me do it. I am just

1 going to pass up the DNA stuff. Here's my
2 outline.

3 **THE COURT:** Okay.

4 **MS. ROSS:** Here is the new DNA report. This
5 is sort of the DNA related materials from the
6 discovery of the original trial.

7 **THE COURT:** All right. Thank you.

8 **MS. RATIGAN:** I'm not sure if Ms. Ross is
9 trying to make that an applicant's exhibit or a
10 court's exhibit. I'm familiar with all this
11 information and I don't have any objection to
12 anything in that.

13 **THE COURT:** Okay. All right. Good enough.

14 **MS. ROSS:** I'd just enter it as a court's
15 exhibit for your consideration. What we have --
16 the main arguments here was that there was a
17 Brady violation in that DNA evidence was
18 available. The State had it. They had access of
19 it and knowledge of it. They never tested it.
20 If they had of tested it, it would have turned
21 out not to be a match for Mr. Bagwell who was
22 charged with this burglary.

23 Also, I'll go through this later. But in the
24 State's case, there are a number of arguments
25 made during the case itself in closing argument.

1 Look at this picture. There's broken glass with
2 blood on it. That was Mr. Bagwell's. That's how
3 he had this cut on his face. So not only was
4 this DNA very important, it was also very
5 prejudicial to Mr. Bagwell and used against him
6 at the trial. I always do a motion for summary
7 -- argument that summary judgement was not filed,
8 uh, argument for summary judgement because the
9 reply was not filed within 30 days. We've also
10 alleged ineffective assistance of counsel. My
11 outline has all the arguments, sort of, for that.
12 I'll go through that, uh, later as we go through
13 testimony and put that on the record.

14 We've also argued prosecutorial misconduct as
15 well, violation of due process. This goes to
16 the, uh, Brady information that was not given
17 along with the closing. The use of things in
18 closing or facts in closings that was not brought
19 into evidence or were simply untrue. This was a
20 case where -- and I've cited page numbers
21 throughout the transcript of the trial. This was
22 a case where the defense called a 911 operator
23 and attempted to show that Steve Bagwell actually
24 called 911 from his apartment. The State
25 continually objected to that testimony. From

1 their own police officer, attempted to show that
2 actually Mr. Bagwell was the one who called the
3 police.

4 This was a situation where neighbors -- uh,
5 two young men lived in one apartment. Bagwell
6 and Spain lived in the next apartment. The ones
7 from, I will call it apartment A, said that
8 Bagwell and Spain broke into their apartment,
9 took nothing. They beat them both up. That was
10 the basis for this burglary. In other words, the
11 victim had beaten up the Defendants.

12 So the DNA is very prejudicial. Attempting
13 to keep out the information that it was actually
14 the Defendants who had called 911 is very
15 prejudicial as well. And I'll go through that
16 later. There are just a number of arguments in
17 closings that go against what was in evidence.
18 It was about testimony. The whole theme of
19 closing was, uh, why would they beat Bagwell
20 unless there was a burglary. That was the whole
21 thing.

22 The defense attempted to put up a witness to
23 explain why. They were prevented by objection of
24 the State. Under Holmes v. South Carolina, you
25 can't prevent, you know, a statement from coming.

Remarks

1 in and then argue why would they do that when the
2 State itself had prevented that.

3 **THE COURT:** Let me ask you with respect to
4 that one issue and that one issue alone.

5 **MS. ROSS:** Okay.

6 **THE COURT:** Is that a subject of appellate
7 review?

8 **MS. ROSS:** Partially. The appellate opinion
9 -- and I'll just get into that briefly. The
10 appellate opinion goes into a little bit of that.
11 At trial, they proffer testimony of this witness
12 that they wanted to present who was Mr. Spain's
13 brother, Jerry Spain. After the State objects to
14 their testimony arguing that the defense had not
15 questioned the witness and alleged victim, Mr.
16 Armstrong, about prior inconsistent statements on
17 the stand. So it was all getting into Rule 413,
18 I believe.

19 What's crazy about that is the defense
20 attempted to question Mr. Armstrong about, do you
21 sell drugs out of the apartment, had you done
22 that. The State objects and keeps all that
23 testimony out. Then when the defense brings up
24 Mr. Spain and attempts to have him say Armstrong
25 told us he was selling marijuana and he beat him

1 up for that reason. There was no burglary. Then
2 they object. The State objects again and says
3 you didn't question Armstrong about that when
4 obviously because of the State's own objection,
5 they were unable to question Armstrong about
6 that.

7 **MS. RATIGAN:** We would argue that was --
8 that not only is an appellate issue, it was the
9 appellate issue. We are not here today to
10 discuss the trial court error. We would argue
11 that's just not a proper PCR issue.

12 **MS. ROSS:** Well, it is in the sense that
13 defense counsel did not argue that it shows bias
14 and because they didn't make that specific
15 argument, they could have possibly got that
16 evidence in by just simply arguing it shows the
17 witness' bias rather than the argument that was
18 actually made.

19 Also, just briefly, I note in that appellate
20 opinion, they continue to say it's harmless error
21 because Armstrong was a neighbor who had known
22 Bagwell all his life. So they say that over and
23 over when, in fact, in the statements that I
24 believe are part of the record, but in the
25 witness' statement of Armstrong at the scene of

1 the crime, his statement says, I opened the front
2 door and saw the tall white guy wearing the red
3 shirt running out of the back patio door. I
4 yelled for Chris to stop them. The guy ran
5 around the side of our building.

6 This is the statement of Mr. Armstrong who
7 supposedly knew Bagwell from high school and he
8 was a neighbor. Clearly, they say it's harmless
9 error in that opinion, but it would certainly be
10 relevant to that, that if Armstrong had actually
11 known Mr. Bagwell from high school, in his
12 initial statement, he would have said I saw my
13 high school buddy, Steve Bagwell, running out of
14 my house and attacked him.

15 So that was not brought in effectively by the
16 State either. I just think that's an important
17 point about the appellate opinion. They seem to
18 be relying heavily on this important witness,
19 bolstering witness testimony based on this prior
20 knowledge, when, in fact, at the scene of the
21 crime at the time, that didn't exist. That's all
22 I have. I'll just go ahead and call Mr. Bagwell.

23 **THE COURT:** Okay. Let me also say, this
24 packet you handed up to me, Ms. Ross, includes
25 four sets of documents. Collectively, I'm going

1 to introduce those as Court's Exhibit number 1.
2 (WHEREUPON, Court's Exhibit 1 is marked for
3 identification purposes.)

4 **STEVE BAGWELL**

5 having first been sworn, testifies as follows:

6 **THE CLERK:** Thank you. You may be seated.

7 **THE COURT:** Before you get started, let
8 Teresa mark that and hand it back to me so she
9 won't be multitasking too much.

10 **THE CLERK:** State your full name for the
11 record.

12 **THE WITNESS:** Steve Randall Bagwell, II.

13 **MS. ROSS:** Okay. Mr. Bagwell.

14 **THE COURT:** Waiting for the Court Reporter
15 to say okay. We will go when she says she's
16 ready.

17 **DIRECT EXAMINATION**

18 **BY MS. ROSS:**

19 **Q** Let me talk about just why you have alleged
20 -- why you are asking for this post-conviction relief
21 here?

22 **A** Because I'm innocent, and if it hadn't been
23 for the prosecutorial misconduct in the case and
24 ineffective assistance of counsel, I wouldn't be here
25 right now.

1 Q All right. Let's go into that and explain
2 that in more depth. When you say you are innocent,
3 are you saying that you did not break into Mr.
4 Armstrong's apartment?

5 A No, ma'am. I didn't. I was never there.

6 Q All right. And you sat through the trial.
7 Was anything taken from the apartment?

8 A From their apartment?

9 Q From their apartment.

10 A I know there was pieces of -- nothing was
11 stolen or nothing.

12 Q Okay. Now, uh, did you ever get a plea offer
13 for probation or anything like that?

14 A No, ma'am.

15 Q Now, uh, let's go into the argument about
16 DNA. Do you have your trial transcript with you?

17 A No, ma'am. They are right there in my
18 paperwork.

19 Q All right. I'll hand you your copy of your
20 trial transcript at this time and talk about the
21 elements of the DNA evidence. Do you think the lack
22 of taking your DNA harmed or helped your case?

23 A It harmed my case. They keep on referring to
24 me running out the glass and cutting my head on the
25 glass and bleeding everywhere. The DNA would have

1 proved that I wasn't ever there.

2 Q So I'll just refer you to page 41, line 10 of
3 your transcript.

4 A Yes, ma'am.

5 Q All right. Now, at that point, this is Mr.
6 Armstrong testifying. What does he say?

7 A He says you saw -- you said you saw Steve run
8 out. Uh-huh. What did he run through? The sharp
9 glass of the patio door.

10 Q All right. And then on the next page, on
11 page 44, line 14, what does he say?

12 A He says, Prior to hitting the Defendant Steve
13 Bagwell, do you remember what his face looked like?
14 Do you remember did he have anything on his face? He
15 says a scar with blood running down it.

16 Q All right. And then the pictures of you are
17 shown to him, correct?

18 A Ma'am?

19 Q Uh --

20 A Yes, ma'am. The picture of me with the blood
21 running down my face?

22 Q Uh-huh. And then on page 45 --

23 A Yes, ma'am. I believe that's on page 41.

24 Q Okay. And then on page 45, line 15, the next
25 page.

1 A Yes, ma'am.

2 Q They move those pictures of you in with the
3 cut, correct?

4 A Yes, ma'am.

5 Q Then on page 61 and 62, uh, line 25 through
6 line 4, Mr. Armstrong attempts to grab the picture of
7 the broken glass and say that's how you got the gash
8 on your forehead, correct?

9 A Yes, ma'am. Yes, ma'am.

10 Q Okay. And then in closing, on page 227, line
11 8, the State submits to the jury that when he ran out
12 -- meaning you -- he ran through the glass, he could
13 have cut his eye while he was running out?

14 A Yes, ma'am.

15 Q And the State argues that -- brings that
16 point home. And this is after Armstrong has asked for
17 the pictures saying this is how he got the cut. And
18 the picture is showing broken glass with blood on it.

19 A Yes, ma'am. He holds up the picture with the
20 broken glass and points to it and says that's how I
21 cut my head, was on a broken glass.

22 Q Now, did you ever talk to Ms. Manigault about
23 submitting a blood sample?

24 A No, ma'am.

25 Q Were you aware that -- why not?

1 **A** Cause she never told me nothing about no DNA
2 evidence. I asked her, I said, what evidence do we
3 have. She told me we had two statements. I said
4 that's it? She said that's it. I knew nothing about
5 no DNA evidence.

6 **Q** Did you have a copy of your discovery at that
7 time?

8 **A** No, ma'am. When I seen the discovery is when
9 we went to trial.

10 **Q** And, uh, so you didn't know that the State
11 had a blood sample in its possession that they had
12 simply not gone ahead and tested?

13 **A** No, ma'am. I didn't know.

14 **Q** And you never went to a hearing where they
15 asked to take your blood, take a swab of your blood?

16 **A** No, ma'am.

17 **Q** Now, Darryl Spain was the co-Defendant in
18 this case, correct?

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

20 **Q** And after the incident, did he write you a
21 letter?

22 **A** Yes, ma'am. I was at R&E and he wrote a
23 letter.

24 **Q** Okay. And I was actually appointed to
25 represent him on post-conviction relief and I wrote

1 you and said I believe it is a conflict. What did you
2 say?

3 **A** I said I believe it was a conflict of
4 interest. I didn't want to be associated with him in
5 my case anymore.

6 **Q** Okay. Is this the letter you wrote me back?

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

8 **Q** And is this a copy of the letter that he
9 wrote to you?

10 **A** Yes, ma'am. That's a copy of the letter he
11 wrote.

12 **MS. ROSS:** Okay. I'd mark this.

13 **(WHEREUPON, Defendant's Exhibit 1 is marked for**
14 **identification purposes.)**

15 **BY MS. ROSS:**

16 **Q** What, basically, does his letter say to you?

17 **A** Uh, basically, it says that he was outside.
18 You want me to read the whole letter?

19 **Q** Uh, well, you know what it says. You can
20 read it or --

21 **A** Basically, what it says is he went outside
22 and I wasn't with him when all this happened. He says
23 the people come up behind him and grab him and he says
24 that I was inside passed out on the recliner. That's
25 basically what it says.

1 Q Does that match your recollection of events?

2 A Yes, ma'am. He left and I was passed out on
3 the recliner.

4 MS. ROSS: I would offer this as Applicant's
5 Exhibit 1 at this time.

6 MS. RATIGAN: Judge, I would object to that,
7 Your Honor. He's not the author of the letter.
8 In fact, Ms. Ross has the author of the letter
9 here today. I would simply argue that that
10 letter should come in under the author and not
11 the recipient.

12 THE COURT: You intend to call that
13 individual as a witness?

14 MS. ROSS: Yes.

15 THE COURT: Well, at this point in time, we
16 won't admit it as evidence. However, it is
17 marked and you may offer it through testimony
18 of --

19 MS. ROSS: And it's got a letter from Mr.
20 Bagwell stapled to the front. I would just offer
21 this part at this time. The next part, I will
22 bring in later.

23 MS. RATIGAN: That's fine.

24 BY MS. ROSS:

25 Q Now, you testified at your own trial,

1 correct?

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

3 **Q** And what basically did you tell the jury?
4 What's your recollection of your testimony?

5 **A** Basically, what I told them was that I was
6 passed out in my recliner. Armstrong come in there,
7 busting in, kicked in my door and come in there and
8 hit me in the head. I didn't know at the time what he
9 hit me in the head with until we went to trial and it
10 come out. He hit me in the head with a pistol.

11 **Q** How did you find out that?

12 **A** Through Jerry Spain's testimony at trial,
13 through his proffered testimony.

14 **Q** And, uh, why didn't you say at that point
15 that Armstrong had sold drugs?

16 **A** I was told basically not to bring it up no
17 more. The judge had done said we ain't gonna bring up
18 no drugs. Ms. Manigault said I could be charged with
19 some more charges if I brought up anything about the
20 drug charges. I would get charged with a drug charge
21 or something.

22 **Q** What had happened before, during the trial,
23 when defense attorneys had attempted to cross-examine
24 Mr. Armstrong about drug sales?

25 **A** They objected. The judge said that he wasn't

1 going to allow nothing of that to be put in.

2 Q Okay. Now, did you call 911 from your house?

3 A Yes, ma'am.

4 Q Do you recall what you said?

5 A Yes, ma'am. I told them, I said I don't know
6 what's happening. I said this man done broke in my
7 house. I said my next door neighbor done broke in my
8 house. He come in here and he beat me up. I said
9 they out their beating my roommate up. I said I don't
10 know what's going on. I said you need to get somebody
11 over here as soon as possible.

12 Q Was that tape put into evidence, that 911
13 tape?

14 A No, ma'am.

15 Q And why not?

16 A Because Ms. Manigault didn't get it in time.

17 Q Okay. And how was she supposed to know to
18 get it?

19 A Because I told her. Whenever I first got
20 locked up, when I told her -- I told her I called 911.

21 Q All right. Do you recall what the incident
22 report just reflects?

23 A The incident report as far as the crime scene
24 and everything?

25 Q Right.

1 **A** It says that they referred to the phone call.
2 Wasn't nothing disturbed within the residence, wasn't
3 nothing taken.

4 **Q** So it just says came out in response to a
5 phone call?

6 **A** Yeah, come out to respond -- in response to a
7 call.

8 **Q** All right. Now, at that 911 call, about that
9 -- I guess Mr. Spain's attorney, Mark -- Barcroft --

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

11 **Q** -- subpoenaed an officer to come in and
12 discuss the 911 call?

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

14 **Q** Now, I'm going to refer you to page 129, line
15 1. At that point, Mr. Barcroft is trying to get
16 testimony out of that witness that there was one call
17 to 911 and it was from you?

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

19 **Q** Now what does the State do when Mr. Barcroft
20 is attempting to get that testimony out?

21 **A** The State objects.

22 **Q** All right. And just generally about that
23 testimony, about the 911 call, what does the State do
24 when the defense attempts to show that it was a
25 disturbance call, not a burglary call?

1 **A** They keep objecting.

2 **Q** So that's not brought out into evidence?

3 **A** No, ma'am.

4 **Q** And then, uh, in closing, doesn't, uh, the
5 State refer to that 911 call?

6 **A** In closing?

7 **Q** I refer you to page -- let me go back to --
8 generally, page 149 to 162.

9 **A** Okay.

10 **Q** That is where Mr. Barcroft is trying to bring
11 out evidence --

12 **A** Yes, ma'am. He's trying to bring out the
13 disturbance call. There was a disturbance call made.

14 **Q** All right. And the State objects a number of
15 times on the basis of hearsay about this disturbance
16 call?

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

18 **Q** And weren't these records held in the regular
19 course of business?

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

21 **MS. RATIGAN:** I'm going to object, Your
22 Honor. She's asking for a legal conclusion.

23 **MS. ROSS:** All right. I'll change my line
24 of questioning.

25 **THE COURT:** I understand. Well, for

1 purposes of the record, I need to rule on the
2 objection, and I sustain the objection. Let's
3 just say that the trial judge made a ruling with
4 respect to the admissibility of evidence. To
5 what degree that is relevant to proceeding today,
6 I'm not certain. However, I will grant you some
7 latitude in that regard.

8 MS. ROSS: All right. Thank you, Your
9 Honor.

10 BY MS. ROSS:

11 Q The State does object a number of times to
12 that testimony, correct?

13 A Yes, ma'am. Yes, ma'am.

14 Q Does your attorney get up and make
15 counterarguments to the State's objection?

16 A No, ma'am.

17 Q And the State's general objection is 911 tape
18 hearsay?

19 A Yes, ma'am.

20 Q All right. Now, then on page 228, line 2 can
21 you read just starting with "now", line 1?

22 A Okay. Now why would he go to Gerald and
23 Chris if Gerald didn't call the police and if Gerald
24 didn't want the police to be there?

25 Q All right. So the evidence -- the State's

1 evidence about the 911 call is what? .

2 **A** They are trying to deny that I called 911.
3 They are trying to say that Gerald and them called
4 911.

5 **Q** And was there any -- did the State present
6 any evidence that Gerald had --

7 **A** No, ma'am. There is no evidence whatsoever
8 that they called 911.

9 **Q** All right. Okay. Let me get back organized.
10 I've got so many things that I want you to get in the
11 record. Now, when talking about the DNA, let's talk
12 about the 911 tape. The attorney didn't get that tape
13 at all.

14 **A** No, ma'am.

15 **Q** They didn't subpoena it.

16 **A** No, ma'am.

17 **Q** Now, did the State give that tape as Brady to
18 your attorney?

19 **A** No, ma'am. Not that I know of.

20 **Q** And you are saying the tape would have shown
21 you calling?

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

23 **Q** Now, did, uh, the State tell you or your
24 attorney before that the witnesses had changed their
25 statements from saying initially they said they both

1 saw both of you and then at trial, they said --

2 A No, they never -- as far as I know, there was
3 still two statements.

4 Q All right. And of course they never turned
5 over the DNA evidence either?

6 A No, they never turned over no -- any -- I
7 didn't know there was no DNA evidence at all.

8 Q And did -- okay. Now, going back to this
9 thing of the closing around page 231, the thing was
10 essentially why beat Bagwell if there wasn't a
11 burglary, correct?

12 A Yes, ma'am.

13 Q Now, why would they? Can you tell us today?

14 A Why would they beat me -- come over there and
15 beat me up?

16 Q Uh-huh.

17 A Yeah, because, uh, through the trial, I found
18 out that him and Darryl, my co-Defendant Darryl Spain,
19 had been into it. He had told the -- our next door
20 neighbor that lived in between [REDACTED] that Gerald
21 was selling marijuana out of his apartment.

22 Q Okay.

23 A And the lady, after Darryl told her that, she
24 went over there and knocked on the door and went and
25 asked Gerald, she told Gerald, I want to buy some weed.

1 Gerald got mad and told the lady he didn't sell weed
2 at the time. So he got mad at Gerald because Gerald
3 just sent somebody over there that he didn't even
4 know.

5 Q All right. And who was going to testify at
6 your trial about that?

7 A Jerry, Jerry Spain.

8 Q And you know that -- he proffered what his
9 testimony would have been on the record, right?

10 A Yes, ma'am.

11 Q And what essentially is your recollection of
12 what that testimony would have been?

13 A He says he went over there the next day and
14 talked to Gerald Armstrong. Gerald Armstrong told him
15 he didn't want to talk outside. He wanted to go
16 inside and talk because he didn't want nobody else to
17 hear. So they went inside. He proceeded to tell him
18 that he was mad. He was mad at Darryl because Darryl
19 had told the next-door neighbor that he was selling
20 dope and the lady come over there and visit him. And
21 he says he come home and caught him in his apartment.
22 After he beat Darryl up, he went over there and busted
23 up my door and caught me in my recliner and then hit
24 me in the head with a pistol.

25 Q All right. And, uh, they tried to get some

1 pictures in at that time, but they couldn't because
2 his testimony was not allowed, correct?

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

4 **Q** But eventually those pictures did come in
5 though, right?

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

7 **Q** And those were the pictures of the door being
8 busted in?

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

10 **Q** And Jerry Spain testified that he took those
11 pictures the next day when he went over?

12 **A** Yes, ma'am. He took them.

13 **Q** But he was prevented by the State's objection
14 of testifying to that?

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

16 **Q** So the jury didn't hear about that, those
17 pictures?

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

19 **Q** But that didn't stop the State, in their
20 closing, to referring to the picture and saying we
21 don't know when this picture was taken, we don't know
22 what was done about this. So they argue -- again,
23 they prevent the testimony from coming in and then
24 they argue ---

25 **A** Yeah, they try --

1 Q --- you don't have this information?

2 A Yes, ma'am.

3 Q All right.

4 A They say in closing argument that they don't
5 even know who took the pictures.

6 Q All right. Now, uh, also on closing, they
7 talk about testimony from neighbors. Can you tell us
8 about that?

9 A Yeah, in closing argument, the prosecutor
10 said that the reason they went over there and arrested
11 me was because they talked to neighbors and got
12 information from the neighbors whenever they did went
13 over there and arrested me. When Officer Cannon, in
14 his testimony, states that he talked to neighbors, he
15 said neighbors didn't have no information -- was
16 irrelevant. He said neighbors got there after
17 everything done happened. So there wasn't no
18 information from no neighbors.

19 Q But that didn't stop the State from
20 bolstering its case by arguing that --

21 A Yes, ma'am. She tried to -- he tried to make
22 it sound like they had more witnesses and more
23 evidence than they actually had.

24 Q That was page 231, 19, reference to the
25 neighbors?

1 A Yes, ma'am.

2 Q And 229, lines 5 through 10 and 222, lines
3 16, all in there?

4 A Yes, ma'am.

5 Q Now, do you think that that closing affected
6 your trial?

7 A Yes, ma'am. I think it did. He tried to
8 lead the jury to believe that there's more evidence
9 than what there was and there wasn't no evidence,
10 there wasn't no neighbors.

11 Q And let's just go -- you think that the
12 prosecutor failed to -- failed in their duty to turn
13 over evidence to you that would have helped your case?

14 A Yes, ma'am. He had the blood evidence the
15 whole time. He could have went over there -- I told
16 Ms. Manigault from the get-go I have nothing to hide.
17 I was never there at the crime -- scene of the crime.
18 I have nothing to hide. I will do whatever it takes.

19 Q All right. And then the -- how about the
20 statements in closing?

21 A The statement as far as the neighbors?

22 Q Yeah. The closing argument. You think that
23 that made your trial fair or un--

24 A No, ma'am. That made it unfair. It was
25 totally unfair. The prosecutor ain't supposed to say

1 nothing. He's supposed to stick to the facts within
2 the case. They were totally false facts. There
3 wasn't no neighbors. There wasn't no information from
4 no neighbors.

5 Q Now, uh, you have also alleged ineffective
6 assistance of counsel. We've discussed the DNA -- uh,
7 let's just discuss general objections. Did Ms.
8 Manigault try the case in an effective manner, in your
9 opinion?

10 A Uh, not in my opinion, no, ma'am. I believe
11 that she could have made reasonable objections. If
12 you look throughout my trial, like in Jerry Spain's
13 testimony, when he starts saying stuff in my favor,
14 she don't even ask him no questions. Whenever the
15 State objects to something, she don't even try to keep
16 it in. Whenever the State tries to bring up -- like
17 the neighbors, there ain't even no objection. Just
18 letting everything slide.

19 Q Did she, uh, make any point, when Mr.
20 Armstrong was talking about how he knew you since high
21 school and everything ---

22 A Yes, ma'am.

23 Q --- did she point out to the jury that he
24 didn't say that to the arresting officer at the scene
25 of the crime that day?

1 **A** No, ma'am.

2 **Q** And she didn't get any kind of DNA sample
3 from you?

4 **A** No, ma'am.

5 **Q** How about the phone records? Would they have
6 helped?

7 **A** Yes, ma'am. They would have helped because
8 it proves -- I told the dispatcher that night what was
9 happening.

10 **Q** How about investigation? Did she interview
11 witnesses?

12 **A** No, ma'am. She ain't interviewed no
13 witnesses. She ain't interviewed the witness that was
14 in my favor, Jerry Spain. I believe if she
15 interviewed the witnesses, the trial outcome would
16 have been different. We could have better prepared a
17 defense.

18 **Q** Did y'all meet before -- how many times did
19 y'all meet before trial?

20 **A** I met Ms. Manigault one time at trial, uh,
21 trial roll call.

22 **Q** What did y'all discuss?

23 **A** She asked me what did I want to do at that
24 time. I told her, I said, well, I ain't had nothing
25 to do with this. I said I'm innocent. She said,

1 well, you want to go to trial. I said yeah, go to
2 trial.

3 Q Did she discuss your charge and the amount of
4 time it carries?

5 A No, ma'am. No.

6 Q Did she discuss any plea offers with you?

7 A No, ma'am.

8 Q Now, in your appeal, the appellate court
9 found that since there was no argument, the witness
10 would show bias?

11 A Yes, ma'am.

12 Q That it was a non-issue for appeal, it wasn't
13 a judge error because --

14 A Ms. Manigault didn't object to it.

15 Q Right. Was that effective on her part in
16 your opinion?

17 A No, ma'am. It would have -- I might have got
18 my appeal if it was objected to.

19 MS. ROSS: Beg the Court's indulgence.

20 BY MS. ROSS:

21 Q Well, just briefly, is there anything else
22 you would like to tell the Court while I review my
23 notes?

24 A Yes, ma'am. Ms. Manigault is a nice lady,
25 but I believe that had she interviewed any of the

1 witnesses, had she interviewed even my own witness --
2 there was no interview of my own witness because his
3 testimony wasn't allowed in the court because they say
4 that she didn't ask Mr. Armstrong the right questions
5 to question the State's witnesses -- had she
6 interviewed the witnesses, she would have known what
7 to ask them. She didn't even know that. I feel that
8 the DNA evidence, I told Ms. Manigault from the get-go
9 I had nothing to hide. I wasn't at the scene of the
10 crime. I wasn't there. The man busted in my house.
11 I called 911. The police come there. I'm the only
12 guy standing there. There's a big old crowd of people
13 standing over there. They went over there to them.
14 Gerald Armstrong and them made up lies and told him
15 they was the ones that called him.

16 Q Okay. I just got two more things I want to
17 put on the record after reviewing my notes. On page
18 76, line 9, uh, did Ms. Manigault show your mug shot
19 or anything to -- show evidence or your Law
20 Enforcement Center medical records to show any
21 evidence that, in fact, you were beat up and bitten?

22 A No, ma'am.

23 Q And Armstrong testified that he --

24 A Yes, ma'am.

25 Q He hit once and didn't bite?

1 **A** Yeah, he tried to say -- there wasn't never
2 no confrontation out front. He tried to say there was
3 a confrontation out front. He seen the blood on the
4 side of my face and then he hit me.

5 **Q** All right. And I'll just show you some
6 records, detention center records. Okay. I'm going
7 to show you some documents that we've looked at
8 before. Can you tell me what those are?

9 **A** This right here is a picture of me at
10 Greenville County.

11 **Q** All right. So that's from the Greenville
12 County Law Enforcement Center records, right?

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

14 **Q** Can you tell me what this is?

15 **A** It's a Greenville County detention center,
16 uh, statement.

17 **Q** And what does that show about bite marks?

18 **A** It says on the side of his chest on the left
19 are the markings of a bite mark.

20 **Q** All right. And what does it say that you
21 complained -- that you said your injuries were from at
22 the time?

23 **A** I told them I was hit in the head and I was
24 bitten on the side.

25 **Q** And what are these?

1 **A** These are Greenville County detention center,
2 uh, statements.

3 **Q** And what does it say about your story on
4 them?

5 **A** It says Mr. Bagwell tells a story of being
6 attacked by several people and kicked several times in
7 the head and the body and the face and lose
8 conscientious. Went to the ER.

9 **MS. ROSS:** I would ask to have these marked
10 as Applicant's Exhibit 2. There are three
11 different sheets. Do you mind if I staple them?

12 **THE COURT:** Sure. No problem.

13 **MS. ROSS:** And I would offer them into
14 evidence at this time.

15 **MS. RATIGAN:** I'd object, Your Honor. They
16 haven't been authenticated. They look like
17 detention center records. Uh, they just haven't
18 been properly authenticated. They can't be moved
19 in under this case.

20 **MS. ROSS:** These are records held in regular
21 course of business. They are stamped.

22 **THE COURT:** These are records from the
23 intake at Greenville County detention center, is
24 that correct?

25 **MS. ROSS:** Yes, Your Honor, and the medical

1 records.

2 **THE COURT:** Okay. I'll overrule the
3 objection and allow this in.

4 **MS. ROSS:** Thank you, Your Honor.

5 **THE COURT:** Okay.

6 **(WHEREUPON, Defendant's Exhibit 2 is marked for**
7 **identification purposes and admitted into the record.)**

8 **BY MS. ROSS:**

9 **Q** Now, those pictures and those records weren't
10 used to cross-examine Mr. Armstrong --

11 **A** No, ma'am.

12 **Q** Now, and also on page 49, line 5 and 75, line
13 9, did Ms. Manigault object to a picture of the TV
14 coming into evidence?

15 **A** No, ma'am.

16 **Q** When did it turn out that picture was taken?
17 Was it taken at the --

18 **A** It was taken a day before trial.

19 **Q** And how long after the event was that?

20 **A** It was roughly about a year and a half after
21 -- and they had done moved from that apartment to a
22 different location.

23 **Q** And what did it show?

24 **A** It shows a picture of this TV and it's got a
25 -- I guess the screen is pushed in.

1 Q Okay.

2 A I asked Ms. Manigault at that time, I said,
3 where did that TV come -- who did the TV come from.
4 She said I don't know. I said, you're going to object
5 to it? She said she didn't want to object because she
6 didn't want to upset the jury by objecting too much.

7 Q All right. And was there anything in the
8 initial report or anything you saw in discovery, after
9 reviewing it now, talking about any damage to a TV at
10 the scene of the crime the next day?

11 A You talking about on the police report
12 itself?

13 Q Yeah.

14 A There's -- no. The police report said
15 nothing was disturbed, nothing was taken.

16 Q Okay. I've got no further questions.

17 A Thank you.

18 Q Uh, please answer any questions.

19 **CROSS-EXAMINATION**

20 **BY MS. RATIGAN:**

21 Q I just have a few quick questions to make
22 sure I have everything straight. So your testimony is
23 you only met Ms. Manigault one time, is that correct?

24 A Yes, ma'am, and at roll call court, roll call
25 count. I think one time at court.

1 Q So you met her once at roll call and maybe
2 once at court?

3 A At court, when we got to court.

4 Q And when you met with her, you talk about the
5 evidence the State had against you?

6 A Not really. The only thing we talked about
7 is she said what are you wanting to do. I said I
8 ain't had nothing to do with this. I told her I
9 called 911. I told her I had pictures of my front
10 door where my front door was busted in. She said what
11 you want to do. I said I ain't had nothing to do with
12 it. She said you want to go to trial. I said yeah,
13 we'll go to trial.

14 Q And so did she tell you that your victims
15 were going to testify against you?

16 A Yeah.

17 Q And did you know you were going to trial with
18 Mr. Spain, it was going to be a joint trial?

19 A No, I didn't know that at that time, no.

20 Q And you told her at that time that you had
21 called 911. Did she say that she was going to look
22 into that or did she just say anything at all?

23 A She didn't say too much at all.

24 Q You say she didn't say too much, did she say
25 anything about the 911?

1 **A** No, she didn't.

2 **Q** And your testimony is the reason you were
3 bleeding when you were arrested is because Mr.
4 Armstrong beat you up, not because you got cut on the
5 glass, is that correct?

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

7 **Q** Okay. And your testimony is that the police
8 officers, pardon me, didn't testify at trial about
9 anything about the neighbors, is that correct?

10 **A** Yes, ma'am. He said they talked it over when
11 they got there. He said they didn't have no
12 information about what happened. He said the only
13 thing they knew was what happened after. They got
14 there after everything done happen. He said they
15 didn't have no information.

16 **Q** But didn't Mr. Armstrong, he had some
17 testimony that mentioned the neighbors, didn't he?

18 **A** Yeah, he does.

19 **Q** And you testified -- you testified that, uh,
20 you wanted Ms. Manigault to interview some witnesses
21 including Jerry Spain. Who else did you want her to
22 talk to?

23 **A** I wanted her to interview Jerry Spain, uh,
24 Darryl Spain. I gave her Darryl Spain's phone number,
25 I gave her his address. I told her to call him, that

1 he was going to testify for me at trial.

2 Q Who else?

3 A Chris Snotty and Gerald Armstrong.

4 Q So the victims in the case as well?

5 A Yes, ma'am.

6 Q Okay. And getting back to the 911 tape, when
7 did you tell Ms. Manigault about the 911 tape? About
8 -- was it right at trial, the day before trial?

9 A No, ma'am. I wrote -- whenever I first got
10 locked up in Greenville County and they told me Ms.
11 Manigault was my lawyer, I wrote Ms. Manigault a
12 letter. In that letter, I told her that he busted in
13 on me, I'm the one that called 911 and, uh, I didn't
14 have nothing to do with this.

15 Q Did you write her a few letters about your
16 case, kind of telling her what your concerns were?

17 A No, ma'am. I just wrote her the one letter.

18 Q All right. That's all I have, Your Honor.

19 THE COURT: Okay. Any redirect?

20 **REDIRECT EXAMINATION**

21 **BY MS. ROSS:**

22 Q Uh, just going back to the neighbors. So in
23 your discovery, is there any interview with the
24 neighbor or anything in the discovery about the police
25 talking to neighbors or neighbors talking to --

1 **A** No, ma'am. There's nothing about the
2 neighbors.

3 **MS. ROSS:** All right. Thank you. Nothing
4 further.

5 **THE COURT:** All right. Mr. Bagwell, thank
6 you, sir.

7 **THE WITNESS:** Thank you, Your Honor.

8 **THE COURT:** Ms. Ross, anything further?

9 **MS. ROSS:** Yes, we'd call Jerry Spain --
10 Darryl Spain. Excuse me.

11 **DARRYL SPAIN**

12 having first been sworn, testifies as follows:

13 **THE CLERK:** Thank you. You may be seated.
14 State your full name for the record.

15 **THE WITNESS:** Darryl Lee Spain.

16 **DIRECT EXAMINATION**

17 **BY MS. ROSS:**

18 **Q** All right. Mr. Spain, uh, I'm Susannah Ross.
19 We've met before, correct? And you know I don't
20 represent you, I represent Mr. Bagwell, right?

21 **A** Yeah.

22 **Q** Now, uh, just to get the context, you were
23 the co-Defendant in this trial that we are here on
24 today. You and Mr. Bagwell were both charged?

25 **A** Correct.

1 Q Now, after the trial, did you send this
2 letter to Mr. Bagwell?

3 A Yes.

4 Q And, uh, is that your signature on there?

5 A Uh-huh.

6 Q Now, does this letter accurately describe Mr.
7 Bagwell's involvement in this case?

8 A Yes.

9 Q And you say something about being setup, what
10 are you talking about there?

11 A Jerry Armstrong and, uh, Chris Snotty set us
12 up. They were mad at me for telling the woman that
13 lived between our apartments that they sold marijuana.

14 Q And were you allowed to put in evidence of
15 that at your trial?

16 A No.

17 Q What was your -- did you feel like you
18 received a fair trial?

19 A No.

20 **MS. ROSS:** I would offer this letter into
21 evidence at this point.

22 **MS. RATIGAN:** Without objection.

23 **THE COURT:** All right. Without objection,
24 the statement is entered into evidence as
25 Applicant's Exhibit number 1.

1 **(WHEREUPON, Defendant's Exhibit 1 is admitted into**
2 the record.)

3 **MS. ROSS:** I have nothing further.

4 **MS. RATIGAN:** I have no questions for Mr.
5 Spain, Your Honor.

6 **THE COURT:** All right. Mr. Spain, thank you
7 for being with us. Appreciate it.

8 **MS. ROSS:** We've got nothing further at this
9 time.

10 **THE COURT:** Okay. Ms. Ratigan.

11 **MS. RATIGAN:** Yes, Your Honor. The State
12 would call Ms. Manigault.

13 **DOROTHY MANIGAULT**

14 having first been sworn, testifies as follows:

15 **THE CLERK:** You may be seated. State your
16 full name for the record please.

17 **THE WITNESS:** Dorothy A. Manigault.

18 **THE CLERK:** Thank you.

19 **DIRECT EXAMINATION**

20 **BY MS. RATIGAN:**

21 **Q** Were you appointed in this case or were you
22 retained, Ms. Manigault?

23 **A** I was appointed.

24 **Q** And you recall representing Mr. Bagwell on
25 this charge?

1 A Yes.

2 Q Did you file appropriate discovery motions?

3 A Yes.

4 Q And what did you receive as part of
5 discovery? You remember?

6 A I received all the incident reports, the
7 statements from the victims, alleged victims in the
8 case, criminal RAP sheet.

9 Q How many times do you recall meeting with Mr.
10 Bagwell before his trial?

11 A I met with Mr. Bagwell a couple of times at
12 the detention center. He recollects meeting with me a
13 couple of times here at the courthouse.

14 Q Do you recall whether or not you had any
15 correspondence back and forth?

16 A No, not really. I'm sure if he said he wrote
17 me a letter, he did.

18 Q Do you recall reviewing the discovery
19 materials with Mr. Bagwell?

20 A Yes, Mr. Bagwell indicated to me that he did
21 have pictures when I was going over the discovery
22 material that I received from the State with him, the
23 victim statement and police report.

24 Q Pictures of what exactly?

25 A His door. He had his own pictures, he said.

1 Q And he told you -- did he tell you he was
2 innocent in this case?

3 A Yes, if he said he did, I'm sure he did.

4 Q Now, in reviewing the discovery, did you
5 notice anything having to do with blood samples or
6 anything recovered from the scene?

7 A There was no discovery material on -- DNA on
8 blood samples. There was discussion in the incident
9 report. As has been testified to, there was glass on
10 the blood. But there was no testing done.

11 Q So you were aware there was some bloody
12 glass, but that was the extent of it?

13 A Correct.

14 Q So would it be fair to say this case was
15 always going to go to trial?

16 A Yes.

17 Q Did you have the opportunity, or would you
18 have had the opportunity to interview the victims in
19 this case?

20 A Sure. Yes.

21 Q And did you speak to them?

22 A No, I did not.

23 Q And can you recall why you didn't?

24 A I have the statements from the victim that I
25 went over with Mr. Bagwell. I generally do not speak

1 to the victim unless it is absolutely necessary to
2 talk with them. The Solicitor's office, uh, is kind
3 of particular about us talking to the victim, so I try
4 and respect that.

5 Q And did you speak to the co-Defendant, Mr.
6 Darryl Spain?

7 A I did.

8 Q And did his story line up with Mr. Bagwell's
9 or was there some deviation?

10 A There was some deviation. I asked Mr., uh,
11 Barcroft -- I had to talk to him briefly. He allowed
12 me to, but there was some deviation about what exactly
13 happened that night.

14 Q What about Jerry Spain, Mr. Darryl Spain's
15 brother, did you speak to him?

16 A I don't recollect if I did. No, I'm sorry.
17 I spoke to Jerry Spain, not Darryl.

18 Q Okay. So you spoke to Jerry Spain, not the
19 co-Defendant?

20 A Correct.

21 Q Okay. So your testimony about there being
22 some deviation was with respect to Jerry Spain?

23 A Yes. The only time I talked with a co-
24 Defendant was in the presence of Mr. Barcroft. It was
25 brief -- a brief -- it was not in detail.

1 Q Did you ever have any intention to call Mr.
2 Jerry Spain as a witness at trial?

3 A No, I did not.

4 Q Did Mr. Bagwell tell you that he had made a
5 911 call from his apartment?

6 A Yes.

7 Q And did he tell you the purpose of having
8 made that call?

9 A Yes.

10 Q Did you look into obtaining that tape or
11 using that as evidence?

12 A Uh, I filed discovery motion. The
13 expectation was to get the tape at the time. When I
14 explored into getting the tape, the Solicitor's office
15 said the tape had been destroyed because it was
16 destroyed after 90 days, I believe.

17 Q Did you inform Mr. Bagwell the tape was not
18 available?

19 A Yes.

20 Q And let's see, backing up to -- there was
21 some testimony -- Mr. Bagwell testified that he
22 believe that during closing argument, the State
23 mentioned the neighbors. Do you recall that being
24 objectionable?

25 A Yes. Mr. Barcroft objected. At one point, I

1 joined in his objection about the inconsistency of
2 testimony as being related by the prosecutor. Judge
3 Pyle ruled that was for the jury to determine.

4 Q And -- but there was some testimony at trial
5 about the neighbors in this case, is that correct?

6 A Yes.

7 Q And who testified about that? Do you
8 remember?

9 A No. I think the question was asked to the
10 officer about the neighbors. I believe he said he did
11 not take any statements from the neighbors. Other
12 than that, I can't remember.

13 Q Would it be fair to say that this case boiled
14 down to a credibility determination? Either the jury
15 was going to believe the two victims or the two
16 defendants, would that be fair to say?

17 A Yes.

18 Q There's been some testimony and some evidence
19 today that the blood from the glass, the broken patio
20 door does not match Mr. Bagwell. In your opinion, if
21 you had had that evidence at trial, would it have
22 affected the outcome of the case?

23 A I don't know. It would be another point for
24 the jury to consider. The testimony was that he was
25 not there. His testimony was that he was beat up by

1 these people in his own apartment sleeping. So it
2 would be another factor for -- it may have affected
3 it. I don't know.

4 Q Would it be fair to say that that would just
5 be another thing in the credibility determination?

6 A That's correct. I told Mr. Bagwell it was
7 going to be a swearing match, the two victims, alleged
8 victims, him and if the co-Defendant testified.

9 Q And Mr. Bagwell also testified that there was
10 a photograph of the victim's television that came into
11 evidence. Do you recall the circumstances of the
12 picture? How it was brought into evidence and
13 anything of that nature?

14 A Yes, I recall -- I think either the week or
15 the week before the trial, the State notified me that
16 they had taken a picture of a television. Of course,
17 I objected then. We objected during the trial to it.
18 It just came in the day before. The testimony was
19 that they had just taken the picture. It was not
20 taken at the time of the alleged incident.

21 Q Can you think of any other witnesses you
22 could have spoken to in order to help the case?

23 A No. Mr. Bagwell was essentially depending on
24 himself and the co-Defendant. And, uh, he was of the
25 impression that the co-Defendant testimony would be

1 enough to relieve him from any responsibility or guilt
2 in this situation. It did not pan out that way.

3 Q Oh, I wanted to ask about the mug shot. Did
4 you ever consider entering evidence of Mr. Bagwell's
5 mug shot?

6 A No, I did not.

7 Q Why is that?

8 A He testified himself about the reason for his
9 bruising when he was arrested, so I did not consider
10 entering the mug shot.

11 MS. RATIGAN: That's all I have, Your Honor.

12 THE COURT: Cross-examination.

13 MS. ROSS: Thank you.

14 CROSS-EXAMINATION

15 BY MS. ROSS:

16 Q I'm just going to go over a few things. As
17 far as the pictures of the TV, it was you that brought
18 out to the jury that the pictures had just been taken
19 the day before, correct?

20 A Yeah. The day before, the week before, a
21 couple of days, yeah.

22 Q So when the State presented those pictures,
23 they never said this was just from the day before?

24 A No, they never said that, but I think there
25 was something that I read in there. Yes, I certainly

1 did bring that up in closing argument.

2 Q Okay. And as far as -- I'll just refer you
3 to page 131, line 1 and down. This talks a little bit
4 about the neighbors.

5 A Yes.

6 Q Uh, can you read what that says just starting
7 at line 1.

8 A I didn't get the names?

9 Q Yes.

10 A Okay. I didn't get the names because they
11 seem -- they seen everything after it happened. They
12 didn't have any information of the incident. So the
13 information was irrelevant.

14 Q And then you say -- you sort of redo --
15 double check. Yes, it was irrelevant, right? And
16 then in closing on page 221, line 8 -- I have this
17 outlined. Uh, the State refers to the neighbors,
18 correct? I spoke with the neighbors. They informed
19 me about what happened.

20 A Uh-huh.

21 Q And then on page 230 through 231, line 12,
22 more reference in the State's closing to these
23 neighbors which Mr. Barcroft does, in fact, object to
24 and is overruled.

25 A Correct.

1 Q Now, --

2 A That's where the judge says it's for the jury
3 to determine what they remembered about the testimony.

4 Q And in your legal opinion, is the statement
5 the prosecutor was making to the jury about the
6 neighbor's evidence, was that in line with the
7 testimony presented by the police officer?

8 A No, it shows that back on -- the original
9 page you referred us to.

10 Q Uh-huh.

11 A Under my questioning, it was said that the
12 statements from the neighbors was irrelevant. There
13 was nothing material that they could offer ---

14 Q Okay.

15 A --- to the case.

16 Q And in fact, would you agree that this
17 bolsters -- is the State, in fact, bolstering their
18 own witnesses by saying there were more witnesses,
19 there were these neighbors, by making the suggestion
20 to the jury?

21 A You could say that.

22 Q Now, uh, just along that line about the
23 closing, the closing thing, would you agree was why
24 were they beating Bagwell, correct? Did you object to
25 that theme at all?

1 **A** No.

2 **Q** Did you object during closing?

3 **A** No, not to that.

4 **Q** Now, in fact, wouldn't you agree that the
5 State knew the defense's position about why, why the
6 victims would beat Bagwell?

7 **A** Yes.

8 **Q** And in fact, the State's objection to Jerry
9 Spain's testimony was the only reason the jury did not
10 know why the victims would beat Bagwell, would you
11 agree with that?

12 **A** The judge kept that testimony out. He ruled
13 it was not admissible.

14 **Q** And I would also just point out, did the
15 State also object to the defense attempts to bring in
16 evidence from the 911 police officer about the call
17 being a disturbance call, not a burglary call?

18 **A** Yes, but the officer did testify that the
19 call did come from the Defendant. He did testify to
20 that.

21 **Q** So there was one call and it was from the
22 Defendant?

23 **A** Correct.

24 **Q** Then the State attempts to argue that it
25 could have been a cell phone call. Maybe there was a

1 cell phone call.

2 **A** Right. It could have been. No evidence.

3 **Q** And then on page 230, line 8, the State says
4 just that to the jury.

5 **A** 231?

6 **Q** Yeah, I think it's 230, line 8. I could be
7 wrong. Oh, I'm sorry. That's about the pictures.

8 **A** Yeah.

9 **Q** Let's just go back. At that statement on
10 line 8, the State argues to the jury I could be wrong,
11 but I don't remember any testimony as to where the
12 pictures were taken.

13 **A** As to when the pictures were taken.

14 **Q** And this is the door jam pictures?

15 **A** Correct.

16 **Q** Do you recall what he was talking about?

17 **A** Correct.

18 **Q** Now, why wasn't there any testimony about
19 where the pictures were taken?

20 **A** It was not admissible. I mean, the judge
21 wouldn't allow it.

22 **Q** Yeah. Jerry Spain was the one who --

23 **A** Right.

24 **Q** And when he attempted to testify to that,
25 what did the State do?

1 A Object.

2 Q So the State's arguing about -- to the jury
3 about something that his objection prevented them from
4 knowing the answer to that question.

5 A Correct.

6 Q At some point in the closing, would you agree
7 that the State also made the same suggestion about the
8 911 call, that, uh, Armstrong made the 911 call when,
9 in fact, that was not the evidence in the case.

10 A Correct. The officer had testified that the
11 911 call logged in came from the Defendant.

12 Q And, uh, just going to the DNA evidence, let
13 me show you this document if I may. What is that
14 document?

15 A Oh, Brady motion.

16 Q All right. And in fact, is your signature on
17 the last page of that document or someone forged on
18 your behalf?

19 A Yeah, my secretary sent it on my behalf.

20 Q All right. Now, what is that?

21 A This is a request for discovery ---

22 Q All right.

23 A --- related to this case, uh, State versus
24 Bagwell, warrant number listed.

25 **MS. ROSS:** All right. And I would ask this

1 to be marked and moved into evidence at this time
2 as Applicant's Exhibit.

3 MS. RATIGAN: No objection, Your Honor.

4 THE COURT: All right. Without objection,
5 it's entered into evidence as Exhibit what
6 number? 3.

7 (WHEREUPON, Defendant's Exhibit 3 is marked for
8 identification purposes and admitted into the record.)

9 BY MS. ROSS:

10 Q Just for the record, that's dated September
11 19th, 2003, isn't it?

12 A Yes.

13 Q Now, would you say the, uh, -- would you
14 agree that the blood sample from the picture not
15 matching Mr. Bagwell's DNA would, in fact, be
16 favorable to Mr. Bagwell's defense?

17 A Yes.

18 Q And was that blood available to the State?

19 A Yes.

20 Q And was it material to his defense that that
21 blood did not match?

22 A Was it material to his defense if the blood
23 didn't match? Well, we didn't do the testing, so --

24 Q I guess I'm saying would a non-match be a
25 material piece of evidence?

1 A Yes.

2 Q And in fact, the State, in fact, had the
3 blood available to them and was considering -- Mark
4 Moyer was considering doing the test, right?

5 A Yes.

6 Q Now, then when Andy Moorman took over the
7 case, did he, in fact, follow through with the test?

8 A No.

9 Q And hadn't Mark Moyer said something about if
10 we are going to trial, that test would be done?

11 A I can't recollect specifically, but it could
12 have been.

13 Q All right. Now, on page 227 in the closing
14 argument and on page 62, and, uh, that's 227, line 8
15 and, uh, 62, line 4, these are two places where
16 Armstrong essentially says show me that picture. This
17 will show where the glass blood is from Mr. Bagwell.
18 Then, in closing, Mr. Moorman goes back and says it
19 again, uh, specifically saying he could have gotten
20 this cut running out the glass in a hurry. See the
21 arch on the glass, he could have got this cut running
22 out. That's 227, line 8. That's Mr. Moorman's
23 argument to the jury. Now, was he showing this
24 picture of this cut glass at the time with the blood
25 on it?

1 **A** Probably.

2 **Q** And all the time, the State had in its
3 possession evidence that would show that that was
4 simply not true?

5 **A** Correct.

6 **Q** And they never gave it to you or even did it?

7 **A** Correct.

8 **Q** Now, they also failed to turn over the 911
9 tape as you testified ---

10 **A** Correct.

11 **Q** --- before. Uh, and on page -- pages 149
12 through 152, the State attempts to prevent you from
13 bringing the evidence from the 911 tape what there is
14 left before the jury by objecting continually to this
15 operator's testimony?

16 **A** Correct.

17 **Q** And then again in closing, he argues totally
18 against what that testimony would have been if he
19 hadn't kept objecting. Now, did you get any
20 forewarning that the alleged victim's testimony was
21 not going to be what was in their statements?

22 **A** No.

23 **Q** Did the State ever inform you that it was
24 going to inform the jury that, uh, Mr. Armstrong had
25 gone to school with Mr. Bagwell and that was going to

1 be in their statement?

2 **A** I have some recollection that they said the
3 victim knew Mr. Bagwell. I can't remember whether it
4 was just as neighbors or whether it was before.

5 **Q** All right. But you agree at trial that Mr.
6 Armstrong says we've known each other all our lives.
7 Yet, in his initial statement, he doesn't say that,
8 does he?

9 **A** Okay. No, he doesn't.

10 **Q** I'm going to just show you. This is the
11 whole exhibits that were put in the trial. These are
12 all the exhibits, the photos and everything.

13 **A** Uh-huh.

14 **Q** Do you recognize those? There is the glass.

15 **A** Uh-huh.

16 **Q** That heel, that picture of a heel, that's Mr.
17 Spain's heel, right? That's not Mr. Bagwell's. All
18 right. Can you tell the court what those are?

19 **A** As have been stated, the exhibits, pictures
20 and statements from the trial.

21 **MS. ROSS:** All right. And I'll have them
22 marked and move them into evidence as Applicant's
23 Exhibit number 4.

24 **THE COURT:** Any objections?

25 **MS. RATIGAN:** They are part of the record

1 although I do not see the relevance in the case
2 today. We are not here to retry the case. We
3 are here to talk about Ms. Manigault's
4 effectiveness.

5 **THE COURT:** All right. Okay. I'll allow
6 the same. Note your objection.

7 **MS. ROSS:** Thank you, Your Honor.

8 **(WHEREUPON, Defendant's Exhibit 4 is marked for**
9 **identification purposes and admitted into the record.)**

10 **BY MS. ROSS:**

11 **Q** I just refer you to Jerry Armstrong's
12 statement.

13 **A** Uh-huh.

14 **Q** Is that the statement that you relied upon in
15 your trying the case?

16 **A** Yes.

17 **Q** Now, in that statement, is there anything
18 said about lifelong friend Steve Bagwell known since
19 middle school? Anything like that?

20 **A** No, this statement is a very short statement.
21 It only talks about the incident of the night.

22 **Q** And what does it say, what description of --
23 what does it say?

24 **A** Uh, as I opened the front door, I saw this
25 tall white guy wearing a red shirt. It looks like

1 running of the back patio door.

2 Q All right. So it doesn't say I knew it was
3 him because I had gone to middle school with him and I
4 known him all my life and he's my neighbor? Nothing
5 like that?

6 A No.

7 Q All right. But that was, in fact, the
8 testimony of that same witness during trial?

9 A Uh-huh.

10 Q That he had known him all his life?

11 A Yeah, but it further says that I recognize
12 the guy that lives next door to us.

13 Q Okay. But nothing about --

14 A Nothing about lifelong friend or schoolmate.

15 Q Okay. And, uh, the State never told you that
16 and you never did a pretrial identification hearing or
17 anything like that, did you?

18 A No.

19 Q And you didn't get your own DNA test?

20 A Correct.

21 Q Now, you did object to the continual
22 references to the blood on the glass, did you, through
23 the trial, the State's references to the blood?

24 A That is correct. The testimony shows that no
25 test was done. They didn't know whose blood it was.

1 Q All right. On 76, line 9, you attempt to
2 cross Mr. Armstrong about this bite.

3 A Correct.

4 Q And, uh, was that based on Mr. Bagwell saying
5 that Mr. Armstrong had bitten him?

6 A Yes.

7 Q And you didn't have the Law Enforcement
8 Center records showing that Mr. Bagwell had indeed
9 been bitten on the back?

10 A Correct.

11 Q So you didn't have that to cross-examine
12 with, did you? Or to impeach his testimony?

13 A Well, it wouldn't have shown that Mr.
14 Armstrong bit him.

15 Q Right.

16 A It just would have shown that he had a bite.

17 Q Okay. And, uh, as far as pretrial
18 investigation, I think you testified that you didn't
19 have your own investigator or anyone go out to the
20 complex to take witnesses or search down neighbors or
21 anything like that, did you?

22 A No, the only witness that -- again, I state
23 that Mr. Bagwell was depending on his co-Defendant to
24 come in and say that he had nothing to do with it.
25 Well, that didn't pan out. The co-Defendant didn't

1 ever say that.

2 Q Okay. And then, uh, with Mr. Spain's
3 testimony, would the State argue that under Rule 613
4 that Mr. Spain could not be questioned because
5 Armstrong hadn't been asked about that testimony
6 before? Isn't it true that the defense attempted to
7 ask Mr. Armstrong questions about his marijuana
8 selling?

9 A Yes.

10 Q And, in fact, was prevented of asking those
11 questions by the State's objection to that testimony?

12 A Yes, the judge kept it out.

13 Q And then the State objected using Rule 13
14 when you attempted to bring in Spain saying, yes, in
15 fact, they were selling marijuana and he said
16 something about that?

17 A Yes.

18 Q Now, did you ever argue a Rule 608 bias at
19 that point saying no, this witness is here to show the
20 bias of the victims, not a prior inconsistent
21 statement?

22 A No.

23 MS. ROSS: Beg the Court's indulgence.

24 THE COURT: Okay.

25 (WHEREUPON, there is a pause.)

1 **MS. ROSS:** I've got nothing further. Thank
2 you.

3 **MS. RATIGAN:** I have just a couple of quick
4 redirect, Your Honor.

5 **THE COURT:** Sure.

6 **REDIRECT EXAMINATION**

7 **BY MS. RATIGAN:**

8 **Q** Ms. Manigault, in your opinion, under Brady,
9 is the State obligated to run forensic tests on all
10 evidence that's collected?

11 **A** No.

12 **Q** And would the blood not matching -- the blood
13 from the patio door glass not matching Mr. Bagwell
14 make it impossible for him to have committed the
15 crime?

16 **A** No, it would not.

17 **Q** And do you recall whether you and your co-
18 counsel in this case pulled out inconsistencies in the
19 victim's testimony?

20 **A** Yes.

21 **MS. RATIGAN:** I have nothing further for Ms.
22 Manigault, Your Honor, and the State would rest
23 at this time.

24 **THE COURT:** All right. You may step down.
25 Thank you for being here.

1 **THE WITNESS:** Thank you.

2 **THE COURT:** Okay. Anything further from
3 either side?

4 **MS. RATIGAN:** Your Honor, I would waive
5 argument and would ask that -- Ms. Ross gave an
6 extremely lengthy opening laying out all of her
7 issues and, in fact, has memoranda. I would
8 simply ask that if she's going to expand on it is
9 one thing, but I would rather not have to --

10 **THE COURT:** Well, this is what I'm thinking.
11 Yeah, I know and I get it. In listening to the
12 testimony and having a heads up before we got
13 started, I see relevant issues. And I can
14 honestly say that I take a lot of this under
15 advisement and I know full well what I'm going to
16 do. In this one, I'm not so certain -- sure --
17 certain.

18 You know, having practiced law for a
19 substantial amount of time, the last thing that I
20 would like to do is give lawyers busywork. I
21 know you've got enough to do. But in this case,
22 what I would like to get from each of you is a
23 proposed order. In the meantime, what I'm going
24 to do is I'm going to read the transcripts.

25 It seems to me that during testimony, there

1 was a lot of references to certain portions of
2 the transcript. There is significant amount of
3 information in there that I just can't gleam into
4 it unless I've read it. So if y'all send me
5 proposed orders setting for your respective
6 points, I would appreciate that. In the
7 meantime, I'll get up to speed on what was in the
8 record.

9 You know, the primary thing that I'm
10 concerned with is really not the ineffective
11 assistance of counsel. Objections were made.
12 The trial judge ruled on the objections and the
13 Court of Appeals said that it was an error.
14 There's not much way of getting around all of
15 that. The real question, uh, that I'm looking at
16 is after-discovered evidence. That's really what
17 I'm looking at.

18 The question becomes, in my mind at least, is
19 was it available at the time of trial. That
20 seems like the one question that I have
21 remaining. It seems to me that it could have
22 changed the outcome of the trial and that it's
23 relevant. And so the question is was it
24 available at the time of trial. Could it have
25 been developed -- did the prosecution give the

1 defense some reason to believe that that evidence
2 was being analyzed? I do see letters from Mr.
3 Moyer which would give the defense the clear
4 indication that it was going to be tested. The
5 question that I have remaining that I have not
6 resolved yet is what do I do with that. So thank
7 you. I appreciate it.

8 Mr. Bagwell, good luck to you, sir.

9 MS. ROSS: Thank you, Your Honor.

10 (WHEREUPON, the proceeding is concluded at
11 approximately 10:57 a.m.)

12
13 (END OF PROCEEDING)
14
15

CERTIFICATE

1 I, the undersigned, Teresa B. Johnson, Official
2 Court Reporter for the Thirteenth Judicial Circuit of
3 the State of South Carolina, do hereby certify that
4 the foregoing is a true, accurate and complete
5 Transcript of Record of all the proceedings had and
6 evidence introduced in the trial of the captioned
7 case, relative to appeal, in the Court of Common Pleas
8 for Greenville, South Carolina, on this 28th day of
9 January, 2011.

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

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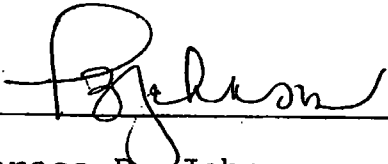
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Teresa B. Johnson
Official Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Steve R. Bagwell,)
 S.C.D.C. No. 304273,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2007-CP-23-7109

ORDER OF DISMISSAL

304273
 COURT
 2007-CP-23-7109
 12 11 2008

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 25, 2007. The Respondent made its return on January 16, 2008. An evidentiary hearing into the matter was convened on May 27, 2010, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Susannah C. Ross, Esquire. Karen C. Ratigan, Esquire, of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying were Daryl Spain and the Applicant's trial counsel, Dorothy A. Manigault, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the December 2003 term of the Greenville County Grand Jury for first-degree

burglary (2003-GS-23-9373). He was represented by Dorothy A. Manigault, Esquire.

After the State called the case to trial,¹ the Applicant was found guilty. On April 13, 2005, the Honorable C. Victor Pyle, Jr. sentenced the Applicant to twenty (20) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Bagwell and Spain, Op. No. 2007-UP-377 (S.C. Ct. App. filed September 18, 2007).

ALLEGATIONS

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

1. Ineffective assistance of trial counsel:
 - a. Failed to request DNA evidence.
 - b. Failed to make reasonable objections.
 - c. Failed to conduct pre-trial investigations.
 - d. Failed to interview witnesses.
 - e. Failed to impeach "perjury testimony."
 - f. Failed to discuss defense strategies.
 - g. Failed to provide an assessment of State's case.
 - h. Failed to inform of maximum possible sentence.
2. Prosecutorial misconduct:
 - a. Failed to provide exculpatory DNA evidence.
 - b. Failed to provide "exculpatory information involving statement of witness."
 - c. Provided "false facts" in closing argument.
3. Newly discovered evidence:
 - a. State has DNA evidence from the scene that was not disclosed to defense and, if tested, would not match the Applicant.

¹ This Court notes the Applicant had a joint trial – and subsequent joint appeal – with co-defendant Daryl Lee Spain.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

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

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he was innocent and was never in the victims’ apartment. The Applicant stated he only met with trial counsel twice and that they never discussed the charges or

possible sentences. The Applicant stated the only evidence he reviewed with trial counsel was the victims' statements. The Applicant stated the discovery materials did not include either information about statements from his neighbors or the tape of the victims' 911 call. The Applicant testified trial counsel failed to interview his co-defendant, the victims or Jerry Spain. The Applicant testified trial counsel failed to enter into evidence: (1) the tape of his 911 call stating someone had come into his apartment and beaten both him and his co-defendant and (2) his booking photograph, which showed his injuries. The Applicant testified trial counsel should have objected to a photograph of the victims' television that was entered into evidence because it was taken the day before trial. The Applicant stated trial counsel should have had Jerry Spain testify about why the victims had motive to lie. The Applicant testified trial counsel should have objected to the portion of the State's closing argument that referenced the police officers' conversations with the Applicant's neighbors.

The Applicant's co-defendant, Daryl Spain, testified the victims in this case "set them up" but that this was not explored at trial.

Trial counsel testified she filed discovery motions and reviewed those materials with the Applicant. Trial counsel testified she and the Applicant had several meetings in which they discussed the State's evidence and the Applicant's contention that he was innocent. Trial counsel testified she did not interview the victims because she had their statements. Regardless, trial counsel stated she usually does not speak to crime victims. Trial counsel stated she did not speak to the Applicant's co-defendant but did speak with his attorney. Trial counsel stated she did recall speaking with Jerry Spain but that, as his story deviated from the Applicant's, she did not intend to call him as a witness at trial. Trial counsel stated she believed that she would receive the tape from the Applicant's 911 call in the discovery materials but later learned the tape

had been destroyed. Trial counsel testified she did not enter the Applicant's mugshot into evidence because he testified at trial that the victims beat him. Trial counsel testified she objected to the admission of the photograph of the victim's television because it had been taken the week before trial. Trial counsel testified that when the solicitor spoke about the neighbors in his closing argument, the co-defendant's attorney made an objection that was overruled. Trial counsel testified, however, there was testimony at trial about the Applicant's neighbors.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel failed to adequately prepare his case for trial. This Court finds trial counsel filed discovery motions and reviewed those materials with the Applicant. This Court finds the Applicant told trial counsel he was innocent of the charge and that they decided to take the case to trial. This Court finds trial counsel had no control over whether the tape of the victims' 911 call was destroyed. This Court also finds that as it was not produced at the PCR hearing, the Applicant has failed to prove the contents of the 911 call that he made would have had any impact on his case. See generally Palacio v. State, 333 S.C. 506, 513, 511 S.E.2d 62, 66 (1999) (holding that, since the contents of challenged documents were not presented at the PCR hearing, the Applicant could not demonstrate how the failure of counsel to obtain these documents prejudiced the defense).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have interviewed witnesses – specifically the victims and Jerry Spain – before trial. This Court finds that as neither the victims nor Jerry Spain testified at the evidentiary hearing, any

discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original). Regardless, this Court notes trial counsel testified she did speak to Jerry Spain but that he did not add anything to their case. Trial counsel also testified that it is not her practice to speak to crime victims and this Court finds such a practice is not error.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have introduced his booking photograph into evidence. This Court notes trial counsel's testimony that she did not feel it was necessary to introduce the photograph to show his injuries because the Applicant testified about them at trial. This Court agrees and finds this was a valid decision. This Court also finds the Applicant failed to meet his burden of proving trial counsel should have objected to the admission of the victims' television into evidence (because it was not taken at the time of the burglary). This Court notes, however, that trial counsel both objected to the admission of the photograph and had the victim admit on cross-examination that the photograph was taken the week before trial. (Trial transcript, p.48; pp.74-75). This Court finds the Applicant has failed to articulate what other action trial counsel should have taken regarding the photograph of the television.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have questioned Jerry Spain about whether the victims had a motive to lie. This Court finds that after reviewing Spain's proffered testimony, this argument is without merit. In the form of a proffer, Spain stated the victims were mad because the Applicant's co-defendant had told a

neighbor that they (the victims) were selling marijuana. (Trial transcript, pp.167-71). Regardless, the Applicant cannot prove he was prejudiced by trial counsel's failure to elicit more detailed testimony from Spain because he did not testify at the PCR hearing. As such, this Court cannot speculate about either what Spain would have testified to or the impact it may have had upon the trial. See Bannister v. State, 333 S.C. at 303, 509 S.E.2d at 809.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have objected to comments made about the neighbors in the State's closing argument. (Trial transcript, p.221; pp.230-31). The Applicant seems to argue that as there was nothing about the neighbors included in the discovery materials, the State should not have been allowed to go into the matter. This argument is without merit. Detective Mark Cannon testified about having spoken to the neighbors in this case. (Trial transcript, pp.130-31). Further, the co-defendant's attorney objected that the State was commenting about the neighbors (when none of the neighbors testified) and the trial judge overruled. (Trial transcript, pp.230-31). It was not necessary for trial counsel to have further objected on this ground. See, e.g., State v. McDaniel, 320 S.C: 33, 37, 462 S.E.2d 882, 884 (Ct. App. 1995) ("So long as the judge had an opportunity to rule on an issue, and did so, it was not incumbent upon defense counsel to harass the judge by parading the issue before him again."). Regardless, this Court concludes the Applicant has failed to prove he was prejudiced by trial counsel's failure to object.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he

was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

Blood Evidence/DNA Test

The Applicant stated the lack of a DNA test harmed his case. The Applicant stated the victims testified that he was bleeding. The Applicant stated trial counsel never spoke to him about submitting a blood sample to be tested. The Applicant stated he was bleeding when the police arrested him because the victims had beaten him, not because he cut himself on the broken glass in the victims' apartment.

Trial counsel testified the bloody piece of glass from the crime scene was mentioned in the incident report. Trial counsel testified the first solicitor handling the case had mentioned a DNA test but the second solicitor (who eventually did prosecute the case) did not have a DNA test performed. Trial counsel stated that evidence the Applicant's blood did not match that of the bloody glass would not necessarily have affected the outcome of the case. Trial counsel stated this would have simply been another piece of evidence for the jury to consider in determining credibility.

This Court notes that prior to this hearing, counsel for the Applicant received an order that allowed the Applicant's blood to be tested against bloody glass from the crime scene. This Court notes the subsequent SLED report indicates the two samples did not match. (Court's Exhibit 1).

After-discovered evidence

This Court finds the Applicant has failed to meet his burden of proving after-discovered evidence. For an applicant to be granted a new trial based on after-discovered evidence, he must

show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (emphasis added).

First, this Court finds a DNA test would not have changed the result of the Applicant's trial. This Court notes the State's case relied upon the testimony of the victims – Jarrett Armstrong and Chris Snoddy. Both trial counsel and the co-defendant's attorney effectively cross-examined these witnesses regarding their beating of the Applicant and his co-defendant. As such, a jury question was created regarding the victims' honesty or credibility. Snoddy testified he did not see the Applicant that night. (Trial transcript, p.89; p.104). Armstrong's testimony was clear, however, that he saw the Applicant leaving the apartment. (Trial transcript, p.70). And both Armstrong and Snoddy testified there was broken glass. (Trial transcript, p.70; p.81). However, there was no testimony that the Applicant cut himself on that broken glass. While the solicitor stated in his closing argument that this could have happened, he did not state it actually occurred. (Trial transcript, p.227). This Court finds the jury's decision was not based on evidence of blood that may have been deposited on the glass but on the other evidence submitted by the State. See State v. Pipkin, 359 S.C. 322, 327, 597 S.E.2d 831, 833 (Ct. App. 2004) (noting the jury is "the finder of fact and weigher of credibility"); see also Bruno v. State, 347 S.C. 446, 556 S.E.2d 393 (2001) (noting that, by its verdict, the jury clearly rejected the defendant's account of what transpired). This Court further finds the fact that the DNA on the glass did not match the Applicant's does not mean he was not involved in this crime.

Second, this Court finds it is clear the DNA report was performed after the conclusion of the Applicant's trial.

Third, this Court finds the DNA test could have, by the exercise of due diligence, been performed prior to the Applicant's trial.

Fourth, this Court finds the DNA test could have been material to the issue of guilt or innocence. This Court also finds, however, that the results of the test were not certain at the time of trial. The Applicant could have been prejudiced significantly if the test results had been different. It was a legitimate trial strategy – which was employed by the co-defendant's attorney in closing argument and inuring to the Applicant – to be able to argue that no DNA evidence existed in this case and that there was reasonable doubt. Cf. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). This Court further notes that the absence of a DNA match to the Applicant does not mean he was not in the victims' apartment.

Fifth, this Court finds the DNA test was not cumulative or impeaching and could have potentially been used to the Applicant's advantage.

This Court finds the Applicant failed to prove all five elements of the test set forth in Mercer. Accordingly, the Applicant failed to meet his burden of proving there was after-discovered evidence in his case that merited a new trial.

Ineffective assistance of counsel

This Court also finds the Applicant has failed to meet his burden of proving trial counsel was ineffective regarding the blood evidence/DNA issue in this case. Trial counsel's performance in this case was not deficient. This was a case in which the jury was left to determine the credibility of the witnesses and to weigh the evidence presented. This Court finds the failure of trial counsel to request a DNA test was not ineffective. At the beginning of her

representation, trial counsel believed the State would be performing a DNA test and she did not learn until much later that the State would not be doing so. This Court notes it is unlikely the trial judge would have continued the case at that late date in order to have the DNA test performed. This Court finds trial counsel had to make a choice between continuing with the case (and having no DNA evidence to link the Applicant to the charge) or postpone the case and potentially receive damaging evidence against her client. This Court finds trial counsel made a reasonable decision to go forward without the DNA test and such choice was in keeping with prevailing professional norms. Further, the fact that the DNA from the bloody glass did not match the Applicant did not mean the Applicant could not have been in the victims' apartment on the night in question. The Applicant cannot prove he was prejudiced by trial counsel's decision not to request a DNA test.

Accordingly, the Applicant has failed to meet his burden of proving either all five (5) elements of the Mercer test or both prongs of the Strickland test. As such, the Applicant has not met his burden of proving he is entitled to a new trial because of after-discovered evidence or ineffective assistance of trial counsel. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not

established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2 day of August, 2010.



Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Greenville, South Carolina.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CASE NO. 2007-CP-23-7109
COUNTY OF GREENVILLE)	
)	
STEVE BAGWELL,)	
APPLICANT,)	
)	MOTION TO ALTER OR AMEND
VS.)	JUDGEMENT
)	
THE STATE OF SOUTH CAROLINA)	
)	
RESPONDENT.)	

FILED CLERK OF COURT
 GREENVILLE CO. SC
 PAUL B. WICKENSINGER
 2009 AUG 24 P 4:11

Pursuant to Rule 59(e), SCRCPC, Applicant hereby moves to alter or amend the judgment of this Court filed August 12, 2010, dismissing Mr. Bagwell's claim for PCR. This matter comes before the Court by way of application of post conviction relief filed October 25, 2007. The State filed its Return and Partial Motion to Dismiss on January 16, 2008. After a number of continuances in order to have a blood sample in evidence in the State's case tested for DNA and a comparison made to the Applicant, an evidentiary hearing was held May 27, 2010, at the Greenville County Courthouse. The Applicant was represented by Susannah Ross, Esquire, and Karen Ratigan, Assistant Attorney General, represented the State. The Applicant, Steve R. Bagwell, testified on his own behalf and co-defendant, Darryl Lee Spain testified as a witness. Dorothy Manigault, Esquire, testified for the State. The Court had before it a SLED report showing that the DNA of the blood sample in the State's possession at the time of trial did not match that of the Applicant, the a copy of the plea transcript, trial exhibits and records from the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Appellate briefs, the unpublished Appellate Opinion, the application for post-conviction relief, and the respondent's return.

PROCEDURAL HISTORY

The Applicant is imprisoned at Leiber Correctional Institution of the South Carolina Department of Corrections serving a twenty (20) year sentence for first-degree burglary. The Greenville County Grand Jury indicted Mr. Bagwell at the December 2003 term of General Sessions Court for first-degree burglary (2003-GS-23-9373). He and co-defendant Darryl Spain were tried before the Honorable C. Victor Pyle. Assistant Thirteenth Circuit Solicitor Andrew B. Moorman called the case on behalf of the State on April 12, 2005, and the jury found both guilty of first-degree burglary on April 13, 2005. An appeal was filed on Mr. Jackson's behalf and Joseph L. Savitz, III, Esquire, of the South Carolina Office of Appellate Defense perfected the appeal and the Court of Appeals affirmed the conviction. State v. Bagwell and Spain, Op. No. 2007-UP-377 (S.C. Ct. App. Filed September 18, 2007).

ARGUMENT

Mr. Bagwell's application alleged (1) ineffective assistance of counsel, (2) prosecutorial misconduct resulting in due process violations, and (3) newly discovered evidence consisting of a SLED Forensic Services Law Enforcement Report dated November 25, 2009, showing that the DNA profile from evidence used against him at his trial did not match Mr. Bagwell. The co-defendant, Daryl Spain, and the Applicant testified at the PCR hearing. Mr. Spain testified that he and Mr. Bagwell had been set up. He authenticated a letter that he had written to Mr. Bagwell soon after the trial where he states that Mr. Bagwell was passed out in his apartment and had no involvement in the

burglary. Mr. Bagwell testified that he requested a trial because he was not guilty and given a fair trial with effective representation and consideration of the newly discovered DNA evidence, the outcome of his trial would have been different.

Ineffective Assistance of Counsel

The Applicant said that his trial attorney failed to move for a DNA test of the blood evidence in the State's custody, failed to subpoena the tape on the 911 call, failed to adequately prepare for trial, failed to sequester and adequately cross examine witnesses, failed to discuss defense strategy, and failed to make necessary objections and arguments which allowed an unfair trial and prevented reversal on appeal. Due to the lack of evidence against the Applicant, there is a strong likelihood that he would have been found not guilty or alternatively his case would have been overturned on appeal if counsel had done these things.

The Applicant stated that he had asked his trial attorney to get a DNA test and asked the same of his PCR attorney because he knew the State's evidence could not match his DNA. Thus, the failure of trial counsel to get the DNA test was tantamount to failing to interview an available witness who the client says will have exculpatory evidence, not legitimate trial strategy. For purposes of a claim of ineffective assistance of counsel, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007); U.S.C.A. Const.Amend. 6. Furthermore, Ms. Manigault did not testify that it was part of her strategy not to test the blood evidence. Likewise, Mr. Bagwell said that he told his trial lawyer that he, not the alleged victims,

called the police after he was attacked and beaten by them while he was sleeping in his apartment. Yet, she failed to subpoena the 911 tape or to argue at trial that the destruction of the tape was a Brady violation. While the non-existence of the tape made it impossible to produce at PCR, thanks to co-defendant's trial counsel, the trial record contains testimony from the 911 records custodian showing that the Applicant made the only 911 call from that area that evening and it was referenced as a disturbance. (Tr. R. pp. 145-163) The effect of this testimony on the jury was limited by the lack of the tape, the State's continued hearsay objections to the police records, and the State's misleading arguments in closing that went without objection.

The Applicant testified that he informed his trial attorney that the reason his neighbors, the alleged victims, broke in his door and attacked him in his apartment was because they thought he was telling people that they sold marijuana. He said he informed his trial lawyer that the co-defendant's brother, Jerry Spain, could confirm this. While witness, Jerry Spain, was not produced at the PCR hearing; again thanks to co-defendant's trial counsel, the trial record contains his proffered testimony. Thus, the content of his testimony is not speculative; it is contained in the trial record. (Tr. R. pp.162-170). While Jerry Spain's proffered testimony supports Mr. Bagwell's defense, the jury never heard it because his trial attorney failed to argue it demonstrated witness bias. Sadly, this issue was not addressed on appeal because of the failure to preserve the record and argue bias under Rule 608. State v. Bagwell and Spain, Op. No. 2007-UP-377 (S.C. Ct. App. Filed September 18, 2007). This attorney error was magnified because, as the Applicant explained, his trial lawyer then told him not to mention in his trial testimony the alleged victims' motive to beat him up and wrongly accuse him of burglary.

because the trial Judge had barred any reference to their drug sales. Thus, he was advised by his lawyer that he could not present a complete defense when the rules of evidence would have allowed it had his attorney had argued them effectively. See Holmes v. SC, 547 US 319, 126 S. Ct. 1727 (2006). Then, taking advantage of this error, the State argued in closing without objection "Steve can't even say for what reason Jarrett beat him up." (Tr. R. p. 231, l. 18)

In closing, counsel for the State also told the jury that Deputy Cannon said, "I spoke with neighbors. Neighbors also informed me about what happened. After talking with those neighbors they placed the defendants under arrest that night. There was a break in that night..." (Tr. R. p 221, l. 8, p. 222, l. 11) Deputy Cannon actually said he spoke to neighbors but did not get their statements because "they didn't have any information of the incident so their information was irrelevant." (Tr. R. p 131, l. 2)

Bolstering occurs when the prosecutor implies that the witness's testimony is corroborated by evidence known to the government but not known to the jury. No objection was made at that time, though co-counsel objected to facts not in evidence later in argument when the State bolsters his victim witnesses again by saying the police didn't depend on the State witnesses alone, "they also got some information from the neighbors." (Tr. R. p 230, l.19). Applicant's trial counsel never objected in closing though the argument was replete with misstatements of facts in evidence, bolstering, and objectionable arguments thereby bringing into question the outcome of the case.

Due Process Violations

Mr. Bagwell alleged that the State suppressed material evidence that was favorable to his case, prevented the jury from hearing legitimate defense testimony and

evidence, and used arguments in closing that so infected the trial with unfairness as to undermine the outcome of the case. A prosecutor's improper closing argument may "so infect[] the trial with unfairness as to make the resulting conviction a denial of due process." United States v. Wilson, 135 F.3d 291, 297 (4th Cir. 1998) (citation and internal quotation marks omitted). In determining whether a defendant's due process rights were violated by a prosecutor's closing argument, the court considers (1) whether the remarks were, in fact, improper, and, (2) if so, whether the improper remarks so prejudiced the defendant's substantial rights that the defendant was denied a fair trial. *Id.* The Applicant proved that the blood sample taken from a piece of door glass that was photographed and used as evidence in his trial did not match his DNA. Yet, with the exculpatory evidence in their custody and having previously indicated by correspondence to defense counsel that the blood would be tested for DNA, the State never tested the blood evidence and never turned over the exculpatory evidence to the Defense. The prejudice of this was magnified when the State argued to the jury that it was the Applicants blood thereby bolstering the alleged victim's highly prejudicial and now known to be false testimony that the bleeding cut on the Applicant's face came from hitting the glass door leaving the crime scene. (Tr. R. p. 62, l.4 & p. 227, l. 8).

The Applicant testified that he called 911 after being attacked by the alleged victims and pointed out that the State failed to secure and turn over the 911 tape which was apparently destroyed after ninety days. Thus, his defense was denied the taped recording of his statements to 911 after being attacked. Then, the State objected to police testimony from police records that showed the 911 call came from a Steve Bagwell, in Steve Bagwell's residence and referenced a disturbance, not a burglary. (TR. R. pp.151-

160) Finally, despite the lack of any evidence in the 911 records to more than one call in the matter and the investigating officer's own testimony that the call came in from the defendants' apartment regarding a disturbance; the State argued in closing that the investigating officer would not have spoken to the alleged victims first if they had not called the police. (Tr. R. p. 129, l.1; p. 149, l. 22, p. 151, l.18; & p. 228, l.1). Again without objection, the State argued facts not in evidence to bolster their witnesses.

Similarly, the State failed to secure the names of neighbor witnesses potentially favorable to the defense and then argued to the jury that they did not have to believe his witnesses alone because the neighbors. The State demonstrated their belief in the materiality of the information in that they referred to neighbors in closing to bolster their witnesses story they caught the defendants in the act when they hurried home in response to neighbors calls that there was an ongoing break in. (Tr. R. p. 37, l. 10). Again, the prosecutor implies that the witness's testimony is corroborated by evidence known to the government but not known to the jury. Since no neighbors testified in the trial and the police testimony regarding neighbors was that some were interviewed but names were not taken because the neighbors gave nothing relevant to the case. (Tr. R. p. 131, l.3 & pp. 230-31).

The State suppressed almost all of defense witness, Jerry Spain's, testimony. He proffered that he photographed Steve Bagwell's broken door the day after the incident when he went by the Applicant's apartment and happened to see the alleged victim, Jarret Armstrong, who admitted that he had gone into Mr. Bagwell's apartment, hit him in the head with the butt of his gun, and beat him up for saying that Jarrett had been selling marijuana. (Tr. R. pp. 162-170). The State objected that the broken door was irrelevant

and argued the remaining testimony was a prior inconsistent statement under Rule 613 of the South Carolina Rules of Evidence. This was sustained though the State's own objections had prevented the defense from questioning Jarrett about selling marijuana and though the evidence showed witness bias under Rule 608 of the South Carolina Rules of Evidence. SCRE 608 & 613. (Tr. R. pp. 57-61 & pp. 162 - 171). Again without objection the State argued in closing there was no testimony as to when the picture of the Applicant's broken door was taken and that there were no explanations for the beating except the Applicant's guilt.

The theme of the State's closing was: why would the alleged victim have hit him unless the Applicant was guilty of the burglary. (Tr. R. p. 226, 1.23 & 231, 1. 18). However, the State through objections and favorable rulings by the trial Judge effectively prevented the defense from answering that very question during the trial with the viable evidence that corroborated the Applicant's trial testimony. (Tr. R. pp. 174-193). The 911 tape recording would have answered that question, as would Jerry Spain if he had been allowed to testify. Finally, Mr. Bagwell also could have answered that question if Judge Pyle and his own attorney had not forbidden him to mention his allegations that the alleged victims sold drugs. The Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense and present all relevant evidence in their defense. Holmes v. South Carolina, 547 U.S. 319, 324 (2006) Mr. Bagwell's conviction and trial transcript exemplify the denial of this right. The State through sloppy police investigation, failings to preserve and produce material evidence, and numerous objections, effectively prevented the Applicant from presenting a defense

to the degree that it constituted prejudicial error and brings into question the outcome of the case.


After Discovered Evidence

To obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since the trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983) (citation omitted). The Applicant has met the standards of Hayden. The DNA evidence is material and would likely change the outcome of the trial. The DNA profile that did not match Stave Bagwell came from a swab taken from blood on a piece of glass from the alleged victims' apartment's sliding glass door. The State put a photograph this glass door into evidence and then argued in closing that the Applicant cut his face on that glass. (Tr. R. p. 41, l.17 & p. 227, l. 8). This bolstered the alleged victim's highly prejudicial and now shown by DNA to be false statement that the Appellant cut his face running through the glass door leaving the crime scene. (Tr. R. p. 41, l. 20, p. 62, l.4). This false testimony also damaged the Applicant's credibility because he said he was cut while being beaten by the alleged victim. The record and the PCR testimony show that the DNA evidence was in the State's possession and it was not made available to the defense prior to trial. Only at the post-conviction level pursuant to Court Order was the DNA comparison made revealing Mr. Bagwell was not a DNA match.

CONCLUSION

For the foregoing reasons, the Applicant respectfully requests this Court to alter or amend its Order of Dismissal and grant post-conviction relief.

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
333 East Coffee St.
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina
This 24 day of August, 2010

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Steve Bagwell,)
)
 Applicant,)
)
 vs.)
)
 The State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT


RECEIVED
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 Clerk of Court
 Greenville County

**ORDER DENYING APPLICANT'S
 MOTION TO ALTER OR AMEND
 JUDGMENT**

Case No.: 2007-CP-23-7109 **ENTERED COMPUTER**

This matter came before the Court pursuant to the Applicant's Motion to Alter or Amend Judgment filed with this Court on or about August 24, 2010. After having carefully considered the Applicant's Motion, the same is respectfully denied.

AND IT IS SO ORDERED.


ROBIN B. STILWELL
THIRTEENTH JUDICIAL CIRCUIT
#2158

September 1, 2010
 Greenville, South Carolina

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 GREENVILLE CO. S.C.
 COURT REPORTER WICKENSIMER

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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
BURGLARY
FIRST DEGREE

At a Court of General Sessions, convened on DECEMBER 16, 2003 the

Grand Jurors of Greenville County present upon their oath:

That STEVE RANDALL BAGWELL did in Greenville County, on or about the 14th day of September, 2003, willfully and unlawfully enter the dwelling of Jarret Armstrong located at [REDACTED] without consent with the intent to commit a crime therein, and the entering or remaining did occur in the nighttime. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

Paul B. W. [Signature]
Clerk of Court C.P. & G.S.
Greenville County, SC
Certified Copy
dated 10-26-07

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
SOLICITOR

WITNESSES

C. HUNTER

GCSO

09/14/03

ARREST WARRANT NUMBER

H 466504

ACTION OF GRAND JURY

TRUE BILL

Russell Patton

Foreperson of GRAND JURY

VERDICT

GUILTY

Suzanne Caldwell

Foreperson of Petit Jury

4-13-05

Date:

DOCKET NO. 2003-GS-23-LMM 009373

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

DECEMBER TERM 2003

4/13/05
GUILTY

THE STATE

VS.

STEVE RANDALL BAGWELL

Indictment for

J
0079

BURGLARY
FIRST DEGREE

VIOLATION § 16-11-311

Certified Copy
Paul B. Waldeman
Clerk of Court C.P. & G.S.
Greenville County, SC
Dated 10-26-07

522

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO THE COURT OF APPEALS

The Honorable C. Victor Pyle, Jr., Trial Judge
The Honorable Robin B. Stilwell, Post-Conviction Relief Judge

Appellate Case No. 2010-173947

Steve R. Bagwell,.....Respondent,

v.

State of South Carolina,.....Petitioner.

APPENDIX II

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ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County

Robin B. Stilwell, Circuit Court Judge

STEVE BAGWELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

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ISSUES PRESENTED

I.

Trial counsel erred in failing to investigate into matters of defense by requesting that DNA testing be conducted on blood found on glass pieces recovered from the shattered sliding glass door which the perpetrator used to enter and/or exit the apartment that was burglarized because the state implied that the blood on the glass belonged to petitioner and touted this as the linchpin evidence to place petitioner at the crime scene and establish his guilt on the burglary charge, when in actuality, petitioner's newly discovered DNA test results evidence indicated that the blood found on the glass pieces in question did not match petitioner's blood DNA, which in turn produced exculpatory and exonerating evidence that was favorable to the defense and warranted a new trial in the case.

II.

Trial counsel erred in failing to present the proper legal argument to the trial judge in order to ensure that the testimony of a favorable defense witness, who would have shed light on the resident's motive to fabricate the burglary allegation against petitioner, would have been admitted into evidence at trial.

STATEMENT

Petitioner Steve Bagwell was found guilty of first degree burglary during the April 2005 term of the Greenville County General Sessions Court before Judge C. Victor Pyle. App. 1-249. Petitioner was represented at the hearing by Dorothy A. Manigault. Petitioner was sentenced to imprisonment for a period of twenty years in the case.

Subsequently, petitioner appealed his conviction and sentence. On appeal, briefs were filed by the appellant and respondent. App. 251-273. Petitioner was represented by Joseph L. Savitz on appeal. Ultimately, petitioner's conviction and sentence were affirmed by the South Carolina Court of Appeals. See State v. Bagwell, Unpublished Opinion No. 2001-UP-377 (Ct. App. September 18, 2007). App. 274-280.

On October 25, 2007, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 274-288. The respondent filed a return dated January 16, 2008, requesting that a hearing be held in the case. App. 289-293.

A PCR hearing was held in the case on May 25, 2010, at the Greenville County Courthouse before Judge Robin Stilwell. App. 295-361. On August 9, 2010, Judge Stilwell issued an order of dismissal in the case. App. 363-374. On August 24, 2010, petitioner filed a Motion to Alter/Amend in response to the order of dismissal. App. 375-384. On September 1, 2010, Judge Stilwell denied the Motion to Alter/Amend. App. 385. Petitioner was represented by Susannah Ross at the PCR hearing.

Petitioner appealed Judge Stilwell's order. This petition follows.

QUESTION I

Trial counsel erred in failing to investigate into matters of defense by requesting that DNA testing be conducted on blood found on glass pieces recovered from the shattered sliding glass door which the perpetrator used to enter and/or exit the apartment that was burglarized because the state implied that the blood on the glass belonged to petitioner and touted this as the linchpin evidence to place petitioner at the crime scene and establish his guilt on the burglary charge, when in actuality, petitioner's newly discovered DNA test results evidence indicated that the blood found on the glass in question did not match petitioner's blood DNA, which in turn produced exculpatory and exonerating evidence that was favorable to the defense and warranted a new trial.

This case was a swearing contest between Jarret Armstrong, who stated that he saw petitioner inside his apartment on the morning in question, and petitioner, who stated that he was sleeping and present in his own apartment, not Armstrong's apartment, during the time the alleged burglary occurred. The state's case consisted of two pieces of evidence: Armstrong's identification to the extent that he claimed he saw petitioner inside his apartment on that morning, and the inference that the cut and blood present on petitioner's face on that morning emanated from the broken sliding glass door from which he allegedly entered and/or exited then.

Jarret Armstrong testified that after arriving at his apartment shortly after midnight on the morning of September 14, 2003, he realized that someone was inside his apartment. Armstrong explained that when he entered his apartment, he saw petitioner inside and that upon being noticed, petitioner escaped through the glass patio sliding door, which was shattered with broken glass everywhere as a result. App. 33, l. 5 – p. 48, l. 7. Armstrong stated that he did not see Darryl Spain in his apartment on the morning in question. App. 53, ll. 18-20.

Chris Snoddy, who was Armstrong's roommate, testified that when he arrived home with Armstrong on that same morning, he did not see petitioner exit the apartment, but added that he did see petitioner's roommate and codefendant Darryl Spain exit their apartment. App. 77, l. 17 – p. 85, l. 6; App. 88, l. 13 – p. 91, l. 19.

Petitioner testified that he was in his own apartment at 11:00 p.m. on September 13, 2003, and that he woke up shortly thereafter to find Armstrong in his apartment fighting him and accusing his roommate Darryl Spain of breaking into his apartment. Petitioner stated that he called the police to report Armstrong's behavior immediately thereafter. App. 174, l. 7 – p. 188, l. 19. Petitioner's position was that he did not commit the burglary as charged because he was in his own residence, not Armstrong's apartment, on the morning in question.

The solicitor did not order pre-trial testing on the blood recovered from the shattered glass sliding door from which the burglar exited; but nonetheless, paraded in front of the jury false inferences that the blood on the broken glass pieces belonged to the burglar (who was purported to be petitioner), and that since Armstrong allegedly saw petitioner inside his apartment, then the logical inference was in effect that petitioner was the burglar who entered the apartment without consent. This blood evidence provided the state with its linchpin evidence. Note the following inferences the solicitor used to link the unidentified blood found on the glass as attributable to petitioner and thus evidence of his guilt on the burglary charge:

- 1.) Armstrong testified that after petitioner ran out of his apartment through the glass patio sliding door, he (petitioner) was seen minutes later with a scar on his face and blood running down his face. App. 44, ll. 14-19; App. 70, ll. 13-19.

- 2.) State's exhibit #6 was a picture depicting the mark/scar Armstrong allegedly saw on petitioner's face on that night. The inference is that the mark emanated from petitioner having been cut by the glass door from which he escaped. App. 44, l. 15 – p. 45, l. 21.
- 3.) State's exhibit #5 was a picture depicting the broken glass door that the perpetrator ran through in order to escape. App. 56, ll. 6-19; App. 41, l. 17 – p. 42, l. 6; App. 184, lines 15 – 20.
- 4.) State's exhibit #7 was an actual picture of the broken glass from the shattered door in question. App. 184, ll. 21-23.
- 5.) During opening argument, the solicitor stated that Armstrong opened his door...and [saw petitioner] inside...and [that] petitioner became upset “and ran out the patio glass door,” which was the “patio glass door which had been shattered moments before” allegedly when the perpetrator entered Armstrong's apartment earlier. App. 25, ll. 3-6.
- 6.) Also, the solicitor stated at opening argument that the evidence will show that there was a cut and blood on the perpetrator's face. App. 26, ll. 1-8.
- 7.) Additionally, the solicitor argued at closing that Armstrong saw “a scratch on [petitioner's] top eye and blood” and that there was “a little blood trail coming down the side of his face” and that “[petitioner] could have gotten this cut...if he ran out, ran through the glass in a hurry [as] ...he could have cut his eye when he was running out.” App. 227, ll. 1-11.
- 8.) Finally, in the appellate court opinion issued by the Court of Appeals in the case, the appellate court concurred with the state's position that the blood evidence provided a connection between the blood present on petitioner's face and the blood found on the

shattered glass piece from the sliding glass back door of the apartment, and that this inference was supported further by Armstrong's testimony that he saw petitioner "leaving through the back glass patio door which had been shattered" and that the "physical evidence corroborated the testimony of Armstrong...[as] the back glass door of the victim's apartment had been shattered," as petitioner was seen "leaving the apartment." See App. 274 – 380.

Clearly, the state attempted to present a connection between the perpetrator's alleged entrance and/or exit through Armstrong's apartment's sliding glass door, which was shattered in the process, and the blood on petitioner's face in order to place petitioner at the crime scene and link him to the role of burglar.

Note that the state did not conduct DNA testing on the blood evidence found on the shattered glass pieces recovered from the crime scene. During the PCR hearing, petitioner testified that counsel erred in failing to conduct DNA testing on him and the blood evidence found on shattered glass pieces present at the crime scene. Petitioner stated that this omission prejudiced the defense because the DNA testing conducted at the PCR stage yielded results that indicated that the blood on the shattered glass pieces recovered at the crime scene did not match his (petitioner's) blood DNA, which in turn meant that this would have provided the defense with exculpatory evidence that could have been used to highlight insufficient proof within the state's case and supported the argument for the exoneration of him on the burglary charge. Petitioner added that he informed counsel that he was innocent and that he was bleeding at the crime scene because Armstrong assaulted petitioner on that morning. Petitioner complained that counsel should have

had the blood on the glass pieces found at the scene tested prior trial. App. 307, l. 15 – p. 310, l. 19; App. 323, ll. 14-18; App. 325, ll. 2-4; App. 327, ll. 6-10; App. 333, ll. 2-6.

Trial counsel admitted that she failed to request that DNA testing be conducted on the blood found on the shattered glass pieces found at the crime scene while preparing for petitioner's defense. App. 339, ll. 4-10. Also, counsel admitted in effect that had that blood evidence been DNA tested prior to trial and results obtained proving there was no match to petitioner's blood and DNA, then this would have been favorable and exculpatory evidence available to use in petitioner's defense at trial in order to argue that the state had insufficient proof beyond a reasonable doubt to support a burglary conviction against petitioner. App. 342, l. 18 – p. 343, l. 3; App. 349, l. 12 – p. 352, l. 7; App. 355, ll. 21-25.

Regarding this issue, the PCR judge held that:

This Court notes that prior to this [PCR] hearing, counsel for the Applicant received an order that allowed that Applicant's blood to be tested against bloody glass from the crime scene. This Court notes the subsequent SLED report indicates the two samples did not match. (Court's Exhibit 1). App. 370.

However, the PCR judge went on to rule that the non-matching DNA blood test results would not have changed the result of petitioner's trial, and that therefore, petitioner did not therefore satisfy the elements of the newly discovered evidence test that would require that a new trial be held in the case. App. 370-372.

Counsel has a duty to conduct reasonable investigations in a case. Strickland v. Washington, 466 U.S. 668 (1984). See Dover v. State, 337 S.C. 298, 523 S.E.2d 459 (2000), where trial counsel erred in failing to investigate into the existence of hospitalization records establishing the victim's commitments for depression and substance abuse and suicide threats in support of

the defendant's defense that the victim committed suicide on the night the state alleged he killed the victim. See also, Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991), where trial counsel was found ineffective in failing to uncover the fact that the prosecutrix no longer desired to prosecute the defendant on the two two-year old forgery charges instigated against him and that one of the burglary charges the defendant pled to in general sessions court had already been disposed of in magistrate's court. Also, compare Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998), where the Court held counsel was ineffective in failing to call a triage nurse who would have testified that the prosecutrix denied penetration occurred in the state's criminal sexual conduct case, because the only evidence of sexual battery was the prosecutrix's accusation, and because this nurse's testimony would have established reasonable doubt and corroborated the doctor's testimony that the prosecutrix had no pelvic lesions, cuts or tears. Additionally see Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2009), where the court found counsel ineffective in failing to adequately investigate and present mitigating evidence (defendant's mental incompetence) during the penalty phase of the trial.

Here, but for counsel's failure to investigate into and obtain DAN test results on the blood evidence in question, a reasonable probability exists that the outcome of petitioner's trial would have been different in the case because the DNA evidence indicated there was no blood match between the blood found on the glass at the crime scene and petitioner's blood, which in turn would have provided the defense with exculpatory evidence that would have weakened the sufficiency of the state's case, which hinged on the blood linchpin evidence and identification evidence, and most likely exonerated petitioner of the burglary charge. Herein lies the prejudice. Thus, trial counsel's failure to conduct DNA investigation constituted deficient legal representation

in the case in violation of petitioner's Sixth Amendment right to effective assistance of counsel at trial. See Strickland v. Washington, 466 U.S. 668 (1984).

Furthermore, not only should petitioner have received PCR relief based on the showing of his receipt of ineffective assistance of trial counsel, but he should have been granted a new trial based on newly discovered evidence uncovered in the case. The newly discovered evidence in the case established that there was no DNA blood match between the crime scene blood found on the glass pieces recovered at the crime scene and petitioner's blood DNA profile, which in turn meant that this was exculpatory evidence which would have nullified the sufficiency of the state's case and exonerated him on the burglary charge.

As a rule, newly discovered evidence would warrant the grant of a new trial if the newly discovered evidence would change the result if a new trial were granted, and was discovered since the trial and could not have been discovered prior to trial, and would constitute material evidence that was not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983). Clearly, this blood/DNA non-match evidence in this case was material evidence due to its exculpatory nature, which was neither cumulative nor impeaching, as it bore on the issue of petitioner's innocence and qualified as favorable and exculpatory evidence that could have been used to attack the sufficiency of the state's case and exonerate petitioner of the burglary charge. Also, petitioner uncovered this newly discovered evidence after the trial, which he could not have done so prior to trial because it was not his (petitioner's) neglect, but rather trial counsel's error in failing to request that the DNA blood testing be conducted prior to trial, which of course constituted ineffective assistance of trial counsel in the case. Finally, it is clear that had this exculpatory DNA evidence been presented at trial, then this would have weakened the state's case by nullifying the

linchpin blood evidence used to link petitioner to the crime charged and forced the state to rely on the one weak piece of identification evidence that remained, and the result would have been insufficient evidence of guilt upon which to support the burglary against petitioner.¹

Trial counsel erred in failing to investigate into matters of defense by not requesting that DNA testing be conducted on the blood evidence found on glass pieces recovered from the sliding door which the perpetrator entered/exited because the state presented false inferences to the effect that the blood evidence found at the scene belonged to petitioner and used this as the linchpin evidence to link petitioner to the crime, when in actuality, petitioner's newly discovered evidence yielded DNA test results that indicated that there was no match between the blood found at the scene and petitioner's blood DNA, which in turn provided the defense with exculpatory and exonerating evidence that negated petitioner's presence at the crime scene and rendered the state's case insufficient beyond a reasonable doubt to prove his guilt on the burglary charge.

¹ Roommate Snoddy did not see or make an identification indicating that petitioner was inside his apartment on the morning in question.

QUESTION II

Trial counsel erred in failing to present the proper legal argument to the trial judge in order to ensure that the testimony of a favorable defense witness, who would have shed light on the resident's motive to fabricate the burglary allegations against petitioner, would have been admitted into evidence at trial

Apparently, petitioner and codefendant Darryl Spain were roommates who lived in an apartment in the same complex where Armstrong and Snoddy, who were also roommates, shared an apartment. Armstrong and Snoddy alleged that petitioner and Darryl were found inside their apartment without their consent, and burglary charges emerged thereafter. At trial, co-defendant's counsel called Jerry Spain, who is Darryl's brother, as a witness for the defense to testify that Armstrong was angry at Darryl for telling a female in another apartment in the complex that he (Armstrong) sold marijuana. Clearly, this provided the motive (revenge) for Armstrong to fabricate the burglary allegations made against petitioner and Darryl Spain. When this issue came out at trial, the state objected to this potential testimony by Jerry Spain per Rule 613(b) SCRE, per the argument that this query should have been addressed as a question (via prior inconsistent statement form) personally to Armstrong and Snoddy rather than directing such questions to Jerry Spain. The trial court agreed with the state's position and did not allow Jerry Spain to testify at trial on this point. App. 162, l.11 – p. 171, l. 21.

During the PCR hearing, petitioner testified that Armstrong told Jerry Spain that he was angry at Darryl Spain for telling their female neighbor that he (Armstrong) sold marijuana and that this in effect led to his actions, i.e., revenge by fabricating the burglary allegation, but that counsel

erred in failing to argue the proper basis to gain the admission of Jerry Spain's testimony into evidence at trial. App. 319, l. 17 – p. 320, l. 24; App. 326, ll. 8-18.

Indeed, this issue was addressed on appeal in a merit brief. Appellate counsel argued that when the state objected to Jerry Spain's testimony on the ground that the same was prohibited under Rule 613(b) SCRE,² then trial counsel in effect should have argued that the testimony was admissible under Rule 608(c) SCRE,³ which allows one to show evidence of a witness' bias, prejudice or ill motive to fabricate testimony in a case. App. 251-259.

The PCR judge ruled that petitioner failed to meet his burden in proving that trial counsel was ineffective in this regard. App. 363-374.

On appeal, the appellate court affirmed the trial court's ruling per 613(b), SCRE, and held that this issue was not preserved for review under the Rule 608(c) SCRE argument raised on appeal (unfortunately due to trial counsel's error in failing to preserve this issue for appeal under Rule 608(c), SCRE) and went on to rule that although the trial judge's exclusion of the testimony under the Rule 613(b), SCRE, was in effect error; nonetheless, this was harmless error because Jerry Spain's story would not have reasonably affected the outcome of the trial due to the physical evidence presented at trial (blood and identification evidence). App. 274-280.

² **Extrinsic Evidence of Prior Inconsistent Statement of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

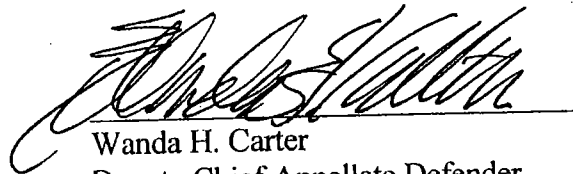
³ **Evidence of Bias.** Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.

As a rule, a party must enter a contemporaneous and specific objection in order to preserve for appellate review a particular issue in a case. State v. Sheppard, 391 S.C. 415, 706 S.E.2d 17 (2011). Here, trial counsel erred in violation of the Sixth Amendment in failing to couch the question regarding the admission of Jerry Spain's testimony under the proper rule (i.e. Rule 608, SCRE) in order to have preserved the issue for appellate review. See Strickland v. Washington, 466 U.S. 668 (1984). But for the error, this issue would have been preserved and reviewed on appeal, and there was a reasonable probability that the case would have been reversed on this appellate issue as well.

CONCLUSION

Based on the foregoing arguments, petitioner requests that the Court grant the petition and allow full briefing on these issues.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

This 29th day of July, 2011.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Robin B. Stilwell, Circuit Court Judge

STEVE BAGWELL,

PETITIONER,

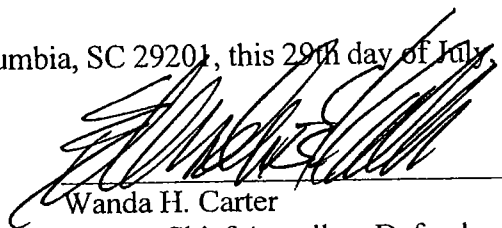
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix and supplemental appendix in this case have been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of July, 2011.

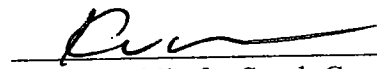


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 29th day
of July, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell, Circuit Court Judge

Steve R. Bagwell,..... Petitioner,

v.

State of South Carolina,..... Respondent.

**RETURN TO PETITION FOR
WRIT OF CERTIORARI**

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QUESTIONS PRESENTED

1. Did trial counsel err in failing to investigate into matters of defense by requesting that DNA testing be conducted on blood found on glass pieces recovered from the shattered sliding glass door which the perpetrator used to enter and/or exit the apartment that was burglarized because the State implied that the blood on the glass belonged to Petitioner and touted this as the linchpin evidence to place Petitioner at the crime scene and establish his guilt on the burglary charge, when in actuality, Petitioner's newly discovered DNA test results evidence indicated that the blood found on the glass pieces in question did not match Petitioner's blood DNA, which in turn produced exculpatory and exonerating evidence that was favorable to the defense and warranted a new trial in the case?

2. Did trial counsel err in failing to present the proper legal argument to the trial judge in order to ensure that the testimony of a favorable defense witness, who would have shed light on the resident's motive to fabricate the burglary allegation against Petitioner, would have been admitted into evidence at trial?

STATEMENT OF THE CASE

The Greenville County Grand Jury indicted Petitioner at the December 2003 term of General Sessions for first-degree burglary (2003-GS-23-9373). (App.pp.386-87). Dorothy A. Manigault, Esquire represented Petitioner.

After the State called the case to trial,¹ Petitioner was found guilty. On April 13, 2005, the Honorable C. Victor Pyle, Jr. sentenced Petitioner to twenty (20) years imprisonment. (App.p.249, lines 20-22).

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense represented Petitioner on appeal. (App.pp.251-60). The Court of Appeals affirmed Petitioner's conviction and sentence. State v. Bagwell and Spain, Op. No. 2007-UP-377 (S.C. Ct. App. filed Sept. 18, 2007). (App.pp.274-80).

Petitioner filed an application for post-conviction relief (PCR) on October 25, 2007 (2007-CP-23-7109). (App.pp.281-88). A hearing was held at the Greenville County Courthouse on May 27, 2010. (App.pp.295-361). Petitioner was present and represented by Susannah C. Ross, Esquire. Karen C. Ratigan, Esquire of the South Carolina Attorney General's Office represented Respondent. The Honorable Robin B. Stilwell denied relief in an order dated August 9, 2010 and filed August 12, 2010. (App.pp.363-74). Judge Stilwell denied Petitioner's subsequent motion to alter or amend judgment by order filed September 2, 2010. (App.pp.375-84; p.385).

¹ Petitioner had both a joint trial and joint appeal with his co-defendant, Daryl Lee Spain.

STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

I. The PCR judge did not err in finding Petitioner failed to meet his burden of proving trial counsel should have requested DNA testing on the broken pieces of glass.

Petitioner argues trial counsel should have requested DNA testing on the broken pieces of glass because it would have proven it was not his blood on the glass. Petitioner argues this was after-discovered evidence presented at the PCR hearing which “produced exculpatory and exonerating evidence.” This argument is without merit.

At trial, Jarrett Armstrong and Chris Snoddy testified their apartment had been burglarized. Armstrong testified he entered the front door of his apartment and saw Petitioner “exiting through the broken glass.” (App.pp.38-39; pp.70-71). Armstrong testified he left the apartment, ran into Petitioner again, and punched him. (App.pp.43-44). Armstrong testified Petitioner’s face was bleeding before he punched him. (App.p.44). Snoddy testified that, before he could reach the rear of the apartment, Armstrong yelled that someone was running out the door. (App.pp.104-05). Snoddy testified that, once he reached the rear of the apartment, he saw the co-defendant “come

out of the broken glass door”² and he hit him with a pole several times to stop him. (App.pp.803-83). Snoddy testified he then found Armstrong outside of Petitioner’s and co-defendant’s apartment and saw Armstrong hit Petitioner. (App.pp.83-84). Snoddy testified Petitioner’s face was bleeding before Armstrong hit him. (App.p.84). Petitioner stated that, on the night in question, he was asleep in a recliner in his own apartment. (App.pp.176-78). Petitioner stated he woke up when Armstrong was beating him and accusing him of breaking into his apartment. (App.p.178).

At the PCR hearing, Petitioner argued that a DNA test on the bloody pieces of glass would have proven it was not his blood. (App.pp.307-09). Petitioner argued he was bleeding when he was arrested because one of the victims beat him up, not because he was cut on the broken glass at the victims’ home. (App.p.333). Counsel for Petitioner moved an exhibit into evidence that was a DNA test indicating blood on three (3) pieces of glass did not belong to Petitioner (and that a reliable DNA profile could not be developed from the other three (3) pieces). (App.p.300; Supp.App.pp.32-35).

Trial counsel testified she was aware there were bloody pieces of glass but that there was no testing done on those items. (App.p.339). Trial counsel explained that the first prosecutor on the case was considering having the items tested but that the prosecutor who eventually had the case did not follow through with testing. (App.p.351). Trial counsel testified she did not know whether DNA testing upon the glass would have changed the outcome of the case. (App.pp.342-43). Trial counsel testified it would have

² Co-defendant’s counsel impeached Snoddy with his prior statement that he saw both Petitioner and the co-defendant exiting the apartment. (App.p.93).

simply been another piece of evidence for the jury to consider in determining credibility. (App.p.343). Trial counsel testified it is not the State's obligation under Brady to run forensic tests on all pieces of available evidence. (App.p.358). Trial counsel also admitted that the lack of Petitioner's blood on the broken glass did not exonerate him of the crime. (App.p.358).

In denying Petitioner's application for post-conviction relief, the PCR judge found Petitioner failed to meet his burden of proving the DNA test constituted after-discovered evidence that merited a new trial. (App.pp.370-72). The PCR judge further found trial counsel was not ineffective in failing to have the evidence subjected to forensic testing. (App.pp.372-73).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The PCR judge did not err in finding Petitioner failed to meet his burden of

proving either that trial counsel was ineffective or that the DNA analysis was true after-discovered evidence. Trial counsel did not err in deciding not to have the broken pieces of glass submitted to forensic testing. Initially, trial counsel believed those items would be tested but they were not. Trial counsel knew at the time of trial, however, that this evidence had not been tested. There was no reason for trial counsel to have had the glass pieces subjected to a DNA analysis. As Petitioner's defense was that he was not in the victims' apartment at the time of the burglary, a negative DNA match would have not affected the outcome of the case. This case hinged upon a credibility determination by the jury – either they would believe the victims' story or the defense theory. A DNA analysis that did not positively identify Petitioner would have simply been another factor for the jury to consider in determining credibility. See Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) (“The credibility of witnesses is for the triers of fact.”); see also Bruno v. State, 347 S.C. 446, 556 S.E.2d 393 (2001) (noting that, by its verdict, the jury clearly rejected the defendant's account of what transpired). Further, Petitioner failed to demonstrate his case was prejudiced as a result of the lack of DNA testing of the broken glass. The DNA analysis that was submitted at the PCR hearing is not exculpatory. The fact that his DNA was not found on the broken pieces of glass does not exonerate him. Armstrong testified he saw Petitioner in his apartment and that he exited through the broken glass door. While the prosecutor may have said in closing argument that it was possible Petitioner could have injured his face on the shattered glass of the victims' door,³ it is well-settled that an attorney's legal arguments are not evidence.

³ App.p.227.

See State v. Charing, 333 S.C. 124, 133 n. 7, 508 S.E.2d 851, 856 n. 7 (1998) (“A solicitor's closing argument is not evidence.”).

Further, the DNA analysis admitted at the PCR hearing did not constitute after-discovered evidence. For an applicant to be granted a new trial based on after-discovered evidence, he must show the evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) (citation omitted). The DNA analysis in this case does not satisfy any of the five (5) Mercer factors. As discussed supra, this evidence would probably not change the result of a new trial in this case. This evidence was, in fact, known at the time of trial and was not material. A negative DNA match would not have exonerated Petitioner. Further, the DNA analysis is merely cumulative to Petitioner's trial testimony. As such, the PCR judge did not err in finding this evidence did not constitute after-discovered evidence in this case. See id.

Accordingly, Petitioner failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Similarly, Petitioner also failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. Further, Petitioner failed to meet his burden of proving the DNA analysis constituted after-discovered evidence.

As Petitioner failed to meet this burden of proof on this issue, the PCR judge did not err in denying the PCR application. See Frasier v. State, 351 S.C. 385, 389, 570

S.E.2d 172, 174 (2002) (“The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”).

II. The PCR judge did not err in finding Petitioner failed to meet his burden of proving trial counsel should have presented a different argument to allow a defense witness to testify at trial.

Petitioner argues trial counsel should have presented a “proper legal argument” that would have allowed Jerry Spain to testify at trial. This argument is without merit.

At trial, counsel for Petitioner’s co-defendant called Jerry Spain (the co-defendant’s brother) as a witness. (App.pp.162-65). The State objected, arguing this testimony concerned a visit to a different location more than a day after the incident in question. The trial judge found co-defendant’s counsel had not laid the proper foundation and did not allow Jerry Spain to testify. (App.pp.165-67). Counsel for the co-defendant then proffered Jerry Spain’s testimony that he went to the Petitioner’s and co-defendant’s apartment two days after the incident and that Jarrett Armstrong stated the co-defendant had broken into the apartment and Armstrong retaliated by going to the Petitioner’s and co-defendant’s apartment and beating them both up. (App.pp.167-70).

At the PCR hearing, Petitioner argued Jerry Spain would have testified at trial that one of the victims admitted that it was his co-defendant that was guilty, not Petitioner. Petitioner argued that Jerry Spain was not allowed to testify about this because the State objected. (App.pp.320-21).

Trial counsel testified she never had any intention of calling Jerry Spain as a witness at trial because his story deviated from Petitioner’s. (App.pp.340-1). Trial counsel confirmed the trial judge prevented Jerry Spain from testifying about why the

victims would have beaten Petitioner. (App.p.347).

In denying Petitioner's application for post-conviction relief, the PCR judge noted trial counsel spoke to Jerry Spain but determined she would not call him as a witness. The PCR judge found Petitioner did not meet his burden of proving trial counsel was ineffective in failing to properly question Jerry Spain because Spain did not testify at the PCR hearing. (App.pp.367-69).

The PCR judge did not err in finding Petitioner failed to meet his burden of proof. While Petitioner argues trial counsel should have presented a "proper legal argument" at trial that would have allowed Jerry Spain to testify, Spain did not testify at the PCR hearing. Thus, any discussion about what Jerry Spain would have testified to at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.") (emphasis in original). Regardless, trial counsel stated she never intended to call Jerry Spain as a witness because his story was not wholly consistent with that offered by Petitioner. Trial counsel, therefore, explained a strategic reason she did not call Jerry Spain to testify in Petitioner's case. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel).

Accordingly, Petitioner failed to prove the first prong of the Strickland test – that

trial counsel failed to render reasonably effective assistance under prevailing professional norms. Similarly, Petitioner also failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. As Petitioner failed to meet this burden of proving ineffective assistance of trial counsel on this issue, the PCR judge did not err in denying the PCR application. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

CONCLUSION

For the foregoing reasons, Respondent submits this Court should deny the Petition for Writ of Certiorari. However, if this Court grants certiorari, Respondent requests the opportunity to fully brief the issues discussed above.

Respectfully submitted,

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Attorney General

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Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAREN C. RATIGAN
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By: 
ATTORNEYS FOR RESPONDENT

December 12, 2011

STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell, Circuit Court Judge

Steve R. Bagwell,..... Petitioner,

v.

State of South Carolina, Respondent.


CERTIFICATE OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Return to Petition for Writ of Certiorari upon Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 12th day of December, 2011.


KAREN C. RATIGAN
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ATTORNEY FOR RESPONDENT

The South Carolina Court of Appeals

Steve Bagwell, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2010-173947

ORDER

This matter is before the Court on a petition for a writ of certiorari. The petition for a writ of certiorari is granted. The parties shall proceed to serve and file the appendix and briefs as provided by Rule 243(j), SCACR.

Thomas E. Huff J.
H. B. We J.
U. Ke J.

Columbia, South Carolina

cc: Wanda H. Carter
Karen Christine Ratigan

FILED

July 8, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County

Robin B. Stilwell, Circuit Court Judge

STEVE BAGWELL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2010-173947

BRIEF OF PETITIONER

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ATTORNEY FOR PETITIONER.

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ISSUES PRESENTEDI.

Trial counsel erred in failing to investigate into matters of defense by requesting that DNA testing be conducted on blood found on glass pieces recovered from the shattered sliding glass door which the perpetrator used to enter and/or exit the apartment that was burglarized because the state implied that the blood on the glass belonged to petitioner and touted this as the linchpin evidence to place petitioner at the crime scene and establish his guilt on the burglary charge, when in actuality, petitioner's newly discovered DNA test results evidence indicated that the blood found on the glass pieces in question did not match petitioner's blood DNA, which in turn produced exculpatory and exonerating evidence that was favorable to the defense and warranted a new trial in the case.

II.

Trial counsel erred in failing to present the proper legal argument to the trial judge in order to ensure that the testimony of a favorable defense witness, who would have shed light on the resident's motive to fabricate the burglary allegation against petitioner, would have been admitted into evidence at trial.

STATEMENT

Petitioner Steve Bagwell was found guilty of first degree burglary during the April 2005 term of the Greenville County General Sessions Court before Judge C. Victor Pyle. App. 1-249. Petitioner was represented at the hearing by Dorothy A. Manigault. Petitioner was sentenced to imprisonment for a period of twenty years in the case.

Subsequently, petitioner appealed his conviction and sentence. On appeal, briefs were filed by the appellant and respondent. App. 251-273. Petitioner was represented by Joseph L. Savitz on appeal. Ultimately, petitioner's conviction and sentence were affirmed by the South Carolina Court of Appeals. See State v. Bagwell, Unpublished Opinion No. 2001-UP-377 (Ct. App. September 18, 2007). App. 274-280.

On October 25, 2007, petitioner filed a PCR application with the Greenville County Office of the Clerk of Court. App. 274-288. The respondent filed a return dated January 16, 2008, requesting that a hearing be held in the case. App. 289-293.

A PCR hearing was held in the case on May 25, 2010, at the Greenville County Courthouse before Judge Robin Stilwell. App. 295-361. On August 9, 2010, Judge Stilwell issued an order of dismissal in the case. App. 363-374. On August 24, 2010, petitioner filed a Motion to Alter/Amend in response to the order of dismissal. App. 375-384. On September 1, 2010, Judge Stilwell denied the Motion to Alter/Amend. App. 385. Petitioner was represented by Susannah Ross at the PCR hearing.

Petitioner appealed Judge Stilwell's order and filed a petition for writ of certiorari on July 29, 2011. The respondent filed a return dated December 12, 2011. On July 8, 2013, this Court granted petitioner's petition for writ of certiorari. This brief follows.

QUESTION I

Trial counsel erred in failing to investigate into matters of defense by requesting that DNA testing be conducted on blood found on glass pieces recovered from the shattered sliding glass door which the perpetrator used to enter and/or exit the apartment that was burglarized because the state implied that the blood on the glass belonged to petitioner and touted this as the linchpin evidence to place petitioner at the crime scene and establish his guilt on the burglary charge, when in actuality, petitioner's newly discovered DNA test results evidence indicated that the blood found on the glass in question did not match petitioner's blood DNA, which in turn produced exculpatory and exonerating evidence that was favorable to the defense and warranted a new trial.

This case was a swearing contest between Jarret Armstrong, who stated that he saw petitioner inside his apartment on the morning in question, and petitioner, who stated that he was sleeping and present in his own apartment, not Armstrong's apartment, during the time the alleged burglary occurred. The state's case consisted of two pieces of evidence: Armstrong's identification to the extent that he claimed he saw petitioner inside his apartment on that morning, and the inference that the cut and blood present on petitioner's face on that morning emanated from the broken sliding glass door from which he allegedly entered and/or exited then.

Jarret Armstrong testified that after arriving at his apartment shortly after midnight on the morning of September 14, 2003, he realized that someone was inside his apartment. Armstrong explained that when he entered his apartment, he saw petitioner inside and that upon being noticed, petitioner escaped through the glass patio sliding door, which was shattered with broken glass everywhere as a result. App. 33, l. 5 – p. 48, l. 7. Armstrong stated that he did not see Darryl Spain in his apartment on the morning in question. App. 53, ll. 18-20.

Chris Snoddy, who was Armstrong's roommate, testified that when he arrived home with Armstrong on that same morning, he did not see petitioner exit the apartment, but added that he did see petitioner's roommate and codefendant Darryl Spain exit their apartment. App. 77, l. 17 – p. 85, l. 6; App. 88, l. 13 – p. 91, l. 19.

Petitioner testified that he was in his own apartment at 11:00 p.m. on September 13, 2003, and that he woke up shortly thereafter to find Armstrong in his apartment fighting him and accusing his roommate Darryl Spain of breaking into his apartment. Petitioner stated that he called the police to report Armstrong's behavior immediately thereafter. App. 174, l. 7 – p. 188, l. 19. Petitioner's position was that he did not commit the burglary as charged because he was in his own residence, not Armstrong's apartment, on the morning in question.

The solicitor did not order pre-trial testing on the blood recovered from the shattered glass sliding door from which the burglar exited; but nonetheless, paraded in front of the jury false inferences that the blood on the broken glass pieces belonged to the burglar (who was purported to be petitioner), and that since Armstrong allegedly saw petitioner inside his apartment, then the logical inference was in effect that petitioner was the burglar who entered the apartment without consent. This blood evidence provided the state with its linchpin evidence. Note the following inferences the solicitor used to link the unidentified blood found on the glass as attributable to petitioner and thus evidence of his guilt on the burglary charge:

- 1.) Armstrong testified that after petitioner ran out of his apartment through the glass patio sliding door, he (petitioner) was seen minutes later with a scar on his face and blood running down his face. App. 44, ll. 14-19; App. 70, ll. 13-19.

- 2.) State's exhibit #6 was a picture depicting the mark/scar Armstrong allegedly saw on petitioner's face on that night. The inference is that the mark emanated from petitioner having been cut by the glass door from which he escaped. App. 44, l. 15 – p. 45, l. 21.
- 3.) State's exhibit #5 was a picture depicting the broken glass door that the perpetrator ran through in order to escape. App. 56, ll. 6-19; App. 41, l. 17 – p. 42, l. 6; App. 184, lines 15 – 20.
- 4.) State's exhibit #7 was an actual picture of the broken glass from the shattered door in question. App. 184, ll. 21-23.
- 5.) During opening argument, the solicitor stated that Armstrong opened his door...and [saw petitioner] inside...and [that] petitioner became upset "and ran out the patio glass door," which was the "patio glass door which had been shattered moments before" allegedly when the perpetrator entered Armstrong's apartment earlier. App. 25, ll. 3-6.
- 6.) Also, the solicitor stated at opening argument that the evidence will show that there was a cut and blood on the perpetrator's face. App. 26, ll. 1-8.
- 7.) Additionally, the solicitor argued at closing that Armstrong saw "a scratch on [petitioner's] top eye and blood" and that there was "a little blood trail coming down the side of his face" and that "[petitioner] could have gotten this cut...if he ran out, ran through the glass in a hurry [as] ...he could have cut his eye when he was running out." App. 227, ll. 1-11.
- 8.) Finally, in the appellate court opinion issued by the Court of Appeals in the case, the appellate court concurred with the state's position that the blood evidence provided a connection between the blood present on petitioner's face and the blood found on the shattered glass piece from the sliding glass back door of the apartment, and that this

inference was supported further by Armstrong's testimony that he saw petitioner "leaving through the back glass patio door which had been shattered" and that the "physical evidence corroborated the testimony of Armstrong...[as] the back glass door of the victim's apartment had been shattered," as petitioner was seen "leaving the apartment." See App. 274 – 380.

Clearly, the state attempted to present a connection between the perpetrator's alleged entrance and/or exit through Armstrong's apartment's sliding glass door, which was shattered in the process, and the blood on petitioner's face in order to place petitioner at the crime scene and link him to the role of burglar.

Note that the state did not conduct DNA testing on the blood evidence found on the shattered glass pieces recovered from the crime scene. During the PCR hearing, petitioner testified that counsel erred in failing to conduct DNA testing on him and the blood evidence found on shattered glass pieces present at the crime scene. Petitioner stated that this omission prejudiced the defense because the DNA testing conducted at the PCR stage yielded results that indicated that the blood on the shattered glass pieces recovered at the crime scene did not match his (petitioner's) blood DNA, which in turn meant that this would have provided the defense with exculpatory evidence that could have been used to highlight insufficient proof within the state's case and supported the argument for the exoneration of him on the burglary charge. Petitioner added that he informed counsel that he was innocent and that he was bleeding at the crime scene because Armstrong assaulted petitioner on that morning. Petitioner complained that counsel should have had the blood on the glass pieces found at the scene tested prior trial. App. 307, l. 15 – p. 310, l. 19; App. 323, ll. 14-18; App. 325, ll. 2-4; App. 327, ll. 6-10; App. 333, ll. 2-6.

Trial counsel admitted that she failed to request that DNA testing be conducted on the blood found on the shattered glass pieces found at the crime scene while preparing for petitioner's defense. App. 339, ll. 4-10. Also, counsel admitted in effect that had that blood evidence been DNA tested prior to trial and results obtained proving there was no match to petitioner's blood and DNA, then this would have been favorable and exculpatory evidence available to use in petitioner's defense at trial in order to argue that the state had insufficient proof beyond a reasonable doubt to support a burglary conviction against petitioner. App. 342, l. 18 – p. 343, l. 3; App. 349, l. 12 – p. 352, l. 7; App. 355, ll. 21-25.

Regarding this issue, the PCR judge held that:

This Court notes that prior to this [PCR] hearing, counsel for the Applicant received an order that allowed that Applicant's blood to be tested against bloody glass from the crime scene. This Court notes the subsequent SLED report indicates the two samples did not match. (Court's Exhibit 1). App. 370.

However, the PCR judge went on to rule that the non-matching DNA blood test results would not have changed the result of petitioner's trial, and that therefore, petitioner did not therefore satisfy the elements of the newly discovered evidence test that would require that a new trial be held in the case. App. 370-372.

Counsel has a duty to conduct reasonable investigations in a case. Strickland v. Washington, 466 U.S. 668 (1984). For example, in Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007), the Court granted Ard a new trial because trial counsel failed to investigate further into the state's gunshot residue analysis conducted on the deceased in order to contradict the state's theory that the inconclusive gun residue results nullified Ard's claim that the deceased held the gun and that as they interacted, the shooting was an accident (or involuntary manslaughter), because there were several gun particles on the deceased's hands that proved that the deceased held or was in control of the

gun. Moreover, in the case of McKnight v. State, 378 S.C. 33, 661 S.E.2d 354 (2005), the court reversed after finding counsel ineffective in failing to research into and present medical expert testimony or evidence to rebut and contradict the state's theory via expert testimony that cocaine caused the death of the fetus in the case. Also, see Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), where the Court reversed because trial counsel was ineffective in failing to investigate into how the testimony of the defendant's brother and nephew could have corroborated the defendant's defense that the drug buyer was not kidnapped, but rather voluntarily drove to his parents' house to get money to pay for the drugs he bought earlier from the defendant because said relatives would have verified that the defendant and the buyer, who claimed he was kidnapped, always "did" drugs together and that the buyer frequently bought drugs from the defendant. See also, Dover v. State, 337 S.C. 298, 523 S.E.2d 459 (2000), where trial counsel erred in failing to investigate into the existence of hospitalization records establishing the deceased's commitments for depression and substance abuse and suicide threats in support of the defendant's defense that the deceased committed suicide and that he did not kill the deceased.

Additionally, see, Cobbs v. State, 305 S.C. 299, 408 S.E.2d 223 (1991), where trial counsel was found ineffective in failing to uncover the fact that the prosecutrix no longer desired to prosecute the defendant on the two two-year old forgery charges instigated against him and that one of the burglary charges the defendant pled to in general sessions court had already been disposed of in magistrate's court. Furthermore, compare Pauling v. State, 331 S.C. 606, 503 S.E.2d 468 (1998), where the Court held counsel was ineffective in failing to call a triage nurse who would have testified that the prosecutrix denied penetration occurred in the state's criminal sexual conduct case, because the only evidence of sexual battery was the prosecutrix's accusation, and because this nurse's testimony would have established reasonable doubt and

corroborated the doctor's testimony that the prosecutrix had no pelvic lesions, cuts or tears. Compare also, Council v. State, 380 S.C. 159, 670 S.E.2d 356 (2009), where the court found counsel ineffective in failing to adequately investigate and present mitigating evidence (defendant's mental incompetence) during the penalty phase of the trial.

Here, but for counsel's failure to investigate into and obtain DAN test results on the blood evidence in question, a reasonable probability exists that the outcome of petitioner's trial would have been different in the case because the DNA evidence indicated there was no blood match between the blood found on the glass at the crime scene and petitioner's blood, which in turn would have provided the defense with exculpatory evidence that would have weakened the sufficiency of the state's case, which hinged on the blood linchpin evidence and identification evidence, and most likely exonerated petitioner of the burglary charge. Herein lies the prejudice. Thus, trial counsel's failure to conduct DNA investigation constituted deficient legal representation in the case in violation of petitioner's Sixth Amendment right to effective assistance of counsel at trial. See Strickland v. Washington, 466 U.S. 668 (1984). But for counsel's error, a reasonable likelihood exists that petitioner's trial would have ended differently.

Furthermore, not only should petitioner have received PCR relief based on the showing of his receipt of ineffective assistance of trial counsel, but he should have been granted a new trial based on newly discovered evidence uncovered in the case. The newly discovered evidence in the case established that there was no DNA blood match between the crime scene blood found on the glass pieces recovered at the crime scene and petitioner's blood DNA profile, which in turn meant that this was exculpatory evidence which would have nullified the sufficiency of the state's case and exonerated him on the burglary charge.

As a rule, newly discovered evidence would warrant the grant of a new trial if the newly discovered evidence would change the result if a new trial were granted, and was discovered since the trial and could not have been discovered prior to trial, and would constitute material evidence that was not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983). Clearly, this blood/DNA non-match evidence in this case was material evidence due to its exculpatory nature, which was neither cumulative nor impeaching, as it bore on the issue of petitioner's innocence and qualified as favorable and exculpatory evidence that could have been used to attack the sufficiency of the state's case and exonerate petitioner of the burglary charge. Also, petitioner uncovered this newly discovered evidence after the trial, which he could not have done so prior to trial because it was not his (petitioner's) neglect, but rather trial counsel's error in failing to request that the DNA blood testing be conducted prior to trial, which of course constituted ineffective assistance of trial counsel in the case. Finally, it is clear that had this exculpatory DNA evidence been presented at trial, then this would have weakened the state's case by nullifying the linchpin blood evidence used to link petitioner to the crime charged and forced the state to rely on the one weak piece of identification evidence that remained, and the result would have been insufficient evidence of guilt upon which to support the burglary against petitioner.¹

Trial counsel erred in failing to investigate into matters of defense by not requesting that DNA testing be conducted on the blood evidence found on glass pieces recovered from the sliding door which the perpetrator entered/exited because the state presented false inferences to the effect that the blood evidence found at the scene belonged to petitioner and used this as the linchpin evidence to link petitioner to the crime, when in actuality, petitioner's newly discovered evidence

¹ Roommate Snoddy did not see or make an identification indicating that petitioner was inside his apartment on the morning in question.

yielded DNA test results that indicated that there was no match between the blood found at the scene and petitioner's blood DNA, which in turn provided the defense with exculpatory and exonerating evidence that negated petitioner's presence at the crime scene and rendered the state's case insufficient beyond a reasonable doubt to prove his guilt on the burglary charge.

QUESTION II

Trial counsel erred in failing to present the proper legal argument to the trial judge in order to ensure that the testimony of a favorable defense witness, who would have shed light on the resident's motive to fabricate the burglary allegations against petitioner, would have been admitted into evidence at trial

Apparently, petitioner and codefendant Darryl Spain were roommates who lived in an apartment in the same complex where Armstrong and Snoddy, who were also roommates, shared an apartment. Armstrong and Snoddy alleged that petitioner and Darryl were found inside their apartment without their consent, and burglary charges emerged thereafter. At trial, co-defendant's counsel called Jerry Spain, who is Darryl's brother, as a witness for the defense to testify that Armstrong was angry at Darryl for telling a female in another apartment in the complex that he (Armstrong) sold marijuana. Clearly, this provided the motive (revenge) for Armstrong to fabricate the burglary allegations made against petitioner and Darryl Spain. When this issue came out at trial, the state objected to this potential testimony by Jerry Spain per Rule 613(b) SCRE, per the argument that this query should have been addressed as a question (via prior inconsistent statement form) personally to Armstrong and Snoddy rather than directing such questions to Jerry Spain. The trial court agreed with the state's position and did not allow Jerry Spain to testify at trial on this point. App. 162, l.11 – p. 171, l. 21.

During the PCR hearing, petitioner testified that Armstrong told Jerry Spain that he was angry at Darryl Spain for telling their female neighbor that he (Armstrong) sold marijuana and that this in effect led to his actions, i.e., revenge by fabricating the burglary allegation, but that counsel erred in failing to argue the proper basis to gain the admission of Jerry Spain's testimony into evidence at trial. App. 319, l. 17 – p. 320, l. 24; App. 326, ll. 8-18.

Indeed, this issue was addressed on appeal in a merit brief. Appellate counsel argued that when the state objected to Jerry Spain's testimony on the ground that the same was prohibited under Rule 613(b) SCRE,² then trial counsel in effect should have argued that the testimony was admissible under Rule 608(c) SCRE,³ which allows one to show evidence of a witness' bias, prejudice or ill motive to fabricate testimony in a case. App. 251-259.

The PCR judge ruled that petitioner failed to meet his burden in proving that trial counsel was ineffective in this regard. App. 363-374.

On appeal, the appellate court affirmed the trial court's ruling per 613(b), SCRE, and held that this issue was not preserved for review under the Rule 608(c) SCRE, argument raised on appeal (unfortunately due to trial counsel's error in failing to preserve this issue for appeal under Rule 608(c), SCRE) and went on to rule that although the trial judge's exclusion of the testimony under the Rule 613(b), SCRE, was in effect error; nonetheless, this was harmless error because Jerry

² **Extrinsic Evidence of Prior Inconsistent Statement of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made, and is given the opportunity to explain or deny the statement. If a witness does not admit that he has made the prior inconsistent statement, extrinsic evidence of such statement is admissible. However, if a witness admits making the prior statement, extrinsic evidence that the prior statement was made is inadmissible. This provision does not apply to admissions of a party-opponent as defined in Rule 801(d)(2).

³ **Evidence of Bias.** Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.

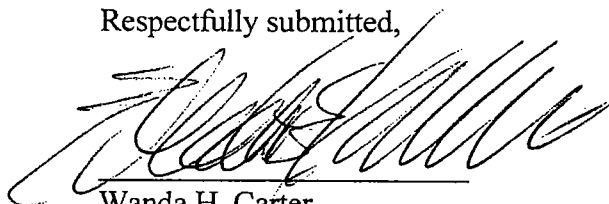
Spain's story would not have reasonably affected the outcome of the trial due to the physical evidence presented at trial (blood and identification evidence). App. 274-280.

As a rule, a party must enter a contemporaneous and specific objection in order to preserve for appellate review a particular issue in a case. State v. Sheppard, 391 S.C. 415, 706 S.E.2d 17 (2011). Here, trial counsel erred in violation of the Sixth Amendment in failing to couch the question regarding the admission of Jerry Spain's testimony under the proper rule (i.e. Rule 608, SCRE) in order to have preserved the issue for appellate review. See Strickland v. Washington, 466 U.S. 668 (1984). But for the error, this issue would have been preserved and reviewed on appeal, and there was a reasonable probability that the case would have been reversed on this appellate issue as well.

CONCLUSION

Based on the foregoing arguments, petitioner requests that the Court reverse the PCR judge's order of dismissal and remand the case for a new trial.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER.

This 6th day of September, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Greenville County

Robin B. Stilwell, Circuit Court Judge

STEVE BAGWELL,

PETITIONER,

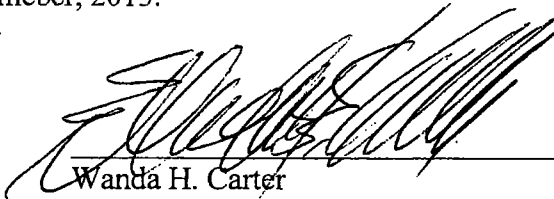
V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

I certify that a true copy of the brief of petitioner, in this case has been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Steve Bagwell, this 6th day of Septemeber, 2013.

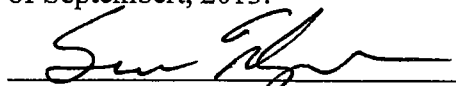


Wanda H. Carter

Deputy Chief Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 6th day
of Septembert, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA
In The Court of Appeals

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2010-173947

Steve R. Bagwell,.....Petitioner,

v.

State of South Carolina,.....Respondent.

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STATEMENT OF ISSUES ON APPEAL

1. Did trial counsel err in failing to investigate into matters of defense by requesting that DNA testing be conducted on blood found on glass pieces recovered from the shattered sliding glass door which the perpetrator used to enter and/or exit the apartment that was burglarized because the State implied that the blood on the glass belonged to Petitioner and touted this as the linchpin evidence to place Petitioner at the crime scene and establish his guilt on the burglary charge, when in actuality, Petitioner's newly discovered DNA test results evidence indicated that the blood found on the glass pieces in question did not match Petitioner's blood DNA, which in turn produced exculpatory and exonerating evidence that was favorable to the defense and warranted a new trial in the case?
2. Did trial counsel err in failing to present the proper legal argument to the trial judge in order to ensure that the testimony of a favorable defense witness, who would have shed light on the resident's motive to fabricate the burglary allegation against Petitioner, would have been admitted into evidence at trial?

STATEMENT OF THE CASE

The Greenville County Grand Jury indicted Petitioner at the December 2003 term of General Sessions for first-degree burglary (2003-GS-23-9373). (App.pp.386-87). Dorothy A. Manigault, Esquire represented Petitioner.

After the State called the case to trial,¹ Petitioner was found guilty. On April 13, 2005, the Honorable C. Victor Pyle, Jr. sentenced Petitioner to twenty years imprisonment. (App.p.249, lines 20-22).

A notice of appeal was filed at the South Carolina Court of Appeals. Joseph L. Savitz, III, Esquire of the South Carolina Office of Appellate Defense represented Petitioner on appeal. (App.pp.251-60). The Court of Appeals affirmed Petitioner's conviction and sentence. State v. Bagwell and Spain, Op. No. 2007-UP-377 (S.C. Ct. App. filed Sept. 18, 2007). (App.pp.274-80).

Petitioner filed an application for post-conviction relief (PCR) on October 25, 2007 (2007-CP-23-7109). (App.pp.281-88). A hearing was held at the Greenville County Courthouse on May 27, 2010. (App.pp.295-361). Petitioner was present and represented by Susannah C. Ross, Esquire. Karen C. Ratigan, Esquire of the South Carolina Attorney General's Office represented Respondent. The Honorable Robin B. Stilwell denied relief in an order dated August 9, 2010 and filed August 12, 2010. (App.pp.363-74). Judge Stilwell denied Petitioner's subsequent motion to alter or amend judgment by order filed September 2, 2010. (App.pp.375-84; p.385).

¹ Petitioner had both a joint trial and joint appeal with his co-defendant, Daryl Lee Spain.

STANDARD OF REVIEW

The proper standard for review of a PCR evidentiary hearing is whether “any evidence of probative value” exists to sustain the post-conviction relief judge’s findings. Cherry v. State, 300 S.C. 115, 119, 386 S.E.2d 624, 626 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

ARGUMENT

I. The PCR judge did not err in finding Petitioner failed to meet his burden of proving trial counsel should have requested DNA testing on the broken pieces of glass.

Petitioner argues trial counsel should have requested DNA testing on broken pieces of glass because it would have proven it was not his blood on the glass. Petitioner argues this was after-discovered evidence presented at the PCR hearing which “produced exculpatory and exonerating evidence.” (Brief of Appellant, p.5). This argument is without merit.

At trial, Jarrett Armstrong and Chris Snoddy testified their apartment was burglarized. Armstrong testified he entered the front door of his apartment and saw Petitioner “exiting through the broken glass.” (App.pp.38-39; pp.70-71). Armstrong testified he left the apartment, ran into Petitioner again, and punched him. (App.pp.43-44). Armstrong testified Petitioner’s face was bleeding before he punched him. (App.p.44). Snoddy testified that, before he could reach the rear of the apartment, Armstrong yelled that someone was running out the door. (App.pp.104-05). Snoddy testified that, once he reached the rear of the apartment, he saw the co-defendant “come

out of the broken glass door”² and he hit him with a pole several times. (App.pp.80-83). Snoddy testified he then found Armstrong outside of Petitioner’s and co-defendant’s apartment and saw Armstrong hit Petitioner. (App.pp.83-84). Snoddy testified Petitioner’s face was bleeding before Armstrong hit him. (App.p.84). Petitioner stated that, on the night in question, he was asleep in a recliner in his own apartment. (App.pp.176-78). Petitioner stated he woke up when Armstrong was beating him and accusing him of breaking into his apartment. (App.p.178).

At the PCR hearing, Petitioner argued a DNA test on the bloody pieces of glass found at the victims’ home would have proven it was not his blood. (App.pp.307-09). Petitioner argued he was bleeding when he was arrested because one of the victims beat him up, not because he cut himself on the broken glass at the victims’ home. (App.p.333). Counsel for Petitioner moved a DNA test into evidence that indicated blood on three pieces of glass did not belong to Petitioner (and that a reliable DNA profile could not be developed from the other three pieces). (App.p.300; Supp.App.pp.32-35).

Trial counsel testified she was aware there were bloody pieces of glass but that no testing done on those items. (App.p.339). Trial counsel explained the first prosecutor on the case was considering having the items tested but the prosecutor who eventually had the case did not follow through with any testing. (App.p.351). Trial counsel testified she did not know whether DNA testing upon the glass would have changed the outcome of the case. (App.pp.342-43). Trial counsel testified it would have simply been another

² Co-defendant’s counsel impeached Snoddy with his prior statement that he saw both Petitioner and the co-defendant exiting the apartment. (App.p.93).

piece of evidence for the jury to consider in determining credibility. (App.p.343). Trial counsel testified it is not the State's obligation under Brady³ to run forensic tests on all pieces of available evidence. (App.p.358). Trial counsel also admitted the lack of Petitioner's blood on the broken glass did not exonerate him of the crime. (App.p.358).

In denying the application for post-conviction relief, the PCR judge found Petitioner failed to meet his burden of proving the DNA test constituted after-discovered evidence that merited a new trial. (App.pp.370-72). The PCR judge further found trial counsel was not ineffective in failing to have the evidence subjected to forensic testing. (App.pp.372-73).

The PCR judge did not err in finding Petitioner failed to meet his burden of proving either that trial counsel was ineffective or that the DNA analysis was actually after-discovered evidence. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v.

³ Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194 (1963).

Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

A.

The PCR judge concluded trial counsel did not err in not having the broken pieces of glass submitted to forensic testing. (App.pp.372-73). This conclusion was proper. Initially, trial counsel believed those items would be tested but they were not. Trial counsel knew at the time of trial, however, that this evidence had not been tested. Regardless, there was no reason for trial counsel to have had the glass pieces subjected to a DNA analysis. As Petitioner's defense was that he was not in the victims' apartment at the time of the burglary, a negative DNA match would have not affected the outcome of the case. This case hinged upon a credibility determination by the jury – either they would believe the victims' story or the defense theory. A DNA analysis that did not positively identify Petitioner would have simply been another factor for the jury to consider in determining credibility. See Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) (“The credibility of witnesses is for the triers of fact.”); see also Bruno v. State, 347 S.C. 446, 556 S.E.2d 393 (2001) (noting that, by its verdict, the jury clearly rejected the defendant's account of what transpired).

Further, Petitioner failed to demonstrate his case was prejudiced as a result of the lack of DNA testing of the broken glass. The DNA analysis submitted at the PCR hearing is not exculpatory. The fact that Petitioner's DNA was not found on the broken pieces of glass does not exonerate him. Armstrong testified he saw Petitioner in his apartment and that he exited through the broken glass door. While the prosecutor may have said in closing argument that it was possible Petitioner could have injured his face

on the shattered glass of the victims' door,⁴ it is well-settled that an attorney's legal arguments are not evidence. See State v. Charping, 333 S.C. 124, 133 n. 7, 508 S.E.2d 851, 856 n. 7 (1998) ("A solicitor's closing argument is not evidence."); see also State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997) (finding a solicitor's argument must stay within the record and its reasonable inferences).

B.

The PCR judge concluded the DNA analysis admitted at the PCR hearing did not constitute after-discovered evidence. (App.pp.370-72). This conclusion was proper. The South Carolina Supreme Court has held that, for an applicant to be granted post-conviction relief based on after-discovered evidence, he must show the alleged evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983) (citation omitted).

First, the DNA test would not have changed the result of the trial. The State's case relied upon the testimony of the victims – both of whom were effectively cross-examined by trial counsel and co-defendant's counsel regarding their beating of Petitioner and his co-defendant. The victims' honesty or credibility was a jury question. Snoddy testified he did not see Petitioner that night. (App.p.89; p.104). Armstrong's testimony was clear, however, that he saw Petitioner leaving the apartment. (App.p.70). And while both victims testified there was broken glass, there was never any testimony that

⁴ App.p.227.

Petitioner cut himself on that glass. (App.p.70; p.81). And though the assistant solicitor stated in his closing argument that this could have happened, he did not state it actually occurred. (App.p.227). It is clear from the guilty verdict that the jury made its decision based upon the evidence submitted during the State's case. Further, a negative DNA match does not exonerate Petitioner from involvement in this crime. As such, the DNA test would not have changed the result of the trial.

Second, the blood and DNA evidence were discovered before Petitioner's trial. It is merely the DNA report that was generated after the trial.

Third, the DNA test clearly could have been performed prior to Petitioner's trial. Trial counsel testified she was aware the pieces of glass had not been (and would not be) tested before the trial.

Fourth, the DNA test would not have been material to the issue of guilt or innocence. Whether or not Petitioner's blood was on the pieces of glass does not prove he is innocent or exonerate him. This is especially true because Armstrong saw Petitioner leaving the crime scene.

Fifth, the DNA test would have been merely cumulative or impeaching evidence. Petitioner testified on his own defense at trial and argued he was not guilty of the crime. (App.pp.184-86). The DNA test would simply have been cumulative to Petitioner's testimony or used in an attempt to impeach the victims' account of events. The absence of a DNA match clearly would not have exonerated Petitioner or conclusively proven he was not in the victims' residence.

The DNA analysis in this case does not satisfy any of the five (5) Hayden factors.

This evidence would probably not change the result of a new trial in this case. This evidence was, in fact, known at the time of trial and was not material. A negative DNA match would not have exonerated Petitioner. Further, the DNA analysis is merely cumulative to Petitioner's trial testimony. As such, the PCR judge did not err in finding this evidence did not constitute after-discovered evidence in this case.

C.

Accordingly, Petitioner failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Similarly, Petitioner also failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. Further, Petitioner failed to meet his burden of proving the DNA analysis constituted after-discovered evidence.

As Petitioner failed to meet this burden of proof on this issue, the PCR judge did not err in denying the PCR application. See Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (“The burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.”).

II. The PCR judge did not err in finding Petitioner failed to meet his burden of proving trial counsel should have presented a different argument to allow a defense witness to testify at trial.

Petitioner argues trial counsel should have presented a “proper legal argument” that would have allowed Jerry Spain to testify at trial. (Brief of Appellant, p.13). This argument is without merit.

At trial, counsel for Petitioner's co-defendant called Jerry Spain (the co-defendant's brother) as a witness. (App.pp.162-65). The State objected, arguing this

testimony concerned a visit to a different location more than a day after the incident in question. The trial judge found co-defendant's counsel had not laid the proper foundation and did not allow Jerry Spain to testify. (App.pp.165-67). Counsel for the co-defendant then proffered Jerry Spain's testimony that he went to Petitioner's and co-defendant's apartment two days after the incident and Armstrong stated the co-defendant had broken into the apartment and Armstrong retaliated by going to Petitioner's and co-defendant's apartment and beating them up. (App.pp.167-70).

At the PCR hearing, Petitioner argued Jerry Spain would have testified at trial that one of the victims admitted that it was his co-defendant that was guilty, not Petitioner. Petitioner argued Jerry Spain was not allowed to testify about this because the State objected. (App.pp.320-21).

Trial counsel testified she never had any intention of calling Jerry Spain as a witness at trial because his story deviated from Petitioner's. (App.pp.340-1). Trial counsel confirmed the trial judge prevented Jerry Spain from testifying about why the victims would have beaten Petitioner. (App.p.347).

In denying the application for post-conviction relief, the PCR judge noted trial counsel spoke to Jerry Spain but determined she would not call him as a witness. The PCR judge found Petitioner did not meet his burden of proving trial counsel was ineffective in failing to properly question Jerry Spain because he did not testify at the PCR hearing. (App.pp.367-69).

The PCR judge did not err in finding Petitioner failed to meet his burden of proof. While Petitioner argues trial counsel should have presented a "proper legal argument" at

trial that would have allowed Jerry Spain to testify, this witness did not testify at the PCR hearing. Thus, any discussion about what Jerry Spain would have testified to at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”) (emphasis in original).

Regardless, trial counsel stated she never intended to call Jerry Spain as a witness because his story was not consistent with that offered by Petitioner. The PCR judge found trial counsel was a credible witness. (App.p.367). See Drayton v. Evatt, 312 S.C. 4, 13, 430 S.E.2d 517, 522 (1993) (finding great deference is given to the PCR judge’s findings on the credibility of witnesses); see also Menne v. Keowee Key Prop. Owners’ Ass’n, Inc., 368 S.C. 557, 567, 629 S.E.2d 690, 696 (Ct. App. 2006) (“Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to trial court findings where matters of credibility are involved.”). And, as Petitioner failed to present Jerry Spain as a witness at the PCR hearing, he was not able to meet his burden of proving Jerry Spain would have offered helpful testimony at trial. The PCR judge, therefore, properly weighed the evidence and witness testimony and was correct in finding trial counsel explained a strategic reason she did not call Jerry Spain to testify in Petitioner’s case. Where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); Stokes v.

State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992). “Counsel’s strategy will be reviewed under ‘an objective standard of reasonableness.’” Huggler v. State, 360 S.C. 627, 633, 602 S.E.2d 753, 756 (2004) (citing Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002)). “Courts must be wary of second-guessing counsel’s trial tactics.” Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). Petitioner failed to present any credible evidence that trial counsel’s strategy regarding Jerry Spain’s purported testimony was either ill-advised or improper.

Accordingly, Petitioner failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. Similarly, Petitioner also failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. As Petitioner failed to meet this burden of proving ineffective assistance of trial counsel on this issue, the PCR judge did not err in denying the PCR application. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

CONCLUSION

For the reasons stated above, this Court should affirm the lower court's ruling and deny the requested relief.

Respectfully submitted,

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By: 
ATTORNEYS FOR RESPONDENT

October 31, 2013

STATE OF SOUTH CAROLINA
In The Court of Appeals

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas

The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2010-173947

Steve R. Bagwell,..... Petitioner,

v.

State of South Carolina,..... Respondent.

CERTIFICATE OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Brief of Respondent upon Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served. This 31st day of October, 2013.



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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Steve Bagwell, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2010-173947

ON WRIT OF CERTIORARI

Appeal From Greenville County
C. Victor Pyle Jr., Circuit Court Judge
Robin B. Stilwell, Post-Conviction Relief Judge

Opinion No. 5267
Heard June 3, 2014 – Filed August 27, 2014

REVERSED

Deputy Chief Appellate Defender Wanda H. Carter, of
Columbia, for Petitioner.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Karen Christine Ratigan, both of
Columbia, for Respondent.

LOCKEMY, J.: In this appeal from the denial of his post-conviction relief (PCR) application, Steve Bagwell argues the PCR court erred in finding his trial counsel was not ineffective for (1) failing to request DNA testing for blood found on glass

recovered at the crime scene and (2) failing to argue a witness's testimony was admissible to show evidence of a victim's bias and motive to fabricate testimony. We reverse and grant Bagwell a new trial.

FACTS

This case involved an alleged burglary at an apartment complex in Greenville County. At trial, Jarrett Armstrong testified he and his roommate Chris Snoddy (collectively, the victims) were on their way home from work one night, when he received a call from a neighbor that caused them to hurry home. Armstrong testified that when they arrived, a large crowd was gathered outside their apartment. According to Armstrong, he entered the front door of the apartment and saw Bagwell, whom Armstrong had known since elementary school, exiting through the back glass patio door, which was shattered. Armstrong stated he did not see Bagwell's roommate, Daryl¹ Spain, inside the apartment and he did not punch Daryl.

Armstrong, however, testified he confronted Bagwell outside Bagwell and Daryl's apartment and punched Bagwell in the face. According to Armstrong, Bagwell's face was scarred with "blood coming down" before Armstrong punched him. The State admitted a photograph of Bagwell taken after the burglary, which shows blood streaming down the left side of his face. On cross-examination, Daryl's counsel asked Armstrong, "This gash that [Bagwell] had on his forehead . . . isn't it true that [Bagwell] received that gash when you hit him on the forehead with a handgun?" Armstrong replied, "No, sir."

Snoddy testified he saw Daryl exiting the apartment through the glass patio door; however, he stated he did not see Bagwell inside the apartment. Snoddy further testified Armstrong and Bagwell began fighting in front of Bagwell and Daryl's apartment. Snoddy also stated Bagwell had "blood or a scratch" down his face before Armstrong punched him.

Bagwell testified in his defense.² According to Bagwell, he was asleep in his apartment at the time of the burglary, and he awoke to find Armstrong "beating on [him]" and accusing Daryl of breaking into Armstrong and Snoddy's apartment.

¹ Spain's name is spelled "Darryl" throughout the appendix; however, it is spelled "Daryl" on the South Carolina Department of Corrections website. We refer to him as Daryl in this opinion.

² Daryl did not testify at trial.

After Armstrong left his apartment, Bagwell called the police and reported that Armstrong had broken into his apartment. Bagwell testified he then looked outside and saw Armstrong beating Daryl and holding a gun to his head. Bagwell further explained that his face was bleeding after the incident because Armstrong attacked him.

During its closing argument, the State asserted,

Some other testimony that's important for you to remember. If you remember both [Snoddy] and [Armstrong] said that when they went over to [Bagwell]'s apartment and he was out front, when they went over there they both saw a scratch on his top eye and blood. A little blood trail coming down the side of [Bagwell's] face. Now how did he get that? How did [Bagwell] get that? How did he get this right here? How did he get this cut? One way he could have gotten this cut, ladies and gentlemen, one way is if when he ran out, ran through the glass in a hurry, see the arc on this glass? He could have cut his eye when he was running out. When [Armstrong] startled them when they came back.

Subsequently, the jury convicted Bagwell and Daryl of first-degree burglary. The trial court sentenced Bagwell to twenty years' imprisonment and Daryl to fifteen years' imprisonment.

At the PCR hearing, Bagwell's PCR counsel introduced DNA test results indicating blood found on three pieces of glass recovered from the victims' glass patio door did not match Bagwell.³ Bagwell alleged his trial counsel was ineffective for failing to request DNA testing for the glass prior to trial.

Bagwell testified trial counsel never informed him the State had the blood samples at the time of his trial. Trial counsel admitted she knew the State had the blood samples prior to trial, but she did not request DNA testing. Trial counsel explained the State originally planned to test the samples, but another solicitor took over the case and decided not to follow through with testing. Trial counsel admitted the test results "may have affected" the outcome at trial; however, she stated the test results would not have excluded the possibility of Bagwell's guilt. Trial counsel further

³ The test results do not indicate who the DNA belonged to.

stated that during its closing argument, the State "probably" displayed a picture of the broken glass door in front of the jury. Finally, trial counsel asserted Bagwell's trial was essentially a "swearing match" between the victims and defendants.

The PCR court found trial counsel was not ineffective for failing to seek DNA testing of the glass prior to trial. To support its finding, the PCR court noted trial counsel believed the State would be performing a DNA test prior to trial, and she did not learn until "much later" the State would not be doing so. Moreover, it found trial counsel made a reasonable decision to proceed to trial without the DNA test because the results of the test could have damaged Bagwell's defense. Additionally, the PCR court found no prejudice from trial counsel's failure to test the glass because "the fact that DNA from the bloody glass did not match [Bagwell] did not mean[] [Bagwell] could not have been in the victims' apartment on the night in question." After the denial of PCR relief, Bagwell filed a petition for writ of certiorari, which this court granted on July 8, 2013.

STANDARD OF REVIEW

"The petitioner in a PCR hearing bears the burden of establishing his entitlement to relief." *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 146 (2014). "This Court will uphold the findings of the PCR court when there is any evidence of probative value to support them, and will reverse the decision of the PCR court when it is controlled by an error of law." *Id.* (internal quotation marks omitted).

In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove trial counsel's performance was deficient, and the deficient performance prejudiced the applicant's case. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To show counsel was deficient, the applicant must establish counsel failed to render reasonably effective assistance under prevailing professional norms. *Id.* at 688. To show prejudice, the applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different. *Id.* at 694. A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial. *Id.* However, "[a] 'reasonable probability' is less than a preponderance of the evidence" *Weik v. State*, Op. No. 27421 (S.C. Sup. Ct. filed July 23, 2014) (Shearouse Adv. Sh. No. 29 at 42). "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington v. Richter*, 131 S. Ct. 770, 792 (2011).

LAW/ANALYSIS

I. Failure to Investigate

Bagwell contends trial counsel was ineffective for failing to request DNA testing for the pieces of glass prior to trial. He further argues he was prejudiced by trial counsel's deficiency because the State implied to the jury throughout the trial Bagwell cut his face running through the glass patio door and "touted this as the linchpin evidence to place [him] at the crime scene." We agree.

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Strickland v. Washington*, 466 U.S. 668, 691 (1984). Thus, "[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). "[A]t a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). "[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions" *Strickland*, 466 U.S. at 691. "[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* at 690.

We hold trial counsel's failure to conduct DNA testing on the glass prior to trial constituted ineffective assistance of counsel. First, trial counsel's decision not to seek DNA testing prior to trial was unreasonable because the State used the glass as circumstantial evidence of Bagwell's guilt. *See Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (stating trial counsel has a duty to conduct a reasonable investigation or to make a reasonable decision that makes investigation unnecessary). Specifically, the State asserted in its closing argument Bagwell "could have cut his eye when he was running out [the victims' glass patio door;]" therefore, the State used the glass as evidence that placed Bagwell at the crime scene. Moreover, the evidence was reasonably available to trial counsel because she knew the State had the evidence prior to trial. *See McKnight*, 378 S.C. at 46,

661 S.E.2d at 360 ("A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State."). Trial counsel's explanation that she did not request DNA testing because she believed the State planned to do so was unreasonable because criminal defense attorneys have a duty "to make an *independent* investigation of the facts and circumstances of the case." *Ard*, 372 S.C. at 331-32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis added). Her duty to test the blood from the glass was especially important here because the test results could have supported Bagwell's claim that he was asleep in his apartment at the time of the burglary. *See Strickland*, 466 U.S. at 691 (stating counsel's conversations with the defendant may be critical when assessing counsel's investigation decisions). Although this court must give heavy deference to trial counsel's decision not to investigate, we find trial counsel's decision to not seek DNA testing prior to trial was objectively unreasonable. *Cf. Simpson*, 367 S.C. at 597, 627 S.E.2d at 706 (stating counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment).

Additionally, we hold trial counsel's failure to test the blood samples prior to trial was prejudicial to Bagwell. *See Strickland*, 466 U.S. at 687 (stating a PCR applicant must prove trial counsel's performance was deficient and the deficient performance prejudiced the applicant's case to establish a claim of ineffective assistance of counsel). Initially, we note prejudice may be found because trial counsel admitted the results of the DNA test "may have affected" the outcome of Bagwell's trial. *See Pauling v. State*, 331 S.C. 606, 610, 503 S.E.2d 468, 471 (1998) (noting a court may find ineffective assistance of counsel when trial counsel admitted the testimony of a witness might have made the difference in obtaining an acquittal). Furthermore, the State's case against Bagwell was not strong. As trial counsel explained, Bagwell's trial was essentially a "swearing match" between the victims and defendants. The only direct evidence linking Bagwell to the burglary was Armstrong's testimony that he saw Bagwell exiting the apartment through the glass door. However, the State referenced the broken glass door several times at trial to corroborate Armstrong's testimony and infer Bagwell was inside the victims' apartment. During its opening argument, the State asserted, "The evidence will show that after [Armstrong] entered[, Bagwell] became upset and ran out the patio glass door. The patio glass door which had been shattered moments before." Additionally, the State admitted a photograph that shows Bagwell's face scarred with blood streaming down the left side of his face, and Armstrong and Snoddy testified Bagwell appeared that way before Armstrong punched him. The State

also introduced a picture of the broken glass door that the perpetrator ran through and a picture of the broken glass from the shattered patio door. Importantly, the State asserted to the jury in its closing argument,

Some other testimony that's important for you to remember. If you remember both [Snoddy] and [Armstrong] said that when they went over to [Bagwell]'s apartment and he was out front, when they went over there they both saw a scratch on his top eye and blood. A little blood trail coming down the side of [Bagwell's] face. Now how did he get that? How did [Bagwell] get that? How did he get this right here? How did he get this cut? One way he could have gotten this cut, ladies and gentlemen, one way is if when he ran out, ran through the glass in a hurry, see the arc on this glass? He could have cut his eye when he was running out. When [Armstrong] startled them when they came back.

Although the DNA test results indicating Bagwell's blood was not found on the pieces of glass do not exonerate Bagwell or preclude the possibility of his guilt, we believe the jury more likely than not would have reached a different verdict had this evidence been presented at trial. *See Harrington v. Richter*, 131 S. Ct. 770, 792 (2011) (recognizing *Strickland* prejudice "does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case'"). The evidence would have rebutted the State's theory that Bagwell cut his eye while exiting the victim's apartment through the glass patio door. Furthermore, it would have cast doubt on Armstrong's and Snoddy's testimonies that Bagwell's face was bleeding before Armstrong punched Bagwell. Likewise, the evidence would have supported Bagwell's testimony that he was in his apartment at the time of the burglary and his face was bleeding because Armstrong attacked him.

Considering the lack of evidence other than Armstrong's testimony, the repeated references to the glass by the State, and the importance of witness credibility at trial, we find that but for trial counsel's failure to test the blood samples, there is a reasonable probability the result of Bagwell's trial would have been different.⁴ *See*

⁴ Bagwell also claims he is entitled to a new trial because the DNA test results constitute after-discovered evidence. Because we reverse the PCR court's finding

Strickland, 466 U.S. at 694 (stating that to show prejudice, the applicant must show that but for counsel's errors, there is a reasonable probability the result of the trial would have been different). Accordingly, we hold trial counsel was ineffective for failing to request DNA testing on the glass prior to trial.

II. Failure to Argue Rule 608(c), SCRE

Bagwell argues trial counsel was ineffective for failing to present the proper legal argument to the trial court, so that Daryl's brother, Jerry Spain, could testify Armstrong was angry with Daryl because Daryl revealed to a mutual neighbor that Armstrong was selling marijuana from his apartment. Specifically, Bagwell argues Jerry's testimony was admissible under Rule 608(c), SCRE, to show Armstrong's bias and motive to fabricate the allegations against Bagwell and Daryl. We disagree.

At trial, Daryl's counsel called Jerry to testify about statements Armstrong made to Jerry two days after the burglary. The State objected, arguing Jerry's testimony was inadmissible under Rule 613, SCRE, because Daryl's counsel failed to lay a proper foundation and did not ask Armstrong whether he made these prior statements to Jerry. The trial court sustained the objection, ordered the jury out of the courtroom, and allowed Daryl's counsel to proffer Jerry's testimony.

During the proffer, Jerry testified he went to Bagwell and Daryl's apartment two days after the burglary and found Armstrong standing outside his apartment. Jerry stated he was unaware Bagwell and Daryl had been arrested for burglary, and he asked Armstrong "what went on." Armstrong told him Daryl broke into Armstrong's apartment. According to Jerry, Armstrong became angry when he found Daryl in his apartment and he went over to Bagwell and Daryl's apartment with a gun, "[a]nd [Bagwell] was in the recliner and [Armstrong] said he hit [Bagwell] against the head with the butt of his gun." Jerry further stated Armstrong told him he then went outside the apartment, beat Daryl, and dragged him around the apartment complex parking lot. Finally, Jerry testified Armstrong told him he wanted to kill Daryl and was angry with him because he previously told a resident at their apartment complex that Armstrong was selling marijuana.

that trial counsel was not ineffective and grant Bagwell a new trial, we decline to address this argument. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating an appellate court need not address remaining issues when a decision on a prior issue is dispositive).

Thereafter, the trial court ruled Jerry's testimony was inadmissible under Rule 613(b), SCRE.

At the PCR hearing, Bagwell asserted Jerry's testimony that Armstrong was angry with Daryl for telling a neighbor that Armstrong sold marijuana would have provided a motive for Armstrong to fabricate the burglary allegations against Bagwell and Daryl. Trial counsel testified she interviewed Jerry, but she never intended to call him as a witness because there was "some deviation" between his testimony and Bagwell's testimony. Trial counsel further testified she did not argue Jerry's testimony was admissible under Rule 608, SCRE; however, Daryl's counsel argued the testimony was admissible under Rule 613, SCRE.

The PCR court found trial counsel was not ineffective for failing to argue Jerry's testimony was admissible to show Armstrong's bias and motive to fabricate the allegations against Bagwell and Daryl. Specifically, it found Bagwell failed to prove prejudice because Jerry did not testify at the PCR hearing.

We find the PCR court did not err in finding trial counsel was not ineffective for failing to introduce Jerry's testimony at trial. On direct appeal, this court held that any error in excluding Jerry's testimony was harmless because physical evidence corroborated Armstrong's and Snoddy's testimony,⁵ and counsel for Bagwell and Daryl were allowed to cross-examine Armstrong and Snoddy. *See State v. Bagwell*, Op. No. 2007-UP-377 (S.C. Ct. App. filed Sept. 18, 2007). Because this court previously found that any error in excluding Jerry's testimony would be harmless, we find Bagwell has not shown that but for trial counsel's failure to properly argue for the admission of this testimony, there is a reasonable probability the result at trial would have been different. Accordingly, we hold the PCR court properly determined trial counsel was not ineffective as to this issue.

CONCLUSION

In conclusion, we hold the PCR court erred in determining trial counsel was not ineffective for failing to request DNA testing on blood found on glass recovered at the crime scene. We further hold the PCR court properly determined trial counsel

⁵ We note with interest that the only physical evidence linking Bagwell to the crime was the blood on Bagwell's face, which the State argued was from a cut Bagwell received when he exited the apartment. However, the DNA evidence Bagwell presented to the PCR court tends to refute that argument.

was not ineffective for failing to introduce Jerry's testimony at trial. Accordingly, we reverse the denial of PCR and find Bagwell is entitled to a new trial.

REVERSED.

KONDUROS, J., concurs.

WILLIAMS, J.: I concur with the majority's opinion that Bagwell was not prejudiced by his counsel's failure to properly argue for the admission of Jerry Spain's testimony. I also agree with the majority's finding that Bagwell's trial counsel was deficient in failing to request DNA testing on the blood from the broken glass found at the crime scene. However, I disagree with the conclusion that Bagwell was prejudiced by his counsel's failure to request DNA testing on the blood from the broken glass found at the crime scene.

"In order to establish a claim of ineffective assistance of counsel, a PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case." *Porter v. State*, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 688 (1984). To show prejudice, the applicant must show that "but for counsel's errors, there is a reasonable probability the result of the trial would have been different." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Id.* at 186, 480 S.E.2d at 735; *see also Strickland*, 466 U.S. at 694.

I do not believe Bagwell has shown his counsel's failure to request DNA testing prejudiced his case. At trial, the State produced witness testimony and photographic evidence that Daryl Spain sustained multiple lacerations on the bottom of his feet on the night of the robbery. Snoddy also testified that Daryl Spain was barefoot when he exited the apartment through the shattered glass door. The cuts on Daryl Spain's feet provide a reasonable alternative explanation for the presence of blood on the glass pieces collected from the scene. In fact, Daryl Spain's lacerations, which were likely inflicted when he attempted to exit the apartment barefooted, are a more plausible explanation for the presence of blood at the scene of the crime than the "scratch on [Bagwell's] top eye." However, the blood on the glass collected from the scene was only tested for a match with Bagwell's DNA; it was never tested for a match with Daryl Spain's DNA. Without also proving the blood does not match with Daryl Spain's DNA, this evidence would not necessarily exonerate Bagwell. Moreover, at his PCR hearing, Bagwell

failed to establish the bloody glass pieces later tested for his DNA were collected from the arch of glass remaining in the doorway, which was allegedly depicted in the photograph entered into evidence by the State.⁶ The tested glass pieces could have easily been collected from the shattered glass covering the apartment floor, which would have supported the State's version of events presented at trial. Without further information to accompany the DNA testing results, the State's theory of the case is unaffected by the DNA evidence because the bloody glass could still be attributed to Daryl Spain's injuries. Accordingly, I find there is not "a reasonable probability the result of the trial would have been different" if this DNA evidence had been introduced at trial. Johnson, 325 S.C. at 187, 480 S.E.2d at 735.

Ultimately, this case was presented to the jury as a "swearing match" between the victims, Armstrong and Snoddy, and the alleged burglars, Bagwell and Daryl Spain. This case turned on credibility, and the jury found the former to be more credible than the latter. As noted in the majority's opinion, the DNA testing results do not exonerate Bagwell or preclude the possibility that he participated in the burglary. Further, as explained above, the State's version of events is unaffected by the presence of blood that did not belong to Bagwell at the scene of the crime. Thus, I would find Bagwell failed to establish that if his counsel had introduced the DNA results at trial, there is "a reasonable probability the result of the trial would have been different." Johnson, 325 S.C. at 187, 480 S.E.2d at 735.

Based on the foregoing, I would hold that Bagwell's case was not prejudiced by his trial counsel's errors, and the PCR court properly dismissed his PCR application.

⁶ The photograph depicting the shattered glass doorway allegedly showing blood on the remaining glass was not included in the record.

STATE OF SOUTH CAROLINA
In The Court of Appeals

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas

The Honorable C. Victor Pyle, Jr., Trial Judge
The Honorable Robin B. Stilwell, Post-Conviction Relief Judge

Appellate Case No. 2010-173947

Steve R. Bagwell,.....Petitioner,

v.

State of South Carolina,.....Respondent.

PETITION FOR REHEARING

I.

On August 27, 2014, this Court reversed the post-conviction relief (PCR) judge’s denial of Petitioner’s application for post-conviction relief. Bagwell v. State, Op. No. 5267 (S.C. Ct. App. filed Aug. 27, 2014). This Court misapprehended or overlooked relevant facts of this case and the applicable law. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing and affirm the PCR judge’s denial of relief.

II.

At trial, one of the two burglary victims testified he saw Petitioner “exiting through the broken glass” of his back door and that he went outside, encountered Petitioner, and

punched him. The second burglary victim testified he saw Petitioner get punched outside of his apartment. Petitioner testified, however, that he was asleep in his own apartment when he awoke to one of the victims beating him.

At the PCR hearing, Petitioner presented a DNA report indicating his blood was not found on broken pieces of glass at the crime scene. Petitioner's trial counsel testified she was aware there broken pieces of bloody glass and that, while the original prosecutor on the case was to have had this glass tested, the second prosecutor failed to do so. Trial counsel testified, however, that the lack of Petitioner's blood on the glass would not exonerate him of having burglarized the victims' apartment.

The PCR judge denied Petitioner's PCR application, finding Petitioner failed to meet his burden of proving trial counsel was ineffective.

III.

In its opinion, this Court reversed the PCR judge's order, finding (1) trial counsel was ineffective for failing to request DNA testing on the pieces of glass and that (2) Petitioner was prejudiced because the prosecutor implied Petitioner's face was cut as a result of having run through the glass patio door.

A.

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). The Strickland standard makes it clear

that one can only prevail on a claim of ineffective assistance of counsel if one can meet his burden of proving both deficiency of counsel and resulting prejudice.

B.

Trial counsel was not deficient for failing to have the broken pieces of bloody glass tested against Petitioner's DNA. This Court found trial counsel not performing this investigation "was unreasonable because the State used the glass as circumstantial evidence of [Petitioner]'s guilt" and that "the test results could have supported [Petitioner]'s claim that he was asleep in his apartment at the time of the burglary." There was no need, however, for trial counsel to have performed an independent investigation and obtained a DNA test on the glass. Evidence was presented at trial that Petitioner's co-defendant had cuts on his feet when he was arrested. Petitioner's defense at trial was that he was at home during the burglary. The lack of a DNA test would not have supported this defense. There was no need to have a DNA test performed that would not have affected the trial strategy. Rather, the case hinged upon a credibility determination by the jury – either they would believe the victims' story or the defense theory. A DNA analysis that did not positively identify Petitioner would have simply been another factor for the jury to consider. See Craven v. Cunningham, 292 S.C. 441, 443, 357 S.E.2d 23, 25 (1987) ("The credibility of witnesses is for the triers of fact."). The jury clearly endorsed the victims' account of what transpired. See Bruno v. State, 347 S.C. 446, 556 S.E.2d 393 (2001).

Contrary to this Court's opinion, the State did not use the bloody pieces of glass as circumstantial evidence of guilt. While the prosecutor may have referenced the theory that Petitioner cut himself on the broken patio door when he left the apartment, this was merely

an argument and did not constitute evidence of any sort. See State v. Charping, 333 S.C. 124, 133 n. 7, 508 S.E.2d 851, 856 n. 7 (1998) (“A solicitor’s closing argument is not evidence.”); see also State v. Huggins, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997) (finding a solicitor’s argument must stay within the record and its reasonable inferences). Further, this Court erred in finding trial counsel was deficient because of the prosecutor’s reference during closing argument. Counsel cannot be held to have been deficient on this basis, as counsel cannot be expected to be clairvoyant about the inferences the prosecutor would make during closing argument. See Strickland v. Washington, 466 U.S. at 690, 104 S. Ct. at 2066 (“Thus, a court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.”) (emphasis added).

C.

Petitioner failed to demonstrate he was prejudiced because no DNA test was performed in this case. In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)). The fact that the DNA test indicated Petitioner’s blood was not upon the broken pieces of glass did not exonerate him from having committed the offense. Petitioner failed to present any proof of where the broken glass was recovered (from the arch at the top of the broken glass

door or from broken pieces on the ground). Not only does the negative DNA match not exonerate Petitioner, it does not affect the State's version of events.

This Court erred in finding "the jury more likely than not would have reached a different verdict had this evidence been presented at trial." This finding is speculative and not supported by the record. One of the victims identified Petitioner – and not his co-defendant – inside the victims' apartment. Both victims testified Petitioner was outside the victims' apartment immediately after the burglary. There was stronger evidence against Petitioner than his co-defendant, and yet the jury found both men to be guilty. To state the addition of this non-exculpatory, non-exonerating DNA evidence would have yielded a verdict of not guilty is rampant speculation.

This Court erred in finding "prejudice may be found because trial counsel admitted the results of the DNA test 'may have affected' the outcome of [Petitioner]'s trial." Trial counsel's statement is not enough to presume prejudice in this case. Trial counsel also testified, for example, that the lack of Petitioner's blood on the glass did not exonerate him of the crime. Trial counsel's statement that a piece of non-exonerating evidence may have affected the trial in this case should not be viewed as decisive. *See, e.g., McAfee v. Thurmer*, 589 F.3d 353, 356 (7th Cir. 2009) (noting attorney "reflection after the fact is irrelevant to the question of ineffective assistance of counsel"); *Wright v. Hooper*, 169 F.3d 695, 707 (11th Cir. 1999) (noting that ineffectiveness is an issue decided by the courts and that "admissions of deficient performance by attorneys are not decisive"). Allowing the determination of prejudice to rest upon trial counsel's admissions or beliefs takes the two-prong *Strickland* analysis away from the courts and allows for self-serving Monday morning

quarterbacking or falling upon the sword to determine whether counsel's performance was prejudicial.

IV.

For all of the foregoing reasons, Respondent submits both prongs of the Strickland analysis were not satisfied and the opinion in this case was error. Respondent requests the panel grant the petition for rehearing, find the PCR judge properly denied Petitioner's PCR application, and affirm the order of dismissal.

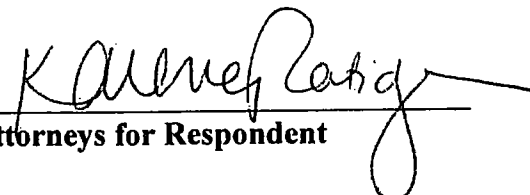
Respectfully submitted,

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By:


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September 5, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

CERTIORARI TO GREENVILLE COUNTY
Court of Common Pleas

The Honorable C. Victor Pyle, Jr., Trial Judge
The Honorable Robin B. Stilwell, Post-Conviction Relief Judge

Appellate Case No. 2010-173947

Steve R. Bagwell,..... Petitioner,

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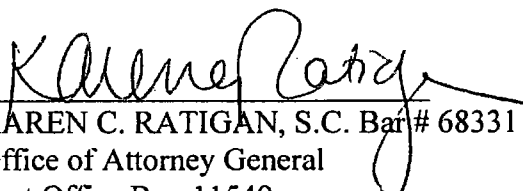
State of South Carolina,..... Respondent.

PROOF OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Petition for Rehearing upon Petitioner by depositing a copy of the same in the United States mail, postage prepaid, addressed to:

Wanda H. Carter, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589

I further certify that all parties required by Rule to be served have been served. This 5th day of September, 2014.


KAREN C. RATIGAN, S.C. Bar # 68331
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The South Carolina Court of Appeals

Steve Bagwell, Petitioner,

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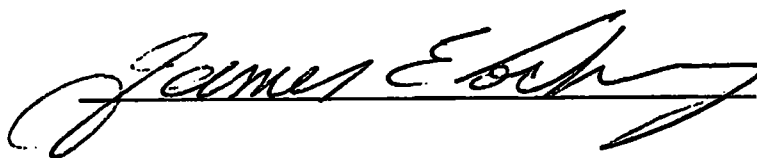
State of South Carolina, Respondent.

Appellate Case No. 2010-173947

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


_____ J.


_____ J.

I would grant the petition for rehearing.


_____ J.

Columbia, South Carolina

cc:

FILED

10/21/14

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