

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County

Edgar W. Dickson, Circuit Court Judge

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SC SUPREME COURT

DAVID DALE SHERIFF

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001012

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF GENERAL SESSIONS
OF THE TENTH JUDICIAL CIRCUIT
2009-GS-04-2990

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

JURY TRIAL

vs)

DAVID DALE SHERIFF,)

DEFENDANT.)

JULY 19-20, 2010
ANDERSON, SOUTH CAROLINA

BEFORE: THE HONORABLE R. LAWTON MCINTOSH

FOR THE STATE:

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TENTH CIRCUIT SOLICITOR'S OFFICE
POST OFFICE BOX 8002
ANDERSON, SC 29622

FOR THE DEFENSE:

KURT TAVERNIER, ESQUIRE
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ANDERSON, SC 29624

JO RICE
COURT REPORTER

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JURY SELECTION

1 **THE COURT:** GOOD AFTERNOON, LADIES AND GENTLEMEN OF THE JURY. MY
2 NAME IS LAWTON MCINTOSH. I'M ONE OF THE RESIDENT CIRCUIT JUDGES HERE IN
3 ANDERSON COUNTY. I KNOW THAT YOU HAD JUDGE MADDOX HERE EARLIER
4 QUALIFYING THE VENIRE. WE ARE BEGINNING A CRIMINAL TRIAL IN JUST ONE
5 MINUTE AND WE WILL HAVE TO GO THROUGH A QUALIFICATION PROCESS FURTHER
6 THAN THE QUALIFICATION PROCESS THAT YOU HAVE BEEN THROUGH PREVIOUSLY
7 THIS MORNING. SO, MISTER BRADLEY, ARE YOU READY TO CALL YOUR NEXT CASE?

8 **MR. BRADLEY:** YES, YOUR HONOR.

9 **THE COURT:** MR. TAVERNIER? HE'S NOT HERE?

10 **MR. TAVERNIER:** MISTER SHERIFF IS NOT HERE, YOUR HONOR. HE'S ON HIS
11 WAY.

12 **THE COURT:** OKAY. IT WILL BE JUST ONE SECOND. LADIES AND GENTLEMEN.
13 WE ARE BRINGING SOMEONE IN AND WE WILL BEGIN THE CASE IN JUST ONE
14 MINUTE. DO I HAVE EVERYTHING, REQUESTS FROM EVERYBODY AT THIS STAGE?

15 **MR. BRADLEY:** YES, YOUR HONOR.

16 **MR. TAVERNIER:** YES, SIR.

17 (DEFENDANT ENTERS THE COURTROOM)

18 **THE COURT:** ALL RIGHT, MISTER BRADLEY, ARE YOU READY TO CALL YOUR
19 NEXT CASE, PLEASE SIR?

20 **MR. BRADLEY:** YES, YOUR HONOR. MAY IT PLEASE THE COURT. THE STATE
21 CALLS THE STATE OF SOUTH CAROLINA VERSUS THE DEFENDANT, DAVID DALE
22 SHERIFF, ON INDICTMENT 2009-GS-04-2990 ON A COUNT OF BURGLARY, FIRST
23 DEGREE. (HANDS DOCUMENT TO THE JUDGE)

24 **THE COURT:** ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY, CAN
25 EVERYBODY HEAR ME OKAY BACK THERE? IS THIS A LITTLE BIT BETTER? OKAY. IF

JURY SELECTION

1 AT ANY TIME YOU CANNOT HEAR ME, OR IF I'M SCREAMING TOO LOUD AT YOU AS I
2 JUST WAS, RAISE YOUR HAND SO I WILL STOP AND MAKE SURE WE ADJUST WHAT
3 WE ARE DOING. AS YOU HEARD, THIS IS A CASE OF THE STATE VERSUS DAVID
4 DALE SHERIFF. HE HAS BEEN INDICTED FOR BURGLARY, FIRST. YOU SAW THE
5 INDICTMENT WAS HANDED UP TO ME. I WILL TELL YOU NOW, AND I WILL INSTRUCT
6 YOU AGAIN LATER, THE INDICTMENT IS SIMPLY A PIECE OF PAPER. THE STATE
7 USES THE MECHANISM, IF YOU WILL, THAT HAS THE CHARGE BROUGHT BEFORE A
8 JURY FOR DETERMINATION OF GUILT OR INNOCENCE. IT IS IN NO WAY, IN ANY
9 FORM OR FASHION, TO BE CONSTRUED AS EVIDENCE OF GUILT. BUT, AT THIS
10 POINT, I NEED TO ASK YOU MORE PARTICULAR QUESTIONS, MORE DEFINED
11 TOWARDS THIS TRIAL. IF YOU WOULD, I KNOW YOU'VE BEEN THROUGH THE
12 GENERAL QUALIFICATIONS AND EXEMPTION QUESTIONS WITH JUDGE MADDOX, BUT
13 I AM GOING TO ASK THAT YOU STAND AND LET THE CLERK ADMINISTER THE OATH
14 AT THIS TIME, PLEASE.

15 (THE CLERK OF COURT ADMINISTERS THE OATH TO THE JURY)

16 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, AGAIN, PLEASE LET ME
17 KNOW IF YOU DO NOT, OR CANNOT, UNDERSTAND THE QUESTIONS THAT I HAVE
18 FOR YOU. THE FIRST QUESTIONS HAVE TO DO WITH ANY FAMILIARITY THAT YOU
19 MAY HAVE WITH WITNESSES, ATTORNEYS, OR OTHER PARTIES IN THIS MATTER.
20 THE FIRST QUESTION THAT I HAVE OF YOU IS, HAS ANYONE EVER BEEN RELATED
21 BY BLOOD OR BY MARRIAGE TO EITHER JOHN BLUME OR TO DAVID DALE SHERIFF?
22 IF SO, WOULD YOU PLEASE STAND. (NO ONE STANDS).

23 MR. BLUME: DID YOU SAY JOHN BLUME?

24 THE COURT: JOHN BLUME. B-L-U-M-E. WOULD YOU STAND, PLEASE, SIR?

25 MR. BLUME: I'M A BLUME.

JURY SELECTION

7
7
7

1 THE COURT: WELL, STOP FOR A SECOND. FIRST, WOULD YOU PLEASE
2 STAND? WOULD YOU PLEASE STAND UP?

3 MR. BLUME: I'M SORRY.

4 THE COURT: THAT'S OKAY. WOULD YOU GIVE ME YOUR JUROR NUMBER?

5 MR. BLUME: SIR? I WAS NUMBER 11.

6 THE COURT: NUMBER 11?

7 MR. BLUME: YEAH.

8 THE COURT: AND STATE YOUR NAME FOR THE RECORD, PLEASE SIR.

9 MR. BLUME: (NO RESPONSE)

10 THE COURT: STATE YOUR NAME, PLEASE.

11 JUROR: BILLY BLUME.

12 THE COURT: BILLY BLUME? OKAY. ARE YOU RELATED BY BLOOD OR BY
13 MARRIAGE TO JOHN BLUME?

14 MR. BLUME: DID YOU SAY JOHN BLUME?

15 THE COURT: J-O-H-N B-L-U-M-E.

16 MR. BLUME: NOT THAT I KNOW OF.

17 THE COURT: OKAY, SIR. IS THERE ANY OTHER QUESTION FROM THE STATE
18 WITH REGARD TO WHAT THIS POTENTIAL JUROR HAS BROUGHT UP?

19 MR. BRADLEY: YOUR HONOR, I BELIEVE DURING QUALIFICATIONS THIS
20 MORNING, HE WAS EXCUSED FROM THE CRIMINAL CASES BY JUDGE MADDOX.

21 THE COURT: HE WAS EXCUSED?

22 MR. BRADLEY: YES, SIR, YOUR HONOR.

23 THE COURT: FROM THIS CASE?

24 MR. BRADLEY: FOR ANY CASE IN GENERAL SESSIONS, YOUR HONOR.

25 THE COURT: OKAY.

JURY SELECTION

1. MR. TAVERNIER: THAT IS CORRECT, YOUR HONOR. HE WAS EXCUSED.

2 THE COURT: MISTER BLUME, DID JUDGE MADDOX EXCUSE YOU FROM
3 FURTHER PARTICIPATION IN CRIMINAL COURT THIS WEEK?

4 MR. BLUME: (SPEAKING TO SOMEONE NEAR HIM)

5 THE COURT: HE DID?

6 MR. BLUME: YES, YOUR HONOR. HE DID.

7 THE COURT: IS THAT CORRECT?

8 CLERK OF COURT: YES, YOUR HONOR. HE WAS EXCUSED FROM ONLY THE
9 GENERAL SESSIONS COURT.

10 THE COURT: OKAY. MISTER BLUME, JUST SO YOU UNDERSTAND. I KNOW
11 SOMETIMES THESE ARE STRANGE PROCEEDINGS IF YOU ARE NOT FAMILIAR WITH
12 THEM, BUT EVERYBODY INFORMED ME —

13 JUROR: HE CAN'T HEAR. HE SAYS HE CAN'T HEAR A WORD.

14 THE COURT: OKAY. COME AROUND. COME AROUND, THEN, SIR.

15 MR. BLUME: I HAVE HEARING DAMAGE, JUDGE.

16 THE COURT: OKAY. I HAVE, TOO.

17 MR. BLUME: I CAN'T HARDLY HEAR ANYTHING.

18 THE COURT: OKAY. CAN YOU HEAR ME NOW?

19 MR. BLUME: YES.

20 THE COURT: YOU CAN STAND RIGHT THERE: JUDGE MADDOX HAS ORDERED
21 THAT, OR JUST ISSUED AN EXCUSE FOR YOU NOT TO PARTICIPATE IN THE CRIMINAL
22 SIDE OF COURT THIS WEEK. OKAY? WE ARE HAVING TWO COURTS. ONE IS CIVIL
23 COURT, WHICH HE IS RUNNING, AND THE OTHER IS GENERAL SESSIONS, THAT I AM
24 RUNNING. OKAY, SIR? ANY CASE INVOLVING A CRIMINAL MATTER, YOU HAVE BEEN
25 EXCUSED FROM FURTHER PARTICIPATION IN IT. SO, THEY GAVE YOU A NOTE THAT

JURY SELECTION

1 HAS THE NUMBER TO CALL IN -- OR HAVE THEY GIVEN THEM OUT YET?

2 CLERK OF COURT: THAT'S WHY HE'S STILL HERE. WE HAVE NOT GIVEN THEM
3 OUT YET.

4 THE COURT: OKAY. THEY WILL GIVE YOU OUT A NOTE IN JUST A LITTLE BIT
5 THAT HAS A NUMBER AND YOU WILL CALL IN TONIGHT AND WE DO NEED TO MAKE A
6 SPECIAL NOTICE FOR WHETHER IT'S FOR CIVIL COURT OR CRIMINAL COURT OR
7 BOTH. OKAY?

8 CLERK OF COURT: YES, SIR.

9 THE COURT: AND JUST LISTEN TO IT, MISTER BLUME, AND IF IT SAYS THAT A
10 CIVIL CASE WILL COME, IS GOING TO BE PICKED, THEN YOU NEED TO SHOW UP. IF
11 THEY SAY IT'S A CRIMINAL CASE THAT IS BEING CALLED, YOU DO NOT NEED TO
12 SHOW UP. IF THEY SAY IT'S CIVIL AND CRIMINAL YOU WILL STILL NEED TO SHOW
13 UP. YOU GOT ME?

14 MR. BLUME: OKAY.

15 THE COURT: IF YOU WILL STAY HERE FOR A FEW MORE MINUTES, SIR, THEN
16 WE WILL GO FROM THERE. OKAY? THANK YOU VERY MUCH.

17 MR. BLUME: THANK YOU.

18 THE COURT: YES, SIR. OKAY. OKAY, SIR. WOULD YOU GIVE US YOUR JUROR
19 NUMBER PLEASE?

20 MR. VAUGHN: JOSH VAUGHN, NUMBER 164.

21 THE COURT: AND ARE YOU RELATED BY BLOOD OR MARRIAGE TO MISTER
22 BLUME OR MISTER SHERIFF?

23 MR. VAUGHN: I'M NOT SURE. I KNOW THAT I RECOGNIZE SOME OF THE
24 PEOPLE AND THAT THEY ARE BLUMES, BUT I DON'T KNOW JOHN BLUME, SIR.

25 THE COURT: WELL, THE QUESTION THAT WE ASKED IS ARE YOU --

JURY SELECTION

1 **MR. VAUGHN:** MY WIFE IS RELATED TO SOME OF THE PEOPLE I SEE OVER
2 THERE . I'M ASSUMING THEY ARE FAMILY, BUT I DON'T KNOW JOHN BLUME.

3 **THE COURT:** OKAY, SIR. AND DO YOU HAVE ANY FURTHER QUESTIONS FROM
4 THE STATE?

5 **MR. BRADLEY:** NOTHING FURTHER, YOUR HONOR.

6 **THE COURT:** FROM THE DEFENSE?

7 **MR. TAVERNIER:** NO, SIR.

8 **THE COURT:** SIR, LET ME ASK YOU THIS. DOES THE FACT THAT YOUR WIFE IS
9 POTENTIALLY RELATED TO THE BLUMES PREVENT YOU FROM BEING FAIR AND
10 IMPARTIAL TO BOTH THE STATE IN THIS MATTER AND TO MISTER SHERIFF IN THIS
11 MATTER?

12 **MR. VAUGHN:** NO, SIR.

13 **THE COURT:** OKAY. ALL RIGHT, ANY FURTHER QUESTIONS FROM EITHER SIDE
14 AS A RESULT OF MY QUESTIONING?

15 **MR. BRADLEY:** NOTHING.

16 **MR. TAVERNIER:** NOTHING, YOUR HONOR.

17 **THE COURT:** NOW, THE NEXT QUESTION I HAVE FOR EVERYBODY IS THIS:
18 HAS ANYONE EVER HAD A CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH
19 EITHER JOHN BLUME OR DAVID DALE SHERIFF? AND IF SO, WOULD YOU PLEASE
20 STAND? (NO ONE STANDS)

21 ALL RIGHT, LADIES AND GENTLEMEN; THE FOLLOWING IS A LIST OF
22 POTENTIAL WITNESSES AND I EMPHASIZE POTENTIAL, THAT MAY BE CALLED IN THIS
23 CASE. I'M GOING TO READ THEM TO YOU. MAKE SURE YOU LISTEN TO THE NAMES
24 OF THE PEOPLE I GIVE TO YOU VERY CLOSELY. IF FOR SOME REASON YOU DO NOT
25 GET IT, AGAIN, RAISE YOUR HAND SO THAT I CAN MAKE SURE THAT YOU HEAR THIS

JURY SELECTION

1 ENTIRE LIST. THE FIRST ONE IS JOHN BLUME. MIKE BASKIN, 10TH CIRCUIT
2 SOLICITORS OFFICE. CORPORAL MARK DAVIS, ANDERSON COUNTY SHERIFF'S
3 OFFICE. TROOPER FRANK WOOTEN, SOUTH CAROLINA HIGHWAY PATROL.
4 LIEUTENANT MIKE MITCHELL, ANDERSON COUNTY SHERIFF'S OFFICE.
5 INVESTIGATOR KEN BLAKELY, ANDERSON COUNTY FIRE DEPARTMENT.
6 INVESTIGATOR MARK COYLE, ANDERSON COUNTY SHERIFF'S OFFICE. SERGEANT
7 TOMMY CLAMP, ANDERSON COUNTY SHERIFF'S OFFICE. LIEUTENANT CHRIS SCOTT,
8 ANDERSON COUNTY SHERIFF'S OFFICE. DETECTIVE MIKE VOIGT, ANDERSON
9 COUNTY SHERIFF'S OFFICE. STEPHANIE STANLEY, SOUTH CAROLINA S.L.E.D. NIKKI
10 PERRY, S.C.L.E.D.. EXCUSE ME. GOING BACK TO MS. STANLEY, STEPHANIE
11 STANLEY IS S.C.L.E.D.. NIKKI PERRY, S.C.L.E.D.. SELENA KINARD, S.C.L.E.D.
12 SHEREE J. BROWN, S.C.L.E.D.. AMY STEPHENS, S.C.L.E.D.. DORIS YARBROUGH,
13 S.C.L.E.D.. PATRICIA CROOKS, S.C.L.E.D.. RENA THOMASON, ANDERSON COUNTY
14 CLERK OF COURT'S OFFICE. DID EVERYBODY GET THAT LIST? COULD EVERYBODY
15 HEAR ME? HAS ANYONE EVER BEEN RELATED BY BLOOD OR MARRIAGE TO ANY OF
16 THE PEOPLE THAT I HAVE JUST READ OUT TO YOU? IF SO, WOULD YOU PLEASE
17 STAND? (NO ONE STANDS)

18 HAS ANYONE EVER HAD A CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH
19 ANY OF THE POTENTIAL WITNESSES THAT I JUST READ OUT TO YOU? IF SO,
20 WOULD YOU PLEASE STAND? (NO ONE STANDS)

21 ALL RIGHT, MISTER TAVERNIER, WOULD YOU PLEASE STAND AND INTRODUCE
22 YOURSELF AND YOUR CLIENT, PLEASE, SIR?

23 MR. TAVERNIER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT. MY
24 NAME IS KURT TAVERNIER AND I AM IN PRIVATE PRACTICE AND I HAVE THE
25 PRIVILEGE OF BEING APPOINTED TO REPRESENT DAVID SHERIFF. (MISTER SHERIFF

JURY SELECTION

1 STANDS WITH MISTER TAVERNIER)

2 THE COURT: MISTER BRADLEY WOULD YOU INTRODUCE YOURSELF AND THE
3 ATTORNEYS FROM YOUR OFFICE HERE TODAY?

4 MR. BRADLEY: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.
5 GOOD MORNING, MY NAME IS MATTHEW BRADLEY AND I'M AN ASSISTANT
6 SOLICITOR HERE IN ANDERSON COUNTY AND SITTING WITH ME THIS WEEK IS
7 ASSISTANT SOLICITOR JENN BYFORD. (MS. BYFORD STANDS) ALSO SITTING WITH
8 ME IS DETECTIVE MATT VOIGT OF THE ANDERSON COUNTY SHERIFF'S OFFICE.
9 (DETECTIVE VOIGT STANDS)

10 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, HAS ANY MEMBER OF THE
11 JURY PANEL EVER BEEN REPRESENTED BY ANY OF THE ATTORNEYS INVOLVED IN
12 THIS CASE OR THEIR FIRMS? IF SO, WOULD YOU PLEASE STAND? (NO ONE
13 STANDS)

14 HAS ANY MEMBER OF THE JURY PANEL EVER BEEN RELATED BY BLOOD OR
15 BY MARRIAGE TO ANY OF THE ATTORNEYS INVOLVED IN THIS CASE OR HAVE YOU
16 EVER HAD A CLOSE, PERSONAL OR A SOCIAL RELATIONSHIP WITH ANY OF THE
17 ATTORNEYS INVOLVED IN THIS CASE OR THEIR FIRMS? IF SO, WOULD YOU PLEASE
18 STAND? (NO ONE STANDS)

19 HAS ANY MEMBER OF THE JURY PANEL FORMED OR EXPRESSED AN OPINION
20 ABOUT THIS MATTER, AND THAT IS THE STATE VERSUS DAVID DALE SHERIFF, OR
21 ABOUT ANY ISSUE OR MATTER INVOLVED IN THIS CASE? IF SO, WOULD YOU
22 PLEASE STAND? (NO ONE STANDS)

23 IS THERE ANY MEMBER OF THE JURY PANEL AWARE OF ANY BIAS OR ANY
24 PREJUDICE EITHER TOWARDS THE STATE OF SOUTH CAROLINA OR TO THE
25 DEFENDANT, DAVID DALE SHERIFF IN THIS CASE? IF SO, WOULD YOU PLEASE

JURY SELECTION

1 STAND. (NO ONE STANDS)

2 IS THERE ANY MEMBER OF THE JURY PANEL WHICH WAS A MEMBER OF THE
3 ANDERSON COUNTY GRAND JURY WHICH ISSUED THE INDICTMENT IN THIS
4 MATTER? IF SO, WOULD YOU PLEASE STAND? (NO ONE STANDS)

5 IS THERE ANY MEMBER OF THE JURY PANEL WHO IS A MEMBER OF, OR A
6 CONTRIBUTOR TO, ANY GROUP WHICH HAS AS ITS PRIMARY CONCERN THE
7 PROMOTION OF LAW ENFORCEMENT OR VICTIM'S RIGHTS? THESE GROUPS WOULD
8 INCLUDE, BUT NOT BE LIMITED TO, M.A.D.D., S.A.D.D., AND C.A.V.E.? IF SO, IF YOU
9 ARE A MEMBER OF OR A CONTRIBUTOR TO THESE GROUPS OR ANY OTHER GROUP
10 WHICH HAS AS ITS PRIMARY CONCERN THE PROMOTION OF LAW ENFORCEMENT
11 OR VICTIM'S RIGHTS, WOULD YOU PLEASE STAND? (NO ONE STANDS)

12 DOES ANY MEMBER OF THE JURY PANEL KNOW OF ANY REASON
13 WHATSOEVER WHY HE OR SHE SHOULD NOT SERVE AS A JUROR IN THIS MATTER,
14 WITH PARTICULAR EMPHASIS BEING PLACED ON YOUR ABILITY TO BE IMPARTIAL TO
15 BOTH THE STATE OF SOUTH CAROLINA AND TO THE DEFENDANT DAVID DALE
16 SHERIFF? IF SO, WOULD YOU PLEASE STAND? (NO ONE STANDS)

17 ALL RIGHT, IS THERE ANY ADDITIONAL VOIR DIRE FROM THE STATE OR FROM
18 THE DEFENSE?

19 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

20 MR. TAVERNIER: NOTHING, YOUR HONOR.

21 THE COURT: ARE YOU READY TO GO AHEAD AND STRIKE?

22 MR. BRADLEY: YES, SIR.

23 THE COURT: MADAM CLERK.

24 THE COURT: HOW MANY ALTERNATES DO YOU WANT? ONE OR TWO?

25 MR. BRADLEY: TWO IS FINE WITH THE STATE, YOUR HONOR.

JURY SELECTION

1 MR. TAVERNIER: ONE, I THINK.

2 THE COURT: ONE?

3 MR. BRADLEY: THAT'S FINE, TOO, YOUR HONOR.

4 THE COURT: OKAY. JUST ONE, PLEASE. THE WAY WE USED TO DO THIS BACK
5 BEFORE I HAD GRAY HAIR AND SOME OF THOSE MEMBERS OUT HERE DIDN'T WEIGH
6 AS MUCH AS THEY DO, WE WOULD HAVE A ROLLER AND WE HAD THE NAMES OF
7 EVERYBODY IN THERE AND THEY WOULD SPIN IT AND THEY WOULD PULL OUT A
8 NAME AND THE INDIVIDUAL CALLED WOULD COME UP. NOW, WE HAVE GONE TO A
9 UNIVERSAL SYSTEM THROUGHOUT SOUTH CAROLINA THAT OUR CHIEF JUSTICE
10 HAS IMPLEMENTED AND IT IS, EFFECTIVELY, A COMPUTER PRINTOUT DOING THE
11 SAME THING. SO, WHAT YOU SEE BEING DONE NOW IS A LIST OF NAMES THAT
12 HAVE BEEN RANDOMLY SELECTED. WHAT WILL HAPPEN THOUGH, IF YOUR NAME
13 AND JUROR NUMBER IS CALLED OUT, I AM GOING TO ASK THAT YOU COME UP
14 FRONT THROUGH THESE TWO SWINGING DOORS AND STAND RIGHT OVER HERE IN
15 FRONT OF, WHERE THIS LITTLE STAIRWELL LEADS UP TO THE BENCH, AND YOU
16 WILL BE SHOWN AGAIN. BUT YOU TURN AROUND AND FACE THE STATE AND FACE
17 THE DEFENDANT AND THE DECISION WILL BE MADE AS TO WHETHER OR NOT YOU
18 WILL SERVE ON THIS JURY. OKAY? THAT SIMPLY MEANS -- IN THE CIVIL SIDE WE
19 HAVE A LIST AND YOU DON'T EVEN KNOW THAT YOU HAVE BEEN STRICKEN OR NOT
20 STRICKEN, YOU ONLY KNOW IF YOU HAVE BEEN PICKED. IN THIS CASE, YOU COME
21 UP AND YOU FACE THE STATE AND FACE THE DEFENSE AND EITHER THE DECISION
22 WILL BE MADE TO PICK YOU OR NOT PICK YOU ON THIS JURY. ARE YOU READY,
23 MADAM CLERK?

24 CLERK OF COURT: YES, YOUR HONOR. LADIES AND GENTLEMEN, AS THE
25 JUDGE INSTRUCTED, WHEN YOUR NAME IS CALLED WILL YOU PLEASE COME AND

JURY SELECTION

1 STEP FORWARD AND STAND RIGHT AT THIS SPOT (DEMONSTRATING) AND FACE
2 THE TWO TABLES. PLEASE BRING ANY PERSONAL BELONGINGS YOU MAY HAVE; A
3 JACKET, PURSE, BOOK, ANYTHING LIKE THAT. PLEASE BRING THOSE WITH YOU.
4 JUROR #172, KAREN R. WILSON.

5 (WHEREUPON, KAREN R. WILSON, A WHITE FEMALE, COMES FORWARD).

6 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

7 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

8 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

9 MR. TAVERNIER: PLEASE SEAT MS. WILSON.

10 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

11 JUROR #87, DONALD W. HENDRIX.

12 (WHEREUPON, DONALD HENDRIX, A WHITE MALE, COMES FORWARD)

13 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

14 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

15 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

16 MR. TAVERNIER: SEAT MR. HENDRIX, PLEASE.

17 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

18 JUROR #147, SALLY J. MCKEE.

19 (WHEREUPON, SALLY MCGEE, A WHITE FEMALE, COMES FORWARD.

20 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

21 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

22 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

23 MR. TAVERNIER: PLEASE SEAT MS. MCKEE.

24 CLERK OF COURT: WILL YOU PLEASE HAVE A SEAT IN THE JURY BOX.

25 JUROR #128, MICHELE M. MOUYEOS.

JURY SELECTION

1 (WHEREUPON, MICHELLE MOUYEOS, A WHITE FEMALE, COMES FORWARD)

2 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

3 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

4 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

5 MR. TAVERNIER: PLEASE SEAT MS. MOUYEOS.

6 CLERK OF COURT: MS. MOUYEOS, PLEASE HAVE A SEAT IN THE JURY BOX.

7 JUROR #119, AMANDA M. MATONIS.

8 (WHEREUPON, AMANDA MATONIS, A WHITE FEMALE, COMES FORWARD)

9 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

10 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

11 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

12 MR. TAVERNIER: PLEASE SEAT MS. MATONIS.

13 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

14 JUROR #134, CAROL A. PALMER.

15 (WHEREUPON, CAROL PALMER, A BLACK FEMALE, COMES FORWARD)

16 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

17 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

18 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

19 MR. TAVERNIER: PLEASE SEAT MS. PALMER.

20 CLERK OF COURT: MS. PALMER, PLEASE HAVE A SEAT IN THE JURY BOX.

21 JUROR #95, TEDDY R. HUNT.

22 (WHEREUPON, TEDDY HUNT, A WHITE MALE, COMES FORWARD)

23 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

24 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

25 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

JURY SELECTION

1 MR. TAVERNIER: PLEASE EXCUSE MISTER HUNT FROM THIS CASE.

2 CLERK OF COURT: PLEASE RETURN TO YOUR SEAT, MISTER HUNT.

3 JUROR #21, JAMES D. BRYANT.

4 (WHEREUPON, JAMES BRYANT, A WHITE MALE, COMES FORWARD)

5 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

6 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

7 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

8 MR. TAVERNIER: PLEASE EXCUSE MISTER BRYANT FROM THIS CASE.

9 CLERK OF COURT: MISTER BRYANT, YOU MAY RETURN TO YOUR SEAT.

10 JUROR #25, JANICE M. CAMPBELL.

11 (WHEREUPON, JANICE CAMPBELL, A WHITE FEMALE, COMES FORWARD)

12 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

13 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

14 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

15 MR. TAVERNIER: PLEASE SEAT MS. CAMPBELL.

16 CLERK OF COURT: MS. CAMPBELL, PLEASE HAVE A SEAT IN THE JURY BOX.

17 JUROR # 129, CINDY M. MULNEIX.

18 (WHEREUPON, CINDY MULNEIX, A WHITE FEMALE, COMES FORWARD)

19 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

20 MR. BRADLEY: PLEASE EXCUSE THIS JUROR.

21 CLERK OF COURT: MS. MULNEIX, YOU MAY RETURN TO YOUR SEAT.

22 JUROR #141, VICTOR R. QUINTANILLA, III.

23 (WHEREUPON, VICTOR QUINTANILLA, A WHITE MALE, COMES FORWARD)

24 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

25 MR. BRADLEY: PLEASE EXCUSE THIS JUROR.

JURY SELECTION

1 CLERK OF COURT: YOU MAY RETURN TO YOUR SEAT.

2 JUROR #135, SHAREN A. PARKER.

3 (WHEREUPON, SHAREN PARKER, A WHITE FEMALE, COMES FORWARD)

4 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

5 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

6 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

7 MR. TAVERNIER: PLEASE SEAT MS. PARKER.

8 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

9 JUROR #100, SHARON C. JENKINS.

10 (WHEREUPON, SHARON JENKINS, A WHITE FEMALE, COMES FORWARD)

11 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

12 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

13 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

14 MR. TAVERNIER: PLEASE SEAT MS. JENKINS.

15 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

16 JUROR #29, KEVIN M. CLAREY.

17 (WHEREUPON, KEVIN CLAREY, A WHITE MALE, COMES FORWARD)

18 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

19 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

20 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

21 MR. TAVERNIER: PLEASE SEAT MISTER CLARY.

22 CLERK OF COURT: PLEASE HAVE A SEAT IN THE JURY BOX.

23 JUROR #164, JOSHUA D. VAUGHN.

24 (WHEREUPON, JOSHUA VAUGHN, A WHITE MALE, COMES FORWARD)

25 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

JURY SELECTION

1 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

2 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

3 MR. TAVERNIER: PLEASE EXCUSE MISTER VAUGHN FROM THIS CASE.

4 CLERK OF COURT: MISTER VAUGHN, YOU MAY RETURN TO YOUR SEAT.

5 JUROR # 165, UMASHANKAR VENKATESAN.

6 (WHEREUPON, UMASHANKAR VENKATESAN, AN INDIAN MALE, COMES
7 FORWARD)

8 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

9 MR. BRADLEY: PLEASE EXCUSE THIS JUROR.

10 CLERK OF COURT: YOU MAY RETURN TO YOUR SEAT.

11 JUROR #166, CHRISTINE WALKER.

12 (WHEREUPON, CHRISTINE WALKER, A WHITE FEMALE, COMES FORWARD)

13 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

14 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

15 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

16 MR. TAVERNIER: PLEASE SEAT MS. WALKER.

17 CLERK OF COURT: MS. WALKER, PLEASE HAVE A SEAT IN THE JURY BOX,

18 JUROR #72, STEPHANIE S. GEER.

19 (WHEREUPON, STEPHANIE GEER, A BLACK FEMALE, COMES FORWARD)

20 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

21 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

22 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

23 MR. TAVERNIER: PLEASE SEAT MS. GEER.

24 CLERK OF COURT: MS. GEER, PLEASE HAVE A SEAT IN THE JURY BOX.

25 JUROR #42, DEBRA A. CULWELL.

1 THE COURT: JUST ONE SECOND. DOES EVERYBODY HAVE TWELVE?

2 CLERK OF COURT: YES, SIR.

3 MR. BRADLEY: YES, SIR.

4 THE COURT: OKAY, WE WILL DO THE ALTERNATES. ONE ALTERNATE. OKAY.

5 MR. BRADLEY: I'M SORRY, YOUR HONOR. WHAT IS THE JUROR NUMBER?

6 CLERK OF COURT: THIS IS JUROR #42, DEBRA A. CULWELL.

7 MR. BRADLEY: THANK YOU.

8 (WHEREUPON, DEBRA CULWELL, A WHITE FEMALE, COMES FORWARD)

9 CLERK OF COURT: WHAT SAY YOU FOR THE STATE?

10 MR. BRADLEY: PLEASE PRESENT THIS JUROR.

11 CLERK OF COURT: WHAT SAY YOU FOR THE DEFENDANT?

12 MR. TAVERNIER: PLEASE SEAT MS. CULWELL.

13 CLERK OF COURT: MS. CULWELL, PLEASE HAVE A SEAT IN THE JURY BOX.

14 YOUR HONOR, WE HAVE TWELVE JURORS AND ONE ALTERNATE.

15 THE COURT: THANK YOU VERY MUCH. LET ME SEE THE ATTORNEYS UP HERE.

16 (BRIEF BENCH CONFERENCE OFF THE RECORD)

17 THE COURT: ALL RIGHT, MS. CULWELL, DID OUR BAILIFF SHOW YOU WHERE
18 TO SIT DURING THE PROCEEDINGS?

19 MS. CULWELL: YES. HE DID, YOUR HONOR.

20 THE COURT: OKAY, VERY GOOD. WHAT I AM GOING TO DO, LADIES AND
21 GENTLEMEN, I AM GOING TO SEND THE JURY PANEL BACK TO THE JURY ROOM. I'M
22 GOING TO ASK THAT Y'ALL DISCUSS AMONGST YOURSELVES AND PICK A JURY
23 FOREPERSON, WHO YOU WANT TO PRESIDE OVER THE JURY DELIBERATIONS AND I
24 WILL GIVE YOU MORE ABOUT THAT, BUT IF YOU WOULD, AND ONCE YOU DECIDE
25 WHO YOU WANT TO BE THE JURY SPOKESPERSON AND FOREPERSON IN THIS

JURY SELECTION

1 JURY, WOULD YOU WRITE IT DOWN ON A NOTE AND HAND IT TO THIS GENTLEMAN
2 RIGHT HERE WHO IS YOUR BAILIFF, AND HE WILL BRING THAT INFORMATION TO ME.
3 AND I CAN GIVE YOU FURTHER INSTRUCTIONS AS WE GO. BUT IF YOU WOULD STEP
4 BACK TO YOUR JURY ROOM AT THIS POINT.

5 (JURY OUT AT 1:07 P.M.)

6 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN WHO REMAIN OUT THERE
7 AND WHO ARE FROM THE VENIRE POOL, FORTUNATELY, OR UNFORTUNATELY,
8 DEPENDING ON YOUR PERSPECTIVE, WE HAVE PICKED THE JURIES THAT WE ARE
9 GOING TO BE USING TODAY. THE CLERK IS GOING TO GIVE YOU A SHEET OF PAPER
10 BEFORE YOU LEAVE HERE THAT HAS A NUMBER, THAT WE ASK THAT YOU CALL
11 BACK, WHAT, AFTER 6:00, JENNIFER?

12 CLERK OF COURT: THAT'S CORRECT, YOUR HONOR. AFTER 6:00 P.M.

13 THE COURT: ALL RIGHT. AND IN THAT, THERE WILL BE A RECORDED
14 MESSAGE, AND MISTER BLUME, THIS PARTICULARLY GOES TO YOU. CAN YOU HEAR
15 ME OKAY?

16 MR. BLUME: YES, SIR.

17 THE COURT: IF THIS LADY SAYS CIVIL AND CRIMINAL, THAT MEANS YOU NEED
18 TO SHOW UP. IF SHE SAYS CIVIL, THAT MEANS YOU NEED TO SHOW UP. OKAY? IF
19 SHE SAYS ONLY CRIMINAL, THEN YOU DO NOT NEED TO SHOW UP. ALL RIGHT? THE
20 REST OF YOU, REGARDLESS OF WHATEVER HER MESSAGE IS, YOU NEED TO SHOW
21 UP. OKAY? BUT IF YOU WILL CALL BACK AFTER 6:00 TODAY, THERE WILL BE A
22 VOICE MESSAGE TELLING YOU WHEN YOU NEED TO REPORT BACK HERE AND IF
23 YOU WOULD, I'M SURE JUDGE MADDOX HAS DONE THIS ALREADY, BUT THANK YOU.
24 AND WE ASK YOU TO BE PROMPT AND SO, IF THEY SAY 2:00 TOMORROW, OR 9:00
25 WEDNESDAY, TRY TO BE HERE FIVE MINUTES UNTIL OR NO LATER THAN THE TIME

MOTIONS

1 DESIGNATED, BUT YOU ARE EXCUSED FOR THE REMAINDER OF THE DAY AND
2 THANK YOU AGAIN FOR BEING HERE.

3 CLERK OF COURT: AND PLEASE DO CALL AFTER 6:00 P.M. IT WILL BE AN
4 ANSWERING MACHINE, SO IF YOU CALL AND GET A BUSY SIGNAL, JUST PLEASE
5 KEEP CALLING UNTIL YOU GET THROUGH. YOU WILL HAVE FURTHER
6 INSTRUCTIONS TOMORROW ON WHEN YOU NEED TO CALL AGAIN.

7 (JURY RELEASED AT 1:09 P.M.)

8 THE COURT: MY UNDERSTANDING IS THAT, WHEN WE HAD A BENCH
9 CONFERENCE, THERE ARE NO OBJECTIONS TO THE PICKING OF THE JURY.
10 CORRECT?

11 MR. BRADLEY: NO OBJECTIONS FROM THE STATE.

12 MR. TAVERNIER: NO OBJECTIONS, YOUR HONOR.

13 THE COURT: I UNDERSTAND FURTHER THERE MAY BE SOME ADDITIONAL
14 PRE-TRIAL MATTERS THAT WE NEED TO REVIEW AT THIS TIME?

15 MR. TAVERNIER: I DO, YOUR HONOR. AND JUST OUT OF CAUTION, I WANT TO
16 RAISE THESE MOTIONS BEFORE THE COURT WITHOUT THE JURY PRESENT SO WE
17 CAN GO AHEAD AND ADDRESS THEM TO KNOW HOW WE ARE GOING
18 TO PROCEED.

19 THE FIRST MOTION I HAVE, YOUR HONOR, PERTAINS TO THE DEFENDANT'S
20 PRIOR CONVICTIONS. THEY ARE OVER TWENTY YEARS OLD. HE WAS
21 INCARCERATED AND I UNDERSTAND -- BUT, I ALSO UNDERSTAND THEY ARE
22 EVIDENCE OF THE CRIME OF BURGLARY FIRST, FOR WHICH HE IS CHARGED. OUT
23 OF CAUTION, I BELIEVE I NEED TO STIPULATE TO THE FACT THAT THEY DO EXIST,
24 THAT THEY ARE THE BASIS FOR THE CHARGE OF BURGLARY FIRST AND THAT I
25 THINK THEY WOULD UNFAIRLY PREJUDICE THE JURY IF THE JURY WERE TO BE

MOTIONS

1 ADVISED OF HIS PRIOR BURGLARY —

2 THE COURT: ARE YOU SAYING YOU ARE STIPULATING TO THE JURISDICTION
3 OF THIS —

4 MR. TAVERNIER: I DO. VERY MUCH, YOUR HONOR.

5 THE COURT: MISTER BRADLEY?

6 MR. BRADLEY: YOUR HONOR, AS I KNOW MISTER TAVERNIER IS AWARE OF,
7 CASE LAW CLEARLY STATES THAT THE STATE IS NOT REQUIRED TO STIPULATE
8 AND AT THIS TIME, WE DON'T PLAN TO STIPULATE. WE PLAN TO CALL THE CLERK'S
9 OFFICER AND HAVE HER ENTER THE CONVICTIONS ON THE RECORD.

10 THE COURT: THAT'S MY UNDERSTANDING OF THE CASE LAW, TOO, BUT LET
11 ME TELL BOTH OF THE PARTIES -- IN FACT, I WAS LOOKING OVER THIS THIS
12 MORNING. I'VE PREPARED A LIMITING INSTRUCTION THAT I FEEL LIKE WOULD
13 PROBABLY BE APPROPRIATE, NOT ONLY IN THE FINAL INSTRUCTIONS TO THE JURY,
14 BUT AT SUCH TIME AS ANY EVIDENCE AS TO PRIOR BURGLARY CONVICTIONS
15 WOULD BE RECEIVED INTO EVIDENCE. MY UNDERSTANDING IS THAT YOU REALLY
16 DON'T HAVE TO DO BUT TWO. YOU CAN'T DO ANY MORE THAN THAT WITHOUT IT
17 BEING NON-RELEVANT, BUT LET ME GIVE YOU THE INSTRUCTION THAT I CAME UP
18 WITH TO MAKE SURE. THIS IS BASICALLY, TOTALLY, STOLEN FROM THE BENCH
19 BOOK. BUT IT SAYS, AND I WILL LET YOU LOOK AT IT, "EVIDENCE OF PRIOR
20 OFFENSES COMMITTED BY THE DEFENDANT IS NOT OFFERED TO PROVE THE
21 DEFENDANT HAS A BAD CHARACTER OR TO PROVE THE DEFENDANT COMMITTED
22 THE BURGLARY ON THIS OCCASION. THE PRIOR CONVICTIONS MAY BE
23 CONSIDERED BY YOU ONLY FOR THE PURPOSE OF DETERMINING WHETHER OR
24 NOT IT SATISFIES THAT ELEMENT OF THE OFFENSE THAT MAKES IT FIRST DEGREE
25 BURGLARY IF YOU ENTER A DWELLING WITHOUT CONSENT TO COMMIT A CRIME

1. AND YOU HAVE TWO PRIOR CONVICTIONS FOR BURGLARY AND/OR...
2. HOUSEBREAKING." THAT WAS GOING TO BE THE CHARGE THAT I WAS GOING TO
3. GIVE TO THE JURY, BOTH AT THE TIME THE EVIDENCE COMES IN, IF IT COMES IN,
4. AND ALSO AT THE TIME OF MY FINAL CHARGE. ANY OBJECTION FROM THE STATE?

5. MR. BRADLEY: NO OBJECTION.

6. MR. TAVERNIER: NO OBJECTION, YOUR HONOR. I AM FAMILIAR WITH IT.

7. THE COURT: OKAY.

8. MR. TAVERNIER: JUST GOT TO GIVE IT A SHOT.

9. THE COURT: OKAY.

10. MR. TAVERNIER: THE SECOND ISSUE, YOUR HONOR, IT IS MY
11. UNDERSTANDING THAT MIKE BASKIN IS IN THE CHAIN OF CUSTODY. THE COURT, AS
12. HIS HONOR IS AWARE, HAS PREVIOUSLY DEALT WITH MISTER BASKIN IN A MATTER
13. IN ANOTHER CASE THAT WE HAVE TRIED IN WHICH MISTER BASKIN HAD -- THERE
14. WAS AN IMPROPER NOTARIZATION OF A DOCUMENT ABOUT DELIVERY OF
15. EVIDENCE TO S.C.L.E.D. HE IN NO WAY TAMPERED WITH THE EVIDENCE, IN NO WAY
16. HAD ANYTHING TO DO OTHER THAN THE FACT THAT THE NOTARIZATION DATE WAS
17. IMPROPER AND WAS WRONG. HE IS IN THE CHAIN OF CUSTODY IN THIS MATTER.
18. THE COURT HAS PREVIOUSLY DEALT WITH IT. OUT OF CAUTION AND THE REASON
19. FOR THIS ISSUE -- I DON'T BELIEVE MISTER BASKIN, IN ANY WAY, TAMPERED WITH
20. ANY OF THE EVIDENCE AND I DON'T MEAN TO DO THIS TO IMPUGN HIS CREDIBILITY.
21. I AM RAISING THIS AS AN ISSUE OUT OF CAUTION JUST TO AVOID ANY PROBLEMS
22. FOR APPEAL OR ANY OTHER ISSUE THAT MAY ARISE IN THE FUTURE.

23. THE COURT: SPECIFICALLY, I KNOW I WAS INVOLVED IN THAT CASE BEFORE
24. AND, SPECIFICALLY, IF I RECALL THE ISSUE WAS THAT BECAUSE OF THE
25. PROCEDURE THAT WAS BEING USED BY S.C.L.E.D AT THAT TIME TO FACILITATE THE

MOTIONS

1 INTRODUCTION, THE AUTHENTICATION OF THE DOCUMENT, THAT MR. BASKIN WAS
2 HAVING THE DOCUMENT NOTARIZED PRIOR TO IT BEING SENT DOWN TO S.C.L.E.D.
3 IS THAT ESSENTIALLY CORRECT?

4 MR. TAVERNIER: THAT IS CORRECT, YOUR HONOR. AND I, IN NO WAY, MEAN
5 TO RAISE THAT AS AN ISSUE TO IN ANY WAY IMPUGN HIS CHARACTER. IT WAS JUST
6 DONE, IT WAS IMPROPER, AND YOU PREVIOUSLY DEALT WITH IT. BUT I FELT THAT
7 OUT OF CAUTION, I NEEDED TO RAISE IT JUST BECAUSE HE IS INVOLVED IN THIS
8 CHAIN OF CUSTODY AND I WANTED TO MAKE SURE IT WAS CLEAR, YOUR HONOR.

9 THE COURT: FROM THE BASIS STATED, I AM GOING TO DENY YOUR MOTION
10 ON THAT BASIS. GO AHEAD.

11 MR. TAVERNIER: YOUR HONOR, THE NEXT MOTION I HAVE IS IT IS MY
12 UNDERSTANDING MISTER BLUME WAS SEPARATED FROM HIS JOB WITH MCCOY
13 LUMBER AFTER A NUMBER OF YEARS AND THAT THERE WAS SOME CONCERN
14 REGARDING CASH SHORTAGES WITH MCCOY LUMBER. I, YOUR HONOR, HAVE
15 COME INTO THIS KNOWLEDGE THROUGH INDEPENDENT THIRD PARTIES. I AM
16 RAISING THIS ISSUE PURELY AS AN ISSUE. I DON'T BELIEVE THAT IT IS, QUITE
17 FRANKLY, RELEVANT, ON MY PART AND I DON'T THINK THERE IS ANYTHING THAT
18 PERTAINS TO IT IN THIS CASE, BUT IT IS INFORMATION THAT I HAVE COME TO
19 LEARN BY JUST LIVING IN HONEA PATH, IN THAT AREA, AND I NEED TO RAISE IT
20 JUST ON THE BEHALF OF MY CLIENT OUT OF CAUTION. I DON'T THINK THAT IT IS, IN
21 ANY WAY, RELEVANT TO THIS CASE, BUT I NEED TO RAISE IT JUST OUT OF
22 CAUTION.

23 THE COURT: ALL RIGHT. MR. BRADLEY?

24 MR BRADLEY: YOUR HONOR, THE STATE WOULD OBJECT TO ANY TYPE OF
25 RELATING TO THAT OR HIM BEING ABLE TO GET INTO THAT DURING THE TRIAL AT

1 ALL. I THINK IT IS HIGHLY IRRELEVANT TO THIS CASE. THERE WERE NO CHARGES
2 MADE. I THINK IT WAS JUST WHAT HE SAID, AN INDEPENDENT THIRD PARTY AND
3 SPECULATION AND HEARSAY AT THIS POINT. IT PROVIDES FOR IT AND THERE
4 WERE NO CRIMINAL CHARGES MADE. THERE IS NOTHING RELATED TO THIS CASE
5 WHATSOEVER AND I WOULD LIKE A RULING TO BE MADE THAT HE CAN'T GET INTO
6 IT AT ALL DURING THE COURSE OF CROSS EXAMINATION.

7 THE COURT: WELL, HERE'S WHAT I AM GOING TO DO AT THIS STAGE. FIRST,
8 ON THE BASIS THAT YOU STATED THAT IT WASN'T RELEVANT, I WOULD EXCLUDE
9 THAT TYPE OF TESTIMONY. HOWEVER, I THINK A SAFER COURSE OF ACTION FOR
10 EVERYBODY TO TAKE IS WHEN, AND IF, YOU PUT UP MISTER BLUME, I ASSUME THAT
11 YOU WILL SINCE HE IS THE VICTIM, THAT YOU BRING -- THAT WE HAVE AN
12 *IN CAMERA* HEARING AS TO THE NATURE OF THE EVIDENCE TO SEE IF IT POSSIBLY
13 COULD BE RELEVANT. I DON'T SEE AT THIS STAGE HOW IT COULD BE.

14 MR. TAVERNIER: YOUR HONOR, I WOULD -- I'M SORRY I DIDN'T MEAN TO CUT
15 YOU OFF, BUT I HAVE NO PLAN ON GOING INTO IT. IT IS AN ISSUE AND I AM RAISING
16 IT JUST TO PROTECT MYSELF FOR FUTURE PURPOSES. I DON'T THINK IT IS
17 RELEVANT AND I REPEAT THAT. I HAVE ALREADY -- I AM FAMILIAR WITH IT AND JUST
18 OUT OF CAUTION AM RAISING IT SO THAT IT DOESN'T COME UP IN THE FUTURE.

19 THE COURT: OKAY. WELL, AS STATED NOW -- AS THE MOTION IS STATED, I
20 WILL DENY YOUR MOTION. BUT I WILL LEAVE -- IF YOU FEEL LIKE THERE IS SOME
21 RELEVANCE THAT MAY BE ESTABLISHED DURING THE COURSE OF THE TRIAL, WE
22 WILL HAVE AN *IN CAMERA* HEARING ON IT, IF NECESSARY.

23 MR. TAVERNIER: OKAY. YOUR HONOR, THE NEXT MOTION, PURSUANT TO MY
24 ORDER OF APPOINTMENT ON MARCH 11, 2010, IN HANDWRITING, IT STATES, IN
25 PERTINENT PART, THAT THIS CASE IS TO BE HEARD OR TRIED DURING THE APRIL,

MOTIONS

1 2010 TERM AND I CAN SHOW YOUR HONOR A COPY OF THE DOCUMENT. (HANDS
2 DOCUMENT TO THE JUDGE)

3 THE COURT: THIS IS THE ORDER I SIGNED?

4 MR. TAVERNIER: THAT'S CORRECT, YOUR HONOR.

5 THE COURT: OKAY, SIR.

6 MR. TAVERNIER: PURSUANT TO THAT ORDER, YOUR HONOR, IT HAS
7 ACCORDING TO MY RECORDS, AND I CHECKED, THERE HAS BEEN NO REQUEST FOR
8 A CONTINUANCE ON MY PART. THERE HAS BEEN NO REQUEST FOR A
9 CONTINUANCE ON BEHALF OF THE STATE AND BASED ON THE ORDER, IT STATES
10 WHAT IT STATES AND JUST ON PLAIN READING, "IT SHALL BE TRIED NO LATER THAN
11 THE APRIL, 2010 TERM. BASED UPON THAT, YOUR HONOR, WITHOUT HAVING ANY
12 ADDITIONAL INFORMATION OR JUSTIFICATION BY THE COURT FOR A CONTINUANCE
13 I REQUEST THAT WE, I RESPECTIVELY REQUEST THAT THE CHARGES BE DISMISSED
14 BECAUSE IT WAS NOT TRIED THROUGH NO FAULT OF MISTER SHERIFF.

15 THE COURT: FIRST, THERE IS NOT A SPEEDY TRIAL MOTION IN THIS CASE IS
16 IT?

17 MR. TAVERNIER: NO, YOUR HONOR.

18 THE COURT: OKAY. MISTER BRADLEY, WHAT DO YOU HAVE IN RESPONSE TO
19 MISTER TAVERNIER?

20 MR. BRADLEY: YES, YOUR HONOR, MAY IT PLEASE THE COURT. AT THAT
21 SAME TIME, ALSO, I WOULD LIKE TO MAKE A NOTE FOR THE RECORD THAT I HAVE
22 BEEN BROUGHT INTO THIS CASE. THE FORMER PROSECUTOR THAT WAS
23 HANDLING THIS CASE, MS. HUEY, SHE IS NOW CURRENTLY OUT ON MATERNITY
24 LEAVE. SHE LEFT, I BELIEVE, AT THE BEGINNING OF JUNE SHE LEFT ON MATERNITY
25 LEAVE AND I TOLD HER THAT I WOULD TRY THIS CASE WHEN SHE LEFT. I WAS IN

1 THE COURTROOM DURING THE HEARING WHEN MISTER POTTER, FROM THE PUBLIC
2 DEFENDER'S OFFICE, WAS RELIEVED AND MR. TAVERNIER WAS APPOINTED. I WAS
3 NOT HANDLING THIS CASE AT THE TIME. THE INFORMATION THAT I HAVE IS AT
4 THAT HEARING, MISTER SHERIFF MADE A NOTE HOW HE HAD NOT BEEN MENTALLY
5 EVALUATED BY MISTER POTTER AND THAT WAS HIS BASIS FOR WANTING TO FIRE
6 MISTER POTTER. AT THAT TIME THAT YOU SIGNED THE ORDER FOR MISTER
7 TAVERNIER TO BE APPOINTED, YOU ALSO SIGNED AN ORDER FOR HIM TO BE
8 MENTALLY EVALUATED. THAT EVALUATION WAS NOT COMPLETED UNTIL WELL
9 AFTER THAT DATE WAS PLACED ON THE ORDER, YOUR HONOR. MS. HUEY'S
10 PREGNANCY, HER GOING OUT IN JUNE AND ALSO THE MENTAL EVALUATION NOT
11 BEING COMPLETED UNTIL AFTER THAT DATE IS THE REASON FOR THE DELAY. I
12 FEEL THERE IS NO PREJUDICE TO THE DEFENDANT IN ANY OF THIS, YOUR HONOR.
13 HE IS BEING TRIED SHORTLY AFTER HAVING MISTER TAVERNIER APPOINTED AND I
14 THINK THAT DATE WAS GIVEN IN THAT ORDER SO MISTER SHERIFF COULD NOT TRY
15 TO DELAY IT ANY FURTHER ON HIS PART. I BELIEVE THERE'S NO PREJUDICE FROM
16 ANY DELAY PAST THAT DATE AS YOU PUT IN THE ORDER, YOUR HONOR.

17 THE COURT: LET ME MAKE SURE THAT I'M CLEAR FOR THE RECORD. FIRST,
18 AND I AM FAIRLY FAMILIAR WITH THE BACKGROUND OF THIS ORDER AND MY INTENT
19 AT THE TIME OF SIGNING THAT ORDER WAS THAT THE DEFENDANT, OR THE
20 DEFENSE OF THE CASE RATHER, NOT DELAY THE PROCEEDINGS ANY FURTHER
21 AND THE CASE GO FORWARD FORTHWITH FOR TRIAL. SO, THAT'S THE PURPOSE
22 OF ME PUTTING THE LANGUAGE IN THE 03-11-2010 ORDER. BUT WHAT I
23 UNDERSTAND FROM MISTER BRADLEY, THAT WHAT YOU ARE TELLING ME IS THAT
24 THE EVALUATIONS WEREN'T COMPLETED UNTIL AFTER THE TIME FOR THE TERM OF
25 COURT AFTER APRIL 19, 2010. IS THAT CORRECT MISTER BRADLEY?

MOTIONS

1 MR. BRADLEY: THAT'S CORRECT. THE REPORT WAS NOT SENT OUT UNTIL
2 MAY 19, 2010.

3 THE COURT: ALL RIGHT.

4 MR. BRADLEY: THERE WAS NOT A JURY BROUGHT IN THE MONTH OF JUNE
5 WHERE IT COULD HAVE BEEN DONE IN JUNE, SO THIS IS THE FIRST AVAILABLE JURY
6 PANEL THAT'S BEEN BROUGHT IN FRONT OF US SINCE THE REPORT CAME IN.

7 THE COURT: WELL, I'M GOING TO FIND THAT NUMBER TWO, THE STATE HAS
8 DONE NOTHING TO DELAY THAT MISTER SHERIFF HAS HIS DAY IN COURT AND THAT
9 IF ANY DELAY HAS OCCURRED IT IS BY THE BEHEST OF THE DEFENDANT AND/OR
10 HIS ATTORNEYS AND THEREFORE I AM NOT GOING TO LET YOU USE THAT FOR A
11 BASIS OF DISMISSAL. THE QUESTION THAT I HAVE, I BELIEVE THERE IS ANOTHER
12 ORDER THAT WAS SIGNED THAT PROHIBITED INTRODUCTION OF OTHER
13 EXTRANEOUS STATEMENTS.

14 MR. TAVERNIER: YOUR HONOR, IN THAT -- THAT WAS MY NEXT MOTION.

15 THE COURT: OKAY.

16 MR. TAVERNIER: ALL RIGHT. IN YOUR ORDER FOR THE EVALUATION, AND IT IS
17 STANDARD VERBIAGE THAT ANY ADMISSION OR STATEMENT MADE BY THE
18 DEFENDANT PURSUANT TO THE EVALUATION CANNOT BE USED AGAINST HIM
19 EITHER FOR IMPEACHMENT OR IN THE CASE IN CHIEF, AS AN ADDITION OR
20 STATEMENT BY THE DEFENDANT AND JUST OUT OF CAUTION, I WANTED TO MAKE
21 SURE THAT THAT IS CURRENT BECAUSE IT'S PRETTY MUCH STANDARD.

22 THE COURT: RIGHT. AND I WOULD CERTAINLY GRANT THAT MOTION.

23 MR. BRADLEY: WE DON'T HAVE ANY PROBLEM WITH THAT. WE UNDERSTAND
24 THAT'S THE WAY IT IS.

25 THE COURT: IS THERE ANYTHING FURTHER FROM YOU, MISTER TAVERNIER?

1 MR. TAVERNIER: JUST A CLARIFICATION, YOUR HONOR. FOR THE RECORD,
2 UNDERSTANDING THAT THERE ARE NO FURTHER OFFERS ON THE TABLE, JUST FOR
3 CLARIFICATION, MISTER SHERIFF WAS, IN FACT, OFFERED A PLEA OF 40 YEARS
4 THAT WAS IN WRITING AND AN ADDITIONAL OFFER OF 30 YEARS THAT WAS A
5 VERBAL OFFER, BOTH OF WHICH HE REJECTED AND HE REQUESTED AND HE
6 WISHED FOR A JURY TRIAL ON THIS CHARGE. AND THEN THERE IS ONLY -- AND
7 REGARDING THE EVALUATION, IT DID COME BACK AND VERIFIED MISTER SHERIFF IS
8 COMPETENT PURSUANT TO ALL MEDICAL TESTS, NOR DO I HAVE ANY QUESTION
9 REGARDING HIS COMPETENCY TO STAND TRIAL. HE IS ABLE TO COMMUNICATE
10 WITH ME AND I THINK, IN GOOD FAITH, CANNOT OFFER ANY MENTAL DEFECT OR
11 ANY OTHER DEFENSE IN THAT REGARD.

12 THE COURT: ALL RIGHT. ANYTHING FURTHER?

13 MR. TAVERNIER: JUST FOR CLARIFICATION, JUST PRIOR TO STEPHANIE
14 STANLEY TESTIFYING, YOUR HONOR, I WOULD REQUEST A VERY, VERY BRIEF
15 IN CAMERA QUESTIONING OF THAT WITNESS.

16 THE COURT: IF Y'ALL WILL MAKE SURE YOU REMIND ME AND I WILL MAKE A
17 NOTE OF IT. NOW, FROM A TIMING PERSPECTIVE, IT'S NOW 1:30 AND I KNOW YOU
18 WANTED TO KIND OF DO A LITTLE BIT. I THINK -- HOW DO YOU PERCEIVE AS FAR AS
19 -- I KNOW YOU HAVE SOME TIMING ISSUES THIS AFTERNOON, I UNDERSTAND,
20 MISTER BRADLEY.

21 MR. BRADLEY: YES, YOUR HONOR. IF WE GET AT LEAST DO OPENINGS AND
22 ALLOW OUR VICTIM TO TESTIFY SO HE CAN GET OUT OF HERE AND GO TO HIS
23 BROTHER-IN-LAW'S VIEWING. HE PASSED AWAY THIS WEEK-END. THE STATE
24 WOULD APPRECIATE THAT, YOUR HONOR.

25 THE COURT: ANY OBJECTIONS FROM THE DEFENSE?

INTRODUCTORY REMARKS TO THE JURY

1 ANYBODY ELSE IN AND OUT, PLEASE SIR. ALL RIGHT, LADIES AND GENTLEMEN, AS I
2 TOLD YOU WE ARE ABOUT TO START THE TRIAL OF THE CASE OF THE STATE
3 VERSUS DAVID DALE SHERIFF. I WILL TELL YOU THAT NORMALLY WE TAKE A
4 BREAK AROUND THIS TIME OR MAYBE EARLIER, BUT BECAUSE OF SOME
5 SCHEDULING ISSUES WE HAVE WE ARE GOING TO GO AHEAD AND TAKE AN
6 OPENING STATEMENT AND DO A WITNESS AND THEN TAKE A BREAK AFTER THAT, IF
7 YOU DON'T MIND, BUT BEFORE WE GET STARTED, I AM GOING TO ASK THE CLERK
8 TO SWEAR YOU IN, PLEASE.

9 (THE CLERK OF COURT ADMINISTERS THE OATH TO THE JURORS)

10 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN, CAN YOU HEAR ME OKAY?
11 THIS COURTROOM HAS A TENDENCY TO HAVE ECHOES, SO AS I WAS TELLING YOU
12 EARLIER, IF AT ANY TIME DURING THIS TRIAL, EITHER IF I AM TELLING YOU
13 SOMETHING OR THESE ATTORNEYS ARE DOING SOMETHING OR YOU CAN'T HEAR
14 THE EVIDENCE, I DON'T CARE IF IT JUST HAPPENS TO BE ONE OF YOU, RAISE YOUR
15 HAND, DON'T BLURT IT OUT, BUT JUST RAISE YOUR HAND AND WE WILL CATCH IT
16 AND WE WILL MAKE SURE THAT YOU DO UNDERSTAND WHAT'S GOING ON. OKAY?

17 AS I TOLD YOU AT THE BEGINNING OF THE CASE, THIS IS THE STATE VERSUS
18 DAVID DALE SHERIFF, INDICTED FOR BURGLARY, FIRST DEGREE. I DON'T KNOW
19 WHETHER ANY OF YOU HAVE EVER BEEN INVOLVED WITH THE CRIMINAL PROCESS
20 BEFORE OR EVEN A CIVIL PROCESS, BUT I WILL TELL YOU THAT WHAT YOU ARE
21 ABOUT TO EMBARK ON IS NOT LIKE YOU SEE ON T.V. AND I IMAGINE MOST OF YOU
22 HAVE SEEN *LAW AND ORDER* OR SOMETHING ALONG THOSE LINES. TRIALS ARE
23 DIFFERENT THAN T.V. A CASE IS NOT PROVEN IN A FIVE MINUTE VIGNETTE AND THE
24 DEFENSE IS NOT ESTABLISHED IN A FIVE MINUTE VIGNETTE. THEY ARE SLOW,
25 DELIBERATE, AND METHODICAL PROCESSES AND THIS IS GOING TO BE, AS WELL.

INTRODUCTORY REMARKS TO THE JURY

1 REMEMBER THIS, A TRIAL IS NOT ENTERTAINMENT, BUT IS A FUNDAMENTAL PART
2 OF OUR COUNTRY AND OUR DEMOCRACY THAT EACH AND EVERY ONE OF YOU
3 HAVE A RIGHT TO BE JUDGED BY A JURY OF YOUR PEERS. THE BOTTOM LINE IS, A
4 TRIAL IS THE SEARCH FOR THE TRUTH TO MAKE SURE THAT JUSTICE IS DONE. IN
5 THIS CASE, YOU'VE HAD THESE ATTORNEYS INTRODUCE THEMSELVES TO YOU,
6 MAYBE A COUPLE OF TIMES BY THIS POINT. THEY ARE ADVOCATES FOR THEIR
7 PARTICULAR POSITIONS IN THIS CASE AND THEY ARE ADVOCATES FOR THEIR
8 CLIENTS FOR THE STATE AND THE DEFENSE, BUT THEY ARE ALSO OFFICERS OF
9 THIS COURT, WHICH MEANS THAT YOU CAN EXPECT THEM TO BE PROFESSIONAL,
10 YOU CAN EXPECT THEM TO BE COMPETENT AND YOU CAN EXPECT THEM TO BE
11 ETHICAL IN THEIR DEALINGS WITH THE COURT AND ONE ANOTHER. LIKEWISE, YOU
12 HAVE JUST TAKEN AN OATH IN THIS MATTER AND THESE PARTIES AND THESE
13 ATTORNEYS HAVE A RIGHT TO EXPECT THAT YOU WILL, LIKEWISE, BE REASONABLE
14 AND THAT YOU WILL BE DILIGENT AND YOU WILL BE ETHICAL IN YOUR RECEIVING
15 OF THE EVIDENCE AND YOUR PARTICIPATION IN THIS MATTER.

16 NOW, WHAT I'M ABOUT TO TELL YOU IS NOT THE FINAL CHARGE ON THE LAW.
17 I WILL GIVE THAT TO YOU AT THE END OF THIS CASE AND YOU WILL BE TOTALLY
18 CLEAR THAT'S WHAT I'M DOING. I WILL TELL YOU NOW THAT AT THE END OF THE
19 CASE, BEFORE YOU ARE ALLOWED TO BEGIN YOUR DELIBERATIONS YOU WILL BE
20 CHARGED ON THE LAW AND I WILL REMIND YOU THROUGHOUT THIS CASE THAT
21 YOU ARE NOT TO BEGIN YOUR DELIBERATIONS UNTIL SUCH TIME AS I TELL YOU
22 THAT YOU ARE ALLOWED TO. BUT THIS IS SIMPLY AN EXPLANATION OF THE
23 PROCEDURE THAT YOU CAN EXPECT TO HAPPEN TODAY IN THIS COURT AND
24 PROBABLY THE NEXT DAY OR SO. THIS IS NOT GOING TO BE AN EXCEEDINGLY
25 LONG CASE, SO THEREFORE I'M GOING TO ASK AND ALSO INSTRUCT THAT THERE

INTRODUCTORY REMARKS TO THE JURY

1 NOT BE ANY NOTE TAKING. THAT MEANS NOTE TAKING WHILE IN THE COURTROOM
2 OR NOTE TAKING WHEN YOU LEAVE THE COURTROOM. RECENTLY, I HAD A JURY,
3 NOT TRYING TO DO SOMETHING THEY WEREN'T SUPPOSED TO DO, BUT I TOLD
4 THEM NO NOTE TAKING SO THEY DIDN'T TAKE ANY IN THE COURTROOM, BUT WHEN
5 THEY WALKED OUT ON BREAK THEY WERE BACK THERE SCRIBBLING NOTES. THEY
6 WEREN'T TRYING TO BE BAD. THEY WERE JUST -- YOU DON'T NEED TO DO THAT
7 AND THE REASON BEING THAT SINCE IT'S NOT GOING TO BE AN EXCEEDINGLY
8 LONG CASE, I'D RATHER YOU PAY CLOSE ATTENTION TO THE EVIDENCE AND TO
9 THE TESTIMONY THAT IS PRODUCED FROM THE WITNESS STAND IN THIS MATTER
10 THAN MAYBE MISS SOMETHING BECAUSE YOU ARE BUSY WRITING A NOTE THAT
11 MAY BE CRITICAL.

12 AGAIN, THE INDICTMENT IS, AS I HAVE READ TO YOU AND I TOLD YOU A
13 MINUTE AGO, THE INDICTMENT IS SIMPLY THE MECHANISM BY WHICH THE STATE
14 CHARGES THE DEFENDANT AND BRINGS HIM TO COURT FOR DETERMINATION OF
15 GUILT OR INNOCENCE. IT IS NOT, AND I REITERATE, IN ANY SENSE OF THE WORD,
16 EVIDENCE OF THE ALLEGATIONS CONTAINED IN THE INDICTMENT. IN FACT, THE
17 DEFENDANT HAS PLED NOT GUILTY TO THE INDICTMENT. WHAT THAT SIMPLY
18 MEANS IS THAT PUTS THE BURDEN ON THE STATE OF SOUTH CAROLINA TO PROVE
19 EACH AND EVERY ELEMENT OF THE CHARGE WHICH HE IS FACING BEYOND A
20 REASONABLE DOUBT. IT WILL BE YOUR DUTY WHEN YOU ARE ALLOWED TO GO
21 BACK AND BEGIN YOUR DELIBERATIONS TO DECIDE WHETHER OR NOT THE STATE
22 HAS MET IT'S BURDEN OF PROOF IN THIS MATTER.

23 NOW, IT HAS BEEN SAID IN THE VERNACULAR OF LAWYERS AND SOMETIMES
24 PEOPLE DON'T LIKE TO LISTEN TO THAT, BUT JURORS ARE THE FINDERS OF THE
25 FACT. THAT MEANS YOU ARE THE SOLE JUDGE OF THE FACTS IN THIS MATTER. IF

INTRODUCTORY REMARKS TO THE JURY

1 AT ANY TIME DURING THE COURSE OF THIS TRIAL I SAY SOMETHING OR I DO
2 ANYTHING THAT MAKES YOU BELIEVE THAT I HAVE A PREFERENCE ONE WAY OR
3 THE OTHER OR HAVE SOME FEELING WHICH WAY YOU SHOULD GO IN YOUR
4 FINDINGS OF FACT, YOU ARE TO DISREGARD THAT. I CAN ASSURE YOU, NUMBER
5 ONE, IF I DO THAT IT IS ACCIDENTAL AND IT'S NOT RELEVANT TO THIS CASE.
6 NUMBER TWO, MY JOB IS AS A REFEREE, ESSENTIALLY, TO MAKE SURE THAT THE
7 PROPER EVIDENCE IS RECEIVED AND IMPROPER EVIDENCE IS EXCLUDED AND
8 THAT BASICALLY THE RULES ARE MET. I HAVE NO PREFERENCE ONE SIDE OR THE
9 OTHER AS TO WHICH WAY YOU SHOULD GO. SO PLEASE DISREGARD ANYTHING
10 THAT I MAY DO. I MAY BE LOOKING AT A NOTE THAT MY LAW CLERK MAY HAND ME
11 BECAUSE WE ALSO DO OTHER BUSINESS WHILE WE ARE UP HERE AT TIMES AND
12 SOMETIMES IT WILL BE TOTALLY UNRELATED, SO DISREGARD ANYTHING THAT I
13 MAY DO.

14 BUT YOU DETERMINE THE FACTS IN THIS CASE FROM THE TESTIMONY THAT
15 YOU HEAR FROM THIS WITNESS STAND AND THE EVIDENCE THAT IS RECEIVED
16 FROM THE WITNESS STAND. YOU ARE NOT, AND YOU SHALL NOT, BE INFLUENCED
17 BY ANY OPINIONS, BY ANY COMMENTS THAT YOU MAY HEAR OUTSIDE THE
18 COURTROOM. AND LET ME JUST SAY THIS: AT ALL TIMES PEOPLE, INCLUDING
19 THESE ATTORNEYS, AND THE PARTIES AND ANY WITNESSES HAVE BEEN
20 INSTRUCTED NOT TO TALK TO YOU DURING THIS TRIAL. IF ANYBODY AT ANY TIME
21 TRIES TO SPEAK WITH YOU ABOUT THIS CASE, WHETHER OR NOT IT IS THE
22 ATTORNEYS OR THE PARTIES OR SOME THIRD PARTY, TELL THEM YOU ARE A
23 JUROR AND IF THEY PERSIST, YOU BRING THAT TO THE BAILIFF'S ATTENTION AND
24 THEY WILL BRING IT TO MY ATTENTION AND THEY WILL BE DEALT WITH
25 FORTHWITH. BUT ONCE THE EVIDENCE IS ADMITTED INTO THE TRIAL OF THIS

INTRODUCTORY REMARKS TO THE JURY

36

1 CASE, IT IS UP TO YOU TO DETERMINE WHICH INFERENCES THAT YOU FEEL WERE
2 APPROPRIATELY DRAWN FROM THAT EVIDENCE. IT'S ESPECIALLY IMPORTANT
3 THAT DURING THE TRIAL OF THIS CASE THAT YOU ARE DILIGENT AND
4 CONSCIENTIOUS AND PAYING ATTENTION TO WHAT THESE ATTORNEYS SAY AND
5 WHAT THE EVIDENCE IS AND WHAT HAS BEEN PRESENTED HERE, BECAUSE
6 USUALLY, IF YOU HAVE AN IMPROPER FACTUAL DETERMINATION, IT CANNOT BE
7 CORRECTED ON APPEAL. TYPICALLY, ONLY ERRORS OF LAW CAN BE CORRECTED
8 ON APPEAL.

9 NOW SPEAKING OF THAT, ON THE OTHER HAND AND WITH THE SAME
10 EMPHASIS, I TELL YOU THE LAW THAT MAKES YOU THE FINDERS OF THE FACTS
11 MAKES ME THE INSTRUCTOR ON THE LAW, MEANING SIMPLY THIS; AT THE END OF
12 THIS CASE WHEN I GIVE YOU THE INSTRUCTIONS ON WHAT THE LAW IS, YOU HAVE
13 TO ACCEPT IT. YOU ARE NOT TO BE CONCERNED WITH WHAT YOU THINK IT IS OR
14 WHAT IT SHOULD BE, BUT ONLY AS I GIVE IT TO YOU. I CANNOT TELL YOU HOW TO
15 FIND FACTS IN THIS CASE AND YOU CAN NOT TELL ME WHAT THE LAW IS. SIMPLY,
16 ONCE I LET THE EVIDENCE COME IN TO THIS TRIAL, YOUR JOB IS TO APPLY THE
17 LAW AS I GIVE IT TO YOU AT THE END OF THIS CASE TO THE FACTS AND THEN MAKE
18 YOUR FINAL DETERMINATION.

19 UNTIL SUCH TIME AS I SPECIFICALLY TELL YOU THAT YOU ARE FREE TO
20 START YOUR DELIBERATIONS, YOU ARE NOT TO DISCUSS THIS CASE IN ANY FORM
21 OR FASHION. THAT MEANS NOT ONLY WITH YOUR FELLOW JURORS, YOU ARE NOT
22 TO DISCUSS IT AMONGST YOURSELVES, BUT YOU ARE NOT TO DISCUSS IT WITH
23 ANY FRIENDS, ANY FAMILY, OR ANYONE WHO MAY BE INVOLVED IN THIS CASE, THE
24 NEWSPAPER, OR ANYONE. AND THAT DOESN'T JUST MEAN FACE TO FACE
25 COMMUNICATIONS, BUT IT ALSO MEANS EMAILS OR ANY OTHER TYPE

INTRODUCTORY REMARKS TO THE JURY

1 CORRESPONDENCE, CELL PHONES OR AS MY DAUGHTER DOES, TWITTER. I
2 WOULDN'T BEGIN TO KNOW HOW TO DO THAT, BUT JUST NO COMMUNICATION.
3 AGAIN, THE PARTIES AND THEIR ATTORNEYS HAVE TOLD YOU AND HAVE BEEN
4 TOLD THEY ARE NOT TO COMMUNICATE WITH YOU ABOUT THIS CASE, SO IF YOU
5 SEE THEM AND THEY DON'T SPEAK THEY ARE NOT BEING RUDE. THEY ARE
6 FOLLOWING MY INSTRUCTIONS. ALSO, WE HAVE BEEN INSTRUCTED BY OUR CHIEF
7 JUSTICE OF OUR SUPREME COURT THAT YOU ARE NOT TO TRY TO LOOK AT ANY
8 NEWS ABOUT THIS CASE. YOU ARE NOT TO LISTEN TO ANY RADIOS OR SHOWS
9 ABOUT THIS CASE, IF THERE ARE ANY OR ANY OUTSIDE INFORMATION
10 WHATSOEVER. WE WANT YOU TO MAKE YOUR DECISION SOLELY BASED UPON THE
11 EVIDENCE THAT YOU HEAR PRESENTED IN THE COURTROOM AND THAT IT IS
12 PROPERLY ADMITTED INTO EVIDENCE. THAT MEANS NO OUTSIDE INFORMATION OF
13 ANY TYPE OR SORT. THAT MEANS THAT YOU ARE NOT TO GO HOME AND MAKE A
14 SEARCH ON ANY OF THE PARTIES IN THIS CASE, OF ANY OF THE COURT OFFICIALS,
15 MYSELF, OR ANY ISSUE THAT YOU HEAR RAISED UP OR ANY ISSUE THAT YOU THINK
16 WOULD BE HELPFUL IN YOUR DECISION. NOW, AFTER THE CASE IS SAID AND DONE
17 AND OVER, YOU CAN LOOK UP ANY OF THESE MATTERS BUT UNTIL SUCH TIMES AS
18 THIS CASE IS DONE, THEN YOU ARE NOT TO DO THAT.

19 BASICALLY, THERE ARE FIVE PARTS IN EVERY TRIAL: THERE WILL BE AN
20 OPENING STATEMENT, THERE WILL BE A PRESENTATION OF THE EVIDENCE, THERE
21 WILL BE CLOSING ARGUMENTS OF THE ATTORNEYS, THERE WILL BE MY CHARGE
22 ON THE LAW TO YOU AND THEN THERE WILL BE YOUR DELIBERATIONS. I JUST TELL
23 YOU THAT SO THAT YOU ARE AWARE OF WHERE YOU TYPICALLY ARE DURING THE
24 COURSE OF THIS CASE. IN JUST A MINUTE, THE SOLICITOR WILL MAKE AN OPENING
25 STATEMENT. BASICALLY, WHAT THAT IS, IS HIS CONTENTION OF WHAT THE ISSUES

1 ARE OR WHAT HE THINKS THE ISSUES ARE IN THIS CASE. THE ATTORNEY FOR THE
2 DEFENDANT MAY, BUT IS NOT REQUIRED TO GIVE AN OPENING STATEMENT. AGAIN,
3 IT WOULD SIMPLY BE HIS CONTENTION OF WHAT THE ISSUES ARE OR WHAT HE
4 THINKS THE ISSUES ARE IN THIS CASE. WHAT THE ATTORNEYS TELL YOU IS
5 HELPFUL, HOWEVER, IT IS NOT EVIDENCE. IT IS ONLY THEIR CONTENTION. THE
6 ONLY EVIDENCE THAT WILL BE RECEIVED IN THIS CASE IS THE TESTIMONY FROM
7 THE WITNESS STAND AND EXHIBITS RECEIVED INTO EVIDENCE.

8 FROM TIME TO TIME, THERE WILL BE OBJECTIONS TO THE TESTIMONY AND IN
9 ANY OTHER CASE I'VE BEEN INVOLVED WITH, EITHER AS A LAWYER OR AS A JUDGE,
10 THERE HAVE BEEN OBJECTIONS. THE MERE FACT THAT ONE SIDE OR THE OTHER
11 OBJECTS TO CERTAIN TESTIMONY IS NOT TO BE CONSIDERED BY YOU. NEITHER IS
12 MY RULING. I MIGHT ASK YOU TO STEP OUT OF THE COURTROOM SO I CAN DEAL
13 WITH THE MATTER SO THE INFORMATION THAT SHOULD NOT BE BEFORE YOU IS
14 CONSIDERED BY YOU OR HEARD BY YOU, BUT THAT IS SIMPLY THE ATTORNEYS
15 DOING THEIR JOB. AGAIN, THE MERE FACT THAT SOMEONE MAY OBJECT AND MY
16 RULING ON IT IS NOT TO BE CONSIDERED BY YOU IN ANY FORM OR FASHION.

17 NOW WHEN YOU DETERMINE, LADIES AND GENTLEMAN, WHAT THE FACTS
18 ARE IN THE CASE, YOU MUST DECIDE WHETHER OR NOT AND WHICH TESTIMONY
19 OF THE WITNESSES YOU FIND BELIEVABLE AND WHAT IS NOT BELIEVABLE. AGAIN,
20 IT IS MY RESPONSIBILITY, SIMILAR TO A GATEKEEPER, TO DETERMINE WHAT
21 COMES INTO EVIDENCE. HOWEVER, ONCE IT IS ADMITTED WHETHER OR NOT YOU
22 BELIEVE THAT TESTIMONY IS SOLELY UP TO YOU, BUT A FEW HELPFUL HINTS IN
23 DECIDING ON BELIEVABILITY OR CREDIBILITY OF THE TESTIMONY AND WITNESSES,
24 YOU CAN CONSIDER SOME OF THESE BUT YOU DON'T HAVE TO. YOU CAN
25 CONSIDER ANY INTEREST THAT WITNESS MIGHT HAVE IN THE MATTER. YOU CAN

INTRODUCTORY REMARKS TO THE JURY

1 CONSIDER ANY BIAS THAT THAT WITNESS MIGHT HAVE IN THE MATTER. YOU CAN
2 CONSIDER ANY PREJUDICE THAT A WITNESS MAY HAVE OR YOU CAN CONSIDER
3 THE OPPORTUNITY FOR THE WITNESS TO HAVE SEEN THE MATTERS AND THINGS
4 ABOUT WHICH HE OR SHE TESTIFIES AND YOU CAN ALSO CONSIDER THE WAY THAT
5 WITNESS ACTS ON THE WITNESS STAND. IN OTHER WORDS, THEIR DEemeanor.
6 ANYTHING ELSE THAT'S IN THE RECORD THAT YOU CAN USE AS INDICATIVE OF
7 TRUTHFULNESS OR LACK OF TRUTHFULNESS, YOU MAY USE. AGAIN, I'M GOING TO
8 ASK THAT YOU PAY CLOSE ATTENTION THROUGHOUT THIS TRIAL. SHORTLY, YOU
9 WILL BE CALLED UPON TO MAKE A DECISION AS TO THE FINDING OF FACTS IN THIS
10 CASE AND MAKE A DECISION OF GUILT OR INNOCENCE. AND MISTER CLAREY, IT
11 WILL BE YOUR ADDITIONAL RESPONSIBILITY TO BE THE SPOKESPERSON. IF, AT
12 ANY TIME, THE JURY NEEDS TO COMMUNICATE WITH THE COURT I AM GOING TO
13 ASK THAT YOU DO JUST LIKE YOU DID, WRITE A NOTE, SIGN IT, AND HAND IT TO THE
14 BAILIFF WHO WILL FORWARD IT TO THE COURT AND WE WILL REVIEW IT HERE IN
15 OPEN COURT AND RESPOND TO IT AS APPROPRIATE. OKAY, SIR?

16 MR. CLAREY: YES, SIR.

17 THE COURT: OTHER THAN THAT, JUST TO MAKE SURE THAT I HAVEN'T
18 OVERLOOKED OR MIS-SPOKEN, I AM GOING TO ASK YOU TO STAND BACK TO YOUR
19 JURY ROOM AND THEN WE WILL COME BACK WITH OPENING STATEMENTS. OKAY?
20 THANK YOU.

21 (JURY OUT AT 1:52 P.M.)

22 THE COURT: ANY OBJECTIONS OR ADDITIONS FROM THE STATE?

23 MR. BRADLEY: NO OBJECTIONS, YOUR HONOR.

24 THE COURT: FROM THE DEFENSE?

25 MR. TAVERNIER: NONE, YOUR HONOR.

OPENING STATEMENT - MISTER BRADLEY

1 THE COURT: YOU GUYS READY TO GO?

2 MR. BRADLEY: YES SIR, YOUR HONOR.

3 THE COURT: ARE YOU GOING TO MAKE AN OPENING OR HAVE YOU MADE A
4 DECISION ABOUT WHETHER YOU ARE GOING TO MAKE AN OPENING OR NOT? YOU
5 DON'T HAVE TO SAY. DO Y'ALL NEED TO TAKE A BREAK BEFORE WE GET STARTED?

6 MR. TAVERNIER: I AM GOING TO WAIVE OPENING, YOUR HONOR.

7 THE COURT: ALL RIGHT. BUCK, GO AHEAD AND BRING THE JURY BACK OUT
8 FOR US.

9 (JURY IN AT 1:54 P.M.)

10 THE COURT: MISTER BRADLEY, ARE YOU READY TO PROCEED?

11 MR. BRADLEY: YES, YOUR HONOR. MAY IT PLEASE THE COURT.

12 OPENING STATEMENT - MISTER BRADLEY

13 GOOD AFTERNOON, LADIES AND GENTLEMEN. THE EVIDENCE IN THIS CASE
14 IS GOING TO SHOW THAT ON AUGUST 19, 2005 THE DEFENDANT, DAVID DALE
15 SHERIFF, ENTERED THE HOME OF JOHN BLUME WHO LIVES AT IN
16 HONEA PATH, HERE IN ANDERSON COUNTY. THE DEFENDANT ENTERED MISTER
17 BLUME'S HOME WITHOUT HIS PERMISSION WITH THE INTENT TO COMMIT A CRIME.
18 THAT CRIME WAS LARCENY. THE DEFENDANT BROKE THROUGH A GLASS DOOR
19 AND WENT INTO MISTER BLUME'S HOME TAKING CASH AND SOME OTHER ITEMS.
20 LAW ENFORCEMENT INVESTIGATED THIS MATTER AND FOUND EVIDENCE AT THE
21 SCENE OF THE CRIME AND THEY HAD THAT ANALYZED. THE ANALYZATION THEN
22 LED LAW ENFORCEMENT TO ARREST AND CHARGE THE DEFENDANT WITH THE
23 CRIME OF BURGLARY, FIRST DEGREE.

24 NOW, WHAT DOES BURGLARY, FIRST DEGREE, MEAN? IN SOUTH CAROLINA,
25 IT IS DEFINED AS "ENTERING THE DWELLING OF ANOTHER WITHOUT CONSENT WITH

OPENING STATEMENT - MISTER BRADLEY

1 THE INTENT TO COMMIT A CRIME AND IT'S DONE BY A PERSON WITH A PRIOR
2 RECORD OF TWO OR MORE CONVICTIONS OF BURGLARY AND/OR HOUSE BREAKING
3 OR A COMBINATION OF BOTH." AND THAT IS EXACTLY WHAT HAPPENED IN THIS
4 CASE. THE DEFENDANT ENTERED THE DWELLING OF JOHN BLUME WITHOUT HIS
5 PERMISSION WITH THE INTENT TO COMMIT THE CRIME OF LARCENY. THE
6 DEFENDANT HAS A PRIOR RECORD OF TWO OR MORE CONVICTIONS OF BURGLARY.

7 NOW, AS THE ASSISTANT SOLICITOR, AND YOU WILL HEAR THE JUDGE TELL
8 YOU, AS ASSISTANT SOLICITOR IT'S MY BURDEN TO PROVE TO YOU BEYOND A
9 REASONABLE DOUBT THAT THE DEFENDANT COMMITTED THAT CRIME OF
10 BURGLARY, FIRST DEGREE, AND I WELCOME THAT BURDEN. BUT WHAT IS BEYOND
11 A REASONABLE DOUBT? IT DOES NOT MEAN BEYOND ALL DOUBT. A REASONABLE
12 DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
13 HESITATE TO ACT. PLEASE DON'T CONFUSE A HESITATION TO ACT WITH
14 CAREFULLY CONSIDERING THE EVIDENCE. THE STATE ASKS THAT YOU DO
15 CAREFULLY CONSIDER THE EVIDENCE WHEN YOU ARE ASKED TO DELIBERATE AT
16 THE END OF THIS TRIAL. DELIBERATION IS NOT THE SAME AS HESITATION. THERE
17 ARE VERY FEW THINGS IN THIS LIFE THAT WE KNOW WITH ABSOLUTE CERTAINTY.
18 THE LAW DOES NOT REQUIRE THE STATE TO PROVIDE PROOF THAT OVERCOMES
19 EVERY POSSIBLE DOUBT. BEYOND A REASONABLE DOUBT MEANS THAT AFTER
20 HEARING ALL THE EVIDENCE IN THIS CASE, YOU THE JURY, ARE FIRMLY CONVINCED
21 OF THE DEFENDANT'S GUILT. I SUBMIT TO YOU THAT AFTER HEARING ALL THE
22 EVIDENCE IN THIS CASE YOU, AS THE JURY, WILL BE FIRMLY CONVINCED OF HIS
23 GUILT.

24 THE TYPES OF EVIDENCE THAT YOU ARE GOING TO SEE THROUGHOUT THE
25 COURSE OF THIS TRIAL WILL COME FROM THAT WITNESS STAND IN THE FORM OF

1 TESTIMONY, YOU'LL SEE PHOTOGRAPHS ON THE OVERHEAD UP HERE (INDICATING)
2 AND YOU WILL ALSO HEAR ABOUT SOME DNA ANALYSIS. AND YOU WILL HEAR
3 TESTIMONY FROM THE VICTIM, MISTER BLUME. YOU WILL HEAR TESTIMONY FROM
4 LAW ENFORCEMENT WHO HANDLED THE INVESTIGATION OF THIS MATTER. YOU
5 WILL HEAR FROM S.C.L.E.D AGENTS OF THE SOUTH CAROLINA LAW ENFORCEMENT
6 DIVISION, YOU WILL HEAR FROM THEM WHO HANDLED THE ANALYZATION, THE
7 DNA EVIDENCE, AND YOU WILL HEAR FROM A REPRESENTATIVE OF THE ANDERSON
8 COUNTY CLERK'S OFFICE IN REGARDS TO THE DEFENDANT'S PRIOR RECORD, THE
9 CONVICTIONS OF BURGLARY.

10 I THANK YOU IN ADVANCE FOR YOUR PATIENCE AND ATTENTIVENESS WHILE
11 HEARING ALL THE EVIDENCE THROUGHOUT THE COURSE OF THIS TRIAL AND I
12 APOLOGIZE FOR Y'ALL HAVING TO SIT AROUND SO LONG TODAY AND I KNOW YOU
13 ARE HUNGRY, I KNOW I AM, BUT WE WILL LET YOU GO HERE IN A LITTLE WHILE.
14 BUT, AGAIN, I SUBMIT TO YOU AGAIN THAT AFTER HEARING EVERYTHING
15 THROUGHOUT THE COURSE OF THIS TRIAL, YOU AS THE JURY, WILL BE FIRMLY
16 CONVINCED OF HIS GUILT AND I AM GOING TO COME BACK UP HERE AT THE END OF
17 THIS TRIAL AND ASK YOU TO FIND HIM GUILTY OF THE CRIME OF BURGLARY IN THE
18 FIRST DEGREE. THANK YOU.

19 THE COURT: MISTER TAVERNIER?

20 MR. TAVERNIER: YOUR HONOR, AT THIS TIME THE DEFENSE WOULD
21 RESPECTIVELY RESERVE IT'S OPENING UNTIL OUR CASE IN CHIEF.

22 THE COURT: GRANTED. READY TO CALL YOUR FIRST WITNESS?

23 MR. BRADLEY: YES, YOUR HONOR. THE STATE CALLS JOHN BLUME TO THE
24 STAND.

25 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, JOHN BLUME

DIRECT EXAMINATION OF JOHN BLUME BY MR. BRADLEY

1 TESTIFIED AS FOLLOWS:)

2 CLERK OF COURT: PLEASE HAVE A SEAT IN THE WITNESS STAND. SIR, IF YOU
3 WILL STATE YOUR FULL NAME AND SPELL YOUR LAST.

4 MR. BLUME: IT'S JOHN BLUME. B-L-U-M-E.

5 DIRECT EXAMINATION OF JOHN BLUME BY MISTER BRADLEY

6 Q GOOD AFTERNOON, MISTER BLUME. COULD YOU TELL US IF YOU ARE
7 EMPLOYED?

8 A I AM.

9 Q WHERE ARE YOU EMPLOYED?

10 A B.J.'S DELI.

11 Q AND HOW LONG HAVE YOU BEEN THERE?

12 A SIX MONTHS.

13 Q OKAY. HAVE YOU EVER BEEN MARRIED?

14 A YES, SIR.

15 Q HOW MANY TIMES?

16 A TWICE.

17 Q DO YOU HAVE ANY CHILDREN?

18 A NO.

19 Q WHERE DO YOU CURRENTLY RESIDE?

20 A HONEA PATH.

21 Q IS THAT IN ANDERSON COUNTY?

22 A IT IS.

23 Q DO YOU OWN THE HOME?

24 A I DO.

25 Q OKAY. CAN YOU DESCRIBE YOUR HOME AND THE SURROUNDING AREA?

1 A IT'S OUT IN THE COUNTRY. IT SITS BACK OFF THE ROAD JUST A LITTLE BIT. I
2 DON'T HAVE ANY HOUSES THAT ARE REAL CLOSE TO ME ON EITHER SIDE.

3 Q OKAY. HOW LONG HAVE YOU LIVED THERE?

4 A SINCE '92.

5 Q AND SO YOU WERE LIVING THERE IN AUGUST OF 2005?

6 A YES.

7 Q ANYONE ELSE LIVING THERE WITH YOU IN AUGUST OF 2005?

8 A NO.

9 Q DRAWING YOUR ATTENTION TO AUGUST 19, 2005, WHAT, IF ANYTHING, CAN
10 YOU TELL ME ABOUT WHAT HAPPENED THAT DAY?

11 A I WENT TO WORK AND WHEN I CAME HOME I, YOU KNOW, WALKED UP TO THE
12 FRONT DOOR. I NOTICED THERE WAS A MARK ON MY FRONT DOOR. I DIDN'T
13 THINK ANYTHING OF IT. I WENT INSIDE TO TURN OFF MY ALARM SYSTEM. I
14 NOTICED IT WAS BEEPING LIKE SOMETHING HAD BEEN TRIPPED. I LOOKED
15 ON THE KEYPAD AND I SEEN BLOOD ON THE KEYPAD. SO, WHEN I STARTED
16 LOOKING AROUND THE HOUSE, YOU KNOW, I NOTICED THERE WAS STUFF
17 THAT HAD BEEN MOVED AND, YOU KNOW, AFTER A QUICK WALK THROUGH, I
18 KNEW WHAT HAPPENED SO I CALLED, YOU KNOW, 9-1-1.

19 Q OKAY. AND YOU SAID YOU WENT TO WORK THAT MORNING. WHAT TIME DID
20 YOU LEAVE THE HOUSE?

21 A ABOUT 6:30.

22 Q AND WHAT TIME DID YOU COME HOME?

23 A I BELIEVE IT WAS ABOUT 5:00.

24 Q WAS ANYONE ELSE AT THE HOUSE WHEN YOU LEFT?

25 A NO.

DIRECT EXAMINATION OF JOHN BLUME BY MR. BRADLEY

1 Q DID YOU GIVE PERMISSION FOR ANYBODY TO COME INTO THE HOUSE THAT
2 DAY?

3 A NO.

4 Q AND CAN YOU DESCRIBE THE ALARM SYSTEM YOU MADE MENTION TO?

5 A IT'S A KEYPAD. IT'S GOT MOTION DETECTORS. IT'S GOT MOTION -- IT'S GOT
6 SENSORS ON THE DOORS WHERE IF THE DOORS ARE OPENED, IT GOES OFF
7 AND WHEN THERE'S MOTION IN THE HOUSE, THEY ARE SET OFF.

8 Q IS IT LINKED TO ANY KIND OF SYSTEM?

9 A IT WASN'T AT THAT TIME.

10 Q SO, IF SOMEONE CAME INTO THE HOUSE WHAT WOULD HAPPEN? WHAT
11 WOULD HAVE HAPPENED?

12 A THE KEYPAD WOULD BEEP AND THE OUTSIDE SIREN WOULD BLARE AND
13 THEN AFTER SO LONG IT RESETS ITSELF.

14 Q OKAY. AND THE BLOOD THAT YOU MENTIONED THAT YOU NOTICED ON THE
15 KEYPAD WHEN YOU RETURNED HOME THAT DAY, HAD IT BEEN THERE
16 BEFORE, BEFORE YOU WENT TO WORK?

17 A NO.

18 Q DID YOU NOTICE BLOOD ANYWHERE ELSE IN THE HOUSE?

19 A YES. THERE WAS BLOOD ON A COUPLE OF DOORS. THERE WAS BLOOD
20 TOWARDS THE BACK DOOR WHERE THE GLASS WAS KNOCKED IN. I GUESS
21 THAT'S WHERE HE GOT CUT AT.

22 Q AND AFTER LOOKING THROUGH YOUR HOME DID YOU DISCOVER ANYTHING
23 MISSING?

24 A YES. I HAD SOME MONEY THAT WAS MISSING AND I HAD SOME STUFF
25 THROWN AROUND. I HAD SOME STUFF ON MY SAFE THAT WAS MISSING.

1 Q WHAT WAS MISSING FROM YOUR SAFE?

2 A ON THE TOP OF MY SAFE, I HAD A PAIR OF BINOCULARS AND A RANGE
3 FINDER. I HAD SOME CASH THAT WAS ON MY DRESSER.

4 Q HOW MUCH CASH?

5 A \$1500.00.

6 Q WHY DID YOU HAVE THAT MUCH CASH IN YOUR HOME?

7 A WE WERE FIXING TO GO ON A HUNTING TRIP AND ME AND MY BUDDIES WERE
8 GOING TO GET TOGETHER. THIS WAS ON A FRIDAY AND WE WERE GOING TO
9 GET TOGETHER ON SATURDAY AND DO A MONEY ORDER AND SEND A
10 DEPOSIT FOR A HUNTING TRIP.

11 Q SO YOU HAD \$1500.00. AND WHERE WAS THAT LOCATED IN THE HOUSE?

12 A IT WAS LAYING ON TOP OF MY DRESSER IN MY BEDROOM.

13 Q WAS ANYTHING ELSE TAKEN BESIDES THE CASH AND THE BINOCULARS AND
14 THE RANGE FINDER?

15 A NOT THAT I KNOW OF. NO.

16 Q SO, YOU SAID AFTER YOU LOOKED THROUGH YOUR HOUSE AND DISCOVERED
17 THE BLOOD AND SAW YOU HAD BEEN BROKEN INTO AND DISCOVERED
18 THINGS MISSING, YOU CALLED 9-1-1?

19 A YES, SIR.

20 Q AND WHAT HAPPENED NEXT AFTER YOU CALLED 9-1-1?

21 A THE SHERIFF'S DEPARTMENT CAME OUT AND THEY, YOU KNOW, WALKED
22 AROUND LOOKING AT STUFF, TOOK FINGERPRINTS, DID A --TOOK BLOOD
23 SAMPLES.

24 Q DID YOU SPEAK WITH THE OFFICERS?

25 A I DID.

DIRECT EXAMINATION OF JOHN BLUME BY MR. BRADLEY

1 Q DID YOU AT THAT TIME GIVE ANY NAMES THAT YOU MAY HAVE SUSPECTED
2 DID THIS? THAT KIND OF THING?

3 A I GAVE THEM A COUPLE OF NAMES OF PEOPLE THAT I KNEW IN THE AREA
4 THAT WAS -- THAT HAD REPUTATIONS.

5 Q AND THAT WAS THE ONLY REASON WHY YOU SUSPECTED THOSE NAMES.
6 CORRECT?

7 A RIGHT.

8 Q AND DO YOU KNOW THE DEFENDANT, DAVID DALE SHERIFF?

9 A I DO NOT.

10 Q HAVE YOU EVER MET OR SPOKEN TO HIM BEFORE?

11 A I HAVE NOT.

12 Q HAVE YOU EVER HAD THE DEFENDANT IN YOUR HOME?

13 A NO.

14 Q HAVE YOU EVER GIVEN THE DEFENDANT PERMISSION TO BE IN YOUR HOME
15 WHEN YOU ARE NOT THERE?

16 A NO.

17 Q DID YOU ALLOW ANYONE ELSE TO GIVE THE DEFENDANT PERMISSION TO
18 COME INTO YOUR HOME?

19 A NO.

20 Q DID YOU EVER GIVE THE DEFENDANT PERMISSION TO TAKE ITEMS FROM
21 YOUR HOME?

22 A NO.

23 MR. BRADLEY: PERMISSION TO APPROACH THE WITNESS, YOUR HONOR?

24 THE COURT: YES, SIR.

25 Q MISTER BLUME, AT THIS TIME I WILL BE SHOWING YOU STATE'S EXHIBITS #1

1 THROUGH #12. CAN YOU TAKE A LOOK AT THESE AND SEE IF YOU
2 RECOGNIZE THEM?

3 A OKAY. THAT'S MY HOUSE, THE FRONT OF MY HOUSE, THAT IS THE BACK
4 DECK WHERE THE HOUSE WAS ENTERED FROM. THAT'S THE BACK DOOR
5 WHERE THE GLASS IS KNOCKED IN. THAT'S A METAL LADDER THAT WAS
6 USED TO KNOCK THE GLASS IN. IT'S LAYING IN THE FLOOR OF MY DINING
7 ROOM. THE SAME STEP LADDER AND THE BACK DECK. THAT'S THE BLOOD
8 ON THE KEYPAD. BLOOD ON THE DOOR. MATTRESS THROWN SIDEWAYS ON
9 MY BED. THAT'S WHERE MY MONEY WAS LAYING AT. THAT'S STUFF THROWN
10 ACROSS MY BEDROOM FLOOR. THAT'S THE SAFE WHERE THE STUFF WAS ON
11 TOP OF. AND THAT'S A PICTURE OF THE SAME ROOM.

12 Q AND DO THESE PICTURES THAT YOU JUST IDENTIFIED, DO THEY ACCURATELY
13 DEPICT THE SCENE AS YOU SAW IT THAT DAY WHEN YOU RETURNED HOME
14 FROM WORK?

15 A IT DOES.

16 Q DO THEY APPEAR TO BE ALTERED OR EDITED IN ANY WAY?

17 A NO.

18 MR. BRADLEY: YOUR HONOR, AT THIS TIME THE STATE WOULD ASK EXHIBITS
19 #1 THROUGH #12 BE ADMITTED INTO EVIDENCE.

20 THE COURT: ANY OBJECTIONS?

21 MR. TAVERNIER: NO OBJECTIONS, YOUR HONOR.

22 (WHEREUPON, TWELVE PHOTOGRAPHS ARE ENTERED INTO EVIDENCE AS
23 STATE'S EXHIBITS #1 - #12, WITHOUT OBJECTION)

24 MR. BRADLEY: PERMISSION TO PUBLISH THESE TO THE JURY, YOUR HONOR?

25 THE COURT: YES, IF YOU WOULD, PUBLISH THEM BY EXHIBIT NUMBER.

DIRECT EXAMINATION OF JOHN BLUME BY MR. BRADLEY

1 MR. BRADLEY: YES, SIR, YOUR HONOR.

2 Q MISTER BLUME, IF YOU WILL STEP DOWN. ALL RIGHT, MISTER BLUME, AS I
3 PUT THESE UP ON THE OVERHEAD, I WILL ASK YOU TO DESCRIBE TO THE
4 JURY WHAT I AM SHOWING THEM JUST AS YOU DID WHEN YOU CALLED THEM
5 OUT. (THE WITNESS IS STANDING IN FRONT OF THE JURY AS MISTER
6 BRADLEY IS PLACING A PHOTOGRAPH ON THE PROJECTOR) I BELIEVE WE
7 ARE GOING TO SHOW THE JURY ON THIS SCREEN SO EVERYBODY CAN SEE
8 IT. (THE LARGER SCREEN WOULD NOT COME UP)

9 THE COURT: CAN EVERYBODY SEE THIS SMALLER MONITOR OKAY? (JURORS
10 NOD) YES, SIR. THEY CAN.

11 MR. BRADLEY: THEY CAN? THANK YOU, YOUR HONOR.

12 Q ALL RIGHT, MISTER BLUME, THIS IS EXHIBIT #1. WILL YOU PLEASE TELL THE
13 JURY WHAT WE ARE LOOKING AT.

14 A THAT'S THE FRONT OF MY HOUSE. THE FRONT DOOR, RIGHT THERE.
15 ACTUALLY HAD A FOOTPRINT ON IT WHERE SOMEBODY HAD TRIED TO KICK IT
16 IN.

17 Q EXHIBIT #2.

18 A THAT'S MY BACK DECK GOING TO MY BACK DOOR THAT THE GLASS WAS
19 KNOCKED IN ON.

20 Q EXHIBIT #3.

21 A THAT'S SHOWING THE DOORWAY ON THE BACK DECK.

22 THE COURT: I AM GOING TO ASK YOU TO SPEAK UP A LITTLE BIT. CAN Y'ALL
23 HEAR HIM OKAY? OKAY. (JURY PANEL NODS) WHAT WAS #3, AGAIN?

24 A IT SHOWS THE DOORWAY GOING ONTO MY BACK DECK.

25 Q EXHIBIT #4.

1 A THAT'S A METAL LADDER RIGHT THERE THAT WAS LAYING ON THE GROUND
2 UP UNDER THE DECK THAT WAS USED TO KNOCK THE GLASS OUT OF THE
3 DOOR RIGHT THERE. HE JUST LEFT IT LAYING IN MY DINING ROOM.

4 Q EXHIBIT #5.

5 A THIS IS THE SAME PICTURE THAT SHOWS THE GLASS.

6 Q EXHIBIT #6.

7 A THAT'S MY ALARM SYSTEM SHOWING THE BLOOD ON THE KEYPAD.

8 Q EXHIBIT #7.

9 A BLOOD ON THE DOORWAY.

10 Q EXHIBIT #8.

11 A THAT'S THE BED IN MY BEDROOM WITH THE MATTRESS TURNED ON IT.

12 Q EXHIBIT #9.

13 A THE MONEY WAS LAYING RIGHT HERE ON MY DRESSER.

14 Q EXHIBIT #10.

15 A THIS IS A WICKER BASKET THAT WAS ON MY OTHER DRESSER THAT HAD A
16 BUNCH OF CHANGE AND STUFF. YOU CAN SEE THE CHANGE LAYING ON THE
17 FLOOR.

18 Q EXHIBIT #11.

19 A THAT'S A SAFE IN ANOTHER ROOM IN MY HOUSE WHERE THE ITEMS WERE
20 SITTING ON TOP OF THE SAFE RIGHT HERE. THERE WAS ALSO BLOOD ON
21 THE HANDLE OF MY SAFE.

22 Q AND WHAT ITEMS WERE ON TOP OF THE SAFE THAT DAY?

23 A A PAIR OF BINOCULARS AND A RANGE FINDER.

24 Q AND FINALLY, EXHIBIT #12.

25 A THAT'S JUST SHOWING THE SAME ROOM AND THE SAFE IS ON THE RIGHT,

CROSS EXAMINATION OF JOHN BLUME BY MR. TAVERNIER

1 RIGHT THERE.

2 Q I BELIEVE THAT'S ALL, MISTER BLUME. YOU MAY RETURN TO YOUR SEAT.

3 (THE WITNESS RETURNS TO THE WITNESS STAND)

4 MR. BRADLEY: NO FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

5 THE COURT: MISTER TAVERNIER?

6 MR. TAVERNIER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.

7 CROSS EXAMINATION OF JOHN BLUME BY MISTER TAVERNIER

8 Q MISTER BLUME, DO YOU HAVE ANY TYPE OF HOUSEKEEPING SERVICE?

9 A NO.

10 Q YOU HANDLE ALL THE VACUUMING AND CLEANING YOURSELF?

11 A I DO.

12 Q HOW OFTEN WOULD YOU SAY THAT YOU TENDED TO THOSE DUTIES?

13 A IT DEPENDS ON IF IT'S DIRTY. YOU KNOW, ONCE A WEEK I VACUUM AND,
14 YOU KNOW, CLEAN AND DUST. I MEAN, I LIVE THERE SO WHENEVER IT NEEDS
15 TO BE DONE.

16 Q THAT'S ALL I HAVE.

17 MR. TAVERNIER: THANK YOU, YOUR HONOR.

18 THE COURT: RE-DIRECT?

19 MR. BRADLEY: I HAVE NOTHING FURTHER, YOUR HONOR. MAY THIS WITNESS
20 BE EXCUSED?

21 THE COURT: YES, SIR. YOU MAY. ANY OBJECTIONS?

22 MR. TAVERNIER: NONE, SIR.

23 THE COURT: THANK YOU, MISTER BLUME. ALL RIGHT, LADIES AND

24 GENTLEMEN OF THE JURY, THANK YOU FOR YOUR PATIENCE. NORMALLY, WE

25 BREAK A LITTLE BIT EARLIER, EXPONENTIALLY EARLIER, BUT WE HAD SOME

1 SCHEDULING ISSUES WE HAD TO DEAL WITH TODAY. BUT I AM GOING TO BREAK
2 FOR LUNCH AT THIS TIME. I'M GOING TO ASK THAT YOU BE BACK IN YOUR JURY
3 ROOM NO LATER THAN 3:30 AND WE WILL CONTINUE ON WITH THE TRIAL, BUT
4 RIGHT NOW, I'M GOING TO REMIND YOU NOT TO DISCUSS THIS CASE AMONGST
5 YOURSELVES OR ANYBODY ELSE, BUT YOU ARE FREE TO GO OUT ON YOUR OWN
6 FOR A WHILE, FOR ABOUT A HOUR AND FIFTEEN MINUTES. WE WILL RESUME AT
7 3:30. THANK YOU VERY MUCH.

8 (JURY OUT AT 2:13 P.M.)

9 THE COURT: ANY ADDITIONS OR EXCEPTIONS FROM THE STATE?

10 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

11 THE COURT: MISTER TAVERNIER?

12 MR. TAVERNIER: NO, YOUR HONOR.

13 THE COURT: ALL RIGHT, WE ARE IN RECESS UNTIL 3:30, AND THANK YOU
14 GUYS FOR BEARING WITH US ON THAT.

15 (LUNCH RECESS)

16 MR. BRADLEY: YOUR HONOR, I DON'T KNOW IF IT'S GOING TO BE AN ISSUE
17 BUT SHOULD IT COME TO IT, I HAVE SEVERAL OF MY WITNESSES ALREADY HERE
18 FROM COLUMBIA AND TO PREVENT THEM HAVING TO COME BACK TOMORROW, IF IT
19 GETS CLOSE TO 5:00 WITH JUST A FEW OF THEM LEFT, WOULD IT BE POSSIBLE TO
20 GO PAST 5:00 TO GET THEM DONE SO THEY WON'T HAVE TO COME BACK
21 TOMORROW, JUST TO PREVENT THEM HAVING TO MAKE THE TRIP TWICE FROM
22 COLUMBIA, IF POSSIBLE? I WOULD APPRECIATE THAT.

23 THE COURT: WELL, LET'S JUST SEE WHERE WE ARE. ALL RIGHT?

24 MR. TAVERNIER: WITH ALL THE BEST RESOURCES OF THE STATE, YOUR
25 HONOR, I'VE GOT NO OBJECTION.

1 THE COURT: ALL RIGHT. I UNDERSTAND. THAT'S A REASONABLE THING TO
2 DO.

3 MR. TAVERNIER: AND QUITE FRANKLY, YOUR HONOR, I HAVE ALREADY
4 INFORMED MISTER BRADLEY OF THIS, THAT WITH THE EXCEPTION OF MS. STANLEY
5 WHO I'VE ALREADY INFORMED THE COURT I WISH TO REVIEW *IN CAMERA*, MOST OF
6 MY QUESTIONS, IF QUESTIONING ON CROSS, IS GOING TO BE LIMITED TO MAYBE
7 ONE QUESTION, SO WE SHOULD BE THROUGH THESE PRETTY QUICK.

8 THE COURT: OKAY.

9 MR. BRADLEY: YES, I DON'T THINK THAT'S GOING TO BE A PROBLEM. I THINK
10 THAT WE CAN BE DONE BY 5:00.

11 THE COURT: YEAH, THAT SHOULDN'T BE A PROBLEM. JUST REMIND ME,
12 PLEASE.

13 MR. BRADLEY: I WILL, YOUR HONOR.

14 THE COURT: IS ALL THE JURY BACK?

15 (JURY IN AT 3:35 P.M.)

16 THE COURT: MISTER CLAREY, DID YOU AND THE JURY HAVE, ALTHOUGH LATE,
17 DID YOU HAVE SUFFICIENT TIME TO HAVE A GOOD LUNCH?

18 MR. CLAREY: I BELIEVE SO. YES, YOUR HONOR.

19 THE COURT: GOOD. GOOD. IS THE STATE READY TO PROCEED WITH ITS
20 NEXT WITNESS?

21 MR. BRADLEY: YES, YOUR HONOR. MAY IT PLEASE THE COURT. THE STATE
22 CALLS CORPORAL MARK DAVIS TO THE STAND.

23 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, CORPORAL MARK
24 DAVIS TESTIFIED AS FOLLOWS:)

25 CLERK OF COURT: THANK YOU. HAVE A SEAT IN THE WITNESS BOX. PLEASE

DIRECT EXAMINATION OF CORPORAL MARK DAVIS BY MR. BRADLEY

1 STATE YOUR FULL NAME AND SPELL YOUR LAST.

2 CORPORAL DAVIS: IT'S MARK DAVIS. D-A-V-I-S.

3 DIRECT EXAMINATION OF CORPORAL MARK DAVIS BY MISTER BRADLEY

4 Q GOOD AFTERNOON, CORPORAL DAVIS. WHERE ARE YOU CURRENTLY
5 EMPLOYED?

6 A THE ANDERSON COUNTY SHERIFF'S OFFICE.

7 Q AND HOW LONG HAVE YOU BEEN THERE?

8 A I HAVE BEEN THERE FIVE YEARS.

9 Q AND WHAT IS YOUR CURRENT POSITION?

10 A CORPORAL SUPERVISOR. I'VE BEEN RE-ASSIGNED TO THE DETENTION
11 CENTER SINCE THIS CASE TOOK PLACE.

12 Q WHAT POSITION DID YOU HAVE AT THAT TIME?

13 A DEPUTY SHERIFF ON THE ROAD PATROL.

14 Q WHAT WERE YOUR DUTIES?

15 A ANSWERING CALLS, BASICALLY.

16 Q OKAY. DRAWING YOUR ATTENTION TO AUGUST 19, 2005, WERE YOU
17 WORKING IN THAT CAPACITY AS DEPUTY SHERIFF?

18 A YES, SIR.

19 Q DID YOU HAVE AN OCCASION TO RESPOND TO
20 HONEA PATH?

21 A YES, SIR.

22 Q AND WHAT WAS THAT REASON?

23 A A BURGLARY CALL.

24 Q OKAY. AND IF YOU COULD, WOULD YOU TELL US WHAT YOU DID WHEN YOU
25 ARRIVED?

DIRECT EXAMINATION OF CORPORAL MARK DAVIS BY MR. BRADLEY

1 A AS THE FIRST RESPONDING OFFICER, OUR OBJECTIVE IS TO CLEAR THE
2 SCENE TO MAKE SURE THE SUSPECTS AREN'T IN THE HOUSE, BASICALLY,
3 FOR THE SAFETY AND SECURITY OF FORENSICS AND INVESTIGATIONS WHEN
4 THEY GET THERE, THAT THEY DON'T HAVE TO WORRY ABOUT THAT.
5 BASICALLY, OUR NUMBER ONE GOAL IS TO SECURE THE SCENE.

6 Q OKAY. AND DID YOU DO THAT WHEN YOU ARRIVED?

7 A YES, SIR.

8 Q AND DID YOU DO ANYTHING ELSE WHEN YOU ARRIVED?

9 A NO, SIR. JUST WALKED THROUGH THE RESIDENCE WITH THE VICTIM. I WAS
10 IN THE RESIDENCE MAYBE FOUR OR FIVE MINUTES, WALKED OUT OF THE
11 RESIDENCE TO WAIT FOR INVESTIGATIONS AND FORENSICS.

12 Q AND DID INVESTIGATIONS AND FORENSICS ARRIVE?

13 A YES, SIR.

14 Q AND YOU DID HAVE CONTACT WITH THE VICTIM?

15 A YES, SIR. HE WAS THERE WHEN I GOT THERE.

16 Q COULD YOU DESCRIBE THE SCENE WHEN YOU ARRIVED? WHAT IT LOOKED
17 LIKE?

18 A YES, SIR. WE WENT IN. I BELIEVE WE WENT IN THE FRONT DOOR. THE FIRST
19 THING HE SHOWED ME WAS THE BLOOD ON THE KEYPAD. WE WENT --
20 TOURED THE ENTIRE RESIDENCE OF THE HOUSE LOOKING IN ALL THE
21 CLOSETS AND ALL THAT TO MAKE SURE THERE WAS NO SUSPECTS STILL
22 INSIDE THE RESIDENCE. HE DID POINT OUT A FEW THINGS TO ME, BUT DUE
23 TO THAT'S NOT WHAT I'M THERE FOR, I DIDN'T PAY A LOT OF ATTENTION TO
24 WHAT HE WAS SHOWING ME. LIKE I SAID, MY MAIN GOAL IS TO MAKE SURE
25 THERE 'S NOBODY IN THE HOUSE THAT IS GOING TO HURT ANY

1 INVESTIGATORS WHEN THEY GET THERE. THE HOUSE WAS IN DISARRAY IN
2 CERTAIN ROOMS. A MATTRESS WAS FLIPPED OFF THE BED. CERTAIN ITEMS
3 LAYING ON THE FLOOR. WE CLEARED THE HOUSE AND AFTER WE CLEARED
4 THE HOUSE WE EXITED THE HOUSE AND WAITED FOR FORENSICS.

5 Q DID YOU COLLECT ANY EVIDENCE AT THAT TIME?

6 A NO, SIR. NOT AT ALL.

7 Q OKAY. DID YOU ATTEMPT TO LOCATE ANY WITNESSES?

8 A NO, SIR.

9 Q OKAY. AND WHY NOT?

10 A THAT IS INVESTIGATIONS.

11 MR. BRADLEY: PERMISSION TO APPROACH THE WITNESS, YOUR HONOR?

12 THE COURT: YES, SIR.

13 Q I WANT TO SHOW YOU WHAT HAS BEEN ADMITTED INTO EVIDENCE STATE'S
14 EXHIBITS #1 THROUGH #12. WOULD YOU TAKE A LOOK AT THOSE AND SEE IF
15 YOU RECOGNIZE THEM?

16 A YES, SIR. THE FIRST PICTURE IS THE FRONT OF THE RESIDENCE. THE REAR,
17 OR THE SECOND PICTURE IS THE REAR OF THE RESIDENCE SHOWING THE
18 DECK. THE THIRD PICTURE IS, AGAIN, ANOTHER PICTURE OF THE DECK AND
19 THE BACK DOOR WHERE THE SUSPECT GAINED ENTRANCE INTO THE
20 RESIDENCE. THE FOURTH PICTURE IS A PICTURE OF A METAL CAMOUFLAGE-
21 PAINTED LADDER THAT THE SUSPECT USED TO BREAK THE WINDOW OUT OF
22 THE GLASS TO THE BACK DOOR TO GAIN ENTRY INTO THE RESIDENCE. THE
23 FIFTH PICTURE IS, AGAIN, A PICTURE OF THE BACK DOOR AND ALSO SHOWS
24 THE LADDER. THE SIXTH PICTURE IS A PICTURE OF THE KEYPAD AND I DO
25 REMEMBER THIS IS ONE THING -- THE FIRST THING HE POINTED OUT, THE

CROSS EXAMINATION OF CORPORAL MARK DAVIS BY MR. TAVERNIER

1 VICTIM POINTED OUT, WAS THIS KEYPAD AND THIS IS A PICTURE OF EXACTLY
2 HOW IT LOOKED WHEN I GOT THERE. THE NEXT PICTURE IS A PICTURE OF
3 BLOOD SPLATTER. THE NEXT PICTURE IS A PICTURE OF THE BED AND THIS
4 WAS THE WAY THE BED LOOKED AND THE BEDROOM LOOKED WHEN I GOT
5 THERE AND WE, YOU KNOW, I WALKED AROUND TOURED THE HOUSE WITH
6 THE VICTIM. THE PICTURE OF A NIGHT STAND WHICH WAS IN FRONT OF THE
7 BED AND THE T.V. WAS PUSHED OFF TO THE SIDE AND THAT IS THE WAY IT
8 LOOKED. THE NEXT PICTURE IS JUST SOME ITEMS THAT WERE THROWN ON
9 THE FLOOR. THE NEXT PICTURE WAS THE SPARE ROOM, OR GUEST
10 BEDROOM, THAT THE SAFE WAS IN AND A PICTURE OF THE EXACT SAME
11 ROOM. AND THAT IS EXACTLY HOW THE HOUSE LOOKED WHEN I GOT THERE.

12 Q OKAY, YOU ANSWERED MY NEXT QUESTION. I WAS GOING TO ASK YOU IF
13 THAT'S HOW YOU REMEMBERED THE HOUSE LOOKING.

14 A YES, SIR. EXACTLY.

15 Q THANK YOU.

16 MR. BRADLEY: NO FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

17 THE COURT: CROSS EXAMINATION?

18 MR. TAVERNIER: JUST A COUPLE.

19 CROSS EXAMINATION OF CORPORAL MARK DAVIS BY MISTER TAVERNIER

20 Q CORPORAL DAVIS.

21 A YES, SIR.

22 Q I NOTICED ON YOUR INCIDENT REPORT THAT IT WAS ENTERED ON AUGUST
23 20TH OF '05. CORRECT?

24 A AUGUST 19, 2005.

25 Q (MR. TAVERNIER SHOWS THE WITNESS A DOCUMENT) THIS REPORT IS DATED

1 AUGUST 20TH OF '05. CORRECT?

2 A THAT WAS THE DATE IT WAS CLEARED BY MY SUPERVISOR, SERGEANT
3 HARPER. THAT REPORT WAS DONE BY ME ON AUGUST 19 --

4 Q THAT IS THE INCIDENT DATE?

5 A UH-HUH.

6 Q BUT YOUR REPORT WAS SET UP --

7 A THAT'S THE DATE THAT IT WAS CLEARED BY MY SUPERVISOR. YES, SIR.

8 Q THE DEFENDANT WASN'T ARRESTED UNTIL 2009. CORRECT?

9 A YES, SIR. I BELIEVE IT WAS 2009. I DON'T HAVE THE EXACT DATE.

10 Q OKAY. SO, A COMPUTER AUTOMATICALLY UPDATES YOUR INCIDENT
11 REPORT?

12 A NO, SIR.

13 Q IT DOESN'T?

14 A NO.

15 Q THEN HOW WAS IT THAT MISTER SHERIFF IS ENTERED AS A SUSPECT ON A
16 REPORT THAT WAS ENTERED IN 2005 AND HE WASN'T ARRESTED UNTIL 2009?

17 A I WOULD NOT HAVE DONE THAT REPORT, SIR. THE ONLY REPORT I DID WAS
18 THE INITIAL FIRST REPORT. ANYTHING AFTER THAT WOULD BE
19 INVESTIGATIONS.

20 Q SO, THEY CAN COME IN AND MODIFY AN INCIDENT REPORT?

21 A THEY CAN ADD TO AN INCIDENT REPORT.

22 Q SO, THE INCIDENT REPORT THAT IS FILED IS NOT THE WAY IT WAS IN 2005
23 WHEN YOU SUBMITTED IT?

24 A NO, SIR. AS FAR AS --

25 Q DID YOU HAVE A SUSPECT LISTED ON THE INCIDENT REPORT YOU FILED

CROSS EXAMINATION OF CORPORAL MARK DAVIS BY MR. TAVERNIER

1 IN 2005?

2 A NO, SIR. I DID NOT.

3 Q WHEN -- ONE OTHER THING. THE PHOTOGRAPHS.

4 A UH-HUH.

5 Q I AM GOING TO KEEP THAT. (REFERRING TO DOCUMENT) YOU CAN'T VERY

6 WELL TELL, BUT THE BLOOD THAT'S ON THE KEYPAD, WAS THERE ANY

7 OTHER DIRT OR GRIME ON THE KEYPAD THAT WAS PRESENT? DO YOU

8 RECALL THAT?

9 A SIR, NO. I DO NOT. THE ONLY THING I RECALL AND LIKE I SAID, THE VICTIM

10 SHOWED ME THE KEYPAD AND IT WAS VERY BRIEF. WE DID NOT LOOK AT IT,

11 BUT AS WE WALKED BY, HE SAID, "HERE'S THE KEYPAD AND HERE'S THE

12 BLOOD ON THE KEYPAD," AND THAT WAS IT.

13 MR. TAVERNIER: NO FURTHER QUESTIONS.

14 THE COURT: RE-DIRECT?

15 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

16 THE COURT: MAY THIS WITNESS BE EXCUSED?

17 MR. BRADLEY: YES SIR, YOUR HONOR.

18 THE COURT: THANK YOU, SIR.

19 MR BRADLEY: YOUR HONOR, THE STATE CALLS INVESTIGATOR MARK COYLE

20 TO THE STAND.

21 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, INVESTIGATOR MARK

22 COYLE TESTIFIED AS FOLLOWS:)

23 CLERK OF COURT: PLEASE HAVE A SEAT IN THE WITNESS BOX. PLEASE

24 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

25 INVESTIGATOR COYLE: MY NAME IS MARK LEE COYLE. C-O-Y-L-E.

DIRECT EXAMINATION OF INVESTIGATOR MARK COYLE BY MISTER BRADLEY

Q GOOD AFTERNOON, INVESTIGATOR COYLE. WHERE ARE YOU CURRENTLY EMPLOYED?

A THE ANDERSON COUNTY SHERIFF'S OFFICE.

Q IN WHAT DEPARTMENT?

A CRIME SCENE AND FORENSICS.

Q AND HOW LONG HAVE YOU BEEN THERE?

A ABOUT THIRTEEN YEARS, TWELVE OR THIRTEEN.

Q WHAT ARE YOUR DUTIES AS A CRIME SCENE INVESTIGATOR?

A PHOTOGRAPH, DOCUMENT, PRESERVE, COLLECT EVIDENCE.

Q AND WERE YOU WORKING IN THAT CAPACITY ON AUGUST 19, 2005?

A YES. I WAS.

Q DID YOU HAVE REASON TO RESPOND TO HONEA PATH?

A I DID.

Q AND WHAT WAS THAT REASON?

A I WAS CALLED BY DISPATCH AND THEY TOLD ME THEY HAD A BURGLARY ON SCENE AND NEEDED INVESTIGATIONS OUT TO PROCESS.

Q DID YOU RESPOND?

A I DID.

Q WAS ANYONE WITH YOU?

A INVESTIGATOR KEN BLAKELY WAS ASSISTING ME ON THAT CALL.

Q AND WAS HE DOING THE SAME ROLE AS YOU, CRIME SCENE INVESTIGATOR?

A PRETTY MUCH. YES.

Q SO, YOU BOTH WORKED THE SCENE?

A YES.

DIRECT EXAMINATION OF INVESTIGATOR MARK COYLE BY MR. BRADLEY

1 Q AND COULD YOU PLEASE TELL US WHAT YOU DID WHEN YOU FIRST ARRIVED
2 ON THE SCENE?

3 A I BELIEVE THE VERY FIRST THING I DID, WE ALWAYS -- WE BREAK OUT A
4 CAMERA AND WE START TAKING PHOTOGRAPHS OF THE SCENE IN THE
5 ORIGINAL POSITION, AS ORIGINAL AS WHEN WE FIND IT.

6 Q OKAY. AND WERE YOU THE ONE WHO TOOK THE PHOTOGRAPHS OF STATE'S
7 EXHIBITS #1 THROUGH #12?

8 A YES, SIR.

9 Q WOULD YOU TAKE A LOOK AT THOSE AND MAKE SURE THOSE ARE YOUR
10 PHOTOGRAPHS?. (HANDS THE DOCUMENTS TO THE WITNESS)

11 A YES, SIR. THEY ARE.

12 Q IS THAT THE WAY YOU REMEMBER THE SCENE LOOKING THAT DAY?

13 A YES, SIR. (HANDS DOCUMENTS BACK TO THE SOLICITOR)

14 Q THANK YOU. DID YOU COLLECT ANY EVIDENCE IN THIS CASE?

15 A I DID.

16 Q WHAT EVIDENCE DID YOU COLLECT?

17 A I COLLECTED A PARTIAL SHOE PRINT FROM THE DOOR THAT HAD VERY
18 LITTLE DETAIL IN IT. WE WERE HOPING TO GET MORE THERE BUT THERE
19 WAS JUST NOT ENOUGH THERE TO USE AND I COLLECTED SOME BLOOD
20 SAMPLES FROM INSIDE THE HOUSE.

21 Q DID YOUR PARTNER COLLECT ANYTHING?

22 A HE DID.

23 Q WHAT DID HE COLLECT?

24 A SOME PARTIAL FINGERPRINTS FROM THE POINT OF ENTRY, I BELIEVE.

25 Q AND WHERE WOULD THAT HAVE BEEN?

1 A ON THE BACK DOOR AT THE WINDOW AREA THAT WAS BROKEN OUT. I

2 BELIEVE HE GOT THEM OFF THE BLIND THAT WAS LOCATED BETWEEN THE

3 GLASS WINDOW THAT WAS KNOCKED OUT.

4 Q COULD YOU EXPLAIN THAT A LITTLE FURTHER, BETWEEN THE GLASS?

5 A IF YOU HAVE SEEN THE WINDOWS, A LOT OF THEM THESE DAYS HAVE THE

6 BLINDS ACTUALLY IN BETWEEN THE GLASS SO -- THEY -- AND I KNOW YOU

7 CAN BUY THEM THAT WAY. A LOT OF PEOPLE HAVE THEM INSTALLED, BUT

8 IT'S JUST A PROTECTION THING. IT'S A LOT EASIER TO KEEP CLEAN AND YOU

9 DON'T HAVE TO DUST THEM. THEY DON'T SWING OUT AT THE DOOR, THINGS

10 LIKE THAT.

11 Q OKAY. AND YOU SAID YOU COLLECTED SOME BLOOD EVIDENCE ON SOME

12 SWABS, I GUESS?

13 A YES. THERE WERE TWO LIFTS AT EACH SITE. SO, THERE WOULD BE TWO

14 BOXES WITH TWO SWABS IN EACH BOX.

15 Q COULD YOU EXPLAIN THE PROCESS OF COLLECTING THAT?

16 A WE USE A STERILE SWAB. WE -- I JUST MOISTEN THE TIP OF IT WITH SOME

17 STERILE SALINE SOLUTION ENOUGH TO RE-HYDRATE THE BLOOD AND WE

18 JUST SWIPE IT ON IT AND IT WILL COLLECT A LITTLE BIT OF THE SAMPLE.

19 Q AND WOULD YOU PLEASE TELL THE JURY, AGAIN, WHERE YOU FOUND THIS

20 BLOOD THAT YOU COLLECTED THAT DAY?

21 A I COLLECTED SOME OFF THE KEYPAD, THE ALARM KEYPAD AND THE OTHER

22 WAS THAT BIG PICTURE YOU SEE OF THE SMEAR ON THE -- AND THAT WAS

23 ON THE DOOR OF THE SPARE BEDROOM WHERE THE GUN SAFE WAS.

24 Q AND WHAT ABOUT THE FOOTWEAR IMPRESSION ON THE FRONT DOOR? DID

25 ANYTHING COME OF THAT?

DIRECT EXAMINATION OF INVESTIGATOR MARK COYLE BY MR. BRADLEY

1 A NO, SIR. YOU COULD TELL THAT IT WAS A FOOTPRINT AND YOU COULD TELL
2 IT WAS KICKED, BUT IT JUST WAS NOT ENOUGH OF ANY KIND OF RIDGE
3 DETAIL OR ANY KIND OF DETAIL TO IDENTIFY EVEN THE SHOE SIZE. IT WAS
4 ABOUT HALF A PRINT.

5 Q AND YOU REFERRED TO THE FINGERPRINT, THE PARTIAL FINGERPRINT THAT
6 YOUR PARTNER COLLECTED THAT DAY. WAS THAT EVER TESTED IN ANY
7 WAY?

8 A IT WAS SUBMITTED TO OUR A-F-I-S DEPARTMENT AND IT WAS RUN THROUGH
9 THE COMPUTER AND IT HAS BEEN RUN SEVERAL TIMES AND IT WAS NEVER
10 HIT.

11 Q SO IT NEVER MATCHED ANYTHING?

12 A NO.

13 Q IT DIDN'T MATCH THE DEFENDANT?

14 A NO.

15 Q AS FAR AS THE SWABS GO, AFTER YOU COLLECTED THEM, WHAT DID YOU DO
16 WITH THEM?

17 A TOOK THEM TO THE SHERIFF'S OFFICE AND ENTERED THEM INTO EVIDENCE.

18 Q AND COULD YOU EXPLAIN HOW YOU DO THAT?

19 A WELL, I PACKAGED THEM IN A SMALL CARDBOARD CONTAINER. BASICALLY,
20 THE TWO LIPS FOLD IN AND YOU CAN PUT THE SWABS IN IT TO KEEP IT
21 SECURE AND IT GIVES IT TIME TO DRY. WE ENTERED IT INTO EVIDENCE AND
22 MY INFORMATION INTO THE COMPUTER. I SEAL IT UP AND PUT IT IN ANOTHER
23 CONTAINER WITH EVIDENCE TAPE AND PUT THAT INTO EVIDENCE INTAKE
24 FOR OUR EVIDENCE TECH.

25 Q IS THIS A SECURE LOCATION THAT YOU PUT IT IN?

1 A OH, YEAH.

2 Q CAN YOU DESCRIBE THE STEPS OF SECURITY THAT YOU ARE AWARE OF?

3 A THE -- OUR BUILDING HAS A KEYPAD TO GET IN OR A NUMBER PAD. THERE IS
4 VERY FEW PEOPLE THAT KNOW THAT NUMBER PAD AND THE FRONT DOOR IS
5 ALSO ALARMED. AND ALSO, ONCE WE PUT IT INTO EVIDENCE INTAKE, WHICH
6 OUR GROUP JUST PRETTY MUCH GOES INTO, ONCE THE EVIDENCE
7 TECHNICIAN GETS IT HE PUTS IT IN EVIDENCE AND ONLY HIM AND HIS PEOPLE
8 HAVE ACCESS TO IT.

9 MR. BRADLEY: PERMISSION TO APPROACH THE WITNESS?

10 THE COURT: YES, SIR.

11 Q IN REGARDS TO THE SWABS YOU COLLECTED THAT DAY, I'M SHOWING YOU
12 WHAT HAS BEEN MARKED STATE'S EXHIBIT #15. COULD YOU TAKE A LOOK AT
13 THAT AND SEE IF YOU RECOGNIZE IT?

14 A IT LOOKS LIKE MY -- DO YOU WANT ME TO OPEN IT?

15 Q NOT AT THIS TIME.

16 A OKAY. I MEAN, THAT'S MY CASE NUMBER AND IT LOOKS LIKE THE ENVELOPE
17 I USED.

18 Q DOES THIS -- COURT'S INDULGENCE. ALL RIGHT, AS FAR AS EXHIBIT #15
19 GOES, ARE THESE THE SWABS THAT YOU COLLECTED THAT DAY AND PLACED
20 INTO EVIDENCE?

21 A I WOULD LIKE TO SEE THE BOX THEMSELVES, IF I COULD.

22 MR. BRADLEY: WITH COURT'S PERMISSION, YOUR HONOR?

23 THE COURT: YES, SIR.

24 (SOLICITOR HANDS THE PACKAGE TO THE WITNESS AND HE OPENS IT)

25 A YES SIR, THAT IS THE BOXES AND THAT IS MY HANDWRITING ON THEM.

CROSS EXAMINATION OF INVESTIGATOR MARK COYLE BY MR. TAVERNIER

1 Q OKAY. AND ONCE YOU PLACED IT IN THAT BOX, YOU SAY YOU PLACED IT IN
2 THE EVIDENCE STORAGE AT THE SHERIFF'S OFFICE AND THAT IS A SECURED
3 LOCATION.

4 A YES, SIR. IT IS.

5 Q OKAY. AND DOES IT -- IT DOESN'T APPEAR TO HAVE BEEN TAMPERED WITH IN
6 ANY WAY DOES IT, FROM WHEN YOU COLLECTED IT?

7 A NO, SIR.

8 Q OKAY. DID YOU HAVE ANY OTHER INVOLVEMENT IN THIS CASE AFTER YOU
9 TURNED THE EVIDENCE OVER TO THE SECURITY SERGEANT?

10 A I DID NOT.

11 MR BRADLEY: NOTHING FURTHER, YOUR HONOR.

12 THE COURT: CROSS EXAMINATION?

13 MR. TAVERNIER: JUST A COUPLE.

14 CROSS EXAMINATION OF INVESTIGATOR MIKE COYLE BY MISTER TAVERNIER

15 Q INVESTIGATOR COYLE, THE VICTIM STATED THAT THERE WAS BLOOD IN
16 SEVERAL LOCATIONS IN THE HOUSE. IS THAT CORRECT?

17 A HE DID.

18 Q BUT WE ONLY HAVE TWO SAMPLES. CORRECT?

19 A YES, SIR.

20 Q OKAY.. NOW, WHEN YOU TOOK THE SAMPLE WITH THE SWAB OFF THE
21 KEYPAD AND YOU USED THE SALINE SOLUTION IN ORDER TO MOISTEN THE
22 BLOOD IN ORDER TO LIFT THAT SAMPLE, THAT WOULD ALSO LIFT ANY
23 RESIDUE FROM THE VICTIM'S SWEAT OR SKIN OR WHATEVER FROM
24 CONTINUALLY TOUCHING THE KEYPAD. WOULD IT NOT?

25 A IT COULD. YES.

1 Q AND SO YOU COULD -- IT WOULD BE MORE THAN LIKELY THAT YOU WOULD
2 PROBABLY HAVE A DUAL SAMPLE OR TWO DIFFERENT DNAs IN A SAMPLE.
3 CORRECT?

4 A YOU COULD. YES.

5 Q VERY EASILY.

6 A YES.

7 Q THAT'S ALL I HAVE. THANK YOU.

8 THE COURT: ANY RE-DIRECT?

9 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

10 THE COURT: MAY THIS WITNESS BE EXCUSED?

11 MR. BRADLEY: YES, SIR.

12 THE COURT: THANK YOU, SIR.

13 MR. BRADLEY: THANK YOU, YOUR HONOR. YOUR HONOR, THE STATE CALLS
14 TROOPER FRANK WOOTEN TO THE STAND.

15 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, FRANK WOOTEN
16 TESTIFIED AS FOLLOWS:)

17 CLERK OF COURT: PLEASE HAVE A SEAT IN THE WITNESS CHAIR. PLEASE
18 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

19 TROOPER WOOTEN: FRANK WOOTEN. W-O-O-T-E-N.

20 CLERK OF COURT: THANK YOU, SIR.

21 DIRECT EXAMINATION OF FRANK WOOTEN BY MISTER BRADLEY

22 Q GOOD AFTERNOON, TROOPER WOOTEN. WHERE ARE YOU CURRENTLY
23 EMPLOYED?

24 A STATE TROOPER, SOUTH CAROLINA HIGHWAY PATROL.

25 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

1 A TWO YEARS.

2 Q AND WERE YOU EMPLOYED ANYWHERE BEFORE YOU WERE EMPLOYED
3 THERE?

4 A YES, SIR. ANDERSON COUNTY'S SHERIFF'S OFFICE.

5 Q WHAT POSITION DID YOU HOLD THERE?

6 A I WAS A DETECTIVE.

7 Q HOW LONG WERE YOU THERE?

8 A FIVE-AND-A-HALF YEARS.

9 Q AND WHAT WERE YOUR DUTIES AS AN INVESTIGATOR?

10 A THE REPORTS THAT WOULD COME INTO OUR OFFICE, I WAS ASSIGNED
11 PROPERTY CRIME FOR BELTON/HONEA PATH.

12 Q AND WERE YOU WORKING IN THAT CAPACITY ON AUGUST 19, 2005?

13 A YES, SIR.

14 Q AND DID YOU HAVE REASON TO BECOME INVOLVED IN AN INVESTIGATION OF
15 A BURGLARY AT JOHN BLUME'S RESIDENCE AT 1009 AUSTIN ROAD?

16 A YES, SIR. I WAS.

17 Q AND WHAT WAS YOUR INVOLVEMENT?

18 A I WAS SENT TO THAT LOCATION IN REFERENCE TO BEING ASSIGNED PRIMARY
19 INVESTIGATOR TO THAT CRIME.

20 Q OKAY. AND THE -- WHAT DID YOU DO WHEN RESPONDING TO THIS
21 RESIDENCE?

22 A I RESPONDED TO THAT RESIDENCE LATER THAT AFTERNOON AFTER IT WAS
23 FOUND BY THE VICTIM, MISTER BLUME. MY POSITION THERE WAS TO
24 INVESTIGATE THE CRIME WHICH WOULD HOPEFULLY LEADS US TO A
25 SUSPECT.

1 Q OKAY. AND CAN YOU DESCRIBE THE SCENE THAT YOU OBSERVED UPON
2 RESPONDING TO MISTER BLUME'S RESIDENCE?

3 A YES, SIR. THE SHOE IMPRESSION ON THE FRONT DOOR WAS STILL THERE,
4 VISIBLE THERE. NOT A LOT OF DETAIL TO THAT. UPON ENTERING THE
5 RESIDENCE WITH MISTER BLUME, HE DID POINT OUT THE BLOOD ON THE
6 KEYPAD WHICH I DID OBSERVE. THE TIME FRAME BETWEEN, I GUESS, THE
7 OTHER INVESTIGATOR'S PROCESSING THE SCENE, HE HAD REMOVED THE
8 PIECE, THE LADDER FROM THE RESIDENCE AND PUT IT OUTSIDE. BUT I DID
9 OBSERVE WHERE THE BACK WINDOW WAS BUSTED OUT. ALSO, IN THE BACK
10 BEDROOM, THE BED WAS BACK, THE MATTRESS STILL WASN'T HANGING OFF.
11 HE DID POINT OUT THE, WHERE THE MONEY WAS LOCATED UP ON THE
12 CHEST OF DRAWERS THERE.

13 Q AND DID YOU COLLECT ANY EVIDENCE AT ALL?

14 A NO, SIR.

15 Q AT THAT TIME, BEING ASSIGNED PRIMARY INVESTIGATING OFFICER OF THIS
16 CASE, WERE YOU ABLE TO DEVELOP ANY LEADS ON THE CASE?

17 A NO, SIR. I WAS NOT ABLE TO COME UP WITH ANY LEADS.

18 Q AND AT THE TIME YOU RESPONDED, DID MISTER BLUME GIVE YOU ANY
19 NAMES OF ANY INDIVIDUALS THAT HE MAY HAVE SUSPECTED IN THIS CASE?

20 A HE DID. IF I REMEMBER CORRECTLY, IT WAS A MISTER ASHLEY, CLYDE, AND
21 A PATTERSON SUBJECT WHICH I DID REQUEST FOR THEM TO BE COMPARED
22 TO THE FINGERPRINTS THAT WERE LIFTED.

23 Q AND WERE THEY COMPARED?

24 A THEY WERE COMPARED. YES SIR.

25 Q DID THEY MATCH?

DIRECT EXAMINATION OF MIKE BASKIN BY MR. BRADLEY

1 A NO, SIR.

2 Q DID YOU REQUEST ANYTHING ELSE BE DONE WITH THE EVIDENCE FOUND AT
3 THE SCENE?

4 A THE EVIDENCE WAS TURNED INTO -- THE BLOOD EVIDENCE WAS TURNED IN
5 AND THAT WAS ACTUALLY SENT TO C.O.D.I.S.

6 Q AND WHERE IS C.O.D.I.S?

7 A C.O.D.I.S. IS ACTUALLY A -- I DON'T KNOW HOW TO DESCRIBE IT, BUT IT'S A
8 BANK WHERE PEOPLE MAINLY, WHEN THEY ARE IN THE PENITENTIARY, THEY
9 TAKE SAMPLES FROM THEM AND ENTER THEM INTO THIS BANK WHICH IS
10 C.O.D.I.S. AND YOU CAN SUBMIT THE DNA INTO THAT AND THEY WILL INFORM
11 YOU IF IT'S A MATCH.

12 Q OKAY. AND YOU DID THIS THROUGH SOUTH CAROLINA LAW ENFORCEMENT
13 DIVISION. IS THAT CORRECT?

14 A YES, SIR. IT GOES TO S.C.L.E.D.

15 Q AND WERE YOU ABLE TO LOCATE ANY WITNESSES TO THIS BURGLARY?

16 A NO, SIR. DUE TO THE LOCATION OF MISTER BLUME'S HOUSE, THERE IS NO
17 OTHER HOUSES IN VIEW BECAUSE OF THE TREES. THERE ARE A COUPLE OF
18 OTHER HOUSES, BUT NOTHING IN SIGHT AND NO WITNESSES WERE EVER
19 FOUND.

20 Q AND YOU SAID YOU LEFT THE SHERIFF'S OFFICE TO GO TO THE HIGHWAY
21 PATROL. IS THAT CORRECT?

22 A THAT'S CORRECT.

23 Q AT THE TIME YOU LEFT, HAD YOU DEVELOPED A SUSPECT AT THAT TIME?

24 A NO, SIR. I HADN'T.

25 Q AND DID YOU HAVE ANY OTHER INVOLVEMENT IN THE CASE BEFORE

1 LEAVING?

2 A NO, SIR. I HAD NO OTHER INVOLVEMENT.

3 Q OKAY. I'M GOING TO SHOW YOU STATE'S EXHIBITS #1 THROUGH #12 TO SEE
4 IF THIS IS HOW YOU REMEMBER THE SCENE. (HANDS PHOTOGRAPHS TO THE
5 WITNESS)

6 A THIS IS HOW I REMEMBER THE BACK PORCH. ONE THING ABOUT THE BACK
7 PORCH, THERE'S NO ENTRANCE STEPS MADE ONTO THE BACK PORCH.
8 SOMETHING HAD TO BE USED TO GET ON -- TO GAIN ENTRY ONTO THE BACK
9 PORCH. THAT'S HOW I REMEMBER THAT. THAT'S HOW I REMEMBER MISTER
10 BLUME'S HOUSE. REGARDING THE LADDER, THIS WAS ACTUALLY
11 PHOTOGRAPHED INSIDE. WHEN I ARRIVED, IT HAD ACTUALLY ALREADY BEEN
12 MOVED, PROCESSED AND MOVED. I DID OBSERVE THE BACK WINDOW HAD
13 BEEN BROKEN. MISTER BLUME HAD ACTUALLY PUT SOMETHING OVER THIS
14 WINDOW WHEN I ARRIVED. THE BEDROOM PICTURE, THE BEDROOM HERE IS
15 STILL THE WAY AS IT IS HERE, IS THE WAY I SEEN IT THAT DAY. THIS IS JUST
16 ANOTHER PICTURE OF THE SAME BEDROOM. THE MONEY HERE ON THE
17 FLOOR HAD ACTUALLY BEEN PICKED UP AND MOVED. IT HAD BEEN CLEANED
18 UP. THE MATTRESS -- MISTER BLUME HAD ALREADY PUT HIS MATTRESS
19 BACK. THE BLOOD HADN'T BEEN CLEANED UP. I DID OBSERVE THE BLOOD
20 ON THE DOOR AND ALSO THE BLOOD ON THE KEYPAD.

21 Q AND YOU HAD STATED THAT BY THE TIME YOU GOT THERE, FORENSICS HAD
22 ALREADY COME IN?

23 A YES, SIR. THEY HAD ALREADY -- THEY HAD ALREADY PROCESSED THE SCENE
24 AND I GOT THERE A SHORT TIME LATER.

25 Q OKAY.

CROSS EXAMINATION OF TROOPER FRANK WOOTEEN BY MR. TAVERNIER

1 MR. BRADLEY: NOTHING FURTHER AT THIS TIME.

2 THE COURT: CROSS EXAMINATION?

3 MR. TAVERNIER: JUST A COUPLE, YOUR HONOR.

4 CROSS EXAMINATION OF FRANK WOOTEEN BY MISTER TAVERNIER

5 Q TROOPER WOOTEEN, THE -- WHAT SAMPLES WERE SUBMITTED TO S.C.L.E.D.
6 FOR ANALYSIS IN FEBRUARY OF '08?

7 A WELL, THOSE, I GUESS THE BLOOD SAMPLES WOULD HAVE BEEN SUBMITTED
8 AND ANALYZED IN '08. I LEFT IN '08.

9 Q OKAY. WELL, SERGEANT CLAMP HAS A SUPPLEMENTAL TO THE INCIDENT
10 REPORT THAT IT WASN'T UNTIL FEBRUARY OF '08 THAT THEY WERE
11 REQUESTED TO BE SENT AND SUBMITTED TO S.C.L.E.D. HAVE YOU GOT ANY
12 EXPLANATION AS TO WHY IT TOOK TWO-AND-A-HALF TO THREE YEARS TO BE
13 DONE?

14 A NO, SIR.

15 Q OKAY. BUT DID YOU HAVE ANY CONNECTION WITH THE SWABS OR CHECK IN
16 ANY EVIDENCE?

17 A NO, I DIDN'T TAKE ANY OF THE SWABS OR ANYTHING LIKE THAT. THAT WAS
18 ALL PROCESSED BEFORE I ARRIVED.

19 Q THAT'S ALL I HAVE. THANK YOU.

20 THE COURT: RE-DIRECT?

21 MR. BRADLEY: NOTHING, YOUR HONOR. I'D ASK THIS WITNESS BE EXCUSED.

22 THE COURT: MAY THIS WITNESS BE EXCUSED?

23 MR. TAVERNIER: YES, SIR.

24 MR. BRADLEY: THE STATE CALLS DETECTIVE MATTHEW VOIGT.

25 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, DETECTIVE MATTHEW

DIRECT EXAMINATION OF DETECTIVE MATT VOIGT BY MR. BRADLEY

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1 VOIGT TESTIFIED AS FOLLOWS:)

2 CLERK OF COURT: THANK YOU. PLEASE HAVE A SEAT IN THE WITNESS
3 CHAIR.

4 DETECTIVE VOIGT: THANK YOU.

5 CLERK OF COURT: PLEASE STATE YOUR FULL NAME FOR THE RECORD AND
6 SPELL YOUR LAST.

7 DETECTIVE VOIGT: MATTHEW VOIGT. V AS IN VICTOR, O-I-G-T.

8 DIRECT EXAMINATION OF MATTHEW VOIGT BY MISTER BRADLEY

9 Q GOOD AFTERNOON, DETECTIVE VOIGT. WHERE ARE YOU CURRENTLY
10 EMPLOYED?

11 A ANDERSON COUNTY SHERIFF'S DEPARTMENT.

12 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

13 A APPROXIMATELY FIVE YEARS.

14 Q AND WHAT POSITION DO YOU HOLD AT ANDERSON COUNTY SHERIFF'S
15 OFFICE?

16 A INVESTIGATIONS.

17 Q AND WHAT ARE YOUR DUTIES AS AN INVESTIGATOR?

18 A I BEG YOUR PARDON, SIR?

19 Q WHAT ARE YOUR DUTIES AS AN INVESTIGATOR?

20 A TYPICALLY, I'M ASSIGNED CASES, PROPERTY CRIMES. AT THE TIME I WAS
21 ASSIGNED THIS CASE, I WAS WORKING IN THE BELTON/HONEA PATH AREA.

22 Q OKAY. SO, YOU HAVE HAD REASON TO BECOME INVOLVED IN THIS
23 INVESTIGATION OF THE BURGLARY AT JOHN BLUME'S RESIDENCE?

24 A YES. AFTER INVESTIGATOR WOOTEN LEFT TO GO TO THE HIGHWAY PATROL,
25 THE CASE WAS LATER ASSIGNED TO ME AS A RESULT OF A MATCH, A

DIRECT EXAMINATION OF DETECTIVE MATT VOIGT BY MR. BRADLEY

1 C.O.D.I.S. MATCH ON THE BLOOD SAMPLE THAT WAS SENT DOWN THERE.

2 Q OKAY. AND WHAT, TALKING ABOUT THE C.O.D.I.S. MATCH, WHAT

3 INFORMATION DID YOU RECEIVE?

4 A I RECEIVED A LETTER FROM THE SOUTH CAROLINA LAW ENFORCEMENT

5 DIVISION ADVISING ME THAT DNA OF A BLOOD SAMPLE THAT HAD BEEN

6 COLLECTED FROM MISTER BLUME'S RESIDENCE THAT HAD BEEN SENT DOWN

7 THERE, THAT THE BLOOD WAS A MATCH TO A DAVID DALE SHERIFF.

8 Q OKAY. AND AT THAT POINT, WHAT DID YOU DO WITH THIS INFORMATION?

9 A I ATTEMPTED TO MAKE CONTACT WITH THE VICTIM AND AFTER I WAS FINALLY

10 ABLE TO TOUCH BASE WITH HIM, I ASKED HIM IF HE WAS FAMILIAR WITH THE

11 SUBJECT, IF HE KNEW HIM AND HAD GIVEN HIM ANY PERMISSION OR REASON

12 TO BE IN HIS RESIDENCE, TO FIND OUT IF MISTER SHERIFF WAS LAWFULLY IN

13 THE RESIDENCE.

14 Q OKAY. AND AT THAT TIME DID YOU DO ANYTHING WITH THE INFORMATION

15 THAT S.C.L.E.D. HAD GIVEN YOU?

16 A YES. MISTER BLUME ADVISED ME THAT NO, HE DID NOT KNOW MISTER

17 SHERIFF AND HE HAD NO REASON TO BE IN HIS RESIDENCE. SO, I DID

18 PROCEED AND GO SPEAK WITH JUDGE WHITMAN ABOUT OBTAINING A

19 WARRANT FOR A BURGLARY FIRST.

20 Q OKAY. AND THIS WAS NOT UNTIL 2009, I BELIEVE. IS THAT CORRECT?

21 A YES, SIR. THAT IS CORRECT.

22 Q DID YOU HAVE ANY OTHER INVOLVEMENT AFTER OBTAINING A WARRANT FOR

23 THE DEFENDANT?

24 A NO, SIR. I DID NOT.

25 MR. BRADLEY: NOTHING FURTHER AT THIS TIME.

DIRECT EXAMINATION OF MIKE BASKIN BY MR. BRADLEY

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1 THE COURT: CROSS EXAMINATION?

2 MR. TAVERNIER: NO QUESTIONS.

3 THE COURT: YOU MAY BE EXCUSED.

4 DETECTIVE VOIGT: THANK YOU, SIR.

5 THE COURT: THANK YOU. ARE YOU READY WITH YOUR NEXT WITNESS?

6 MR. BRADLEY: YES, SIR, YOUR HONOR. THE STATE CALLS MIKE BASKIN TO
7 THE STAND.

8 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, MIKE BASKIN
9 TESTIFIED AS FOLLOWS:)

10 CLERK OF COURT: PLEASE HAVE A SEAT IN THE WITNESS CHAIR. PLEASE
11 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

12 MR. BASKIN: WILLIAM MICHAEL BASKIN. B-A-S-K-I-N.

13 DIRECT EXAMINATION OF MILE BASKIN BY MISTER BRADLEY

14 Q GOOD AFTERNOON, INVESTIGATOR BASKIN. WHERE ARE YOU EMPLOYED?

15 A THE SOLICITOR'S OFFICE.

16 Q AND WHAT POSITION DO YOU HOLD THERE?

17 A INVESTIGATOR.

18 Q AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

19 A SINCE 19 – EXCUSE ME. SINCE 2007.

20 Q AND WHERE WERE YOU EMPLOYED BEFORE THAT?

21 A THE CITY POLICE DEPARTMENT. ANDERSON CITY POLICE DEPARTMENT.

22 Q WHAT POSITION DID YOU HOLD THERE?

23 A I WORKED IN FORENSICS IN EVIDENCE.

24 Q OKAY. AND WHAT ARE YOUR DUTIES IN YOUR CURRENT POSITION AS AN
25 INVESTIGATOR FOR THE SOLICITOR'S OFFICE?

DIRECT EXAMINATION OF MIKE BASKIN BY MR. BRADLEY

1 A TO GATHER INFORMATION ON CASES.

2 Q AND AS PART OF YOUR DUTIES, DID YOU HAVE REASON TO BECOME
3 INVOLVED WITH THIS MATTER, THE STATE VERSUS DAVID DALE SHERIFF?

4 A YES. I DID.

5 Q AND WHAT WAS YOUR INVOLVEMENT?

6 A I WAS GIVEN A SCHMERBER ORDER TO COLLECT A SWAB, A DNA SWAB,
7 FROM THE DEFENDANT.

8 Q AND WHEN YOU SAY A SWAB, WHAT DO YOU MEAN BY THAT?

9 A SWAB THE MOUTH TO GET A DNA SAMPLE.

10 Q AND WHEN DID YOU OBTAIN THIS SWAB?

11 A ON 10-14-2009.

12 Q AND WHY DID YOU OBTAIN IT?

13 A BECAUSE I -- BECAUSE I WAS GIVEN A SCHMERBER ORDER TO OBTAIN IT, A
14 COURT ORDER.

15 Q AND WHAT DID YOU DO WITH THE SWAB AFTER YOU OBTAINED IT?

16 A I GAVE IT TO TOMMY CLAMP WHO IS THE EVIDENCE CUSTODIAN AT THE
17 ANDERSON COUNTY SHERIFF'S OFFICE.

18 Q OKAY. AND YOU DID THIS FOR STORAGE REASONS? AND YOU DID THIS FOR
19 STORAGE PURPOSES?

20 A YES.

21 Q AND SINCE THE TIME YOU OBTAINED THE SWAB FROM THE DEFENDANT AND
22 THE TIME YOU GAVE IT TO SERGEANT CLAMP AT THE SHERIFF'S OFFICE, WAS
23 IT CONTINUOUSLY UNDER YOUR CARE AND CONTROL AT ALL TIMES?

24 A YES. IT WAS.

25 Q AND WAS IT KEPT SECURE IN YOUR CUSTODY?

1 A YES.

2 MR. BRADLEY: PERMISSION TO APPROACH THE WITNESS?

3 THE COURT: YES, SIR.

4 Q I'M SHOWING YOU WHAT'S BEEN MARKED STATE'S EXHIBIT #16. WOULD YOU
5 TAKE A LOOK AT THAT AND SEE IF YOU RECOGNIZE IT.

6 A YES. THIS IS -- THIS IS THE PACKAGING THAT I PUT THE SWABS IN.

7 Q OKAY. AND DOES IT HAVE ANY OF YOUR MARKS ON THE ITEM?

8 A YES, SIR. IT HAS MY NAME AND THE CASE NUMBER, WHEN I COLLECTED IT,
9 THE DATE AND TIME, THE LAB NUMBER THAT IT WAS GOING TO BE
10 ASSOCIATED WITH.

11 Q OKAY. AND DOES THIS EXHIBIT APPEAR TO BE IN SUBSTANTIALLY THE
12 CONDITION IT WAS WHEN IT WAS LAST IN YOUR POSSESSION?

13 A YES. THE SEAL HAS BEEN BROKEN ON IT, BUT IT'S THE SAME.

14 Q AND WHY WOULD THE SEAL HAVE BEEN BROKEN ON IT?

15 A SO THEY COULD GET THE CONTENTS OUT OF IT.

16 Q AND WHY WOULD THEY NEED TO GET THE CONTENTS OUT?

17 A TO CHECK IT AGAINST THE SAMPLE.

18 Q OKAY. DID YOU HAVE ANY OTHER INVOLVEMENT IN THIS CASE?

19 A NO.

20 Q THANK YOU.

21 MR. BRADLEY: NOTHING FURTHER AT THIS TIME, YOUR HONOR.

22 THE COURT: CROSS EXAMINATION?

23 CROSS EXAMINATION OF MIKE BASKIN BY MISTER TAVERNIER.

24 Q MISTER BASKIN, MISTER SHERIFF COMPLIED AND VOLUNTEERED TO GIVE
25 THE SAMPLE. DIDN'T HE?

DIRECT EXAMINATION OF SERGEANT TOMMY CLAMP BY MR. BRADLEY

1 A YES. HE DID.

2 MR. TAVERNIER: NO FURTHER QUESTIONS.

3 THE COURT: RE-DIRECT?

4 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

5 THE COURT: YOU MAY BE EXCUSED.

6 MR. BRADLEY: THE STATE CALLS SERGEANT TOMMY CLAMP TO THE STAND.

7 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, SERGEANT TOMMY

8 CLAMP TESTIFIED AS FOLLOWS:)

9 CLERK OF COURT: PLEASE HAVE A SEAT IN THE WITNESS STAND. PLEASE

10 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

11 SERGEANT CLAMP: MY NAME IS JOHN THOMAS CLAMP, JUNIOR. MY LAST

12 NAME IS SPELLED C-L-A-M-P.

13 DIRECT EXAMINATION OF SERGEANT TOMMY CLAMP BY MISTER BRADLEY

14 Q GOOD AFTERNOON, SERGEANT CLAMP. WHERE DO YOU WORK?

15 A I AM CURRENTLY WITH THE ANDERSON COUNTY'S SHERIFF OFFICE.

16 Q WHAT IS YOUR POSITION THERE?

17 A I AM SUPERVISOR IN CHARGE OF THE EVIDENCE DIVISION.

18 Q AND HOW LONG HAVE YOU BEEN IN THAT POSITION?

19 A APPROXIMATELY FOR EIGHTEEN-AND-A-HALF -- I'M SORRY, IN THAT POSITION

20 FOR EIGHT YEARS. I HAVE BEEN EMPLOYED BY THE SHERIFF'S OFFICE FOR

21 APPROXIMATELY EIGHTEEN-AND-A-HALF YEARS.

22 Q AND WHAT ARE YOUR DUTIES IN THAT POSITION?

23 A MY SPECIFIC DAILY DUTIES ARE TO TAKE CUSTODY AND CONTROL OF

24 EVIDENCE THAT IS SUBMITTED AS FOUND PROPERTY OR ITEMS OF EVIDENCE

25 IN CASES.

1 Q OKAY.

2 MR. BRADLEY: PERMISSION TO APPROACH THE WITNESS?

3 THE COURT: YES, SIR.

4 Q I AM SHOWING YOU STATE'S EXHIBITS #15 AND #16. IF YOU WILL TAKE A
5 LOOK AT THESE AND SEE IF YOU RECOGNIZE THEM.

6 A YES. I DO.

7 Q HOW DO YOU RECOGNIZE THEM?

8 A THE OUTER BAG HAS MY NAME AND INITIALS ON IT.

9 Q AND WHY WOULD THEY HAVE THOSE ON IT?

10 A THOSE ARE REQUIREMENTS TO HAVE THESE ITEMS SUBMITTED TO THE
11 STATE LAW ENFORCEMENT DIVISION FOR ANALYSIS.

12 Q SO, THESE ITEMS WERE IN YOUR POSSESSION?

13 A YES, SIR.

14 Q AND WHEN DID THEY COME INTO YOUR POSSESSION?

15 A STATE'S EXHIBIT #15, WHICH WOULD BE THE SWABS THAT WAS SUBMITTED
16 BY INVESTIGATOR COYLE, CAME INTO MY POSSESSION ON AUGUST 19, 2005.
17 STATE'S EXHIBIT #16, WHICH IS THE KNOWN STANDARD COLLECTED BY
18 INVESTIGATOR BASKIN, CAME INTO MY POSSESSION ON OCTOBER 15, 2009.

19 Q AND REFERRING TO STATE'S EXHIBIT #15, THE SWAB FROM INVESTIGATOR
20 COYLE FROM THE CRIME SCENE, WHAT DID YOU DO WITH THOSE ITEMS?

21 A THESE ITEMS WERE STORED IN A LOCKED, SECURED EVIDENCE ROOM ONLY
22 ACCESSIBLE BY THREE PERSONS UNTIL THEY WERE SUBMITTED TO THE
23 STATE LAW ENFORCEMENT DIVISION FOR ANALYSIS.

24 Q AND WHEN DID YOU SUBMIT THOSE ITEMS TO S.L.E.D?

25 A THESE SPECIFIC ITEMS, STATE'S EXHIBIT #15, WERE SUBMITTED TO THE

1 STATE LAW ENFORCEMENT DIVISION ON FEBRUARY 22, 2008.

2 Q AND DOES THAT STATE'S EXHIBIT #15, DOES THAT EXHIBIT APPEAR TO BE IN
3 SUBSTANTIALLY THE SAME CONDITION IT WAS THE LAST TIME IT WAS IN
4 YOUR POSSESSION?

5 A YES, SIR. IT DOES.

6 Q OKAY. REFERRING TO STATE'S EXHIBIT #16, THE SWAB TAKEN BY
7 INVESTIGATOR BASKIN OF THE DEFENDANT. WHEN DID THAT COME INTO
8 YOUR POSSESSION?

9 A I TOOK THAT FROM INVESTIGATOR BASKIN ON OCTOBER 15, 2009 AT THE
10 SHERIFF'S OFFICE.

11 Q AND WHAT DID YOU DO WITH THAT?

12 A IT WAS ADDITIONALLY SUBMITTED TO SLED ON NOVEMBER 10, 2009 AS A
13 STANDARD FOR COMPARISON TO THE SWABS WE HAD ALREADY TAKEN
14 DOWN.

15 Q DOES THAT EXHIBIT APPEAR TO BE IN SUBSTANTIALLY THE SAME CONDITION
16 IT WAS THE LAST TIME IT WAS IN YOUR POSSESSION?

17 A YES, SIR. IT'S STILL IN THE SAME PACKAGE WITH MY INITIALS ON IT AND THIS
18 ONE WAS SEALED UNTIL INVESTIGATOR COYLE OPENED IT TO LOOK AT THE
19 EVIDENCE.

20 Q AND THEN WHAT -- AND DID YOU BRING THESE ITEMS TO COURT TODAY?

21 A YES. THEY HAVE BEEN IN MY POSSESSION UNTIL I PICKED THEM UP FROM
22 THE STATE LAW ENFORCEMENT DIVISION AND I BROUGHT THEM TO COURT
23 THIS MORNING.

24 Q SO, AFTER THEY WERE TESTED DOWN AT SLED YOU WENT BACK AND PICKED
25 THEM UP. IS THAT CORRECT?

1 A THAT'S CORRECT.

2 Q AND AS PART OF YOUR DUTIES TO DO SO, YOU ALSO BRING THEM TO COURT.
3 IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q AND WHILE THESE EXHIBITS HAVE BEEN IN YOUR POSSESSION, HAVE THEY
6 BEEN KEPT SECURE CONTINUOUSLY AND CONSTANTLY?

7 A THAT'S CORRECT. OUR CRIME SCENE BUILDING IS ACCESSIBLE TO, NOW,
8 ONLY THIRTEEN PEOPLE. AT THAT TIME, IT WAS APPROXIMATELY TEN
9 PEOPLE, BUT THE BUILDING ITSELF HAS A LOCKED -- IT'S LOCKED,
10 ACCESSIBLE TO ONLY THIRTEEN PEOPLE NOW WITH THE DOOR CODE AND
11 THE BUILDING IS ALARMED IF NO ONE IS THERE. UNDER AN ADDITIONAL
12 MEASURE OF SECURITY, THERE'S TWO ROOMS INSIDE THE BUILDING THAT
13 ONLY THREE PERSONS HAVE ACCESS TO.

14 Q DO THESE ITEMS APPEAR TO HAVE BEEN TAMPERED WITH IN ANY WAY
15 OTHER THAN FOR THE ANALYZATION PURPOSES?

16 A NO, SIR.

17 MR. BRADLEY: NOTHING FURTHER AT THIS TIME.

18 THE COURT: CROSS EXAMINATION?

19 MR. TAVERNIER: NO QUESTIONS, YOUR HONOR.

20 THE COURT: ALL RIGHT. YOU MAY BE EXCUSED. MAY I SEE THE ATTORNEYS
21 UP HERE RIGHT QUICK, PLEASE SIRS.

22 (BRIEF BENCH CONFERENCE OFF THE RECORD)

23 MR. BRADLEY: THE STATE CALLS NIKKI PERRY.

24 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, NIKKI PERRY

25 TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION OF NIKKI PERRY BY MR. BRADLEY

1 CLERK OF COURT: THANK YOU. PLEASE HAVE A SEAT IN THE WITNESS
2 STAND. PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR
3 LAST.

4 MS. BERRY: NICOLE RENEE PERRY. P-E-R-R-Y.

5 DIRECT EXAMINATION OF NICOLE PERRY BY MISTER BRADLEY

6 Q GOOD AFTERNOON, MS. PERRY. WOULD YOU PLEASE TELL US WHERE YOU
7 ARE EMPLOYED?

8 A I AM CURRENTLY EMPLOYED WITH THE SOUTH CAROLINA LAW
9 ENFORCEMENT DIVISION, COMMONLY KNOW AS S.C.L.E.D.

10 Q AND WHAT IS YOUR POSITION THERE?

11 A I AM A FORENSIC TECHNICIAN IN THE EVIDENCE CONTROL DEPARTMENT.

12 Q AND HOW LONG HAVE YOU BEEN THERE?

13 A APPROXIMATELY FOUR YEARS.

14 Q WHAT ARE YOUR DUTIES IN THAT POSITION?

15 A WE LOG IN AND PACKAGE EVIDENCE AND FORWARD THEM TO THE LAB FOR
16 FORENSIC ANALYSIS.

17 Q AND DID YOU RECEIVE ANY ITEMS OF EVIDENCE IN REGARDS TO THIS CASE?

18 A I DID.

19 Q AND FROM WHERE AND FOR WHAT PURPOSE?

20 A I RECEIVED, ACCORDING TO THE CHAIN OF CUSTODY, I RECEIVED SWABS
21 FROM TOMMY CLAMP OF THE ANDERSON COUNTY SHERIFF'S OFFICE ON
22 FEBRUARY 22, 2008.

23 Q AND DID YOU MARK THE ITEMS OF EVIDENCE UPON RECEIVING IT?

24 A DID I MARK THE EVIDENCE?

25 Q DID YOU MAKE ANY NOTATIONS OF ACCEPTING THIS EVIDENCE?

1 A OH, WELL, I WILL LOG IN THE EVIDENCE. WE PROVIDE -- TOMMY WOULD
2 PROVIDE ME WITH THE S.C.L.E.D. FORENSIC SERVICE REQUEST FORM AND
3 THAT STATES CASE INFORMATION AS WELL AS THE ITEMS BEING SUBMITTED
4 TO THE LAB. I WOULD LOG IN THAT INFORMATION AND AT THAT TIME, A LAB
5 NUMBER WILL BE GENERATED. I WILL PLACE THE EVIDENCE IN A HEAT-
6 SEALED POUCH AND I WILL SEAL IT AND HAVE TOMMY INITIAL IT, TOO.

7 Q OKAY. AND UPON DOING SO, WHAT WOULD YOU HAVE DONE AFTER DOING
8 THAT?

9 A AFTER THE CASE IS COMPLETED AND THE CASE IS LOGGED IN, I PLACE THE
10 EVIDENCE IN THE DNA INTAKE STORAGE IN OUR LOCKED EVIDENCE ROOM.

11 Q AND IS THAT WHAT YOU DID IN THIS CASE?

12 A THAT'S WHAT I DID. YES, SIR.

13 MR. BRADLEY: YOUR HONOR, PERMISSION TO APPROACH THE WITNESS?

14 THE COURT: YES, SIR.

15 Q I'M SHOWING YOU STATE'S EXHIBIT #15. WOULD YOU TAKE A LOOK AT THAT
16 AND SEE IF YOU RECOGNIZE IT?

17 A I RECOGNIZE OUR LAB NUMBER L0802807 AND ITEM NUMBER 1.

18 Q OKAY. AND IS THIS THE EXHIBIT THAT CAME INTO YOUR POSSESSION FROM
19 SERGEANT CLAMP THAT DAY?

20 A THE PACKAGE -- YEAH, I RECOGNIZE THE LABEL. IT IS.

21 Q AND OTHER THAN THE BAG HAVING BEEN OPENED, DOES IT APPEAR TO BE IN
22 SUBSTANTIALLY THE SAME CONDITION AS THE LAST TIME IT WAS IN YOUR
23 POSSESSION?

24 A OTHER THAN THE PACKAGE BEING OPENED.

25 Q AND WHILE IT WAS IN YOUR CUSTODY, WAS IT CONTINUOUSLY AND

DIRECT EXAMINATION OF SELENA KINARD BY MR. BRADLEY

1 CONSTANTLY UNDER YOUR CONTROL AND IN YOUR POSSESSION?

2 A YES, WHILE IT WAS IN OUR CUSTODY.

3 Q AND UPON DELIVERING THIS ITEM TO THE DNA EVIDENCE INTAKE STORAGE,
4 AFTER THAT, DID YOU HAVE ANY FURTHER INVOLVEMENT WITH THIS EXHIBIT?

5 A I DID NOT.

6 Q ALL RIGHT.

7 MR. BRADLEY: NOTHING FURTHER AT THIS TIME.

8 THE COURT: CROSS EXAMINATION?

9 MR TAVERNIER: NO QUESTIONS, YOUR HONOR.

10 THE COURT: THANK YOU, MA'AM. YOU MAY BE EXCUSED.

11 MS. BERRY: THANK YOU.

12 MR. BRADLEY: THE STATE CALLS SELENA KINARD.

13 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, SELENA KINARD
14 TESTIFIED AS FOLLOWS:)

15 CLERK OF COURT: PLEASE HAVE A SEAT IN THE WITNESS STAND. PLEASE
16 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

17 MS. KINARD: SELENA KINARD. K-I-N-A-R-D.

18 DIRECT EXAMINATION OF SELENA KINARD BY MISTER BRADLEY

19 Q GOOD AFTERNOON, MS. KINARD. PLEASE TELL US WHERE YOU ARE
20 EMPLOYED.

21 A YES. I AM EMPLOYED WITH S.C.L.E.D., THE SOUTH CAROLINA LAW
22 ENFORCEMENT DIVISION.

23 Q IN WHAT POSITION?

24 A I AM A FORENSIC TECHNICIAN.

25 Q HOW LONG HAVE YOU BEEN EMPLOYED THERE?

1 A THREE YEARS.

2 Q - AND WHAT ARE YOUR DUTIES?

3 A I AM RESPONSIBLE FOR THE INTAKE OF EVIDENCE FROM AGENCIES FROM
4 ACROSS THE STATE AND LOGGING THAT EVIDENCE INTO OUR COMPUTER
5 SYSTEM AND STORING THAT IN OUR EVIDENCE ROOM.

6 Q DID YOU RECEIVE ANY ITEMS OF EVIDENCE IN REGARDS TO THIS CASE?

7 A YES, SIR. I DID.

8 Q AND WHAT IS THAT?

9 A ON FEBRUARY 25, 2008, I RECEIVED ITEM NUMBER 1, WHICH IS DESCRIBED AS
10 A SEALED, HEAT-SEALED POUCH CONTAINING A SWAB. I REMOVED THAT
11 ITEM FROM THE REFRIGERATOR, WHICH WE HAVE FOR DNA EVIDENCE AND I
12 GAVE THAT TO FORENSIC TECHNICIAN, SHEREE BROWN FROM THE DNA
13 DEPARTMENT.

14 Q OKAY. AND DID YOU COME INTO CONTACT WITH ANY OTHER EVIDENCE IN
15 THIS CASE?

16 A YES, I DID. ITEM 2, WHICH IS DESCRIBED AS A SEALED HEAT-SEALED POUCH,
17 CONTAINING A BUCCAL SWAB DESCRIBED AS DAVID DALE SHERIFF.

18 Q AND WHEN DID YOU COME INTO CONTACT WITH THAT?

19 A THAT WAS ON NOVEMBER 10, 2009.

20 Q AND WHERE DID YOU RECEIVE THAT FROM?

21 A I RECEIVED THAT FROM TOMMY CLAMP OF THE ANDERSON COUNTY
22 SHERIFF'S OFFICE.

23 Q AND WHAT DID YOU DO AFTER RECEIVING IT FROM SERGEANT CLAMP?

24 A I LOGGED THAT INTO OUR COMPUTER SYSTEM AND AFTER THAT, I PUT IT
25 INTO THE DNA REFRIGERATOR WHICH IS IN OUR EVIDENCE ROOM.

DIRECT EXAMINATION OF SELENA KINARD BY MR. BRADLEY

1 Q OKAY. I'M SHOWING YOU WHAT'S BEEN MARKED AS STATE'S EXHIBITS #15
2 AND #16. WOULD YOU TAKE A LOOK AT THESE AND SEE IF YOU RECOGNIZE
3 THEM?

4 A YES. I DO.

5 Q AND HOW DO YOU RECOGNIZE THEM?

6 A I RECOGNIZE THEM FROM THE YELLOW LABEL THAT IS AFFIXED TO THE HEAT-
7 SEALED POUCHES. THAT IS THE LAB NUMBER AS WELL AS THE ITEM
8 NUMBER.

9 Q OKAY. AND ARE THESE THE ITEMS THAT CAME INTO YOUR POSSESSION ON
10 THOSE DATES THAT YOU DESCRIBED FOR US?

11 A YES. THEY ARE.

12 Q AND DO THEY APPEAR TO BE IN SUBSTANTIALLY THE SAME CONDITION,
13 OTHER THAN EXHIBIT #15, THE BAG HAS BEEN OPENED?

14 A WITH THE EXCEPTION OF THE INITIALS ON THE SIDE AND THE DATE OF THE
15 ANALYST OPENING IT, THEY DO APPEAR TO BE IN THE SAME CONDITION.

16 Q AND WHEN THESE ITEMS WERE IN YOUR POSSESSION WERE THEY
17 CONSTANTLY AND CONTINUOUSLY UNDER YOUR CARE?

18 A YES. UNTIL THEY WERE PUT INTO THE REFRIGERATOR. THAT'S CORRECT.

19 Q OKAY. AND DID YOU HAVE ANY OTHER INVOLVEMENT IN THIS CASE AFTER
20 THAT?

21 A NO. I DID NOT.

22 MR. BRADLEY: NOTHING FURTHER AT THIS TIME, YOUR HONOR.

23 THE COURT: CROSS EXAMINATION?

24 MR. TAVERNIER: JUST TWO BRIEFLY, YOUR HONOR, IF I MAY.

25 CROSS EXAMINATION OF SELENA KINARD BY MISTER TAVERNIER

1 Q MS. KINARD, THE INITIAL SAMPLE THAT YOU RECEIVED, THOSE WERE THE
2 BLOOD SAMPLES THAT YOU RECEIVED IN FEBRUARY OF '08. IT INDICATES ON
3 THE EVIDENCE CHAIN OF CUSTODY SHEET THAT THEY WENT TO THE DNA
4 REFRIGERATOR ON THE FOURTH FLOOR. CORRECT?

5 A THAT'S CORRECT. THAT'S AFTER I GAVE THAT TO SHEREE BROWN FROM THE
6 DNA DEPARTMENT.

7 Q OKAY. AND THEN WITH THE SWAB THAT WAS TAKEN INTO EVIDENCE ON
8 11-10-09, IT SHOWS YOU TAKING IT IN AND THEN IT GOES TO DNA AND THEIR
9 STORAGE, BUT YOU TESTIFIED THAT IT WENT TO A DNA REFRIGERATOR?

10 A THAT'S CORRECT. THAT'S -- OUR INTAKE STORAGE --

11 Q OKAY.

12 A -- IS A REFRIGERATOR.

13 Q WHY DOES IT REFLECT INTAKE STORAGE IN ONE LOCATION AND THE DNA
14 REFRIGERATOR IN ANOTHER LOCATION?

15 A THE DNA REFRIGERATOR FOR THE ITEM NUMBER 1--

16 Q YES.

17 A -- IS UPSTAIRS IN OUR DNA DEPARTMENT. THE INTAKE STORAGE IS IN THE
18 EVIDENCE ROOM WHERE I WORK. ON ITEM 1, ON 02-20-- EXCUSE ME -- ON
19 02-26, IT WENT TO SHEREE BROWN,

20 Q BUT --

21 A -- SHE IS IN THE DNA DEPARTMENT.

22 Q OKAY. I DIDN'T MEAN TO OVERSTEP YOU.

23 A THAT'S OKAY.

24 Q OKAY. SO, BECAUSE IT'S REFLECTED ON ONE AND NOT ON THE OTHER OF
25 THE INTAKE SHEETS.

DIRECT EXAMINATION OF SHEREE BROWN BY MR. BRADLEY

1 A THAT'S TWO DIFFERENT LOCATIONS.

2 MR. TAVERNIER: NOTHING FURTHER, YOUR HONOR.

3 THE COURT: RE-DIRECT?

4 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

5 THE COURT: THANK YOU, MA'AM. YOU MAY BE EXCUSED.

6 MS. PERRY: THANK YOU.

7 MR. BRADLEY: THE STATE CALLS MS. SHEREE BROWN.

8 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, SHEREE BROWN

9 TESTIFIED AS FOLLOWS:)

10 CLERK OF COURT: THANK YOU. PLEASE HAVE A SEAT IN THE WITNESS
11 STAND. PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR
12 LAST.

13 MS. BROWN: SHEREE BROWN. B-R-O-W-N.

14 DIRECT EXAMINATION OF SHEREE BROWN BY MISTER BRADLEY

15 Q GOOD AFTERNOON, MS. BROWN. WHERE ARE YOU EMPLOYED?

16 A SOUTH CAROLINA LAW ENFORCEMENT DIVISION, ALSO KNOWN AS S.C.L.E.D.

17 Q HOW LONG HAVE YOU BEEN THERE?

18 A SIXTEEN YEARS.

19 Q AND WHAT POSITION DO YOU CURRENTLY HOLD?

20 A A TECHNICIAN IN THE DNA DEPARTMENT.

21 Q WHAT ARE YOUR DUTIES IN THAT POSITION?

22 A ONE OF MY DUTIES IS TO RECEIVE EVIDENCE FROM THE EVIDENCE LOG-IN
23 THAT THE AGENCIES BROUGHT IN AND TAKE IT IN, PHYSICALLY, AND
24 TRANSFER THEM IN THE COMPUTER AND TO THE DNA DEPARTMENT.

25 Q OKAY. DID YOU COME INTO CONTACT WITH ANY EVIDENCE IN REGARD TO

1 THIS CASE WE'RE HERE ON TODAY?

2 A YES.

3 Q AND WHAT DATE DID YOU COME INTO CONTACT WITH THAT EVIDENCE?

4 A FEBRUARY 25, OF '08. AND ALSO NOVEMBER 10, OF '09.

5 Q OKAY. FROM WHERE -- IN REGARDS TO THE ONE YOU RECEIVED ON
6 FEBRUARY 25, '08, WHERE DID YOU RECEIVE THAT ITEM FROM?

7 A THAT ITEM WAS FROM SELENA KINARD.

8 Q FOR WHAT PURPOSE DID YOU RECEIVE IT?

9 A TO TEST FOR DNA

10 Q OKAY. AND WHAT DID YOU DO WITH THE ITEM UPON RECEIVING IT?

11 A I HAD IT IN MY CUSTODY. I GOT IT ON FEBRUARY 26TH AND THAT'S WHEN IT
12 WAS TRANSFERRED TO ME, SECURED AND LOCKED IN THE REFRIGERATOR IN
13 THE DNA DEPARTMENT.

14 Q WHAT WAS THE PURPOSE OF PUTTING IT IN THE REFRIGERATOR?

15 A BECAUSE AT THIS TIME THE CASE WAS ASSIGNED TO US FOR DNA ANALYSIS,
16 TO MEET THE STANDARDS.

17 Q OKAY. AND I AM GOING -- YOU ALSO REFERRED TO RECEIVING SOME ITEMS
18 ON NOVEMBER 10, OF '09. WHERE DID YOU RECEIVE THAT ITEM FROM?

19 A ITEM NUMBER 2, S.C.L.E.D. NUMBER 2, WAS RECEIVED FROM PATRICIA
20 CROOKS.

21 Q OKAY. AND WHAT DID YOU -- FOR WHAT PURPOSE DID YOU RECEIVE THAT
22 ITEM?

23 A SAME AS BEFORE. SO IT COULD BE ANALYZED IN THE DNA DEPARTMENT.

24 Q UPON RECEIVING IT, WHAT DID YOU DO WITH THE ITEM?

25 A IT WAS IN MY CUSTODY TIL NOVEMBER 12TH -- EXCUSE ME. I TRANSFERRED

DIRECT EXAMINATION OF SHEREE BROWN BY MR. BRADLEY

1 IT TO THE DNA DEPARTMENT AND STEPHANIE STANLEY TOOK IT FROM MY
2 CUSTODY.

3 Q ON WHAT DATE?

4 A NOVEMBER 12, 2009.

5 Q OKAY. AND WHILE THESE ITEMS WERE IN YOUR CUSTODY, WERE THEY
6 CONSTANTLY AND CONTINUOUSLY UNDER YOUR CONTROL?

7 A YES.

8 Q DID ANYBODY ELSE TAKE POSSESSION OF THEM UNTIL YOU TURNED THEM
9 OVER TO THESE PEOPLE AT S.C.L.E.D. THAT YOU STATED?

10 A NO. THEY WERE SECURED WITHIN THE DNA DEPARTMENT.

11 Q OKAY.

12 MR. BRADLEY: PERMISSION TO APPROACH, YOUR HONOR?

13 THE COURT: YES, SIR.

14 Q I AM SHOWING YOU STATE'S EXHIBITS #15 AND #16 AND I'LL ASK THAT YOU
15 TAKE A LOOK AT THESE AND SEE IF YOU RECOGNIZE THEM.

16 A YES.

17 Q HOW DO YOU RECOGNIZE THEM?

18 A THIS ONE HAS GOT MY INITIALS AND STEPHANIE STANLEY'S INITIALS ON THIS
19 POUCH AND THESE ARE THE LABELS THAT WE USE.

20 Q AND BESIDES THE BAG BEING OPEN, DO THESE ITEMS APPEAR TO BE IN
21 SUBSTANTIALLY THE SAME CONDITION AS THEY WERE THE LAST TIME YOU
22 SAW THEM?

23 A YES.

24 Q OKAY. DO THEY APPEAR TO HAVE BEEN TAMPERED WITH IN ANY WAY?

25 A NOT WHEN I HAD THEM IN MY CUSTODY.

1 Q OKAY.

2 MR. BRADLEY: NOTHING FURTHER AT THIS TIME.

3 MR. TAVERNIER: NO QUESTIONS, YOUR HONOR.

4 THE COURT: YOU MAY STEP DOWN.

5 MR. BRADLEY: THE STATE CALLS PATRICIA CROOKS.

6 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, PATRICIA CROOKS
7 TESTIFIED AS FOLLOWS:)

8 CLERK OF COURT: THANK YOU. PLEASE HAVE A SEAT IN THE WITNESS
9 STAND. PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR
10 LAST.

11 MS. CROOKS: MY NAME IS PATRICIA CROOKS. LAST NAME IS SPELLED
12 C-R-O-O-K-S.

13 DIRECT EXAMINATION OF PATRICIA CROOKS BY MISTER BRADLEY

14 Q GOOD AFTERNOON, MS. CROOKS. ARE YOU CURRENTLY EMPLOYED?

15 A YES. I AM.

16 Q WHERE ARE YOU EMPLOYED?

17 A SOUTH CAROLINA LAW ENFORCEMENT DIVISION, ALSO KNOW AS S.C.L.E.D.

18 Q AND WHAT POSITION DO YOU HOLD THERE?

19 A I'M A FORENSIC TECHNICIAN IN CHARGE OF THE EVIDENCE ROOM.

20 Q AND HOW LONG HAVE YOU BEEN IN THAT POSITION?

21 A I'VE BEEN IN THAT POSITION ABOUT A YEAR-AND-A-HALF, BUT EMPLOYED
22 WITH S.C.L.E.D. FOR ALMOST TWENTY-FIVE YEARS.

23 Q WHAT OTHER POSITION AT S.C.L.E.D.?

24 A I WAS A FORENSIC TECHNICIAN IN THE QUESTION DOCUMENT DEPARTMENT
25 FOR CLOSE TO TWENTY YEARS.

DIRECT EXAMINATION OF PATRICIA CROOKS BY MR. BRADLEY

1 Q AND DID YOU HAVE ANY REASON TO RECEIVE ANY ITEMS OF EVIDENCE IN
2 REGARDS TO THIS CASE THAT WE ARE HERE FOR TODAY?

3 A YES, SIR. I DID.

4 Q ON WHAT DATE DID YOU RECEIVE THAT EVIDENCE?

5 A OKAY. ON NOVEMBER 10, OF '09, I RECEIVED ITEM 2, WHICH WAS A
6 HEAT-SEALED POUCH CONTAINING A BUCCAL SWAB DESCRIBED AS DAVID
7 DALE SHERIFF AND I RECEIVED THAT FROM THE DNA EVIDENCE INTAKE
8 STORAGE.

9 Q AND UPON RECEIVING IT, WHAT DID YOU DO WITH IT?

10 A UPON RECEIVING IT, I TOOK CUSTODY OF IT AND THEN A MINUTE LATER
11 TRANSFERRED CUSTODY OF THAT EVIDENCE TO SHEREE BROWN.

12 Q AND WHILE THAT EVIDENCE WAS IN YOUR POSSESSION, WAS IT CONSTANTLY
13 AND CONTINUOUSLY UNDER YOUR CARE?

14 A THAT IS CORRECT.

15 MR. BRADLEY: PERMISSION TO APPROACH, YOUR HONOR?

16 THE COURT: YES, SIR.

17 Q WOULD YOU TAKE A LOOK AT EXHIBIT #16, WHICH THIS ONE RIGHT HERE.
18 SEE IF YOU RECOGNIZE THAT?

19 A I DO.

20 Q HOW DO YOU RECOGNIZE IT?

21 A BY THE S.C.L.E.D. LABORATORY NUMBER HERE WITH THE BAR CODE L0802807
22 AND IT IS ITEM 2.

23 Q AND THIS ITEM WAS RECEIVED ON THE DATE YOU PREVIOUSLY TESTIFIED
24 TO?

25 A THAT'S CORRECT.

1 Q AND DOES THIS ITEM APPEAR TO HAVE BEEN TAMPERED WITH IN ANY WAY?

2 A NO. IT DOES NOT.

3 Q SO, IT APPEARS TO BE IN SUBSTANTIALLY THE SAME CONDITION AS IT WAS
4 THE LAST TIME IT WAS IN YOUR POSSESSION?

5 A THAT'S CORRECT.

6 MR. BRADLEY: NOTHING FURTHER AT THIS TIME.

7 MR. TAVERNIER: NO QUESTIONS.

8 THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN.

9 MS. CROOKS: THANK YOU.

10 MR. BRADLEY: MAY WE APPROACH, YOUR HONOR?

11 THE COURT: YES, SIR.

12 (BRIEF BENCH CONFERENCE OFF THE RECORD)

13 THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE ARE GOING TO TAKE
14 A FEW MINUTE BREAK. ONE OF THE REASONS THAT WE ARE CONTINUING ON, I
15 KNOW THAT YOU ARE KIND OF GETTING THE BRUNT OF IT THIS AFTERNOON, BUT
16 WE ARE GETTING THROUGH SOME WITNESSES THAT ARE NOT FROM IN TOWN. WE
17 WON'T BE TERRIBLY LONG, BUT IF YOU GO AHEAD AND TAKE CARE OF THINGS AND
18 TAKE CARE OF PERSONALLY AND GET YOURSELVES SOMETHING TO DRINK AND WE
19 WILL GET YOU BACK OUT HERE IN JUST A FEW MINUTES. AGAIN, I REMIND YOU NOT
20 TO SPEAK ABOUT THE CASE WHILE YOU ARE OUT OF HERE. THANK YOU VERY
21 MUCH.

22 (JURY OUT AT 4:34 P.M.)

23 THE COURT: ANYTHING FROM THE STATE?

24 MR. BRADLEY: NOTHING AT THIS TIME, YOUR HONOR.

25 THE COURT: FROM THE DEFENSE?

IN CAMERA EXAMINATION OF STEPHANIE STANLEY BY MR. TAVERNIER

1 MR. TAVERNIER: NOTHING, YOUR HONOR.

2 THE COURT: JO, DO YOU NEED A FEW MINUTES?

3 COURT REPORTER: YES, SIR.

4 THE COURT: OKAY. LET'S TAKE ABOUT A FIVE MINUTE BREAK.

5 (BRIEF BREAK)

6 THE COURT: DO YOU WANT TO GO AHEAD AND DO THAT *IN CAMERA* HEARING
7 NOW?

8 MR. TAVERNIER: YES, SIR.

9 THE COURT: OKAY. HAS EVERYBODY HAD ENOUGH TIME TO HAVE A BREAK?

10 RENA, HAVE YOU HAD ENOUGH TIME?

11 CLERK OF COURT: YES, SIR.

12 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, STEPHANIE STANLEY
13 TESTIFIED AS FOLLOWS:)

14 CLERK OF COURT: PLEASE HAVE A SEAT IN THE WITNESS STAND. PLEASE
15 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

16 MS. STANLEY: STEPHANIE STANLEY. S-T-A-N-L-E-Y.

17 IN CAMERA EXAMINATION OF STEPHANIE STANLEY BY MISTER TAVERNIER

18 Q MS. STANLEY, AND THIS IS JUST A FEW PRELIMINARY QUESTIONS THAT I
19 HAVE. I REPRESENT MISTER SHERIFF, BUT THE CRUX OF MY QUESTIONS
20 SURROUND THE FACT THAT IN THE SWABS THAT WERE TAKEN FROM THE
21 INCIDENT LOCATION, ONE IN PARTICULAR WAS TAKEN FROM THE KEYPAD.
22 THAT SWAB ONLY CONTAINED DNA EVIDENCE FROM MISTER SHERIFF. IS
23 THAT CORRECT?

24 A LET ME CHECK TO MAKE SURE. (LOOKS THROUGH HER DOCUMENTS) IT WAS
25 A SINGLE SOURCE THAT I GOT -- DEVELOPED FROM THE ALARM KEYPAD.

1 Q OKAY. THAT BEGS THE QUESTION BECAUSE MISTER BLUME HAS TESTIFIED
2 HE'S NOT NECESSARILY THE GREATEST HOUSEKEEPER, OKAY? MY WORDS,
3 NOT HIS, BUT HE WORKED AT A LUMBER YARD AND IF HE CAME IN FROM
4 WORK, OR WHATEVER, ON A REPEATED BASIS AND TOUCHED THAT KEYPAD,
5 IT'S BEEN MY EXPERIENCE IN ALL THE YEARS THAT I WAS INVOLVED IN LAW
6 ENFORCEMENT AND DEFENSE, THAT THERE WOULD BE SOME TYPE OF
7 TRACE, EITHER SWEAT OR SKIN OR WHATEVER, THAT WOULD COME OFF OF
8 FINGERS USED TO REPEATEDLY TOUCH SOMETHING. OKAY? WHEN
9 INVESTIGATOR COYLE APPLIED SALINE SOLUTION TO THE SWAB AND THEN
10 TOOK THE BLOOD OFF OF THE KEYPAD, THE QUESTION I'VE GOT IS WHY
11 WOULD IT NOT PICK UP ANY TRACE FROM MISTER BLUME WHO IS THE VICTIM
12 AND THE OWNER OF THE HOUSE, FROM ANYTHING THAT HE WOULD HAVE?
13 WHY IS THERE NOT TOUCH RESIDUE FROM THERE WHEN HE -- IF HE TOOK AN
14 ADEQUATE SAMPLE SWAB FROM THAT KEYPAD?

15 A WHEN WE ARE -- WHEN WE ARE TALKING ABOUT SAMPLES THAT DO HAVE
16 TOUCH DNA UNDERNEATH THEM, BLOOD HAS A LOT OF DNA PRESENT, SO
17 YOU DON'T ALWAYS PICK UP ANYTHING ELSE OTHER THAN THE SINGLE
18 SOURCE PROFILE. THERE'S A LOT OF THINGS THAT CAN GO INTO IT. ONE
19 BEING WHETHER OR NOT A PERSON IS A SHEDDER. JUST BECAUSE I HAVE
20 TOUCHED THIS TABLE DOESN'T MEAN I AM GOING TO LEAVE DNA BEHIND. HE
21 MAY BE A PERSON WHO LEAVES LESS DNA BEHIND. I KNOW FROM WORKING
22 IN THE LAB YOU MAY NOT FIND MY DNA PROFILE FROM THERE. SO, IT COULD
23 JUST BE IT DIDN'T GET PICKED UP, IT COULD BE THAT IT IS NOT THERE.

24 Q OKAY, BUT SOME SWEAT OR ANYTHING ELSE OF THAT NATURE, THAT WAS
25 THE -- YOU KNOW, BECAUSE YOU STATED THE BLOOD WOULD BE THE

1 OVERRIDING DNA

2 A RIGHT.

3 Q BUT WITH THE SALINE THERE WAS JUST -- IT HAS BEEN MY EXPERIENCE THAT
4 WE TYPICALLY, AND I AM BASING THIS ON ANOTHER CASE I HAD UP IN
5 OCONEE, WHERE WE HAD A CONTAMINATED SAMPLE FROM A COUPLE OF
6 DIFFERENT SOURCES, BECAUSE THE SWAB PICKED THAT UP OFF OF VARIOUS
7 SURFACES AND IT CONTAMINATED THE BLOOD AND WE HAD TWO OR THREE
8 DNA SAMPLES IN THAT ONE BLOOD SAMPLE.

9 A RIGHT. IF THERE WAS ANOTHER DNA PROFILE THAT WAS DETECTIBLE,
10 PRESENT, IT WOULD HAVE SHOWN AS A DNA MIXTURE ON MY RESULTS AND I
11 DON'T HAVE ANY INDICATION THAT THERE IS DNA MIXTURE, MORE THAN ONE
12 PERSON CONTRIBUTING TO THE SAMPLE. AND WITH TOUCH SAMPLES, YOU
13 ARE TALKING ABOUT VERY LOW LEVELS OF DNA USUALLY, SO TOUCH
14 SAMPLES AREN'T VERY RELIABLE. USUALLY, WE CAN PREDICT WHAT KIND OF
15 RESULTS WE GET FROM BLOOD AND WE'RE NOT ALWAYS SURE WHETHER OR
16 NOT WE WILL ALWAYS GET A PROFILE FROM A TOUCH SAMPLE.

17 Q LET ME ASK YOU -- OKAY, THAT BEGS THE QUESTION THEN, WOULD YOU HAVE
18 TESTED -- WOULD YOUR TESTS HAVE PRODUCED THAT, IF THERE WAS A
19 MINOR SAMPLE PRESENT?

20 A IF THERE WAS A MINOR SAMPLE -- WE DON'T RUN A SEPARATE TEST. IT
21 WOULD BE THE SAME EXACT TEST ALL THE WAY THROUGH, SO THAT IF IT
22 WAS DETECTABLE IT WOULD HAVE SHOWN UP.

23 Q OKAY.

24 MR. TAVERNIER: AND FOR THE RECORD, YOUR HONOR, I WOULD STIPULATE
25 TO MS. STANLEY'S QUALIFICATIONS AS AN EXPERT IN THIS FIELD. I'M NOT GOING TO

1 CHALLENGE THAT.

2 THE COURT: WHAT IS THIS FIELD? WHAT IS THE AREA OF EXPERTISE?

3 MR. BRADLEY: FORENSIC SEROLOGY AND DNA ANALYSIS.

4 THE COURT: SAY THAT AGAIN.

5 MR. BRADLEY: FORENSIC SEROLOGY AND DNA ANALYSIS.

6 THE COURT: AND DID YOU SAY SHEDDER OR SWEATER?

7 MS. STANLEY: SHEDDER.

8 THE COURT: SHEDDER AS IF HE SHED DNA?

9 MS. STANLEY: IF HE SHED SKIN CELLS. YES, SIR.

10 THE COURT: OKAY. THANK YOU, MA'AM. MAY MS. STANLEY STEP DOWN? ARE
11 YOU FINISHED OR DO YOU WANT SOME CROSS EXAMINATION?

12 MR. TAVERNIER: I AM FINISHED, YOUR HONOR. MISTER BRADLEY CAN
13 QUALIFY HER AS WHATEVER HE DEEMS APPROPRIATE FOR THE JURY, BUT I'M
14 SATISFIED WITH HER INFORMATION.

15 THE COURT: OKAY. THANK YOU, MA'AM. CAN SHE STEP DOWN AT THIS POINT
16 AND WE WILL JUST CALL HER BACK?

17 MR. BRADLEY: YES, SIR.

18 THE COURT: THANK YOU, MA'AM. FOR SCHEDULING PURPOSES, THIS IS THE
19 LAST WITNESS OF THE DAY. IS THAT CORRECT?

20 MR. BRADLEY: YES SIR, YOUR HONOR.

21 THE COURT: OKAY. THANK YOU.

22 (JURY IN AT 4:49 P.M.)

23 THE COURT: IS THE STATE READY TO PROCEED?

24 MR. BRADLEY: YES, SIR, YOUR HONOR. MAY IT PLEASE THE COURT, THE
25 STATE CALLS AGENT STEPHANIE STANLEY TO THE STAND.

DIRECT EXAMINATION OF STEPHANIE STANLEY BY MR. BRADLEY

1 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, AGENT STEPHANIE
2 STANLEY TESTIFIED AS FOLLOWS:)

3 CLERK OF COURT: THANK YOU. PLEASE HAVE A SEAT IN THE WITNESS
4 STAND. PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

5 MS. STANLEY: STEPHANIE STANLEY. S-T-A-N-L-E-Y.

6 DIRECT EXAMINATION OF STEPHANIE STANLEY BY MISTER BRADLEY

7 Q GOOD AFTERNOON, AGENT STANLEY. WHAT IS YOUR OCCUPATION?

8 A I AM A FORENSIC SCIENTIST FOR THE SOUTH CAROLINA LAW ENFORCEMENT
9 DIVISION, WHICH IS COMMONLY REFERRED TO AS S.C.L.E.D. AND I AM
10 ASSIGNED TO THE DNA CASE WORK DEPARTMENT.

11 Q ALL RIGHT. HOW LONG HAVE YOU BEEN AT S.C.L.E.D.?

12 A I HAVE BEEN AT S.C.L.E.D. SINCE FEBRUARY OF 2005 AND DOING THIS
13 PARTICULAR JOB SINCE SEPTEMBER OF 2005.

14 Q AND WHAT KIND OF TRAINING DO YOU HAVE TO HAVE TO OBTAIN THIS JOB?

15 A I HAVE A BACHELOR OF SCIENCE DEGREE IN BIOLOGICAL SCIENCES FROM
16 CLEMSON UNIVERSITY AND I'VE ALSO BEEN TRAINED IN-HOUSE AT S.C.L.E.D.. I
17 WAS TRAINED IN DNA ANALYSIS, SEROLOGY, I WAS TRAINED IN COURT
18 TESTIMONY, STATISTICS AS IT RELATES TO DNA ANALYSIS, AND EVIDENCE
19 HANDLING.

20 Q AND HAVE YOU EVER TESTIFIED AS AN EXPERT BEFORE?

21 A I HAVE.

22 Q AND HOW MANY TIMES?

23 A I BELIEVE IT'S SEVEN.

24 Q AND WHAT FIELD HAVE YOU QUALIFIED IN?

25 A FORENSIC DNA ANALYSIS AND SEROLOGY.

1 **MR. BRADLEY:** YOUR HONOR, AT THIS TIME THE STATE WOULD ASK THAT SHE
2 BE DECLARED AN EXPERT IN THE FIELD OF FORENSIC SEROLOGY AND DNA
3 ANALYSIS.

4 **THE COURT:** ANY OBJECTIONS?

5 **MR. TAVERNIER:** NO OBJECTIONS, YOUR HONOR. THE JURY CAN TAKE THE
6 FACT THAT SHE WENT TO CLEMSON INTO CONSIDERATION.

7 **THE COURT:** THANK YOU. LADIES AND GENTLEMEN OF THE JURY, IT'S BEEN
8 STIPULATED GRACIOUSLY BY COUNSEL THAT MS. STANLEY IS AN EXPERT IN THE
9 AREA OF FORENSIC SEROLOGY AND DNA ANALYSIS. I WILL TELL YOU THAT
10 NORMALLY A WITNESS IS NOT ALLOWED TO GIVE THEIR OPINION, BUT THEY MUST
11 TESTIFY AS TO WHAT THEY SAW, WHAT THEY HEARD, WHAT THEY SMELLED.
12 TYPICALLY, WHAT WE NORMALLY CONSIDER OUR SENSES. HOWEVER, BECAUSE OF
13 A PERSON'S EXPERIENCE OR THEIR EDUCATION, OR A COMBINATION OF THE
14 ABOVE, THEY MAY BE ALLOWED TO GIVE AN OPINION IN THE AREA OF THEIR
15 EXPERTISE. AS I HAVE TOLD YOU, THIS LADY HAS BEEN ADMITTED TO BE AN
16 EXPERT IN THE AREA OF FORENSIC SEROLOGY AND DNA ANALYSIS. SHE WILL BE
17 ALLOWED TO GIVE HER OPINION IN THAT AREA. IT IS LIKE ANY OTHER EVIDENCE
18 THAT YOU RECEIVE IN THIS CASE. YOU ARE NOT REQUIRED TO ACCEPT HER
19 OPINION, BUT IT IS JUST EVIDENCE YOU CAN DO WITH AS YOU SEE FIT. THANK YOU.
20 MISTER BRADLEY?

21 **MR BRADLEY:** THANK YOU, YOUR HONOR.

22 **Q** NOW, MS. STANLEY, WHAT DOES A DNA ANALYST DO?

23 **A** I RECEIVE EVIDENCE SAMPLES AND KNOWN STANDARDS FROM POLICE
24 AGENTS ACROSS SOUTH CAROLINA. THEY BRING IN CASE SAMPLES. I THEN
25 TEST FOR A SUSPECTED BODY FLUID WHICH IS KNOWN AS SEROLOGY AND

DIRECT EXAMINATION OF STEPHANIE STANLEY BY MR. BRADLEY

1 USUALLY WHAT WE ARE LOOKING FOR IS BLOOD, SEMEN, OR SALIVA OF
2 THOSE SAMPLES. I THEN ATTEMPT TO GET A DNA PROFILE FROM THOSE
3 ITEMS. I DEVELOP A REPORT. I ALSO WILL DEVELOP A DNA PROFILE FROM A
4 KNOWN STANDARD AND THAT IS SOMETHING THAT HAS COME FROM A
5 PARTICULAR INDIVIDUAL. IT'S USUALLY A BLOOD STANDARD, A SAMPLE TAKEN
6 FROM SOMEBODY'S ARM, OR WHAT IS KNOWN AS A BUCCAL SWAB. THESE
7 ARE ORAL SWABS THAT ARE STERILE AND RUBBED INSIDE SOMEONE'S CHEEK
8 TO COLLECT SKIN CELLS AND THEY ARE SUBMITTED FOR US TO USE AS
9 COMPARISON TO EVIDENCE. I WRITE A REPORT BASED ON MY FINDINGS AND I
10 TESTIFY IN COURT.

11 Q AND COULD YOU PLEASE EXPLAIN A LITTLE BIT MORE ABOUT WHAT DNA IS?

12 A YES. DNA IS AN ABBREVIATION FOR DEOXYRIBONUCLEIC ACID. IT IS A
13 CHEMICAL THAT IS FOUND IN ALL OF OUR CELLS WITH THE EXCEPTION OF
14 OUR RED BLOOD CELLS AND YOU CAN THINK OF DNA AS RESPONSIBLE FOR
15 THE PASSING OF GENETIC INFORMATION FROM GENERATION TO
16 GENERATION. YOU GET HALF OF YOUR DNA FROM YOUR MOM AND HALF OF
17 YOUR DNA COMES FROM YOUR DAD AND MOST OF OUR DNA IS THE SAME
18 AMONG HUMANS. WE ALL HAVE TWO ARMS, TWO LEGS, BUT IN FORENSICS
19 WE ARE INTERESTED IN A VERY SMALL PORTION OF OUR DNA THAT IS
20 DIFFERENT. IT ALLOWS US TO TELL INDIVIDUALS APART FROM ONE ANOTHER.
21 IN OUR LAB, WE LOOK AT FIFTEEN OF THOSE LOCATIONS ON THE DNA AND
22 THE INFORMATION FROM THOSE LOCATIONS, COMBINED, IS WHAT WE CALL A
23 DNA PROFILE. AND NO TWO PEOPLE WILL HAVE THE SAME DNA PROFILE WITH
24 THE EXCEPTION OF IDENTICAL TWINS.

25 Q AND AGENT STANLEY, DID YOU RECEIVE ANY ITEMS IN THIS CASE TO

1. ANALYZE?

2. A I DID.

3. MR. BRADLEY: PERMISSION TO APPROACH?

4. THE COURT: YES, SIR.

5. Q I'M SHOWING YOU STATE'S EXHIBITS #15 AND #16. TAKE A LOOK AT THESE
6. AND SEE IF YOU RECOGNIZE THEM.

7. A I DO.

8. Q HOW DO YOU RECOGNIZE THEM?

9. A I'M NOT SURE WHICH ONE IS STATE'S #15 OR #16, BUT WHAT I'M LOOKING FOR
10. IS THE LAB NUMBER HERE. (INDICATING) THIS CORRESPONDS TO MY WORK
11. THAT I'VE DONE INSIDE THE LAB. THIS IS A ITEM NUMBER FOR US. IT IS
12. PRESENT ON BOTH PACKAGES, THE CASE NUMBER AND THE ITEM NUMBER.
13. AND I ALSO WRITE MY INITIALS WHEN I HANDLE THE EVIDENCE. THIS IS
14. WHERE I HAVE CUT INTO THIS PACKAGE AND I HAVE SEALED IT BACK.
15. (INDICATING) AND MY INITIALS ARE ON THE INSIDE PACKAGING AS WELL.

16. Q JUST TO BE CLEAR. WHAT IS STATE'S EXHIBIT #15? I BELIEVE THE MARKER
17. SHOULD BE ON THE PLASTIC BAGS FOR EXHIBIT MARKING.

18. A OKAY. STATE'S EXHIBIT #15 WAS SUBMITTED TO ME AS SWABS. WHEN I
19. OPENED THE PACKAGE, I FOUND SWABS FROM AN ALARM KEYPAD AND
20. SWABS FROM A SPARE ROOM DOOR.

21. Q WHAT IS STATE'S EXHIBIT #16?

22. A STATE'S EXHIBIT #16 CORRESPONDS WITH MY ITEM NUMBER 2 AND IT WAS
23. PRESENTED BUCCAL SWABS FROM DAVID DALE SHERIFF.

24. Q OKAY. AND WHY WERE THESE ITEMS IN YOUR POSSESSION?

25. A I'M SORRY?

DIRECT EXAMINATION OF STEPHANIE STANLEY BY MR. BRADLEY

1 Q WHY WERE THESE ITEMS IN YOUR POSSESSION?

2 A THEY WERE IN MY POSSESSION. -- I RECEIVED THEM TO PERFORM DNA
3 ANALYSIS ON THE SWABS AND PERFORM DNA ANALYSIS ON THE STANDARD
4 TO SEE IF THE TWO PROFILES MATCHED, TO SEE IF THE DNA FROM THE
5 SWABS MATCHED THE DNA FROM THE STANDARD.

6 Q AND FROM WHERE DID YOU RECEIVE THESE ITEMS?

7 A MAY I REFER TO MY CHAIN? (LOOKS THROUGH HER DOCUMENTS) I RECEIVED
8 MY ITEM 1, WHICH WERE THE SWABS, FROM A SECURE REFRIGERATOR IN
9 OUR DNA DEPARTMENT.

10 Q AND I BELIEVE THAT CORRESPONDS WITH STATE'S EXHIBIT #15. IS THAT
11 CORRECT?

12 A YES.

13 Q HOW ABOUT STATE'S EXHIBIT #16?

14 A I RECEIVED THIS ITEM FROM FORENSIC TECHNICIAN, SHEREE BROWN. SHE IS
15 A TECHNICIAN IN THE DNA DEPARTMENT.

16 Q AND STATE'S EXHIBIT #15, WHEN DID YOU RECEIVE THAT ITEM?

17 A MARCH 19, 2008.

18 Q AND STATE'S EXHIBIT #16?

19 A NOVEMBER 12, 2009.

20 Q AND WHAT CONDITION WERE THESE ITEMS WHEN YOU RECEIVED THEM?

21 A WHEN I RECEIVED THESE ITEMS THEY WOULD BE INSIDE THE HEAT-SEALED
22 POUCH. THIS IS THE ENVELOPE THAT THE AGENCY HAS SUBMITTED. WHEN IT
23 COMES INTO S.C.L.E.D., IT'S PLACED INSIDE THE HEAT-SEALED POUCH AND
24 IT'S SEALED AND THE PERSON DROPPING OFF THE EVIDENCE SIGNS IT. SO
25 THERE WOULDN'T HAVE BEEN ANY CUTS OR ANYTHING INTO THE BAGS.

1 Q HAD IT BEEN TAMPERED WITH IN ANY WAY, WHAT WOULD YOU HAVE DONE
2 ABOUT IT?

3 A I WOULD NOT HAVE ANALYZED IT.

4 Q THESE ITEMS HAD NOT BEEN TAMPERED WITH IN ANY WAY?

5 A NO.

6 Q AND DID YOU PERFORM AN ANALYSIS ON THESE ITEMS?

7 A I DID.

8 Q AND COULD YOU PLEASE DESCRIBE THOSE FOR US?

9 A THE FIRST STEP OF THE PROCESS THAT I PERFORMED WAS SEROLOGY,
10 WHICH I'M TRYING TO IDENTIFY BODY FLUIDS: BLOOD, SEMEN, AND SALIVA. IN
11 THIS CASE, I WAS ASKED TO CHECK FOR BLOOD. ONCE I CHECKED FOR
12 BLOOD, I PERFORMED DNA ANALYSIS AND DEVELOPED A DNA PROFILE.

13 Q AND SO YOU WERE ABLE TO DEVELOP A DNA PROFILE FROM THESE ITEMS
14 SUBMITTED TO YOU?

15 A YES.

16 Q IN REGARDS TO EXHIBIT #15, THAT IS YOUR ITEM 1, YOU WERE ABLE TO
17 DEVELOP DNA PROFILE FROM THE EVIDENCE SUPPLIED. IS THAT CORRECT?

18 A YES.

19 Q WOULD YOU DESCRIBE THOSE AGAIN, WHAT THOSE ITEMS WERE.

20 A IT WAS SWABS FROM AN ALARM KEYPAD AND SWABS FROM A SPARE ROOM
21 DOOR.

22 Q AND I BELIEVE EXHIBIT #16 WAS THE KNOWN STANDARD FROM THE
23 DEFENDANT. IS THAT CORRECT?

24 A YES.

25 Q AND WERE YOU ABLE TO DEVELOP A DNA PROFILE FROM THAT?

DIRECT EXAMINATION OF STEPHANIE STANLEY BY MR. BRADLEY

1 A I WAS.

2 Q AND WERE YOU ABLE TO COMPARE THE TWO, THE EVIDENCE ITEMS AND THE
3 KNOWN STANDARD FROM THE DEFENDANT?

4 A YES. I WAS.

5 Q AND WHAT WERE YOUR RESULTS IN THAT COMPARISON?

6 A ON THE SWABS FROM THE ALARM KEYPAD AND THE SPARE ROOM DOOR,
7 BLOOD WAS INDICATED AND THE DNA PROFILE DEVELOPED FROM THOSE
8 ITEM MATCHES THE DNA PROFILE OF DAVID DALE SHERIFF. THE PROBABILITY
9 OF RANDOMLY SELECTING AN UNRELATED INDIVIDUAL HAVING A DNA PROFILE
10 MATCHING THESE ITEMS IS APPROXIMATELY ONE IN TWENTY-SEVEN
11 QUINTILLION.

12 Q EXACTLY HOW MANY ZEROS ARE IN A QUINTILLION?

13 A THIS NUMBER, IF YOU WANT TO VISUALIZE, IT'S A TWENTY-SEVEN AND IT'S
14 FOLLOWED BY EIGHTEEN ZEROS.

15 Q SO, THAT'S A VERY LARGE NUMBER.

16 A IT IS.

17 Q AND WHAT IS THE SIGNIFICANCE OF THIS NUMBER?

18 A WHAT WE ARE TRYING TO DO HERE IS GIVE A LITTLE BIT OF WEIGHT TO THE
19 EVIDENCE. IF I WAS ABLE TO TEST TWENTY-SEVEN QUINTILLION PEOPLE, I
20 WOULD EXPECT TO FIND THIS DNA PROFILE ONCE OUT OF THOSE TWENTY-
21 SEVEN QUINTILLION PEOPLE.

22 Q AND IT JUST SO HAPPENS THAT IT DOES, IN FACT, MATCH THE DEFENDANT.
23 IS THAT CORRECT?

24 A IT DOES.

25 Q AND SO, IN YOUR OPINION, IN YOUR EXPERT OPINION TO A REASONABLE

1 DEGREE OF SCIENTIFIC CERTAINTY, DOES THE DNA PROFILE THAT YOU

2 FOUND ON THE ITEMS, FROM THE ALARM KEYPAD AND THE SPARE ROOM

3 DOOR, MATCH THE DNA PROFILE OF THE DEFENDANT DAVID DALE SHERIFF?

4 A YES. THE DNA PROFILE DEVELOPED FROM THOSE ITEMS MATCHES THE DNA
5 PROFILE OF DAVID DALE SHERIFF.

6 Q AND WHAT DID YOU DO WITH THESE ITEMS AFTER TESTING THEM?

7 A THEY WOULD HAVE BEEN RE-PACKAGED, RE-SEALED. YOU CAN TELL WHERE I
8 HAVE SEALED THE OUTSIDE ENVELOPE AND THEN I RETURN THEM TO OUR
9 LOG-IN DEPARTMENT.

10 Q AND COULD YOU TELL US WHAT HAPPENED TO THEM AFTERWARDS, AFTER
11 RETURNING THEM TO THE LOG-IN DEPARTMENT?

12 A I RETURNED MY ITEM 1, WHICH WERE THE SWABS TO AMY STEPHENS AND
13 SHE WOULD PLACE THEM INTO OUR SECURE STORAGE AREA WHERE IT
14 AWAITS FOR THE AGENCY TO COME PICK THEM UP, THE SUBMITTING AGENCY.
15 SOMEBODY FROM ANDERSON COUNTY SHERIFF'S OFFICE, I BELIEVE.

16 Q AND FROM YOUR DOCUMENTATION, CAN YOU SEE WHETHER OR NOT THEY
17 WERE RETURNED TO THE SHERIFF'S OFFICE?

18 A YES. IT LOOKS LIKE THE SWABS WERE RETURNED ON MAY 14, 2009 AND THE
19 STANDARD, MY ITEM 2, WAS RETURNED JANUARY 12, 2010.

20 Q DOES IT SHOW WHO IT WAS RETURNED TO FROM THE SHERIFF'S OFFICE?

21 A THE SWABS WERE PICKED UP BY, IT LOOKS LIKE TOMMY CLAMP, ANDERSON
22 COUNTY SHERIFF'S OFFICE AND THE STANDARD WAS PICKED UP BY TOMMY
23 CLAMP, ANDERSON COUNTY SHERIFF'S OFFICE.

24 MR. BRADLEY: YOUR HONOR, AT THIS TIME THE STATE WOULD MOVE INTO
25 EVIDENCE STATE'S EXHIBITS #15 AND #16 SUBMITTED INTO EVIDENCE.

CROSS EXAMINATION OF STEPHANIE STANLEY BY MR. TAVERNIER

1 THE COURT: ANY OBJECTIONS?

2 MR. TAVERNIER: YOUR HONOR, SUBJECT TO MISTER BRADLEY TYING IT
3 TOGETHER WITH MS. STEPHENS AND MS. YARBOROUGH TOMORROW.

4 THE COURT: ADMITTED INTO EVIDENCE WITHOUT OBJECTION, SUBJECT TO
5 BEING TIED IN TOMORROW BY THE PROPERTY CHAIN OF CUSTODY EVIDENCE.

6 (WHEREUPON, SWABS, STATE'S EXHIBIT #15 AND A KNOWN STANDARD FROM
7 THE DEFENDANT, STATE'S EXHIBIT #16, ARE ADMITTED INTO EVIDENCE, WITHOUT
8 OBJECTION, SUBJECT TO COMPLETING THE CHAIN OF CUSTODY EVIDENCE)

9 MR. BRADLEY: NO FURTHER QUESTIONS AT THIS TIME, YOUR HONOR.

10 THE COURT: CROSS EXAMINATION?

11 MR. TAVERNIER: JUST A FEW QUESTIONS.

12 CROSS EXAMINATION OF STEPHANIE STANLEY BY MISTER TAVERNIER

13 Q MS. STANLEY, WHAT WOULD THE ODDS BE IF MISTER SHERIFF HAD AN
14 IDENTICAL TWIN?

15 A AN IDENTICAL TWIN WOULD SHARE THE EXACT SAME DNA PROFILE.

16 Q DO YOU KNOW WHETHER MISTER SHERIFF HAS AN IDENTICAL TWIN?

17 A I DO NOT. UNLESS THAT IS PRESENTED TO ME FROM THE SHERIFF'S OFFICE,
18 WE DON'T QUESTION THAT.

19 Q THANK YOU.

20 MR. TAVERNIER: NO FURTHER QUESTIONS.

21 THE COURT: ANY RE-DIRECT?

22 MR. BRADLEY: NO RE-DIRECT, YOUR HONOR.

23 THE COURT: MAY MS. STANLEY BE EXCUSED?

24 MR. BRADLEY: I HAVE NO OBJECTION, YOUR HONOR.

25 THE COURT: THANK YOU, MA'AM. YOU ARE EXCUSED. ALL RIGHT, MISTER

1 BRADLEY, DO YOU HAVE ANY WITNESSES FOR THE REMAINDER OF THE DAY?

2 MR. BRADLEY: YES, YOUR HONOR. THE STATE WOULD LIKE TO RECALL

3 DETECTIVE DAVID COYLE FOR ONE MORE QUESTION, YOUR HONOR.

4 THE COURT: OKAY. YOU ARE STILL UNDER OATH.

5 DETECTIVE COYLE: YES, SIR.

6 THE COURT: THANK YOU.

7 RE-DIRECT EXAMINATION OF DETECTIVE DAVID COYLE BY MISTER BRADLEY

8 Q DETECTIVE COYLE, JUST TO FOLLOW UP, IN YOUR INVESTIGATION OF THIS

9 MATTER DID YOU LEARN WHETHER OR NOT THE DEFENDANT HAS AN

10 IDENTICAL TWIN?

11 A NO. HE DOES NOT HAVE AN IDENTICAL TWIN.

12 Q THANK YOU.

13 MR. BRADLEY: YOUR HONOR, NOTHING FURTHER.

14 THE COURT: CROSS EXAMINATION?

15 MR. TAVERNIER: NO. YOUR HONOR.

16 THE COURT: YOU MAY STEP DOWN. ALL RIGHT, DO YOU REST FOR THE

17 AFTERNOON?

18 MR. BRADLEY: YES, SIR, YOUR HONOR.

19 THE COURT: LADIES AND GENTLEMEN, THANK YOU FOR BEARING WITH US

20 TODAY. YOU HAVE ALLOWED US TO TAKE CARE OF SOME SCHEDULING ISSUES

21 THAT COULDN'T BE AVOIDED AND THANK YOU FOR YOUR PATIENCE. AND WHAT I AM

22 GOING TO DO IS EXCUSE YOU TODAY. I'M GOING TO ASK THAT YOU BE BACK IN

23 YOUR JURY ROOM NO LATER THAN 9:30 IN THE MORNING. IS 9:30 OKAY WITH

24 EVERYBODY?

25 MR. BRADLEY: THAT'S FINE, YOUR HONOR.

1 THE COURT: OKAY. I REMIND YOU THAT WHILE YOU ARE NOT IN THE
2 COURTROOM YOU MAY NOT SPEAK ABOUT THIS CASE AMONGST YOURSELVES,
3 WITH YOUR SPOUSE, FRIENDS, CAN'T TALK ABOUT IT ON THE PHONE, OR DIRECTLY
4 OR INDIRECTLY. JUST WAIT UNTIL YOU GET BACK TOMORROW AND YOU WILL HAVE
5 SUFFICIENT TIME TO DELIBERATE THIS CASE AMONGST YOURSELVES, BUT UNTIL
6 THAT TIME I AM GOING TO ASK THAT YOU NOT SPEAK ABOUT IT. ALL RIGHT. I HOPE
7 YOU HAVE A NICE EVENING. I AM GOING TO EXCUSE YOU FOR THE DAY. THANK
8 YOU.

9 (JURY OUT AT 5:06 P.M.)

10 THE COURT: ANYTHING FROM THE STATE?

11 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

12 MR. TAVERNIER: NOTHING.

13 THE COURT: I ASSUME THAT MISTER SHERIFF IS NOT OUT ON BOND?

14 MR. TAVERNIER: HE IS NOT, YOUR HONOR. HE REMAINS IN CUSTODY.

15 THE COURT: HE WILL REMAIN REMANDED. 9:30 IN THE MORNING?

16 MR. BRADLEY: YES, SIR.

17 THE COURT: ALL RIGHT. ANYTHING IN ADDITION WE NEED TO LOOK AT
18 BEFORE WE GET OUT OF HERE? I'VE GOT A COPY OF MY PROPOSED CHARGE ON
19 THE LAW OF FIRST DEGREE BURGLARY. IT'S JUST BEEN AMENDED A LITTLE BIT
20 FROM THE BENCH BOOK JUST TO MAKE IT MORE APROPOS TO THE FACTS IN THIS
21 CASE. Y'ALL JUST TAKE A LOOK AT IT WHEN YOU GET A CHANCE AND WE WILL GO
22 OVER IT AND DO A BRIEF CHARGE CONFERENCE IN THE MORNING. ALL RIGHT.
23 THANK YOU, LADIES AND GENTLEMEN. WE ARE IN RECESS.

24 (RECESS FOR THE DAY)

25 MORNING OF JULY 20, 2010:

1 THE COURT: ARE YOU READY FROM THE STATE?

2 MR. BRADLEY: YES, SIR, YOUR HONOR.

3 THE COURT: MISTER TAVERNIER?

4 MR. TAVERNIER: READY TO PROCEED, YOUR HONOR.

5 THE COURT: WOULD YOU BRING THE JURY IN, PLEASE, SIR.

6 MR. TAVERNIER: DO WE NEED TO DO THE PRELIMINARY?

7 THE COURT: JUST ONE SECOND. DO WE NEED TO HOLD THEM? (THE JUDGE
8 TELLS THE BAILIFF TO HOLD THE JURY) DO YOU WANT TO MAKE A PROFFER ON
9 THAT?

10 MR. TAVERNIER: PLEASE. IF I MAY?

11 THE COURT: CERTAINLY. AND JUST FOR THE RECORD, WE HAD A BENCH
12 CONFERENCE AT WHICH TIME THE DEFENSE COUNSEL INFORMED ME OF HIS INTENT
13 TO INTRODUCE INTO EVIDENCE THE NOTICE FROM THE SOLICITOR'S OFFICE OF
14 THEIR INTENT TO SEEK LIFE WITHOUT POSSIBILITY OF PAROLE AND THAT'S WHAT
15 HE WANTED TO INTRODUCE INTO EVIDENCE. I RULED THAT IT IS NOT ADMISSIBLE,
16 BECAUSE IT IS PURELY DESIGNED TO PLAY ON THE SYMPATHY AND THE PASSIONS
17 AND THE PREJUDICES OF THE JURY AND IT'S NOT RELEVANT TO GUILT OR
18 INNOCENCE IN THIS MATTER. GO AHEAD.

19 MR. TAVERNIER: YOUR HONOR, THE REASON THAT I'M DOING SO IS, AS AN
20 ELEMENT OF THE STATE'S CASE IN CHIEF, THEY ARE PERMITTED TO PRESENT
21 EVIDENCE THAT HE HAS PRIOR CONVICTIONS FOR HOUSEBREAKING AND/OR
22 BURGLARY AS IN BOTH THE ELEMENT OF THE CRIME OF BURGLARY FIRST AND AS IT
23 ALSO BECOMES AN ENHANCEMENT TO HIS SENTENCE. IT SERVES A DUAL PURPOSE
24 AND SO BASED ON THAT, I THINK IT WOULD BE RELEVANT. I UNDERSTAND THE
25 COURT'S RULING, BUT JUST TO PRESERVE THE RECORD.

NOTICES MADE COURT EXHIBITS #2 AND #3

1 THE COURT: CERTAINLY, AND LET'S MAKE THAT NOTICE A COURT EXHIBIT. I
2 THINK EVERYBODY KNOWS WHAT THE FORM IS, BUT JUST IN CASE.

3 MR. TAVERNIER: OKAY. THERE ARE THREE, YOUR HONOR. THE FIRST WAS
4 SERVED UPON HIM IN MARCH OF '09. THAT WAS, IN FACT, SERVED BY OR PREPARED
5 BY SCOTT MCELHANNAN WITH THE SOLICITOR'S OFFICE AT THAT TIME. THE
6 SECOND WAS IN JANUARY OF 2010, BY KATHERINE HUEY OF THE SOLICITOR'S
7 OFFICE AND THE LAST ONE WAS BY MISTER BRADLEY IN JUNE OF 2010. THERE IS
8 THE THREE OF THEM THAT WERE SERVED UPON HIM WITH EACH RESPECTIVE
9 SOLICITOR THAT HAD THE CASE. (HANDS DOCUMENTS TO THE JUDGE)

10 THE COURT: THANK YOU, SIR. WE WILL JUST MAKE THAT ONE GROUP EXHIBIT
11 AS A COURT'S EXHIBIT.

12 MR. TAVERNIER: PLEASE. YES, I THINK THAT WILL SERVE FOR SIMPLICITY.
13 (WHEREUPON, THREE DOCUMENTS, NOTICES FROM THE SOLICITOR'S OFFICE,
14 ARE ENTERED INTO EVIDENCE AS COURT'S EXHIBIT #2)

15 THE COURT: ALL RIGHT. OTHERWISE, ARE WE READY TO PROCEED, MISTER
16 BRADLEY?

17 MR. BRADLEY: YES, SIR, YOUR HONOR.

18 THE COURT: MISTER TAVERNIER? ARE YOU READY TO PROCEED, MISTER
19 TAVERNIER?

20 MR. TAVERNIER: I AM, YOUR HONOR. AND JUST OUT OF CAUTION, I'M NOT
21 SURE WHETHER THIS IS THE APPROPRIATE TIME, BUT SINCE WE'VE GOT A MINUTE.
22 YESTERDAY, WHEN YOU RULED ON THE ORDER TO RELIEVED AS COUNSEL WHERE
23 IT SAID THE CASE SHALL NOT BE TRIED NO LATER THAN APRIL 19TH?

24 THE COURT: YES, SIR.

25 MR. TAVERNIER: DO I NEED TO MAKE A COPY OF THAT ORDER AS PART OF MY

110 NOTICES.MADE COURT EXHIBITS.#2 AND.#3. 110

1 PROFFER? OR - I KNOW IT SHOULD BE IN THE FILE.

2 THE COURT: I THINK THAT'S A GOOD IDEA JUST TO BE ON THE SAFE SIDE TO
3 MAKE SURE THAT YOU ARE COVERED.

4 MR. TAVERNIER: OKAY.

5 THE COURT: WE WILL JUST MAKE THAT A COURT EXHIBIT AS WELL.

6 MR. TAVERNIER: I WAS JUST GOING THROUGH IT LAST NIGHT.

7 THE COURT: RIGHT.

8 MR. TAVERNIER: JUST TO MAKE SURE THE RECORD IS CLEAR.

9 THE COURT: YEAH, I SHOULD HAVE DONE THAT YESTERDAY, ACTUALLY.

10 (WHEREUPON, A PREVIOUS ORDER OF THE COURT IS ADMITTED INTO
11 EVIDENCE AS A COURT'S EXHIBIT #3)

12 THE COURT: ANYTHING FURTHER?

13 MR. TAVERNIER: THAT'S ALL I HAVE, YOUR HONOR. THANK YOU.

14 THE COURT: OH, COME UP HERE, PLEASE. CAN I SEE BOTH OF YOU?

15 (BRIEF BENCH CONFERENCE OFF THE RECORD)

16 (JURY IN AT 9:54 A.M.)

17 THE COURT: GOOD MORNING MISTER CLAREY, LADIES AND GENTLEMEN OF
18 THE JURY, ARE YOU READY TO PROCEED?

19 MR. CLAREY: YES, SIR. WE ARE.

20 THE COURT: ALL RIGHT. ARE YOU READY TO PROCEED, MISTER BRADLEY?

21 MR. BRADLEY: YES, SIR. WE ARE.

22 THE COURT: ALL RIGHT. WE ARE READY TO PROCEED.

23 MR. BRADLEY: THE STATE CALLS AMY STEPHENS.

24 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, AMY STEPHENS
25 TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION OF AMY STEPHENS BY MR. BRADLEY

1 CLERK OF COURT: HAVE A SEAT IN THE WITNESS STAND, PLEASE. IF YOU
2 WOULD PLEASE STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

3 MS. STEPHENS: AMY STEPHENS. S-T-E-P-H-E-N-S.

4 DIRECT EXAMINATION OF AMY STEPHENS BY MISTER BRADLEY

5 Q GOOD MORNING, MS. STEPHENS.

6 A GOOD MORNING.

7 Q WHERE ARE YOU EMPLOYED?

8 A I AM EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION,
9 ALSO KNOWN AS S.C.L.E.D..

10 Q AND HOW LONG HAVE YOU BEEN THERE?

11 A I HAVE BEEN WITH S.C.L.E.D. SINCE MARCH 2, 2006.

12 Q WHAT POSITION DO YOU HOLD?

13 A I AM A FORENSIC TECHNICIAN IN THE EVIDENCE CONTROL DEPARTMENT.

14 Q AND WHAT ARE YOUR DUTIES?

15 A I LOG IN AND PACKAGE EVIDENCE FOR FORENSIC ANALYSIS AS WELL AS
16 STOCK THE EVIDENCE IN OUR EVIDENCE ROOM.

17 Q AND DID YOU RECEIVE ANY ENVELOPES IN REGARDS TO THIS CASE WE'RE
18 HERE FOR TODAY?

19 A YES. I DID.

20 Q AND WHAT WAS THAT?

21 A I RECEIVED S.C.L.E.D. ITEM #1, 1.1, AND 1.2.

22 Q AND JUST TO BE CLEAR, COULD YOU GIVE US A DESCRIPTION OF THOSE
23 ITEMS.

24 A S.C.L.E.D. ITEM #1 IS DESCRIBED AS A SWAB. SLED ITEM 1.1 WAS SWABS
25 FROM AN ALARM KEYPAD AND S.C.L.E.D. ITEM #1.2 WAS SWABS FROM A

1 SPARE ROOM DOOR, SAFE/GUNS.

2 Q AND WHEN DID YOU RECEIVE THESE ITEMS?

3 A I RECEIVED THEM ON MAY 08, 2009 at 4:40 P.M.

4 Q FROM WHOM DID YOU RECEIVE THESE?

5 A OUR FORENSIC SCIENTIST, STEPHANIE STANLEY.

6 Q AND SO THIS WAS AFTER THE ANALYZATION OF THOSE ITEMS?

7 A THAT'S CORRECT.

8 Q AND WHEN YOU RECEIVED THEM, WHAT DID YOU DO WITH THEM?

9 A I PUT THEM INTO MY CUSTODY AND THEN I STOCKED THEM ON THE EVIDENCE
10 SHELF IN OUR EVIDENCE ROOM.

11 Q AND WHEN THEY CAME INTO YOUR CUSTODY, WERE THEY CONSTANTLY AND
12 CONTINUOUSLY UNDER YOUR CARE AND CONTROL?

13 A CORRECT. UNTIL I STOCKED THEM ON THE SHELF. YES.

14 Q OKAY.

15 MR. BRADLEY: PERMISSION TO APPROACH THE WITNESS?

16 THE COURT: YES, SIR.

17 Q I'M SHOWING YOU STATE'S EXHIBIT #15. WOULD YOU TAKE A LOOK AT THAT
18 AND SEE IF YOU RECOGNIZE IT?

19 A YES. I RECOGNIZE THE LAB NUMBER L0802807, ITEM #1.

20 Q AND BESIDES THE BAG HAVING BEEN OPENED, DO THEY APPEAR TO BE IN
21 SUBSTANTIALLY THE SAME CONDITION AS THEY WERE THE LAST TIME YOU
22 SAW THEM?

23 A YES. BESIDES BEING OPENED. YES.

24 Q AND DO THEY APPEAR TO HAVE BEEN TAMPERED WITH IN ANY WAY?

25 A BESIDES THE HOLE THAT'S IN THERE, NO.

DIRECT EXAMINATION OF DORIS YARBROUGH BY MR. BRADLEY

1 Q OKAY.

2 MR. BRADLEY: NOTHING FURTHER AT THIS TIME.

3 THE COURT: CROSS EXAMINATION?

4 MR. TAVERNIER: NO QUESTIONS, YOUR HONOR.

5 THE COURT: YOU MAY STEP DOWN. THANK YOU, MA'AM.

6 MS. STEPHENS: THANK YOU.

7 MR. BRADLEY: MAY THIS WITNESS BE EXCUSED AT THIS TIME?

8 THE COURT: SIR?

9 MR. BRADLEY: MAY THIS WITNESS BE EXCUSED?

10 THE COURT: ABSOLUTELY.

11 MR. BRADLEY: THE STATE CALLS DORIS YARBROUGH.

12 (AFTER BEING DULY SWORN BY THE CLERK OF COURT, DORIS YARBROUGH
13 TESTIFIED AS FOLLOWS:)

14 CLERK OF COURT: PLEASE HAVE A SEAT IN THE WITNESS STAND. PLEASE.
15 STATE YOUR FULL NAME FOR THE RECORD AND SPELL YOUR LAST.

16 MS. YARBROUGH: MY NAME IS DORIS YARBROUGH. Y-A-R-B-R-O-U-G-H.

17 DIRECT EXAMINATION OF DORIS YARBROUGH BY MISTER BRADLEY

18 Q GOOD MORNING, MS. YARBROUGH. WHERE ARE YOU EMPLOYED?

19 A I AM EMPLOYED WITH THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION
20 ALSO KNOWN AS S.C.L.E.D..

21 Q AND WHAT IS YOUR POSITION THERE?

22 A I'M A FORENSIC TECHNICIAN IN THE EVIDENCE CONTROL DEPARTMENT.

23 Q AND HOW LONG HAVE YOU BEEN THERE?

24 A FOR TWO YEARS.

25 Q AND AGAIN, WHAT ARE YOUR DUTIES?

1 A TO LOG IN, PACKAGE AND STOCK EVIDENCE.

2 Q OKAY. AND DID YOU HAVE A REASON TO COME INTO CONTACT WITH ANY
3 EVIDENCE REGARDING THIS CASE?

4 A I DID.

5 Q AND WHEN DID YOU COME INTO CONTACT WITH IT?

6 A ON MAY 14, 2009 AT 9:26 A.M. IN THE MORNING.

7 Q AND FOR WHAT REASON DID YOU CAME INTO CONTACT WITH IT?

8 A IT WAS RETURNED TO THE ANDERSON COUNTY SHERIFF'S OFFICE.

9 Q AND YOU PERSONALLY RETURNED IT?

10 A TO TOMMY CLAMP. YES, SIR.

11 Q TO TOMMY CLAMP. AND WHEN IT CAME INTO YOUR POSSESSION, WAS IT
12 CONSTANTLY AND CONTINUOUSLY IN YOUR CARE?

13 A IT WAS IN THE EVIDENCE CONTROL -- OUR LOCKED SECURE EVIDENCE ROOM
14 AND I RETRIEVED IT AND RETURNED IT TO TOMMY CLAMP.

15 Q AND JUST TO BE CLEAR. WHAT ITEM ARE WE SPEAKING OF THAT YOU CAME
16 INTO CONTACT WITH?

17 A ITEM 1, 1.1, AND 1.2, WHICH ARE SWABS.

18 Q OKAY.

19 MR. BRADLEY: PERMISSION TO APPROACH THE WITNESS, YOUR HONOR?

20 THE COURT: YES, SIR.

21 Q I'LL SHOW YOU STATE'S EXHIBIT #15. SEE IF YOU RECOGNIZE THAT ITEM?

22 A THIS IS LAB #L08-02807, ITEM 1, AND THE PACKAGE WOULD HAVE BEEN
23 SECURED WHEN I RETURNED IT TO TOMMY CLAMP.

24 Q OKAY. SO, THAT'S THE ONLY THING THAT APPEARS TO BE DIFFERENT, THAT
25 THE BAG IS OPENED NOW?

CROSS EXAMINATION OF DORIS YARBROUGH BY MR. TAVERNIER

1 A CORRECT.

2 Q OKAY AND HOW ABOUT ITEM #2? WHO RETURNED THAT TO THE SERGEANT?

3 A THAT WAS RETURNED BY OUR EVIDENCE CONTROL LADY, PATRICIA CROOKS.

4 Q OKAY.

5 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR. YOUR HONOR, AT THIS

6 TIME I WOULD AGAIN ASK THAT STATE'S EXHIBITS #15 AND #16 BE ADMITTED INTO

7 EVIDENCE.

8 THE COURT: ANY OBJECTIONS?

9 MR. TAVERNIER: NO OBJECTIONS.

10 THE COURT: ALL RIGHT. ADMITTED WITHOUT OBJECTION.

11 (WHEREUPON, SWABS ARE ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #15

12 AND A KNOWN STANDARD IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #16,

13 WITHOUT OBJECTION)

14 THE COURT: ANY CROSS EXAMINATION?

15 MR. TAVERNIER: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.

16 CROSS EXAMINATION OF DORIS YARBROUGH BY MISTER TAVERNIER

17 Q MS. YARBROUGH —

18 A YES, SIR.

19 Q — LET ME SHOW YOU WHAT HAS BEEN MARKED AS DEFENDANT'S EXHIBIT #1

20 FOR IDENTIFICATION. IS THIS THE DOCUMENT TO WHICH ALL OF YOU, ALL THE

21 TECHNICIANS FOR S.C.L.E.D. REFER IN ORDER TO ESTABLISH A CHAIN OF

22 CUSTODY?

23 A CORRECT.

24 Q AND IS THAT EXHIBIT, WHICH CONSISTS OF THREE SHEETS, PERTAIN TO THIS

25 CASE AND THE CHAIN OF CUSTODY WITH THE SWABS AND THE DEFENDANT'S

1 BUCCAL SWAB?

2 A YES, SIR.

3 Q OKAY. AND YOU ARE FAMILIAR WITH THIS DOCUMENT?

4 A YES, SIR.

5 Q IS THIS AN ACCURATE REFLECTION -- THIS IS A COPY, BUT IS THIS AN
6 ACCURATE REFLECTION OF THE ORIGINAL ONE?

7 A YES, SIR.

8 Q OKAY.

9 MR. TAVERNIER: YOUR HONOR, AT THIS TIME I WOULD MOVE DEFENDANT'S
10 EXHIBIT #1 INTO EVIDENCE.

11 THE COURT: ANY OBJECTIONS?

12 MR. BRADLEY: NO OBJECTIONS, YOUR HONOR.

13 THE COURT: ADMITTED WITHOUT OBJECTION.

14 (WHEREUPON, THE CHAIN OF CUSTODY DOCUMENTS FOR THE SWABS ARE
15 ENTERED INTO EVIDENCE AS DEFENDANT'S EXHIBIT #1, WITHOUT OBJECTION)

16 MR. TAVERNIER: NO FURTHER QUESTIONS.

17 MR. BRADLEY: MAY THIS WITNESS BE EXCUSED, YOUR HONOR?

18 THE COURT: YES, SIR.

19 MR. BRADLEY: THE STATE CALLS RENA THOMASON TO THE STAND.

20 THE COURT: LADIES AND GENTLEMEN OF THE JURY, BEFORE WE GET
21 STARTED, JUST TO MAKE SURE THAT IT IS ABSOLUTELY CLEAR FOR THE RECORD, I
22 KNOW THIS LADY HAS BEEN IN THE COURTROOM ALL WEEK. SHE IS NOT AN
23 EMPLOYEE OF THE SOLICITOR'S OFFICE. SHE IS NOT AN EMPLOYEE OF THE
24 DEFENSE COUNSEL. SHE IS NOT AN EMPLOYEE OF THE STATE OF SOUTH
25 CAROLINA. SHE IS AN EMPLOYEE OF THE ANDERSON COUNTY CLERK OF COURT'S

DIRECT EXAMINATION OF RENA THOMASON BY MR. BRADLEY

1 OFFICE AND SHE IS BEING MERELY CALLED AS A RECORDS CUSTODIAN TO TESTIFY
2 ABOUT CERTAIN RECORDS AND SHE DOESN'T HAVE AN AXE TO GRIND IN THIS CASE
3 ONE WAY OR THE OTHER. THAT BEING SAID, WOULD YOU PLEASE RAISE YOUR
4 RIGHT HAND.

5 (AFTER BEING DULY SWORN BY THE JUDGE, RENA THOMASON TESTIFIED AS
6 FOLLOWS:)

7 THE COURT: STEP AROUND PLEASE AND STATE YOUR NAME AND SPELL YOUR
8 NAME FOR THE RECORD, PLEASE.

9 MS. THOMASON: RENA THOMASON. T-H-O-M-A-S-O-N.

10 DIRECT EXAMINATION OF RENA THOMASON BY MR. BRADLEY

11 Q GOOD MORNING, MS. THOMASON.

12 A GOOD MORNING.

13 Q WHAT IS YOUR OCCUPATION?

14 A I'M A COURT CLERK.

15 Q AND WHO IS YOUR EMPLOYER?

16 A ANDERSON COUNTY CLERK OF COURT'S OFFICE.

17 Q HOW LONG HAVE YOU BEEN EMPLOYED BY THEM?

18 A SINCE 2005.

19 Q AND WHAT ARE YOUR DUTIES IN THAT POSITION?

20 A I HANDLE THE DAY TO DAY OPERATIONS THAT INVOLVE GENERAL SESSIONS
21 OR CRIMINAL COURT.

22 Q OKAY. AND, OVERALL, WHAT FUNCTIONS DOES THE CLERK'S OFFICE
23 PERFORM?

24 A OUR MAIN FUNCTION IS AS THE RECORD KEEPERS FOR THE COURT.

25 Q OKAY. SO, THE COUNTY MANAGES IT?

1 A YES, SIR.

2 Q AND WITH REGARDS TO YOUR DUTIES, WOULD YOU PLEASE EXPLAIN TO THE
3 JURY WHAT TYPES OF CRIMINAL RECORDS ARE MAINTAINED?

4 A WE HANDLE THE ARREST WARRANTS, THE TRUE BILL INDICTMENTS
5 RECEIVED FROM THE GRAND JURY, THE SENTENCING SHEETS THAT ARE
6 SIGNED BY THE JUDGE, ANY ORDERS THAT ARE SIGNED BY THE JUDGE. ALSO,
7 ANY MOTIONS OR FILINGS MADE BY THE SOLICITOR'S OFFICE OR THE
8 DEFENSE ATTORNEYS.

9 Q AND THE RECORDS THAT BELONG TO A CERTAIN INDIVIDUAL, DO THEY
10 CONTAIN PERSONAL INFORMATION IN THOSE RECORDS TO KEEP THEM
11 STRAIGHT?

12 A YES, SIR. THEY DO.

13 Q AND WHAT KIND OF PERSONAL INFORMATION IS MAINTAINED?

14 A WE HAVE ACCESS TO THEIR ADDRESS, THE DATE OF BIRTH, SOCIAL SECURITY
15 NUMBER, DRIVER'S LICENSE NUMBER.

16 Q OKAY. AND ARE THESE CRIMINAL RECORDS KEPT IN THE ORDINARY COURSE
17 OF BUSINESS IN THE ANDERSON COUNTY CLERK'S OFFICE?

18 A YES, SIR. THEY ARE.

19 Q AND THE INFORMATION MAINTAINED IN THE RECORDS, ARE THEY
20 ACCURATELY REFLECTED?

21 A YES, SIR.

22 Q AND WERE YOU SUBPOENAED TO TESTIFY IN THIS MATTER HERE TODAY, THE
23 STATE VERSUS DAVID DALE SHERIFF?

24 A YES, I WAS.

25 MR. BRADLEY: PERMISSION TO APPROACH THE WITNESS, YOUR HONOR?

DIRECT EXAMINATION OF RENA THOMASON BY MR. BRADLEY

1 THE COURT: YES, SIR.

2 Q I'M SHOWING YOU WHAT HAS BEEN MARKED AS STATE'S EXHIBITS #13 AND
3 #14. IF YOU COULD TAKE A LOOK AT THOSE AND SEE IF YOU RECOGNIZE
4 THEM?

5 A YES, SIR. I DO.

6 Q AND HOW DO YOU RECOGNIZE THEM?

7 A THESE ARE FILINGS FROM THE CLERK'S OFFICE.

8 Q AND WHAT ARE THESE ITEMS?

9 A THIS IS INDICTMENT 1990-GS-04-1777 THAT WAS TRUE BILLED
10 SEPTEMBER 11, 1990, THE STATE VERSUS DAVID DALE SHERIFF, WITH A
11 CORRESPONDING SENTENCING SHEET AND ALSO AN INDICTMENT OF
12 1989-GS-04-2164 THAT WAS TRUE BILLED, DATED OCTOBER 24, 1989, THE
13 STATE VERSUS DAVID DALE SHERIFF, WITH ALSO, THE CORRESPONDING
14 SENTENCING SHEET.

15 Q AND CAN YOU TELL US FOR EACH EXHIBIT, FOR EACH INDICTMENT, WHAT THE
16 CHARGE WAS FOR DAVID DALE SHERIFF?

17 A YES, SIR. ON 1990-GS-04-1777, THE INDICTMENT WAS FOR BURGLARY IN A
18 DWELLING AND ON 1989-GS-04-2164, THE INDICTMENT WAS FOR BURGLARY,
19 SECOND DEGREE, AND GRAND LARCENY.

20 Q AND DOES IT REFLECT IN THOSE DOCUMENTS THAT DAVID DALE SHERIFF WAS
21 CONVICTED OF THOSE CRIMES?

22 A YES, SIR. IT DOES.

23 Q OKAY. AND DO THESE EXHIBITS ACCURATELY REFLECT THE INFORMATION
24 THAT IS CONTAINED WITHIN THEM?

25 A YES, SIR. THEY DO.

1 Q ARE THESE EXHIBITS ORIGINAL OR EXACT COPIES?

2 A THEY ARE EXACT COPIES.

3 Q AND HOW DO YOU KNOW THEY ARE EXACT COPIES OF THE ORIGINAL?

4 A THEY CARRY THE CLERK'S CERTIFIED TRUE COPY STAMP AND THE CLERK'S
5 SEAL.

6 Q OKAY. AND DO THESE EXHIBITS APPEAR TO BE ALTERED OR EDITED IN ANY
7 WAY?

8 A NO, SIR.

9 MR. BRADLEY: YOUR HONOR, AT THIS TIME THE STATE WOULD MOVE TO
10 HAVE THESE EXHIBITS, STATE'S EXHIBITS #13 AND #14, ADMITTED INTO EVIDENCE.
11 THE COURT: ANY OBJECTIONS?

12 MR. TAVERNIER: NO OBJECTION, YOUR HONOR.

13 THE COURT: ALL RIGHT, #13 AND #14 ADMITTED WITHOUT OBJECTION.

14 (WHEREUPON, TWO INDICTMENTS ARE ENTERED INTO EVIDENCE AS STATE'S
15 EXHIBITS #13 AND #14, WITHOUT OBJECTION)

16 MR. BRADLEY: YOUR HONOR, I WOULD LIKE TO PUBLISH THEM TO THE JURY.

17 THE COURT: YES, SIR.

18 MR. BRADLEY: I THINK WE HAVE IT WORKING TODAY. (REFERRING TO LARGE
19 SCREEN) ALL RIGHT, MS. THOMASON, IF YOU WOULD STEP DOWN, PLEASE.
20 (WITNESS COMPLIES) THIS IS STATE'S EXHIBIT #13, YOUR HONOR.

21 THE COURT: YES, SIR.

22 Q WOULD YOU PLEASE EXPLAIN TO THE JURY AGAIN WHAT WE ARE LOOKING
23 AT.

24 A THIS IS INDICTMENT NUMBER 1990-GS-04-1777. YOU CAN SEE IT AT THE TOP.
25 (INDICATING). OVER ON THE LEFT, UNDER ACTION OF THE GRAND JURY, IT IS

DIRECT EXAMINATION OF RENA THOMASON BY MR. BRADLEY

1 TRUE BILL DATED, AND IT IS THE STATE VERSUS DAVID DALE SHERIFF. IT IS.
2 AN INDICTMENT FOR BURGLARY AS WELL.

3 Q AND DOES ANYWHERE ON THIS DOCUMENT SHOW WHETHER HE WAS
4 CONVICTED OF THIS CRIME?

5 A IT DOES. AT THE TOP ON THE RIGHT, IT DOES STATE THAT HE ENTERED INTO
6 A GUILTY PLEA.

7 Q AND STATE'S EXHIBIT #14, IF YOU COULD PLEASE EXPLAIN THE SAME
8 INFORMATION TO THE JURY.

9 A THIS IS INDICTMENT 1989-GS-04-2164 AND ON THE LEFT, UNDER ACTION OF
10 THE GRAND JURY, IT IS TRUE BILL DATED. IT IS THE STATE VERSUS DAVID
11 DALE SHERIFF INDICTMENT FOR BURGLARY, SECOND, AND GRAND LARCENY
12 AND IT HAS ON THE RIGHT, ONCE AGAIN, WHERE HE SIGNED IT AND THAT HE
13 ENTERED A GUILTY PLEA.

14 Q ALL RIGHT, MS. THOMASON, YOU CAN RETURN TO YOUR SEAT. (WITNESS
15 COMPLIES) MS. THOMASON, ARE THESE DOCUMENTS MAINTAINED, THE
16 PERSONAL INFORMATION IN THE RECORDS OF WHO THEY BELONG TO, DAVID
17 DALE SHERIFF, THAT'S LISTED ON THE DOCUMENT?

18 A YES, SIR.

19 Q AND DOES THE PERSONAL INFORMATION IN THIS FILE WITH THIS
20 DOCUMENTATION, DO THEY MATCH THE DAVID DALE SHERIFF THAT WE HAVE
21 HERE TODAY, THE DEFENDANT?

22 A YES, SIR.

23 Q SO, THESE PRIOR CONVICTIONS BELONG TO THE DEFENDANT?

24 A YES, SIR.

25 MR. BRADLEY: NO FURTHER QUESTIONS.

1 THE COURT: CROSS EXAMINATION?

2 MR. TAVERNIER: JUST ONE.

3 CROSS EXAMINATION OF RENA THOMASON BY MR. TAVERNIER

4 Q MS. THOMASON, IT REFLECTS ON THOSE INDICTMENTS THAT MISTER
5 BRADLEY JUST ADMITTED, THAT MISTER SHERIFF PLED GUILTY TO THOSE
6 OFFENSES. DOES IT NOT?

7 A YES, SIR. IT DOES.

8 Q HE DID NOT RECEIVE A TRIAL. HE PLED GUILTY TO THEM. DID HE NOT?

9 A YES, SIR.

10 Q AND THE LAST ONE WAS DATED 1990?

11 A YES, SIR.

12 Q THAT'S ALL. THANK YOU.

13 THE COURT: ANY RE-DIRECT?

14 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

15 THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN. LADIES AND

16 GENTLEMEN OF THE JURY, LET ME EXPLAIN SOMETHING TO YOU, PLEASE.

17 EVIDENCE OF THESE PRIOR OFFENSES COMMITTED BY THE DEFENDANT IS NOT

18 BEING OFFERED TO PROVE THE DEFENDANT HAS A BAD CHARACTER OR TO PROVE

19 THAT THE DEFENDANT COMMITTED THE BURGLARY ON THIS OCCASION. THE PRIOR

20 CONVICTIONS MAY BE CONSIDERED BY YOU ONLY FOR THE PURPOSE OF

21 DETERMINING WHETHER OR NOT IT SATISFIES THAT ELEMENT OF THE OFFENSE

22 THAT MAKES IT FIRST DEGREE BURGLARY, IF YOU ENTER A DWELLING WITHOUT

23 CONSENT TO COMMIT A CRIME AND YOU HAVE TWO PRIOR CONVICTIONS FOR

24 BURGLARY AND/OR HOUSEBREAKING. THANK YOU. CALL YOUR NEXT WITNESS,

25 PLEASE.

DIRECTED VERDICT MOTION BY MR. TAVERNIER

1 MR. BRADLEY: YOUR HONOR, AT THIS TIME THE STATE RESTS.

2 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE JURY, WE ARE
3 GOING TO TAKE A FEW MINUTE BREAK BEFORE WE GO FURTHER. IF YOU WOULD,
4 JUST RETIRE BACK TO YOUR JURY ROOM AND GET SOMETHING TO DRINK, GRAB A
5 REST, AND WE WILL BE BACK WITH YOU IN JUST A FEW MINUTES.

6 (JURY OUT AT 10:10 A.M.)

7 THE COURT: MISTER TAVERNIER, DOES MISTER SHERIFF WISH TO TESTIFY?

8 MR. TAVERNIER: FIRST, YOUR HONOR, I NEED TO MAKE MY OBLIGATORY
9 MOTIONS —

10 THE COURT: SURE.

11 MR. TAVERNIER: --- FOR A DIRECTED VERDICT OF NOT GUILTY BASED ON THE
12 ALLEGED FACT THAT THE STATE HASN'T PROVEN IT'S BURDEN. UNDERSTANDING
13 HOW THE COURT WILL RULE, I WOULD LIKE TO RENEW ALL MY PREVIOUS MOTIONS
14 AT THIS TIME AND PRESERVE THEM FOR THE RECORD AND UNDERSTANDING THAT,
15 AND UNDERSTANDING THE COURT'S PREVIOUS RULINGS, IT WILL PROBABLY BE
16 REINSTATED. I WOULD LIKE ABOUT TWO MINUTES TO DISCUSS WITH MISTER
17 SHERIFF WHETHER HE WISHES TO TESTIFY AT THIS TIME.

18 THE COURT: ABSOLUTELY. YOUR MOTIONS ARE DENIED, BUT YOU ARE
19 PROTECTED ON THE RECORD. WE WILL BE IN RECESS AND IF YOU WILL NOTIFY US
20 WHEN YOU ARE READY TO PROCEED AND I'LL GO OVER THE FIFTH AMENDMENT.

21 MR. TAVERNIER: IT WON'T TAKE BUT TWO MINUTES, YOUR HONOR.

22 THE COURT: OKAY. THEN WE WILL JUST STAY HERE.

23 MR. TAVERNIER: YOUR HONOR, AFTER CONSULTING WITH MISTER SHERIFF,
24 HE HAS INFORMED ME, AND I HAVE ADVISED HIM AS TO HIS CHOICES. HE HAS
25 INFORMED ME THAT HE DOES NOT WISH TO TAKE THE STAND ON HIS OWN BEHALF.

FIFTH AMENDMENT RIGHTS

1 UNDERSTANDING THAT, I WOULD ASK THE COURT TO AT LEAST QUESTION HIM AS
2 TO HIS DECISION SO THAT HE UNDERSTANDS FULLY. I THINK HE DOES, BASED ON
3 OUR CONVERSATIONS, BUT I WOULD ASK THE COURT TO INQUIRE OF HIM AND MAKE
4 SURE THAT HE UNDERSTANDS FULLY HIS RIGHTS REGARDING THIS.

5 THE COURT: BE GLAD TO. ALL RIGHT, MISTER SHERIFF.

6 MR. SHERIFF: YES, SIR.

7 FIRST AMENDMENT RIGHTS

8 THE COURT: AT THIS TIME, I'M GOING TO EXPLAIN TO YOU CERTAIN OF YOUR
9 RIGHTS. IF YOU DO NOT UNDERSTAND ANYTHING I SAY TO YOU, PLEASE LET ME
10 KNOW. IF YOU WANT ME TO EXPLAIN ANYTHING TO YOU IN MORE DETAIL, PLEASE
11 LET ME KNOW. OKAY? YOU UNDERSTAND THAT?

12 MR. SHERIFF: YES, SIR.

13 THE COURT: NOW, WE'VE REACHED THE STAGE IN YOUR TRIAL WHERE, IF
14 YOU DESIRE, YOU MAY PRESENT YOUR DEFENSE. YOU HAVE A RIGHT TO CLAIM THE
15 PROTECTIONS, HOWEVER, OF THE FIFTH AMENDMENT TO THE CONSTITUTION OF
16 THE UNITED STATES WHICH READS IN PART, AND I AM GOING TO READ IT TO YOU.
17 "THAT NO PERSON SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS
18 AGAINST HIMSELF." THIS MEANS, MISTER SHERIFF, THAT YOU CAN'T BE REQUIRED
19 TO TESTIFY IN THIS CASE. YOU HAVE A RIGHT TO TESTIFY IF YOU DESIRE TO.
20 HOWEVER, NO ONE CAN MAKE YOU TESTIFY. THIS IS A PERSONAL RIGHT AND NO
21 ONE CAN WAIVE THIS RIGHT OR ASSERT THE RIGHT EXCEPT YOURSELF. OKAY? IF
22 YOU DECIDE YOU WANT TO TESTIFY, YOU WILL BE SUBJECT TO THE SAME RULES
23 THAT GOVERN ANY OTHER WITNESSES AND YOU MAY BE EXAMINED OR CROSS
24 EXAMINED ON ANY RELEVANT ISSUE IN THIS CASE. IN ADDITION, IF YOU HAVE ANY
25 CONVICTIONS INVOLVING DISHONESTY OR FALSE STATEMENT OR FOR CRIMES

FIFTH AMENDMENT RIGHTS

1 PUNISHABLE BY IMPRISONMENT FOR MORE THAN ONE YEAR, AND I DETERMINE
2 THAT THE PROBATIVE VALUE OF ADMITTING THIS EVIDENCE OUTWEIGHS THE
3 PREJUDICIAL IMPACT, THE SOLICITOR WILL BE ABLE TO PRODUCE YOUR RECORD
4 TO ATTACK YOUR CREDIBILITY. OBVIOUSLY, IN THIS CASE WE ALREADY HAVE TWO
5 SUCH INSTANCES OF PRIOR GUILTY PLEAS FOR BURGLARY INTO A DWELLING AND
6 THEN BURGLARY SECOND AND GRAND LARCENY. SO, YOU WOULD BE SUBJECT TO
7 BE CROSS EXAMINED ABOUT THOSE. IF YOU HAVE OTHER PLEAS OR YOU ARE
8 FOUND GUILTY OTHERWISE YOU MAY BE SUBJECT TO CROSS EXAMINATION ON
9 THOSE AS WELL. HOWEVER, MISTER SHERIFF, IF YOU DO WANT TO TESTIFY, THE
10 DECISION ON YOUR PART MUST BE MADE FREELY, IT MUST BE MADE INTELLIGENTLY
11 AND IT MUST BE MADE VOLUNTARILY WITH THE KNOWLEDGE OF THE PROTECTIONS
12 GIVEN TO YOU BY THE FIFTH AMENDMENT AND ALSO KNOWLEDGE OF THE
13 CONSEQUENCES OF YOUR DECISION TO TESTIFY. NOW, IF YOU DECIDE THAT YOU
14 DO NOT WANT TO TESTIFY AND THAT'S WHAT YOUR ATTORNEY TELLS ME IS, IN
15 FACT, THE CASE, THEN THE JURY WILL BE INSTRUCTED BY ME WHEN I GIVE THE
16 CHARGE ON THE LAW THAT THEY CANNOT GIVE THE FACT THAT YOU DID NOT
17 TESTIFY ANY CONSIDERATION WHATSOEVER AND THERE IS TO BE ABSOLUTELY NO
18 PREJUDICE TO YOU BECAUSE YOU DID NOT TESTIFY. THEREFORE, IT IS LEFT
19 ENTIRELY UP TO YOU WHETHER OR NOT YOU WANT TO TESTIFY. YOU MAY TALK TO
20 YOUR ATTORNEY FURTHER AT THIS STAGE. YOU MAY WANT TO TALK TO YOUR
21 FAMILY OR FRIENDS OR ANYONE ELSE, BUT THE FINAL DECISION WILL BE UP TO
22 YOU. DO YOU UNDERSTAND THAT?

23 MR. SHERIFF: YES, SIR.

24 THE COURT: DO YOU HAVE ANY QUESTIONS WHATSOEVER OF WHAT I HAVE
25 EXPLAINED TO YOU?

1 MR. SHERIFF: NO, SIR.

2 THE COURT: HAVE YOU HAD SUFFICIENT TIME TO DISCUSS WITH YOUR
3 ATTORNEY WHETHER OR NOT YOU WANT TO OR YOU SHOULD TESTIFY IN THIS
4 CASE?

5 MR. SHERIFF: CAN I SPEAK WITH MY WIFE JUST A MINUTE, YOUR HONOR?

6 THE COURT: YES, SIR, YOU MAY.

7 MR. SHERIFF: OKAY.

8 (BRIEF BREAK)

9 THE COURT: ALL RIGHT. MISTER SHERIFF, HAVE YOU HAD SUFFICIENT
10 AMOUNT OF TIME TO SPEAK WITH WHOMEVER YOU WOULD LIKE TO INCLUDING
11 YOUR ATTORNEY, YOUR WIFE, YOUR FAMILY OR FRIENDS?

12 MR. SHERIFF: CAN I SPEAK TO MY PREACHERS, TOO, IF YOU DON'T MIND?

13 THE COURT: SIR?

14 MR. SHERIFF: CAN I SPEAK WITH MY PREACHERS, TOO?

15 THE COURT: YES, SIR. YOU MAY SPEAK WITH ANYBODY YOU LIKE. I WOULD
16 ASK THEM TO COME FORWARD TO THE BENCH OR TO THE BAR.

17 MR. SHERIFF: THANK YOU, SIR.

18 (BRIEF BREAK)

19 THE COURT: ALL RIGHT, MISTER SHERIFF, AGAIN, HAVE YOU HAD SUFFICIENT
20 TIME TO SPEAK WITH WHOMEVER YOU WOULD LIKE TO, INCLUDING YOUR PASTOR'S,
21 YOUR WIFE, FAMILY, FRIENDS, AND YOUR ATTORNEY, BEFORE YOU DECIDE WHAT
22 YOU WANT TO DO?

23 MR. SHERIFF: YES, SIR.

24 THE COURT: OKAY. DO YOU WISH TO TALK TO YOUR ATTORNEY ANY
25 FURTHER?

CHARGE CONFERENCE

1 MR. SHERIFF: WE'RE GOOD. THANK YOU.

2 THE COURT: DO YOU WISH TO TESTIFY?

3 MR. SHERIFF: NO, SIR. I DON'T WANT TO TESTIFY.

4 THE COURT: THANK YOU VERY MUCH.

5 MR. SHERIFF: THANK YOU.

6 CHARGE CONFERENCE

7 THE COURT: ALL RIGHT. AT THIS STAGE -- HAVE YOU GUYS HAD A CHANCE
8 TO LOOK AT MY PROPOSED CHARGE ON THE LAW?

9 MR. BRADLEY: I THINK YESTERDAY YOU JUST ASKED US TO LOOK AT THE
10 BURGLARY, FIRST, SECTION.

11 THE COURT: SIR?

12 MR. BRADLEY: I THINK YESTERDAY WE HAD THE BURGLARY FIRST SECTION TO
13 LOOK AT. OTHER THAN THAT, I ASSUME IT'S GOING TO BE THE STANDARD STUFF
14 THAT YOU NORMALLY HAVE.

15 THE COURT: YEAH. LET ME JUST HAVE IT HERE AND JUST GO OVER IT. HAVE
16 YOU LOOKED AT THE BURGLARY FIRST CHARGE THAT I HAVE?

17 MR. TAVERNIER: YES, YOUR HONOR. I HAVE. I REVIEWED IT YESTERDAY AND I
18 AM VERY FAMILIAR WITH THE OTHER CHARGES THAT YOU HAVE MADE BASED ON
19 PRIOR TRIALS, SO I THINK THE BURGLARY FIRST IS ABOVE THE BOARD IN THIS
20 CASE.

21 THE COURT: OKAY. ARE YOU READY TO GO INTO YOUR CLOSING?

22 MR. BRADLEY: YES, SIR, YOUR HONOR, BUT I BELIEVE SINCE MISTER
23 TAVERNIER ENTERED THE EXHIBIT, I WILL BE GOING LAST. I BELIEVE I'M GOING TO
24 RESERVE OPENING ON THE LAW AND THE EVIDENCE AND DO IT ALL AT ONCE AT THE
25 END.

1 THE COURT: MY LAW CLERK IS GOING TO GET THE VERDICT FORM AND I AM
2 GOING TO LET YOU LOOK AT THAT AND THEN WE WILL GO AHEAD AND GET
3 STARTED.

4 THE COURT: MISTER TAVERNIER, ARE YOU GOING TO PUT UP ANY DEFENSE
5 IN THIS MATTER, OTHER THAN WHAT YOU'VE DONE?

6 MR. TAVERNIER: YOUR HONOR, I PREVIOUSLY INTRODUCED DOCUMENTS AND
7 AFTER CONSULTING WITH MISTER SHERIFF WE WILL NOT BE PRESENTING ANY
8 ADDITIONAL EVIDENCE AND THAT WILL BE OUR CASE IN CHIEF.

9 THE COURT: AND I AM ALSO GOING TO FIND THAT MISTER SHERIFF HAS MADE
10 A KNOWING, INTELLIGENT, AND VOLUNTARY WAIVER OF HIS RIGHT TO TESTIFY AND
11 RIGHT NOT TO TESTIFY AND HAS, IN FACT, ASSERTED HE DOES NOT WANT TO
12 TESTIFY.

13 MR. TAVERNIER: YOUR HONOR, BASED ON THE FACT THAT WE WILL NOT BE
14 PRESENTING ANY EVIDENCE AND WE HAVE ESSENTIALLY CLOSED OUR CASE IN
15 CHIEF, I BELIEVE IT IS REQUIRED FOR ME TO RENEW ALL MY MOTIONS AND EVEN
16 THOUGH WE HAVE JUST GONE THROUGH IT JUST A COUPLE OF MINUTES AGO, I
17 NEED TO RENEW MY MOTIONS FOR PRESERVATION FOR ANY ISSUES THAT MIGHT
18 BE APPEALABLE FOR THE RECORD.

19 THE COURT: I'LL NOTE YOUR MOTIONS AND FIND THAT YOU ARE PROTECTED
20 ON THE RECORD AND I'LL DENY YOUR MOTIONS. WOULD YOU GUYS STEP
21 FORWARD AND LOOK AT THE VERDICT FORM PLEASE TO MAKE SURE THAT THERE IS
22 NOT A PROBLEM WITH IT FROM YOUR PERSPECTIVE? (BOTH ATTORNEYS COMPLY)

23 (JURY IN AT 10:28 A.M.)

24 THE COURT: ALL RIGHT, MISTER CLAREY AND LADIES AND GENTLEMEN OF THE
25 JURY, IF YOU WILL RECALL DURING THE OPENING CHARGE FROM ME I TOLD YOU

DISCUSSION ON CLOSING ARGUMENTS

1 THERE ARE FIVE PHASES TO EVERY TRIAL. WE HAVE FINISHED THE PHASE THAT
2 HAS THE PRESENTATION OF THE EVIDENCE. THE NEXT PHASE WILL BE THE
3 CLOSING STATEMENTS FROM THE ATTORNEYS. MISTER BRADLEY?

4 MR. BRADLEY: YOUR HONOR, I BELIEVE AT THIS TIME MISTER TAVERNIER
5 WOULD GO FIRST.

6 MR. TAVERNIER: IF MISTER BRADLEY'S WAIVING HIS OPENING AND CLOSING,
7 THE DEFENSE WAIVES IT'S CLOSING.

8 THE COURT: ALL RIGHT. SO, FROM THIS POINT WE WILL GO FORWARD WITH
9 THE CHARGE? JUST ONE SECOND. LET ME DO THIS. LADIES AND GENTLEMEN, WE
10 HAVE ONE ADMINISTRATIVE MATTER. I HATE TO DO THIS TO YOU, BUT SOMETIMES
11 IT'S NECESSARY. WOULD YOU STEP BACK TO YOUR JURY ROOM, PLEASE?

12 (JURY OUT AT 10:29 A.M.)

13 THE COURT: ALL RIGHT, MISTER BRADLEY?

14 MR. BRADLEY: I DIDN'T MEAN TO WAIVE MY CLOSING, YOUR HONOR. THAT'S
15 NOT WHAT I WAS TRYING TO DO. I WAS JUST SAYING THAT SINCE HE INTRODUCED
16 EVIDENCE HE WAS SUPPOSED TO GO FIRST. SO, I'M JUST -- I DON'T KNOW WHAT HE
17 IS TRYING TO ACCOMPLISH HERE.

18 THE COURT: WELL, HE IS TRYING TO THROW YOU IN THE CREEK A LITTLE BIT,
19 I BELIEVE. BUT ACTUALLY, I THINK HE'S ACTUALLY RIGHT. I MEAN, IF YOU WAIVE
20 OPENING ON THE LAW, AND HE WAIVES HIS RIGHT TO A CLOSING ARGUMENT, THEN
21 WE GO STRAIGHT TO THE CHARGE ON THE LAW IS MY UNDERSTANDING. NOW, I'M
22 GLAD TO HEAR FROM YOU ON IT, BUT THAT IS MY UNDERSTANDING.

23 MR. BRADLEY: YES, SIR. THAT WAS NOT MY INTENTION. I WAS -- FROM WHAT
24 WE SPOKE ABOUT A WHILE AGO, HE SAID HE WAS GOING FIRST AND I DIDN'T
25 UNDERSTAND HE WAS DOING THIS, YOUR HONOR. THAT WAS NOT MY INTENTION AT

DISCUSSION ON CLOSING ARGUMENTS

1 ALL. IF THAT'S GOING TO BE THE CASE, I WOULD LOVE TO OPEN ON THE LAW.

2 MR. TAVERNIER: UNDERSTANDING THAT, YOUR HONOR, THAT WAS PART OF
3 MY TRIAL STRATEGY. BASED ON MY DISCUSSIONS WITH MISTER SHERIFF WE
4 DISCUSSED THAT. THAT'S WHY I WAITED ON MISTER BRADLEY TO WAIVE HIS
5 CLOSING, HIS INITIAL OPENING, BECAUSE IT IS MY UNDERSTANDING, BASED ON
6 PAST EXPERIENCE, IF THE DEFENSE DOESN'T CLOSE THEN THERE IS NO CLOSING
7 BY THE STATE AS IT IS A REBUTTAL.

8 THE COURT: THAT'S MY UNDERSTANDING. NOW, THE QUESTION IS, DID HE
9 MAKE A WAIVER WHEN HE SAID, "I WAIVE MY OPENING STATEMENT" AND I THINK ---

10 MR. BRADLEY: I, YOUR HONOR ---

11 THE COURT: --- IT'S LIKELY HE DID.

12 MR. BRADLEY: I DON'T MEAN TO INTERRUPT YOU, BUT I THINK WHAT I SAID
13 MYSELF WAS THAT I THOUGHT MISTER TAVERNIER WAS GOING FIRST.

14 MR. TAVERNIER: BUT I AM WAIVING -- EXCUSE ME, I DON'T MEAN TO STEP
15 OVER YOU. GO AHEAD.

16 MR. BRADLEY: I WAS JUST SAYING, THAT WAS NOT MY INTENTION AND I DID
17 NOT INTEND TO DO THAT AT ALL. I WOULD LIKE TO CLOSE.

18 MR. TAVERNIER: I UNDERSTAND WHAT HE SAID, BUT HE'S ON THE RECORD AS
19 HAVING WAIVED HIS OPENING. THAT'S WHY I WAITED UNTIL HE WAIVED HIS
20 OPENING, SO THAT I COULD THEN WAIVE MY CLOSING. THAT PREVENTS HIM FROM
21 HAVING ANY CLOSING ARGUMENT.

22 THE COURT: AS MUCH AS YOU WANT TO HAVE A CLOSING ARGUMENT, I
23 AGREE WITH HIM ON THAT, MISTER BRADLEY. I THINK AT THIS STAGE, THAT WE GO
24 INTO THE LAW. OKAY? I NOTE YOUR OBJECTION FOR THE RECORD.

25 MR. BRADLEY: YOUR HONOR ---

CHARGE ON THE LAW

1 THE COURT: -- I NOTE YOUR OBJECTION FOR THE RECORD, BUT I THINK AT
2 THIS STAGE IT'S A WAIVER AND IT'S A STRATEGIC MATTER AND I UNDERSTAND
3 THAT, BUT THAT IS WHAT WE ARE GOING TO DO. ALL RIGHT, ANYTHING FURTHER?

4 MR. TAVERNIER: NOTHING, YOUR HONOR.

5 THE COURT: ANYTHING FURTHER? I UNDERSTAND YOUR OBJECTION TO MY
6 RULING.

7 MR. BRADLEY: YES, YOUR HONOR. I WOULD JUST LIKE TO AGAIN STATE THAT
8 I DID NOT KNOWINGLY WAIVER AND I WAS NOT TRYING TO DO THAT.

9 THE COURT: I UNDERSTAND. BUCK, WOULD YOU BRING THE JURY IN, PLEASE?

10 (JURY IN AT 10:32 A.M.)

11 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY, AT THIS TIME
12 BOTH PARTIES HAVE OPTED OUT OF GIVING CLOSING ARGUMENT OR I HAVE RULED
13 THAT THEY HAVE AND I AM GOING AHEAD AND GO TO THE FOURTH PHASE OF THIS
14 CASE AND THAT IS MY INSTRUCTION ON THE LAW TO YOU. IT IS GOING TO BE
15 SOMEWHAT LENGTHY, SO AT ANY POINT YOU GET SLEEPY OR TIRED AND YOU WANT
16 TO TAKE A BREAK, RAISE YOUR HAND AND I WILL STOP AND GIVE YOU A CHANCE TO
17 DO THAT, BUT I AM NOT NEARLY AS ELOQUENT AS THESE TWO FINE LAWYERS OVER
18 HERE AND SO UNFORTUNATELY, A LOT OF IT WILL BE READ TO YOU AND I
19 APOLOGIZE FOR THAT IN ADVANCE.

20 **CHARGE ON THE LAW**

21 NOW THAT YOU HAVE HEARD ALL THE EVIDENCE AND THE ARGUMENTS OF
22 THE ATTORNEYS IN THIS MATTER, IT'S MY DUTY TO INSTRUCT YOU ON THE LAW. MY
23 INSTRUCTIONS ARE GOING TO BE IN THREE PARTS. THE FIRST PART WILL BE THE
24 GENERAL INSTRUCTIONS THAT DEFINE AND CONTROL YOUR DUTIES AS JURORS.
25 THE SECOND PART WILL BE THE LAW, THE INSTRUCTIONS ON WHAT THE RULES OF

CHARGE ON THE LAW

1 LAW ARE IN THIS CASE, I.E. WHAT THE STATE MUST PROVE IN ORDER TO MAKE OUT
2 IT'S CASE AND THE LAST PART WILL BE SOME RULES THAT GOVERN YOUR
3 DELIBERATIONS AND I WILL LET YOU KNOW AS WE GET THROUGH ONE PART AND
4 GO INTO THE NEXT. IF AT ANY TIME YOU NEED TO TAKE A BREAK, AGAIN, PLEASE
5 LET ME KNOW.

6 BUT, LADIES AND GENTLEMEN, IT IS YOUR DUTY TO FIND THE FACTS FROM
7 THE EVIDENCE IN THIS CASE. TO THOSE FACTS YOU WILL APPLY THE LAW AS I GIVE
8 IT TO YOU. YOU MUST FOLLOW THE LAW AS I GIVE IT TO YOU AND YOU MUST NOT
9 BE CONCERNED WITH WHAT THE LAW SHOULD BE. YOU SHALL ONLY CONCERN
10 YOURSELVES WITH WHAT THE LAW IS. YOU ARE NOT TO BE INFLUENCED BY ANY
11 PERSONAL LIKES OR DISLIKES, ANY OPINIONS, PREJUDICE OR UNDUE SYMPATHY
12 YOU MAY HAVE FOR ONE SIDE OR THE OTHER. THAT MEANS THAT YOU MUST
13 SIMPLY DECIDE AND MAKE YOUR FINDINGS OF FACT BASED SOLELY ON THE
14 EVIDENCE THAT HAS BEEN PRESENTED IN THIS CASE FROM THE JURY STAND AND
15 ACCORDING TO THE LAW. IF YOU REMEMBER, AT THE BEGINNING OF THIS CASE,
16 YOU TOOK AN OATH TO DO JUST THAT.

17 NOW, IN FOLLOWING MY INSTRUCTIONS TO YOU, YOU CAN'T SINGLE OUT
18 SOME OF THEM AND FOLLOW THOSE AND IGNORE OTHERS. THEY ARE ALL EQUALLY
19 IMPORTANT AND YOU MUST NOT READ INTO THESE INSTRUCTIONS OR ANYTHING
20 THAT I MAY HAVE SAID OR ANYTHING THAT I MAY HAVE DONE AS A SUGGESTION AS
21 TO WHICH WAY YOU SHOULD RETURN YOUR VERDICT. THAT IS A MATTER ENTIRELY
22 UP TO YOU, BECAUSE UNDER OUR CONSTITUTION I AM NOT ALLOWED TO HAVE AN
23 OPINION ABOUT THE FACTS OF THIS CASE AND I WILL TELL YOU, I DON'T. YOU AND
24 YOU ALONE ARE THE JUDGES OF WHAT THE FACTS ARE AND AS I TOLD YOU AT THE
25 BEGINNING OF THIS CASE, I AM THE JUDGE OF THE LAW.

CHARGE ON THE LAW

1 WHEN YOU DECIDE FACTS, YOU DO SO BY EVALUATING AND WEIGHING THE
2 EVIDENCE THAT YOU HEARD DURING THE TRIAL AND THERE IS NO WAY THAT YOU
3 CAN LITERALLY WEIGH EVIDENCE. I CAN'T GIVE YOU A SET OF SCALES. THIS IS
4 ENTIRELY A MENTAL PROCESS AND YOU WEIGH AND EVALUATE EVIDENCE SIMPLY
5 BY USING YOUR GOOD COMMON SENSE AND YOUR SOUND JUDGEMENT THAT YOU
6 BROUGHT WITH YOU WHEN YOU CHECKED IN AS A JUROR THIS WEEK.

7 NOW, WHAT IS EVIDENCE? WHAT YOU HEARD BY WAY OF SWORN TESTIMONY
8 OF THE WITNESSES, BOTH ON DIRECT EXAM AND CROSS EXAMINATION, IS
9 EVIDENCE. ALSO, EXHIBITS THAT HAVE BEEN RECEIVED INTO EVIDENCE IS ALSO
10 EVIDENCE. IN THIS CASE, THAT'S IT.

11 NOW LET ME TELL YOU WHAT IS NOT EVIDENCE. ARGUMENTS AND
12 STATEMENTS BY THE ATTORNEYS ARE NOT EVIDENCE. THEY ARE NOT WITNESSES.
13 THEY HAVE NOT BEEN SWORN. WHAT THEY HAVE SAID DURING THE COURSE OF
14 THIS TRIAL IS INTENDED TO HELP YOU INTERPRET THE EVIDENCE, BUT IT IS NOT
15 EVIDENCE. IF THE FACTS AS YOU REMEMBER THEM DIFFER FROM THE WAY THE
16 ATTORNEYS HAVE STATED THEM TO YOU, THEN YOUR MEMORY WILL CONTROL.
17 ANY QUESTIONS OR OBJECTIONS BY THE ATTORNEYS IS NOT EVIDENCE. AS YOU
18 WILL RECALL AT THE BEGINNING OF THIS CASE I TOLD YOU THE ATTORNEYS HAVE A
19 ETHICAL AND PROFESSIONAL DUTY TO RAISE OBJECTIONS ANY TIME THEY FEEL
20 SOMETHING IS IMPROPER DURING THE COURSE OF A PROCEEDING. YOU SHALL
21 NOT BE INFLUENCED BY THE FACT THAT AN OBJECTION WAS MADE, NOR MY RULING
22 ON THAT OBJECTION AS THAT IS SIMPLY THE PROCEDURE THAT IS FOLLOWED IN
23 EACH AND EVERY TRIAL. ALSO, WHAT YOU HAVE HEARD OUTSIDE OF THIS
24 COURTROOM IS NOT EVIDENCE. YOU ARE TO DECIDE THIS CASE SOLELY FROM THE
25 EVIDENCE RECEIVED AT TRIAL, THAT MEANS FROM THIS WITNESS STAND.

1 NOW, THERE ARE TWO TYPES OF EVIDENCE THAT ARE GENERALLY
2 PRESENTED DURING A TRIAL. YOU HAVE DIRECT EVIDENCE AND YOU HAVE
3 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS TESTIMONY OF A PERSON WHO
4 ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYE
5 WITNESS. CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE OR, PUT ANOTHER
6 WAY, CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS IN
7 CIRCUMSTANCES FROM WHICH YOU COULD FIND ANOTHER FACT EXISTS EVEN
8 THOUGH IT HAS NOT BEEN PROVEN DIRECTLY. JUST TO GIVE YOU AN EXAMPLE, IF
9 YOU WAKE UP IN THE MORNING AND YOU SEE TRACKS AND THERE IS SNOW ON THE
10 GROUND AND YOU SEE FOOT TRACKS THROUGH YOUR YARD, YOU CAN INFER THAT
11 SOMEBODY WALKED THROUGH YOUR YARD THE NIGHT BEFORE. THAT'S INDIRECT
12 OR CIRCUMSTANTIAL EVIDENCE. I'LL TELL YOU THAT THE LAW MAKES ABSOLUTELY
13 NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN EITHER DIRECT OR
14 CIRCUMSTANTIAL EVIDENCE. YOU ARE ENTITLED TO CONSIDER BOTH KINDS.
15 THERE IS NOT A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
16 EVIDENCE THAN THERE IS FOR DIRECT EVIDENCE. IF, AFTER WEIGHING ALL THE
17 EVIDENCE, YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A
18 REASONABLE DOUBT YOU MUST FIND THE DEFENDANT NOT GUILTY.

19 NOW, IN DECIDING WHAT THE FACTS ARE, YOU MUST CONSIDER ALL THE
20 EVIDENCE AND I WILL TELL YOU THAT OVER AND OVER THROUGHOUT THIS CHARGE,
21 BUT IN DOING THIS YOU MUST DECIDE WHICH TESTIMONY TO BELIEVE AND WHICH
22 TESTIMONY NOT TO BELIEVE. YOU MAY DISBELIEVE ALL OR PART OF ANY WITNESS'
23 TESTIMONY OR YOU MAY BELIEVE ALL OF IT. IN MAKING THAT DECISION, YOU MAY
24 TAKE INTO ACCOUNT A NUMBER OF FACTORS, INCLUDING BUT NOT LIMITED TO THE
25 FOLLOWING: WAS THE WITNESS ABLE TO SEE, OR HEAR, OR KNOW THE THINGS

CHARGE ON THE LAW

1 ABOUT WHICH THE WITNESS TESTIFIED, HOW WELL WAS THE WITNESS ABLE TO
2 RECALL AND DESCRIBE THOSE THINGS, WHAT WAS THE WITNESS' MANNER WHILE
3 TESTIFYING OR AS WE COMMONLY CALL WHAT WAS THEIR DEemeanOR, IS THERE
4 SOME REASON A WITNESS WOULD WANT TO GIVE TESTIMONY THAT WOULD HELP
5 OR HURT ONE SIDE OR THE OTHER, DID THE WITNESS HAVE AN INTEREST IN THE
6 OUTCOME OF THIS CASE OR ANY BIAS OR ANY PREJUDICE CONCERNING ANY PARTY
7 OR ANY MATTER INVOLVED IN THIS CASE, HOW REASONABLE WAS THE WITNESS'
8 TESTIMONY CONSIDERED IN LIGHT OF ALL THE EVIDENCE PRESENTED IN THE CASE,
9 WAS THE WITNESS' TESTIMONY CONTRADICTED BY WHAT THAT WITNESS HAD SAID
10 OR DONE AT ANOTHER TIME OR BY THE TESTIMONY OF OTHER WITNESSES OR BY
11 OTHER EVIDENCE.

12 NOW, LADIES AND GENTLEMEN, THOSE ARE SOME BUT CERTAINLY NOT ALL
13 THE FACTORS THAT YOU MAY CONSIDER IN MAKING YOUR DECISION OF WHICH
14 TESTIMONY TO BELIEVE AND DISBELIEVE. AND OF COURSE, YOU DO NOT CHECK
15 YOUR COMMON SENSE AND SOUND JUDGEMENT AT THE DOOR WHEN YOU BECOME
16 A JUROR AND YOU SHOULD USE THOSE THINGS THAT YOU, IN YOUR DAY TO DAY
17 EXPERIENCE, FIND INDICATIVE OF TRUTHFULNESS OR LACK OF TRUTHFULNESS IN
18 MAKING THAT DETERMINATION.

19 NOW, YOU HAVE HEARD TESTIMONY FROM PERSONS DESCRIBED AS AN
20 EXPERT AND I WILL TELL YOU THAT PERSONS WHO, BY EDUCATION AND
21 EXPERIENCE, HAVE BECOME AN EXPERT ON SOME FIELD MAY STATE THEIR OPINION
22 ON MATTERS IN THAT FIELD AND MAY STATE THEIR REASONS FOR THAT OPINION.
23 EXPERT TESTIMONY SHOULD BE JUDGED JUST AS ANY OTHER TESTIMONY. YOU
24 MAY ACCEPT IT OR YOU MAY REJECT IT AND GIVE IT AS MUCH WEIGHT AS YOU
25 THINK IT DESERVES CONSIDERING THE WITNESS' EDUCATION AND EXPERIENCES,

1 THE REASONS GIVEN FOR THE OPINION, AS WELL AS ALL THE OTHER EVIDENCE IN
2 THE CASE.

3 LADIES AND GENTLEMEN, THE INDICTMENT IN THIS MATTER CHARGES DAVID
4 DALE SHERIFF WITH BURGLARY, FIRST DEGREE AND I TOLD YOU AT THE BEGINNING
5 OF THIS CASE AND I REMIND YOU AGAIN, THAT THE FACT THAT THE DEFENDANT
6 WAS ARRESTED, THE FACT THAT HE WAS CHARGED AND INDICTED IN THIS CASE, IS
7 NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE
8 OF GUILT IN THIS CASE AT ALL. NOR DOES IT CREATE ANY PRESUMPTION OR
9 INFERENCE OF GUILT. THIS DOCUMENT IS SIMPLY THE FORMAL WRITTEN
10 INSTRUMENTS WHICH CONTAINS THE CHARGES AGAINST THE DEFENDANT AND IS
11 THE MECHANISM BY WHICH THE STATE BRINGS THE CHARGES BEFORE A JURY
12 SUCH AS YOURSELVES FOR DETERMINATION OF GUILT OR INNOCENCE.

13 NOW, IN FACT, IN THIS CASE THE DEFENDANT HAS PLED NOT GUILTY TO THE
14 INDICTMENT AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE
15 DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE
16 IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT. I CHARGE
17 YOU THAT IT IS AN IMPORTANT RULE OF LAW THAT A DEFENDANT IN A CRIMINAL
18 MATTER, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL
19 ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE
20 INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE
21 SATISFYING YOU THAT GUILT BEYOND A REASONABLE DOUBT IS PRESENT. THIS
22 PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR
23 DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL
24 UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU THAT
25 GUILT HAS BEEN ESTABLISHED BEYOND A REASONABLE DOUBT. IT HAS BEEN SAID

CHARGE ON THE LAW

1 THAT THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS
2 PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE
3 DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE
4 SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. THE
5 PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY. IT'S NOT JUST A
6 LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS
7 ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE
8 DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

9 SO, THAT LEADS US TO WHAT IS A REASONABLE DOUBT? CAN YOU HEAR ME
10 OKAY? (JURORS NOD) A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD
11 CAUSE A SINCERE, HONEST, AND CONSCIENTIOUS PERSON TO HESITATE TO ACT IN
12 AN IMPORTANT MATTER IN THEIR OWN AFFAIRS. PROOF BEYOND A REASONABLE
13 DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S
14 GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH
15 ABSOLUTE CERTAINTY AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE
16 PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR
17 CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE
18 DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT
19 GUILTY. IF, ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT
20 THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF
21 THE DOUBT AND FIND HIM NOT GUILTY. A REASONABLE DOUBT MAY ARISE FROM
22 THE EVIDENCE OR FROM THE LACK OF THE EVIDENCE. I FURTHER INSTRUCT YOU
23 THAT A DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT THAT MAY ARISE
24 IN THE CASE. WHAT THAT SIMPLY MEANS IS THIS. IF, UPON ANY ISSUE OF FACT
25 ESSENTIAL TO CONVICTION AND A VERDICT OF GUILTY OF THE OFFENSE CHARGED,

CHARGE ON THE LAW

1 IF YOU HAVE ANY REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE
2 RESOLVED, IT IS YOUR DUTY TO RESOLVE THAT DOUBT IN FAVOR OF THE
3 DEFENDANT.

4 LADIES AND GENTLEMEN, IN ORDER TO ESTABLISH CRIMINAL LIABILITY,
5 CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE REQUIRED TO
6 BE PROVEN BY THE STATE FOR A PARTICULAR CRIME MIGHT BE PURPOSE, IT MIGHT
7 BE INTENT, KNOWLEDGE, RECKLESSNESS, OR CRIMINAL NEGLIGENCE. CRIMINAL
8 INTENT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT. CRIMINAL
9 INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE
10 CIRCUMSTANCES SURROUNDING THE SITUATION. THERE IS NO WAY TO PROVE
11 INTENT TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY THAT MEDICAL
12 SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD
13 IN MIND. SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE
14 CIRCUMSTANCES SHOWN TO HAVE EXISTED AND THIS IS HOW YOU MAKE A
15 DETERMINATION AS TO WHETHER OR NOT THE ELEMENT REQUIRING INTENT IS
16 PRESENT. IT IS NOT NECESSARY TO ESTABLISH INTENT BY DIRECT OR POSITIVE
17 EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS
18 ANY OTHER FACT, TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND
19 ALL THE FACTS AND CIRCUMSTANCES OF THE CASE. CRIMINAL INTENT IS A MENTAL
20 STATE, A CONSCIOUS WRONGDOING AND IT IS UP TO YOU TO DETERMINE WHAT
21 THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO
22 HAVE EXISTED.

23 LADIES AND GENTLEMEN, I INSTRUCT YOU AND I EMPHASIZE THE FACT THAT
24 THE DEFENDANT DID NOT TESTIFY IN THIS TRIAL SHALL NOT BE CONSIDERED BY
25 YOU IN ANY FORM OR FASHION IN YOUR DELIBERATION. IT IS NOT A FACTOR THAT

CHARGE ON THE LAW

1 YOU MAY CONSIDER WHATSOEVER.

2 THOSE ARE THE GENERAL RULES THAT APPLY TO YOUR DUTIES AS JURORS IN
3 THIS CASE. NOW, I KNOW THAT TOOK A FEW MINUTES. WOULD YOU LIKE TO STAND
4 UP AND TAKE A BREAK OR WOULD YOU LIKE TO PROCEED WITH THE LAW
5 APPLICABLE AS TO WHAT THE STATE HAS TO ESTABLISH?

6 MR. CLAREY: I THINK WE WOULD LIKE TO GO FORWARD.

7 THE COURT: GO FORWARD? OKAY. NOW, THIS IS PART TWO. THESE ARE
8 RULES OF LAW THAT YOU MUST APPLY TO THIS CASE AND THAT MEANS THIS IS
9 WHAT THE STATE MUST PROVE IN ORDER TO MAKE OUT IT'S CASE. THE
10 DEFENDANT IS CHARGED WITH FIRST DEGREE BURGLARY. THE STATE MUST PROVE
11 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ENTERED A DWELLING
12 WITHOUT CONSENT. A DWELLING IS ANY BUILDING OR PORTION OF A BUILDING IN
13 WHICH A PERSON ORDINARILY SLEEPS. A BUILDING CONSTRUCTED AS A DWELLING
14 THAT HAS NEVER BEEN OCCUPIED CANNOT BE CONSIDERED A DWELLING FOR
15 PURPOSES OF BURGLARY, BUT A BUILDING IS A DWELLING EVEN IF THE RESIDENTS
16 ARE TEMPORARILY ABSENT FROM THE BUILDING. IN ORDER TO PROVE THAT THE
17 DEFENDANT ENTERED THE DWELLING, THE STATE DOES NOT HAVE TO SHOW THAT
18 THE DEFENDANT'S ENTIRE BODY ENTERED THE DWELLING. THE SMALLEST ENTRY
19 IS SUFFICIENT. IT MAY BE ANY PART OF THE BODY SUCH AS A HAND OR A FOOT OR
20 EVEN AN INSTRUMENT SUCH AS A HOOK OR OTHER INSTRUMENT. IN ADDITION, THE
21 STATE DOES NOT HAVE TO PROVE THAT FORCE WAS USED TO GAIN ENTRY. IF A
22 PERSON ENTERS A BUILDING BY USING DECEPTION, ARTIFICE, TRICK, OR
23 MISREPRESENTATION TO GET CONSENT TO ENTER, THIS IS AN ENTRY WITHOUT
24 CONSENT.

25 NEXT, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE

CHARGE ON THE LAW

1 DEFENDANT INTENDED TO COMMIT A CRIME, EITHER A FELONY OR MISDEMEANOR
2 AT THE TIME OF ENTRY. THE MERE ENTRY INTO A DWELLING WITHOUT CONSENT IS
3 NOT A BURGLARY. IF THE INTENT TO COMMIT A CRIME IS FORMED AFTER THE
4 ENTRY, IT IS NOT BURGLARY. ON THE OTHER HAND, IF THE DEFENDANT INTENDED
5 TO COMMIT A CRIME AT THE TIME OF ENTRY, IT IS BURGLARY EVEN IF THE INTENT
6 WAS ABANDONED AFTER THE ENTRY. IT DOES NOT MATTER THAT THE INTENDED
7 CRIME WAS NOT COMPLETED. INTENT MAY BE SHOWN BY THE ACTION AND
8 CONDUCT OF THE DEFENDANT AND OTHER CIRCUMSTANCES WHICH YOU MAY
9 NATURALLY AND REASONABLY INFER INTENT.

10 FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
11 DEFENDANT HAS A PRIOR RECORD OF TWO OR MORE CONVICTIONS FOR BURGLARY
12 AND/OR HOUSEBREAKING. EVIDENCE OF PRIOR OFFENSES COMMITTED BY THE
13 DEFENDANT WAS NOT OFFERED TO PROVE THAT THE DEFENDANT HAD A BAD
14 CHARACTER OR TO PROVE THE DEFENDANT COMMITTED THE BURGLARY ON THIS
15 OCCASION. THE PRIOR CONVICTIONS MAY BE CONSIDERED BY YOU ONLY FOR THE
16 PURPOSE OF DETERMINING WHETHER OR NOT IT SATISFIES THAT ELEMENT OF THE
17 OFFENSE THAT MAKES IT FIRST DEGREE BURGLARY IF YOU ENTER A DWELLING
18 WITHOUT CONSENT TO COMMIT A CRIME AND YOU HAVE TWO PRIOR CONVICTIONS
19 FOR BURGLARY AND/OR HOUSEBREAKING.

20 BEFORE YOU CAN EVEN CONSIDER THE EVIDENCE OF THE DEFENDANT'S
21 PRIOR BURGLARY AND/OR HOUSEBREAKING CONVICTIONS, YOU MUST FIND THAT
22 THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT A BURGLARY WAS
23 COMMITTED BY THE DEFENDANT. IF YOU FIND BEYOND A REASONABLE DOUBT
24 THAT THE BURGLARY WAS COMMITTED, THEN YOU MAY CONSIDER THE EVIDENCE
25 OF THE PRIOR CONVICTIONS AS EVIDENCE OF ONE OF THE CIRCUMSTANCES WHICH

CHARGE ON THE LAW

1 WOULD MAKE THE BURGLARY A BURGLARY, FIRST DEGREE. IF YOU DO NOT FIND
2 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED THE ALLEGED
3 PRIOR OFFENSES, THEN YOU CANNOT RETURN A VERDICT OF FIRST DEGREE
4 BURGLARY.

5 LADIES AND GENTLEMEN, THAT IS PART TWO. THAT IS THE LAW APPLICABLE
6 TO THIS CASE AND THAT IS THE LAW THAT YOU MUST APPLY IN DECIDING WHETHER
7 OR NOT THE STATE HAS MET IT'S BURDEN OF PROOF.

8 NOW, FINALLY, PART THREE HAS TO DO WITH SOME GENERAL
9 CONSIDERATIONS FOR YOUR DELIBERATIONS. LET ME POINT OUT TO YOU, NUMBER
10 ONE, THAT YOU DON'T SERVE AS JURORS TO BE PARTISANS OR ADVOCATES FOR
11 EITHER SIDE. YOU WERE CHOSEN TO BE JURORS IN THIS CASE BECAUSE BOTH
12 SIDES BELIEVED THAT YOU COULD BE FAIR AND IMPARTIAL AND DECIDE THIS CASE
13 SOLELY FROM THE EVIDENCE PRESENTED FROM THE WITNESS STAND IN THIS TRIAL
14 AND WITHOUT BIAS OR PREJUDICE TO ONE SIDE OR THE OTHER. THAT MEANS THAT
15 IN MAKING YOUR DECISION USE YOUR EXPERIENCES IN LIFE, YOUR COMMON
16 SENSE, AND YOUR LOGIC AND GOOD REASON IN MAKING YOUR FACTUAL
17 DETERMINATIONS.

18 NOW, DELIBERATION HAS BEEN DEFINED AS THIS: CAREFUL CONSIDERATION,
19 A WEIGHING UP WITH A VIEW TO A DECISION. THE GENIUS OF OUR JURY SYSTEM IS
20 IT ALLOWS TWELVE MEN AND WOMEN SUCH AS YOURSELVES FROM DIFFERENT
21 BACKGROUNDS, FROM DIFFERENT LIFE EXPERIENCES, AND DIFFERENT
22 PERSPECTIVES TO CONSIDER THE EVIDENCE, TO TALK ABOUT IT AND TO
23 ULTIMATELY REACH A VERDICT. WE CALL THEM DELIBERATIONS FOR A REASON.
24 YOU ARE TO CONSIDER THIS EVIDENCE IN THIS CASE CAREFULLY. YOU ARE TO
25 CONSIDER IT THOROUGHLY AND DELIBERATELY. YOU ARE TO DISCUSS IT AMONG

CHARGE ON THE LAW

1 YOURSELVES IN A CALM AND THOROUGH AND COURTEOUS MANNER. AND AGAIN,
2 REMEMBER, YOU ARE NOT PARTISANS OR ADVOCATES FOR ONE SIDE OR THE
3 OTHER. YOU ARE JUDGES OF THE FACTS. YOUR SOLE INTEREST IN THIS CASE IS
4 TO FIND TRUTH FROM THE EVIDENCE THAT YOU HEARD IN THIS COURTROOM. I'M
5 GOING TO ASK YOU AND ALSO INSTRUCT YOU TO LISTEN TO THE VIEWS OF YOUR
6 FELLOW JURORS. CONSIDER EVERYONE'S POINTS OF VIEW. TALK THROUGH AND
7 DISCUSS THE EVIDENCE. AND REMEMBER, IF YOU ARE DOING SOMETHING
8 DELIBERATELY, YOU ARE NOT IN A BIG HURRY AND IN THIS CASE YOU SHOULDN'T BE
9 IN A HURRY EITHER. THIS IS A VERY IMPORTANT CASE TO BOTH SIDES AND THIS IS
10 THEIR ONLY DAY IN COURT. WHEN YOU RETIRE TO THE JURY ROOM YOU SHOULD
11 DISCUSS THIS CASE WITH YOUR FELLOW JURORS AND REACH AN AGREEMENT IF
12 YOU CAN DO SO. IN ORDER TO BE VALID, HOWEVER, YOUR VERDICT MUST BE
13 UNANIMOUS. EACH OF YOU MUST DECIDE THIS CASE FOR YOURSELF, BUT YOU
14 SHOULD ONLY DO SO AFTER YOU HAVE IMPARTIALLY CONSIDERED ALL THE
15 EVIDENCE, YOU HAVE DISCUSSED IT WITH ALL THE OTHER JURORS AND LISTENED
16 TO THE VIEWS OF YOUR FELLOW JURORS. DO NOT BE AFRAID TO CHANGE YOUR
17 OPINION IF THE DISCUSSION PERSUADES YOU THAT YOU SHOULD DO SO, BUT DO
18 NOT COME TO A DECISION SIMPLY BECAUSE THE OTHER JURORS THINK IT IS RIGHT.
19 IT IS IMPORTANT, AGAIN, THAT YOU ATTEMPT TO REACH A UNANIMOUS VERDICT,
20 BUT OF COURSE YOU CAN ONLY DO THAT AFTER YOU HAVE MADE YOUR OWN
21 DECISION. DO NOT CHANGE AN HONEST BELIEF ABOUT THE WEIGHT AND EFFECT
22 OF THE EVIDENCE SIMPLY TO REACH A VERDICT. IN OTHER WORDS, DO NOT
23 CHANGE YOUR OPINION SOLELY FOR THE SAKE OF REACHING A UNANIMOUS
24 VERDICT.

25 NOW, MISTER FOREPERSON, AFTER YOU HAVE REACHED A UNANIMOUS

CHARGE ON THE LAW

1 VERDICT IN THIS CASE, I AM GOING TO ASK YOU TO FILL OUT THE VERDICT FORM
2 AND I AM GOING TO BRING IT DOWN TO YOU AND GO OVER THAT WITH YOU. YOU
3 WILL KNOCK ON THE DOOR AND TELL THE BAILIFF AND WE WILL RECEIVE YOUR
4 VERDICT BACK HERE IN THE COURTROOM.

5 IF, AT ANY TIME DURING THE COURSE OF YOUR DELIBERATIONS IT BECOMES
6 NECESSARY FOR YOU TO COMMUNICATE WITH THE COURT, YOU MAY AS I
7 INSTRUCTED YOU EARLIER, WRITE IT DOWN, SIGN YOUR NAME, WHATEVER THE
8 INFORMATION IS, GIVE IT TO THE BAILIFF AND HE WILL BRING IT TO US AND WE WILL
9 RECEIVE IT HERE IN OPEN COURT. JUST REMEMBER, HOWEVER, NEVER TELL THE
10 BAILIFF, NEVER TELL ME, OR ANYONE WHERE THE JURY STANDS NUMERICALLY IN
11 ITS DECISION. OKAY? YOU UNDERSTAND THAT?

12 I AM GOING TO BRING THIS VERDICT FORM DOWN TO YOU. LET ME TELL YOU
13 THAT THE ORDER IN WHICH YOUR OPTIONS APPEAR IS OF NO SIGNIFICANCE
14 WHATSOEVER. THEY HAVE TO APPEAR IN ONE ORDER OR THE OTHER. AGAIN,
15 YOUR VERDICT HAS TO BE UNANIMOUS. (JUDGE LEAVES THE BENCH AND STANDS
16 IN FRONT OF THE JURY) AND I WILL TELL YOU THAT YOU ARE BOUND BY THE
17 RECORD THAT HAS BEEN ESTABLISHED IN THIS CASE FROM THIS WITNESS STAND,
18 THE TESTIMONY IN THIS CASE AND THE EVIDENCE RECEIVED. NOW, IF YOU WILL
19 LOOK, YOU HAVE TWO OPTIONS: WE, THE JURY, UNANIMOUSLY FIND THAT THE
20 DEFENDANT DAVID DALE SHERIFF IS NOT GUILTY OF BURGLARY, FIRST DEGREE OR
21 GUILTY OF BURGLARY, FIRST DEGREE. SIMPLY CHECK WHICH ONE OF THOSE
22 OPTIONS THAT YOU DECIDE UPON. SIGN YOUR NAME. LET THE FOREPERSON
23 KNOW. WE WILL RECEIVE YOUR VERDICT BACK IN THE COURTROOM. OKAY, SIR?

24 MR. CLAREY: OKAY, SIR.

25 (JUDGE RETURNS TO THE BENCH)

1 THE COURT: ALL RIGHT, LADIES AND GENTLEMEN OF THE JURY, AT THIS TIME
2 I'M GOING TO ASK THAT YOU GO BACK TO YOUR JURY ROOM. I'M GOING TO SEE IF
3 I'VE OVERLOOKED SOMETHING OR MIS-STATED SOMETHING THAT I NEED TO
4 CORRECT BEFORE YOU BEGIN YOUR DELIBERATIONS. DO NOT BEGIN YOUR
5 DELIBERATIONS AT THIS POINT. ONCE WE HAVE RESOLVED THESE ISSUES, ALL THE
6 EXHIBITS WILL BE SENT BACK TO YOU ALONG WITH WORD THAT YOU CAN BEGIN
7 YOUR DELIBERATIONS. THANK YOU VERY MUCH.

8 (JURY OUT AT 10:57 A.M.)

9 THE COURT: ANY ADDITIONS OR EXCEPTIONS FROM THE STATE, MISTER
10 BRADLEY?

11 MR. BRADLEY: NO OBJECTIONS, YOUR HONOR.

12 MR. TAVERNIER: YOUR HONOR, I KNOW YOU DISCUSSED THE WEIGHT OF THE
13 EVIDENCE. I DON'T KNOW IF I MISSED THE CREDIBILITY OF WITNESSES.

14 THE COURT: I THINK I DID. LET ME DOUBLE CHECK IT. YEAH, I DID. IT SAYS,
15 "WHAT WAS THE WITNESS ABLE TO HEAR, SEE, AND KNOW THE THINGS ABOUT
16 WHICH THEY TESTIFY."

17 MR. TAVERNIER: YES. OKAY.

18 THE COURT: OTHER THAN THAT?

19 MR. TAVERNIER: NO, SIR.

20 THE COURT: YOU ARE PROTECTED ON THE RECORD FOR YOUR OBJECTION.
21 ON MY CHARGE, ANY OBJECTION FROM YOU?

22 MR. BRADLEY: NOTHING ON THE CHARGE, YOUR HONOR.

23 MR. TAVERNIER: NO, SIR.

24 THE COURT: ALL RIGHT. JUST LOOK AT THE EXHIBITS AND MAKE SURE THEY
25 ARE OKAY AND WE WILL SEND THEM BACK TO THE JURY.

VERDICT

1 (BOTH LAWYERS CHECK THE EXHIBITS)

2 MR. BRADLEY: EVERYTHING IS IN ORDER, YOUR HONOR.

3 THE COURT: OKAY. (SPEAKING TO THE BAILIFF) ALL RIGHT, IF YOU WOULD
4 TAKE THOSE BACK AND TELL THE JURY THEY CAN BEGIN THEIR DELIBERATIONS.

5 (SPEAKING TO THE ATTORNEYS) Y'ALL WERE VERY PREPARED AND VERY
6 PROFESSIONAL AND YOU TRIED A VERY GOOD CASE. THANK YOU.

7 (EVIDENCE BACK AT 10:59 A.M.)

8 VERDICT

9 THE COURT: WE HAVE A VERDICT?

10 MR. BRADLEY: YES, SIR.

11 THE COURT: BEFORE WE GET STARTED, ANYTHING FROM THE STATE?

12 MR. BRADLEY: NOTHING FURTHER, YOUR HONOR.

13 THE COURT: FROM THE DEFENSE?

14 MR. TAVERNIER: NOTHING, YOUR HONOR.

15 THE COURT: WOULD YOU BRING THE JURY IN, PLEASE.

16 (JURY IN AT 11:37 A.M.)

17 THE COURT: MISTER CLAREY, MY UNDERSTANDING IS THE JURY HAS
18 REACHED A VERDICT.

19 MR. CLAREY: YES, SIR.

20 THE COURT: IS IT UNANIMOUS?

21 MR. CLAREY: IT IS.

22 THE COURT: WOULD YOU PASS IT TO THE BAILIFF, PLEASE SIR? (MR. CLAREY
23 COMPLIES. BAILIFF HANDS IT TO THE CLERK OF COURT WHO HANDS IT TO THE
24 JUDGE. JUDGE LOOKS AT DOCUMENT.) WOULD YOU PUBLISH THE VERDICT,
25 PLEASE MA'AM?

1 CLERK OF COURT: THE STATE OF SOUTH CAROLINA VERSUS DAVID DALE
2 SHERIFF, INDICTMENT NUMBER 2009-GS-04-2990. WE, THE JURY, UNANIMOUSLY
3 FIND THE DEFENDANT DAVID DALE SHERIFF IS GUILTY OF BURGLARY IN THE FIRST
4 DEGREE. SIGNED KEVIN M. CLAREY, FOREMAN, ANDERSON, SOUTH CAROLINA,
5 JULY 20, 2010. LADIES AND GENTLEMEN OF THE JURY, IS THAT YOUR VERDICT?

6 (JURORS NOD AND INDICATE THAT IS THEIR VERDICT)

7 THE COURT: THANK YOU VERY MUCH FOR YOUR SERVICE, LADIES AND
8 GENTLEMEN. I WOULD LIKE TO BE ABLE TO SAY THAT YOU ARE DONE FOR THE
9 WEEK, BUT YOU ARE NOT. I AM GOING TO ASK THAT YOU COME BACK AT 2 O'CLOCK,
10 BUT BEFORE YOU DO, I WOULD LIKE TO MEET WITH YOU IN THE JURY ROOM FOR A
11 FEW MINUTES. I WILL SAY YOU WERE VERY WELL ATTUNED TO THE EVIDENCE ON
12 BOTH SIDES OF THE CASE AND I THANK YOU FOR YOUR SERVICE TO ANDERSON
13 COUNTY AND TO THE STATE OF SOUTH CAROLINA. AT THIS TIME, I'M GOING TO ASK
14 YOU TO STEP BACK TO YOUR JURY ROOM.

15 (JURY OUT AT 11:40 A.M.)

16 THE COURT: ANYTHING, MR TAVERNIER, BEFORE WE...

17 MR. TAVERNIER: NOTHING, YOUR HONOR, OTHER THAN THAT EITHER PRIOR
18 TO SENTENCING OR SOMETIME IF YOU WOULD - MISTER SHERIFF SAID HE WOULD
19 LIKE TO ADDRESS THE COURT AND IF THE JURY WISHES TO BE PRESENT THAT IS
20 ACCEPTABLE TO HIM.

21 THE COURT: WHAT I AM GOING TO DO, UNLESS SOMEBODY HAS AN
22 OBJECTION, IS I ALWAYS GO BACK AND JUST GET JURY OBSERVATIONS. IT'S NOT
23 ABOUT - AND I NEVER ASK THEM ABOUT WHAT THEY DID OR WHY THEY DID IT, IT'S
24 JUST ABOUT THE PROCESS. I'LL TELL THEM I'M ABOUT TO DO THE SENTENCING AND
25 THEY ARE MORE THAN WELCOME TO COME IN IF THEY WOULD LIKE TO.

SENTENCING

1 MR. TAVERNIER: THANK YOU, YOUR HONOR.

2 THE COURT: WE WILL BE IN RECESS FOR TWO SECONDS.

3 (BRIEF RECESS)

4 SENTENCING

5 THE COURT: ALL RIGHT, MISTER SHERIFF, WOULD YOU COME FORWARD,
6 PLEASE, SIR? (MISTER SHERIFF AND MISTER TAVERNIER COME FORWARD) YOUR
7 ATTORNEY ADVISES ME THAT YOU HAVE A STATEMENT THAT YOU HAVE PREPARED
8 AND WOULD LIKE TO PRESENT?

9 MR. SHERIFF: YES, SIR.

10 THE COURT: GO AHEAD, PLEASE SIR.

11 MR. SHERIFF: FIRST OF ALL, I WOULD JUST LIKE TO SAY THANK YOU FOR
12 BEING PATIENT WITH ME AND TO THE JURY, THANK YOU FOR COMING OUT TODAY
13 AND MISTER BRADLEY AND EACH AND EVERY ONE OF Y'ALL, THANK YOU. I JUST
14 WANTED TO SAY THAT FROM THE BOTTOM OF MY HEART. I JUST THANK YOU FOR
15 KEEPING IT PROFESSIONAL. THANK YOU. YOUR HONOR, THERE IS SOMETHING I'D
16 LIKE TO GIVE TO YOU FOR YOU TO LOOK OVER SOME THINGS FOR ME, BUT I DON'T
17 KNOW IF I SHOULD DO IT NOW OR -- I DON'T KNOW THE PROCESS. I'VE GOT SOME
18 STUFF I NEED TO COME TO YOU WITH, BUT I DON'T KNOW IF I AM SUPPOSED TO DO
19 IT NOW OR AFTERWARD. I'M NOT SURE.

20 THE COURT: WELL, LET ME JUST TELL YOU THIS, MISTER SHERIFF. I'M -- SINCE
21 I'VE BEEN ON THE BENCH, I'M NO LONGER A ATTORNEY. YOU HAVE A VERY FINE
22 ATTORNEY AND MY SUGGESTION --

23 MR. SHERIFF: YES, SIR.

24 THE COURT: -- IS YOU PRESENT IT TO HIM AND HE CAN DO WITH IT WHICH IS
25 APPROPRIATE. HE KNOWS BETTER THAN THE VAST MAJORITY OF LAWYERS IN THE

1 STATE OF SOUTH CAROLINA.

2 MR. SHERIFF: EVEN IF IT'S SOMETHING THAT REALLY NEEDS TO BE SAID

3 TODAY?

4 THE COURT: WELL, I MEAN I – LET ME TELL YOU SOMETHING. UNDER THE

5 CIRCUMSTANCES I AM GOING TO GIVE YOU SOME LEEWAY, BUT I AM NOT GOING TO

6 GIVE YOU TOTAL RANGE TO SAY WHATEVER. OKAY?

7 MR. SHERIFF: YES, SIR.

8 THE COURT: IF YOU FEEL THE NEED, YOU MAY CONVERSE WITH YOUR

9 ATTORNEY OR IF I FEEL LIKE IT'S INAPPROPRIATE, THEN I WILL STOP YOU. OKAY?

10 WHATEVER – YOU WANT TO SPEAK WITH MISTER TAVERNIER BEFORE YOU BRING IT

11 UP AND SEE IF IT'S SOMETHING THAT SHOULD BE SAID, OR IF NOT, THEN GO AHEAD.

12 MR. SHERIFF: BRING IT TO YOU?

13 THE COURT: WHEN YOU SAY BRING IT TO ME, YOU ARE NOT SUPPOSED TO

14 BRING ME ANYTHING.

15 MR. SHERIFF: OKAY. I SEE.

16 THE COURT: I MEAN, IF YOU WANT TO SAY SOMETHING HERE, NOW IS YOUR

17 CHANCE TO SAY IT, BUT I WOULD SUGGEST THAT YOU MAYBE TALK TO MISTER

18 TAVERNIER FIRST AND SEE WHAT IT IS.

19 MR. SHERIFF: OKAY. I CAN. (CONFERS WITH MISTER TAVERNIER AND SHOWS

20 HIM DOCUMENTS.)

21 (BRIEF BENCH CONFERENCE OFF THE RECORD)

22 THE COURT: THOSE MATTERS ARE FOR ANOTHER FORUM AND ANOTHER

23 PROCEDURE AND NOT FOR TODAY. OKAY, SIR?

24 MR. SHERIFF: OKAY. THANK YOU SIR.

25 THE COURT: OKAY. DO YOU HAVE ANYTHING ELSE YOU WOULD LIKE TO SAY

SENTENCING

1 BEFORE I PASS SENTENCE?

2 MR. SHERIFF: JUST THANK YOU FOR EVERYBODY BEING PROFESSIONAL
3 TODAY, MISTER BRADLEY, AND MISTER TAVERNIER, I THANK YOU.

4 MR. TAVERNIER: YOUR HONOR, I DO HAVE JUST A COUPLE I WOULD LIKE TO
5 ADDRESS, IF I MAY?

6 THE COURT: OKAY. GO AHEAD.

7 MR. TAVERNIER: YOUR HONOR, AS YOU ARE AWARE FROM TRYING THIS CASE,
8 THERE WERE CERTAIN ELEMENTS THAT WE HAD TO DEAL WITH AND BASED ON
9 WHAT MISTER SHERIFF HAD PRESENTED TO MISTER POTTER, HIS INITIAL
10 ATTORNEY, AND THEN WHEN YOU APPOINTED ME, HIS CULPABILITY IN THE MATTER
11 WAS NEVER REALLY PUT INTO QUESTION, BECAUSE HE ADMITTED FROM DAY ONE
12 THAT HE HAD PARTICIPATED IN THE OFFENSE. I WAS ABLE TO, AS THE COURT HAS
13 BEEN INFORMED, NEGOTIATE A THIRTY-YEAR SENTENCE FOR HIM ON HIS BEHALF
14 WHICH WOULD HAVE LEFT HIM A CERTAIN SENTENCE, PROBABLY TWENTY-SIX ODD
15 YEARS, TWENTY-FOUR YEARS DEPENDING UPON HOW THEY CALCULATED HIS
16 SERVICE, BUT HE FELT THAT, IN AND OF ITSELF, THAT THE LENGTHY SENTENCE
17 WOULD BE A DEATH SENTENCE AND THAT WOULD BE LIFE WITHOUT PAROLE IN ANY
18 EVENT. SO, THE PRACTICAL MATTER BECAME MAKING THE STATE PROVE ITS CASE
19 AND BASED ON THE WAY IT WAS TRIED AND THE WAY WE HANDLED THE TRIAL IN
20 THIS CASE, I THINK YOU COULD TELL THAT THE EVIDENCE WAS INSURMOUNTABLE
21 AND WAS ABOUT THE ONLY WAY THAT WE COULD FAIRLY ADDRESS THE COURT
22 WITHOUT IMPUGNING THE CREDIBILITY OF ANYTHING DEALING WITH IT. HE WANTED
23 HIS DAY IN COURT. HE GOT IT. HE HAS BEEN INFORMED FROM DAY ONE, AFTER I
24 GOT TO REVIEW THE FILE AND RECEIVED IT, THAT IT WAS WHAT I WOULD CALL A
25 SLAM-DUNK AND HE WAS INFORMED OF THAT AND KNEW THE RISK HE WAS

1 RUNNING, BUT FELT LIKE THAT ROLLING THE DICE WAS THE ONLY OPPORTUNITY HE
2 HAD BECAUSE THIRTY YEARS AS OPPOSED TO LIFE WAS BASICALLY THE SAME TO
3 HIM WITH WHAT HE WOULD BE DEALING WITH. AND SO, NOT WASTING -- SOME
4 WOULD CONSIDER IT WASTING THE COURT'S TIME. HE JUST WANTED TO EXERCISE,
5 I GUESS IS THE BEST WORD, TO HIS FULLEST, ALL HIS RIGHTS THAT HE HAD
6 PURSUANT TO THE CONSTITUTION AND HE DID SO. I THINK THE TRIAL WAS CLEAN. I
7 THINK IT WAS FAIR, PERTAINING TO ALL THE EVIDENCE THAT WAS PRESENTED AND
8 WHAT HE COULD SHOW, OR NOT SHOW, DEPENDING ON HOW YOU VIEW IT AND I
9 THINK HE'S SATISFIED THE JURY DID ITS JOB. THEY HAD; I THINK, VIRTUALLY LITTLE
10 CHOICE, IF ANY, IF THEY LISTENED TO THE EVIDENCE AND THEY DID AND MISTER
11 SHERIFF HAS EXPRESSED THAT HE'S SATISFIED WITH THE RESULTS. IT WAS WHAT
12 WAS EXPECTED AND HE IS GOING TO LIVE WITH THE CONSEQUENCES.

13 THE COURT: LET ME JUST SAY FOR THE RECORD THAT IT'S NEVER A WASTE
14 OF THE COURT'S TIME WHEN ANYBODY EXERCISES THEIR CONSTITUTIONAL RIGHTS.
15 THAT'S A BASIC FUNDAMENTAL FREEDOM THAT WE ALL HAVE. THAT BEING SAID,
16 MISTER SHERIFF, YOU UNDERSTAND THAT I HAVE ABSOLUTELY NO DISCRETION IN
17 THIS MATTER AT ALL.

18 MR. SHERIFF: YES, SIR. I DO.

19 THE COURT: AND THAT THE ONLY SENTENCE THAT THE LAW ALLOWS ME
20 UNDER THE CIRCUMSTANCES IS BASED ON YOUR PRIOR RECORD IS THAT I
21 SENTENCE YOU TO LIFE. THAT MEANS UNTIL DEATH --

22 MR. SHERIFF: YES, SIR.

23 THE COURT: -- WITHOUT THE POSSIBILITY OF PAROLE. GOOD LUCK TO YOU,
24 SIR.

25 MR. SHERIFF: CAN I SAY THANK YOU TO THE JURORS?

SENTENCING

- 1 THE COURT: YES, YOU MAY. THEY ARE RIGHT BACK THERE.
- 2 MR. SHERIFF: THANK YOU FOR JUST BEING PROFESSIONAL. THANK YOU.
- 3 THE COURT: GOOD LUCK TO YOU, MISTER SHERIFF.
- 4 MR. SHERIFF: THANK YOU, SIR.
- 5 MR. TAVERNIER: THANK YOU, YOUR HONOR.

CERTIFICATE

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING ONE HUNDRED FIFTY-TWO PAGED TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE TRIAL IN THE CAPTIONED CASE, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH CAROLINA ON JULY 19-20, 2010, AT THE ANDERSON COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

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

JANUARY 6, 2010

Jo Rice

JO RICE

STATE OF SOUTH CAROLINA)

County of Anderson)David Dale Sheriff)

Full name and prison number, if any, of applicant,)

v.)

State of South Carolina)

Name of Respondent)

In the Court of Common Pleas

A TRUE COPY

JUN 12 2013

2013-CP-04-01431
CLERK OF COURTAPPLICATION FOR
POST-CONVICTION RELIEFCOMMON PLEAS AND
GENERAL SESSIONS

2013 JUN 12 PM 17

FILED-CLERK'S OFFICE
ANDERSON SCINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make 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. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant 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 Lee Correctional Institution, SMU North 42
990 Wisacky Highway, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Anderson County Court of
General Sessions Pleas, Anderson, SC 29621
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2009-GS-042990/ First Degree Burglary
 - (b) N/A
 - (c) N/A
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 20, 2007¹⁰ -- First Degree Burglary/ LWOP Sentence
 - (b) N/A
 - (c) N/A

5. Check whether a finding of guilty was made
- (a) after a plea of guilty YES
- (b) after a plea of not guilty N/A
- (c) after a plea of nolo contendere N/A
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. Anderson County Court of Common Pleas
- ii. N/A
- iii. N/A
- (b) the result in each such Court to which you appealed:
- i. Anders Brief
- ii. N/A
- iii. N/A
- (c) the date of each such result:
- i. July 2012/ Remittur was sent down
- ii. N/A
- iii. N/A
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. David D. Sheriff vs. State of South Carolina
- ii. N/A
- iii. N/A
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) N/A
- (b) N/A
- (c) N/A
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) Conflict of Interest
- (c) Failure to Investigate
- (d) Constitutional Violations

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

(a) See. Attach.

(b) N/A

(c) N/A

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

No

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

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

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

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

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? YES

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. Failure to instruct the Solicitor was seeking an LWOP
- ii. sentence.
- iii.

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

- i. Direct Appeal
- ii. N/A
- iii. N/A

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) NO
- (b) N/A
- (c) N/A

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

- (a) your arraignment and plea? YES
- (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 application with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Kirt Tavener

ii. LaNelle Cantey Durant

iii. N/A

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

i. Trial

ii. Direct Appeal

iii. N/A

18. State clearly the relief you seek in filing this application.

Vacate and remand for new trial.

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

No

STATE OF SOUTH CAROLINA)
)
 COUNTY OF Anderson)

VERIFICATION

I, David Dale Sheriff, 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.

David Dale Sheriff

Sworn to and subscribed before me

This 7 day of June, 2013.

Debra Sims L.S.

Notary Public for South Carolina

My Commission Expires 11-4-2015

2013-CP-04-01431

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

I, David Dale Sheriff, 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 proceeding or give security therefor.

David Dale Sheriff
 Applicant

Sworn to and subscribed before me

This 7 day of June, 2013

Debra Sims L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

A TRUE COPY

JUN 12 2013

Patricia A. Kelly
 CLERK OF COURT

- Petitioner alleges his Sixth (6th) and Fourteenth (14th) Amendment Constitutional Rights was violated. When trial counsel failed to challenge appellants Conflict of Interest claim.

Relevant Facts

Argument

Ineffective Assistance of Trial Counsel

- Petitioner alleges his Sixth (6th) and Fourteenth Amendment Constitutional Rights was violated. When his trial counsel failed to fully investigate appellants case.

Relevant Facts

Argument

David Skeiff 171192
SMU - 42 North

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Bishopville S.C.

COMMON PLEAS AND
GENERAL SESSIONS
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JUN 10 2013

Mr. Richard A Shirley
Anderson County Clerk of Court
P.O. Box 8002

Anderson S.C. 29622

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

David Dale Sheriff,
S.C.D.C. No. 171192,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE TENTH JUDICIAL CIRCUITCase No. 2013-CP-04-14³¹~~13~~**RETURN**

Respondent, making its Return to the application for post-conviction relief filed June 12, 2013 would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted at the December 2009 term of the Anderson County Grand Jury for burglary, first-degree (2009-GS-04-2990). Applicant was represented by Kurt Tavernier, Esq. On July 19, 2010, the State called its case to trial. Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh and was found guilty as indicted. Judge McIntosh sentenced Applicant to life without the possibility of parole "LWOP" for burglary, first-degree.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by LaNelle DuRant, Esq., of the Office of Appellate Defense pursuant to Anders v. California.¹ The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. David Dale Sheriff, No. 2012-UP-453 (S.C. Ct. App. filed on July 18, 2012). The Remittitur was issued on August 10, 2012.

¹ Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967).

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

II.

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

1. Ineffective Assistance of Counsel:
 - a. "Conflict of Interest;"
 - b. "Failure to Investigate;"
 - c. "Constitutional Violations."

Any claims not specifically enumerated in the PCR application or amendments not made ten (10) days prior to the evidentiary hearing will be opposed by the State, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

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

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

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

IV.

The Respondent submits that Applicant's third allegation for Post-Conviction Relief should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160 (2003). An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.... S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily dismiss these allegations.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

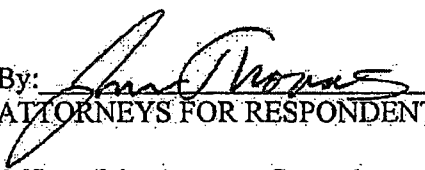
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. WALT WHITMIRE
Assistant Attorney General

By: 
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Telephone: (803) 734-3737

January 7, 2014

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

DAVID DALE SHERIFF, #171192

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent

IN THE COURT OF COMMON PLEAS
IN THE TENTH CIRCUIT

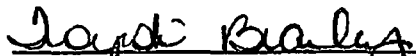
2013-CP-04-1431

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Hugh W. Welborn, Esq.
Post Office Box 173
Anderson, SC 29622

DATED this 7th day of January, 2014


 Troyeshl Brailey, Legal Assistant
 For Respondent

State of South Carolina

County of Anderson

In the Court of Common Pleas

David Dale Sheriff,

Applicant,

-VS-

State of South Carolina,

Respondent.

2013-CP-04-1431

July 30, 2014

Transcript of Record

BEFORE:

The Honorable Edgar W. Dickson, Judge

APPEARANCES:

Hugh Welborn, Esquire
Attorney for the Applicant

John W. Whitmire, Esquire
Assistant Attorney General
Attorney for the State

Renee H. Tollison
Circuit Court Reporter

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23 Mr. Sheriff has filed a timely application for post-
24 conviction relief. He is present and represented by Mr.
25 Welborn. In his current application, he is alleging

David Dale Sheriff - Direct Examination by Mr. Welborn

4

1 conflict of -- ineffective assistance, failure to
2 withdraw the representation pursuant to a conflict of
3 interest, and at this time, generically, failure to
4 investigate what the application denotes as
5 constitutional violations. I'll turn matters over to Mr.
6 Welborn to maybe enunciate a little more on those last
7 two.

8 THE COURT: All right.

9 Mr. Welborn?

10 MR. WELBORN: Your Honor, may it please the
11 Court.

12 THE COURT: Yes, sir.

13 MR. WELBORN: I think my client -- that's
14 correct what was just stated. I think my client could go
15 into more detail about what he means by these
16 constitutional violations. And if I may call him to the
17 stand?

18 THE COURT: All right.

19 (WHEREUPON, the witness was duly sworn.)

20 THE COURT: All right. Mr. Welborn, your
21 witness.

22 MR. WELBORN: Thank you. May it please the
23 Court.

24 DAVID DALE SHERIFF,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION

2 BY MR. WELBORN:

3 Q. Mr. Sheriff, we've met and we've talked and
4 corresponded. I'm going to ask you, please -- it was
5 stated a little while ago that you had a sentence after a
6 conviction of a trial in which Mr. Tavernier represented
7 you. And you received a sentence after conviction of
8 life without parole; is that correct?

9 A. Yes, sir.

10 Q. Now, you've alleged in your application first thing
11 is that there was ineffective assistance of counsel
12 because there was a conflict of interest. Now, I'm going
13 to hand to you a court exhibit that we've agreed to be
14 admitted.

15 MR. WELBORN: May I approach the witness, Your
16 Honor?

17 THE COURT: You may.

18 Q. Mr. Sheriff, this is what you have sent to me -- and
19 you've got a copy of it on your desk -- where there's a
20 transcript of March 8th of 2010. This was when Mr.
21 Potter represented you. This was heard, I believe, by
22 Judge McIntosh where you had some difficulties with Mr.
23 Potter, and he got relieved. And then you've got some
24 notations out here about where Judge McIntosh said this
25 was going to be -- "Everybody's conflicted out there at

David Dale Sheriff - Direct Examination by Mr. Welborn

6

1 the public defender's officer because they're all out
2 there. So, you know, that's just something you need to
3 understand." And then later -- and, of course, the court
4 granted that motion, relieved Mr. Potter and then later
5 appointed, I believe, Mr. Tavernier to represent you. So
6 far have I said everything correctly?

7 A. You have.

8 Q. And I'm going to ask you, please, did you determine
9 later that Mr. Potter -- excuse me -- Mr. Tavernier is or
10 was associated with the public defender's office?

11 A. Yes, sir, I did.

12 Q. And as a matter of fact, that is part of this
13 exhibit showing where he is a public defender, listed as
14 a public defender ---

15 A. That's right.

16 Q. --- with the Department of Indigent Defense; is that
17 correct?

18 A. Yes, sir.

19 Q. And it lists his street address as 301 Camson Road,
20 and that is where the public defender's office is; is
21 that correct?

22 A. That's correct.

23 Q. And it gave you his contact details as the public
24 defender's telephone number of 260-4048; is that correct?

25 A. That's correct.

1 Q. And then you've got another document -- again, this
2 is in evidence -- attached. It says, South Carolina
3 Department of Indigent Defense, Public Defenders. It's
4 got Kurt Tavernier listed, same telephone number in
5 Anderson, South Carolina, that we just went over; is that
6 correct?

7 A. That's correct, yes, sir.

8 Q. Now, thank you. As a result of that, who was
9 appointed to represent you after that hearing anyway?

10 A. Mr. Kurt Tavernier.

11 Q. Now, you've alleged that there would be a conflict
12 of interest regarding that. Is that because of
13 everything I just went over with you?

14 A. That's absolutely right, yes, sir.

15 Q. And do you think because of that is perhaps there
16 was some possibilities of maybe knowledge, information,
17 et cetera, that could be adverse to you. And I'm not
18 accusing Mr. Tavernier or anyone of any kind of bad
19 activities or ulterior motives or conspiracies or
20 anything like that. But just the idea of possibilities
21 of information that could hurt you in some fashion
22 floating among the people that could affect you in a bad
23 way. Does that bother you? Is that the conflict you're
24 alleging, sir?

25 A. Well, yes, sir, because based upon the judge's --

1 what the judge said in this transcript, there was nobody
2 -- anybody that was affiliated with the public defender's
3 office in any shape, form or fashion, lawyers, judges,
4 investigators, anybody that had anything to do with that
5 public defender's office could have anything to do with
6 me because I would have a conflict with all of them.

7 Q. Now, you took this to trial ---

8 A. Yes, sir, I did.

9 Q. --- with Mr. Tavernier?

10 A. Yes, sir.

11 Q. And then you were convicted; is that correct?

12 A. Yes.

13 Q. Are you asking the Court then to find that that
14 conflict of interest existed or was there and, therefore,
15 that was ineffective assistance of counsel in some
16 fashion because that conflict should have been resolved,
17 should have been known about, should have been divulged,
18 and it wasn't? Is that what you're asking?

19 A. That's exactly what I'm saying, yes, sir.

20 Q. Thank you. Now, you next allege that there is a
21 failure to investigate. I imagine you're alleging that
22 Mr. Tavernier did that as well; is that correct?

23 A. That's exactly right.

24 Q. What did he do or not do?

25 A. Okay. He was my lawyer for approximately two weeks

1 before -- a couple of weeks before we went to trial. He
2 came and spoke with me one time based upon the
3 investigation that Mr. Potter put forth. He never put
4 forth his own investigation. If he did so, he never
5 showed me how he did investigate anything because all the
6 investigation was upon what Mr. Potter had already done
7 up until this point in time. And if he had have of done
8 any investigation, it would fall back on the conflict of
9 interest with the public defender's office that I had
10 with everyone that was there.

11 Q. Okay. Now, you also allege, quote, constitutional
12 violations. What are you referring to? What do you
13 mean?

14 A. Different parts of the constitution says that every
15 person that is brought into a courtroom will have
16 adequate representation. I can't have adequate
17 representation if I have a conflict with my lawyer or the
18 lawyer's office that's representing me.

19 Q. Okay. Now, those are the three things you've
20 alleged. And we've talked about that.

21 A. Yes, sir.

22 Q. Is there anything else you want to call to the
23 Court's attention that falls into any of these issues we
24 just talked about?

25 A. Not off-the-top-of-my-head, no, sir.

1 Q. Thank you. Answer anything opposing counsel or the
2 Court may have.

3 THE COURT: Mr. Whitmire?

4 MR. WHITMIRE: May it please the Court. And
5 for the record, Your Honor, the joint exhibit is an
6 appellate record that applicant sent to the Court of
7 Appeals as part of his Anders brief. It is attached to
8 your records.

9 THE COURT: I've got that, the copy of the
10 transcript with Mr. Potter and the information about the
11 public defenders.

12 MR. WHITMIRE: May I approach the court
13 reporter?

14 THE COURT: Yes, sir.

15 (WHEREUPON, Joint Exhibit Number 1 was marked for
16 identification only.)

17 CROSS-EXAMINATION

18 BY MR. WHITMIRE:

19 Q. Good afternoon.

20 A. Good afternoon.

21 MR. WHITMIRE: May it please the Court.

22 THE COURT: Yes, sir.

23 Q. Mr. Sheriff, you're alleging a conflict of interest
24 today; is that correct?

25 A. Yes, sir, I am.

1 Q. And how exactly did Mr. Tavernier's conflict of
2 interest adversely affect your trial?

3 A. Okay. At the time when this hearing took place,
4 when he did relieve Mr. Potter, I was told on page seven
5 of March the 8th ---

6 Q. I'm not talking about the preliminary hearing. I'm
7 asking at trial what was -- how did it affect your
8 ability to put up a defense to argue your case?

9 A. I had a conflict with anybody that was in the public
10 defender's office whether they were standing in place for
11 the public defender's office or working with the public
12 defender's office in any form based upon what the judge
13 told me.

14 Q. And this hearing you had, you attached it to your
15 Anders response; correct? Court of Appeals?

16 A. I'm pretty sure, yes, sir, I think. I'm almost
17 definite, yes, sir.

18 Q. And why were you upset with Mr. Potter again?

19 A. There was a question with some indictment. But
20 we're not talking about that today, sir. We're talking
21 about this ---

22 Q. No. I'm actually asking.

23 A. Okay. There was an incident with an indictment that
24 I -- there was some mistakes on the indictment when it
25 was brought forth to his attention. At nine o'clock the

1 next morning, I was re-indicted.

2 Q. But your problem was with Mr. Potter in particular?

3 A. At that time, yes.

4 Q. Well, didn't the judge tell you they'd appoint
5 someone off the list?

6 A. Yes.

7 Q. And how exactly did having Mr. Tavernier hurt you?

8 A. Because he was part of the public defender's office
9 as we showed in the paperwork that's in front of you.
10 He's an assistant to the public defender's office. If
11 you look back at the hearing transcript, it clearly
12 states that no one from the public defender's office can
13 come down here and work with me.

14 THE COURT: Mr. Sheriff?

15 THE WITNESS: I'm sorry.

16 THE COURT: No. What I want you to do, if you
17 will listen to his questions. I've got that transcript.

18 THE WITNESS: Yes, sir. Okay.

19 THE COURT: I see where he said that.

20 THE WITNESS: Okay.

21 THE COURT: Okay. I think what he wants to do
22 is get behind that. There has to be a reason that there
23 was a conflict.

24 THE WITNESS: Okay.

25 THE COURT: There's something -- you know --

1 and I don't know what it was. The only way I'm going to
2 find out what it is is for you to tell Mr. Whitmire what
3 you think that conflict with the public defender's office
4 is. And so that's what he's ...

5 And Mr. Whitmire, am I correct?

6 MR. WHITMIRE: Yes, Your Honor.

7 THE COURT: That's what he's trying to ask you.
8 We're not questioning the fact that that is not in this
9 order. I've got it.

10 THE WITNESS: Yes, sir.

11 THE COURT: He did say that. But what I don't
12 understand -- and what Mr. Whitmire is trying to get at
13 -- is what is the conflict that you had or that the
14 public -- or that you perceive with the public defender's
15 office so that they couldn't represent you?

16 THE WITNESS: Okay.

17 THE COURT: What is the actual factual basis of
18 that?

19 THE WITNESS: Okay. Okay.

20 THE COURT: And Mr. Whitmire, if I have
21 misspoken, you know, please correct me.

22 But that's what we're trying to get at.

23 THE WITNESS: Okay. Well, the date that we had
24 this hearing on March 8th, 2010, when I was in front of
25 Judge McIntosh when he told me -- what he told me was

1 that if he relieved Mr. Potter as my counsel and ---

2 Q. Well, I understand that. What I'm asking is, when
3 your case was called for trial, regarding the way, the
4 manner Mr. Tavernier put your case in front of the jury,
5 what did his status as a contract attorney with the
6 public defender's office do to hurt you?

7 A. Okay. To me, it was based upon everything the judge
8 has said. I know it sounds like I'm reading in circles,
9 but I'm telling you this is what my answer is. My answer
10 is this, that no one from there could come down there and
11 represent me because there would be a conflict. I can't
12 sit here and say that Mr. Tavernier done anything
13 personally against me. All I'm saying is that there was
14 a conflict with anyone that was affiliated with that
15 public defender's office.

16 Q. I think what -- and tell me if I'm wrong. I believe
17 your chief complaint is Mr. Tavernier used public
18 defender resources to investigate the case?

19 A. Yes, sir.

20 Q. So he used resources to your advantage?

21 A. Well, I'm not going to say it was to my advantage or
22 disadvantage. He used those resources, yes.

23 Q. Mr. Sheriff, have you filed a P.C.R. in the past?

24 A. No. Not on this, no.

25 Q. Not in this case, but in a prior case back in 1994?

1 A. When I was young, yes.

2 Q. Do you remember having a hearing?

3 A. Yes, I did.

4 Q. Do you remember the judge ruling?

5 A. He didn't rule; we took it back.

6 MR. WHITMIRE: May I approach the witness, Your Honor?

7 Honor?

8 A. I'm pretty sure that we took it off.

9 THE COURT: You may.

10 Q. Mr. Sheriff, do you recognize this order of

11 dismissal from your first P.C.R.?

12 A. I do recognize it, but it was my understanding at

13 this time that we withdrew this. The dismissal, we

14 withdrew it because I could possibly get more time if I

15 went in front of the judge that day.

16 MR. WHITMIRE: And, Your Honor, at this time,

17 let the record reflect that the applicant has identified

18 State's Exhibit 1.

19 Q. Mr. Sheriff, would you turn to page six of that

20 order?

21 MR. WHITMIRE: And may I approach one more

22 time?

23 THE COURT: You may.

24 Q. Starting at the second full paragraph, Mr. Sheriff,

25 will you publish or read that paragraph for the court

1 reporter?

2 A. "The court finds that counsel informed the applicant
3 that he represented his co-defendant and explained the
4 conflict of interest that could conceivably arise. This
5 court finds that both the applicant and the co-defendant
6 gave similar statements of confessions to the police and
7 did not attempt to implicate one another. This court
8 finds that no conflict of interest ever manifested
9 itself."

10 Q. Thank you, Mr. Sheriff.

11 MR. WHITMIRE: At this time, Your Honor, the
12 State moves in Exhibit 1, order of dismissal, from his
13 first post-conviction relief action.

14 THE COURT: Any objection?

15 MR. WELBORN: That's already agreed to.

16 THE COURT: Okay. That is in evidence without
17 objection.

18 (WHEREUPON, State's Exhibit Number 1 was marked and
19 admitted into evidence.)

20 Q. So Mr. Sheriff, you have alleged a conflict of
21 interest before?

22 A. Well, to tell you the truth, when I was filling my
23 first P.C.R. application out, I was told to do that
24 because that was what was being helped with me. This
25 time I did it myself because I went to the law library

1 and looked these things up before I started.

2 Q. But you're aware of some of the basic rules of
3 conflict of interest?

4 A. Now, not then.

5 Q. So that issue was brought to the court's attention
6 and you testified on it but just forgot about it?

7 A. That's been a long time ago, sir.

8 Q. So you never talked to Mr. Tavernier about him
9 representing you? Any problems you had?

10 A. Not really.

11 Q. So otherwise, besides this hearing you had, you're
12 satisfied with Mr. Tavernier?

13 A. No, I'm not satisfied, no, sir.

14 Q. And can you explain why?

15 A. Because I felt like that, yes, sir, I am guilty. I
16 did commit my crime. I'm not here on trial for that
17 today. I did. But I felt like with him being my lawyer
18 for a couple of weeks, he could have went in there and
19 done his own investigation. Maybe we could have come to
20 some kind of different finding that I could have pled
21 guilty to a straight sentence before this trial took
22 place. A lot of different things.

23 Q. Didn't Mr. Tavernier put the plea negotiations on
24 the record at the beginning of your trial?

25 A. He told me that in my transcript, yeah.

1 Q. So you had the opportunity to enter a forty-year
2 guilty plea?

3 A. I thought it was thirty or thirty-five. I'm not
4 sure.

5 Q. I'm asking. You had that opportunity? He talked to
6 you about that?

7 A. Yes, sir. I would have took the thirty.

8 Q. Then why didn't you stop the trial at the beginning
9 and tell Mr. Tavernier you wanted to plead guilty?

10 A. Because it was over. No, sir, that wasn't possible
11 at that time because Mr. Tavernier informed me that once
12 we came to court -- when he left me at the county jail
13 that evening, that once he left that that plea bargain
14 would have been taken off the case. But it wasn't thirty
15 years no more. It was forty years on the table. And I
16 stated to him that I was already in my forties. That
17 forty years was also a life sentence before recognizing
18 that the life sentence that I was given was really a
19 death sentence because it's not life. It's life to the
20 death which gives me no opportunity for anything.

21 MR. WHITMIRE: No further questions, Your
22 Honor. I reserve the right to call applicant in the
23 State's case.

24 THE COURT: All right. Mr. Welborn, anything
25 on redirect?

1 MR. WELBORN: No, nothing further.

2 THE COURT: All right. Thank you, sir. You
3 may step down. Appreciate it.

4 THE WITNESS: Thank you.

5 THE COURT: Any other witnesses?

6 MR. WELBORN: No, sir. That's the case.

7 THE COURT: All right. Any witnesses for the
8 State?

9 MR. WHITMIRE: Yes, Your Honor. The State
10 would call Mr. Tavernier.

11 KURT TAVERNIER,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. WHITMIRE:

15 Q. Good afternoon, Mr. Tavernier. How long have you
16 been practicing law?

17 A. Since 1989.

18 Q. And what was your occupation before you went to law
19 school?

20 A. I was a law enforcement officer with Greenville
21 City.

22 Q. How long?

23 A. Five years.

24 Q. And after graduating law school, what was your
25 initial legal experience?

Kurt Tavernier - Direct Examination by Mr. Whitmire

20

1 A. I was with the solicitor's office in Greenville for
2 a couple of years. Went into private practice until
3 1999. Took over the drug unit for the Anderson
4 Solicitor's Office until 2002. And I've been in private
5 practice ever since.

6 Q. What is your current professional working
7 relationship with the public defender's office here?

8 A. I'm a contract attorney and have been since 2002.

9 Q. Mr. Tavernier, do you recall your representation in
10 this matter?

11 A. Yes, I do.

12 Q. Had a chance to review your file?

13 A. I have.

14 Q. What were the circumstances surrounding your
15 appointment on this case as second counsel?

16 A. It was my understanding that there was a dispute
17 that arose between Mr. Potter and Mr. Sheriff. And Mr.
18 Sheriff asked that Mr. Potter be relieved. The court
19 appointed me. As contract attorney, I'm frequently
20 appointed in conflict cases and ordered -- because we are
21 separate and distinct from the public defender's office.
22 I take murder cases and conflict cases like this in order
23 to handle them rather than have private attorneys, other
24 private attorneys, come in.

25 Q. Just for the record, this isn't the first time a

1 conflict has developed between a client and a public
2 defender and you've taken over the representation?

3 A. I handle at least half a dozen to a dozen a year
4 when conflicts arise.

5 Q. Do you recall your initial consultations with the
6 applicant?

7 A. Pretty much, yes.

8 Q. How many times did you meet with him?

9 A. I want to say twice possibly. I know at least once
10 that I did go over everything with him after I had a
11 chance to review the file. I picked the file up from the
12 P.D. office. I reviewed the file at Matthew Bradley's
13 office and went over everything to see what the evidence
14 was and if there was anything that was needed.

15 Q. You have the opportunity to consult with Mr. Potter
16 prior?

17 A. Oh, absolutely.

18 Q. Did the applicant express any concerns about you
19 taking over the case?

20 A. None that I recall.

21 Q. And just for the record, can you explain the State's
22 case, the basis for the charges and the conviction?

23 A. The initial case was made against Mr. Sheriff
24 because there was a blood smear fingerprint on a light
25 switch plate, the cover plate. And from that, they were

1 able to make a positive I.D. that Mr. Sheriff was in the
2 house. And he had no right to be there.

3 After that was determined, they then interviewed Mr.
4 Sheriff. And he ultimately gave a complete confession to
5 the offense and never denied his culpability from day one
6 once confronted.

7 Q. Do you have an investigator on staff that you use?

8 A. If I need one, I'll use Brad Baxter or Jody
9 McCurley. Kendra Gurley does some of my work out at the
10 P.D. office if I need paperwork or letters written or
11 anything like that. But for the most part, because of my
12 background, I generally do my own.

13 Q. That's your background as a former law enforcement
14 officer?

15 A. As a law enforcement officer, and criminal defense
16 is my primary area of concentration. And I know what I
17 need. I know what to look for. And very seldom do I
18 rely on anybody else to prepare a case for me.

19 Q. And just for the record, did Mr. Sheriff ever
20 complain about your association as a contract attorney
21 during the course of the representation?

22 A. Not that I recall, no.

23 Q. Did your status as a contract attorney have any
24 impact on your ability to effectively represent him?

25 A. No. Quite frankly, I'm utilized a lot because of my

1. relationship with the solicitor's office and law
2. enforcement officers. I tend to get probably a little
3. more benefit of the doubt regarding negotiations. And so
4. frequently I'm called in to help try and negotiate a
5. different plea or some type of alternative sentence to
6. resolve issues. And I tried in this case too.

7. Q. Since the applicant has raised that issue sua sponte
8. at this hearing, do you recall the plea negotiations in
9. this matter?

10. A. Oh, absolutely. After he had been served with the
11. life-without-parole notice and that was an issue,
12. anything short of that is considered to be a win factor.
13. The initial offer was forty years. And through
14. negotiations with Matthew Bradley, I got it down to
15. thirty years. That was conveyed to Mr. Sheriff, and he
16. refused. I think my last conversations with him the
17. night -- the day before trial, that was conveyed to him.
18. Matthew Bradley -- in order to put pressure so we didn't
19. have to waste court time and go to trial -- said that
20. unless we accepted that offer of thirty years that he
21. would pull it, and he did. I think -- July 8th, I think
22. was the date.

23. Q. Just for the record, what is your general practice
24. on advising a client of the constitutional implications
25. of a guilty plea?

1 A. They are typically -- they have a right to confront
2 witnesses. They waive that. They have a right to a jury
3 trial. They waive that. They have to basically admit
4 their culpability to the offense unless we're doing an
5 Alford plea. That any rights they have that would be
6 brought out at trial or defenses they have are waived.
7 And that they have a full and knowing understanding of
8 all the elements of the crime of which they're charged.
9 And that -- and typically, in this instance or when we
10 have a recommendation, that the judge has a right to
11 accept the recommendation, but also has a right to alter
12 it after he accepts the plea. But in my experience,
13 ninety-nine point nine percent of the time when I enter
14 into a recommendation with the solicitor, the judge will
15 accept that.

16 Q. Throughout the course of your representation, were
17 there any impediments to the applicant's ability to
18 communicate with you that you noticed?

19 A. None. Mr. Sheriff was fully competent. He
20 understood the ramifications of what had been done. He
21 understood the ramifications of life without parole.
22 That if convicted at trial he would have no alternative
23 as far as a sentence is concerned of life without parole.
24 And really, the only issue that ever really came up was
25 that he had requested or wanted the jury to be informed

1 that the only sentence that he would be entitled to would
2 be a life without parole. And we went over that issue.

3 Q. And I recall -- and correct me if I'm wrong. But
4 you put the plea negotiations on the record during the
5 course of the trial?

6 A. I do. Mr. Sheriff was one of probably three or four
7 trials I had wherein I had significantly less time
8 offered that was rejected by the defendant. And as a
9 matter of course, I make sure that they understand the
10 ramifications of what they're doing. And if they don't
11 understand me or what I have told them, I explain that to
12 the judge, have the judge explain it to them, that this
13 is what was offered, and, you know, are they rejecting it
14 to make sure that everything is covered.

15 Q. Just a few more questions. Are you satisfied with
16 your representation of this case?

17 A. I think on the record -- yes. To answer your
18 question, yes. I think on the record I stated that as
19 far as the State's case is concerned, it came as close to
20 being what would be considered a slam dunk as you could
21 get because of the fingerprint evidence and the
22 confession given by Mr. Sheriff.

23 It was, in all accounts, a fairly simple case. The
24 main issues I had pertaining to one of the elements was
25 that the prior convictions for housebreaking coming into

1 evidence. And that's always a little tricky because it
2 tends to taint the jury's mind as to convictions without
3 the defendant having taken the stand. And he's basically
4 impeached without even having to take the stand. But
5 other than that, I thought it was a pretty clean trial.

6 Q. And you presented those arguments during the course
7 of trial, objections to it?

8 A. Yes. Yes, I did.

9 Q. One last final question. Did you try this case to
10 the best of your ability?

11 A. I try all of my cases to the best of my ability.

12 Q. Thank you, Mr. Tavernier.

13 A. You're welcome.

14 Q. Please answer any questions opposing counsel may
15 have for you.

16 THE COURT: Mr. Welborn?

17 MR. WELBORN: If the Court will bear with me.

18 CROSS-EXAMINATION

19 BY MR. WELBORN:

20 Q. So it's still your position, Mr. Tavernier, that
21 even though, even though you did all these things that
22 there still wasn't the perception of a conflict of
23 interest that could at least linger and have lingering
24 doubts in my client's mind even as we sit here?

25 A. My office is totally removed from the public

1 defender's office. And my files are maintained, for the
2 most part, in my office. I do my own investigation.
3 There is no investigator technically at the P.D. office
4 that I utilize. And haven't utilized since, I think,
5 Jimmy Penn left in 2007, maybe 2008. Other than that, I
6 do my own investigation, rely on my own things. Kendra
7 Gurley, up until this past year, had been handling most
8 of my correspondence and doing the nature of the
9 paperwork, requests for discovery. But everything is
10 pretty much delivered to my office and sent to me. And
11 so I'm about as far removed as I can be. Now, I may --
12 you know, there are cases we'll talk about and that sort
13 of thing. And, obviously, I did talk to Mr. Potter to
14 find out what he had learned and after a review of the
15 file at Matthew Bradley's office just to make sure there
16 was nothing I was missing. And as I say, a pretty
17 straightforward simple case.

18 Q. Did he ever complain to you, my client, that there
19 was a conflict?

20 A. No, not that I recall.

21 Q. If he had done that, what would you have done?

22 A. I would have addressed it. I don't think -- it
23 would haven't changed a doggone thing as far as I'm
24 concerned. I would have informed the court that he had
25 an issue. But as far as I was concerned -- I do things

1 myself. I'm a sole practitioner. And all my secretary
2 does is help me with personal injury cases. As far as
3 criminal stuff, I do it all myself.

4 Q. Excuse me.

5 A. Sure.

6 Q. And he appealed this case is my understanding; is
7 that correct?

8 A. We give everybody notice that they have ten days in
9 which to file an appeal, yes.

10 Q. So I think he raised those issues on appeal; is that
11 correct to your knowledge?

12 A. Once my obligation is done at trial, other than
13 advising them that they have the right to appeal, my
14 involvement in the case is pretty well done. And I don't
15 believe I've been consulted regarding any issues.

16 Q. Thank you.

17 MR. WELBORN: That's all I have.

18 THE COURT: I've got a just couple of
19 questions.

20 Mr. Tavernier, on the -- you are listed in the South
21 Carolina Commission on Indigent Defense. They list you
22 as a public defender. Have you seen these things?

23 THE WITNESS: I just saw them this morning,
24 Your Honor.

25 THE COURT: Okay. And the phone number they

1 use, I take it, is the public defender's office phone
2 number; is that correct?

3 THE WITNESS: Yes. They do. We don't -- if I
4 may, I'm a contract attorney.

5 THE COURT: Right.

6 THE WITNESS: We are not employees of the
7 State. We are not employees of the public defender's
8 office. We receive no benefits from them. We get paid a
9 flat sum each month for handling whatever cases. I
10 primarily handle drug cases and whatever murder cases or
11 otherwise that come in and have done so since 2002.

12 THE COURT: Okay.

13 THE WITNESS: But I am not an employee. They
14 list us as contract public defenders.

15 THE COURT: Okay. All right.

16 Mr. Whitmire, my questions give you -- do you have
17 any questions on redirect?

18 MR. WHITMIRE: None, Your Honor. The State
19 would rest, and ask that Mr. Tavernier be released from
20 his subpoena.

21 THE COURT: Okay.

22 And I know I asked him questions. He didn't ask any
23 questions. But did my questions bring up any issues for
24 you, Mr. Welborn?

25 MR. WELBORN: No, sir.

1 THE COURT: Okay.

2 MR. WELBORN: Thank you.

3 THE COURT: Any objection to Mr. Tavernier
4 being excused?

5 MR. WELBORN: No objection.

6 THE COURT: Thank you for coming. I appreciate
7 it.

8 All right. Any other witnesses on behalf of the
9 State?

10 MR. WHITMIRE: None, Your Honor. Request the
11 opportunity to give a very brief closing argument.

12 THE COURT: Okay. All right. Mr. Whitmire?

13 MR. WHITMIRE: May it please the Court. I
14 discovered this conflict of interest just going through
15 his appellate documents. And he seems to interpret Judge
16 McIntosh's stern warning about relieving Mr. Potter as a
17 literal no contact with the public defender's office.
18 Any contact that existed in this case was absolutely
19 minimal and it would have erred to his benefit.

20 Furthermore, his complaint by reading this
21 transcript that he has attached -- and for the record to
22 be clear, we typically don't order preliminary
23 transcripts. His complaint was with Mr. Potter on an
24 indictment issue. Mr. Potter, in particular, not with
25 the public defenders office, not because he had a co-

1 defendant and one of them had to conflict out which
2 brings up most of the conflict of interest law.

3 Furthermore, it's of note, referring to State's
4 Exhibit 1, that he has brought this allegation of
5 ineffective assistance of counsel twenty years ago. It's
6 trying to get out on a technicality. So, Your Honor, he
7 had the benefit of that next name coming up after having
8 Mr. Potter relieved to have Mr. Tavernier who is one of
9 the best, if not the best, defense attorney in this area.
10 So he's gotten the benefit effective representation and
11 is very lucky to have had Mr. Tavernier as his attorney.
12 And this court [sic] would ask that Your Honor dismiss
13 this allegation for lack of legal merit.

14 THE COURT: Yes, sir.

15 Mr. Welborn?

16 MR. WELBORN: Well, Your Honor, this is not a
17 mere technicality to my client. He's going to come out
18 of prison only at the end of his natural life. This is
19 very serious to him. And in his mind, he feels like,
20 well, this was a conflict and the judge was very stern
21 about -- Judge McIntosh -- about being a conflict. And
22 yet he was represented by someone that would give the
23 appearance, the appearance of a conflict. And that's his
24 concern.

25 And I certainly want to make it clear for the record

1 I don't think that Mr. Tavernier would do anything in the
2 world to betray anyone's trust in a courtroom. I've
3 never seen it or heard about it. But I know Mr.
4 Tavernier. And I deal with him on a regular basis. This
5 man dealt with him for a short period of time. And as a
6 result of that representation and the events that
7 occurred causing it, he's never going to come out of
8 prison. And it's understandable he would say, well, this
9 is a whole lot more than a technicality. The judge said
10 everybody's conflicted out. And I think that under that
11 scenario that he ought to be granted a new trial.

12 THE COURT: All right. What I'll do -- oh, Mr.
13 Whitmire?

14 MR. WHITMIRE: If I may, just indulge me for a
15 few quick more comments. Your Honor, I believe that
16 comment from Judge McIntosh was a waiver. It had nothing
17 to do -- it wasn't an order. It wasn't a direct fine
18 line this or that. That's even if there was a potential
19 conflict. The State's position there was not.

20 And I would like to go back to Strickland. So much
21 of the standard of effective representation is based on
22 the efforts, the type of client you have. It's an
23 individualized, particularized inquiry in this situation.
24 The records clearly show that applicant was aware of this
25 allegation, some of the law behind this, had another

1 judge hear it and decided not to bring it to Mr.
2 Tavernier's attention and now wants to bring it up. It
3 substantially diminishes the credibility of the
4 allegation itself.

5 Thank you, Your Honor.

6 THE COURT: Thank you. What I will do is I
7 will review the transcript and I'll get back to y'all
8 with my decision.

9 MR. WELBORN: Thank you, Your Honor.

10 MR. WHITMIRE: Thank you, Your Honor.

11 (WHEREUPON, court stood in recess at approximately
12 12:43 p.m.)

13 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1

CERTIFICATE OF REPORTER

2

I, the undersigned Renee H. Tollison, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Anderson County, South Carolina, on the 30th day of July 2014.

10

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12

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

14

September 10, 2015

15

16

s/ *Renee H. Tollison*

17

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF GENERAL SESSIONS
OF THE TENTH JUDICIAL CIRCUIT
2009-GS-04-2990

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

vs)

DAVID DALE SHERIFF,)

DEFENDANT.)

TRANSCRIPT OF RECORD

MARCH 8, 2010
ANDERSON, SOUTH CAROLINA

BEFORE: THE HONORABLE R. LAWTON MCINTOSH

FOR THE PLAINTIFF:

CATHERINE T. HUEY
10TH CIRCUIT SOLICITOR'S OFFICE
POST OFFICE BOX 8002
ANDERSON, SC 29622

FOR THE DEFENSE:

ANDREW T. POTTER, ESQUIRE
301 CAMSON ROAD
ANDERSON, SC 29621



See page 7 - line 22, 23, 24, 25,

Court stated

See pg 10 lines 14 & 17 (Date set for trial
Judges order; No Extension Requested)

Pg 8 Lines

List of need for New Att!

JO RICE
COURT REPORTER

1 **THE COURT:** SOLICITOR, BE GLAD TO HEAR FROM YOU.

2 **MS. HUEY:** YOUR HONOR, THIS IS DAVID DALE SHERIFF. HE'S CHARGEI
3 WITH BURGLARY, FIRST DEGREE, 2009-GS-04-2990. THE STATE IS READY TO
4 PROCEED TO TRIAL TODAY AGAINST MISTER SHERIFF, BUT I BELIEVE MISTER
5 POTTER HAS A MOTION.

6 **THE COURT:** YES, SIR.

7 **MR. POTTER:** JUDGE. IF IT PLEASES THE COURT, THIS IS A CASE IN
8 WHICH I HAVE A MOTION TO RESPECTFULLY WITHDRAW AS COUNSEL FOR
9 MISTER SHERIFF. THERE IS A CONFLICT THAT HAS ARISEN WITH REGARDS
10 TO ME BEING ABLE TO REPRESENT HIM EFFECTIVELY IN THIS MATTER, AND I
11 CAN GO INTO MORE DETAIL IF YOU NEED ME TO. HOWEVER, HE HAS
12 EXPRESSED A DESIRE FOR ME TO NOT REPRESENT HIM ANYMORE AND I
13 RESPECTFULLY ASK YOUR HONOR TO ALLOW ME TO WITHDRAW. MY
14 ASSISTANT WENT OUT TO THE JAIL, I BELIEVE ON THURSDAY, AND INFORMED
15 HIM THAT THERE WAS A GOOD CHANCE THAT YOU MAY MAKE HIM GO
16 FORWARD TODAY *PRO SE* BECAUSE HE DOES NOT HAVE COUNSEL AS FAR AS
17 I'M AWARE. HE HAS NOT HIRED COUNSEL, BUT THAT'S WHY WE ARE
18 STANDING HERE TODAY. THIS IS THE THIRD TIME HE'S BEEN ON THE TRIAL
19 ROSTER. THE FIRST TIME WAS IN DECEMBER WHERE I HAD TO TRY ANOTHER
20 CASE. IT DIDN'T GET REACHED IN JANUARY AND WE HAD THAT DEATH
21 PENALTY CASE IN FEBRUARY AND SO...

22 **THE COURT:** HE'S BEEN ON THE ROSTER TWICE, BUT IT WASN'T
23 CALLED? IS THAT WHAT YOU'RE TELLING ME?

24 **MS. HUEY:** YES, SIR, BECAUSE WE RAN OUT OF TIME.

25 **THE COURT:** STATE YOUR NAME FOR THE RECORD.

1 **MR. SHERIFF:** DAVID SHERIFF, DAVID DALE SHERIFF.

2 **THE COURT:** MY UNDERSTANDING IS THERE ARE TWO MOTIONS
3 ACTUALLY BEFORE ME. ONE MOTION IS TO RELIEVE COUNSEL AND ONE IS TO
4 HAVE YOUR COUNSEL RELIEVED AS YOUR COUNSEL. IS THAT CORRECT?

5 **MR. SHERIFF:** YES, SIR.

6 **THE COURT:** WHY ARE YOU ASKING FOR YOUR COUNSEL TO BE
7 RELIEVED?

8 **MR. SHERIFF:** BECAUSE I'VE BEEN IN THE DETENTION CENTER FOR
9 TWENTY-SIX MONTHS. AS LONG AS I'VE ASKED TO SPEAK TO HIM, I SPOKE TO
10 HIM ONE TIME FOR FIFTEEN MINUTES AND WE HAVEN'T HAD ANY TIME TO
11 DISCUSS ANYTHING THAT'S REALLY HAPPENING ON MY CASE AND I FELT LIKE
12 HE WASN'T REALLY WORKING IN MY BEST INTERESTS .

13 **THE COURT:** HAVE YOU GOTTEN DISCOVERY FROM THE SOLICITOR'S
14 OFFICE ON THE CHARGES IN THIS CASE?

15 **MR. SHERIFF:** YES, SIR. I HAVE.

16 **THE COURT:** OKAY. DO YOU THINK THERE IS FURTHER DISCOVERY
17 THAT NEEDS TO BE DONE?

18 **MR. SHERIFF:** THERE'S SOME OTHER THINGS THAT HAVEN'T BEEN
19 TAKEN INTO CONSIDERATION. YOUR HONOR, I'VE GOT MENTAL PROBLEMS
20 AND I'VE BEEN UNDER PSYCHIATRIC TREATMENT FOR A LONG TIME AND
21 THERE'S NEVER BEEN ANY QUESTIONS ABOUT IT. I'VE HAD A PSYCHOLOGIST.
22 HE HADN'T ASKED ME QUESTIONS. HE HASN'T ASKED ME ANYTHING ABOUT
23 POSSIBLE CHARACTER WITNESSES AND THINGS LIKE THAT AND AS I TOLD
24 YOU, HE HASN'T SPENT BUT FIFTEEN MINUTES WITH ME TALKING ABOUT MY
25 CASE AND I'M ON TRIAL FOR MY LIFE, YOUR HONOR.

1 THE COURT: WHAT KIND OF PSYCHOLOGICAL PROBLEMS DO YOU
2 CONTEND THAT YOU HAVE?

3 MR. SHERIFF: I AM BIPOLAR. I AM SCHIZOPHRENIC AND I HAVE A
4 BELL'S ---

5 THE COURT: WHAT MEDICATION ARE YOU ON?

6 MR. SHERIFF: HALDOL.

7 THE COURT: HALDOL?

8 MR. SHERIFF: YES, SIR.

9 THE COURT: HOW LONG HAVE YOU BEEN ON HALDOL?

10 MR. SHERIFF: I HAVEN'T BEEN TAKING IT LATELY.

11 THE COURT: SIR?

12 MR. SHERIFF: I HAVEN'T BEEN TAKING IT LATELY.

13 THE COURT: WHO IS YOUR DOCTOR?

14 MR. SHERIFF: IT'S MS. FAYE CAMPBELL WITH THE ANDERSON COUNTY
15 MENTAL HEALTH DEPARTMENT.

16 THE COURT: IT'S WHO?

17 MR. SHERIFF: MS. FAYE CAMPBELL WITH THE ANDERSON COUNTY
18 MENTAL HEALTH DEPARTMENT.

19 THE COURT: WHEN WERE YOU DIAGNOSED AS BEING BIPOLAR?

20 MR. SHERIFF: SINCE I'VE BEEN THERE.

21 THE COURT: BEG YOUR PARDON?

22 MR. SHERIFF: WITHIN THE LAST TWENTY-SIX MONTHS, SINCE I'VE BEEN
23 IN THE COUNTY JAIL.

24 THE COURT: LET ME ASK YOU, HOW DID YOU GET DIAGNOSED IF
25 NOBODY HAS LOOKED INTO WHETHER OR NOT YOU HAVE PSYCHOLOGICAL

1 PROBLEMS?

2 MR. SHERIFF: THAT'S WHAT THEY DID THERE. SHE'S COME TO SEE ME
3 EVERY WEEK.

4 THE COURT: SO SHE STOPPED?

5 MR. SHERIFF: NO. SHE STOPPED BUT MY OTHER DOCTOR WENT
6 SOMEWHERE ELSE. SHE'S JUST NOT TAKING MY CASE.

7 THE COURT: WHO'S YOUR OTHER DOCTOR?

8 MR. SHERIFF: MISTER MARTY MURPHY WITH THE ANDERSON COUNTY
9 HEALTH DEPARTMENT AND A LADY NAMED MISS DEE. YOUR HONOR —

10 THE COURT: JUST A SECOND. I'M GOING TO LET YOU SAY WHAT YOU
11 NEED TO, BUT WHAT OTHER INVESTIGATION DO YOU BELIEVE NEEDS TO BE
12 DONE ON THIS CASE?

13 MR. SHERIFF: I JUST THINK I NEED SOME REPRESENTATION THAT'S
14 GOING TO HELP ME, YOUR HONOR. I DON'T WANT TO WASTE YOUR TIME.

15 THE COURT: I WANT TO HEAR SPECIFICALLY WHAT YOU CONTEND
16 NEEDS TO BE DONE AS FAR AS FURTHER INVESTIGATION. MY
17 UNDERSTANDING IS THAT YOU'VE RECEIVED THE DISCOVERY FROM THE
18 SOLICITOR'S OFFICE AND YOU'VE REVIEWED THAT WITH YOUR COUNSEL. IS
19 THAT CORRECT?

20 MR. SHERIFF: YES, SIR. THERE WAS A QUESTION I HAD. I ASKED
21 MISTER POTTER ABOUT SOMETHING WITH THE ORIGINAL INDICTMENT AND
22 AFTER I TALKED WITH HIM I WAS RE-INDICTED. I DIDN'T UNDERSTAND HOW
23 THAT HAPPENED WHEN NOBODY KNEW IT BUT ME AND MY LAWYER. I WAS
24 INDICTED ON THIS CHARGE AND THE WAY THE INDICTMENT READ FROM THE
25 BEGINNING, IT WAS NO GOOD AND I WROTE MY LAWYER A LETTER ABOUT IT

1 AND THE VERY NEXT WEEK I WAS RE-INDICTED AND THAT'S SOMETHING THAT
2 -- AND THEN IT SAT ON THE TABLE FOR MONTHS AND MONTHS AND I JUST
3 FELT LIKE I WASN'T BEING REPRESENTED IN MY BEST INTERESTS. I DON'T
4 WANT TO WASTE YOUR TIME. I'M NOT TRYING TO BLOW SMOKE OR
5 ANYTHING.

6 THE COURT: WELL, I'M NOT SURE IF YOU'RE TRYING TO WASTE MY TIME
7 OR NOT, MISTER SHERIFF. I'M TRYING TO FIND THAT OUT. NOW, ARE YOU
8 SAYING MISTER POTTER BETRAYED A LAWYER/CLIENT CONFIDENCE?

9 MR. SHERIFF: WELL, I HAVE NO OTHER WAY OF KNOWING HOW SHE
10 WOULD KNOW TO CHANGE IT WHEN I STARTED ASKING THE QUESTIONS.

11 THE COURT: WELL, OTHER THAN THE TECHNICAL WORDING OF THE
12 INDICTMENT, WHAT FURTHER INVESTIGATION DO YOU CONTEND THAT
13 SHOULD HAVE BEEN DONE THAT HAS NOT BEEN DONE?

14 MR. SHERIFF: JUST FINDING OUT ABOUT MY MENTAL STATE.

15 THE COURT: HAVEN'T YOU HAD A PSYCHIATRIST TREATING YOU SINCE
16 YOU WERE LOCKED UP TWENTY-SIX MONTHS AGO?

17 MR. SHERIFF: YES, SIR. I HAVE.

18 THE COURT: SO WHAT FURTHER ASPECT OF THAT, OF YOUR
19 DISABILITY OR YOUR COMPETENCE, DO YOU THINK NEEDS TO BE
20 INVESTIGATED?

21 MR. SHERIFF: REALLY I JUST NEED A GOOD LAWYER THAT'S GOING TO
22 FIGHT FOR ME BECAUSE REALLY, I AM ON TRIAL FOR MY LIFE.

23 THE COURT: I UNDERSTAND THAT. LET ME ASK YOU THIS, DO YOU
24 HAVE ANY INCOME?

25 MR. SHERIFF: NO, SIR.

1 THE COURT: HOW DO YOU INTEND TO GET A NEW LAWYER?

2 MR. SHERIFF: MY WIFE IS TRYING TO SAVE. YOU KNOW, WITH ME IN
3 JAIL I'M NOT MAKING NO MONEY AND THERE'S NOT A REAL EASY WAY TO DO
4 THAT AND SHE'S TRYING AS HARD AS SHE CAN, BUT WE'RE BROKE. I'M BEING
5 HONEST.

6 THE COURT: I WANT YOU TO BE. IF I EXCUSE YOUR ATTORNEY, IF I
7 GRANT YOUR MOTION TO RELIEVE YOUR ATTORNEY, YOU DON'T GET TO PICK
8 AN ATTORNEY OF YOUR OWN. DO YOU UNDERSTAND THAT?

9 MR. SHERIFF: YES, SIR. I KNOW THAT.

10 THE COURT: DO YOU UNDERSTAND THAT I COULD, IF I THOUGHT IT
11 APPROPRIATE, MAKE YOU GO FORWARD TODAY AND BE YOUR OWN
12 LAWYER?

13 MR. SHERIFF: YES, SIR.

14 THE COURT: YOU UNDERSTAND THAT?

15 MR. SHERIFF: YES, SIR. FROM WHAT YOU'RE TELLING ME NOW.

16 THE COURT: SIR?

17 MR. SHERIFF: FROM WHAT YOU'RE TELLING ME NOW, I UNDERSTAND
18 THAT.

19 THE COURT: AND IS THAT THE WAY YOU WANT TO GO?

20 MR. SHERIFF: THAT'S NOT THE WAY I WANT TO GO, YOU HONOR, BUT I
21 DON'T FEEL SAFE THE OTHER WAY.

22 THE COURT: WELL, DO YOU UNDERSTAND THAT IF I GRANT YOUR
23 MOTION TO RELIEVE MISTER POTTER, THAT MEANS THAT NO ONE FROM THE
24 PUBLIC DEFENDER'S OFFICE CAN COME DOWN HERE AND WORK ON YOUR
25 CASE BECAUSE THEY WOULD ALL HAVE A CONFLICT?

1 **MR. SHERIFF: YES, SIR.**

2 **THE COURT: DO YOU UNDERSTAND THAT?**

3 **MR. SHERIFF: YES, SIR. I DO.**

4 **THE COURT: YOU UNDERSTAND THAT YOU DON'T GET TO ASK THAT**
5 **MISTER JONES TO BE MY ATTORNEY, YOU WILL GET WHOEVER IS NEXT IN**
6 **LINE TO GET A CASE, IF YOU QUALIFY.**

7 **MR. SHERIFF: YES, SIR.**

8 **THE COURT: IS THAT WHAT YOU ARE ASKING ME TO DO?**

9 **MR. SHERIFF: YES, SIR. PLEASE, SIR.**

10 **THE COURT: DO YOU UNDERSTAND THAT IF I DO GRANT YOUR MOTION**
11 **AS WELL AS MISTER POTTER'S MOTION THAT YOUR CASE IS NOT GOING TO**
12 **KEEP BEING CONTINUED. IT WILL BE CONTINUED TODAY.**

13 **MR. SHERIFF: I UNDERSTAND THAT. I UNDERSTAND COMPLETELY.**

14 **THE COURT: AND I'M GOING TO REQUIRE THE SOLICITOR'S OFFICE TO**
15 **CALL THIS CASE TO TRIAL IN THE NEAR FUTURE. DO YOU UNDERSTAND**
16 **THAT?**

17 **MR. SHERIFF: YES, SIR. I DO.**

18 **THE COURT: OKAY. I WANT YOU, BEFORE I MAKE MY DECISION, I WANT**
19 **YOU TO WRITE A LIST DOWN OF ALL DISCOVERY, ALL INVESTIGATION THAT**
20 **YOU ARE ASKING THAT YOUR ATTORNEY DO.**

21 **MR. SHERIFF: OKAY, SIR.**

22 **THE COURT: I'M GOING TO GIVE IT -- I'M GOING TO HAVE YOU GIVE IT**
23 **TO MISTER POTTER SO THAT WHEN A NEW ATTORNEY COMES ON YOUR**
24 **CASE, HE WILL KNOW EXACTLY WHAT YOU ARE ASKING BE DONE IN ADDITION**
25 **TO WHAT HAS ALREADY BEEN DONE ON YOUR CASE. DO YOU UNDERSTAND**

1 THAT?

2 MR. SHERIFF: YES, SIR.

3 THE COURT: DO YOU UNDERSTAND THAT?

4 MR. SHERIFF: YES. I DO.

5 THE COURT: ALL RIGHT. DO YOU HAVE ANY QUESTIONS?

6 MR. SHERIFF: I THINK I'VE GOT WHAT YOU'RE ASKING FOR NOW.

7 THE COURT: I DON'T WANT YOU TO GIVE IT TO ME.

8 MR. SHERIFF: YES, SIR.

9 THE COURT: YOU GIVE IT TO MISTER POTTER WHO WILL THEN GIVE IT
10 TO THE NEW ATTORNEY SHOULD I GRANT YOUR MOTION. NOW, I
11 UNDERSTAND YOU HAVE WITNESSES HERE?

12 MS. HUEY: YES, SIR, YOUR HONOR. WE ARE READY TO GO AND WE
13 HAVE BEEN. I DO FEEL THAT THIS IS A DELAY TACTIC. I THINK THE
14 DEFENDANT IS GETTING CONFUSED BETWEEN SOMEONE WHO IS GOING TO
15 REPRESENT HIM IN COURT AND HE KEEPS SAYING, "HIS BEST INTERESTS."
16 THE FACTS OF THIS CASE, JUDGE, IF I MAY BRIEFLY GO INTO THEM.

17 THE COURT: YES.

18 MS. HUEY: ESSENTIALLY, THE DEFENDANT BROKE INTO THE HOUSE. HE
19 CUT HIMSELF WHEN HE BROKE INTO THIS HOUSE AND LEFT HIS DNA THERE
20 AND THAT IS HOW WE GOT TO HIM. THAT IS THE ONLY PIECE OF EVIDENCE
21 AGAINST HIM, TO TELL YOU THE TRUTH, BUT IT'S HARD TO ARGUE WITH THAT
22 SO I DON'T KNOW WHAT ANOTHER ATTORNEY CAN DO FOR HIM IN TERMS OF
23 INVESTIGATION.

24 THE COURT: AND I DON'T EITHER AS I SIT HERE, AND THAT'S WHAT I'M
25 CONCERNED WITH, BUT ALSO, THIS IS A CASE THAT INVOLVES POSSIBLE LIFE

1 IN PRISON WITHOUT THE POSSIBILITY OF PAROLE?

2 MS. HUEY: YES, SIR. IT DOES.

3 THE COURT: AND YOU NOTIFIED MISTER SHERIFF?

4 MS. HUEY: YES, SIR.

5 THE COURT: WHEN WOULD HE BE -- NOW, YOU'RE EXPECTING.

6 CORRECT?

7 MS. HUEY: YES, SIR. I AM.

8 THE COURT: I DON'T MEAN TO BE TOO PERSONAL, BUT HOW SOON ARE

9 YOU EXPECTING THIS CASE TO GO FORWARD?

10 MS. HUEY: JUDGE, I WOULD PREFER TO TRY THE CASE AS QUICKLY AS

11 POSSIBLE, BUT I UNDERSTAND IF HE'S GIVEN A NEW ATTORNEY, THAT

12 ATTORNEY WILL NEED SOME TIME TO REVIEW THE DISCOVERY AS WELL.

13 THE COURT: DO WE HAVE A TERM IN APRIL?

14 MS. HUEY: YES, SIR. WE DO. APRIL 19TH, I BELIEVE

15 THE COURT: OKAY. I'LL TELL YOU WHAT, MISTER SHERIFF, WHAT I'M

16 GOING TO DO IS, I'M GOING TO GRANT YOUR MOTION. I'M REQUIRING THAT

17 YOUR CASE BE BROUGHT BACK UP FOR TRIAL APRIL 19TH. IF YOU DON'T

18 HAVE AN ATTORNEY, YOU WILL GO FORWARD BY YOURSELF. DO YOU

19 UNDERSTAND? YOU WILL BE *PRO SE*.

20 MR. SHERIFF: ARE YOU GOING TO TRY TO APPOINT ME ONE, SIR?

21 THE COURT: I'M GOING TO PUT YOU BACK ON THE LIST. MADAM CLERK,

22 WHAT IS THE PROCESS? DO YOU JUST PUT HIM BACK ON THE LIST?

23 CLERK OF COURT: WE DO, YOUR HONOR. THE P.D.'S OFFICE HAS THEIR

24 OWN LIST.

25 THE COURT: THEY WILL TAKE CARE OF THAT? OKAY. I WANT YOU --

1 HOW LONG IS HE OVER HERE THIS MORNING? I'M GOING TO HAVE YOU,
2 BEFORE YOU LEAVE COURT TODAY, TO MAKE OUT A LIST OF EACH AND
3 EVERY THING THAT YOU CONTEND NEEDS TO BE DONE ON YOUR CASE. DO
4 YOU UNDERSTAND?

5 MR. SHERIFF: YES, SIR.

6 THE COURT: IF YOU LEAVE ANYTHING OUT, THEN IT WILL JUST BE TOO
7 LATE.

8 MR. SHERIFF: YES, SIR.

9 MS. HUEY: YOUR HONOR, IF I MAY ASK FOR ONE MORE THING.

10 THE COURT: YES, MA'AM.

11 MS. HUEY: SINCE MISTER SHERIFF HAS BROUGHT UP HIS
12 COMPETENCY, DO YOU THINK WE COULD GO AHEAD AND GET A MENTAL
13 EVALUATION ORDERED SO THAT WE CAN HAVE THAT DONE —

14 THE COURT: ARE YOU REQUESTING ONE?

15 MS. HUEY: YES SIR. I AM.

16 THE COURT: ABSOLUTELY.

17 MR. POTTER: THAT MAY DELAY THINGS, JUDGE.

18 MS. HUEY: USUALLY, JUDGE, IF WE CAN GET THAT DONE THIS WEEK,
19 THEY'VE BEEN A LOT QUICKER AND WE CAN GET THAT DONE IN PROBABLY A
20 FEW WEEKS.

21 THE COURT: OKAY. IF YOU'LL PREPARE ME AN ORDER.

22 MS. HUEY: YES, SIR. I'LL GET THAT TO YOU THIS AFTERNOON.

23 THE COURT: ALL RIGHT. MISTER POTTER, YOU'VE BEEN SITTING
24 THERE. DO YOU HAVE ANYTHING YOU WANT TO PUT ON THE RECORD?

25 MR. POTTER: JUDGE, THERE'S PROBABLY A LOT OF THINGS I NEED TO

1 PUT ON THE RECORD.

2 THE COURT: I UNDERSTAND IF YOU CAN'T.

3 MR. POTTER: I DON'T THINK I HAVE ANYTHING FURTHER TO SAY. WITH
4 REGARDS TO THE INDICTMENT, THAT WAS SOMETHING THAT WAS CAUGHT
5 BY THE SOLICITOR. I HAD NO DISCUSSIONS WITH THE SOLICITOR
6 REFERENCING THE INDICTMENT AND WITH REGARDS TO COMPETENCY, I MET
7 WITH MISTER SHERIFF. THERE WAS NO INDICATION THAT HE WAS N-G-R-I,
8 THERE WAS NO INDICATION THAT HE WAS GUILTY BUT MENTALLY ILL WHEN I
9 MET WITH HIM. HE UNDERSTOOD WHAT HE WAS CHARGED WITH. HE
10 UNDERSTOOD WHY HE WAS BEING CHARGED WITH BURGLARY FIRST AS
11 OPPOSED TO A BURGLARY SECOND. HE WAS ABLE TO, WITH REGARDS TO
12 THE FIRST INDICTMENT, SHOW ME THE POTENTIAL FLAW IN THE INDICTMENT
13 WITH REGARDS TO HIS COMPETENCY AND HE ASSISTED ME, HE WAS ABLE TO
14 DO THAT, JUDGE. SO, AT NO POINT IN TIME DID I FEEL THAT THERE WAS A
15 MENTAL HEALTH SITUATION OR MENTAL HEALTH ISSUE THAT I NEEDED TO
16 INVESTIGATE.

17 THE COURT: I'M GOING TO ASK YOU, MISTER POTTER, TO STICK
18 AROUND. I WANT YOU, MISTER SHERIFF, TO PREPARE THAT LIST. I WANT
19 YOU TO SIGN AND DATE IT. OKAY, SIR?

20 MR. SHERIFF: YES, SIR.

21 THE COURT: AND LET ME TELL YOU SOMETHING, MISTER SHERIFF,
22 YOU'RE NOT GOING TO COME INTO THIS COURTROOM IN APRIL AND THINK
23 THAT YOU ARE CONTINUING YOUR CASE. AT SOME POINT, YOU ARE GOING
24 TO TRIAL WHETHER YOU HAVE AN ATTORNEY OR NOT. THE NEXT TIME YOUR
25 CASE IS CALLED TO TRIAL, IF YOU DO NOT HAVE AN ATTORNEY AT THAT

1 POINT, THEN YOU WILL BE REQUIRED TO GO FORWARD BY YOURSELF. DO
2 YOU UNDERSTAND THAT?

3 MR. SHERIFF: YES, SIR. I DO.

4 THE COURT: NOW, MISTER POTTER, WHAT NEEDS TO BE DONE TO
5 CHECK THROUGH THE CONFLICT'S LIST IN YOUR OFFICE? CAN YOU DO THAT
6 THIS AFTERNOON?

7 MR. POTTER: YES, SIR, JUDGE. I CAN MAKE A CALL OUT THERE TODAY
8 AND MY ASSISTANT CAN GET A NAME.

9 THE COURT: I'M GOING TO GRANT MISTER SHERIFF'S MOTION THAT
10 MISTER POTTER BE RELIEVED. I'M ALSO GOING TO GRANT MISTER POTTER'S
11 MOTION TO BE RELEASED. BEFORE WE LEAVE HERE I WANT YOU TO GET
12 THAT INFORMATION TO MISTER POTTER SO HE CAN GET IT FILED AND GIVE IT
13 TO THE NEXT ATTORNEY THAT'S GOING TO REPRESENT YOU. OKAY?

14 MR. SHERIFF: DO YOU HAVE PAPER AND A PENCIL THAT I CAN WRITE
15 WITH?

16 THE COURT: SOMEONE WILL PROVIDE YOU WITH THAT. GOOD LUCK
17 TO YOU, MISTER SHERIFF. YOU HAVE SOME PEOPLE HERE WAITING TO
18 TESTIFY?

19 MS. HUEY: YES, SIR. I WILL SPEAK WITH THEM MOMENTARILY.

20 THE COURT: TELL THEM I APOLOGIZE THAT I HAD TO CONTINUE THIS
21 CASE, BUT I'M TRYING TO MAKE SURE THAT WE DO IT ONCE AND ONLY ONCE.

22 MS. HUEY: THANK YOU, JUDGE.



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kurt tanvernier

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Public Defender



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County	Attorney	Contact	Office
Anderson	Robert A. Gamble Circuit Public Defender	Tel: 864-260-4048 Fax: 864-260-4134 Email Contact	Anderson
Anderson	Jennifer L. Johnson Staff Attorney	Tel: 864-260-4048 Fax: 864-260-4134 Email Contact	Anderson
Anderson	Kristi McCauley Public Defender	Tel: 864-260-4048 Fax:	Anderson
Anderson	Matthew Perkins Public Defender	Tel: 864-260-4048 Fax:	Anderson
Anderson	Andrew T. Potter Assistant Public Defender	Tel: 864-260-4048 Fax: 864-260-4134 Email Contact	Anderson
Anderson	John J. Stathakis Public Defender	Tel: 864-226-1885 Fax: 864-226-0561	Anderson
Anderson	Kurt Tanvernier Public Defender	Tel: 864-260-4048 Fax:	Anderson
Anderson	G. Scott Thomason Public Defender	Tel: 864-260-4048 Fax:	Anderson

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

94-CP-04-138

ENTERED

7-10-95

David Sheriff, 171192,

Applicant,

vs.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

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JUL 29 2014

This matter comes before the Court by way of an application for post-conviction relief dated January 27, 1994. The Respondent made its Return on April 15, 1994. An evidentiary hearing into the matter was convened on June 20, 1995 at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by Bruce Byrholdt, Esquire. The Respondent was represented by Allen Bullard of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Testifying on behalf of the State was Harold Lowery, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Anderson County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. The Applicant was indicted at the September 11, 1990 term of the Court of General Sessions for Anderson County for Burglary

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R.A.P.

First Degree (Indictment No. 90-GS-04-1777) and two counts of Burglary Second Degree (90-GS-04-1764 and 1780). He was represented by Harold Lowery, Esquire. On September 24, 1990, the Applicant pled guilty to the charges. He was sentenced by the Honorable Tom J. Ervin to confinement for a period of twenty-four (24) years for Burglary First Degree and fifteen (15) years, concurrent, for each count of Burglary Second Degree. The Applicant did not appeal his guilty plea or sentence.

In his application, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel did not make known facts that would have been relevant.
 - b. Counsel did not discuss case in detail with the defendant prior to court.
 - c. Counsel was not adequately prepared to plead case.

Prior to the start of the hearing, the Court questioned Applicant's counsel regarding if Applicant desired to make any amendments to the application for post-conviction relief. Applicant's counsel made a motion to amend the Application for Post-Conviction relief to include a claim that counsel was ineffective because he had a conflict of interest. Trial counsel represented the Applicant's co-defendant, Sean Eric Wisham. Respondent had no objection to the application for post-conviction relief being amended in this regard and thus the Court granted the motion to so amend the application for post-conviction relief.

This Court has had the opportunity to review the record

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R.A.P.

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 and to closely pass upon their credibility and has weighed their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

The Court finds all the allegations contained in the original application for post-conviction relief to be allegations of inadequate preparation. The Applicant contends counsel's inadequate preparation amounted to deficient performance entitling him to a remand of these charges for a new trial. When an ineffectiveness claim is presented the Applicant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the Applicant must show that the outcome of his proceeding was prejudiced and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694.

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the two-part standard adopted in Strickland v. Washington, supra, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he

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would not have pled guilty and would have insisted on going to trial. This Court finds that the Applicant cannot meet the prejudice requirement.

The Applicant claims that counsel never came to talk with him during his pre-trial incarceration in the Anderson County Detention Center. He also claims he was only able to discuss his case with his attorney on the morning before his guilty plea and was, therefore, completely unaware of any options he had other than to plead guilty. The evidence before this Court does not support these contentions.

This Court finds that trial counsel visited the Applicant on at least two occasions to discuss his case while he was in the Anderson County Detention Center awaiting trial. In addition to these two visits, counsel also spoke with the Applicant via telephone and had his investigator interview the Applicant on four or five other occasions. Through his investigation counsel learned that the Applicant had been doing cocaine at the time of his arrest. Counsel also learned that both the Applicant and his co-defendant had given statements to the police, confessing to the crimes. This Court finds that the Applicant told his attorney the same story he had told the police in his confession. The Applicant never gave counsel any indication that his confession to the police was involuntary. Instead, he told counsel that he understood his rights when he gave the police his confession. This Court finds that the Applicant never protested his guilt and never advised his attorney that he wanted a jury trial. Therefore, counsel

negotiated with the solicitor's office for a favorable plea bargain for his client. Counsel was able to negotiate a deal whereby the solicitor would recommend a twenty-four year sentence if the Applicant pled guilty as charged. This Court finds that counsel explained the negotiation to the Applicant and he agreed to accept the deal.

This Court is also persuaded by the Applicant's sworn testimony at his guilty plea. At that time the Applicant indicated he understood and waived his right to a jury trial and accompanying Constitutional rights. Tr. p. 5. The Applicant also indicated that he was pleading guilty because he was guilty. Tr. p. 6. Even after Judge Ervin explained the options he claims his attorney had failed to explain to him, he continued to maintain his guilt and proceed with his guilty plea. The Applicant also informed Judge Ervin he understood he was waiving his right to challenge any statement he had made to the police. Tr. p. 9. When specifically questioned on the subject, the Applicant also told the Judge he had talked with his attorney as often as he needed and felt he had done everything he should have done. Finally, at the conclusion of the plea the Applicant assured Judge Ervin the sentence he had just received was agreeable with him. It defies logic that a person who supposedly had such strong reservations about his attorney's preparedness, as Applicant asserts now, would stand idly by and allow himself to be sentenced to prison even after the sentencing judge gave him ample opportunity to protest the proceeding. Based on the foregoing this Court concludes counsel performed a thorough

investigation into the charges against his client, advised him of his options and assisted in obtaining a favorable resolution of the charges.

The Applicant also claims counsel was ineffective because he represented both the Applicant and his co-defendant, thereby causing a conflict of interest. This Court finds the mere possibility of a conflict of interest is insufficient to invalidate a criminal conviction. Langford v. State, ___ S.C. ___, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id.

This Court finds that counsel informed the Applicant that he represented his co-defendant and explained the conflict of interest that could conceivably arise. This Court finds that both the Applicant and his co-defendant gave similar statements (confessions) to the police and did not attempt to implicate one another. This Court finds that no conflict of interest ever manifested itself. Both the Applicant and his co-defendant pled guilty as charged, and there is no evidence either co-defendant ever had adverse interests with regard to these charges.

This Court finds that the Applicant's attorney demonstrated a normal degree of skill, knowledge and professional judgment that is

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expected of an attorney who practices criminal law. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, supra; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). This Court finds that the Applicant has failed to meet his burden of proof by a greater weight or preponderance of the evidence to prove that counsel was ineffective. This allegation and the application is denied and dismissed.

As to any and all allegations raised in the application and at the hearing not specifically addressed in this Order, this Court finds them to be waived by the Applicant as he failed to meet his burden of proof regarding them. They are hereby denied and dismissed.

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Therefore, this application for post-conviction relief must be denied and dismissed.

In addition this Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief must be denied and dismissed; and
2. The Applicant must be remanded to the custody of the Respondent.

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AND IT IS SO ORDERED this 5th day of July, 1995.



RODNEY A. PEEPLES
Presiding Judge
Tenth Judicial Circuit

Barnwell, South Carolina.

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CLERK OF COURT
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 COMMON PLEAS AND
 GENERAL) C.A. No. 2013-CP-04-1431

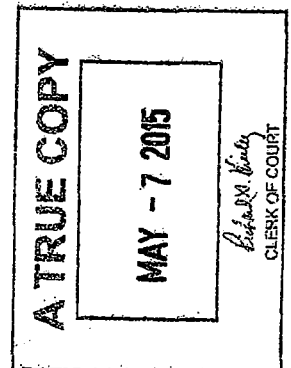
David Dale Sheriff,
 S.C.D.C. No. 171192,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed June 12, 2013. Respondent subsequently filed its responsive pleadings. An evidentiary hearing into the matter was convened on July 30, 2014 at the Anderson County Courthouse. Applicant was present and was represented by Hugh W. Welborn, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General. Kurt Tavernier, Esq., (counsel) testified to his course of conduct during the representation on the matters at issue.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Anderson County. The Applicant was indicted for burglary, first-degree at the December 2009 term of the Court of General Sessions for Anderson County (2009-GS-04-2990). The Applicant was represented by Kurt Tavernier, Esq. On July 19, 2010, the State called its case to trial before the Honorable R. Lawton McIntosh. The jury found Applicant guilty as indicted. Judge McIntosh sentenced Applicant to a term of life without the possibility of parole (LWOP).

A timely notice of appeal was filed on Applicant's behalf and perfected by LaNelle Durant, Esq., of the Office of Appellate Defense pursuant to Anders v. California.¹ The South Carolina Court of Appeals affirmed Applicant's sentence and conviction State v. David Dale Sheriff, No. 2012-UP-453 (S.C. Ct. App. filed on July 18, 2012). The Remittitur was issued on August 10, 2012.

At the PCR hearing, Applicant proceeded on the limited allegations of ineffective assistance of counsel in his assertion that he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. Counsel issued advice to Applicant to the effect that no defense was possible to his charge
 - b. "Counsel did not familiarize himself with the facts of the case;"
 - c. Failure to file a motion for reconsideration of the sentence.

Summary of Testimony and Evidence presented at the PCR Hearing

Applicant testified that counsel's representation constituted a conflict of interest. Applicant testified that he had his original appointed attorney, Tenth Circuit Asst. Public Defender Andrew Potter, Esq., removed because of a personal conflict. Applicant explained that conflict as follows: Attorney Potter successfully moved to quash a defective indictment. He was dissatisfied with Attorney Potter after the State subsequently re-indicted him. Applicant testified that the Trial Judge granted Applicant's motion to have Attorney Potter relieved and further conflicted Applicant's case from the Tenth Circuit Public Defender's Office. Applicant reasoned "there should not have been anyone having anything to do with the Public Defender's Office involved with his case, and then counsel was appointed." Applicant testified that "I can't say that [counsel] did anything personally against me." Instead, he reasoned that counsel's representation

¹ Anders v. California, 386 U.S. 738 (1967).

was in violation of the Trial Judge's order because "[counsel] was an assistant to the Public Defender's Office." Applicant testified that counsel utilized resources from the Public Defender's Office; yet he was unaware if counsel's posture here was done to benefit his case. Upon cross-examination, Applicant testified to his 1994 PCR action from a prior conviction where he previously had raised a similar conflict of interest allegation. Applicant explained that he originally raised the conflict allegation in 1994 because "he was told to do so." In contrast, Applicant testified that he raised the allegation in the present case after personally researching the purported error.

Applicant alleged counsel should have done more to investigate his case. Applicant testified that counsel failed to do his own independent investigation of Applicant's case and that counsel relied solely upon Attorney Potter's previous work product. However, Applicant conceded his guilt. Last, Applicant alleged that counsel should have negotiated for more favorable plea offers. Applicant explained that the plea negotiations were held after the State called his case to trial. Applicant testified that the State offered him a thirty year sentence and that he would have accepted the offer but for the State changing it to a forty year sentence the following day.

At the PCR hearing, counsel testified to his course of conduct during the representation. Counsel briefly summarized his previous experience in criminal law as follows: he was a police officer for five years prior to his matriculation into law school; he has been licensed as an attorney since 1989; he worked for the Greenville Solicitor's Office before entering private practice; counsel left private practice to head the narcotics unit for the Anderson County Solicitor's Office; since then, he returned to private practice and has held a contract for indigent representation since 2002.

Counsel testified to the circumstances surrounding his appointment as substituted counsel on Applicant's case. Counsel testified that he handles six to twelve conflict cases a year from the Tenth Circuit Public Defender's Office. Counsel operates his own law firm. He further explained that his office is totally removed from the Public Defender's Office; all case files are housed in his office and maintained by his staff. Counsel testified that his contract with Indigent Defense is wholly unrelated to the Public Defender's Office. Counsel was appointed as substitute counsel after Applicant successfully moved to have Attorney Potter relieved based upon a personal dispute. He met with Attorney Potter to review the case. Counsel could not recall Applicant expressing any concern over his involvement in the case.

Counsel summarized the State's evidence against Applicant as follows: blood smears established that Applicant was at the victim's house where he had no right to be there. He acknowledged his guilt and never denied culpability during the representation. Counsel testified that he personally conducts his own investigations into his client's cases. He met with Applicant prior to trial to prepare for the case. Counsel testified to his failed efforts to negotiate a plea as follows: the initial offer was a recommendation for a forty-year term of imprisonment; Applicant refused that offer. Counsel was able to elicit a second offer for a recommendation of a thirty-year term of imprisonment that would expire when the State called the case for trial. Counsel testified that he conveyed the second offer to Applicant. He apprised Applicant of the constitutional consequences and implications of accepting and rejecting the plea offers. He testified that Applicant was competent and understood the ramifications of what would happen if he was convicted; he would have no alternative to LWOP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the

witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject's convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, Applicant claims that due to his attorney's sub-standard performance, he has been denied his constitutionally protected right to counsel. In deciding a claim of ineffective assistance of counsel, the focus is on "the fundamental fairness of the proceeding whose result is being challenged." Strickland v. Washington, 466 U.S. 668 (1984). Applicant must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id.

The Court finds that Applicant was not deprived of effective assistance of counsel. Defense counsel's pre-trial investigation and discussions with Applicant were reasonable in the circumstances, and did not fall below professional norms. The Court finds that defense counsel competently advised Applicant of the charge and possible sentences. The Court finds no conflict of interest existed with defense counsel representing Applicant. As such, the Court finds there was no prejudice towards the Applicant from defense counsel's representation of Applicant. The Court finds defense counsel's testimony regarding communications with Applicant credible, and does not find Applicant's testimony credible. Therefore, the court is denying the application.

Furthermore, this Court finds Applicant's conviction was supported by overwhelming evidence of his guilt. At trial, the State presented thorough testimony from the victim on the

extent of the burglary. Trial Tr. pp.43-51. The police obtained a blood sample that subsequently was matched to Applicant's D.N.A. profile. Trial Tr. p.73; pp. 103-04. After deliberating for forty-one minutes, the jury found Applicant guilty as indicted. Trial Tr. pp.144-45.

APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland, *supra*. 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.

This Court finds Applicant has failed to meet his burden to prove counsel's performance was either deficient or ineffective for his purported conflict of interest in handling Applicant's case. "To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001). "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008) (internal citation omitted). This Court finds counsel's testimony on the matter to be credible and convincing.

First, this Court finds that Applicant lacks standing to raise this *post hoc* allegation in PCR. Judge Peebles' order from Applicant's prior PCR Application from the mid-1990s shows that he is knowledgeable of this issue; this Court finds that Applicant has produced no credible justification to explain why he did not raise his concerns on the purported conflict to the Trial Judge at his trial. See State v. Patterson, 263 S.C. 176, 179, 209 S.E.2d 39, 40 (1974) ("Furthermore, appellant was not treading new ground. He was an experienced accused, and, as his testimony makes clear and the trial judge found, he fully understood his rights as an accused being subjected to custodial interrogation."). Second and alternatively, this Court finds that Applicant's argument is unsound as a matter of law. Third and alternatively, Applicant has entirely failed to present any competent evidence that showed Attorney Tavernier's substitution on his case inured to his detriment. Instead, the record clearly shows that Applicant received a windfall benefit on having counsel appointed to his case where his performance, on the matters at issue here, was exemplary. Therefore, this Court readily denies and dismisses this allegation with prejudice.

B.

Applicant's allegation that counsel's performance was deficient and ineffective in purportedly failing to adequately investigate his case is similarly without merit. "Criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (internal citations omitted). "The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id.

This Court finds that Applicant failed to make a sufficient prima facie showing here. See United States v. Schaflander, 743 F.2d 714, 721 (9th Cir. 1984) (In order to prevail on an ineffectiveness claim, a petitioner must make a sufficient factual showing to substantiate the claims. A petitioner must still show conduct below an objective standard of reasonableness as well as prejudice, and must also show more than conclusory allegations. Mere conclusory allegations are deficient.). In light of Applicant's silence on the basis and purported prejudice here, he testified that he was in fact guilty. In contrast, this Court finds counsel's testimony concerning his investigation procedures and his efforts in Applicant's case to be credible and sound. Therefore, this allegation is readily denied and dismissed with prejudice.

C.

This Court finds that Applicant's allegation that counsel's performance was deficient and ineffective for not eliciting a more favorable plea offer than the State's offer to recommend a thirty year prison sentence is without merit. Absent detrimental reliance, not present in this case, a criminal defendant has no right to a plea bargain. Instead, the constitutional authority here rests solely within the purview of the prosecuting office. See Ex parte Harrell v. Attorney Gen. of

State, 409 S.C. 60, 66, 760 S.E.2d 808, 810-11 (2014) (citing State v. Thrift, 312 S.C. 282, 306, 440 S.E.2d 341, 355 (1994) (internal quotations omitted) ("Noting that the State possesses "wide latitude in selecting what cases to prosecute and what cases to plea bargain, the Court observed that the Attorney General's authority to prosecute derives from our state constitution."))). Therefore, this allegation is denied and dismissed with prejudice.

Applicant also failed to meet his burden to prove that counsel's performance on advising him to accept the State's second offer that included the State's recommendation for a thirty year sentence constituted either deficient or ineffective performance. "Where counsel's ineffective advice led to an offer's rejection, and where the prejudice alleged is having to stand trial, a defendant must show that but for the ineffective advice, there is a reasonable probability that the plea offer would have been presented to the court, that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the actual judgment and sentence imposed." Lafler v. Cooper, -- U.S. --, 132 S. Ct. 1376, 1380 (2012). "Simply put, the first inquiry is whether trial counsel's advice was deficient." Alexander v. State, 303 S.C. 539, 542, 402 S.E.2d 484, 485 (1991). This Court finds counsel's testimony on the matter to be compelling and dispositive in light of his consistent representations to the Trial Judge on the matter. Trial Tr. p.30. Notably, Applicant was silent here where he could have addressed the Court on the matter if he felt that the State pulled the offer before he had sufficient time to accept it. Most importantly, Applicant did not correct counsel's representation that "[both offers] of which he rejected and he requested and he wished for a jury trial on this charge." Trial Tr. p.30, ln. 5-6. This Court finds that even Applicant's assertion, when viewed in isolation, that "he would have taken the thirty" to be dubious and a product of wishful thinking. Therefore, this allegation is denied and dismissed with prejudice.

D.

Except as discussed above, this Court finds that the Applicant affirmatively abandoned the remaining allegations set forth in his application at the hearing. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are 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 for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

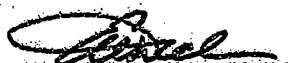
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 1st day of May, 2015.



EDGAR W. DICKSON
Presiding Judge
Tenth Judicial Circuit

Orangeburg, South Carolina

FILED CLERK'S OFFICE
ANDERSON SC
2015 MAY -7 AM 11:56
COMMON PLEAS AND
GENERAL SESSIONS

DOCKET NO. 2009-GS-04-02990

WITNESSES

M Voigt, Anderson County Sheriff's Dept.

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

DEC 15 2009

Term

ARREST WARRANT NUMBER

Direct Ref.

J878364

THE STATE

vs.

David Dale Sheriff

ACTION OF GRAND JURY

TRUE BILL

DEC 15 2009

Foreperson of Grand Jury

Date:

Foreperson

VERDICT

CTH

Indictment for

Burglary / Burglary (After June 20, 1985) - First degree

SC Code: 16-11-0311

CDR Code: 0079

A TRUE COPY

MAY 15 2013

Kufabv Kufabv
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF Anderson)

INDICTMENT

At a Court of General Sessions, convened on DEC 15 2009, the Grand Jurors of Anderson County present upon their oath:

Burglary / Burglary (After June 20, 1985) - First degree

That David Dale Sheriff did in Anderson County, on or about the August 19, 2005, willfully and unlawfully enter the dwelling of John Samuel Blume located at

without consent and with the intent to commit a crime therein and/or the defendant has two or more convictions for burglary or housebreaking or a combination of both. This is in violation of §16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

238

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Anderson

VS.

David Dale Sheriff

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2009GS0402990

AW#: 2009GS0402990

Date of Offense: 8/19/2005

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

AKA:

Race: W Sex: M Age: 40

DOB: SS#:

Address:

City, State, Zip:

DL# SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (After June 20, 1985) - First degree

In violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☒ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense,The plea is: ☒ Without Negotiations or Recommendation,☐ Defendant Waives Presentment to Grand Jury.☐ Negotiated Sentence,☐ Recommendation by the State. (defendant's initials)ATTEST: *[Signature]* 73689

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$1000; provided that upon the service of days/months/years and or payment of \$

; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ 130.00

Clerk of Court Deputy Clerk
Court Reporter: *[Signature]*

SCCA/217 (11/2009)

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning
Substance AbuseRandom Drug/Alcohol Testing ☐
Fine may be pd. in equal consecutive weekly/monthly
pmts. of \$ Beginning
\$ Paid to Public Defender Fund

Other:

CLERK OF COURT

☐ Appointed PD or appointed other counsel,
\$47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code:

Sentence Date: 7/20/10