

Docket No. _____

In the Supreme Court of the United States

STEVEN BURTON, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

***PETITION FOR WRIT OF CERTIORARI TO
THE AIKEN COUNTY COURT OF COMMON PLEAS***

APPENDIX

BENJAMIN JOHN TRIPP
Counsel of Record
Appellate Defender
SOUTH CAROLINA COMMISSION
ON INDIGENT DEFENSE
DIVISION OF APPELLATE DEFENSE
Post Office Box 11589
Columbia, South Carolina 29211-1589
(803) 734-1330
btripp@sccid.sc.gov

TABLE OF CONTENTS

Findings of Fact and Conclusions of Law at Trial.....	A1
Opinion affirming conviction	A26
PCR Order of Dismissal	A28
Order Denying Certiorari	A38

1 INVESTIGATOR BRAD WERTS.

2 Q WAS ANY CHARGES AROSE OUT OF THAT?

3 A NO CHARGES WERE MADE.

4 THE COURT: MR. ROUTZONG, I AM BEING PATIENT.
5 LET'S STICK WITH THE RELEVANCY OF THE SEARCH WARRANT.
6 THIS IS NOT A DEPOSITION.

7 MR. ROUTZONG: YES, SIR.

8 BY MR. ROUTZONG:

9 Q WHY DID YOU INCLUDE THAT IN THE AFFIDAVIT?

10 A IT WAS PART OF -- WHEN WE RE-SEARCHED THE RESIDENCE IT
11 WAS ONE OF THE INCIDENTS THAT SHOWED UP AT THE RESIDENCE.

12 MR. ROUTZONG: I DON'T HAVE ANY OTHER QUESTIONS,
13 YOUR HONOR.

14 THE COURT: THANK YOU. REDIRECT.

15 MR. GRIMES: NONE, YOUR HONOR.

16 THE COURT: YOU MAY STEP DOWN. NEXT WITNESS.

17 MR. GRIMES: NO MORE WITNESSES, YOUR HONOR.

18 THE COURT: ANY ARGUMENT IN SUPPORT OF YOUR
19 MOTION, MR. ROUTZONG?

20 (WITNESS LEFT THE STAND.)

21 MR. ROUTZONG: YOUR HONOR, THIS EVIDENCE SHOULD BE
22 SUPPRESSED BECAUSE IT WAS A PRODUCT OF AN UNLAWFUL OR
23 UNCONSTITUTIONAL INTRUSION INTO MR. BURTON'S PRIVACY.
24 ALL OF THESE ITEMS WERE WELL WITHIN THE CURTILAGE OF
25 THE HOUSE. THEY HAD A FRONT DOOR. THEY COULD HAVE

1 CHOSEN TO KNOCK ON THE FRONT DOOR. HE TESTIFIED THAT
2 HE DIDN'T.

3 HE DOESN'T HAVE ANY SERIAL NUMBERS TO CORRESPOND
4 WITH THE TOOLS THAT HE CLAIMS WERE IN PLAIN VIEW. THE
5 ONLY THING HE CAN SAY IS THAT THEY'RE A COMMON BRAND
6 NAME TOOLS.

7 YOUR HONOR, THE MOTORCYCLE WAS WELL WITHIN THE
8 CURTILAGE. AND INVESTIGATOR PRINCE TESTIFIED IT WAS
9 FIVE OR 6 FEET AWAY FROM THE DOOR. BUT FOR THAT
10 INTRUSION, YOUR HONOR, OR MR. -- INVESTIGATOR PRINCE
11 WOULD NOT HAVE HAD PROBABLE CAUSE TO SEEK A SEARCH
12 WARRANT--

13 THE COURT: WHERE IS THE INTRUSION? WHAT DO YOU
14 ALLEGE TO BE THE INTRUSION, THE FACT THAT THEY DIDN'T
15 GO TO THE FRONT DOOR AND THEY JUST WALKED AROUND TO THE
16 BACKYARD?

17 MR. ROUTZONG: YES, YOUR HONOR. IT'S CLEAR THAT
18 IF THERE WERE ANYTHING, IT WOULD -- THERE WAS NOTHING
19 IN PLAIN VIEW IN THE FRONT OBVIOUSLY, YOUR HONOR. THEY
20 COULD HAVE KNOCKED ON THE FRONT DOOR TO FIND OUT IF
21 ANYBODY WAS HOME. RATHER THAN DOING THAT, THEY WENT
22 INTO THE CURTILAGE BEHIND THE HOME AND DID A SEARCH
23 WARRANT.

24 THE COURT: DO YOU HAVE ANY CASE LAW THAT SAYS
25 THAT IF THEY FAILED TO KNOCK ON THE FRONT DOOR AND

1 SIMPLY WALK TO THE BACKYARD THAT THAT IS AN INVASION OF
2 THE DEFENDANT'S RIGHTS OR ANY CASE LAW THAT CAN GUIDE
3 ME ON THAT?

4 MR. ROUTZONG: I DO NOT, YOUR HONOR.

5 THE COURT: THANK YOU. ANYTHING ELSE?

6 MR. ROUTZONG: NO, YOUR HONOR.

7 THE COURT: THANK YOU. MR. GRIMES?

8 MR. GRIMES: YOUR HONOR, THE INVESTIGATOR WAS OUT
9 THERE IN REGARDS TO INVESTIGATING A STOLEN TRAILER.
10 THEY HAD INFORMATION AS TO THE PROPERTY THAT WAS IN THE
11 TRAILER WHEN IT WAS STOLEN AND HE'S TESTIFIED THAT HE
12 WAS ABLE TO SEE THAT PROPERTY WHILE HE WAS THERE
13 ATTEMPTING TO MAKE CONTACT WITH THE INDIVIDUALS THAT
14 LIVE ON THE PROPERTY.

15 THE COURT: THANK YOU. RESPECTFULLY -- I WILL
16 RESPECTFULLY DENY YOUR MOTION TO SUPPRESS. ALL RIGHT
17 WHAT ELSE WE GOT?

18 MR. GRIMES: YOUR HONOR, WE HAVE A JACKSON V. DENO
19 HEARING. THE STATE CALLS INVESTIGATOR PRINCE.

20 THE COURT: ALL RIGHT, SIR. YOU'RE STILL UNDER
21 OATH.

22 STACY PRINCE, AFTER BEING DULY SWORN,
23 TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. GRIMES:

- 1 Q THANK YOU VERY MUCH.
- 2 THE COURT: REDIRECT IF ANY?
- 3 MR. GRIMES: NONE, YOUR HONOR.
- 4 THE COURT: YOU MAY STEP DOWN. NEXT WITNESS. MAY
- 5 HE BE EXCUSED? ANY OBJECTION?
- 6 MR. ROUTZONG: NO OBJECTION.
- 7 THE COURT: YOU MAY LEAVE IF YOU'D LIKE.
- 8 (WITNESS LEFT THE STAND.)
- 9 MR. GRIMES: THE STATE CALLS INVESTIGATOR STACY
- 10 PRINCE.
- 11 STACY PRINCE, AFTER BEING DULY SWORN,
- 12 TESTIFIED AS FOLLOWS:
- 13 THE WITNESS: STACY PRINCE. P-R-I-N-C-E.
- 14 DIRECT EXAMINATION
- 15 BY MR. GRIMES:
- 16 Q INVESTIGATOR PRINCE, WHERE ARE YOU EMPLOYED?
- 17 A I AM EMPLOYED WITH THE AIKEN COUNTY SHERIFF'S OFFICE.
- 18 Q AND WHAT IS YOUR POSITION THERE?
- 19 A I'M CURRENTLY ASSIGNED TO INVESTIGATIONS DIVISION, CID.
- 20 Q YOU INVESTIGATE CASES?
- 21 A YES, SIR.
- 22 Q HOW DID YOU BECOME INVOLVED WITH THIS CASE?
- 23 A I WAS CONTACTED BY DETECTIVE LUKE SHERMAN WITH NORTH
- 24 AUGUSTA PUBLIC SAFETY.
- 25 Q AND WHAT INFORMATION DID YOU GATHER FROM HIM?

1 A DETECTIVE SHERMAN HAD BEEN FOLLOWING UP ON A LEAD IN
2 REGARDS TO A STOLEN TRAILER FROM THEIR JURISDICTION THAT
3 BELONGED TO M&W ASSOCIATES.

4 Q DID YOU GO ANYWHERE WITH DETECTIVE SHERMAN?

5 A YES, WE DID. WE TRAVELED TO [REDACTED] IN
6 RIDGE SPRING WITHIN AIKEN COUNTY. DETECTIVE SHERMAN'S
7 INVESTIGATION HAD TAKEN HIM THERE OUTSIDE OF HIS
8 JURISDICTION.

9 Q IS THAT AREA WITHIN YOUR JURISDICTION?

10 A YES, SIR, AND IT'S WITHIN BOUNDARIES OF AIKEN COUNTY.

11 Q WHAT DID YOU DO WHEN YOU GOT THERE?

12 A WHEN WE ARRIVED AT [REDACTED] -- NORMALLY WHEN
13 I ARRIVED AT A RESIDENCE I ATTEMPT TO MAKE CONTACT WITH WHA
14 APPEARS TO BE THE MOST USED DOOR. IN THIS CASE I WENT TO
15 THE BACK DOOR, KNOCKED ON THE BACK DOOR AND RECEIVED NO
16 RESPONSE FROM THERE. I THEN TOOK THE PATH OF LEAST
17 RESISTANCE FROM THE BACK DOOR TO A CAMPER DOOR WHICH WAS
18 LOCATED IN THE YARD PARKED NEXT TO THE TRAILER.

19 THE CAMPER WAS PLUGGED UP WITH WATER AND ELECTRICAL
20 SUPPLY WHERE SOMEBODY COULD BE STAYING IN. I ATTEMPTED TO
21 MAKE CONTACT THERE.

22 Q WERE YOU ABLE TO MAKE CONTACT WITH ANYBODY?

23 A I COULD REACH NO ONE AT THE TRAILER OR AT THE CAMPER.

24 Q DID YOU NOTICE ANYTHING ELSE WHILE YOU WERE THERE?

25 A WHILE I WAS THERE, WHEN I FIRST TRIED TO MAKE CONTACT

1 TO THE REAR DOOR WITHIN 5 FEET OF THE REAR DOOR WAS A
2 MOTORCYCLE THAT WAS BEING DISASSEMBLED WHICH -- WITH NO VIN
3 WHICH IS VERY PLAINLY ABLE TO BE SEEN FROM STANDING THERE AT
4 THE BACK DOOR.

5 FROM THERE WHEN I WALKED TO THE CAMPER I PASSED BY A
6 SMALL SHED. IN THIS SHED WAS A NUMBER OF POWER TOOLS AND
7 ALL WHICH WAS CONSISTENT WITH PROPERTY THAT HAD BEEN
8 REPORTED FROM THE STOLEN TRAILER FROM NORTH AUGUSTA WHICH
9 DETECTIVE SHERMAN HAD ALREADY FURNISHED ME A LIST OF THAT
10 PRIOR TO US GOING TO THE RESIDENCE AND BRIEFING ME ON THIS
11 CASE.

12 Q DID YOU DO ANYTHING WITH THAT INFORMATION?

13 A WITH THAT, ONCE I COULD NOT MAKE CONTACT WITH EITHER --
14 AT EITHER THE CAMPER OR RESIDENCE I TRAVELED BACK TO THE
15 SHERIFF'S OFFICE AT WHICH TIME WE SAT DOWN AND WROTE AN
16 AFFIDAVIT FOR A SEARCH WARRANT FOR THE RESIDENCE AND
17 PRESENTED IT BEFORE A AIKEN COUNTY MAGISTRATE AND SHE SIGNED
18 IT.

19 Q WHAT DID YOU DO WITH THE SEARCH WARRANT ONCE IT'S
20 OBTAINED?

21 A ONCE WE OBTAINED THE SEARCH WARRANT WE TRAVELED BACK TO
22 [REDACTED] WE ATTEMPTED TO MAKE CONTACT AGAIN AT
23 THE TRAILER AND AT THE CAMPER AT WHICH TIME WE FORCED ENTRY
24 INTO THE TRAILER AND INTO THE CAMPER WHICH WAS LOCKED. WE
25 CLEARED THE CAMPER. THE PROPERTY THAT WAS -- THAT WAS

1 LISTED FROM THE STOLEN TRAILER WAS OBSERVED THERE IN THE
2 LITTLE SMALL METAL BUILDING ALONG WITH THE MOTORCYCLES,
3 FOUR-WHEELERS AND ALL.

4 WHEN JUST LOOKING AT THEM THERE ON THE PROPERTY WITH
5 THE SEARCH WARRANT, NONE OF THESE CARRIED VINS OR
6 IDENTIFICATION NUMBERS ON THEM. YOU COULD TELL WHERE ALL
7 HAVE BEEN GROUND OFF AND ALTERED.

8 Q LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY MARKED FOR
9 IDENTIFICATION PURPOSES AS STATE'S EXHIBIT 1. DO YOU
10 RECOGNIZE WHAT THAT IS?

11 A THIS IS A TRUE COPY OF THE SEARCH WARRANT THAT WE
12 OBTAINED FOR [REDACTED]

13 MR. GRIMES: AT THIS TIME THE STATE WOULD MOVE TO
14 INTRODUCE THE SEARCH WARRANT, STATE'S EXHIBIT 1 INTO
15 EVIDENCE.

16 MR. ROUTZONG: WITHOUT OBJECTION, YOUR HONOR.
17 (WHEREUPON, STATE'S EXHIBIT NO. 1 WAS MARKED FOR
18 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

19 BY MR. GRIMES:

20 Q WHAT DID YOU DO WITH THE PROPERTY THAT YOU FOUND -- IS
21 IT [REDACTED]?

22 A [REDACTED] RIDGE SPRING, AIKEN COUNTY. THE
23 PROPERTY AND ALL WHICH WE LOCATED AT THE RESIDENCE WHEN WE
24 ARRIVED THERE AND MADE SURE THERE WAS NO ONE THERE THAT
25 WOULD POSE A THREAT OR ANYTHING TO LAW ENFORCEMENT, THE

1 SEARCH WAS CONDUCTED ON THE PROPERTY. I REQUESTED A FELLOW
2 INVESTIGATOR VICTORIA LOGGER TO MAKE AN INVENTORY LIST OF
3 ALL OF THE PROPERTY THAT WE RECOVERED THERE, WHICH IT WAS
4 ALL INVENTORIED.

5 SOME THE PROPERTY WAS RETURNED TO THE OWNERS AT THE
6 SCENE TO INCLUDE THE DENALI CAMPER, AND MOST OF THE POWER
7 TOOLS TO M&W ASSOCIATES. THE REASON THEY WERE RETURNED
8 THERE WAS, ONE, WE DIDN'T HAVE A WAY TO TRANSPORT THE DENALI
9 CAMPER, AND IT WOULD HAVE BEEN EASIER TO JUST RELEASE THE
10 POWER TOOLS AND ALL BACK TO THE OWNERS THERE.

11 THE REMAINING PROPERTY WAS TRANSPORTED TO THE AIKEN
12 COUNTY SHERIFF'S OFFICE WHERE IT WAS PLACED INTO EVIDENCE
13 STORAGE.

14 Q LET ME SHOW YOU WHAT'S BEEN ADMITTED INTO EVIDENCE AS
15 STATE'S EXHIBITS 16 AND 17. DO YOU RECOGNIZE WHAT'S IN
16 THOSE PHOTOGRAPHS?

17 A I DO. STATE'S EXHIBIT 16 IS PROPERTY THAT WAS LOCATED
18 IN THE SMALL METAL BUILDING LOCATED BEHIND THE FIFTH WHEEL
19 DENALI CAMPER. THE PROPERTY -- THE RIGID AIR COMPRESSOR WAS
20 ONE OF THE FIRST ITEMS THAT COULD BE NOTICED LOOKING AT THE
21 SHED THAT WAS ON THE LIST OF STOLEN PROPERTIES FROM M&W
22 ASSOCIATES.

23 STATE'S EXHIBIT 17 IS A SET OF DRILL BITS WITH MODEL'S
24 NAME AND ALL DUCT-TAPED AROUND THEM TO HOLD THEM TOGETHER.
25 IT WAS LOCATED IN THE METAL BUILDING.

1 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBITS
2 10 AND 11. DO YOU RECOGNIZE WHAT'S IN THOSE PHOTOGRAPHS?

3 A I DO. STATE'S EXHIBIT 10 IS A TRUE REPRESENTATION OF
4 THE VERY FIRST VISIT TO THE ADDRESS ON [REDACTED] WITH
5 DETECTIVE LUKE SHERMAN. IN THIS PHOTOGRAPH IS A PHOTOGRAPH
6 OF THE 35-FOOT DENALI CAMPER. ONE OF THE KAWASAKI
7 MOTORCYCLES CAN BE OBSERVED OFF TO THE RIGHT HAND SIDE OF
8 THE CAMPER.

9 TWO PREVIOUS -- TWO OTHER MOTORCYCLES, WHICH YOU CAN'T
10 SEE THEM IN THE PHOTO, BUT ARE ACTUALLY COVERED UP OFF TO
11 THE LEFT HERE ALONG WITH A WHITE COVERED SMALL -- ABOUT A 10
12 TO 12-FOOT ENCLOSED TRAILER WITH DECALS AND ALL REMOVED OF
13 IT.

14 STATE'S EXHIBIT 11 IS JUST A CLOSE-UP SHOT OF THE FRONT
15 OF THE DENALI CAMPER ALONG WITH -- BUT YOU CAN SEE THE LARGE
16 KAWASAKI MOTORCYCLE OFF TO THE RIGHT.

17 Q WERE THOSE PHOTOGRAPHS TAKEN AT [REDACTED]

18 A THEY WERE TAKEN AT [REDACTED].

19 Q I SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 22.

20 A STATE'S EXHIBIT 22 IS GOING TO BE THE TWO SMALLER
21 KAWASAKI DIRT BIKES WHICH IN PHOTOGRAPH STATE'S EXHIBIT 10
22 YOU CAN SEE THAT THEY WERE COVERED UP BY A SMALL TARP OFF TO
23 THE LEFT HAND SIDE OF THE CAMPER.

24 Q AND STATE'S EXHIBIT 24.

25 A STATE'S EXHIBIT 24 IS GOING TO BE THE LARGER KAWASAKI

1 BIKE WHICH LOOKING AT STATE'S EXHIBIT 10 WILL BE OFF TO THE
2 RIGHT HAND SIDE AND SITTING IN FRONT OF THE SMALL TIN
3 BUILDING WHERE THE TOOLS AND ALL THAT WERE LOCATED.

4 Q STATE'S EXHIBITS 25 AND 26. DO YOU RECOGNIZE WHERE
5 THOSE WERE TAKEN?

6 A YES. TWENTY-SIX IS GOING TO BE THE BACK DOOR OF THE
7 RESIDENCE FROM THE WAY I APPROACHED IT FROM THE DRIVEWAY. I
8 WOULD HAVE WALKED RIGHT PAST THE ONE BIKE THAT WAS BEING
9 DISASSEMBLED ALONG WITH THIS ONE WHICH WAS SITTING ON SOME
10 TYPE OF BLOCK. IT WAS BLOCKED UP TO TRY TO MAKE CONTACT
11 WITH THE BACK DOOR. LOCATED IN IT'S GOING TO BE ONE OF THE
12 HONDA RANCHER ES FOUR-WHEELERS.

13 AND THEN THIS IS JUST MORE OF -- STATE'S EXHIBIT 25 IS
14 MORE OF A -- KIND OF A CORNER SHOT OF THE BACK SIDE OF THE
15 RESIDENCE FROM THE END OF THE TRAILER.

16 Q I SHOW YOU WHAT'S IN STATE'S EXHIBIT 14.

17 A STATE'S EXHIBIT 14 IS THE HONDA ES LOCATED IN EVIDENCE
18 WITH THE SHERIFF'S OFFICE.

19 Q WAS THAT RECOVERED FROM -- WHERE WAS THAT PROPERTY
20 RECOVERED FROM?

21 A THIS HONDA ES WAS THE ONE WHICH IS DEPICTED -- IT IS
22 ACTUALLY IN STATE'S EXHIBIT 25. IT WAS LOCATED AT THE
23 BACKYARD OF [REDACTED]

24 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
25 EXHIBIT 12.

1 A STATE'S EXHIBIT 12 IS GOING TO BE THE YAMAHA GRIZZLY
2 660 WHICH IS LOCATED AT [REDACTED] AND ALSO IN STATE'S
3 EXHIBIT 25, THE PHOTO.

4 Q LET ME SHOW YOU WHAT'S PREVIOUSLY BEEN MARKED FOR
5 IDENTIFICATION AS STATE'S EXHIBIT 18.

6 A STATE'S EXHIBIT 18 IS A TANDEM AXLE FLAT-BED TRAILER
7 LOCATED AT [REDACTED] WHICH THE FENDER HAD BEEN REMOVED
8 OFF OF IT WHEN WE RETURNED OUT THERE ALONG WITH -- YOU CAN
9 ALSO AT THE VERY TONGUE YOU CAN SEE WHERE THE IDENTIFICATION
10 PLATES HAVE BEEN REMOVED.

11 Q DOES THAT FAIRLY AND ACCURATELY REPRESENT THE TRAILER
12 AS YOU OBSERVED IT ON THAT DAY?

13 A THAT IS EXACTLY WHERE THE TRAILER WAS THAT DAY.

14 MR. GRIMES: YOUR HONOR, AT THIS TIME THE STATE
15 MOVES TO INTRODUCE STATE'S EXHIBIT 18 INTO EVIDENCE.

16 THE COURT: ANY OBJECTION?

17 MR. ROUTZONG: NO OBJECTION.

18 (WHEREUPON, STATE'S EXHIBIT NO. 18 WAS MARKED FOR
19 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

20 BY MR. GRIMES:

21 Q LET ME SHOW YOU WHAT'S PREVIOUSLY BEEN MARKED AS
22 STATE'S EXHIBIT 19. DO YOU RECOGNIZE WHAT'S IN THAT
23 PHOTOGRAPH?

24 A YES. THIS IS A CLOSER SHOT OF THE TONGUE OF STATE'S
25 EXHIBIT 18 TO -- AND THE LOCATION AND WHERE THE SERIAL

1 PLATES WERE TAKEN OFF.

2 Q WOULD THIS BE THE TRAILER THAT YOU IDENTIFIED IN
3 STATE'S EXHIBIT 18?

4 A YES. THIS IS THE TONGUE. THIS IS JUST A CLOSE-UP SHOT
5 OF THE TONGUE OF STATE'S EXHIBIT 18.

6 Q DOES THAT FAIRLY AND ACCURATELY REPRESENT THE TONGUE OF
7 THAT TRAILER?

8 A IT DOES.

9 MR. GRIMES: AT THIS TIME THE STATE WOULD MOVE TO
10 INTRODUCE STATE'S EXHIBIT 19 INTO EVIDENCE.

11 THE COURT: ANY OBJECTION?

12 MR. ROUTZONG: NO OBJECTION, YOUR HONOR.

13 THE COURT: WITHOUT OBJECTION.

14 (WHEREUPON, STATE'S EXHIBIT NO. 19 WAS MARKED FOR
15 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

16 BY MR. GRIMES:

17 Q DO YOU KNOW WHETHER A SERIAL NUMBER OR VEHICLE
18 IDENTIFICATION NUMBER WAS FOUND ON THAT TRAILER?

19 A THE TRAILER WAS SEARCHED AS FAR AS THE FRONT TONGUE
20 UNDERNEATH IT AND EVEN ON THE AXLE FRAMES AND NONE WAS
21 FOUND.

22 Q I AM GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
23 EXHIBIT 20 FOR IDENTIFICATION. DO YOU KNOW WHAT'S DEPICTED
24 IN THAT PHOTOGRAPH?

25 A STATE'S EXHIBIT 20 IS A SINGLE AXLE COVERED CARGO

1 TRAILER THAT WAS LOCATED AND SECURED FROM [REDACTED]
2 [REDACTED] IT'S ALSO IN STATE'S EXHIBIT 10 OFF TO THE LEFT SIDE
3 OF THE DENALI CAMPER.

4 Q IS THAT -- IN STATE'S EXHIBIT 10, IS THAT A PHOTOGRAPH
5 OF THAT CAMPER? WHERE IS THAT?

6 A THE CAMPER IS GOING TO BE LOCATED ON THE RIGHT SIDE.
7 THIS DOOLITTLE -- THIS TRAILER IS MADE BY DOOLITTLE
8 TRAILERS. IT IS LOCATED ON THE LEFT HAND SIDE OF THE DENAL
9 CAMPER.

10 Q IN STATE'S EXHIBIT 10, WHERE WAS THIS PHOTOGRAPH TAKEN

11 A STATE'S EXHIBIT 10 WAS TAKEN AT [REDACTED]

12 Q AND STATE'S EXHIBIT 20, IS THAT -- IS THAT THE SAME
13 TRAILER?

14 A THIS IS THE SAME TRAILER. IT IS JUST A CLOSER SHOT OF
15 THE FRONT OF IT WHICH LOCATED AT THE TOP, NEAR THE TOP OF
16 THE FRONT OF THE TRAILER YOU CAN SEE WHERE SOME TYPE OF
17 DECAL HAS BEEN REMOVED AND WHICH ANY CONTACT WITH THE
18 DOOLITTLE TRAILER COMPANY, THIS SERIAL NUMBER SHOULD HAVE
19 BEEN LOCATED ON THE FRONT OF THE TONGUE ON THIS TRAILER.

20 THAT WAS THE ONLY IDENTIFICATION THAT THEY PLACED ON
21 IT, AND THAT HAS BEEN REMOVED.

22 Q WAS THIS TRAILER RECOVERED FROM [REDACTED] [REDACTED]?

23 A IT WAS RECOVERED FROM [REDACTED] [REDACTED] [REDACTED].

24 Q DOES THIS PHOTOGRAPH FAIRLY AND ACCURATELY REPRESENT
25 THE TRAILER?

1 A IT DOES.

2 MR. GRIMES: YOUR HONOR, AT THIS TIME THE STATE
3 WOULD MOVE TO INTRODUCE STATE'S EXHIBIT 20 INTO
4 EVIDENCE.

5 MR. ROUTZONG: WITHOUT OBJECTION.

6 (WHEREUPON, STATE'S EXHIBIT NO. 20 WAS MARKED FOR
7 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

8 BY MR. GRIMES:

9 Q I SHOW YOU WHAT'S PREVIOUSLY BEEN MARKED FOR
10 IDENTIFICATION AS STATE'S EXHIBIT 21. DO YOU RECOGNIZE
11 WHAT'S IN THAT PHOTOGRAPH?

12 A TWENTY-ONE IS JUST A CLOSE-UP SHOT OF THE TONGUE OF THE
13 TRAILER WHERE THE SERIAL NUMBER, IDENTIFICATION NUMBER
14 SHOULD BE, AND IT'S JUST A CLOSE-UP OF STATE'S EXHIBIT 20 AS
15 FAR AS THE TONGUE OF THE TRAILER.

16 Q IS THAT -- THE TONGUE OF THE TRAILER, THAT'S IN STATE'S
17 EXHIBIT 10?

18 A STATE'S EXHIBIT 10 AND 20.

19 Q WERE YOU ABLE TO LOCATE ANY VEHICLE IDENTIFICATION
20 NUMBER OR SERIAL NUMBER ON THAT TRAILER?

21 A NO. IN CONTACT WITH THE DOOLITTLE COMPANY THAT
22 ACTUALLY MAKES IT, MANUFACTURES THAT TYPE OF TRAILER, THE
23 ONLY PLACE THAT THEY PLACE A VIN IS ON THE RIGHT HAND FRONT
24 OF THE TONGUE.

25 Q DOES THIS PHOTO FAIRLY AND ACCURATELY REPRESENT THE

1 TONGUE OF THAT TRAILER?

2 A IT DOES. NO, I'M SORRY. THE LEFT HAND FRONT OF THE
3 TONGUE IF YOU'RE LOOKING AT IT.

4 MR. GRIMES: AT THIS TIME THE STATE WOULD MOVE TO
5 INTRODUCE STATE'S EXHIBIT 21 INTO EVIDENCE.

6 MR. ROUTZONG: NO OBJECTION.

7 (WHEREUPON, STATE'S EXHIBIT NO. 21 WAS MARKED FOR
8 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

9 BY MR. GRIMES:

10 Q THROUGH YOUR INVESTIGATION WERE YOU ABLE TO DETERMINE
11 WHO RESIDES AT [REDACTED]

12 A YES, SIR, THE DEFENDANT STEVEN MAURICE BURTON ALONG
13 WITH A -- I BELIEVE IT'S HIS WIFE, KATRINA BURTON.

14 Q THANK YOU.

15 MR. GRIMES: YOUR HONOR, MAY WE APPROACH?

16 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

17 THE COURT: I THINK THAT WE'RE AT A PRETTY GOOD
18 STOPPING POINT. THE FOOD IS HERE. SO Y'ALL GO BACK
19 AND ENJOY YOUR LUNCH. DON'T DISCUSS THE CASE. DON'T
20 START ANY DELIBERATIONS. ONCE YOU -- AND YOU'RE
21 WELCOME TO TAKE THE LUNCH OUTSIDE. I DON'T KNOW WHAT
22 THE WEATHER -- YESTERDAY WAS GORGEOUS. WHAT IS IT LIKE
23 OUTSIDE? IS IT ANY RAINING OR DOES ANYBODY KNOW?

24 ANYWAY, WE'RE GOING TO START BACK AT 2:00. AND I
25 AM NOT TRYING TO GIVE YOU A LONG LUNCH BREAK, BUT I'VE

1 GOT A 1:10 HEARING, 1:30 HEARING, AND I AM GOING TO
2 TAKE TO SOME MATTERS RIGHT HERE AT 12:30, SO IT'S GOING
3 TO TAKE ME UNTIL 1:00. SO I DON'T WANT Y'ALL SITTING
4 BACK THERE TWIDDLING YOUR THUMBS.

5 SO EAT AND ENJOY YOUR LUNCH AND JUST BE BACK AT
6 2:00 AND DON'T DISCUSS THE CASE AND DON'T DELIBERATE.
7 THANK YOU. IS 5:00 -- I AM JUST SAYING THAT RIGHT NOW,
8 BUT IS THAT AN IMPOSITION ON ANYBODY THIS AFTERNOON IF
9 WE GO TO FIVE? EVERYBODY GOT RIDES AND CHILDREN TAKEN
10 CARE OF AND SUPPER COOKED? THANK YOU. Y'ALL HAVE A
11 WONDERFUL LUNCH.

12 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 12:20
13 PM.)

14 THE COURT: ALL RIGHT. OFFICER, I AM GOING TO LET
15 YOU STEP DOWN REMINDING YOU THAT WE'RE STILL IN THE
16 MIDDLE OF YOUR TESTIMONY. I WOULD ASK THAT YOU NOT
17 DISCUSS IT OVER THE LUNCH HOUR. WE'LL BE STARTING BACK
18 RIGHT AT 2:00. ANYTHING FOR THE RECORD BY THE STATE
19 BEFORE WE BREAK FOR LUNCH?

20 MR. GRIMES: NONE, YOUR HONOR.

21 THE COURT: BY THE DEFENDANT?

22 MR. ROUTZONG: NO, SIR.

23 THE COURT: THE DEFENDANT IS IN CUSTODY.

24 (WHEREUPON, A BREAK WAS TAKEN.)

25 THE COURT: ANYTHING FOR THE RECORD BY PLAINTIFF

1 -- I MEAN BY THE STATE WITH THIS...

2 MR. GRIMES: WE'D LIKE TO PUBLISH SOME OF THE
3 PICTURES THAT WE'VE USED PREVIOUSLY AND USE THE BIG
4 SCREEN TO DO IT. THAT WOULD BE THE NEXT LINE OF
5 QUESTIONING.

6 THE COURT: ANYTHING BY THE DEFENDANT?

7 MR. ROUTZONG: NO, YOUR HONOR.

8 THE COURT: BRING THE JURY IN.

9 (WHEREUPON, THE JURY CAME INTO OPEN COURT AT
10 APPROXIMATELY 2:04 PM.)

11 THE COURT: HOW WAS THE LUNCH?

12 THE JUROR: GREAT. THANKS.

13 THE COURT: WE GOT EVERYBODY?

14 THE BAILIFF: YES, SIR. WE'RE DOWN TO 13.

15 THE COURT: THAT'S RIGHT. WE LOST ONE THIS
16 MORNING. ANYBODY HAVE STEAK? I DIDN'T EITHER. I HAD
17 THE SAME OLD TUNA FISH SANDWICH I GET EVERY DAY OVER
18 THERE. YOU MAY PROCEED.

19 MR. ROUTZONG: YES, YOUR HONOR.

20 THE COURT: HOLD ON A SECOND. SOMEBODY IS COLD.
21 ARE YOU OKAY?

22 THE JUROR: I AM FINE.

23 THE COURT: IF Y'ALL GET COLD, PLEASE RAISE YOUR
24 HAND. I'LL MAKE THEM TURN THAT THING ONE WAY OR THE
25 OTHER.

1 MR. GRIMES: THANK YOU. YOUR HONOR, AT THIS TIME
2 THE STATE WOULD MOVE TO PUBLISH EXHIBITS 10, 11, 12,
3 14, 16, 17, 18, 19, 20, 21, 22, 24, 25 AND 26.

4 THE COURT: HOW DO YOU INTEND TO DO IT?

5 MR. GRIMES: WE'D ASK THAT WE BE ALLOWED TO
6 PUBLISH IT ON THE MONITOR AND HAVE THE INVESTIGATOR
7 COME DOWN.

8 THE COURT: THAT'S FINE. GO AHEAD. ALL RIGHT.
9 YOU KNOW MY RULES. STAND OVER HERE SO YOU DON'T BLOCK
10 THE JURORS.

11 THE COURT: GENTLEMEN, PLEASE IDENTIFY THE
12 EXHIBIT.

13 (WITNESS LEFT THE STAND.)

14 BY MR. GRIMES:

15 Q I AM HANDING YOU WHAT'S PREVIOUSLY BEEN MARKED AS
16 STATE'S EXHIBIT 10. IS THAT PHOTOGRAPH REPRESENTED ON THE
17 MONITOR?

18 A THAT IT. STATE'S EXHIBIT 10 IS THE ORIGINAL PHOTOGRAPH
19 THAT I'M HOLDING IN MY HAND. THE [REDACTED]
20 DEPICTION--

21 COURT REPORTER: I CAN'T HEAR.

22 THE COURT: YOU'RE GOING TO HAVE TO SPEAK
23 DISTINCTLY AND...

24 THE WITNESS: THE PHOTOGRAPH ON THE PLASMA HERE IS
25 STATE'S EXHIBIT 10. THAT'S THE LOCATION OF 106 SCRUB

1 OAK ROAD. THAT'S WHEN WE ARRIVED TO EXECUTE THE SEARCH
2 WARRANT. IN THE PHOTOGRAPH YOU HAVE THE DENALI CAMPER
3 ALONG WITH THE WHITE ENCLOSED TRAILER.

4 THE COURT: MR. WITNESS, POINT IT OUT TO US.

5 THE WITNESS: THE DENALI CAMPER, WHITE ENCLOSED
6 TRAILER WHICH HAS IDENTIFICATIONS REMOVED ALONG WITH
7 RIGHT HERE YOU'RE GOING TO HAVE TWO KAWASAKI
8 MOTORCYCLES THAT ARE COVERED UP THAT ARE PICTURED LATE
9 IN THE PHOTOGRAPHS ALONG THE ONE OF THE KAWASAKI
10 MOTORCYCLES PROPPED UP BESIDE A TREE HERE.

11 BY MR. GRIMES:

12 Q I HAND YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 11. IS
13 THAT THE PHOTOGRAPH THAT'S DEPICTED ON THE MONITOR?

14 A STATE'S EXHIBIT 11 IS THE DENALI CAMPER WHICH IS
15 LOCATED AT [REDACTED] WHICH IS -- STOLEN OUT OF GEORGIA
16 ALONG AND WITH THE KAWASAKI 200 SERIES MOTORCYCLE.

17 Q I HAND YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 18.
18 IS THAT THE PHOTOGRAPH THAT'S DEPICTED ON THE MONITOR?

19 A STATE'S EXHIBIT 18 PHOTOGRAPH IS THE SAME AS WHICH IS
20 ON THE MONITOR. WHAT YOU HAVE THE TENDER -- YOU CANNOT TELL
21 ON THIS PHOTOGRAPH, BUT THAT'S GOING TO BE THE TONGUE UP
22 HERE AT THE VERY FRONT. ALSO YOU HAVE THE WHITE ENCLOSED
23 TRAILER WHICH IS ALSO LOCATED IN THIS PHOTOGRAPH.

24 Q DO YOU KNOW WHERE THE PHOTOGRAPH IS TAKEN?

25 A 106 [REDACTED]

1 Q I AM HANDING YOU WHAT'S BEEN MARKED STATE'S EXHIBIT 19.
2 IS THAT THE PHOTOGRAPH THAT'S DEPICTED ON THE MONITOR?

3 A THAT IS DEPICTED -- CORRECT. STATE'S EXHIBIT 19 IS
4 GOING TO BE THE TONGUE OF THE BLACK TRAILER THAT YOU JUST
5 SEEN IN THE PRIOR PHOTOGRAPH WITH THE FENDER AND ALL
6 REMOVED, AND THAT'S THE TONGUE WHERE THE SERIAL NUMBER AND
7 ALL SHOULD BE LOCATED.

8 Q I HAND YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT 20.
9 IS THAT DEPICTED ON THE MONITOR?

10 A THAT'S CORRECT IS WHAT'S DEPICTED ON THE MONITOR. THIS
11 IS THE WHITE ENCLOSED TRAILER WHICH YOU'VE SEEN IN THE PRIOR
12 PHOTOGRAPHS. UP ON THE TOP YOU'LL NOTICE THE SIGNS HAVE
13 BEEN REMOVED AND PART OF THE TONGUE RIGHT THERE WHICH IS --
14 WHERE THE SERIAL NUMBER SHOULD BE LOCATED.

15 Q AND I AM HANDING YOU WHAT'S IN EVIDENCE AS STATE'S
16 EXHIBIT 21.

17 A TWENTY-ONE IS JUST A CLOSE-UP SHOT OF THE PREVIOUS
18 PHOTOGRAPHS, PREVIOUS EXHIBIT NO. 20, THE TONGUE WHERE YOU
19 CAN NOTICE THE SIGNAGE RIGHT THERE AS FAR AS WHERE THE
20 SERIAL PLATE, SERIAL NUMBERS AND ALL SHOULD HAVE BEEN
21 LOCATED ON. THE STICKER -- THAT'S BEEN PEELED OFF.

22 Q I AM HANDING YOU WHAT'S IN EVIDENCE AS STATE'S
23 EXHIBIT 25. IS THAT DEPICTED ON THE MONITOR?

24 A STATE'S EXHIBIT 25 IS THE BACKYARD AT [REDACTED]
25 [REDACTED] LOCATED IN THE PHOTOGRAPH YOU HAVE A 660 GRIZZLY

1 FOUR-WHEELER, A HONDA RANCHER, AND TWO SUZUKI BIKES ALONG
2 WITH THE KAWASAKI WITH REMOVED VINS.

3 Q STATE'S EXHIBIT 26, IS THAT DEPICTED ON THE MONITOR?

4 A THAT'S STATE'S EXHIBIT 26 DEPICTED ON THE MONITOR.

5 THIS IS THE BACK DOOR TO THE RESIDENCE WHERE I INITIALLY
6 ATTEMPTED TO MAKE CONTACT. MY PATH WOULD -- TOOK ME FROM
7 THE SIDE OF THE TRAILER HERE ACTUALLY BETWEEN THESE TWO
8 BIKES UP TO THE BACK DOOR, WHICH THIS BIKE WAS IN THE
9 PROCESS OF BEING STRIPPED WITH NO SERIAL NUMBERS, AND THE
10 HONDA RANCHER LOCATED IN THERE ALSO.

11 Q I HAND YOU WHAT'S IN EVIDENCE AS STATE'S EXHIBIT 24.
12 IS THAT DEPICTED ON THE MONITOR?

13 A THIS IS -- STATE'S EXHIBIT 24 IS THE KAWASAKI 200
14 SERIES MOTORCYCLE, SAME AS ON THE MONITOR HERE. THAT WAS
15 LOCATED AT -- PROPPED UP AGAINST A TREE AT [REDACTED]

16 [REDACTED]

17 Q AND STATE'S EXHIBIT 22 IN EVIDENCE, IS THAT DEPICTED ON
18 THE MONITOR?

19 A STATE'S EXHIBIT 22 IS TWO KAWASAKI KLX 125 DIRT BIKES
20 WHICH WERE LOCATED AT [REDACTED] AND IT'S -- THESE TWO
21 BIKES WERE ACTUALLY COVERED UP BY A BLUE TARP.

22 Q DO YOU KNOW WHERE THE VEHICLE IDENTIFICATION NUMBER
23 WOULD BE ON THOSE?

24 A THE FRONT COILS. AND LOCATED IN THIS PHOTOGRAPH, IF
25 YOU LOOK YOU CAN SEE RIGHT HERE WHERE THE VINS HAVE BEEN

1 GROUND ON BOTH OF THEM. THEY'VE ACTUALLY RUSTED OVER ON
2 BOTH OF THEM WHERE THE VINS WERE TAKEN OFF.

3 Q WHAT'S BEEN MARKED AS STATE'S EXHIBIT 16 THAT'S IN
4 EVIDENCE, IS THAT DEPICTED ON THE MONITOR?

5 A STATE'S EXHIBIT 16 DEPICTED ON THE MONITOR, THIS IS THE
6 TOOLS AND ALL WHICH WERE LOCATED IN THE SMALL TIN BUILDING
7 LOCATED ACTUALLY RIGHT BEHIND THE DENALI CAMPER WHICH IS --
8 THE COMPRESSOR, TOOLS AND ALL THAT WAS OWNED AND BELONGED TO
9 MOFFIT OR M&W ASSOCIATES OUT OF NORTH AUGUSTA.

10 Q I HAND YOU WHAT'S BEEN ENTERED AS STATE'S EXHIBIT 17.
11 IS THAT DEPICTED ON THE MONITOR?

12 A THAT IS DEPICTED ON THE MONITOR. THIS IS A SET OF
13 DRILL BITS, PLASTIC CASE THAT BELONGED TO M&W ASSOCIATES OF
14 NORTH AUGUSTA WHERE MOTTEL HAD ACTUALLY LABELED AND WROTE
15 HIS NAME ON THEM IN DUCT-TAPE.

16 Q STATE'S EXHIBIT 14, IS THAT DEPICTED ON THE MONITOR?

17 A STATE'S EXHIBIT 14 DEPICTED ON THE MONITOR, THIS IS THE
18 HONDA ES RANCHER FOUR-WHEELER THAT WAS LOCATED AT [REDACTED]
19 [REDACTED] THAT WE SEIZED AND TOOK INTO EVIDENCE.

20 Q AND THIS IS STATE'S EXHIBIT 2. IS THAT WHAT'S DEPICTED
21 ON THE MONITOR?

22 A THE KAWASAKI GRIZZLY 660, FOUR-WHEEL DRIVE, THIS WAS
23 ALSO LOCATED AT [REDACTED]. THE SERIAL NUMBER WAS
24 REMOVED FROM IT.

25 Q THANK YOU.

1 (WHEREUPON, THE JURY ENTERED THE COURTROOM.)

2 VERDICT

3 THE COURT: MADAM FORELADY, HAVE Y'ALL REACHED A
4 VERDICT ON ALL 10 INDICTMENTS?

5 THE FOREPERSON: YES, WE HAVE.

6 THE COURT: HAND IT TO MR. WHITTLE, PLEASE. ALL
7 RIGHT. MR. ROUTZONG, HAVE YOUR CLIENT STAND, PLEASE.

8 THE CLERK: YOUR HONOR, THE STATE OF SOUTH
9 CAROLINA VERSUS STEVEN MAURICE BURTON, INDICTMENT
10 NUMBER 2010-GS-02486, AS TO THE OFFENSE OF RECEIVING
11 STOLEN GOODS AS TO ONE COVERED TRAILER SERIAL NUMBER
12 15TTBE17206D001137 WE THE JURY FIND THE DEFENDANT NOT
13 GUILTY. CARRIE LUCAS, FOREPERSON.

14 YOUR HONOR, AS TO THE CASE, STATE OF SOUTH
15 CAROLINA VERSUS STEVEN MAURICE BURTON, INDICTMENT
16 NUMBER 2010-GS-02-546, AS TO THE OFFENSE OF VIOLATION
17 OF MOTOR VEHICLE CHOP SHOP ACT AS TO ONE ENCLOSED CARGO
18 TRAILER, WE THE JURY FIND THE DEFENDANT GUILTY.
19 UNANIMOUSLY AGREED, FOREPERSON, CARRIE LUCAS.

20 YOUR HONOR, THE STATE OF SOUTH CAROLINA VERSUS
21 STEVEN MAURICE BURTON, INDICTMENT NUMBER
22 2010-GS-02-547, AS TO THE OFFENSE OF VIOLATION OF MOTOR
23 VEHICLE CHOP SHOP ACT AS TO ONE FOURTEEN FOOT DUAL
24 WHEELED FLAT-BED TRAILER, WE THE JURY FIND THE
25 DEFENDANT GUILTY. UNANIMOUSLY AGREED, FOREPERSON.

1 CARRIE LUCAS.

2 AS TO THE STATE OF SOUTH CAROLINA VERSUS STEVEN
3 MAURICE BURTON, INDICTMENT NUMBER 2010-GS-02-545, AS TO
4 THE OFFENSE OF VIOLATION OF MOTOR VEHICLE CHOP SHOP ACT
5 AS TO ONE KAWASAKI DIRT BIKE, WE THE JURY FIND THE
6 DEFENDANT GUILTY. UNANIMOUSLY AGREED, FOREPERSON
7 CARRIE LUCAS.

8 AS TO THE STATE OF SOUTH CAROLINA VERSUS STEVEN
9 MAURICE BURTON, INDICTMENT NUMBER 2010-GS-02-485, AS TO
10 THE OFFENSE OF RECEIVING STOLEN GOODS AS TO A DENALI
11 CAMPER VIN 47CFD1T205P61584, WE THE JURY FIND THE
12 DEFENDANT GUILTY. UNANIMOUSLY, FOREPERSON CARRIE
13 LUCAS.

14 AS TO THE STATE OF SOUTH CAROLINA VERSUS STEVEN
15 MAURICE BURTON, INDICTMENT NUMBER 2010-GS-02-539, AS TO
16 THE OFFENSE OF VIOLATION OF MOTOR VEHICLE CHOP SHOP ACT
17 AS TO ONE KAWASAKI MODEL KLX 125 DIRT BIKE, WE THE JURY
18 FIND THE DEFENDANT GUILTY. UNANIMOUSLY AGREED,
19 FOREPERSON CARRIE LUCAS.

20 AS TO THE STATE OF SOUTH CAROLINA VERSUS STEVEN
21 MAURICE BURTON, INDICTMENT NUMBER 2010-GS-02-540, AS TO
22 THE OFFENSE OF VIOLATION OF MOTOR VEHICLE CHOP SHOP ACT
23 AS TO ONE KAWASAKI MODEL KLX 125 DIRT BIKE, WE THE JURY
24 FIND THE DEFENDANT GUILTY. UNANIMOUSLY AGREED,
25 FOREPERSON CARRIE LUCAS.

1 AS TO THE STATE OF SOUTH CAROLINA VERSUS STEVEN
2 MAURICE BURTON, INDICTMENT NUMBER 2010-GS-02-541; AS TO
3 THE OFFENSE OF VIOLATION OF MOTOR VEHICLE CHOP SHOP ACT
4 AS TO ONE UNKNOWN BRAND MODEL GSX 1300R STREET BIKE, WE
5 THE JURY FIND THE DEFENDANT GUILTY. UNANIMOUSLY,
6 FOREPERSON CARRIE LUCAS.

7 AS TO THE STATE OF SOUTH CAROLINA VERSUS STEVEN
8 MAURICE BURTON, INDICTMENT NUMBER 2010-GS-02-542, AS TO
9 THE OFFENSE OF VIOLATION OF MOTOR VEHICLE CHOP SHOP ACT
10 AS TO ONE YAMAHA MODEL 660 FOUR-WHEELER, WE THE JURY
11 FIND THE DEFENDANT GUILTY. UNANIMOUSLY AGREED,
12 FOREPERSON CARRIE LUCAS.

13 AS TO THE STATE OF SOUTH CAROLINA VERSUS STEVEN
14 MAURICE BURTON, INDICTMENT NUMBER 2010-GS-02-544, AS TO
15 THE OFFENSE OF VIOLATION OF MOTOR VEHICLE CHOP SHOP ACT
16 AS TO ONE HONDA RANCHER FOUR-WHEELER, WE THE JURY FIND
17 THE DEFENDANT GUILTY. UNANIMOUSLY AGREED, FOREPERSON
18 CARRIE LUCAS.

19 FOREPERSON, LADIES AND GENTLEMEN OF THE JURY, OF
20 THE PETIT JURY, IF THIS IS STILL YOUR VERDICT, PLEASE
21 INDICATE BY RAISING OF YOUR RIGHT HAND. ALL HANDS ARE
22 RAISED.

23 THE COURT: THANK YOU. ANYTHING FURTHER FOR THE
24 JURY BEFORE I DISMISS THEM BY THE STATE?

25 MR. GRIMES: NOTHING, YOUR HONOR.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Steven Burton,

Appellant.

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2012-UP-138
Submitted February 1, 2012 – Filed February 29, 2012

AFFIRMED

Appellate Defender Tristan M. Shaffer, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Assistant Attorney General William M. Blich, Jr.,

all of Columbia; and Solicitor J. Strom Thurmond, Jr., of Aiken, for Respondent.

PER CURIAM: Steven Burton appeals his convictions for one count of receiving stolen goods and eight counts of violating the Motor Vehicle Chop Shop Act, arguing investigators used evidence obtained during an illegal search as the basis for probable cause in support of a search warrant. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authority: State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) ("In most cases, making a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced." (internal alteration, italics, and quotation marks omitted)).

AFFIRMED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

Steven Burton, #168626,

Case No. 2012-CP-02-01421

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an application for post-conviction relief filed June 11, 2012. The Respondent made its Return on October 8, 2012. An evidentiary hearing into the matter was convened on July 10, 2013, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented Charles T. Brooks, III, Esquire. The Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted at the March 2010 term of the Aiken County Grand Jury for Receiving Stolen Goods (2010-GS-02-0485) and eight counts of Violation of Motor Vehicle Chop Shop Act (2010-GS-02-0539/-0540/-0541/-0542/-0543/-545/-546-7-547). The Applicant was represented by Michael Routzong, Esquire. The Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III, where he was convicted as indicted. On March 18, 2010, Judge Early sentenced Applicant to ten years imprisonment for Receiving Stolen Goods and a consecutive five years imprisonment for one count of violation of Motor Vehicle

Page 1 of 10

FILED
[Signature]
C.C.P.S.
[Signature]
Deputy Clerk

Chop Shop Act. Judge Early sentenced Applicant to five years imprisonment on each of the remaining seven counts of violation of Motor Vehicle Chop Shop Act with each to run concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Tristan Shaffer, Esquire. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Burton, 2012 -UP-138 (Ct. App. filed February 29, 2012). The Remittitur was sent on March 16, 2012.

In his original and amended application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

- I. Ineffective Assistance of Counsel.
 - a. "... Counsel's failure to adequately investigate, research and present a valid Fourth Amendment violation issue to the court."
 - b. "Although Counsel did move to suppress the evidence prior to Applicant's trial, Counsel failed to provide the Court with adequate facts of case law to support such suppression."
 - c. "Counsel failure to timely object to the introduction of evidence obtained in violation of Applicant's rights as guaranteed by the Fourth Amendment to the United States Constitution and South Carolina Law."
 - d. "... Counsel failed to raise and argue a valid chain of custody issue concerning some of the evidence used against the Applicant."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Additionally, Applicant presented testimony from plea counsel, Michael Rutzong, Esquire (Counsel). This Court also had before it a copy of Applicant's trial transcript, Appellate records, the records of the Aiken County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified he met with Counsel one time prior to his trial. Applicant testified he reviewed some discovery with Counsel, but Applicant did not receive a copy of discovery until after his trial. Applicant testified he only discussed defenses with Counsel the day prior to trial. Applicant testified he requested Counsel to contact his car company to prove that Applicant could legally own car frames without vehicle identification numbers (VIN). Applicant testified he did not own the land and only owned the drag bike.

Following Applicant's testimony, Counsel was called to testify. Counsel testified he has been practicing criminal law since 2005. Counsel testified he was appointed in this case. Counsel testified Applicant was focused on retaining private Counsel. Counsel testified he met with Applicant seven times prior to his trial. Counsel testified he received and reviewed discovery with Applicant prior to his trial. Counsel testified Applicant asked for his brother to be a witness, however in Counsel's opinion, Applicant's brother's testimony was not beneficial. Counsel testified he reviewed the charges with Applicant and discussed his version of the facts. Counsel testified Applicant stated he received the stolen goods from a third party, who asked him to work on the various items. Counsel testified his overall trial strategy was to place the blame on the third party and portray Applicant as an innocent bystander.

Counsel testified he made a motion to suppress the evidence. Counsel testified he was not adequately prepared to argue the Fourth Amendment issue dealing with the suppression of the search warrant. Counsel testified he argued during the suppression motion that the evidence should have been suppressed because it was a product of an unlawful search. Counsel argued the evidence used to establish probable cause to obtain a search warrant was within the curtilage of the house. Counsel argued Investigator Prince impermissibly went to the back door of the trailer instead of knocking on the front door. Counsel further argued Investigator Prince could not have

properly identified the tools located in the shed, because Investigator Prince did not have any serial numbers for the tools. Counsel summarized that but for the unlawful intrusion upon Applicant's property, Investigator Prince would not have been able to establish the probable cause to obtain a search warrant. Counsel testified he was ineffective for failing to present to the court any case law in support of his arguments. Counsel further testified he was ineffective for failing to properly preserve the motion for Appellate review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not as credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Buller, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

Counsel was ineffective for failing to research, argue, present, and preserve for appeal a Fourth Amendment issue.

After careful review based on the standard discussed above, this Court finds the Applicant has failed to prove Counsel was ineffective in his representation for failing to research, argue, and preserve for appeal a Fourth Amendment issue. Counsel testified he failed to properly preserve a Fourth Amendment issue for Appellate review. However, Applicant has failed to prove prejudice as a result of the unpreserved Fourth Amendment issue. An examination of the merits of the issue is appropriate in analyzing the prejudice prong in Applicant's case. See generally Sikes v. State, 323 S.C. 28, 30, 448 S.E. 560, 562 (1994). ("When the defendant claims that counsel's failure to articulate a Fourth Amendment claim was ineffective assistance, [the] defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded).

After careful review of the record this Court finds the Trial Court properly admitted the evidence seized as a result of a search warrant obtained after a proper investigation conducted on Appellant's property. "The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Gaster, 349 S.C. 545, 564 S.E.2d 87, 93 (2002) (citations omitted). "An abuse of discretion occurs when the trial court's ruling is based on an error of law." State v. McDonald, 343 S.C. 319, 540 S.E.2d 464, 467 (2000) (quoting Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528, 539 [2000]); State v. Moore, 377 S.C. 299, 659 S.E.2d 256, 259 (Ct. App. 2008). On appeal from a motion to suppress evidence based on Fourth Amendment grounds, appellate court review is limited to determining whether any evidence supports the circuit court's decision. State v. Bowman, 366 S.C. 485, 623 S.E.2d 378, 386 (2005); Moore, 659 S.E.2d at 259-260.

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. For Fourth Amendment purposes, "[a] search compromises the individual interest in privacy; a seizure deprives the individual of dominion over his or her person or property." Horton v. California, 496 U.S. 128, 133 (1990) (citing U.S. v. Jacobsen, 466 U.S. 109 [1984]); see also, Moore, 659 S.E.2d at 260.

Warrantless searches and seizures are *per se* unreasonable absent a recognized exception to the Fourth Amendment warrant requirement. Mincey v. Arizona, 437 U.S. 385, 390 (1978); State v. Abdullah, 357 S.C. 344, 592 S.E.2d 344, 348 (Ct. App. 2004). The seizure of items in plain view is a recognized exception to the warrant requirement. See State v. Dupree, 319 S.C. 454, 462 S.E.2d 279 (1995), *cert. denied*, 516 U.S. 1131 (1996).

Under the plain view exception, objects falling within the plain view of a law enforcement officer lawfully in a position to view them are subject to seizure and admissible as evidence. State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999). "[T]he two elements needed to satisfy the plain view exception are: (1) the initial intrusion which afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities." State v. Wright, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011), reh'g denied (Mar. 16, 2011).

The South Carolina Supreme Court has also explored the powers of an officer in conducting an investigation and where he may travel in order to investigate a complaint or a report of a crime. See Wright, 391 S.C. at 444, 706 S.E.2d at 328. The Court examined federal law related to the investigatory powers of police: "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection." Katz v. U.S., 389 U.S. 347, 351, 88 S.Ct. 507, 511, 19 L.Ed.2d 576 (1967) (citations omitted). "A policeman may lawfully go to a person's home to interview him. . . . In doing so, he obviously can go up to the door. . . ." U.S. v. Daoust, 916 F.2d 757, 758 (1st Cir. 1990) (citations omitted). "A police officer without a warrant is privileged to enter private property to investigate a complaint or a report of an ongoing crime." 24 C.J.S. Criminal Law 2404 (2006); see also Clark v. City of Montgomery, 497 So.2d 1140, 1142 (Ala. Crim. App. 1986); Wright, 391 S.C. at 444, 706 S.E.2d at 327-328. The Court concluded investigators had the authority to enter a property based on an anonymous tip to investigate the complaint that dog fighting occurred on the property.

In the instant case, the incriminating nature of the items seen by Investigator Prince was readily apparent. The motorcycle's VIN number was filed off, which makes its possession very

incriminating. Further, Investigator Prince was able to see through an open shed door several items consistent with items missing from the recovered stolen M&W trailer which began the investigation. As a result this prong of the plain view doctrine has clearly been met.

Applicant's main contention was Investigator Prince had no reason to be on Applicant's property and had no justification for being where he could see the incriminating evidence. Investigator Prince was lawfully on Applicant's property at the time the items were seen. Investigator Prince was investigating the possession of stolen goods. He approached the door of the mobile home which appeared to be the most frequently used door. He knocked and did not receive an answer. He subsequently went to the door of the trailer and did not receive an answer. It was in the process of this investigation that he saw the stolen goods later recovered under the search warrant.

Investigator Prince had every right to investigate the crime by going up to the doors of the mobile home and trailer. He was permitted to be on the property to investigate and he could proceed to what appeared to be the most used door in order to attempt to make contact with Applicant. In doing so, any evidence out in plain view, such as the motorcycle and the tools in the open shed, was subject to seizure and certainly usable by Investigator Prince in preparing a search warrant for the property.

Investigator Prince was properly on Applicant's property conducting an investigation based on the information he received from Detective Sherman. The items he referenced in the search warrant were in plain view and seen by the officer while he was conducting his investigation. The incriminating nature of the items, filed off VIN numbers and tools matching those stolen from M&W, was readily apparent and Investigator Prince was where he lawfully had a right to be in order to conduct his investigation into the complaint. As a result, the items

were in plain view and were subject to seizure or use as grounds for probable cause to obtain a warrant for the entire property to search for stolen goods. Accordingly the trial court did not err in admitting the evidence obtained as a result of the execution of a validly obtained search warrant.

Based on the foregoing, even if Counsel had renewed his motion in order to properly preserve the Fourth Amendment issue, Applicant has not shown there is a reasonable probability that the outcome of the trial would have been different because his Fourth Amendment claim fails on the merits. Therefore, this Court finds Applicant has failed to establish the requisite prejudice to support his claim of ineffective assistance of Counsel.

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 that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

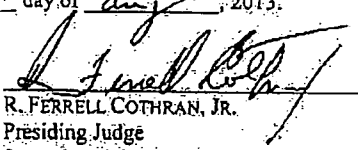
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an

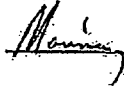
Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 19 day of Aug, 2013.


R. FERRELL COTHRAN, JR.
Presiding Judge
Second Judicial Circuit


South Carolina

The Supreme Court of South Carolina

Steven Burton, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2014-000283

ORDER

This matter is before the Court on a petition for a writ of certiorari. The petition for a writ of certiorari is denied.


C.J.
FOR THE COURT

Columbia, South Carolina

April 8, 2015

cc:

Daniel Francis Gourley, II, Esquire

~~Benjamin John Tripp, Esquire~~

